

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

One Hundred And Seventeenth Legislature

OF THE

State Of Maine

VOLUME VI

SECOND REGULAR SESSION

House of Representatives

January 3, 1996 to April 3, 1996

Senate

January 3, 1996 to March 13, 1996

ONE HUNDRED AND SEVENTEENTH MAINE LEGISLATURE
SECOND REGULAR SESSION
17th Legislative Day
Tuesday, February 27, 1996

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

Prayer by Reverend Glenn Swope, High Street Congregational Church, Auburn.

National Anthem by the Vikettes and Viking Voices, Oxford Hills High School, South Paris.

Physician for the day, Scott A. Thomas, D.O., Eastern Maine Medical Center.

The Journal of Thursday, February 22, 1996 was read and approved.

SENATE PAPERS

The following Joint Resolution: (S.P. 709)

JOINT RESOLUTION RECOGNIZING THE 100TH ANNIVERSARY OF THE MAINE STATE COUNCIL OF THE KNIGHTS OF COLUMBUS

WHEREAS, the Maine State Council of the Knights of Columbus is celebrating its 100th Anniversary during 1996; and

WHEREAS, the Maine State Council of the Knights of Columbus is a Catholic family fraternal service organization; and

WHEREAS, the Maine State Council of the Knights of Columbus, through its subordinate councils, has contributed millions of dollars of financial aid to the less fortunate of the State of Maine; and

WHEREAS, the Maine State Council of the Knights of Columbus, through its subordinate councils, has contributed millions of hours in assisting people in need in the State of Maine; and

WHEREAS, the State Deputy, Lynn Cayford, the leader of the Knights of Columbus, continues to foster support and assistance to people in need through his stewardship; now, therefore, be it

RESOLVED: That We, the Members of the One Hundred and Seventeenth Legislature, now assembled in the Second Regular Session, offer our congratulations and best wishes to the members of the Knights of Columbus on the occasion of their organization's 100th Anniversary; and be it further

RESOLVED: That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to the State Deputy of the Maine State Council of the Knights of Columbus in honor of the occasion.

Came from the Senate read and adopted.

Was read and adopted in concurrence.

Ought to Pass as Amended

Report of the Committee on Taxation reporting "Ought to Pass" as amended by Committee Amendment "B" (S-431) on Bill "An Act to Decrease the Paperwork Burden on Maine Businesses by Decreasing the Number of Tax Filings for Retailers" (S.P. 79) (L.D. 167)

Came from the Senate with the Report read and accepted and the Bill passed to be engrossed as amended by Committee Amendment "B" (S-431).

Report was read and accepted. The Bill read once. Committee Amendment "B" (S-431) was read by the Clerk and adopted and the Bill assigned for second reading Thursday, February 29, 1996.

Ought to Pass as Amended

Report of the Committee on Marine Resources reporting "Ought to Pass" as amended by Committee Amendment "A" (S-430) on Bill "An Act to Create a Scallop Diving Tender License" (S.P. 655) (L.D. 1715)

Came from the Senate with the Report read and accepted and the Bill passed to be engrossed as amended by Committee Amendment "A" (S-430).

Report was read and accepted. The Bill read once. Committee Amendment "A" (S-430) was read by the Clerk and adopted and the Bill assigned for second reading Thursday, February 29, 1996.

PETITIONS, BILLS AND RESOLVES REQUIRING REFERENCE

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

Agriculture, Conservation and Forestry

Bill "An Act Strengthening the Laws That Prohibit the Drugging of Animals Competing in Pulling Events and Livestock Exhibitions" (H.P. 1322) (L.D. 1809) (Presented by Representative WHITCOMB of Waldo) (Cosponsored by Representative SPEAR of Nobleboro and Representatives: KNEELAND of Easton, TRUE of Fryeburg) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.)

State and Local Government

Bill "An Act to Amend the Boundary between Berwick and South Berwick" (H.P. 1323) (L.D. 1810) (Presented by Representative FARNUM of South Berwick) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.)

Reported Pursuant to Resolve

Representative CAMERON for the Joint Standing Committee on Business and Economic Development pursuant to Resolve 1995, chapter 52, section 8 asks leave to submit its findings and to report that the accompanying Bill "An Act to Make Changes in the Beverage Container Deposit Laws" (H.P. 1324) (L.D. 1813) be referred to the Joint Standing Committee on Business and Economic Development for Public Hearing and printed pursuant to Joint Rule 20.

Report was read and accepted, and the Bill referred to the Committee on Business and Economic Development, ordered printed and sent up for concurrence.

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

SPECIAL SENTIMENT CALENDAR

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

Recognizing:

Ryan James Anderson, of Boy Scout Troop #184 in Caribou, who has attained the high rank and distinction of Eagle Scout. We extend our congratulations on this occasion; (SLS 223)

On objection of Representative ROBICHAUD of Caribou, was removed from the Special Sentiment Calendar.

On motion of the same Representative, the Special Sentiment was indefinitely postponed.

Mark T. Corriveau, of Buxton, who has been named the National Grand Champion at the National Truck Driver Championships held in New Orleans, Louisiana. Mr. Corriveau drives for the Hannaford Trucking Company and won the Five Axle Flat category at the 1995 Maine State Truck Driving Championship. We extend our congratulations on this occasion; (HLS 904) by Representative LIBBY of Buxton. (Cosponsor: Senator LORD of York)

On objection of Representative JACQUES of Waterville was removed from the Special Sentiment Calendar.

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

REPORTS OF COMMITTEES Ought to Pass as Amended

Representative REED from the Committee on Taxation on Resolve, Authorizing the State Tax Assessor to Convey the Interest of the State in Certain Real Estate in the Unorganized Territory (H.P. 1219) (L.D. 1669) reporting "Ought to Pass" as amended by Committee Amendment "A" (H-723)

Report was read and accepted. The Bill read once. Committee Amendment "A" (H-723) was read by the Clerk and adopted and the Bill assigned for second reading Thursday, February 29, 1996.

CONSENT CALENDAR First Day

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

(S.P. 627) (L.D. 1634) Bill "An Act to Clarify Professional Liability" Committee on Judiciary reporting "Ought to Pass"

(S.P. 615) (L.D. 1618) Bill "An Act to Reform the Standard of Fiduciary Prudence" Committee on Judiciary reporting "Ought to Pass" as amended by Committee Amendment "A" (S-432)

(S.P. 634) (L.D. 1642) Bill "An Act to Extend Waivers of Certain Provisions of the Education Laws" Committee on Education and Cultural Affairs reporting "Ought to Pass" as amended by Committee Amendment "A" (S-433)

(S.P. 657) (L.D. 1717) Bill "An Act Allowing Towns to Form Regional Shellfish Management Committees" Committee on Marine Resources reporting "Ought to Pass" as amended by Committee Amendment "A" (S-429)

(H.P. 1248) (L.D. 1710) Bill "An Act to Simplify Applications for Tax Exemptions for Blind Individuals" Committee on Taxation reporting "Ought to Pass"

There being no objections, the above items were ordered to appear on the Consent Calendar of Thursday, February 29, 1996 under the listing of Second Day.

CONSENT CALENDAR Second Day

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

(S.P. 651) (L.D. 1703) Bill "An Act to Confirm That Nonprofit Health Care Providers May Achieve Cost Savings on Professional and General Liability Coverage" (C. "A" S-425)

(S.P. 659) (L.D. 1719) Bill "An Act to Correct Omissions in the Productivity Realization Task Force Legislation Relating to the State Soil and Water Conservation Commission and the Animal Welfare Board" (C. "A" S-426)

(H.P. 1275) (L.D. 1751) Resolve, to Authorize the Exchange of a Parcel of Land Owned by the State with One Owned by Luke Bolduc

(H.P. 1200) (L.D. 1650) Bill "An Act Enabling the Maine Employers' Mutual Insurance Company to Better Serve the Needs of Small Business" (C. "A" H-719)

(H.P. 1215) (L.D. 1665) Bill "An Act to Amend the Maine Insurance Code with Respect to Domestic Violence" (C. "A" H-720)

(H.P. 1231) (L.D. 1684) Bill "An Act to Consolidate Insurer Billing Procedures and to Streamline the Licensing Process for Reinsurance Intermediaries" (C. "A" H-718)

No objections having been noted at the end of the Second Legislative Day, the Senate Papers were Passed to be Engrossed as Amended in concurrence and the House Papers were Passed to be Engrossed or Passed to be Engrossed as Amended and sent up for concurrence.

BILLS IN THE SECOND READING As Amended

Bill "An Act to Clarify the Sales Tax Law Applicable to Packaging" (S.P. 207) (L.D. 550) (C. "B" S-427)

Bill "An Act to Reestablish the Tax Credit for Intrastate Airlines" (EMERGENCY) (S.P. 245) (L.D. 642) (C. "B" S-428)

Bill "An Act to Implement the Recommendations of the Study Commission on Property Rights and the Public Health, Safety and Welfare Establishing a Land Use Mediation Program and Providing for Further Review of Rules" (H.P. 1188) (L.D. 1629) (C. "A" H-711)

Resolve, Authorizing the Sale by the State of a Certain Parcel of Land to Joseph Squeglia (H.P. 1254) (L.D. 1723) (C. "A" H-717)

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

ENACTORS

Emergency Measure

Resolve, Establishing the Study Commission on Workers' Compensation Laws Relating to Small Business (H.P. 664) (L.D. 887) (C. "B" H-689)

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

Representative VIGUE: Mr. Speaker, Ladies and Gentlemen of the House: I would like to say a few words concerning L.D. 887. This requires a two-thirds majority and it is very, very important for the small businesses of the State of Maine.

In the 116th, we had two pieces of legislation introduced to exempt companies with five or under and another one to exempt people with 10 or under. In the 117th, the same thing happened. We had two more pieces of legislation to exempt people with five or

fewer employees and 10 or fewer. What we wanted to do was to have a study so if there is a problem, which the feeling is there is, this is going to study it and hopefully correct it for the small businesses of the state. I urge you to please support L.D. 887. 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. 112 voted in favor of the same and 4 against and accordingly the Resolve was finally passed, signed by the Speaker and sent to the Senate.

Emergency Measure

Resolve, to Extend Deadlines Relating to the Task Force to Review the Beverage Container Deposit Laws (H.P. 1175) (L.D. 1607)

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. 112 voted in favor of the same and 2 against and accordingly the Resolve was finally passed, signed by the Speaker and sent to the Senate.

An Act to Amend the Bowdoinham Water District Charter (H.P. 1170) (L.D. 1602) (C. "A" H-691)

An Act to Provide for Confidential Treatment of State and Federal Regulatory Information in the Application Process for Financial Institutions (H.P. 1206) (L.D. 1656) (C. "A" H-694)

An Act Concerning Portable Scale Tolerances on the Interstate Highway System (H.P. 1227) (L.D. 1680) (C. "A" H-695)

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

An Act Concerning Notification to Maine Workers and Contractors (S.P. 341) (L.D. 946) (C. "A" S-418)

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

On motion of Representative JOYCE of Biddeford was set aside.

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

Representative JOYCE: Mr. Speaker, Men and Women of the House: I just wanted to say that, again, during the public hearing and the work session nobody showed up to testify either for or against this bill. There is no evidence that there is even a demand for this out in the private sector. I request a roll call.

The same Representative 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. 297

YEA - Adams, Ahearne, Benedikt, Berry, Bouffard, Bunker, Carr, Chartrand, Chase, Chizmar, Clark, Cloutier, Davidson, Desmond, DiPietro, Dore, Driscoll, Etnier, Fisher, Fitzpatrick, Gates, Gerry, Gould, Green, Hatch, Heesch, Hichborn, Jacques, Johnson, Jones, K.; Joseph, Keane, Kerr, Kilkelly, Kontos, LaFountain, Lemaire, Lemke, Luther, Martin, Mayo, Mitchell EH; Mitchell JE; Morrison, Nadeau, O'Neal, Paul, Pendleton, Poulin, Pouliot, Povich, Richard, Ricker, Rosebush, Rowe, Samson, Saxl, J.; Saxl, M.; Shiah, Sirois, Stevens, Thompson, Townsend, Treat, Tripp, Tuttle, Tyler, Vigue, Volenik, Watson, Winn, The Speaker.

NAY - Aikman, Ault, Bailey, Barth, Bigl, Buck, Cameron, Campbell, Carleton, Chick, Clukey, Cross, Damren, Dexter, Donnelly, Dunn, Farnum, Gamache, Gooley, Greenlaw, Hartnett, Heino, Jones, S.; Joy, Joyce, Joyner, Kneeland, Labrecque, Lane, Layton, Lemont, Libby JD; Libby JL; Lindahl, Look, Lovett, Madore, Marshall, Marvin, McAlevey, McElroy, Meres, Murphy, Nass, Ott, Peavey, Perkins, Pinkham, Plowman, Poirier, Reed, G.; Reed, W.; Rice, Robichaud, Savage, Spear, Stedman, Stone, Taylor, True, Tufts, Underwood, Waterhouse, Wheeler, Whitcomb, Winglass, Winsor.

ABSENT - Birney, Brennan, Daggett, Gieringer, Guerrette, Lumbra, Nickerson, O'Gara, Richardson, Simoneau, Strout, Truman.

Yes, 72; No, 67; Absent, 12; Excused, 0.

72 having voted in the affirmative and 67 voted in the negative, with 12 being absent, the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

An Act to Describe Property Posting under the Criminal Trespass and Trespass by Motor Vehicle Laws (H.P. 1247) (L.D. 1709)

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

On motion of Representative HEESCHEN of Wilton was set aside.

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

Representative HEESCHEN: Mr. Speaker, May I pose a series of questions through the Chair?

The SPEAKER: The Representative may pose his questions.

Representative HEESCHEN: First, if this was discussed and debated last week in the House, I apologize for not being present, but I just wanted to ask for a little clarification on some of the issues here. One question I had was that it was my understanding that some members of the committee were concerned about the color of the paint that is required for the markings. I just ask if someone could give me an explanation of the concern and why it was finally decided not to make a change in that?

The SPEAKER: The Representative from Wilton, Representative Heesch has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Waterville, Representative Jacques.

Representative JACQUES: Mr. Speaker, Ladies and Gentlemen of the House: I apologize. Could the

Representative repeat his question, since I only caught about one-third of it?

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

Representative HEESCHEN: Mr. Speaker, Men and Women of the House: It was my understanding that one or more members of the Criminal Justice Committee had some concern about the color that is specified for the paint markings for the border. I just want to get some explanation of what that concern was and how that was resolved.

The SPEAKER: The Representative from Wilton, Representative Heesch has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Millinocket, Representative Clark.

Representative CLARK: Mr. Speaker, Men and Women of the House: I am not aware of any remarks to that. You may want to pose the question to some committee members, but I am not aware of any.

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

Representative JACQUES: Mr. Speaker, Men and Women of the House: I will attempt to answer that question the best I can. What the Trespass Commission came down with and I was a member of the Trespass Commission, was we wanted to give the department the authority by rule to adopt a color that would not be a color that is used by land surveyors or people that are out cruising forests to mark trees to be cut.

We pretty much left the determination of what that ultimate color was going to be to the department. We got into a debate of whether we should be designating the color or not. I don't remember if we ultimately designated a color. I think we are talking about a silver or a blue-gray color, which is established, I guess, in the other states for demarcation, telling people you are not allowed to go on that land. The reason they did that was to make it different from the blue or the fluorescent orange that cruisers or land surveyors use to make slash marks on the trees in the woods.

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

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

The SPEAKER: The Representative may pose his question.

Representative HEESCHEN: Thank you Mr. Speaker. In the first section of the bill on page 1, the current law essentially says that "in a manner prescribed by law," which doesn't exist to our knowledge, up to now, "or in a manner reasonably likely to come to the attn of intruders or that is fenced." I notice that the phrase "reasonably likely to come to the intruders" is still included in the law. My question now is, how will the interpretation of that phrasing, assuming it is still a law, be interpreted in light of the Section 4 that is proposed? That is, maybe I will phrase this a little differently. Will, in most cases, if land is not posted in conformance exactly with Section 4, will it then not be considered to be reasonably likely to come to the attention of intruders?

The SPEAKER: The Representative from Wilton, Representative Heesch has posed a question through the Chair to anyone who may care to respond. The

Chair recognizes the Representative from Waterville, Representative Jacques.

Representative JACQUES: Thank you Mr. Speaker. I am not sure I understand that question. Maybe I am deluded this morning. The standards that are put in there in Section 1 that will be recognized across the state for a landowner to mark his land to tell people they do not want people on that land. You will still be able to use signs, but as was discussed in the Trespass Commission, if you use just signs and somebody rips them down and throws them away or the weather gets to them, then you will not be able to hold the person on the land to the same standards that you would if you mark your boundary with a colored paint as will be recognized across the state for telling people you do not wish them on your property.

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

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

The SPEAKER: The Representative may pose his question.

Representative HEESCHEN: Thank you. To Representative Jacques, I am not sure you actually got to my question. That is, how will the phrase that is still in here, "reasonably likely to come to the attention of intruders," how will that be determined? Obviously there is going to be a determination and if you have marked it according to Section 4, then that is adequate, because it is called for in the new language here, but we still have the old language in, which has allegedly been difficult to enforce. If the landowner posts the land in a way that they think is reasonably likely to come to the attention of intruders, but isn't every hundred feet and all the right colors, how is that going to be interpreted?

The SPEAKER: The Representative from Wilton, Representative Heesch has posed a question through the Chair to the Representative from Waterville, Representative Jacques. The Chair recognizes that Representative.

Representative JACQUES: Thank you Mr. Speaker. It is my understanding that under the new marking standards it would be very difficult to say that it did not come to your attention because there is going to be a solid colored line across every tree along the border, but some of the legal people on the commission wanted to keep the language in there to make sure that that standard was still in the law.

Under the old law, as you well know, one no-trespassing sign covering a 400 foot or 600 foot or 1,000 foot boundary in someone's opinion might cover that standard. Clearly, unless you came right upon that sign, you would not meet that standard, because you did not see that sign. It may have been sufficient for the landowner because he didn't want to pay another dollar and a half for another sign. The landowner wasn't the problem. It was the person who was entering the property that was the problem. The legal people felt that standard should be kept in the law regardless of whether you have a sign on every tree or a sign every 50 feet or the solid painted lines across your whole boundary. The standards should still be kept in the law.

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

Representative GOOLEY: Mr. Speaker, Men and Women of the House: With this issue, the aluminum paint

thing, having been a forester for going on 40 years now, foresters use a number of different colored paint for different activities, whether it is blue, red, yellow paint or orange paint. I can understand wanting to standardize using a certain color paint for boundary lines. That happens to be under this scenario and it happens to be aluminum colored paint. I don't have a problem with doing that, because I think having been in the woods and seen the different color paints that if you see aluminum paint, you are going to know that is a boundary line. I think that is important. Somebody might ask if you put silver paint on a sugar maple tree, the bark on a sugar maple is kind of a silvery color to begin with, will it show up? I think the difference in the colors are ok. It will show up.

I think from that stand point, I think that is a good change in the law. On the other aspects of the legality of the trespassing, that I really don't know that much about. I wasn't on the commission that studied this so I guess I will go along with what has been recommended here.

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

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

The SPEAKER: The Representative may pose his question.

Representative HEESCHEN: Thank you Mr. Speaker. To Representative Jacques, who stated that the paint is going to be on every single tree, actually it is going to be not more than 100 feet by the law here. Suppose you have a situation where the landowner has put paint on trees no more than 100 feet apart on their property line. Suppose the tree falls down sometime in the winter during a blow down and this tree is missing and then when you get to court, the trespasser says, well, you didn't have a mark every 100 feet that is clearly specified in the law here. There is one missing. This seems to me to be sort of the same thing as the signs being down, whether it is deliberately down or blown down. How will that issue be addressed in any more satisfactory manner than the current problem with signs missing or not missing?

The SPEAKER: The Representative from Wilton, Representative Heesch has posed a question through the Chair to the Representative from Waterville, Representative Jacques. The Chair recognizes that Representative.

Representative JACQUES: Thank you Mr. Speaker, Men and Women of the House: It is my understanding that the recommendation is at least every 100 feet. Clearly, if you want to make it clear to anyone that you do not want them on your land and the tree, it is not like trees grow three inches apart, then I would mark that boundary line on almost every tree that followed the boundary line. It would be very clear for the people enforcing the law that someone saw that mark when they entered your property. I dare say that if you continue to say every 100 feet, as with the signs, the argument will always be made that you didn't see the sign and you walked in between those two signs at 100 feet. Having spent a little time in the woods myself, I find it most difficult to believe that people who are out there hunting, pursuing game or doing those things could walk by a fluorescent orange sign even at 100 feet and claim that they didn't see it. The fact of the matter is they do and the courts recognize that.

The painting method is a long established method in most states that have successfully dealt with people trespassing on other people's lands. That is why we borrowed it and that is why we are hopefully instituting it Maine. It can be effective if the landowner wants to take the time to spray his trees. If one blows down in a storm, I would strongly suggest that the landowner go back and make sure the two on each side of it are painted so somebody will not be able to sneak into that hole.

This law is designed to avoid the pitfalls that the current law has now, which really we have no trespassing law in this state right now, because it is so poorly worded and poorly drafted.

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

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

The SPEAKER: The Representative may pose his question.

Representative HEESCHEN: Thank you Mr. Speaker. As was noted, the law says that the markings have to be in no greater intervals than 100 feet, that is a fairly specific number. The question is, suppose that landowner has 10 to 25 miles of line that they maintain and it blows down during a wind storm. Does the landowner have to go out, particularly this winter, every three weeks and check the line to make sure no trees have blown down, in order to save their case should it come up in court?

The SPEAKER: The Representative from Wilton, Representative Heesch has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Farmington, Representative Gooley.

Representative GOOLEY: Mr. Speaker, Men and Women of the House: Most landowners, I happen to own a few hundred acres myself, don't get over their land but maybe once a year when they check out the boundary line. If a tree does fall down and it happens to have been a boundary tree that had paint on it, I don't necessarily mark it then. I periodically go through and mark my boundary lines maybe every 10 years. The boundary paint that we use today will stand up for about 10 years. Most people who mark their boundary lines will put paint on trees, wherever trees appear along the lines. Usually they put the output paint on trees 10 to 20 feet apart so that just in case a tree does fall down, there will be other trees there that will have paint on them.

We, as landowners, don't put paint on dead trees because they aren't going to be there that long. We put paint on live trees which are going to be there to upward to whatever, 50 to 100 years. I think most landowners are judicious and careful in how they paint their trees. So, this 100 feet really doesn't bother me all that much. Thank you.

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

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

The SPEAKER: The Representative may pose his question.

Representative HEESCHEN: Thank you Mr. Speaker. This one to Representative Gooley. Representative Gooley could you explain for me the legal status of a boundary line for the purpose that you might mark it and the legal status of this trespass line, which it is my understanding and please correct me if I am wrong, is not the same necessarily as a boundary

line. It seems to have very specific intervals that one must do in order to hold up in court. It is my understanding and this is a question as to whether the boundary line that you are marking has the same kind of potential problem, that is if one tree is missing, it won't stand up in court.

The SPEAKER: The Representative from Wilton, Representative Heeschén has posed a question through the Chair to the Representative from Farmington, Representative Gooley. The Chair recognizes that Representative.

Representative GOOLEY: Mr. Speaker, Men and Women of the House: This is a big state. There are thousands and thousands of miles of boundary lines and there are a lot of single landowners who own 1,000 acres or more. I know that I had one call from a landowner who happened to be in Representative Heeschén's district, who owns well over 10,000 acres. He called me and he wanted to know why we would want to pass something like this. It would be a hardship on him to have to maintain, probably he has 100 miles of line. I don't know, but he has a lot, I know that.

I guess the question of the 100 feet. If a tree does fall down, then it becomes a lawyer's opportunity to discuss the issue of a tree that has fallen down and there is a gap there of over 100 feet. If somebody trespasses and if they break a leg and the landowner is sued, what then? I don't have the answer to that. I think that this boundary line business in that it is something that is so big, the boundary line maintenance thing is so big that there are going to be some opportunities for gaps. I don't know of landowners who have been sued because some hunter went on the person's property and broke their leg and then sued the landowner because there was a slippery rock there or something like that. I guess it becomes a problem for lawyers at that point. I guess that is the way I would answer that. Thank you.

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

Representative HEESCHÉN: Mr. Speaker, Men and Women of the House: I am really confused by Representative Gooley's transformation of this from a bill which seemed to try to define trespassing to one that is sort of protecting a landowner against suit. I didn't realize that landowners were subject to suit if people were freely using their land, particularly trespassers. It seems to me that this bill does not accomplish what it set out to do, to somehow make the trespass law better. That is to make it possible for a landowner to actually maintain their land and post it if they so desire. The burden right now, as it has been, is on the landowner to prove that, in fact, someone is trespassing as Representative Jacques has noted, is awfully difficult because a trespasser can just go out there and go.

They could tear down signs. They could say they didn't see the signs because they weren't every 100 feet. In fact, part of the confusion that we have had over the years with the trespass law is that any trespasser is going to respond to a landowner saying you are supposed to have, it will be old tales, signs every 50 feet or every 100 feet and you didn't have them, but of course the law says all it has to be is reasonably likely to come to the attention of intruders, which most cases would be where people are likely to approach the property. In a lot of cases, that is pretty evident, roads and other access areas.

I think that when making this fairly detailed marking thing, it is going to make it very difficult for a landowner to say that their marking was reasonably likely to come to the attention of intruders if, in fact, they didn't do exactly this and if they didn't do exactly what Representative Jacques suggested, paint every doggone tree not only with your boundary line, but with your trespass line. I would note in response to Representative Gooley's statement that we don't paint dead trees, there was a survey done around my property at one time and the surveyor painted every doggone tree, including dead trees. But, in fact, there are live trees that blow down. There is plenty of blow downs in the kind of wind we have got here.

What we have got with this again will be a problem of enforcement. The landowner is not going to be able to prove any more easily than now, that someone is actually trespassing because some savvy trespasser is going to be able to say well, this was 101 feet apart, it wasn't 100 feet. By being so specific, I think we are providing a way to make it very difficult for landowners to do anything.

I think the root of the problem is that despite all of the efforts of the commissioner of Inland Fish and Game, editorial writers, the Sportsmen Alliance and the booklet on hunting that always says that landowner relations are really important, you should try to get permission and talk to people and know where you are hunting. The fact is, nobody does that. I can only talk as a microcosm, but on my 200 or 300 acres, over the last 24 years, there have been exactly two, count them, two times that a hunter has asked if they could have permission. I don't post my land and I haven't been intending to. One of those times was a neighbor kid, who decided he better do that after having put a bullet through my greenhouse. The other was a hunter who asked permission after I asked him to park a little differently on the edge of my field.

I think that there is where the problem is. If we really did have good landowner relations with the hunters, we wouldn't be dealing with these trespass issues. I think this law really isn't going to work. I would actually like to see the study commission go back and get at the root of the problem here and come up with a better way of marking that really addresses the problems. I request a division on this.

The same Representative requested a division on passage to be enacted.

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

Representative JACQUES: Mr. Speaker, Men and Women of the House: I submit to you that the Trespass Commission is not going to go back and go over this again because this is one of five bills that came out of the Trespass Commission that met all summer. Representatives on the Trespass Commission were from the Sheriffs' Departments, local police departments, state police, wardens' service, small woodlot owners, Sportsmen Alliance of Maine, Maine Forest Products Council, a representative of the legal profession from the Maine Lawyers. This is one of five bills that has to be taken together. It was spread out because the committees of jurisdiction, this happened to go to the Criminal Justice Committee, and we did exactly what Representative Heeschén suggests.

The most effective way to do this was to require a fence around your entire boundary line. I went elk hunting in Colorado last year and trespassing is not a problem in Colorado. Under Colorado law, every square foot of your boundary has a fence around it, whether you have seven acres or 70,000 acres. In the case of Ralph Loren, a couple of hundred thousand acres. He has a fence that goes 19.5 miles on one side of his property. In Colorado, if you get caught across that fence and you don't have permission from the landowner, it is not much of a problem. You go to court and you are found guilty of trespassing and end of discussion. If you have killed something on that other side of that fence, it is a whole other series of crime.

What Dave Peadar did who was the representative of the warden service is go to the states and look at the way they deal with trespassing without putting a major financial burden on landowners. The representatives of landowners told us that signs are a major financial burden. The trees that the signs are on fall down. They get ripped off and the whole ball of wax. The reason we went with painting is because in the states where they have a somewhat effective method of protecting landowners rights from trespassers is because they take the time to spray with the 10-year old lasting paint that Representative Gooley talked about close enough along their boundary lines that someone would have to be lying to say they couldn't see it. Of course, unless they are color blind, but that is a whole other problem. We do not have an effective trespass law on the books right now as Representative Heeschen has clearly pointed out.

The Trespass Commission came out with what has worked best everywhere else. I believe it will work here. If a landowner is serious about keeping people out and this does not mean he has to do his whole boundary, it just applies to the area that he wants to keep people out from. If I had 400 acres and I was concerned about 100 acres around my home and my barn where my children played, I could mark off that 100 acres with the spray paint in the woods and leave the other 300 acres open.

The alternative to this was to say that all land was posted unless you put a sign up saying, come on my land, hunt, fish, pick fiddleheads or whatever it is you want to do. That was unacceptable to all the commission members except one. He felt that we should post all land for everybody and if you wanted people on your land you would have to put a sign up saying whatever. We did not see that as a viable alternative. This is the alternative that came out of the whole summer and fall's work of the Trespass Commission.

I think it is the absolute best that we are going to come up with unless we go to alternative posting which is an affirmative permission, which gets you to another whole mess. I don't think the task force could do any better on making recommendations than we did. This is the way we recommended that we go. The choice is up to you. The system we have now, which is useless or one that I feel shows some great promise. Mr. Speaker, I request the yeas and nays please.

Representative JACQUES of Waterville 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. 298

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

NAY - Benedikt, Heeschen, Waterhouse.

ABSENT - Berry, Birney, Brennan, Buck, Cloutier, Daggett, Gieringer, Guerrette, Hatch, Lemaire, Lumbra, Marshall, Nickerson, O'Gara, Poirier, Samson, Truman.

Yes, 131; No, 3; Absent, 17; Excused, 0.

131 having voted in the affirmative and 3 voted in the negative, with 17 being absent, the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

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

SENATE PAPERS

The following Joint Order: (S.P. 710)

ORDERED, the House concurring, that the Joint Standing Committee on Natural Resources report out a bill relating to solid waste management planning and state-owned solid waste disposal facilities.

Came from the Senate read and passed.

Was read and passed in concurrence.

Bill "An Act to Extend Health Care Coverage for Parents Leaving the Aid to Families with Dependent Children Program" (S.P. 712) (L.D. 1812)

Came from the Senate referred to the Committee on Human Resources and Ordered Printed.

Was referred to the Committee on Human Resources in concurrence.

Reported Pursuant to Statutes

Report of the Revisor of Statutes pursuant to the Maine Revised Statutes, Title 1, section 94 asks

leave to submit its findings and to report that the accompanying Bill "An Act to Correct Errors and Inconsistencies in the Laws of Maine" (EMERGENCY) (S.P. 711) (L.D. 1811) be referred to the Joint Standing Committee on **Judiciary** for public hearing and printed pursuant to Joint Rule 20.

Came from the Senate with the Report read and accepted and the Bill referred to the Committee on **Judiciary** and Ordered Printed.

Report was read and accepted and the Bill referred to the Committee on **Judiciary** in concurrence.

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

Expression of Legislative Sentiment recognizing Mark T. Corriveau (HLS 904) which was tabled by Representative JACQUES of Waterville pending passage.

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

Representative LIBBY: Mr. Speaker, Men and Women of the House: It gives me pleasure to say to the members of the House that Mark Corriveau of Buxton was named the 1995 Grand Champion at the National Truck Driving Championships as was mentioned by the Clerk.

The championship tests the drivers in time-field courses designed to simulate actual conditions on city streets and highways. Problems require intricate and precise maneuvers that try the skill and judgment of the drivers. The contestants competed in one of eight categories including straight trucks, three, four and five axle tractor trailer combinations, tank trucks, flat bed, twin trailer and auto transport.

The winner in each category received \$1,000 in cash and a \$1,000 savings bond, a gold belt buckle and a trophy. As Grand Champion, Mark also won a \$10,000 savings bond, a diamond ring and a plaque.

Mark has been employed at Hannaford Trucking Company since 1988. Prior to that, he was employed at Merrill Transport Company from 1984 to 1988 and a Sears Brothers Packing from 1982 to 1984. All of his driving has been without a preventable accident. Mark and his wife, Pauline, live in the great Town of Buxton. Thank you.

Subsequently, was passed and sent up for concurrence.

On motion of Representative KONTOS of Windham, the House adjourned at 11:55 a.m., until 10:00 a.m., Thursday, February 29, 1996.