

# 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  
34th Legislative Day  
Friday, March 29, 1996

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

Prayer by Reverend Eunice Vanderweide, Freedom Bible Fellowship.

National Anthem by Cape Elizabeth Middle School Band.

Physician for the day, Paul M. Cox, M. D., Portland.

The Journal of yesterday was read and approved.

At this point, the Speaker appointed Representative KILKELLY of Wiscasset to serve as Speaker Pro Tem.

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

SENATE PAPERS

The following Communication: (H.C. 405)  
Maine State Senate  
State House Station 3  
Augusta, Maine 04333  
March 28, 1996

The Honorable Dan A. Gwadosky  
Speaker of the House  
117th Legislature  
Augusta, Maine 04333  
Dear Speaker Gwadosky:

In accordance with Joint Rule 38, please be advised that the Senate today confirmed the following:  
Upon the recommendation of the Joint Standing Committee on Business and Economic Development:

Donald J. Plourde of Winslow for appointment as a member of the Maine State Housing Authority;  
David J. Ott of Cumberland for appointment as a member of the Finance Authority of Maine;

David C. Kitchen of Yarmouth and Jeffrey S. Mitchell of Farmington for reappointment as members of the Maine Real Estate Commission;

Upon the recommendation of the Joint Standing Committee on Labor:

Peter T. Dawson of Hallowell for reappointment as a public member of the Maine Labor Relations Board;  
Pamela Chute of Brewer for reappointment as an alternate public member of the Maine Labor Relations Board;

Kathy M. Hooke of Bethel for reappointment as an alternate public member of the Maine Labor Relations Board;

Gwendolyn Gatcomb of Winthrop for appointment as an employee member of the Maine Labor Relations Board, and

Carol B. Gilmore of Charleston for appointment as an alternate employee member of the Maine Labor Relations Board.

Sincerely,  
S/May M. Ross  
Secretary of the Senate

Was read and ordered placed on file.

The following Communication: (H.C. 406)  
Maine State Senate  
State House Station 3

Augusta, Maine 04333  
March 28, 1996

The Honorable Dan A. Gwadosky  
Speaker of the House  
117th Legislature  
Augusta, Maine 04333

Dear Speaker Gwadosky:

In accordance with Joint Rule 38, please be advised that the Senate today confirmed the following:

Upon the recommendation of the Joint Standing Committee on Agriculture, Conservation and Forestry:

Mary Beth Dolan of Tenants Harbor for appointment as a member of the Land Use Regulation Board; and

Upon the recommendation of the Joint Standing Committee on State and Local Government:

David M. Gauvin of Brewer for appointment as a member of the Workers' Compensation Board.

Sincerely,  
S/May M. Ross  
Secretary of the Senate

Was read and ordered placed on file.

The following Communication: (H.C. 407)  
Maine State Senate  
State House Station 3  
Augusta, Maine 04333  
March 28, 1996

The Honorable Dan A. Gwadosky  
Speaker of the House  
117th Legislature  
Augusta, Maine 04333  
Dear Speaker Gwadosky:

In accordance with Joint Rule 38, please be advised that the Senate today confirmed, upon the recommendation of the Joint Standing Committee on Legal and Veterans Affairs, Edwin W. Bowden of Camden for reappointment and the Honorable Orland G. McPherson of Eliot for appointment as members of the State Liquor and Lottery Commission.

Sincerely,  
S/May M. Ross  
Secretary of the Senate

Was read and ordered placed on file.

ORDERS

On motion of Representative BUNKER of Kossuth Township, the following Joint Resolution: (H.P. 1376) (Cosponsored by Representatives: AHEARNE of Madawaska, DRISCOLL of Calais, LAYTON of Cherryfield, LOOK of Jonesboro, NASS of Acton, O'NEAL of Limestone, Senator: CASSIDY of Washington)

JOINT RESOLUTION RECOGNIZING THE 200TH  
ANNIVERSARY OF THE INCORPORATION OF THE  
TOWN OF COLUMBIA

WHEREAS, the Town of Columbia, in the southwestern part of Washington County, was first surveyed and settled in the 1700's and was incorporated as a town on February 8, 1796; and

WHEREAS, the Town of Columbia, originally plantation numbers 12 and 13 west of Machias, divided into Columbia and Columbia Falls in 1863, relied on the natural resources of the area for its economy and livelihood; and

WHEREAS, the lumber trade, mills, shipbuilding and harvesting of valuable marsh grass in the Town of Columbia and the Town of Columbia Falls contributed to the rich and noble heritage in the State of Maine; and

**WHEREAS**, the Town of Columbia and the Town of Columbia Falls exemplify the special qualities that distinguish the small towns that populate our beautiful State; now, therefore, be it

**RESOLVED:** That We, the Members of the One Hundred and Seventeenth Legislature, now assembled in the Second Regular Session, take this occasion to recognize the 200th anniversary of the incorporation of the original Town of Columbia and to commend the good citizens and officials of the Town of Columbia and the Town of Columbia Falls for the success they have achieved together for 200 years, extending to each our sincere hopes and best wishes for continued achievement over the next 200 years; and be it further

**RESOLVED:** That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to the citizens and officials of these proud communities, the Town of Columbia and the Town of Columbia Falls, in honor of the occasion.

Was read and adopted and sent up for concurrence.

On motion of Representative HICHBORN of Lagrange, the following Order: (H.O. 51)

**ORDERED**, that Representative Jack L. Libby of Kennebunk be excused March 25 to 29 for health reasons.

**AND BE IT FURTHER ORDERED**, that Representative Rodney W. McElroy of Unity be excused March 22 for personal reasons.

**AND BE IT FURTHER ORDERED**, that Representative Eleanor M. Murphy of Berwick be excused March 22 for personal reasons.

**AND BE IT FURTHER ORDERED**, that Representative John H. Underwood of Oxford be excused March 25 for personal reasons.

Was read and passed.

#### REPORTS OF COMMITTEES

##### **Ought to Pass Pursuant to Joint Order (H.P. 1290)**

Representative ROBICHAUD from the Committee on State and Local Government on Bill "An Act to Revise the Salaries of Certain County Officers" (EMERGENCY) (H.P. 1379) (L.D. 1887) reporting **"Ought to Pass"** Pursuant to Joint Order (H.P. 1290)

Report was read and accepted. The Bill read once.

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

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

##### **Ought to Pass Pursuant to Joint Order (H.P. 1368)**

Representative SPEAR from the Committee on Agriculture, Conservation and Forestry on Bill "An Act Regarding the Maine Potato Board" (EMERGENCY) (H.P. 1380) (L.D. 1888) reporting **"Ought to Pass"** Pursuant to Joint Order (H.P. 1368)

Report was read and accepted. The Bill read once.

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

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

#### **Divided Report**

Majority Report of the Committee on Legal and Veterans Affairs reporting **"Ought Not to Pass"** on Bill "An Act to Authorize Video Gaming" (H.P. 296) (L.D. 400)

Signed:

Senators:

Representatives:

MICHAUD of Penobscot  
FERGUSON of Oxford  
STEVENS of Androscoggin  
CHIZMAR of Lisbon  
CARR of Hermon  
FISHER of Brewer  
NADEAU of Saco  
LEMONT of Kittery  
BUCK of Yarmouth  
LABRECQUE of Gorham

Minority Report of the same Committee reporting **"Ought to Pass"** as amended by Committee Amendment "A" (H-874) on same Bill.

Signed:

Representatives:

TRUE of Fryeburg  
GAMACHE of Lewiston  
MURPHY of Berwick

Was read.

On motion of Representative TRUE of Fryeburg, tabled pending acceptance of either Report and later today assigned.

#### **Divided Report**

Majority Report of the Committee on Natural Resources reporting **"Ought to Pass"** as amended by Committee Amendment "A" (H-876) on Bill "An Act to Reorganize and Redirect Aspects of the Site Location of Development Laws" (H.P. 1352) (L.D. 1853)

Signed:

Senators:

Representatives:

LORD of York  
RUHLIN of Penobscot  
HATHAWAY of York  
DEXTER of Kingfield  
GOULD of Greenville  
BERRY of Livermore  
SHIAH of Bowdoinham  
MARSHALL of Eliot

Minority Report of the same Committee reporting **"Ought Not to Pass"** on same Bill.

Signed:

Representatives:

POULIN of Oakland  
MERES of Norridgewock  
WATERHOUSE of Bridgton  
DAMREN of Belgrade

Was read.

Representative DEXTER of Kingfield moved that the House accept the Majority **"Ought to Pass"** as amended Report.

On further motion of the same Representative, tabled pending his motion to accept the Majority **"Ought to Pass"** as amended Report and later today assigned.

#### **Divided Report**

Majority Report of the Committee on Natural Resources reporting **"Ought to Pass"** as amended by Committee Amendment "A" (H-872) on Bill "An Act to Implement the Recommendations of the Land and Water Resources Council Regarding Gravel Pits and Rock Quarries" (H.P. 1353) (L.D. 1854)

Signed:

Senators:

HATHAWAY of York

Representatives: LORD of York  
RUHLIN of Penobscot  
DEXTER of Kingfield  
GOULD of Greenville  
POULIN of Oakland  
BERRY of Livermore  
MERES of Norridgewock  
WATERHOUSE of Bridgton  
DAMREN of Belgrade  
MARSHALL of Eliot

Minority Report of the same Committee reporting  
"Ought Not to Pass" on same Bill.

Signed:

Representative: SHIAH of Bowdoinham

Was read.

Representative DEXTER of Kingfield moved that the House accept the Majority "Ought to Pass" as amended Report.

On further motion of the same Representative, tabled pending his motion to accept the Majority "Ought to Pass" as amended Report and later today assigned.

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#### ENACTORS

##### Emergency Measure

An Act to Implement the Productivity Plan of the Department of Agriculture, Food and Rural Resources Relating to the Animal Welfare Board, the Maine Dairy Promotion Board and the Maine Dairy and Nutrition Council (H.P. 1159) (L.D. 1593) (C. "A" H-843; S. "A" S-527)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 106 voted in favor of the same and 0 against and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

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##### Emergency Measure

An Act Concerning Technical Changes to the Tax Laws (S.P. 697) (L.D. 1771) (C. "A" S-494)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 103 voted in favor of the same and 0 against and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

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

**COMMUNICATIONS**

The following Communication:

**STATE OF MAINE  
SUPREME JUDICIAL COURT  
AUGUSTA, MAINE 04330**

March 28, 1996

Hon. Jeffrey H. Butland  
President, Maine Senate  
State House Station 2  
Augusta, Maine 04333

Dear Mr. President:

It is my pleasure to transmit the Answers of the Justices to the Questions Propounded by the House of Representatives and the Senate, as well as the Questions Propounded by the Governor.

Sincerely yours,

S/Daniel E. Wathen  
Chief Justice

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**OPINION OF THE JUSTICES  
OF THE SUPREME JUDICIAL COURT**

**GIVEN UNDER THE PROVISIONS OF SECTION 3  
OF ARTICLE VI OF THE CONSTITUTION**

Docket No. OJ-96-1

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**QUESTIONS PROPOUNDED BY THE HOUSE OF REPRESENTATIVES  
AND THE SENATE IN A COMMUNICATION DATED JANUARY 30, 1996**

**AND**

**QUESTIONS PROPOUNDED BY THE GOVERNOR  
IN A COMMUNICATION DATED FEBRUARY 14, 1996**

**ANSWERED MARCH 28, 1996**

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ANSWERS OF THE JUSTICES

To the Honorable House of Representatives and Senate of the State of Maine, and to the Honorable Angus S. King, Jr., Governor of Maine:

In compliance with the provisions of section 3 of article VI of the Constitution of Maine, we, the undersigned Justices of the Supreme Judicial Court, have the honor to submit the following responses to the questions propounded by the House of Representatives and the Senate on January 30, 1996, and by the Governor on February 14, 1996.

In November 1995, a majority of Maine voters approved an amendment to the Constitution that authorizes the Governor to disapprove any dollar amount appearing in an appropriation or allocation section of an enacted legislative document through the use of a line-item veto. The amendment provides:

The Governor has power to disapprove any dollar amount appearing in an appropriation section or allocation section, or both, of an enacted legislative document. Unless the Governor exercises the line-item veto power authorized in this section no later than one day after receiving for signature the enacted legislation, the powers of the Governor as set out in section 2 apply to the entire enacted legislation. For any disapproved dollar amount, the Governor shall replace the dollar amount with one that does not result in an increase in an appropriation or allocation or a decrease in a deappropriation or deallocation. When disapproving a dollar amount pursuant to this section, the Governor may not propose an increase in an appropriation or allocation elsewhere in the legislative document. The Governor shall specify the distinct dollar amounts that are revised, and the part or parts of the legislative document not specifically revised become law. The dollar amounts in an appropriation or allocation that have been disapproved become law as revised by the Governor, unless passed over the Governor's veto by

the Legislature as the dollar amounts originally appeared in the enacted bill as presented to the Governor; except that, notwithstanding any other provision of this Constitution for dollar amounts vetoed pursuant to this section, a majority of all the elected members in each House is sufficient to override the veto, and each dollar amount vetoed must be voted on separately to override the veto. Except as provided in this section, the Governor may not disapprove, omit or modify any language allocated to the statutes or appearing in an unallocated section of law.

Me. Const. art. IV, pt. 3, § 2-A (Supp. 1995). Noting that the amendment drafted by the legislature and enacted by the voters does not expressly define the relationship between the Governor's line-item veto authority articulated in section 2-A and the more general veto power provided in article IV, part third, section 2,<sup>1</sup> both the legislature and the Governor propounded certain questions to the Justices. These questions seek guidance as to the relationship between the exercise of the line-item veto pursuant to section 2-A and the exercise of the general veto power pursuant to section 2; specifically, whether the exercise of the line-item veto precludes the Governor from subsequently employing the general veto power.

An advisory opinion represents the views of the individual Justices and is not a decision of the Supreme Judicial Court

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<sup>1</sup> Me. Const. art. IV, pt. 3, § 2 (supp. 1995) provides:

Every bill or resolution, having the force of law, to which the concurrence of both Houses may be necessary, except on a question of adjournment, which shall have passed both Houses, shall be presented to the Governor, and if the Governor approves, the Governor shall sign it; if not, the Governor shall return it with objections to the House in which it shall have originated, which shall enter the objections at large on its journals, and proceed to reconsider it. If after such reconsideration, 2/3 of that House shall agree to pass it, it shall be sent together with the objections, to the other House, by which it shall be reconsidered, and, if approved by 2/3 of that House, it shall have the same effect as if it had been signed by the Governor; but in all such cases, the votes of both Houses shall be taken by yeas and nays, and the names of the persons, voting for and against the bill or resolution, shall be entered on the journal of both Houses respectively. If the bill or resolution shall not be returned by the Governor within 10 days (Sundays excepted) after it shall have been presented to the Governor, it shall have the same force and effect as if the Governor had signed it unless the Legislature by their adjournment prevent its return, in which case it shall have such force and effect, unless returned within 3 days after the next meeting of the same Legislature which enacted the bill or resolution; if there is no such next meeting of the Legislature which enacted the bill or resolution, the bill or resolution shall not be a law.

sitting as the Law Court. *Opinion of the Justices*, 437 A.2d 597, 610 (Me. 1981). Whenever a question is asked of us by the Governor, the Senate or the House of Representatives, we first must determine "whether the case is one in which the law allows the opinions of the Justices to be given." *Opinion of the Justices*, 339 A.2d 483, 491 (Me. 1975). Such an opinion constitutionally is permissible only "upon important questions of law, and upon solemn occasions . . ." Me. Const. art. VI, § 3 (Supp. 1995). There is no doubt that the questions asked of us in this case are "important in a constitutional sense . . . ." *Opinion of the Justices*, 370 A.2d 654, 667 (Me. 1977). For it to be a solemn occasion, however, the questions must not be "tentative, hypothetical and abstract . . . ." *Opinion of the Justices*, 330 A.2d 912, 915 (Me. 1975). Subjects of advisory opinions must be of "instant, not past nor future concern; things of live gravity." *Opinion of the Justices*, 134 Me. 510, 513 (1936).

In the past, the Justices have declined to render an advisory opinion as to the requisite vote necessary for the House of Representatives to override a section 2 gubernatorial veto, concluding that, in the absence of a vetoed measure actually pending before the Legislature, the matter was not of instant concern. *Opinion of the Justices*, 229 A.2d 829, 831 (Me. 1967). The questions propounded in this case, however, concern actions that must be taken in very short time periods. If we reserved judgment and required there to be a legislative document awaiting the signature of the Governor before reaching the questions, we would not be able to respond in a meaningful

way to a request for an advisory opinion within the time period during which the Governor must act. Accordingly, there does exist a solemn occasion, and we have the constitutional authority to answer the question. *Opinion of the Justices*, 623 A.2d 1258, 1262 (Me. 1993); *Opinion of the Justices*, 370 A.2d at 667.

We first address the questions jointly propounded by the House of Representatives and the Senate.

QUESTION 1: Once the Governor has exercised the line-item veto power under Section 2-A, if the Legislature overrides any dollar amount vetoed, i the Legislature required to return the document to the Governor to allow the Governor to use the more general veto power under Section 2 to veto the entire document, even though Section 2-A by its own terms provides that any part or parts of the legislative document not specifically revised become law?

ANSWER: We answer in the affirmative. The briefs filed by the Attorney General and by the Counsel to the Governor acknowledge that the amendment is ambiguous and that a defensible argument can be advanced to support more than one answer. We are not persuaded that the language of section 2-A stating that "[t]he Governor shall specify the distinct dollar amounts that are revised, and the part or parts of the legislative document not specifically revised become law," requires that the Governor forego his section 2 general veto power in the event he exercises the line-item veto power. If such an interpretation were adopted, the practical effect would be to make the line-item veto virtually meaningless. We believe that a different construction of section 2-A better accords with reason and the presumed intent of the citizens who voted to amend the Constitution.

In interpreting the Maine Constitution, "we look primarily to the language used . . . ." *Farris ex rel. Dorsky v. Goss*, 143 Me. 227, 230 (1948). "Constitutional provisions are accorded a liberal interpretation in order to carry out their broad purpose, because they are expected to last over time and are cumbersome to amend." *Allen v. Quinn*, 459 A.2d 1098, 1102 (Me. 1983). In construing the Constitution, we seek the meaning that the words would convey to an intelligent, careful voter. *Allen*, 459 A.2d at 1100 (quoting *Kuhn v. Curran*, 61 N.E.2d 513-18 (1945)). The plain language of section 2-A does not resolve the ambiguities surrounding the question whether a Governor's line-item veto power and general veto power are mutually exclusive. Nor does the amendment's legislative history resolve such ambiguities.<sup>2</sup> Although we agree that section 2-A's words "become law" *could* be read literally to mean that parts of a document not revised by the Governor become *instantly* effective, such a reading is overly restrictive and does not comport with the meaning that the amendment would convey to an intelligent, careful voter.<sup>3</sup> We are unpersuaded by the contention that the words "become law" as set forth in section 2-A necessarily mean that legislation not specifically revised cannot later be

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<sup>2</sup> The legislative history is very general and offers little guidance in resolving the issues raised in the Questions propounded to us.

<sup>3</sup> It is noteworthy that the words "become law" found in section 2-A are not commonly used in other provisions of the Constitution to signal the conclusion of the legislative process. *See, e.g.*, Me. Const. art. IV, pt. 3, § 2; *but see* art. IV, pt. 3, § 19. To interpret section 2-A's language "become law" literally would be to ignore the amendment's other generalized provisions. For example, unlike section 2, section 2-A does not offer specific guidance as to the procedures for legislative reconsideration and override of a line-item veto. *Compare* art. IV, pt. 3, § 2's provisions regarding the Governor's objections to legislation, the return of legislation to the house of its origin, the requirements for legislative reconsideration, the type of vote to be taken in each house, and how legislation becomes law *with* art. IV, pt. 3, § 2-A's more generalized language. Moreover, if the section 2-A phrase "become law" were to be read consistently to mean instantaneous effect, the items disapproved by the Governor through the exercise of his line-item veto would become law immediately as revised by the Governor, subject to subsequent invalidation by the Legislature at some indefinite time through the exercise of a legislative override. We are aware of no precedent for such an odd construction or procedure.

vetoed by the Governor pursuant to section 2. We read section 2-A as simply meaning that those portions of a document not subject to a line-item veto are not affected by the line-item veto and become law provided they withstand the regular section 2 veto process for the enactment of legislation.

We also agree with the Attorney General that the following language in section 2-A is ambiguous:

Unless the Governor exercises the line-item veto power authorized in this section no later than one day after receiving for signature the enacted legislation, the powers of the Governor as set out in section 2 apply to the entire enacted legislation.

The language merely makes clear that there is a one-day time limit for the exercise of the line-item veto and does not dictate a conclusion that a line-item veto precludes a subsequent general veto.

By virtue of section 2, the Governor has ten days to decide whether to exercise a general veto. If section 2-A is interpreted to mean that the Governor's use of the line-item veto precludes subsequent use of a general veto, the practical effect would be to require the Governor to decide whether to exercise a general veto affecting the entire enacted legislative document during the same one-day time frame in which he must decide whether to exercise a line-item veto, which is more precise and directed only to one or more dollar amounts in the legislation. Moreover, pursuant to this narrow construction, on the exercise of the line-item veto, all those provisions of the legislation not subject to the line-item veto

would escape completely the possibility of the exercise of *any* veto power, negating an important safeguard necessary to the checks and balances so integral to our constitutional system. Such a construction would be at odds with the express provisions of section 2.<sup>4</sup>

There is nothing in section 2-A's wording or legislative history to notify the intelligent and careful voter that the proposed amendment would operate to restrict the Governor's full veto power.<sup>5</sup> The line-item veto instead appears to have been intended to give the Governor an additional option with respect to monetary provisions in approved legislation. If the intent of section 2-A was to abolish the use of the general veto power in the event of a line-item veto, that intent would be expressed in clear language.<sup>6</sup> In the absence of such clear language, the more sensible construction of section 2-A is that the vetoes are distinct by compatible options available to be exercised by the Governor in a concurrent fashion. The more restrictive interpretation should be disregarded because, in our view, it does not effectuate the overall intent of section

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<sup>4</sup> In addition to the differences in time frames required for gubernatorial action (*compare* section 2's ten-day period, excluding Sundays, *with* section 2-A's one-day deadline), there is a material difference in the number of votes required to override a governor's veto within the respective provisions. *Compare* the two-thirds majority required of both houses to override a section 2 veto *with* the simple majority required of both houses in section 2-A. There are also situations when a governor conceivably may wish to exercise both types of vetoes available under the Constitution. For example, were a governor to have numerous objections to fiscal portions of a bill, and such discrete objections expressed in a line-item veto were overridden in a timely fashion by the majority vote of both houses of the Legislature, he then is presented with a very different situation and subsequently may wish to employ the stronger weapon of the general veto, requiring a two-thirds vote in each house to be overridden, regarding the entire legislation.

<sup>5</sup> The ballot question proposed to Maine voters in November 1995 asked: "Do you favor amending the Constitution of Maine to give the Governor a line-item veto over expenditures of state funds, providing that vetoed items may be passed over the Governor's veto by a majority of all the elected members of the Senate and the House of Representatives?"

<sup>6</sup> *See* Me. Const. art. IV, pt. 3, § 19, which addresses the effective dates of measures approved by popular referendum, and expressly states that "[t]he veto power of the Governor shall not extend to any measure approved by vote of the people . . . ."

2-A to increase the power of the Governor to better control legislative spending. *Allen*, 459 A.2d at 1101-02; *Opinion of the Justices*, 137 Me. 347, 349 (1940).

Section 2 remains a significant part of the Constitution, despite the addition of section 2-A's language. Thus, contrary to the contention that a governor's exercise of a section 2-A line-item veto precludes the later use of the section 2 general veto power, section 2 still requires presentment of a bill to the Governor, and contemplates the possible return of it to the Legislature after a general veto of the legislation, requiring a two-thirds majority of both houses to override that general veto. The general veto provision granted to the Governor, essentially unchanged since 1820, is separate and distinct from section 2-A's requirements and was not modified in any way by the 1995 amendment.

QUESTION 2: If the answer to Question 1 is yes:

A. Does the 10-day limitation imposed on the Governor by Section 2 begin to run upon the initial presentation to the Governor regardless of whether the line-item veto power is used or does it begin to run when it is returned to the Governor again?

ANSWER: The calculation of the ten-day period (excluding Sundays) during which the Governor may exercise the section 2 veto commences on the initial presentment of the enacted legislation to the Governor.

This construction gives meaning and purpose to all provisions of section 2-A and maintains the integrity of the Governor's section 2 veto power. Should the Governor exercise

the line-item veto without exercising the general veto power, and the Legislature fails to act in any way, "the part or parts of the legislative document not specifically revised," and "the dollar amounts in an appropriation that have been disapproved," become law at a discernable time, i.e., ten days from the original presentment to the Governor. Should the Legislature fail in its attempt to override the line-item veto, the legislation, with the Governor's dollar amounts, will become law ten days from its original presentment to the Governor, unless signed into law by the Governor prior to that time. Should the Legislature override the line-item veto before the legislation becomes law, the Governor still has the authority pursuant to section 2 to exercise the general veto within the time remaining in the ten-day period. If, following a legislative override of a line-item veto, the Governor does not exercise the general veto, the enacted bill becomes law with "the dollar amounts originally appear[ing] in the enacted bill as [originally] presented to the Governor . . . ."

B. Within what time frame must the Legislature return the document to the Governor?

ANSWER: The Legislature must return the disapproved items overridden by the Legislature to the Governor before the end of the tenth day following the presentment to the Governor of the originally enacted legislation. The disapproved items must be returned in sufficient time to allow the Governor to exercise the section 2 general veto of the bill originally presented to

him.

C. If the Governor were to attempt to return the document with a second or subsequent exercise of the line-item veto power, must the Legislature continue to reconsider the returned document under Section 2-A?

ANSWER: We read section 2-A as allowing the Governor only one opportunity to exercise the line-item veto power. The Governor, however, may return the legislation by the exercise of the general veto power, provided he acts within ten days of presentment of the enacted legislation to him.

QUESTION 3: For emergency legislation, what is the effective date for any dollar amount revised by the Governor through the use of the line-item veto power in Section 2-A on which the Legislature fails to take action, fails to override or overrides?

ANSWER: Pursuant to Me. Const. art. IV, pt. 3, § 16, emergency legislation may take effect at such time as the as the Legislature directs. In the event of a line-item veto, if the Legislature fails to take action or fails to override, and the Governor does not exercise the section 2 general veto, emergency legislation would take effect ten days after it initially is submitted to the Governor, unless he signs the legislation into law prior to that time. If the Legislature overrides the line-item veto on emergency legislation within ten days of its original presentment to the Governor, the effective date of the legislation still would be ten days from its original presentment, unless the Governor exercises the general veto power within that time. If the legislation becomes law, the specified effective date thereon, if any,

would govern.

We next address those questions propounded to us by the Governor.

QUESTION 1: Does the Executive have the constitutional authority to invoke the full veto power of art. IV, pt. 3, § 2 following a legislative override of an earlier Executive section 2-A line-item veto? If yes, how is the ten day period for [a] section 2 veto calculated?

ANSWER: We answer in the affirmative. The ten-day period within which a section 2 veto must be exercised begins to run on the date the legislation initially is presented to the Governor.

QUESTION 2: Upon receipt of a budget bill from the Legislature, does the Executive have the constitutional authority to invoke the line-item veto powers of Me. Const. art. IV, pt. 3, § 2-A within 24 hours, and then proceed to invoke the full veto powers of art. IV, pt. 3 § 2 within ten days of original presentment of the bill if the Legislature fails to act on the line-item veto?

ANSWER: As discussed in our responses to Questions 1 and 2 propounded by the House of Representatives and the Senate, we answer that question in the affirmative.

QUESTION 3: Does the Executive's exercise of the section 2-A line-item veto power delay the effective date of all provisions of the affected legislation, or only the disapproved provisions, and, if so, until what date?

ANSWER: In accordance with our responses to Questions 1 and 2(A) propounded by the House of Representatives and the Senate, an exercise of the line-item veto delays the effective date of the disapproved provisions of the affected legislation. All provisions of the affected legislation are subject to the exercise of the general veto.

Respectfully submitted,

S/Daniel E. Wathen  
Chief Justice

S/David G. Roberts

S/Caroline D. Glassman

S/Robert W. Clifford

S/Paul L. Rudman

S/Kermit V. Lipez  
Associate Justices

ANSWERS OF JUSTICE DANA

To the Honorable House of Representatives and Senate of the State of Maine, and to His Excellency, Angus S. King, Jr., Governor of Maine:

I do not concur in the opinion of my colleagues on the Court and pursuant to Article VI, section 3 of the Maine Constitution, I, the undersigned Justice of the Supreme Judicial Court, have the honor to submit the following responses to the questions propounded by the House of Representatives and Senate on January 30, 1996, and by the Governor on February 14, 1996.

I first address the questions jointly propounded to us by the House of Representatives and the Senate.

QUESTION #1: Once the Governor has exercised the line-item veto power under Section 2-A, if the Legislature overrides any dollar amount vetoed, is the Legislature required to return the document to the Governor to allow the Governor to use the more general veto power under Section 2 to veto

the entire document, even though Section 2-A by its own terms provides that any part or parts of the legislative document not specifically revised become law?

ANSWER: I answer in the negative. In interpreting the Maine Constitution "we look primarily to the language used." *Allen v. Quinn*, 459 A.2d 1098, 1000 (Me. 1983) (quoting *Farris ex rel. Dorsky v. Goss*, 143 Me. 227, 230, 60 A.2d 908, 910 (1948)). See *Wood v. State Admin. Bd.*, 238 N.W. 16, 18 (Mich. 1931) (language of constitutional provision authorizing governor to veto distinct items of appropriation "must be read with all intendments against enlargement beyond its plain words"). In construing the Constitution, we seek the meaning which the words would convey to an intelligent, careful voter. *Allen*, 459 A.2d at 1100 (quoting *Kuhn v. Curran*, 61 N.E.2d 513, 517-18 (N.Y. 1945)).

The second sentence of section 2-A provides that "[u]nless the Governor exercises the line-item veto . . . , the powers of the Governor as set out in section 2 apply to the entire enacted legislation." Notwithstanding the assertion that this syntax is ambiguous, I believe it is not.<sup>1</sup> Unless we read "unless" to mean "even if," the Governor's line-item veto powers and general veto powers are mutually exclusive. If the word "unless" retains its usual meaning and the Governor exercises his line-item veto, he cannot subsequently exercise his general veto power.

The plain language in the fifth sentence of section 2-A

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1. Webster's New World Dictionary defines unless as "in any case other than; except if." Webster's New World Dictionary 496 (1982). My colleagues, in effect, substitute "Even if" for "Unless" in order to avoid the force of the only sentence that speaks directly to the interrelationship between section 2-A and section 2. Alternatively they may be reading the two clauses of the second sentence as though they were separated by a period rather than a comma.

that "the part or parts of the legislative document not specifically revised *become law*,"<sup>2</sup> is the natural consequence of the inability of the Governor to later veto the legislation pursuant to section 2. An interpretation that the Governor nevertheless retains section 2 general veto power over the entire legislation is contrary to the plain language of section 2-A because it would permit the use of general veto as to items that have already "become law." See *Karcher v. Kean*, 462 A.2d 1273, 1286 (N.J. Super. Ct. App. Div. 1984), *aff'd in part, rev'd in part*, 479 A.2d 403 (N.J. 1983)<sup>3</sup> ("In the absence of a vote overriding a Governor's veto . . . the state of the appropriation following the Governor's line-item veto must ultimately stand as law."); *Johnson v. Walters*, 819 P.2d 694, 699 (Okla. 1991)<sup>4</sup> (non-vetoed appropriation items have the force and effect of law because a

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2. The phrase "become law" is similar to words used in other provisions of the Maine Constitution to indicate the conclusion of the legislative process. See Me. Const. art. IV, pt. 3, § 19 ("Any measure referred to the people and approved by a majority of the votes given thereon shall . . . take effect and 'become a law . . .'"); Me. Const. art. IV, pt. 3, § 2 (if a bill cannot be returned after a veto because the Legislature has adjourned and if there is no meeting of the Legislature the bill "shall not be a law"). Also, other states that give their governor some form of line-item veto power use the language "become law." See, e.g., Ill. Const. art. IV, § 9 ("Portions of a bill not reduced or vetoed shall become law. . . . If a reduced item is not so restored, it shall become law in the reduced amount."); Mass. Const. art. 63, § 5 ("The Governor may disapprove or reduce items or parts of items in any bill appropriating money. So much of the bill as he approves shall upon his signing the same become law."); Mich. Const. art. V, § 19 (the part or parts the governor approves "shall become law"); Tenn. Const. art. III, § 18 (the portions of a bill appropriating money that the governor approves "shall become law"); W. Va. Const. art. VI, § 51 (11) (if the governor approves an appropriation bill it shall "become law" and if two-thirds of the members of each house agree to pass the items disapproved or reduced by the governor, such items "shall become law" notwithstanding the objections of the governor); Wis. Const. art. V, § 10 (if two-thirds of both houses agree to approve the rejected part of an appropriation bill notwithstanding the governor's objections the rejected part shall become law").

3. The governor's line-item veto power contained in the New Jersey Constitution provides in relevant part:

If any bill presented to the Governor shall contain one or more items of appropriation of money, he may object in whole or in part to any such item or items while approving the other portions of the bill. . . . If upon reconsideration . . . one or more of such items or parts thereof be approved by two-thirds of all the members of each house, the same shall become a part of the law, notwithstanding the objections of the Governor. . . .

N.J. Const. art. V, § 1, par. 15. The New Jersey Constitution has been construed to include the power of reduction. *Karcher v. Kean*, 479 A.2d 403, 416-417 (N.J. 1984).

Similar to the governor's line-item veto power in Maine, several states constitutions give the governor not only the power to veto an item but the option to reduce it. See Alaska Const. art. II, § 15; Cal. Const. art. IV, § 10; Haw. Const. art. III, § 16; Ill. Const. art. IV, § 9(d); Mass. Const. art. 63, § 5; Mo. Const. art. IV, § 26; Neb. Const. art. IV, § 15; N.J. Const. art. V, § 1, par. 15; Tenn. Const. art. III, § 18; W. Va. Const. art. VI, § 51(11).

4. The line-item veto authority contained in Oklahoma's Constitution provides that: "[A]ll items not disapproved [by the Governor] shall have the force and effect of law according to the original provisions of the bill. Any item or items so disapproved shall be void, unless repassed by a two-thirds vote. . . ." Okla. Const. art. VI, § 12.

specific affirmative approval from the Governor of individual items is not necessary).

Similarly, the sixth sentence of section 2-A stating that the specific dollar amounts that have been revised by the Governor "become law as revised by the Governor" unless the Governor's line-item veto is overridden by the majority vote of both houses of the Legislature, is also inconsistent with an interpretation that the Governor has a second opportunity to veto the legislation.

Construing constitutional provisions require "that the views of the framers be given great consideration." *See Opinion of the Justices*, 146 Me. 316, 323, 80 A.2d 866, 869 (1951). The legislative history indicates that the drafters of section 2-A intended that the amendment be a relatively "weak" line-item veto as line-item veto provisions go. They intended to give the Governor a surgical instrument to improve legislation he generally supported. *See Patrick J. Lucey, The Partial Veto in the Lucey Administration*, 77 marq. L. Rev. 427, 428 (1994) (referring to Wisconsin's gubernatorial partial veto power as partial veto "scalpel"). The legislative record indicates that the proposal put before the voters was of this latter type:

Representative Donnelly: Thank you Mr. Speaker, Men and Women of the House: As a member of the committee who is in support of Representative Kerr's proposal, and I compliment him for the drafting, what I consider a fine line compromise on what a Line-item Veto means. Line-item Veto in this case, we had a number of proposals before us and they went from one extreme, which was a very heavy handed strong Line-item Veto to what I consider Representative Kerr's, which balanced the power of the Executive under this proposal and the continuing authority of this Legislative body.

Legis. Rec. 595-96 (1995).<sup>5</sup>

Even the question put to the voters:

Do you favor amending the Constitution of Maine to give the Governor a line-item veto over the expenditures of state funds, providing that vetoed items may be passed over the Governor's veto by a majority of all the elected members of the Senate and House of Representatives?

provides no hint that after the legislation was "passed over the Governor's veto" by a majority of both houses the Governor would thereafter get a second veto requiring a two-thirds vote of both houses for it to "become law."

Finally research has uncovered no other instance in which a state has granted its governor the sequential veto power discovered by my colleagues. Because a constitutional amendment may only be initiated in the Legislature, an "intelligent, careful voter" would not assume that the Legislature that has steadfastly resisted granting a line-item veto power to the Governor for 175 years would voluntarily place itself under such extreme executive pressure. When a legislature is considering its vote to override a governor's line-item veto, only in Maine may the Governor intimidate the Legislature with the threat of a subsequent veto of the entire legislation.<sup>6</sup>

Additionally, it is inaccurate to suggest that the construction I urge makes the line-item veto "virtually

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5. Representative Whitcomb: "Line -item Veto is an appropriate question to ask the people. It doesn't diminish our power one iota. ..." Legis. Rec. 598 (1995). Representative Guerrette: "It is, in my mind, a well crafted bill that balances the needs of protecting the rights of this body to make legislation and yet giving the Governor the ability to take bad pieces of spending out of the budget." Legis. Rec. 840 (1995).

6. See footnote 4 in my colleagues opinion.

meaningless." First, the Governor retains his full veto power under section 2. Second, if the Governor generally approves of an appropriation bill but wants to selectively eliminate or reduce some items therein, for the first time in 175 years, he may do so.

QUESTION #2: If the answer to Question #1 is yes:

A. Does the 10-day limitation imposed on the Governor by Section 2 begin to run upon the initial presentation to the Governor regardless of whether the line-item veto power is used or does it begin to run when it is returned to the Governor again?

ANSWER: My answer to the first question makes it technically unnecessary for me to answer this second question. It is apparent, however, that neither section 2 nor section 2-A requires the Legislature to undertake or accomplish its override effort within any particular time period following the Governor's veto. In the case of a section 2 veto this period of uncertainty presents no problem because the legislation is a nullity unless and until it is overridden. The situation is otherwise with the line-item veto. That is why section 2-A provides that even before the override vote the monies appropriated by the Legislature and not eliminated or reduced by the Governor "become law" (to take effect in accordance with another provision of the Constitution). There is no metaphysical problem if the Legislature subsequently restores funds to a particular legislative line. Those funds are like a supplemental appropriation.

If as my colleagues suggest the two vetoes are not mutually

exclusive, the Legislature could defer its line-item veto override vote until after the Governor no longer has the power to exercise a section 2 veto. In order to avoid this result, my colleagues infer from the Constitution a requirement that if the Legislature is going to override the line-item veto it must do so before the Governor's section 2 veto power expires. Thus they argue, contrary to the express language of section 2-A, the balance of the legislation does not "become law" for the full ten days given the Governor under section 2.

The fact that legislation does not become law following a line-item veto until the Governor's power to exercise his section 2 veto expires reveals a serious flaw in my colleagues' construct. If the Legislature adjourns within the ten day period, the Governor's power to veto a bill under section 2 is extended until three days into the next meeting of the same Legislature. Me. Const. art. IV, pt. 3, § 2. Pursuant to my colleagues' construct if the Legislature overrides the Governor's line-item veto and then adjourns before the Governor exercises his section 2 veto, the legislation would not become law until "three days after the next meeting of the same legislature"; and if there is no such meeting, the legislation would never "be a law." It is difficult to reconcile such a result with the obvious intent of section 2-A that the unobjectionable parts of the legislation "become law."

QUESTION #3: For emergency legislation, what is the effective date for any dollar amount revised by the Governor through the use of the line-item veto power in Section 2-A on which the Legislature fails to take action, fails to override or overrides?

ANSWER: For emergency legislation the effective date of the revised dollar amount is the date set forth in the legislation or the date of the Governor's line-item veto, whichever is later. If the veto is overridden, the effective date of the amount previously reduced and then restored is the date of the override or the date set forth in the legislation, whichever is later.

I next address those questions propounded to us by the Governor.

QUESTION #1: Does the Executive have the constitutional authority to invoke the full veto powers of art. IV, pt. 3, § 2 following a legislative override of an earlier Executive section 2-A line-item veto? If yes, how is the ten day period for [a] section 2 veto calculated.

ANSWER: As discussed in my response to Question #1 propounded by the House of Representatives and Senate, I answer in the negative.

QUESTION #2: Upon receipt of a budget bill from the Legislature, does the Executive have the constitutional authority to invoke the line-item veto powers of Me. Const. art. IV, pt. 3, § 2-A within 24 hours, and then proceed to invoke the full veto powers of art. IV, pt. 3, § 2 within ten days of original presentment of the bill if the Legislature fails to act on the line-item veto?

ANSWER: As discussed in my response to Question #1 propounded by the House of Representatives and Senate, I answer in the negative.

QUESTION #3: Does the Executive's exercise of the section 2-A line-item veto power delay the effective date of all provisions of the affected legislation, or only the disapproved provisions, and, if so, until what date?

ANSWER: In accordance with my response to Question #1 propounded by the House of Representatives and Senate, the Executive's exercise of the section 2-A line-item veto delays the effective date of only the difference between the amount of money that originally appeared in the bill as presented to the Governor and the Governor's reduced amount. If the Legislature overrides the Governor's line-item veto, the effective date of the amount restored is either 90 days after adjournment or in the case of emergency legislation, on the date of the override or the date set forth in the legislation, whichever is later. Me. Const. art. IV, pt. 3, § 16.

Respectfully submitted,

S/Howard H. Dana, Jr.  
Associate Justice

S.C. 562

**SENATE PAPERS**

The following Joint Resolution: (S.P. 771)  
**JOINT RESOLUTION HONORING THERESA COUGHLIN  
 ON THE OCCASION OF HER RETIREMENT**

**WHEREAS**, Theresa Coughlin, Senior Secretary in the Office of Fiscal and Program Review, is retiring after 11 years of dedicated service to the Legislature; and

**WHEREAS**, Theresa has contributed her skills and energies in the Office of Fiscal and Program Review taking the official minutes of the hearings and work sessions of the Appropriations and Financial Affairs Committee, beginning with the Second Regular Session of the 112th Legislature, providing the committee with documentation of their actions on each line item in each budget it considered; and

**WHEREAS**, Theresa's willingness to take on a wide variety of assignments has made her an invaluable member of the Legislature's nonpartisan staff; now, therefore, be it

**RESOLVED**: That We, the Members of the 117th Legislature now assembled in the Second Regular Session, formally express our sincere appreciation to Theresa Coughlin for her dedicated service to the Legislature and Maine State Government and extend our best wishes to her for a happy, healthy and fulfilling retirement; and be it further

**RESOLVED**: That a suitable copy of this resolution, duly authenticated by the Secretary of State, be presented to Theresa Coughlin with our deep appreciation.

Came from the Senate, read and adopted.

Was read and adopted in concurrence.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Oxford, Representative Underwood, who wishes to speak on the record.

Representative UNDERWOOD: Madam Speaker, Ladies and Gentlemen of the House: I rise this morning to address the unfortunate occurrence which happened in this Chamber last night. I do believe that this task is a responsibility of our leadership, but it's obvious that they won't perform the duties entrusted to them by this caucus. As a member of the 117th Legislature I have been proud to stand with such an outstanding group of people. Though we often disagree on issues, the debate for the most part has been professional, educational, and rarely personal. Last night a member of this body crossed the line. During debate this Representative objected to a fellow member speaking for a third time. Our rules state that after speaking twice on the same issue members can only speak again with the consent of the entire body. There is an unwritten rule, however, that no one will be denied this privilege. Unfortunately I was not present in the chamber at the time this happened or I would have spoken then and objected. It is also unfortunate that those members that were present did not object. After this occurred I cannot believe that there were members in the hall, boasting about what had just happened. I cannot just sit back and allow this matter to be swept under the rug, because if I do it would set a very dangerous precedent. If we stop showing common courtesy and respect for those we serve with, this institution will begin to unravel and self-destruct. I would personally like to apologize to the Representative from Paris, and I would hope the Representative that made this motion would do the

same. I also hope that as long as I serve as a member of this body that this kind of disrespect will not happen again. Thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Madison, Representative Richard, who wishes to speak on the record.

Representative RICHARD: Madam Speaker, Men and Women of the House: I would like to respond. If an apology is in order I make that apology, I do feel I would like to set the record straight. I believe it was a fourth time the speaker was going to speak. My concern was not that the speaker was speaking for the fourth time, my concern was that there had been a lot of research done and that research was done by a member of the committee and not shared with the committee. I feel if we are going to do research, then we owe it to all of our constituents who have presented something to us to share that research so that they can rebut it. I consider that Representative to be a friend. I have enjoyed working with her, and in no way did I mean to be rude. I just felt that it was unfortunate and it was unfair not to have shared that material with the committee when we were in work session. Unfortunately that Representative did not attend many of the work sessions and I do not know why. It may have been a medical reason, but I would like to have heard that material in work session, with the people who had sponsored the bill able to respond to it. I do apologize. I did not do it for political reasons, I just did it because I did not feel what was happening was right.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Mexico, Representative Luther, who wishes to speak on the record.

Representative LUTHER: Madam Speaker, Ladies and Gentlemen of the House: It is has long been a bother to me that we have unwritten rules and written rules. If the unwritten rules are going to be the real rules then those are the rules we ought to go by. The one rule that I would like to have seen in the eight years that I have been here is that we could move the question. Thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Waterville, Representative Jacques, who wishes to speak on the record.

Representative JACQUES: Madam Speaker, Men and Women of the House: I was not in my seat yesterday when this situation occurred. Neither was my colleague and seatmate, the assistant floor leader. I was one of the ones that got up and spoke out last session when this did occur. I think the gentlelady from Madison, Representative Richard, has extended her apologies. We must remember she was not here when this occurred. This situation has never come up in her tenure here and she is one of the finest ladies that I have ever met, so surely, I hope everyone understands that there was nothing in her actions that wanted to direct any malice or any hard feelings to the good Representative from Paris, Representative Birney. We did not have the opportunity to be here in either corner to react and make comment last night. I assured everyone that talked to me about it from the other side of the aisle that we would indeed be talking with Representative Richard and pointing out how we do things around here. I was sure that when we did that that she would understand and take appropriate action. She did so today. Let's let the situation rest. Thank you.

The Speaker resumed the Chair.  
The House was called to order by the Speaker.

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

#### UNFINISHED BUSINESS

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

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

HOUSE REPORT - "Ought to Pass" as amended by Committee Amendment "A" (H-866) - Committee on State and Local Government on Resolve, Regarding Legislative Computer Information Systems (EMERGENCY) (H.P. 1226) (L.D. 1679)

TABLED - March 28, 1996 (Till Later Today) by Representative CARLETON of Wells.

PENDING - Acceptance of Committee Report.

Subsequently, the Resolve was indefinitely postponed.

An Act to Implement the Recommendations of the Task Force on Tax Increment Financing (MANDATE) (H.P. 1313) (L.D. 1797) (C. "A" H-808)

TABLED - March 28, 1996 (Till Later Today) by Representative JACQUES of Waterville.

PENDING - Passage to be Enacted.

Subsequently, this being a Mandate, a two-thirds vote was necessary, a total was taken. 102 voted in favor of the same and 4 against, 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.

SENATE DIVIDED REPORT - Majority (12) "Ought to Pass" as amended by Committee Amendment "A" (S-534) - Minority (1) "Ought Not to Pass" - Committee on Education and Cultural Affairs on Bill "An Act to Improve the Child Development Services System" (S.P. 753) (L.D. 1866)

- In Senate, Majority "Ought to Pass" as amended Report read and accepted and the Bill passed to be engrossed as amended by Committee Amendment "A" (S-534)

TABLED - March 28, 1996 (Till Later Today) by Representative AULT of Wayne.

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

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

The Bill was read once. Committee Amendment "A" (S-534) was read by the Clerk and adopted. The Bill was assigned for second reading later in today's session.

Resolve, to Reimburse a Lumber Company in Connection with Sales Tax Paid by the Company (S.P. 747) (L.D. 1857)

- In Senate, Majority "Ought Not to Pass" Report of the Committee on Taxation read and accepted.

- In House, Majority "Ought Not to Pass" Report of the Committee on Taxation read and accepted in concurrence.

TABLED - March 28, 1996 (Till Later Today) by Representative KNEELAND of Easton.

PENDING - Motion of same Representative to reconsider whereby the Majority "Ought Not to Pass" Report was read and accepted.

Subsequently, the House voted to Reconsider action whereby the Majority "Ought Not to Pass" Report was accepted.

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

Representative KILKELLY: Mr. Speaker, Men and Women of the House: This is the same issue that was before us a couple of days ago, and as many of you recall, failed by the narrowest of margins. Many people have had questions since that time, so I would like to very quickly recap the situation that was presented. A small business in the northern part of Lincoln County, in fact overpaid their sales tax, and as soon as that was discovered when the business changed hands to a different part of the family, as soon as it was discovered the people went to their accountant and the accountant went to the state. The state came in and did an audit and determined that in fact for approximately five years that the business had overpaid its sales tax. The current statute of limitations says that the state can only reimburse for three years. The state did that. They reimbursed for three years with interest. The situation we have before us, a request from that business for the reimbursement of the money that was paid in, not interest. One of the questions that has been raised is why is the state at all culpable in this? Part of the interesting situation that went on is that the state in fact did a sales tax audit in the course of this five-year period. During that sales tax audit they determined that the business had underpaid by \$66.69. They did not find that the business had overpaid by many thousands of dollars. Because of that we feel, those of us that are supporting this issue, that there is a shared responsibility. The business probably should have found the error, they didn't. The state probably should have found the error, they didn't. All we are asking is that the money that was paid in by this business that in fact belongs to this business be returned to this business. The amount that is in the bill, there is a cap of \$40,000. The state would go in and do a third audit and would determine the exact final amount and that money would then be reimbursed. As I said the other day, I think this is an opportunity for us to acknowledge that we all make mistakes, those things do happen and this is a chance for us to put his money where our mouth is in talking about small business and supporting small business. I would urge you to not accept the current "Ought Not to Pass" Report, so that we can go on to accept the Minority "Ought to Pass" Report. Thank you.

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

Representative PERKINS: Mr. Speaker, Colleagues of the House: I wish I had enough business so that I

didn't notice \$40,000. It seems to me that one of the main ideas behind statute of limitations is that there most likely will be a disputation of facts if you dig back too many years. In this case there is no dispute of the facts. I think we ought to give them back their money.

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

Representative SIMONEAU: Mr. Speaker, Ladies and Gentlemen of the House: I rise to speak against this and feel you should support the "Ought Not to Pass" Report. Tax policy of this type is not economic development. In tax law you generally have two statutes of limitations. You have a six-year statute of limitations on criminal prosecution. You have a three-year statute of limitations, generally, on civil matters. There is very good reason for that. It's to give the government its opportunity to collect taxes, or to pay back, and it's to give the taxpayer his or her opportunity to have a proper assessment. I have seen hundreds of cases where the statute of limitations is cut both ways. I have been a revenue agent and seen a taxpayer smile at me when I say you made a mistake here for ten years, a large one, and you are frustrated because you can't go back more than three years. I have been a CPA on the other side of that, where I have smiled and said sorry folks, you can't go back. I have also seen people discover where they have overpaid their taxes and they couldn't get it back because of the statute of limitations. We are talking about a sales tax here. Some of you, I'm sure, have prepared sales tax returns. It requires math skills at about the sixth or seventh grade level. You simply take your gross sales, you back out your exempt sales, and you multiply it by five or six percent. This person paid double, that means they were paying 12 percent. The form is very clear, sales times six percent is sales tax liability.

Yesterday morning I went into work before I came over here. Several of the people in the office had had this thing debated, I asked them if any of them could think of any way in which somebody could possibly double pay their sales tax for a long period of time. They looked at me and laughed. They thought I was kidding. I told them I was dead serious. They said no, how could you double pay your sales tax for a five-year period? Think about that. We are talking about a very simple computation. I understand he testified. This man called me at home the other night, and I am sure he has called some of you, asking me to reverse my vote. I told him there was no way I would. He testified in Taxation that he obtained the services of a well-known and prestigious accounting firm. I suggested to him that he should be talking to his accounting firm, because if they were in there doing an audit, part of an audit is to verify tax liabilities. If anyone should be paying him back it should be their malpractice insurance company, not the State of Maine. He then blamed the computer program. I suggested to him that he should be talking to the people that sold the software, because if they had a program that was doubling up on the sales tax, their errors and omissions policy should be paying back what he couldn't get because of the statute of limitations, not the State of Maine. The question I will ask you that I don't think anybody has asked, if this computer program was doubling up on certain sales, and that tax liability

was going to the books, what was being collected? Did anyone ask that question? What did the man collect? Did he collect twice? You have got to ask some other very simple questions. A simple bookkeeping system posts a sales tax liability as it accrues, basic procedure is to tie in the total sales to what the sales tax liability is. What was reported for sales on his income tax returns? You can bet it wasn't the double sales. Someone should have known what was going on and this went on for five years. I have heard this is the business's money, well, perhaps it is to some extent. But you know, when I was talking to this man I asked him, I said let's just change the facts a little bit. Let's assume that a Bureau of Taxation Revenue Agent was in auditing your tax return, your income tax return, and the revenue agent saw a mistake of some magnitude on an open year that had been going on for five or six or seven years to where you owed the State of Maine a great deal of money. Would you be magnanimous enough to waive the statute of limitations, or would you say wait a minute state, you can only go back three years, yet I want to go back five years. These come in, I understand on an annual basis to Taxation. We had a couple in the last session. You have statutes for very good, practical, ethical reasons. You start waiving those statutes because someone made mistakes and you are going to be flooded with this stuff. Some people win, some people lose on the statute of limitations, but you shouldn't take and fool around with them. You are establishing a very bad tax policy in my opinion. I would support the "Ought Not to Pass" Report. Thank you.

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

Representative BAILEY: Mr. Speaker, Ladies and Gentlemen of the House: It was only last year that I appeared before the Legislature with a constituent that had overpaid his income tax. Shortly after the statute of limitations had run out he, because of the death of his accountant, and continuation after continuation, finally got his income tax prepared and in, to find that he had overpaid by \$7,000. The statute of limitations was held up in that situation. I feel that the statute of limitations should be held up in this situation, if not, then I would like to go back and introduce legislation to recoup the \$7,000 that my constituent had overpaid. I'm sure that everybody in this House, sooner or later, is going to be confronted with the situation, and if you start whittling away at the statute of limitations you are going to find that more and more and more of these cases are going to appear and you are just going to do away with the whole system. I would urge you to support the "Ought Not to Pass" motion. Thank you.

The SPEAKER: The Chair recognizes the Representative from Fryeburg, Representative True.

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

The SPEAKER: The Representative may pose his question.

Representative TRUE: If this was paid back, at what percent does the state reimburse for keeping the money for that period of time?

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

recognizes the Representative from Berwick, Representative Murphy.

Representative MURPHY: Mr. Speaker, Men and Women of the House: The interest paid back in interest charges right now is 11 percent. If they owe you they pay 11 percent, if you owe them you pay 11 percent plus penalties.

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

Representative KILKELLY: Mr. Speaker, Men and Women of the House: For further clarification of that question, this resolve does not, in fact, require or request interest. It is only the principal, the amount of money that he actually paid in. It does not request interest.

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

Representative REED: Mr. Speaker, Ladies and Gentlemen of the House: The facts of this matter have been clearly presented again this morning and there is no need to pursue them further. What we are charged with this morning is reconsideration. To me that means that we should think again about this matter. I ask you to do that. Over the last 24 or 30 hours I have heard members say I voted with X on this or I followed Y's light, naming a particular member, and I ask you not to do that this morning. I ask you to reconsider and to pose to yourselves a series of questions. First, the question that you should ask of yourself I think is, is there not a remedy here against the manufacturer and the marketer of the defective software? The second question is, is there not a potential remedy that should be sought against the firm or the individual who rendered an opinion as to the accuracy of the financial statements? The third question that you should ask is, in 36MRS, 2011, it says that any taxpayer dissatisfied with the decision of the State Tax Assessor, upon written request for refund filed, shall appeal thereupon to Superior Court, so you should say has that remedy been sought? The answer, to my understanding, is no. If you have answered yes to any of the questions that you have posed to yourself, then I would submit to you that it is inappropriate to go directly to the State of Maine as the first recourse. Only if you can answer no to all of those questions is the matter appropriately before us for action at this moment. If you have answered yes to one then I submit that this particular action at this time is premature and I urge that you consider support of the Majority "Ought Not to Pass" Report. Thank you.

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

Representative SIMONEAU: Mr. Speaker, Ladies and Gentlemen of the House: Very briefly, there is one thought that I forgot to add to my list here. Keep in mind that this tax paid to the state has been deducted on income tax returns, so it has already been subsidized to the tune of approximately 40 percent. Thank you.

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

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

Representative MURPHY: Mr. Speaker, Ladies and Gentlemen of the House: I still feel quite strongly that the man made a mistake, there is no doubt about

it. We are not all certified public accountants, if we were we probably would have done a little better in business, and we wouldn't have to hire one, and even they can make some mistakes. None of them are intentional or anything else, but this man made a mistake and our laws say if you make a mistake you can go back three years, or if you make a mistake and they came in and audited him and the mistake had been in the state's favor, instead of in his favor, they would have gone back three years. All they have to prove is fraud and you only have to prove one dollar fraud. I had an IRS man tell me he can prove one dollar fraud on any audit that he does. Then they can open your books up back to day one if they so choose to. They can go back for years and years and years. I think it's close to 20 years. They have done this, and before they get through with a person, with the penalties and the interest, they just automatically have to file bankruptcy and the state loses money. This is a man who honestly overpaid and didn't realize it. We are not asking to pay the 11 percent interest, just give him back his own money. If he owes 40 cents of every dollar to the federal government, he will have to pay it. He will have to claim that as income this year, I am assuming. I know that everything I get I have to claim for income, so I am assuming that he will have to do the same thing for his business or whatever he puts it into. So, he will have to pay that. We also will get tax money on that also, so I'm just asking that we pay the man what we owe him. At least some of us will have a clear conscience because we have tried. Thank you.

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

Representative KILKELLY: Mr. Speaker, Men and Women of the House: Just a final point. There has been some concern about the fact that this is a very unusual situation and is absolutely precedent setting in something that has never happened before. I have before me a document from 1991, a resolve in which the state reimbursed to a couple \$47,000 for gas tax that was overpaid in error. It is something that happens. The reason that we have an office called the Revisor of Statutes is because every once in a while we need to revise something. Every once in a while we need to make an exception. I would urge you, in this case, to make an exception and, again, to reimburse this person only the money that they paid in in error, not with interest. Thank you.

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

Representative DORE: Mr. Speaker, Men and Women of the House: I am going to rise on this issue because I feel so very strongly about it, and the vote was so close the other day. I hope that you heard what Representative Reed said to you about not voting with a friend on this, and voting on just the issue of fairness. Representative Bailey was correct when he stood up and said that last year he tried very hard to get somebody \$7,000 in back payments. This committee beat him on the floor fair and square. The accountant had died. This gentleman who owns a lumber business, his accountant didn't die. His accountant is available and has malpractice insurance. The manufacturer of his computer software did not die. They have liability insurance. The man is capable of hiring an attorney. He needs to look in the yellow pages and select one, but I suspect

that he likes these vendors that he deals with, and he doesn't want them to solve his problem of his error. It has been implied that it's the state's error because the state did an audit. The state did a simple audit. It's a very base audit that says is everything here being done honestly. They came to the conclusion that everything there was being done honestly. It only does a full-charge audit if there is fraud. Representative Murphy referred to the IRS and how they can always prove fraud. Well that's not what Maine State Tax Assessors do. They don't set out to prove fraud. They rarely prove fraud and the only time they go way, way back is if they have proved fraud. It has got to be a major thing. You don't see Maine State Tax Assessors proving fraud of one dollar and then going into a full blown examination of people's lives. I do think there are arguments about the IRS and I want to urge you not to vote your passion about the IRS, because this isn't about the IRS. This is about the State of Maine. If you vote against this motion and win, I hope one of you on the prevailing side will do me the courtesy of holding the bill, because if you vote on the prevailing side and win, I am going to ask that you consider an amendment to let all of our taxpayers, that's the fairness issue, who might have made a mistake between year three and year five, and might be owed some money, to be able to go and collect and put in that money. That is the only way that is fair for everyone of your constituents, if absolutely everybody can have a change in the statute of limitations, not this gentleman who made his mistake and hasn't chosen the available recourses, but all of our constituents who may have made a mistake and overpaid. We should change the statute of limitations. So, if you don't vote with the Majority, and you are on the prevailing side, I hope one of you will have the courtesy to table the bill. I really encourage you to vote with the Majority. It's bad precedence and it is not a \$40,000 bill. Representative Reed and I won't be here next year, but you will all have bills in because somebody in each of your districts, who made a mistake between three and five years ago, and can't go back to the State of Maine. Thank you.

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

Representative HICHBORN: Mr. Speaker, Ladies and Gentlemen of the House: I'm not a lawyer. I'm not an accountant. I was brought up to believe that it was not right to profit from someone else's mistakes. I'm sure that if you had borrowed \$100 from me and came back the next week and gave me an envelope with a bill in it and I took it home and found out that it was a \$1000 bill that you had put in there by mistake, I'm quite sure that every single one of you would have been on my doorstep the next morning and would have expected to get your \$900 back, and you would have gotten it. I can't see why the state should profit by anybody's mistake. Taking something that isn't ours is called thievery where I come from. This troubles me to think that when I go home I will have to apologize to somebody and explain to them why the state took several thousand dollars from a hard working man just because he made a stupid mistake. Thank you.

Representative KILKELLY of Wiscasset requested a roll call on the motion to accept the Majority "Ought Not to Pass" 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 Old Town, Representative Keane.

Representative KEANE: Mr. Speaker, Ladies and Gentlemen of the House: One thing I have learned today is I would like to have Marge KilKelly and Representative Murphy as my Representatives, but actually their political prowess is not the issue here today. The issue is justice. I think that's what we all want, to seek justice for the individual, justice for the state. What we have here is the Bureau of Taxation, that ruled in this particular case, and they didn't rule in favor of the gentleman. The issue was brought to the Bureau of Taxation. The Bureau of Taxation reviewed it at length and supported the Taxation Committee, and they supported the Bureau of Taxation's determination in this regard. The issue was brought up before the Senate. The Senate supported the Taxation Committee. The Senate supported the Bureau of Taxation determination in this case. It was brought to the House. The House supported the Taxation Committee, supported the Senate, supported the Bureau of Taxation. Now it's brought to the House again and we support it again. This man has had justice as far as I am concerned and as far as a day in court, a hearing of his case. The thing that disturbs me about it, and I have always been a little bit ambivalent about this issue, but the thing that disturbs me is the individual had recourses, as Representative Reed indicated, he had recourse to go to the court from the beginning. In fact, the statute determined, that is your recourse, you go to the courts if you don't feel the Bureau of Taxation's ruling in your case is just. The individual never elected to go to the courts. That individual elected to put the Senate, the Bureau of Taxation, the Taxation Committee and the House of Representatives, debating this issue for quite a lot of time and a lot of money. He still has the recourse to go to the courts. He can still have his day in court. Thank you.

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

Representative PLOWMAN: Mr. Speaker, Men and Women of the House: As a previous member said, I am not an attorney, I am not an accountant, but I am a small business owner and have been paying sales tax since 1982 in different endeavors. The sheet that you fill out to file sales tax has got to be one of the easiest things the government has ever put out. It's one-sided, you put down your gross sales, you put down your exempt sales, you take your figure, you carry it to a line, you multiply it out, you carry that figure to the bottom line and you write the check. Most of you know I can multiply, but multiplying by six and multiplying by one is sort of like multiplying by six and then multiplying by twelve. I can figure out that one and six is different than six and twelve. Twelve percent of your sales should be a glaring figure. One quarter my bookkeeper brought me the forms that she had

filled out and I sent her back, I said there is no way we did that much business that month. She said you're right, that's what we did for the whole quarter. If I can fill out a one-page form then I think an astute business man can see that when it comes to the bottom line something is not right, absolutely not right. The gentleman has a six-year statute of limitations in a civil venue for him to go to against his accountant, who carries malpractice insurance, and against the software maker and the person who installed it. He has recourse to recoup his money. We, at some point, this Legislature, decided that there would be a three-year statute of limitations. The statute of limitations means that at some point the responsibility ends. It ended. The gentleman got back the three years, without a hassle. He got the three years back because that was the right thing to do. There's two years, those are lost years, they are absolutely lost. In fact, the state probably shouldn't even have audited those years as far as I'm concerned because they didn't have a responsibility for those years any more. I also feel if we are spending this much time auditing this gentleman's return, that we ought to make sure that he is paying us for doing the work that his accountant didn't do. Now, I'm just a simple business person, but if I can fill out that form, so can anybody. Thank you.

The SPEAKER: A roll call has been ordered. The pending question before the House is acceptance of the Majority "Ought Not to Pass" Report. All those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 348

YEA - Aikman, Ault, Bailey, Barth, Benedikt, Bigl, Bouffard, Brennan, Buck, Cameron, Carr, Chartrand, Chase, Chick, Clark, Clukey, Cross, Damren, DiPietro, Donnelly, Dore, Etnier, Farnum, Fisher, Gamache, Gates, Gieringer, Gooley, Green, Greenlaw, Hartnett, Hatch, Heino, Johnson, Jones, K.; Joyce, Joyner, Keane, Labrecque, LaFountain, Layton, Lemaire, Lemont, Libby JD; Lindahl, Luther, Madore, Marvin, McAlevey, McElroy, Mitchell JE; Nadeau, Nass, O'Gara, Ott, Peavey, Pendleton, Pinkham, Plowman, Poirier, Reed, G.; Richard, Ricker, Robichaud, Rosebush, Rowe, Samson, Savage, Saxl, J.; Simoneau, Stedman, Stevens, Stone, Taylor, Thompson, Townsend, Treat, Tripp, True, Tufts, Tyler, Volenik, Whitcomb, Winglass.

NAY - Adams, Ahearne, Berry, Bunker, Carleton, Chizmar, Cloutier, Daggett, Desmond, Dexter, Driscoll, Fitzpatrick, Gerry, Gould, Guerrette, Hichborn, Jacques, Jones, S.; Joy, Kilkelly, Kneeland, Kontos, Lane, Look, Lovett, Lumbra, Marshall, Mayo, Meres, Mitchell EH; Murphy, O'Neal, Paul, Perkins, Poulin, Pouliot, Povich, Reed, W.; Rice, Saxl, M.; Shiah, Sirois, Spear, Strout, Tuttle, Underwood, Vigue, Waterhouse, Watson, Wheeler.

ABSENT - Birney, Campbell, Davidson, Dunn, Heeschen, Joseph, Kerr, Lemke, Libby JL; Martin, Morrison, Nickerson, Richardson, Truman, Winn, Winsor, The Speaker.

Yes, 84; No, 50; Absent, 17; Excused, 0.

84 having voted in the affirmative and 50 voted in the negative, with 17 being absent, the Majority "Ought Not to Pass" Report was accepted and sent up for concurrence.

#### BILL HELD

Bill "An Act to Establish the Penobscot County Budget Committee" (S.P. 613) (L.D. 1617)

- In Senate, passed to be engrossed as amended by Committee Amendment "A" (S-476)

- In House, passed to be engrossed as amended by Committee Amendment "A" (S-476) as amended by House Amendment "A" (H-855) thereto in non-concurrence.

HELD at the Request of Representative CLARK of Millinocket.

Representative CLARK of Millinocket moved that the House reconsider its action whereby this Bill was passed to be engrossed as amended by Committee Amendment "A" (S-476) as amended by House Amendment "A" (H-855) thereto.

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

On motion of Representative BOUFFARD of Lewiston, the House recessed until 1:30 p.m.

(After Recess)

The House was called to order by the Speaker.

Bill "An Act to Establish the Penobscot County Budget Committee" (S.P. 613) (L.D. 1617) which was tabled by Representative CLARK of Millinocket pending his motion to reconsider action whereby this Bill was passed to be engrossed as amended by Committee Amendment "A" (S-476) as amended by House Amendment "A" (H-855) thereto.

Representative CLARK of Millinocket withdrew his motion to Reconsider.

Subsequently, the Bill was passed to be engrossed as amended by Committee Amendment "A" (S-476) as amended by House Amendment "A" (H-855) thereto in non-concurrence and sent up for concurrence.

Bill "An Act to Promote Additional Health Insurance Reform" (H.P. 1074) (L.D. 1513)

- In House, Majority "Ought Not to Pass" Report of the Committee on Banking and Insurance read and accepted on March 25, 1996.

- In Senate, Minority "Ought to Pass" as amended Report of the Committee on Banking and Insurance read and accepted and the Bill passed to be engrossed as amended by Committee Amendment "A" (H-820) as amended by Senate Amendment "A" (S-526) thereto in non-concurrence.

TABLED - March 28, 1996 (Till Later Today) by Representative JACQUES of Waterville.

PENDING - Further Consideration.

Representative VIGUE of Winslow moved that the House Insist.

Representative GATES of Rockport moved that the House Recede and Concur.

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

Representative GATES: Mr. Speaker, Men and Women of the House: This bill is back to us in non-concurrence. At issue is the length of time before Blue Cross and Blue Shield is permitted to leave their current nonprofit status and become a for-profit company.

The Senate forged the compromise, finally approved 22 to 8 that there would be a moratorium until June 30, 1997, which is, as you know, the end of the 118th First Regular Session. I preferred a longer period of time, but I am willing to accept the Senate compromise and I urge you to do so. I would just like to make a couple of points. This delay will allow the 118th Legislature to deal with the issue of public assets and to protect the public assets that are a part of Blue Cross and Blue Shield. It is my view that it is our responsibility to not allow them to go forward unless those assets are protected.

Secondly, we are not out of step with the rest of the country by doing this. In every state but one where Blue Cross and Blue Shield has gone public, assets have been set aside for charitable purposes, because they were allowed to build up their tremendous value through tax exemptions and their nonprofit status. In California, the amount that was set aside was 3 billion dollars. The value of Blue Cross and Blue Shield above their reserve, which belonged to their policy holders, is somewhere between 100 and 500 million dollars. It is a huge issue.

Thirdly, this isn't even a partisan issue. In California it was the Republican Superintendent of Insurance that forced Blue Cross and Blue Shield to set aside their assets. However, our Superintendent of Insurance doesn't have that sort of discretion in this area. Our Superintendent of Insurance will have to follow the law as written so if they file a plan to go for-profits, the superintendent has no discretion and has to grant the plan if it follows the existing law passed by the last Legislature which allows them to go mutual.

I urge you to give the 118th Legislature the time to deal with this issue. We tried and we just ran out of time this time. We came very close. I have talked to many of you about this and many of you said that Blue Cross and Blue Shield doesn't want any date at all. Of course they don't. There are four lobbyists in the hall working this issue. It reminds me of the debate we had the other day on Representative Hartnett's amendment to the transportation issue. Many people said that the DMV doesn't want it. Of course they don't want it. They don't want to be told what to do. Well the DMV doesn't run this place and I submit to you that neither does Blue Cross and Blue Shield. I urge you not to listen to the drumbeat of the people in the hall, but to listen to the voices of your constituents and please support the motion to recede and concur. Thank you.

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

Representative VIGUE: Mr. Speaker, Ladies and Gentlemen of the House: We have debated this issue at great lengths. We have dealt for years and years with Blue Cross and Blue Shield. They have served us extremely well. The hands of this company should not necessarily be tied to what we want to do. I guarantee you that we will not regret opposing the recede and concur motion of my counterpart on the committee. I ask you to please oppose the pending motion. Thank you.

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

Representative MAYO: Mr. Speaker, Ladies and Gentlemen of the House: I find myself in an odd position opposing the good Representative from

Camden/Rockport. However, we on the Banking and Insurance Committee, and I believe all the members of this House, received a letter from the President of Blue Cross and Blue Shield, Mr. Green, indicating that they were going to do nothing with regard to this issue of converting to a mutual company. If, in fact, they moved in that direction prior to January 1, 1997, which is the start of the 118th Legislature. I think it is inappropriate for this body to pass legislation to tell a company what it can and cannot do. To me, as a businessman, it sends the message that we do not trust Blue Cross and Blue Shield. For over 50 years, they have been the insurer of last resort in this state and I think that we can trust them to raise the issue of the assets and it has nothing to do with this particular issue today. Mr. Speaker, I move that we indefinitely postpone this bill and all accompanying papers and ask for a roll call when the vote is taken.

The SPEAKER: The Chair would inform the Representative from Bath that since the pending issue is in non-concurrence, the Chair is not able to accept that motion at this point in time. The pending motion is the motion to Recede and Concur.

The Chair recognizes the Representative from Naples, Representative Thompson.

Representative THOMPSON: Mr. Speaker, Men and Women of the House: I would urge members of the House to look at this issue and to vote in favor of this motion to recede and concur. What we have here is a very unique situation of Blue Cross and Blue Shield being a creation of the Maine Legislature as a public charitable organization.

When Blue Cross and Blue Shield appeared before our committee, they testified that it was their position that there were no public interests in the assets of Blue Cross and Blue Shield if they should convert to a for-profit stock company. That flies in the face of every other Blue Cross and Blue Shield conversion that has taken place, except one in the State of Georgia where there was a statute specifically addressing the point. In every other instance when Blue Cross has converted, there have been public assets set aside into some type of a charitable trust for the benefit of the people of that state.

Blue Cross has sent a letter saying "We won't do anything until January 1," but that does not solve the problem. The 118th Legislature will not have time to pass a new process by January 1 of next year. We will be convening somewhere in that time period in the beginning of January, but we will not have time to act. What the present receding and concurring would mean that they cannot act until June 30, which would coincide with the first session of the 118th Legislature. That would give the 118th Legislature the opportunity to act on this important issue. We, as legislators, in offering this are not trying to make a determination of what assets are part of a public trust. We are simply saying, give the 118th Legislature a chance to set up a proper procedure whereby this transition can be made in an orderly fashion and a determination can be made to what part of these assets are public assets. I would ask your support for this motion to recede and concur.

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

Representative LUMBRA: Mr. Speaker, Men and Women of the House: If Blue Cross and Blue Shield did decide to file to mutualize their company by January

1 of next year, it wouldn't be an automatic thing. They would first have to file with the superintendent. The superintendent then reviews the application. There is then an opportunity for public hearings for any interested party. The superintendent then makes a decision. This is a timely process, nothing happens in state government overnight. This will take a significant amount of time. This would also allow the superintendent and any interested parties to bring an issue before the 118th Legislature and the 118th Legislature could deal with it.

If we mandate that they can't put an application in until June, then the Legislature could be done or nearly done. Also, please remember that this bill initially was never about Blue Cross and Blue Shield mutualizing the company. It was a different issue. That issue came up later on and we had work session after work session about who the interested parties were. It was well defined. The public has an interest. The subscribers have an interest and the policyholders have an interest. The Attorney General's Office is very aware of that. Blue Cross and Blue Shield is very aware of that and the superintendent is very aware of that.

I would join my good friend, Representative Vigue and ask you to please vote against this motion. Thank you.

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

Representative SAXL: Mr. Speaker, Men and Women of the House: Once the Blue Cross and Blue Shield train is going down the track it is going to be too late. In a recent editorial from the Lewiston Sun Journal the editors write, "Under the present plan, once Blue Cross converted to a mutual company, the state would have no further review, should it later be bought by investors as many nonprofits have been throughout the country."

If Maine doesn't stake a claim to the assets now, later will be too late. I don't know what the assets of Blue Cross and Blue Shield are. I don't know what portion of those are public. I don't know what portion of those should be private. I do know that we have a duty here today to give the people of the State of Maine a chance to look at these assets and make a deliberate decision before Blue Cross and Blue Shield mutualizes.

It is important to note that the amendment that we have before us today and the pending motion of Representative Gates is brought about in the spirit of nonpartisanship. In the other body, Senator Abromson, a Republican from my hometown of Portland and the Chair of the Banking and Insurance Committee, thought it was the wise decision to make sure there was a moratorium on Blue Cross and Blue Shield's mutualizing until the end of the session. That is somewhere between the two plans. It is a fair compromise and today we have a chance to do something to protect the assets and to make a deliberate determination about the status of Blue Cross and Blue Shield as it considers mutualization.

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

Representative VIGUE: Mr. Speaker, Ladies and Gentlemen of the House: When we voted on this issue previously, we voted on a September date. Now we are voting on an earlier date and it is no more necessary than the earlier date. I urge you to hold your previous position and oppose the pending motion to

recede and concur. Mr. Speaker, I request that the committee report be read.

Representative VIGUE of Winslow requests the Clerk to read the Committee Report.

The Clerk read the Committee Report in its entirety.

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

Representative CHASE: Mr. Speaker, Men and Women of the House: I just had a few quick points to make. This is not an antibusiness bill and I would hope if you support the motion to recede and concur that you are not fooled by that argument. This has nothing to do with the normal business in the State of Maine. Blue Cross and Blue Shield was established by statute as a nonprofit, charitable organization. It is rather different than most of our businesses. We are attempting in the same way that the charter was originally drawn up, that is through the legislative process to make sure that if this business goes from a nonprofit to a mutual company and then perhaps to a publicly traded for-stock company that the Legislature has some input and is able to over see that process.

My friend, Representative Mayo, said that the issue of assets had nothing to do with this bill and I could not disagree more. That is exactly what we are talking about. That is exactly what we are arguing about and that is exactly what our work sessions were about. As Representative Lumbra told you, the original bill, in fact, had nothing to do with assets. It had nothing to do with mutualization. Blue Cross and Blue Shield was looking for rate-regulation relief and we all agreed. We gave it to them. Blue Cross and Blue Shield brought an amendment that addressed the issue of mutualization and we, as a committee, said, "Excuse us, we are looking at your charter. You are a charitable organization. What happened to the assets that currently belong to the people of the State of Maine?" That is how it was raised. This bill has everything to do with that issue.

What we are saying is that we want some time for the 118th Legislature to address this issue. Why, if we already have current law, do we want the 118th Legislature involved at all? That is because there is no clear language dealing with assets in current law. What we have in current law is a reference to the Superintendent of Insurance. The Superintendent of Insurance does not generally make decisions about nonprofit corporations. We have a hybrid here. We have a business that was created by statute. We have a charitable organization that the means by which they change to a mutual would be determined by the Superintendent of Insurance according to insurance law. Insurance law does not address the issue. What we are saying is please, men and women of this body, allow the 118th Legislature, the body that created this charitable organization, to deal with this charitable organization. Mr. Speaker, when the vote is taken I ask for the yeas and nays.

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

Representative STONE: Mr. Speaker, Ladies and Gentlemen of the House: I wonder is somebody could clarify something for me and define a public asset?

The SPEAKER: The Representative from Bangor, Representative Stone has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Bangor, Representative Lumbra.

Representative LUMBRA: Mr. Speaker, Men and Women of the House: We cannot define public asset. That is what the committee debated and debated and debated about. That is what the Attorney General, the Superintendent of Insurance and Blue Cross and Blue Shield will be working on over the summer.

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

Representative THOMPSON: Mr. Speaker, Men and Women of the House: I would like to disagree with the good Representative from Bangor. The law has routinely defined and found what public assets are. In the law of charitable organizations, if a charitable organization should, for example, dissolve, those funds would become a public trust or a public asset and would be used in the same intent as the original purpose of the charitable organization. What we have here is what we couldn't decide in committee is the process for how to determine what portion of Blue Cross and Blue Shield might be a public asset and we certainly did not try to say that we were the ones that should determine how much of that was a public asset. What we are trying to do is hope the 118th Legislature sets up a proper process for determining how that public asset will be determined ultimately and who will make the determination.

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

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

The SPEAKER: The Representative may pose his question.

Representative STONE: Thank you. I am just trying to get this clear in my head so I can figure what I am going to do. I don't think I really got an answer. Why does something become a public asset? Who paid for it to make it a public asset? Why does the state feel that they are entitled to any of this? This is a little gray to me and I am probably not the only one. Thank you.

The SPEAKER: The Representative from Bangor, Representative Stone has posed a series of questions through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Winslow, Representative Vigue.

Representative VIGUE: Mr. Speaker, Ladies and Gentlemen of the House: The reason that Blue Cross and Blue Shield is thought of as being an asset owned by the State of Maine is because of the status that we set up in 1939 making Blue Cross and Blue Shield a nontaxable entity. They are not taxed two percent of the premium dollars that they receive.

In this session we were talking about using that money for another purpose and the money that came out, we were looking at 8 to 10 million dollars. You are looking at a pretty good sum of money if you multiply times of years from 1939 to the present.

This is the reason there is some doubt as to what portion, in total, is owned by the State of Maine and what portion is owned by Blue Cross and Blue Shield or the policyholders.

The SPEAKER: The Chair recognizes the Representative from Yarmouth, Representative Buck.

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

The SPEAKER: The Representative may pose his question.

Representative BUCK: Mr. Speaker, Men and Women of the House: My question is if we use the logic of the last speaker then would not all the chartered churches in the state fall under this as well?

The SPEAKER: The Representative from Yarmouth, Representative Buck has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Naples, Representative Thompson.

Representative THOMPSON: Mr. Speaker, Ladies and Gentlemen of the House: In response to the question, the process that we are looking at is setting up a process for nonprofit medical organizations, that would be nonprofit hospitals and Blue Cross and Blue Shield. If they should mutualize and change and eventually go to a for-profit status, a church would not be involved because assumably a church is not going to be going into a for-profit status and become a for-profit corporation. In any event, this process would not apply to churches. It would only be a process that would apply to medical service institutions.

The SPEAKER: A roll call has been 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. 349

YEA - Adams, Ahearne, Benedikt, Berry, Brennan, Carr, Chartrand, Chase, Chizmar, Clark, Daggett, Desmond, Etnier, Fisher, Fitzpatrick, Gates, Gerry, Gooley, Green, Heesch, Johnson, Jones, K.; Keane, Kilkelly, Kontos, Lemaire, Luther, Mitchell EH; Mitchell JE; O'Neal, Povich, Richardson, Rosebush, Rowe, Samson, Saxl, J.; Saxl, M.; Shiah, Sirois, Stevens, Thompson, Townsend, Treat, Tripp, Tuttle, Volenik, Watson, Winglass, Winn.

NAY - Aikman, Ault, Bailey, Barth, Bigl, Bouffard, Buck, Bunker, Cameron, Carleton, Chick, Cloutier, Clukey, Cross, Damren, Dexter, DiPietro, Donnelly, Dore, Driscoll, Farnum, Gamache, Gieringer, Gould, Greenlaw, Guerrette, Hartnett, Hatch, Heino, Hichborn, Jacques, Jones, S.; Joseph, Joy, Joyce, Joyner, Kerr, Kneeland, Labrecque, LaFountain, Lane, Layton, Lemont, Lindahl, Look, Lovett, Lumbra, Madore, Marshall, Marvin, Mayo, McAlevey, McElroy, Meres, Murphy, Nadeau, Nass, O'Gara, Ott, Paul, Peavey, Pendleton, Pinkham, Plowman, Poirier, Poulin, Pouliot, Reed, G.; Reed, W.; Rice, Richard, Ricker, Robichaud, Savage, Simoneau, Spear, Stedman, Stone, Strout, Taylor, True, Tufts, Tyler, Underwood, Vigue, Waterhouse, Wheeler, Whitcomb, Winsor, The Speaker.

ABSENT - Birney, Campbell, Davidson, Dunn, Lemke, Libby JD; Libby JL; Martin, Morrison, Nickerson, Perkins, Truman.

Yes, 49; No, 90; Absent, 12; Excused, 0.

49 having voted in the affirmative and 90 voted in the negative, the motion to Recede and Concur was not accepted.

Subsequently, the House voted to Insist.

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:

House Divided Report - Committee on Natural Resources - (11) Members "Ought to Pass" as amended by Committee Amendment "A" (H-872) -(1) Member "Ought Not to Pass" on Bill "An Act to Implement the Recommendations of the Land and Water Resources Council Regarding Gravel Pits and Rock Quarries" (H.P. 1353) (L.D. 1854) which was tabled by Representative DEXTER of Kingfield pending his motion to accept the Majority "Ought to Pass" as amended Report.

The SPEAKER: The Chair recognizes the Representative from Bowdoinham, Representative Shiah.

Representative SHIAH: Mr. Speaker, Ladies and Gentlemen of the House: I'm sure you're not too excited about hearing the one on a twelve-to-one report, but I feel I have to raise several issues that this bill brought forth. You've all got a green sheet that was passed around, I hope you haven't tossed it yet, on this bill, L.D. 1854. A little background, this is a bill that came to us very late this session. I feel we were very rushed on this bill. I consider it a major change in our current laws. It's a complicated issue but this being part of the site laws, now moved over to a separate section, and I want to mention a few things that concern me about the bill. Three primary concerns. The public participation, and again if you have your green sheet you can see it on there, right now, if this is passed, there will be no public hearing provided for unless a gravel pit needs a variance. This does not allow a forum for citizens to raise concerns and challenge the assertions of the operators. That is a big concern of mine. Just to back up a little more, there was a working group set up to work on this issue over the last year or so, a 15 member group, 9 members from the gravel industry and 6 public members. All six of the public members had several concerns with this bill and felt they were consistently outvoted when the working group met throughout the year. They attended our work session and voiced these concerns again, so I am bringing some of those forward to you now. I certainly am not an expert on this issue, and that is one of my problems. It was such a big bill coming to us so late, we didn't know what was going to be in the bill so we had very little time to really study this in depth.

Two other things I want to mention is the level of excavation allowed. If this passes, variances may be granted to excavate below the seasonal highwater table if the area is not designated as a public drinking water supply and other things. That's a very troubling issue to me when we start allowing for excavations below the water table. The consequences, I believe, are unknown. All aquifers act differently. You don't know what is going to happen when you get into the water table. You don't know what you are going to be effecting. I am very concerned about this going into the water table issue. Those are my two big concerns. The third one is traffic standards. Again the bill changes that and for those of you who aren't that familiar with

gravel and gravel pits, gravel tends to accumulate in certain areas. It has been deposited there over many, many years, so you can have several gravel pits in one area which could lead to significant increase in traffic and noise. Again if L.D. 1854 is adopted we could get up to 50 trucks per hour per pit, which several of the public members mentioned concerns about because some of them were from an area where three gravel pits are very closely located and there was concern over both traffic and noise levels. This is something that I just felt we didn't spend enough time on and reached enough of a compromise on.

I know some of you received a letter yesterday from a fellow in Freeport who talked about some of the problems they had down there. I have gotten several calls and comments on this issue. Again, some of you have dealt with this a lot longer than I have, in the gravel pit industry and in the bills that have come through in the past, I know we have kicked this around a lot in the past. Again, the changes in 1854 I think are big enough to warrant concern. What do we do? Do we defeat this or do we try and work out an amendment next year? I think in my view I would like to defeat this now and try and bring it back next year and try to compromise on some of these areas. Again, it was a very last minute bill, that concerned me. I just felt that we were rushed with this bill. It moved very quickly through the committee process and the public members attended the work session and called me and faxed me stuff and sent me stuff. I won't read through all of it here now. I think some other people might have some comments on the bill. So, I raise these issues, again knowing a lot of you haven't had a chance to deal with this matter yet this session. Again, just to summarize, public participation, traffic standards and going into the water table are my three biggest concerns. So with that I will urge you to vote to oppose the bill and I appreciate your time. Thank you.

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

Representative GOULD: Mr. Speaker, Ladies and Gentlemen of the House: I think it is important that you get the rest of the story, because it's not too often that you have an opportunity to vote for a piece of legislation that removes some barrier to business, while at the same time offers greater environmental protections than it did before. Let me explain what I mean. Gravel pits used to be regulated under the Site Location Act, that location act was in effect for about 25 years. In that 25-year period we had 125 gravel pits out of the hundreds and hundreds of gravel pits in the state that were operated, we had 125 regulated. Two years ago we changed to put standards in, the same standards that they had been using under the site law, we put standards in to regulate gravel pits from five to 30 acres. In that two-year period we had an additional 250, let me repeat, we had an additional 250 gravel pits regulated. In two years we had 250 gravel pits regulated, where in 25 years we had 125 gravel pits regulated. That's quite a change. You can have all of the regulations you want, and if there is nobody checking into the regulations they don't do an awful lot of good. I checked this morning with DEP. DEP told me again something that I had already known, that they check gravel pits on an average, these 125, once in 25 years. So, you may have great regulations, but if those regulations

aren't being checked they really aren't much good are they? I said how often do you check the gravel pits that you have now? They said they were checking them once a year. Also let me point out that the standards, the operational standards, that gravel pits were governed by under the site law are virtually the same gravel pit standards that are operating under today, and yet we are checking them more frequently, much more frequently. It seems to me that this is improving the environmental standards.

I also think it is very important to note a couple of other things. You can start a gravel pit, and build that gravel pit up to 25 acres without regulation at all, unless the municipality chooses to do something. So, you can have a lot of gravel pits starting without ever being regulated. It's also important to note that no gravel pit under this law that we are proposing to you can be any larger than 10 acres of operating gravel pit. They have to reclaim any of the other acreage that they use. Under the site law, gravel pits could be 50 acres, 100 acres, you could have a 100-acre hole in the ground and that was not stopped. If you don't think it's happening then come with me and I will take you to some of the gravel pits that I have hauled gravel out of that were greater than 50 acres. There are gravel pits out there with great big holes. This will not allow it.

Now, public participation, I think it's important to note that an equal number of people from business and the public were invited to attend this working task force. Some of the public people chose not to attend. DEP can do many things, but they can't force people to attend if they don't wish to, if you don't wish to attend it's kind of difficult to have input into the process that is taking place. So, I don't think they should complain on that ground if they chose not to attend. Under the new idea to go below the water table, there is nothing new about that. Under the site development of location you could get a permit to go below the water table. It's exactly the same thing under this proposed law. If you wish to go below the water table under this proposed law you have to get a full blown permit from DEP. There has to be public hearings and the whole nine yards. So that hasn't changed. What we did, because you always want to make sure that you kind of balance things out and take things and make sure you are not getting too far ahead of yourself, so what we got in this bill was that DEP would grant no permits, no variances, to any of these standards until the rules were in place. We designated these rules as substantial rules, which means, as you all are well aware, they come back to the committee of jurisdiction for review and then to the full legislature for review. So, until these rules are developed there can be no variances. It's written into the law that no variance can be granted by the DEP prior to March 1, 1997, and the 118th Legislature will be meeting at that time and will be reviewing the rules and it will be up to them to see if these rules governing variances are sufficient to be passed in order to protect the environment.

Again, it just seems to me that we have very few opportunities in this Legislature to vote for a piece of legislation, while not perfect, does improve the regulation and the protection of the environment while at the same time giving people a greater opportunity to operate their business. So, I certainly hope that you will look at this bill

carefully and will support the improvements of business conditions and the improvements to regulation conditions. I will close with this one last thing. Traffic standards were mentioned, and the Representative from Bowdoinham, Representative Shiah, is 100 percent correct. The accumulative impact on three or four gravel pits, the trucks entering those, has not been taken into account. Now let me tell you the rest of the story. It never has been taken into account. In the Site Location Law it was never taken into account. However, what we did in this law is we strengthened the traffic regulations. It used to be that so many, I think it was 120, cars per hour was what the original standard was. This is down to 100, which is reducing it. Even then we are making it a little better than it was before. So folks, I'm going to repeat and sit down with this. We really need to vote for something that improves business and improves environmental regulations. Thank you.

The SPEAKER: The Chair recognizes the Representative from Norridgewock, Representative Meres.

Representative MERES: Mr. Speaker, Ladies and Gentlemen of the House: One of the issues that was discussed a few minutes ago was public participation, and living in the area that I do where we have a lot of gravel pits, I did receive many constituent concerns and I did talk to the public participants who were at our public hearing. One of their main concerns was they felt that public participation was something that needed to be addressed. I made them a commitment that I would try to help them in that area. I introduced an amendment which was accepted unanimously by the committee to deal with that issue. I want you to be assured that our committee did hear their concerns and worked toward a resolution. Let me tell you that what we did in our amendment was to request that the applicants notify the abutters and the municipality seven days prior to applying for a permit, which would give ample time for people within the community to rally and to approach the town officials if they felt that there was something that needed to be addressed. The municipality then was given the ability to act if they had a concern. The municipality could agree to approach the DEP and ask them to address anything that they considered to be a substantial problem on environmental impact. The DEP was then requested to get back with an answer to that within 30 days. The thinking behind that was that we are trying our best, as a Legislature, to address the concept of bringing things back towards local control, and part of embracing that is we assume that the municipality, with its own capacity to be the first to recognize and articulate the fact that there would be a problem within that community. We also wanted to make sure that there was ample time for notice before any activity actually began.

The other side to this that I don't think we talked about much was the variance process. On the blue sheet it talks quite a bit about a variance, and we did talk about the fact that variances are required for many different things that concerned the average citizen. In every variance, any time an applicant applies for a variance, a public hearing is automatically a part of that process. So, you can be assured that the public participation focus has been addressed. Some people would probably prefer that it be a lot more stringent, but I feel that this is a

workable way to deal with it and it does allow the public to have input at every level of the process. Thank you.

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

Representative TREAT: Mr. Speaker, Men and Women of the House: It's hard to rise after my friend, Representative Meres from Norridgewock, who I know is a strong environmentalist and really has the will of people at the local level at heart, as do I. I think this is an issue of local control, as she has mentioned, and I need to tell you something about the ability of towns to actually do something in the area of gravel pits. What this bill does is essentially turn from having right now what we have, which is the ability of towns to oversee gravel pit expansions or new gravel pits. They can do whatever they do at the local level, and we also have DEP permits. This bill essentially takes away the DEP permit part, turns it essentially into a notification law, changes a number of the standards that pits have to comply with, and allows the towns to continue what they are doing right now in terms of regulating gravel pits. I have had the opportunity in my other life as a lawyer, which is diminishing on a daily basis I might add, but I have represented a few towns in trying to deal with gravel pits. What I can tell you from my own experience is that towns have very few tools at their disposal available for them to use to regulate gravel pits. In fact, their ordinances regarding gravel pits, or the ordinances that they use to try to regulate gravel pits, are often thrown out by the courts as unconstitutional. Indeed, in a recent case I had about a year and a half ago, a case was brought to my attention where the Town of Gray had attempted to even regulate the hours of operation of a gravel pit. One would think that that is something that a town inherently has within its own authority, to regulate the hours of operation, and yet the courts said no, their ordinance did not give them that authority, even though it was an ordinance giving them the authority to regulate gravel pits. It wasn't specific enough. It didn't talk about noise relating to hours of operation, therefore they could not regulate hours of operation. That was the Town of Gray. The Town of Whitefield attempted to regulate a gravel pit. A gravel pit that involved an expansion as well as having an asphalt plant within that gravel pit. Their ordinance was thrown out and they were told the ordinance was too vague. You can't regulate the matter of the trucks going by, the matter of the noise, the matter of houses shaking because there are so many gravel pits in one town. Representative Shiah of Bowdoinham was right, these gravel pits tend to be several to a town. It's the nature of the gravel deposits and it's very difficult for a town to look at all of those impacts. Where does a town get the money? In the case of Whitefield, they didn't have enough money to hire an attorney to represent them, or to even sit in with them at the planning board meetings. Towns do not have a lot of resources right now and they depend, currently, on help from DEP. They look to DEP standards as a way of setting their own standards. They look to DEP traffic studies as a way of measuring their own. They don't have traffic engineers. They don't have the money to go out and hire traffic engineers. They don't have the money to hire a hydrologist to find out what is going on under

the water table, which brings me to the water table issue.

I hate to disagree with my other good friend, Representative Gould from Greenville, who said that right now you can get a variance which goes below the water table. In fact, that is not how I read the law. If you go to page 10 of your bill, the big fat bill that very few people here have actually taken the trouble to try to read, you will see what is crossed out. What is crossed out and replaced with the ability to dig under the water table is the provision that says you can get a variance to two feet above the water table, not below the water table. Right now the law says you have to have five feet in between the digging and the water table. What this bill says, and under current law, you can get a variance, but it is only to two feet above the water table. Under this bill you can get a variance to dig right down and go below the water table. What does DEP have to look at to get this variance? I found this very interesting. The point was made that they have to get a variance to do this and DEP will look at it. What are they looking at? Are they looking at the issue of contamination, which is the concern I would have since you are talking about trucks with petroleum products that can get into the ground water very easily. No, they are not looking at that. They are looking at the issue of whether the yield is effective. What does that mean? It means the volume of water going into a wetland or a neighboring stream. It has nothing to do with contamination.

I think there are some problems with this bill and there are problems that perhaps the committee did not have enough time to really address. This is a very serious matter. It's a very serious dismantling of environmental standards that we have right now. It is something that has tremendous impact on the lives of the people in these communities. I have represented people who lived in historic houses where things fell off the walls, the frames of the windows moved around, because of the nature of the heavy truck traffic on the road outside, because there were several gravel pits in this town and all the trucks went up and down the same road. Towns do not have the authority right now to do what they need to do. I would ask you to take a look at your town ordinance and see whether your town ordinance would stand up to court review. I am willing to bet that there are many, many ordinances in the towns of every person in this room that would be thrown out by a court if that town tried to regulate a gravel pit. I know this from my own personal bad experience of taking one of those ordinances and doing my best to defend it and being told by a court that this is just a vague ordinance and they couldn't use it to regulate gravel pits. It was a typical ordinance, similar to ordinances that I have seen all over this state. I think you should think very carefully before getting rid of the checks and balances that we have right now where we have a system where the state and the communities work together, they compliment each other in regulating this very significant industrial use. Most towns that I am aware of are not trying to stop the gravel pits totally, they are trying to do things like setting hours of operation so that the crusher isn't going at five a.m. or four a.m. They are setting truck traffic limits. They are setting buffer zones. They are looking at runoff issues. They may require a ground-water well to be dug so

that contamination can be checked before it gets into the water table. They are not trying to prohibit gravel pits. They are trying to have reasonable regulation of those gravel pits so that they can co-exist with residential neighborhoods that are inevitably right on the edge of these gravel pits. I hope you will vote against the pending motion so that we can go on to accept the Minority "Ought Not to Pass" Report. Thank you.

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

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

The SPEAKER: The Representative may pose his question.

Representative HARTNETT: Thank you. The first question I have has to do with the cover of L.D. 1854. Please excuse my ignorance. It says this was brought forward from the Land and Water Resources Council. My question is, is that part of DEP? If not, who are they and what do they do? The second question I have had to do with the filing of a notice of intent to expand with the municipality seven days prior to the filing of notice with the department. What sort of time frame does the municipality have to respond? I know they are getting it seven days prior to the Department getting it, but what is the time frame they have to respond to the department about an expansion? My point being that many of our small towns where these pits exist may only have biweekly meetings of selectmen or council. I am wondering is this sufficient time for them to respond? Thank you.

The SPEAKER: The Representative from Freeport, Representative Hartnett has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Greenville, Representative Gould.

Representative GOULD: Mr. Speaker, Men and Women of the House: In response to the Representative's first question dealing with the Land and Water Council. It is made up of the departments, like Environmental Protection, Conservation, et cetera. I believe Fish and Wildlife is included in that. Most of the environmental organizations. The time frame, I believe without checking into it, if I am incorrect I am sure that somebody will correct me, but I believe it is 30 days. You also need to remember that on that time frame a municipality or an individual can complain or question the DEP anytime. So, it doesn't stop, this is just to give them the time so that they can check into it.

Now, while I am on my feet, there are a couple of other things that I would like to straighten out here. We are getting several laws confused and I would like to try to straighten it out so that you do understand it. When I said that you can go below the water table, that is exactly correct. You can go below the water table under the site location development law. Under the law that we passed two years ago you cannot go below the water table, but under the site development of location, which is what governs certain gravel pits over 30 acres right now, you can get a permit to go below the water table. What we are doing is transferring that whole thing to gravel pits above 30 acres, and you still can go below the water table if you can get a variance. I just want to make sure that we understand the laws that we are dealing with. I also want you to be sure that you understand that certainly courts do rule ordinances out of order, but that does not in any way

imply that a municipality cannot rewrite its ordinance and write it in such a way that it will comply with the courts.

I would just like to read, I know how we like to have people read to us, but this is a very short thing. It says, on page 18, section 30, number 1, "Nothing in this section may be construed to limit a municipality's authority under home rule to adopt ordinances regulating fallow, topsoil, clay or silt excavations." Sometimes ordinances do get thrown out. There is absolutely no question, but you can always rewrite them and go back and try again. I also want to correct one other thing, and that is that DEP will continue to regulate gravel pits. DEP cannot regulate truck traffic on state highways. The towns cannot regulate truck traffic on state highways. I do know that sometimes trucks are a pain. My house only sits about 20 feet from the road that goes right by me and I have log trucks going by me that are quite heavy when they go by. I couldn't agree more with Representative Treat, sometimes they are a pain, but that's life in Maine. Thank you.

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

Representative WATERHOUSE: Mr. Speaker, Men and Women of the House: I just want to address one point that the good Representative Gould just mentioned in reference to what Representative Treat had said about town ordinances. It is true that some of the town ordinances do get thrown out, and some of these smaller towns have trouble writing ordinances, but I have a small town in my district, it has 256 people. They wanted to stop a development for a spring water bottled operation. They thought it would be detrimental to their road, to their rural lifestyle. They wrote an ordinance and it was upheld in the Supreme Court. I dare say that if your small town wrote an ordinance and it didn't stand up to what you wanted to do, then you should get yourself another lawyer.

The SPEAKER: The Chair recognizes the Representative from Livermore, Representative Berry.

Representative BERRY: Mr. Speaker, Men and Women of the House: It hasn't been often this session that I have been able to speak on a Majority Report, but I'm pretty comfortable with this bill and I did have some second thoughts at times. I looked back in my town and I have seen some of the gravel pits that have operated and some of them have been left with more than a 10-acre scar on the landscape. I have heard from the industry prior to a few years ago, there really wasn't much compliance in the industry. When I talked to a friend of mine who I look up to who has been involved in the DOT for many years, he has dealt with DEP and he has dealt with small contractors in the community and he sees them making a real effort to bring that industry into compliance. The DEP has worked with the contractors. They've got programs. They are setting the gravel pits up the way they should be set up to be internally drained, erosion control and the proper ways to run them. I was brought up next to a gravel pit and I know what the trucks are like coming by, sometimes when you had to make sure the ball didn't land in the street at the wrong time. I know one particular gravel pit near my house has been reclaimed and it's a nice area now. On the other end of town there is one that is an open scar. I think this bill will be an improvement. There will always

be challenges in the court, there always has been. I don't want to drag it on but I think the benefits of this bill will be great. Thank you.

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

Representative CHARTRAND: Mr. Speaker, Men and Women of the House: I have some problems with this bill. I am not an expert on gravel pits by any means, but I have communicated with a number of the people who are public members of the committee that put together this report. One of them lives not far from me and another one works in Rockland. They said all of the six public members disagreed with the report issued to the committee, the Natural Resources Committee, and made their opinions known to that committee. I don't know what process happened there, but they clearly opposed the results of their work force and this bill. There may be some good aspects to the bill, I don't know, but there are clearly some that threaten towns across Maine and that all of the public participants are strongly opposed to. I think this bill should be indefinitely postponed and that the people involved should work on this further and possibly come back with a bill in the next session. I think it's too early to vote on a piece of legislation that all of the public participants oppose. We have heard that they had input into the process, but their input to us now is to vote against this bill and I hope you will follow that. Thank you.

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

Representative JACQUES: Mr. Speaker, Men and Women of the House: Sometimes I kind of miss not being on the Energy and Natural Resources Committee any longer. Today is not one of those times. I served on the Energy and Natural Resources Committee for 16 years, and that committee did some awful fine work in that 16 years. We passed one of the most comprehensive solid waste laws in the country at the time. We reclassified the rivers, lakes and streams in this state. We dealt with major issues. I've got to tell you, I consider myself somewhat of an environmentalist and I think the gravel pit law that we passed a couple of years ago was a major piece of legislation. I will tell you why. When the gravel pit people came to us, landowners and pit operators were showing us that they were spending hundreds of thousands of dollars and were not improving the quality of the environment one iota. Their argument was we don't mind spending money to operate a pit, but make us spend money that will benefit someone besides a huge bureaucracy. So we sat down and we looked at a couple of parameters. Number one, men and women of the House, you cannot build, develop, create, expand anything in this state to increase economic activity or home development without gravel, sand, loam and clay. You can talk about it. You can pass bills giving tax incentives. You can loosen up borrowing. You can lower interest rates. Unless you can get in and get that stuff out of the ground you cannot develop in this state. A little lightbulb went off in my head. We can talk about it. We can put it on our brochures, but unless we put the mechanics in action it will not occur. My friends are complaining to me that they can't afford to build a house. They couldn't afford to build a road to the house. Do you know why? Gravel that used to be \$1 a yard, or 20 cents a yard, or 50 cents a yard was now

\$6 or \$7 or \$10 a yard. Try to buy some loam. Concrete, I do a little bit of that myself, the price of concrete has gone up considerably. What was the problem? We have to jump through this hoop and this hoop and this hoop and this hoop. We don't mind jumping through hoops but it doesn't benefit the environment. So, the law we came up with two years ago took a whole bunch of pits scattered all over the state that were a real mish mash of problems. They were everywhere, and we said to the people who owned them, if you come forward, and you register these pits, and we go through the process and put these pits in attainment and you follow the law we will get off your backs. We will make suggestions that will help the environment and will enable you to sell that yard of gravel or loam, and we can continue to develop and grow in this state. It worked, men and women of the House, it worked. Pit owners came forward. They said they didn't want to be a problem. They wanted to be part of the solution. How could they help? Yes, there are still a few out there that are problems, but you can take care of those. I have pits in my district. I have some good pits in my district and I have some that are not so good, but I want to tell you every time a pit gets better the pressure on the pits that aren't very good gets stronger.

Representative Gould is exactly right, what was possible in the past when you talk about ground water, we made it clear that that was not acceptable. There is a variance that you can go through under this bill. Do you honestly believe that the DEP, remember who we are talking about now, will give a variance for someone to dig in ground water if there is a chance of contamination? I'm talking about the same DEP that your constituents complain about because they won't give somebody a permit to build a ten foot addition on a building somewhere, or pave their driveway or their parking lot. I can see right now, they will be handing those variances out left and right to dig below the ground water. Come now. This bill is an extension of a very important piece of legislation for the environment of this state. It moves forward. It's just part of a continuing process, but clearly, men and women of the House, we cannot talk about voting for economic development and activity in one side of our mouth, and continue to put useless and needless regulations on the very people that can accomplish what you want to accomplish, and that is get the gravel, get the sand, get it out of the ground, reclaim that pit, and in a few years you will never know that it was there. That's what's happening. It should be happening more and this is an attempt to speed that process up. Don't be fooled into thinking that this is an anti-environmental bill, because it is not. Clearly, as Representative Waterhouse pointed out, the town wants to adopt ordinances that make sense. They can do that and they will be upheld. We insisted on that two years ago. This bill makes that pretty clear. Let's let that process continue. Let's give a real plus, not a campaign brochure, to getting some real economic activity going in this state, and at the same time afford some real environmental protection around those pits. You can do that. The choice is up to you.

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

Representative TREAT: Mr. Speaker, Men and Women of the House: First I want to request a roll call

when the vote is taken. It's hard to stand up as one of what appears to be the minority in this group here and rebut the very strong assertions of many people who I know have worked hard on the gravel pit issue over the years, but I do encourage this body to take a look at the language of this bill. There is a lot of language in this bill, and some of it is somewhat alarming. DEP cannot take action based on contamination concerns if the language in the law doesn't give them that authority. That's called arbitrary and capricious action by an agency and you can overturn it. We want our agencies to be following the laws that we write and we should write them to give them appropriate tools that they can use. I'm not saying that the law we have right now is perfect, but this is a very long bill that came in at the end of the session, was worked on by the Land and Water Resources Council, a part of the State Planning Office. I know that members of the public that were involved in this raised issues from day one. I don't know whether a minority report coming from all of the members of the public ever went to the Legislature. I would be interested in hearing from the committee members on whether they got to see those objections in writing, but it seems to me that there has been a real push to get this through very quickly and there simply hasn't been the time to look at it. I am very concerned that towns will not have appropriate tools to take action. It's all very well to say that towns should rewrite all of their ordinances. I know that the Maine Municipal Association has been telling towns to do that for years. Well, why don't they do it? Because they have to hire an attorney and other people and sit down with the planning board and spend a lot of time reworking all of those ordinances. It's great for towns who have done it and done it right, but there are a lot of towns out there, and even the ones who try to do it right, for example the Town of Gray that I have this page from, tried to do it right. They had a very specific ordinance dealing with gravel pits and even their ordinance was held not to deal with something as simple as hours of operation. It just seems to me we should go slow on this. I understand from committee members that it doesn't even go into effect immediately. What's the point of doing it now? I urge your opposition to the pending motion. Thank you.

Representative TREAT of Gardiner 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 pending question before the House is acceptance of the Majority "Ought to Pass" Report. All those in favor will vote yes; those opposed will vote no.

#### ROLL CALL NO. 350

YEA - Ahearne, Aikman, Ault, Bailey, Barth, Benedikt, Berry, Bigl, Bouffard, Brennan, Buck, Bunker, Cameron, Carleton, Carr, Chick, Chizmar, Clark, Cloutier, Clukey, Cross, Daggett, Damren, Davidson, Desmond, Dexter, DiPietro, Driscoll,

Farnum, Fisher, Fitzpatrick, Gamache, Gieringer, Gooley, Gould, Green, Greenlaw, Guerrette, Hartnett, Heino, Hichborn, Jacques, Jones, S.; Joseph, Joy, Joyce, Joyner, Keane, Kerr, Kneeland, Kontos, Labrecque, Lane, Layton, Lemaire, Lemke, Lemont, Libby JD; Lindahl, Look, Lovett, Madore, Marshall, Marvin, McAlevey, McElroy, Meres, Mitchell EH; Morrison, Murphy, Nadeau, Nass, O'Gara, O'Neal, Ott, Paul, Pendleton, Perkins, Pinkham, Plowman, Poirier, Pouliot, Povich, Reed, G.; Reed, W.; Rice, Richard, Ricker, Robichaud, Rosebush, Rowe, Samson, Saxl, J.; Saxl, M.; Simoneau, Sirois, Spear, Stedman, Stone, Strout, Taylor, Thompson, Tripp, True, Tufts, Tuttle, Tyler, Underwood, Vigue, Waterhouse, Wheeler, Whitcomb, Winglass, Winsor, The Speaker.

NAY - Adams, Chartrand, Chase, Dore, Etnier, Gates, Gerry, Hatch, Heesch, Johnson, Jones, K.; Kilkelly, LaFountain, Luther, Mayo, Peavey, Richardson, Savage, Shiah, Stevens, Townsend, Treat, Volenik, Watson.

ABSENT - Birney, Campbell, Donnelly, Dunn, Libby JL; Lumbra, Martin, Mitchell JE; Nickerson, Poulin, Truman, Winn.

Yes, 115; No, 24; Absent, 12; Excused, 0.

115 having voted in the affirmative and 24 voted in the negative, with being absent, the Majority "Ought to Pass" as amended Report was accepted.

The Bill was read once. Committee Amendment "A" (H-872) 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-872) 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, for Laying of the County Taxes and Authorizing Expenditures of Androscoggin County for the Year 1996 (EMERGENCY) (H.P. 1374) (L.D. 1883) which was passed to be engrossed in the House on March 28, 1996.

Came from the Senate passed to be engrossed as amended by Senate Amendment "A" (S-540) in non-concurrence.

The House voted to Recede and Concur.

#### Non-Concurrent Matter

Bill "An Act to Facilitate the Implementation of a Logo Sign Program on the Interstate" (H.P. 1359) (L.D. 1864) on which the Majority "Ought to Pass" as amended Report of the Committee on Transportation was read and accepted and the Bill passed to be engrossed as amended by Committee Amendment "A" (H-849) in the House on March 26, 1996.

Came from the Senate with the Minority "Ought to Pass" as amended Report of the Committee on Transportation read and accepted and the Bill passed to be engrossed as amended by Committee Amendment "B" (H-850) in non-concurrence.

The House voted to Insist 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. 807) (L.D. 1124) Bill "An Act to Establish the Education Reform Act of 1995" Committee on **Education and Cultural Affairs** reporting **"Ought to Pass"** as amended by Committee Amendment "A" (H-882)

On motion of Representative JOY of Crystal was removed from the First Day Consent Calendar.

The Report was read and accepted. The Bill was read once. Committee Amendment "A" (H-882) was read by the Clerk and adopted. The Bill was assigned for second reading later in today's session.

## BILLS IN THE SECOND READING

### As Amended

Bill "An Act to Improve the Child Development Services System" (S.P. 753) (L.D. 1866) (C. "A" S-534)

Was reported by the Committee on **Bills in the Second Reading**, read the second time.

On motion of Representative MITCHELL of Vassalboro tabled pending passage to be engrossed as amended and later today assigned.

## REPORTS OF COMMITTEES

### Divided Report

Majority Report of the Committee on **Labor** reporting **"Ought Not to Pass"** on Bill "An Act to Abolish the Legislative Retirement System" (H.P. 363) (L.D. 483)

Signed:

Senator:

Representatives:

RAND of Cumberland

HATCH of Skowhegan

CHASE of China

LEMAIRE of Lewiston

PENDLETON of Scarborough

SAMSON of Jay

TUTTLE of Sanford

Minority Report of the same Committee reporting **"Ought to Pass"** as amended by Committee Amendment "B" (H-881) on same Bill.

Signed:

Senators:

Representatives:

BEGLEY of Lincoln

MILLS of Somerset

JOY of Crystal

JOYCE of Biddeford

STEDMAN of Hartland

WINSOR of Norway

Was read.

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

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

## ENACTORS

### Emergency Measure

An Act to Establish a Sea Urchin Management Plan (H.P. 1252) (L.D. 1714) (H. "A" H-865 to C. "A" H-816)

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. 113 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 Regarding Agricultural Irrigation Ponds (S.P. 748) (L.D. 1858) (C. "A" S-531)

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. 110 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 Kennebec County for the Year 1996 (H.P. 1373) (L.D. 1881)

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. 101 voted in favor of the same and 7 against, and accordingly the Mandate was finally passed, signed by the Speaker and sent to the Senate.

An Act to Increase the Reimbursement Levels for Forest Fire Suppression Costs (H.P. 1321) (L.D. 1808) (C. "A" H-862)

An Act to Create the Small Enterprise Growth Program (H.P. 1337) (L.D. 1831) (Governor's Bill) (C. "A" H-844)

An Act to Amend the Freedom of Access Laws to Include Advisory Boards and Commissions in the Definition of Public Proceedings (S.P. 739) (L.D. 1847) (C. "A" S-529)

Resolve, to Reduce Reliance on the Property Tax for School Funding (H.P. 1112) (L.D. 1560) (C. "A" H-861)

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.

## TABLED AND TODAY ASSIGNED

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

Bill "An Act to Allow the Diagnosis of Biologically-based Mental Illness by Licensed Psychologists" (EMERGENCY) (S.P. 622) (L.D. 1630)

- In House, Minority **"Ought to Pass"** as amended Report of the Committee on **Banking and Insurance** read and accepted and the Bill passed to be engrossed as amended by Committee Amendment "B" (S-473) on March 26, 1996.

- In Senate, Senate insisted on its former action whereby the Majority **"Ought to Pass"** as amended Report of the Committee on **Banking and Insurance** was read and accepted and the Bill passed to be engrossed as amended by Committee Amendment "A" (S-472) and asked for a Committee of Conference in non-concurrence.

- In House, House recessed.

TABLED - March 28, 1996 by Representative VIGUE of Winslow.

PENDING - Adoption of House Amendment "A" (H-879) to Committee Amendment "B" (S-473)

At this point, the Speaker appointed Representative JACQUES of Waterville to serve as Speaker Pro Tem.

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

The SPEAKER PRO TEM: The Chair recognizes the Representative from Bangor, Representative Lumbra.

Representative LUMBRA: Mr. Speaker, Men and Women of the House: I would like to ask for a roll call on this and would urge you to vote against this motion. Thank you.

Representative LUMBRA of Bangor requested a roll call on adoption of House Amendment "A" (H-879) to Committee Amendment "B" (S-473).

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

Representative THOMPSON: Mr. Speaker, Ladies and Gentlemen of the House: This is a very simple amendment to explain, because unlike most bills that come before you, this amendment makes the bill do exactly as the title of the bill says. It is a bill to allow the diagnosis of biologically based mental illness by a licensed psychologist. This provision was contained in both the Majority Report and the Minority Report. It is a position that no one has argued should not happen. We have simplified our report by limiting it to this one issue, which is something that clearly should be enacted into law. I would ask for your support for this amendment.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Bangor, Representative Lumbra.

Representative LUMBRA: Mr. Speaker, Men and Women of the House: The reason I oppose this amendment is because it takes us back to the original law of last year which I think the entire committee agreed had a flaw in it. The original law said that parity for treatment of the mentally ill would be given to any mental illness provider. The Minority Report that came before you on L.D. 1630 a few days ago, from Representative Mayo, at least said that it had to be within their scope of practice. The Majority Report, we limited who could provide medical parity. This amendment takes us back to the original bill which I think we all agreed was flawed. I ask you please to vote against this amendment. Thank you.

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

Representative VIGUE: Mr. Speaker, Ladies and Gentlemen of the House: I would urge you to please oppose the pending motion. The bill was flawed in its original version and that is the reason for my opposition to this. If we could take and go back to

the original position then we would have what was intended by the bill and not have groups brought in that were not intended. That is all I have to say. I have fought this and I think it's about time we take it to its final rest. I would urge you to oppose the pending motion. Thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Bath, Representative Mayo.

Representative MAYO: Mr. Speaker, Ladies and Gentlemen of the House: Three days ago we debated this bill for well in excess of an hour. There is a strong divergence of opinion on behalf of the committee. There are some on the Banking and Insurance Committee who feel very strongly on this issue and who feel that they understood what took place in this chamber a year ago when we debated and approved, overwhelmingly, L.D. 595. I would strongly urge that you support this amendment which clarifies the situation and allow us to go on to other business that we have not debated in this chamber in the last couple of days.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Portland, Representative Saxl.

Representative SAXL: Mr. Speaker, Men and Women of the House: Two or three days ago this body overwhelmingly, by a margin of nearly three to one, accepted Representative Mayo's amendment to L.D. 1630. That amendment was more expansive than the amendment that was brought forward today by Representative Thompson. Representative Thompson has done his best effort to accommodate the interests of both sides, address the common issues of both the Minority and the Majority Reports, by addressing the ability of psychologists to successfully diagnose biologically based mental illness. That's all this piece of legislation before you does. Let's be very clear that under no circumstance would any counselor of any kind be able to legally practice in the State of Maine beyond their scope of practice. Their licensure is determined by their scope of practice, it relies on that. So this bill, this amendment, does not take us back into the dark ages. What it does is it addresses the common points of both pieces of legislation and accommodates some of the Minority Reports concerns and it just says psychologists are qualified to diagnose biologically based mental illness.

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

Representative VIGUE: Mr. Speaker, Ladies and Gentlemen of the House: The issue here is not scope of practice. The issue is the payment for services and for bringing people up to a certain level with MDs, licensed psychologists and doctors. I don't feel, even to this day, that this was intended by the original legislation. It was strictly a matter of providing full funding, so we are talking dollars. This is money right there ladies and gentlemen, nothing else. I urge you to oppose the pending motion. Thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Bangor, Representative Lumbra. Having spoken twice now requests unanimous consent to address the House a third time. Is there objection? Chair hears no objection, the Representative may proceed.

Representative LUMBRA: Mr. Speaker, Men and Women of the House: I want to re-emphasize that this amendment takes us back to the original bill which both Majority and Minority Reports which we debated

so long two days ago recognized there was a problem in the original bill. This amendment takes us back to the original bill. If you have to support anything, I would prefer you support the Minority Report, even though I was on the Majority Report, instead of going back to this original bill. Please oppose this. Thank you.

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

Representative DORE: Mr. Speaker, Ladies and Gentlemen of the House: It is absolutely true that what this does, the original sponsor of the legislation, Senator Abromson in the other body, intended to allow psychologists to be reimbursed at the parity rate for diagnosis. That is precisely and only what this does. What the law did two years ago, that apparently some members of the Banking and Insurance Committee feel they didn't understand, is provide that consumers would get access to mental health care for biologically based illnesses only at parity their access to all other health care. If you have a biologically based heart condition, if you have an 80/20 copay insurance arrangement, you are going to pay 20 percent of the payment if you see your cardiologist. You are also going to pay 20 percent of the payment if your cardiologist sends you to see a nutritionist. You are also going to pay 20 percent if you go to see a family practice physician or a nurse practitioner. If you have a biologically based mental illness only, apparently some people didn't understand that two years ago, and I fail to understand how that happened, I truly do because I think there was a thorough debate on this, if you have a biologically based mental illness only you are going to receive parity coverage for a practitioner, an advanced degree practitioner, whether you see them for the medical aspect, which would be anything from a physical exam to an MRI to an in-hospital treatment to prescriptive visits, or for any other part of psycho-social rehabilitation which may include therapy, which probably will include therapy. That therapy can be performed by an MSW, a licensed psychologist, a psychiatric nurse, or a psychiatrist. People keep talking about money and I'm not getting that because it is actually cheaper, given the 80/20 co-pay, to see a less advanced degree person. I am not concerned with that and I am not making an argument that this is going to save money, but it is certainly not going to spend money. I keep hearing that argument and if that were true, as I said before, there would be a fiscal note for the state, we are a large purchaser of insurance. The truth of the matter is the point of parity, the point of equal treatment, the point of nondiscrimination is to make it so that people choose the practitioner who best fits their disease. I have never asked for one little bit more than parity. If there is managed care in physical illness there should be managed care in mental health. To the extent that a managed care agency may choose the practitioner you see for anything else they will also be able to choose the practitioner you see for this. I really urge you to support this Committee Amendment "H." If you don't, the bodies will be in conflict and an unfortunate thing will happen to psychologists, but among the people on my worry list are not psychologists, it's the consumers and the way the law is today benefits the consumers because it is the lowest cost access to them at the earliest and cheapest level of entry. Thank you.

The SPEAKER PRO TEM: A roll call has been ordered. The pending question before the House is adoption of House Amendment "A." All those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 351

YEA - Adams, Ahearne, Ault, Benedikt, Berry, Bouffard, Brennan, Bunker, Cameron, Carr, Chartrand, Chase, Chizmar, Clark, Cloutier, Cross, Daggett, Davidson, Desmond, Dore, Driscoll, Etnier, Fisher, Fitzpatrick, Gamache, Gates, Gerry, Green, Hartnett, Hatch, Heesch, Heino, Hichborn, Jacques, Johnson, Jones, K.; Joseph, Keane, Kerr, Kilkelly, Kontos, LaFountain, Lemaire, Libby JD; Mayo, McAlevey, McElroy, Mitchell EH; Mitchell JE; Morrison, Nadeau, O'Gara, O'Neal, Peavey, Perkins, Pouliot, Povich, Reed, G.; Richardson, Ricker, Rosebush, Rowe, Samson, Saxl, J.; Saxl, M.; Shiah, Simoneau, Sirois, Spear, Stevens, Strout, Thompson, Townsend, Treat, Tripp, Tuttle, Tyler, Volenik, Watson, The Speaker.

NAY - Aikman, Bailey, Barth, Bigl, Birney, Buck, Carleton, Chick, Clukey, Damren, Gieringer, Gooley, Greenlaw, Guerrette, Jones, S.; Joy, Joyce, Joyner, Kneeland, Labrecque, Lane, Layton, Lemont, Lindahl, Look, Lovett, Lumbr, Luther, Madore, Marshall, Marvin, Meres, Nass, Ott, Pendleton, Pinkham, Plowman, Poirier, Reed, W.; Richard, Robichaud, Savage, Stedman, Stone, Taylor, True, Tufts, Underwood, Vigue, Waterhouse, Wheeler, Winglass, Winsor.

ABSENT - Campbell, Dexter, DiPietro, Donnelly, Dunn, Farnum, Gould, Lemke, Libby JL; Martin, Murphy, Nickerson, Paul, Poulin, Rice, Truman, Whitcomb, Winn. Yes, 80; No, 53; Absent, 18; Excused, 0.

80 having voted in the affirmative and 53 voted in the negative, with 18 being absent, House Amendment "A" (H-879) to Committee Amendment "B" (S-473) was adopted.

The Bill was passed to be engrossed as amended by Committee Amendment "B" (S-473) as amended by House Amendment "A" (H-879) thereto in non-concurrence 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:

#### SPECIAL SENTIMENT CALENDAR

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

Recognizing:

John S. Martin, of Pittston, on the occasion of his retirement as Director of the Bureau of Liquor Enforcement. We extend our appreciation for his 20 years of leadership as director and for his 32 years of service to the bureau and the citizens of the State; (HLS 1082) by Representative CLARK of Millinocket. (Cosponsors: Representative NADEAU of Saco, Representative GUERRETTE of Pittston, Senator FERGUSON of Oxford)

Was read.

On motion of Representative CLARK of Millinocket, tabled pending passage and later today assigned.

**ENACTORS**  
**Emergency Measure**

An Act to Amend Certain Laws Administered by the Department of Environmental Protection (H.P. 1222) (L.D. 1672) (C. "B" H-858)

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. 123 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 Implement Performance Budgeting in State Government (S.P. 700) (L.D. 1790) (Governor's Bill) (S. "A" S-525 to C. "A" S-502)

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

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

#### Emergency Measure

An Act to Clarify the Retirement Status of Certain Employees of the Child Development Services System (H.P. 1349) (L.D. 1850) (C. "A" H-875)

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. 113 voted in favor of the same and 1 against and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

#### Emergency Measure

An Act to Reduce Costs for Municipalities (S.P. 770) (L.D. 1884)

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

#### Mandate

An Act to Require that Public Schools Permit Participation in Curricular, Cocurricular and Extracurricular Activities for Students Enrolled in Approved Equivalent Instruction Programs (H.P. 1327) (L.D. 1818) (C. "A" H-871)

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. 108 voted in favor of the same and 9 against, and accordingly the Mandate was passed to be enacted, signed by the Speaker and sent to the Senate.

An Act to Provide Affordable Access to Information Services in All Communities of the State through Enhanced Library and School Telecommunications (H.P. 618) (L.D. 828) (C. "A" H-832)

An Act to Revise the Sunrise Review Process for Occupational and Professional Regulation (H.P. 1287) (L.D. 1767) (C. "A" H-877)

An Act to Place Penobscot Land in Trust (H.P. 1306) (L.D. 1787) (S. "A" S-524)

An Act to Extend the Milk Handling Tax (H.P. 1372) (L.D. 1880)

An Act to Reduce the Notice and Hearing Requirements Imposed on Quasi-municipal Corporations and Districts (H.P. 1378) (L.D. 1886)

Resolve, to Improve Tribal and State Relations (H.P. 1217) (L.D. 1667) (S. "A" S-537 to C. "A" H-856)

Resolve, to Extend the Reporting Deadline of the Commission to Study the Growth of Tax-exempt Property in Maine's Towns, Cities, Counties and Regions (H.P. 1344) (L.D. 1839) (C. "A" H-870)

Resolve, to Secure a Release of Property from the State (S.P. 760) (L.D. 1872) (C. "A" S-536)

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.

#### 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.

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

SENATE DIVIDED REPORT - Majority (8) "Ought to Pass" pursuant to Public Law 1993, chapter 566, section 10 - Minority (5) "Ought Not to Pass" pursuant to Public Law 1993, chapter 566, section 10 - Committee on Utilities and Energy on Bill "An Act to Amend the Laws Concerning Enhanced 9-1-1" (S.P. 766) (L.D. 1877)

- In Senate, Majority "Ought to Pass" pursuant to Public Law Report read and accepted and the Bill passed to be engrossed.

TABLED - March 28, 1996 (Till Later Today) by Representative KONTOS of Windham.

PENDING - Motion of same Representative to accept the Majority "Ought to Pass" pursuant to Public Law Report.

Subsequently, the Majority "Ought to Pass" pursuant to Public Law Report was passed.

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

Under further suspension of the rules, the Bill was passed to be engrossed in concurrence.

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

JOINT ORDER - Relative to repealing and replacing the Joint Rules (S.P. 761)

- In Senate, read and passed as amended by Senate Amendment "A" (S-497)

TABLED - March 25, 1996 by Representative MITCHELL of Vassalboro.

PENDING - Adoption of Senate Amendment "A" (S-497)

Senate Amendment "A" (S-497) was adopted.

Representative BENEDIKT of Brunswick presented House Amendment "B" (H-867) which was read by the Clerk.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Falmouth, Representative Reed.

Representative REED: Mr. Speaker, Ladies and Gentlemen of the House: The Joint Order before you represents a culmination of many, many, many hours of work by a the subcommittee on rules of the TQM Committee, a very diverse but intense group who spent a great deal of time. The amendment that is presented for your consideration at the moment suggests to me that its intention is to delay cloture date by several weeks from that which is in the Joint Order. I think that it is fair to say that this is not a very productive step forward to delay the process by a number of weeks. We all know that it is difficult and awkward to get this process moving and to delay that start by several weeks is not in the best interest of the people of Maine, or of this Legislature, therefore I respectfully move indefinite postponement of House Amendment "B."

Representative REED of Falmouth moved that House Amendment "B" (H-867) be indefinitely postponed.

The Chair ordered a division on the motion to indefinitely postpone House Amendment "B" (H-867).

The SPEAKER PRO TEM: The Chair recognizes the Representative from Brunswick, Representative Benedikt.

Representative BENEDIKT: Mr. Speaker, Men and Women of the House: I would just like to point out to the body that we have a situation here with new members. We have term limits in place. We have a large number of new members coming in to the body and asking them to present their bills by mid-December is much too early for them to be able to respond. We have to recognize that with a turnover in membership the name of the game changes and therefore we ought to try to accommodate the new membership of the Legislature. For that reason I have proposed this amendment. I know I was very unhappy a year ago with the cloture date of something similar and we did agree to extend it to January 8. January 8 was not anywhere near far enough. I feel that this is a reasonable proposal. I really understand where you are coming from. I want to understand you want to limit the number of bills, that it's burdensome, there is possibly redundancy in the number of bills, but I don't see how people newly elected to this body can work effectively without this change. Thank you.

A vote of the House was taken. 71 voted in favor of the same and 25 against, subsequently, House Amendment "B" (H-867) was indefinitely postponed.

Representative ADAMS of Portland presented House Amendment "A" (H-809) which was read by the Clerk.

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

Representative ADAMS: Mr. Speaker, Men and Women of the House: The amendment that I am offering would make one numerical change in the set of rules offered to us. Should you still have that set of rules that appears on supplement two of March 25 at your desk you will find at the top of page three what my amendment would do is to change the maximum number of sponsors that a bill could have from the figure of seven to the figure of ten. It seems to me that ten is going to give us the option of offering a balance between House and Senate cosponsors, and there is some value to that. When I was a "first-termer" here, no bill could have more than four cosponsors,

as I recall. It was very difficult to find a way when you had to seek some form of balance to pack only four people onto bills that were usually much larger in that scope, intent and consequence. Four was too few. However, when we changed to unlimited cosponsorship I felt that was too many. You and I both know that that was not a co-sponsorship, that made it a pole vaulting competition where you all tried to hit the bar that said 100 cosponsors. People didn't necessarily really place the value on a cosponsorship that should, I think, be there for serious legislation doing the people's business. I think ten is a good balance. Ten will give you an opportunity to have five members of both bodies upon the bill. You could seek a balance in whatever way you, as the primary sponsor, may think, that is between the House and Senate or seek it geographically or by strengths and expertise. It would add to your opportunity to put upon the bill those with the greatest expertise who could contribute to the discussion the greatest balance and that seems to be to me what good legislation should do. For that reason I request that you would vote in favor of this numerical change. Thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Falmouth, Representative Reed.

Representative REED: Mr. Speaker, Ladies and Gentlemen of the House: The rules subcommittee spent a great deal of time, I dare say several hours in a couple of different meetings, discussing sponsorship. Representative Adams is exactly on point with the issue of unlimited sponsorship. It became a matter of not really being the sponsor of a bill, but occupant of slot number 422 on the sheet and it was inappropriate. The rules committee, as I say, discussed this at length. It was our feeling that going to a much small number of sponsors brought back significance and importance to the act of being asked to, or agreeing to be a sponsor. It certainly is not a cataclysmic argument whether seven or ten is better. I ask for a division on adoption. Thank you.

Representative REED of Falmouth requested a division on adoption of House Amendment "A" (H-809).

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

Representative KILKELLY: Mr. Speaker, Men and Women of the House: Going back to some comments made by Representative Adams in terms of the limited number of sponsors. When I first began serving here it was four, the primary sponsor and then three cosponsors. It did create an additional problem that I haven't heard discussed and that is you do often end up with duplicate bills because people are committed to sponsoring a piece of legislation and even though there may be one in that is similar, if there isn't room on that bill then they end up having a duplicate bill. I think the effort in terms of unlimited cosponsorship may, in fact, have gone in the wrong direction, but part of the reason for that was to provide an opportunity for people to make a statement. I think ten is a much more reasonable number in that way because it does provide opportunity for a balance. It does provide an opportunity for a few more people to be a part of one bill as opposed to having to get two bills, and that obviously saves us time and money and committee work and all those things. I would really urge that you do support adoption of this amendment. Thank you.

The Chair ordered a division on adoption of House Amendment "A" (H-809).

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

Representative TREAT: Mr. Speaker, Men and Women of the House: Just a little more additional information from a member of the rules committee. We did discuss this issue and in fact it was members of the House who were on the rules committee that would have preferred the ten cosponsors. We weren't unanimous in that, but there was a division of opinion. I think the Senators tended to go more toward the smaller number. I think this is an appropriate number and I don't think that it is the kind of thing that would cause the whole rules to go down the tube. It's something that is a reasonable change and appropriate, particularly from the perspective of a House member. So, I would encourage your support of this pending motion.

A vote of the House was taken. 59 voted in favor of the same and 43 against, House Amendment "A" (H-809) was adopted.

On motion of Representative BENEDIKT of Brunswick, the House reconsidered its action whereby Senate Amendment "A" (S-497) was adopted.

Representative BENEDIKT of Brunswick presented House Amendment "A" (H-868) to Senate Amendment "A" (S-497) which was read by the Clerk.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Brunswick, Representative Benedikt.

Representative BENEDIKT: Mr. Speaker, Ladies and Gentlemen of the House: I had read the report put out by the committee and I was under the impression that we would have a joint caucus in order to discuss changes to the rules, and of course time seems to have prevented us from having this, so I have to present this directly to you. My concern, again, as a freshman legislator, trying to effectively represent my constituents and I felt there were too many committees, there were too many committee assignments. Many of us were assigned to two committees and that was too much of a burden in terms of effective legislative preparation. In talking to the membership I discarded the idea of changing the number of committees, but I do believe that reducing the membership of some of the committees would be a way of having each member only serve on one committee. That would certainly help the process. With that in mind I created, by intuition if you will, rather than the TQM Committee, two groups of committees. One would have a maximum of 13 members and one group would have a maximum of 9 members. My observation on attending many committee hearings was that there were very seldom more than two Senators present and therefore we could effectively reduce the number of Senators from three to two and at the same time keep the ratio of representation adequate by having a ratio of two Senators to seven Representatives, and meet some of the rulings by courts which Representative Martin alluded to a couple of days ago.

The other concern was that the number of meetings of the committees prevented full attendance at this body, and I felt it was unfortunate that when we debate, very often, only half the membership is present. The reason they are not here in most cases is because they are attending committee hearings. So, I thought there should be a scheduling process whereby when the session is convened, no scheduled

committee hearings are to be conducted. That, together with one member on one committee, would solve many of the problems and expedite the process. I urge you to think about this and even if you don't vote for it remember it for the next time around when we look at the rules. Thank you.

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

Representative CARLETON: Mr. Speaker, Men and Women of the House: I agree with the concept of people not serving on more than one committee. We do have 17 standing committees. I think we would be better served by having 16, each consisting of 10 members of the House and then you would reduce the duplicate membership quite a bit. However, this particular amendment which proposes to make several committees nine-member committees, and several committees thirteen-member committees doesn't seem to have much rhyme or reason for it. For instance, the Banking and Insurance Committee, which seems to have a lot of work, is a nine member committee, as is the Judiciary Committee, presumably we would want the larger committees that have a larger amount of work. I'm not sure whether that's the reasoning behind the selection of committees as being nine or thirteen members. The larger point, however, is if you take the number of House members on nine-member committees, which is seven, multiply nine times seven, getting 63 House slots, and then add the number of House slots on the 13-member committees, which is 10, multiply 10 by eight gives 80 slots, you add 63 and 80 and you get 143 slots for House members on these committees. Obviously 143 is not 151, there wouldn't be enough slots to have everybody on a committee.

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

Representative KONTOS: Mr. Speaker, Men and Women of the House: This issue has come before this body and it has come before the TQM Committee since it's inception in the 115th Legislature. At that point there was a subcommittee that reviewed committee structure, committee scheduling and the implications of that aren't always the way we schedule our time, but also with staff, with the lobby, with the departments. There was even reference made, as I remember it, in the 115th TQM Committee to a Pete Marwick study that recommended some of what Representative Benedikt is proposing, which are major and minor committees. There has still never been consensus on this issue. I suggest we reject the motion and those of you who are interested in this, tell your leadership that you would like to serve on TQM and you can go to work on it this summer and come forward in January with a recommendation that includes consultation with staff, both partisan and nonpartisan, as well as the departments and members of the lobby who would be affected by this kind of a change in our structure. So, with all respect to the Representative who has been thinking about this, I encourage him to get on TQM and the rest of you reject this motion at this time.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Falmouth, Representative Reed.

Representative REED: Mr. Speaker, Ladies and Gentlemen of the House: For a variety of well-spoken reasons this proposal at this time is not quite structurally sound. With respect to the concern of those members who feel that service on more than one committee is excessive there is a simple solution,

one simply requests a single committee assignment from one's leadership and therefore, since this proposal is just not yet ripe, I regretfully move indefinite postponement of (H-868).

Representative REED of Falmouth moved that House Amendment "A" (H-868) to Senate Amendment "A" (S-497) be indefinitely postponed.

The Chair ordered a division on the motion to indefinitely postpone House Amendment "A" (H-868) to Senate Amendment "A" (S-497).

A vote of the House was taken. 101 voted in favor of the same and 4 against, House Amendment "A" (H-868) to Senate Amendment "A" (S-497) was indefinitely postponed.

Senate Amendment "A" (S-497) was adopted.

A two-thirds vote being necessary a total was taken. 121 voted in favor of the same and 0 against, the Joint Order (S.P. 761) was passed as amended by Senate Amendment "A" (S-497) and House Amendment "A" (H-809) in non-concurrence and sent up for concurrence.

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The Speaker resumed the Chair.

The House was called to order by the Speaker.

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On motion of Representative JACQUES of Waterville, the House recessed until 6:30 p.m.

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(After Recess)

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The House was called to order by the Speaker.

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

House Divided Report - Committee on **Natural Resources** - (8) Members **"Ought to Pass"** as amended by Committee Amendment "A" (H-876) - (4) Members **"Ought Not to Pass"** on Bill "An Act to Reorganize and Redirect Aspects of the Site Location of Development Laws" (H.P. 1352) (L.D. 1853) which was tabled by Representative DEXTER of Kingfield pending his motion to accept the Majority **"Ought to Pass"** as amended Report.

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

Representative HEESCHEN: Mr. Speaker, Men and Women of the House: I understand that there are a number of people who have a number of concerns with a number of areas in this bill, and I would appreciate being given the opportunity to hear a lot of them. I will put on record right now that one of the concerns I have about this bill is that it proposes to eliminate the review of a certain category of transmission lines. If you note section B-13 of the bill, it proposes to raise the threshold for review of transmission lines from those rated at 100 kilovolts to 120 kilovolts. You do not have an infinite range of transmission lines. You have transmission lines operating at certain voltages. The largest in the state are 345,000 volts, the next largest is 115,000 volts and then you have smaller, minor transmission lines. What the bill does is eliminate review under the site location act of the second largest category of transmission lines in this state, many of which are of regional significance and

probably should be given review. I don't believe local review is the appropriate place for that. That is a concern that I have, and I know there are other people with other concerns about this bill.

The SPEAKER: The Chair recognizes the Representative from Norridgewock, Representative Meres.

Representative MERES: Mr. Speaker, Ladies and Gentlemen of the House: I am one of the people on the Minority Report on this bill and the reason I am on the Minority Report is that there were some things I thought that were left undiscussed and unresolved, and I just wanted to take an opportunity to kind of let you know some of the things that bothered me about this legislation. It's not a bad thing when you get large groups of people together as stakeholders and have them come and work hard to try to resolve some issues that are important to the economy and the future of Maine. I think that the people on this particular case did an excellent job of doing that. They worked long and hard and they made a lot of decisions and they brought them forth to us at the very last minute. The site law is something, as you probably know, that hasn't been addressed by this body for almost 25 years. The impact of the changes are going to be significant to the State of Maine. I think that there are two things that I respect as principles when I make any decisions and one is process and the other is the law of no surprises. I find that in this particular case we had a real sense of pressure because we didn't receive this bill in any form until the very last minute, and we tried our best to accommodate everybody but we really didn't get the time to do a significant review of issues, and we didn't solve the problems of many of the people who were there. One of the things that was talked about almost consistently by everybody, all the stakeholders that I talked to one on one, and other legislators, was a concern that the consensus that was built was a fragile one. They all had things that they needed to address. Everybody was really feeling positive about the focus of this. They were feeling positive about the goals, but they were also feeling a little bit uncomfortable about some of the things that they had to give up in order to get something. So, it wasn't like it was a unanimous rah rah rah. There were a lot of concerns going on. Some of the more consistent ones I heard over and over again, if you read through the testimony, most people did agree that the process was good and most people were not opposed to the bill, but they were opposed to parts of the bill. The Maine Audubon Society had said quite well that there were significant things that were lost. There was an attempt to explain these concerns, and I would like to share some thoughts of the working group. Currently the site law is the only state law that addresses issues of state significance concerning wildlife habitat, unusual natural areas, fisheries and archeological and historical sites. There are all areas of state significance that have not been protected as well as they could be under the site law, and nevertheless these areas have received a level of protection that we fear could be lost with threshold changes. This same concern was reflected by other people who came. It was reflected by the Natural Resources Council and then reflected again in testimony by the Maine

Association of Planners. So, that is one area that we really never did resolve.

There are other areas that I thought needed some attention. One of them was maintaining present standards of environmental protection. This law significantly improves environmental protection when you think of the changes that will take place in storm water. But there are other areas where there is less focus. One of the problems that a lot of people have are the habitat and significantly sensitive areas, but also they are concerned about things like some of the mapping that isn't accomplished and some of the problems that exist with the municipalities. So, we have to look at those issues as something that has to be completed in the future.

The other areas of concern are two areas that weren't addressed in sort of a less significant way. Small business is one. The people that we talked to who represented the Maine Merchants Association and other small business owners were not actively participating in the stakeholders process and they have to absorb a significant financial impact when it comes to permitting, and that impact is something that we should consider when we look at this bill.

The other area where there were people who were not in consensus had to do with municipalities. The municipalities in this bill are going to be asked to pick up the responsibility of dealing with these rules and regulations within their communities based on their ability to do this right now. There will be a review of their capacity to deal with this at this point, and if they are considered to have that capacity they will be given the responsibility of taking over these things. In the future, by the year 2003, it's deemed that this will happen whether they have the capacity or not. The state has said that they will help with technical assistance, but only if they have the means and the finances to do it. Municipalities will be allowed to hire private assistants and will be able to charge the applicant for that, but on the whole municipalities over 2,500 people may not necessarily really understand and be able with the good sense of desire to take on this responsibility. So there is a gap there and I think it is significant enough and it has been addressed in the testimony of the Maine Municipal Association themselves. I can read it to you. It says, "Without diluting our support for the broad principle, MMA is concerned, however, about the legislative vagueness in addressing how the state will help to build the requisite local capacity in communities where it now does not exist." The legislation does tell the types of issues where they will have to take over, and then it says, "This deeming will occur automatically when they deem somebody capable, regardless of whether these municipalities in fact have the ability to conduct such reviews. We are concerned that the state, which is strapped for resources, will pass on reviewing responsibilities prematurely to smaller communities before they are adequately equipped to handle them. The key to achieving the long-range goals of this legislation is the process for building capacity in these communities, and on this critical point the legislation is particularly vague. In the absence of a certified growth management plan, or a comprehensive plan that is consistent with a growth management plan, the standards detailed in this bill are not themselves adequate to ensure that a town is equipped to do credible reviews of these small

projects." Then they go on to say as they conclude the letter, "But the process for developing local capacity needs to be more fully thought through and defined and of critical importance, state funds need to be targeted to this effort." These are two key pieces that are still missing from this legislation.

So, my point in telling you all this is not to totally defeat the spirit of this legislation, but to make you aware of some of the areas where we have some gray area and where there are some concerns to be looked at. Thank you.

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

Representative DEXTER: Mr. Speaker, Men and Women of the House: First of all, this is the stakeholders bill. I will admit that we did receive it late in the session, and I will admit that it is a comprehensive bill, but I happen to have had the good fortune to chair the hearing. It was a lengthy hearing. It went late into the night. Everybody had a chance to speak, both for and against. What this would do is streamline the permit process for the DEP. Isn't that what we all want? I know I do. To start with, this will authorize DEP to start the rule-making process. They can't do that without this bill. That doesn't mean it's going to be law, because we made sure that any of these rule changes will come back to the committee. In other words they can't become law until we act upon it. We worked this bill Sunday until 6:30 that night, reconsidered three times at least. If you look at the Majority Report you won't see that combination again this year, I will guarantee that. Just read the Majority Report, that should tell you something. I'm not aware that the environmental groups are against this. I don't know why they should be because it is improving the environment.

I'll just give you a short list of people that are for it. The Maine Chamber, P110, the Maine Oil Dealers Association, the Real Estate Developers, the Maine Municipal Association, and as far as I know, the environmental groups, at least they haven't made their presence known as being against it. So, I would hope that you would go along with the motion of "Ought to Pass" so that down the road we, once more, can get this state moving, as the Governor says. One way to get it moving is you streamline the process. This is what it will do. Is it a perfect bill? No, in fact those of us, the five of us in the House, originally were going to vote against it, but after several days and several hours of considering it you can see the result. I certainly wouldn't be standing here if I thought this wasn't a step in the right direction. I think most of you know me by now. That's all I'm going to say for now.

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

Representative WATERHOUSE: Mr. Speaker, Ladies and Gentlemen of the House: This is one of those bills that if I was sitting in the audience in the hearing I would have testified as being neither for nor against. Representative Dexter was correct when he said we got this bill quite late, quite a comprehensive bill and we did work on it quite a bit, but I had the same problems with this as Representative Meres did. It is a good bill for bigger business. It's a good bill for the environment, per se, but it does have a tremendous impact on the smaller businesses. It could be very

expensive. It's also going to be very expensive for small towns that don't have the capacity. They are supposed to have the capacity by the year 2003 with help from the department. So, for those reasons I voted in committee against the bill. I do not feel strongly against the bill, like I said, it has some good parts to it, but we did get it late and I have some unanswered questions so therefore I voted the way I did. Thank you.

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

Representative GOULD: Mr. Speaker, Ladies and Gentlemen of the House: I guess the first question I would ask of you is would you like to see DEP get out of some municipal affairs, and getting out of municipal affairs at the same time that we are maintaining and actually strengthening environmental regulations? I think the answer to that is of course you would. Many of us would like to get DEP out of our affairs. We are always talking about letting us do it at the local level. Give it back to us. This is a bill that does. What does it do? How does it do this? It says that in subdivisions it raises the threshold to seven acres, but what it says, and I will try to simplify it because it does go into great detail, but it says that if a subdivision in a municipality has no impact on statewide issues or state resources then the municipality will regulate, if it chooses to. That's another point. This is not saying you have to, it's saying that you can, if the municipality chooses to regulate it will do so. What if there is an issue in there of statewide significance or major regional significance? Then DEP continues to regulate. What's the trade-off? Why are they willing to do this? What's going to happen? Because obviously, as you know, the Representative from Waterville, Representative Jacques, said this is the same DEP that is always looking over our shoulder. So why are they willing to trade off? Because DEP believes that the most significant impact from development is storm water. So what they are going to do is regulate more closely storm-water runoff. That means that if you have an acre of impervious area then you will have to have mitigation and a storm-water permit. In sensitive areas, in watersheds like China Lake or Three Mile Pond that are well on their way to pollution, then you will again have to have a storm-water permit. So, what we are doing is what we have said the State of Maine really wants to do, we are protecting the waters of the State of Maine, giving them greater protection. Will this impact small businesses? Absolutely, there is absolutely no question, and this is something that I had a great deal of concern about and spoke about, but I guess the question you should ask yourself is should we be responsible for taking care of the pollution that we are creating? Can we afford not to take care of the waters of our state? The answer that I have is no, we cannot afford not to take care of it. Now, as I said, I had some problems, Representative Waterhouse had problems, Representative Meres had problems, a lot of us did with this. The thing that finally convinced me, and it took quite a lot of convincing, but the thing that finally convinced me that this was a good step in the right direction is the fact that it won't take place for some time. They must develop rules. They must come back with the sensitive areas well defined so that we know what those sensitive areas are. That will take place next year. Since they are

substantive rules the Natural Resources Committee will have to go over them and if it finds them sufficient they will report them back to the full Legislature.

So, while there are concerns here, I really think that this is a good step in the right direction because it does get municipalities involved. It gets DEP out of local government and gets them involved in areas that they should be involved in. So, while it isn't perfect, it is something that I do urge you to support. Thank you.

The SPEAKER: The Chair recognizes the Representative from Livermore, Representative Berry.

Representative BERRY: Mr. Speaker, Men and Women of the House: I won't try to repeat everything that has been said but I tend to agree with most of it. This bill did come before our committee at a late date due to the printing and all that business. The issue isn't new. I think I have been following it for the past year or so as it has gone on as the issues have been very important. I support the idea of the bill, the purpose to make the DEP react quicker to the needs and to be right when they are protecting the environment, the right to do that the right way with the right methods for controlling storm waters and some of the erosion control methods. The other part I like about this, the way the committee set the dates up, it requires the rules to come back by January 1 so the next Legislature will be able to review those rules. The bill doesn't become effective until July 1, 1997, so if there is something that appears during the next session that is substantially wrong, we will have a chance to address it before it is enacted, before it takes effect. The other part, although I can't talk about an amendment that may be before us at a later time, but the issue of the transmission lines, when we talked about that the original language that was in the bill that came before us was for 100 kilovolt transmission lines. It seemed to be a request to raise it. It was kind of a half hearted request, I guess, and I guess when the time comes I will probably support that amendment if it is presented. I support this bill and I hope you will consider it. Thank you.

The SPEAKER: The Chair recognizes the Representative from Norridgewock, Representative Meres.

Representative MERES: Mr. Speaker, Ladies and Gentlemen of the House: The point I am trying to make here tonight is I want in the record some of the things that are questionable about this legislation more than anything else. There are some things that we really haven't addressed in a big way. One of the things that we have done is we have included an exemption for construction projects for which federal storm-water discharge applications have been made not to require review. That's not a bad idea because that means that some big project will only have to go through one application. There is a gap there, and there is no sure definition about who will be responsible and the problem with that to me is that as far as I know the AG's office hasn't even looked at that yet. So, I think that is one thing I would like to let you know.

Another thing I would like to remind you about is the municipal side to this. Yes, municipalities will have the local control, but they might not have the will or they might not have the want to. One of the things you have to realize about municipalities is

that in order to qualify for this you do not have to have a comprehensive plan, you do have to have some capacity. There are areas which if the town chooses not to look at them they will not be looked at. So there is another gap here in our environmental protection. As I mentioned before, there are some areas that haven't even been addressed that have to do with things that some of us are really concerned about. You know we are concerned about things like, you know, archeological and historical resources. Some of us are really concerned about you, know deer, wintering yards and, you know, things which are of state significance, which can be within localities where a local planning board or a local code enforcement officer might not have the capacity through ordinance to define. There are some problems with erosion, I mean in the wording in this, when you deal with erosion they took out a lot of the things that have to do with it and reworded it so it pretty much says you can do whatever you want. I mean I don't know whether or not these are things that you care about, but I want you to realize that this is not necessarily all good, and if somebody has got to stand up here and say the emperor has no clothes I'll say it, the emperor has no clothes. Thank you.

The SPEAKER: The Chair recognizes the Representative from South Berwick, Representative Farnum.

Representative FARNUM: Mr. Speaker, Men and Women of the House: After dealing with DEP for ten years I find this bill a little bit of a relief. I can remember the arguments I have had and this bill here limits those. Thank you.

The SPEAKER: The Chair recognizes the Representative from Bowdoinham, Representative Shiah.

Representative SHIAH: Mr. Speaker, Ladies and Gentlemen of the House: This bill, 1853, was another late arriving bill to our committee this year, as was already mentioned. It's a bill that we went back and forth on. We had a lot of interesting discussion on it. I went back and forth to whether I could support this or not. There is a lot to this bill. I am saddened that we got it so late and I am on the "Ought to Pass" Majority, but very luke warm to be honest with you. There are some good provisions in here on storm water, which we will be getting the rules back next January before the committee of jurisdiction to deal with. There are a lot of other pieces that were sort of tied to that storm-water piece that makes it sort of a package as it was presented to us. Though I am concerned, one of the memos from DEP listed this as sort of "unpacking" the site law. That has been a continuing concern of mine. This bill is by no means perfect and I only want to just be on record as saying I am supportive of it but this was my toughest bill this session of any bill that we had before the committee because there are things in here that just, again the municipal capacity, turning over to towns in the year 2003 of 2,500 people or greater, I'm concerned about. Again, we will have to see what the storm-water piece looks like and some of the other exemptions that are in here. There's a lot to this bill and again I'm sorry we didn't have more time to work with this bill. There was a lot of people who put a lot of effort into this bill over the last year. There were subcommittees working on the bill, and we had quite a few interested parties in the committee room at the work session when we discussed it. Again, the key part to me is the storm-water

piece that again we will be getting the rules back next year so it is hard to say now how good those are going to be. Hopefully they will be good. The committee will have to kick those around and the full legislature will have to adopt those rules. So, this doesn't take effect until July 1, 1997 so it does give us time to possibly amend it next year and again, that may be needed. I just want to mention that there is a lot in this bill and I am very tentative in my support for this and I just want to be on record as saying that. Thank you.

The Chair ordered a division on the motion to accept the Majority "Ought to Pass" as amended Report.

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

Representative HEESCHEN: Mr. Speaker, Men and Women of the House: I just wanted to respond briefly to some comments that were made previously. Representative Gould mentioned that rules will be coming back for review and everything is going to be put in abeyance until the rules are in place. That may be true for much of this bill, but it is not true for things that are statutory changes. The statutory change that I referred to before, the trigger for review of transmission lines, is one such change. There won't be any rules coming back on that. I think that with the imminent deregulation of the electric utility industry we shouldn't rush into just exempting these large lines from a broader review, because we don't know, for one thing, who will actually be building these lines. The size of the line we are talking about has a very real probability of triggering an eminent-domain process in order for it to occur. I think that we can't afford to leave reviews of things that are most likely of regional significance to just the municipal level where the municipalities will, in all likelihood, not have the ability to deal with this particular issue. Municipalities may be able to deal with other kinds of subdivisions and so forth, with assisted expertise, but I practically guarantee that they won't be able to deal with issues around siting of facilities that transcend many, many towns. I should also note that when the Public Utilities Commission reviews proposals for transmission lines for utilities that they restrict their review and analysis and decision to economic concerns. They rely entirely on the site review of the DEP for that aspect of it. So I think we should look very carefully before we make those changes.

I do want to commend the committee for working hard on this. I know how difficult it is to get a big piece of legislation at the last minute in the session, and how difficult it is to make those decisions as to whether we should go ahead and put something out or whether this really needs more time. I commend them for working on the storm-water issue, which I agree is a very important aspect of this bill. As a former member of a town planning board and comprehensive plan committee, I just want to offer a little perspective from the municipal level, and that is I think we never really considered, and this is a town of over 4,000 people, we never really considered that DEP was somehow getting into our affairs. Rather we looked to the DEP as a resource for us to rely on and help us in making a lot of these reviews. Sometimes we frankly felt that our ability to review the complex projects was beyond what we could do. I think that if there are resources in this bill that provide for

assistance to municipalities how confident can we be that we will be funding those resources on a regular basis and that the municipalities will be able to count on those being there, especially as we look further on down the road when we can't bind any Legislature in the future? I think those are the real concerns that we should ask ourselves about this bill.

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

Representative GOULD: Mr. Speaker, Men and Women of the House: You have heard all you need to hear but I do want you to understand one thing, this law is effective, the whole law and nothing but the law, is effective July 1, 1997. That was something that we discussed very frequently in the committee and was something that I did not want to see happen, was to have a fragmented law go into effect. We settled for July 1, 1997. Thank you.

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

A vote of the House was taken. 77 voted in favor of the same and 21 against, the Majority "Ought to Pass" as amended Report was accepted.

The Bill was read once. Committee Amendment "A" (H-876) 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.

Representative HEESCHEN of Wilton presented House Amendment "A" (H-885) which was read by the Clerk.

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

Representative HEESCHEN: Mr. Speaker, Men and Women of the House: The amendment I offer here eliminates the three sections of the bill that increase the threshold for evaluation under the site law for transmission lines. That's all it does. I know that Representative Gould has said that the entire law doesn't take effect until 1997, but there will be no rules coming back that would alter this piece of the law. I do think it's premature that we make these changes in the law at this time, for the reasons that I gave previously and I don't think you all want to hear again. So, I would urge adoption of this amendment. Thank you.

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

Representative KONTOS: Mr. Speaker, Men and Women of the House: I urge you to support this amendment. I have talked with the Representative from Wilton when we first learned of this section of the bill. This is one of those places where the Natural Resources Committee's jurisdiction has somewhat overlapped with the Utilities and Energy's jurisdiction. In this case with the extremely uncertain landscape out there, in terms of electric utility structuring and restructuring, I think it's appropriate that this be deleted at this time and I would suggest that the committee can revisit this issue in another year when we get a better read on what's happening with some of the changes in the electric industry. I think it's a reasonable amendment. It eliminates one of the problems that I have with the bill and I would hope you can support it. Thank you.

Representative MARSHALL of Eliot moved that House Amendment "A" (H-885) be indefinitely postponed.

The SPEAKER: The Chair recognizes the Representative from Eliot, Representative Marshall.

Representative MARSHALL: Mr. Speaker, Colleagues of the House: There has been many things said about this bill and it's very true that there are a lot of parts in this bill and that some of us like some of the parts and some of us are kind of lukewarm on some of the parts, but as far as those things that have been said in this bill that are going to be unregulated, that's not necessarily the truth. The truth is that DEP isn't going to be directly regulating some of these things. They are going to be regulated by somebody else, a higher power possibly, or the local community that will be regulating these things, but they certainly won't be unregulated. What we have been trying to do is to minimize the duplicity of regulation that any project gets when you try to do something. In some of the discussions around the hall today the cost of doing business in the State of Maine is very difficult. Some people have said that perhaps those who try to regulate businesses maybe first ought to have to sign paychecks on the front for a while to see what it takes to do some of those things, not that business should be irresponsible and do things that damage society and damage their neighbors, but it certainly is another situation to have to sign paychecks on the front instead of just on the back side. I hope you will support the indefinite postponement of this amendment. Thank you.

The SPEAKER: The Chair recognizes the Representative from Livermore, Representative Berry.

Representative BERRY: Mr. Speaker, Men and Women of the House: I would urge you to vote against the pending motion. I think the chair of the Utilities Committee aptly put it. This is an item that I think was out of our jurisdiction. When we talked about this Sunday afternoon in committee, we had questions about the difference between a 100 and a 120 kilovolt line. The committee members really didn't understand the difference and there wasn't any experts on it. There were some lobbyists there. They felt they were representing their employers, which is fine, but I don't think there was the expertise to explain the difference. As far as I'm concerned we should have tabled that one. If we had known we were going to bring it up the two following days we maybe would have tabled that. We ran into a little trouble with that to be honest. I think this is language that was in the original recommendation by the task force and I think it's appropriate to accept the amendment. I urge you to vote against the pending motion and I would request a division. Thank you.

Representative BERRY of Livermore requested a division on the motion to indefinitely postpone House Amendment "A" (H-885).

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

Representative HEESCHEN: Mr. Speaker, Men and Women of the House: I think Representative Berry has put a finger on a certain amount of confusion that existed with this and why it seems like it may be innocuous but really isn't. He said that no one really could explain the difference between a 100 kilovolt line and a 120 kilovolt. The fact is, there are no transmission lines operating at 100 kilovolts, and there are no transmission lines operating at 120 kilovolts. In this state they are operating at 115,000 volts. What we are doing is moving the threshold from review from just below that 115 line,

which again is the second largest category of lines in the state, to just above it, so you don't review that. I think that these lines will be lines that require eminent domain. I think there are some things that are appropriate for local review and some things that aren't. I really question whether, for instance, we should be reviewing the site location of say a 36 mile, 115 kilovolt transmission line, six miles at a time, town by town. I don't think that's a good way of doing it. If we make this change be ready when your constituents come to you and ask you when there is a line proposed in the area and it has been suggested that eminent domain is going to be in the cards and they come and ask you where the review process is on this particular project. Please, I urge you to defeat the pending motion.

The Chair ordered a division on the motion to indefinitely postpone House Amendment "A" (H-885).

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

Representative GOULD: Mr. Speaker, Ladies and Gentlemen of the House: Very briefly, according to what the DEP told us, they have reviewed two since they have been doing this, and there is one pending. So, I don't know what the big thing is about this. The second point I would like to make is I still don't understand why people think that the DEP is going to get out of doing something that they think is going to be harmful to the environment. In my ten years of dealing with DEP I have never known them to decide that they are going to be too easy on people and on the environment. Am I an expert on 100 or 150? No, but DEP is and they said that they do not need to regulate this, so I strongly urge you to support the indefinite postponement.

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

Representative ADAMS: Mr. Speaker, Men and Women of the House: I too would rise to say I believe there is merit in the proposal put forward by my friend, the Representative from Wilton, Representative Heesch. There is probably no one in the Legislature that has more knowledge of that extremely complicated and arcane field of electrical work than Representative Heesch, who has made it a point of conscience and a point of diligence to all his time in this Legislature to follow that particular subject of voltage lines, their effect upon people, upon school children, and upon the environment and upon our towns as we, in a more and more complicated world, try to deal with how these things get sited. I would point out to you that within recent memory of everybody in this Legislature, whether or not we were serving here, there were two extremely contentious and very complicated cases that had to do precisely with the siting of the kind of lines that Representative Heesch's amendment deals with. One was built, the other was not. One was upgraded slightly in York County, not far from where my friend, Representative Marshall, comes from, after continued problems with the citizenry and the company that finally, after a period of years, reached an agreement. The other was not. The processes that were then put in place to deal with that very kind of problem are among those things that the law before us now, if passed unamended by Representative Heesch's proposal, would be lost. All those things that were gained would be forgotten. All the new things that were put

in place would be lost. I believe that is a mistake, given the fact that human memory is short, but yours is sure to perk up if all of a sudden one of these lines is coming through your town or the back yard of one of your constituents in York, or Cumberland, or Oxford Counties and you have to deal with the results.

Much good science indicates that we simply do not know largely what the effects of large amounts of voltage upon human beings will be, because it is a new phenomena. It is only about 40 to 60 years old, since the days of the REA, Rural Electrification Administration, that allowed these large power lines to come out into the country. My grandfather's home had no electricity until the REA came. It's something that close to us in time. We don't know what it does. Serious studies have indicated, and I am holding one in my hand, we are not allowed to show props so take no notice of it please, that would indicate having three different committees of the Legislature look at it, that it was important from the Education Committee, from the Department of Education, from the Department of Environmental Protection, from the Natural Resources Committee and from the Utilities Committee, that the effects of power lines upon children in schools should be something that we should be concerned about. A large amount of schools had a good study done. I'm holding the results of that study in my hand, and it is of some consequence to Mainers. The overall object of it being be careful about what we do and study carefully until we know more and leave it at that.

You should be equally as concerned that we were dealing at the time the study was done with only three of the larger known utilities in the State of Maine. These federal acts, you will hear those of us on the Utilities Committee speak of, that have deregulated not only the communications industry, but they have also deregulated a good deal of the power industry, so much so that last summer many members of this Legislature stood for a good deal of work working with the Joint Standing Committee on Utilities and Energy for the deregulation of industry that you and I are used to thinking of one, two, or three of them that provide our electricity. That report is the enormous document I'm also not holding in my hand for you to observe at this moment. It would also indicate that in the federal law, instead of having one utility that you are going to have to deal with to get your electricity, you may have, in Penobscot County, up to nine utilities that will be bidding to provide you with electricity. That will be good for the consumers in the short run, but very difficult for your town in the long run if nine different sets of utility lawyers all simultaneously are going to be approaching your three selectmen with the best of the New York, Washington, Boston and Philadelphia lawyers they can buy for you to try to sort it out upon a budget that probably isn't even adequate to answer your own school funding needs right now.

For that reason I think it would be best if we left the law as it is, which would be the effect of Representative Heesch's amendment, simply remove it from the bill as it is now and then vote on the bill as you see fit. I believe there is much merit in what Representative Heesch says, even if you have no understanding of the science of electromagnetic fields. We do have an understanding of the science of the law of unintended consequences. That's the one law you and I cannot veto. It can never be

repealed and it is inevitable. If you would rather leave things, I think, the way they should be, so we can have some control about how these things are done in our towns, and give your town mothers and fathers the maximum amount of control on local decisions in the coming years as this field gets more complicated, then I would really suggest that you trust Representative Heeschén to have pointed out one thing in this bill that, as far as local control goes, is a big ticket item. It's just that you and I don't know it yet. We sure will very soon when nine different power companies come to your door trying to sell you electricity and all of them are going to have to put their power lines somewhere. I would urge you to follow Representative Heeschén's light. Thank you.

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

Representative HEESCHÉN: Mr. Speaker, Men and Women of the House: Representative Gould said that while there are only two or three of these a year it therefore isn't worth the regulating. Well, we have only had one nuclear power plant constructed over the last 20 some years and I don't think that makes a good argument for not doing a site review at more than a local level there. Actually, the more I think about it, the more I believe that if there really are only two or three that might be reviewed in a year, it really is inappropriate to expect all the municipalities in the state to beef up their ability to deal with this particular issue. It makes a whole lot more sense to be able to do that, especially where these lines go across community borders. I think that the members should realize that the DEP, in the site-review process for power lines, is never a barrier to the ultimate construction of that power line. The DEP process has a lengthy pre-permit process, pre-application process and they develop and work with the applicant and resolve all the potential problems, stream crossings, erosion and so forth, and ultimately you have a better product for that and the applicant can be confident in going forward with it at the PUC. The hurdles for any electric power project, the ones that really keep something from happening, or make it happen, are the economic considerations and those are at the PUC. There hasn't been any time when the DEP has been a road block for a power line construction, but I think it's really important that that expertise be there and it be applied.

Representative KONTOS of Windham requested a roll call on the motion to indefinitely postpone House Amendment "A" (H-885).

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 Lewiston, Representative Bouffard.

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

The SPEAKER: The Representative may pose his question.

Representative BOUFFARD: Thank you. I'm a little bit confused about this. Apparently the bill itself says it won't go into effect until July of 1997. We

are talking about transmission lines, which should be taken care of under the Department of Energy. If there is a flaw here, one way or the other, cannot one agency or the other change the law before July 1997?

The SPEAKER: The Representative from Lewiston, Representative Bouffard has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Greenville, Representative Gould.

Representative GOULD: Mr. Speaker, Ladies and Gentlemen of the House: I hope I can answer this. Obviously the DEP can't change the law. The Legislature makes the laws for the DEP and the Energy Department has to take its orders from Washington, so they would be the ones that would have to do that. The DEP can't change the laws. It's only us that can. I hope that answers your question.

The SPEAKER: The Chair recognizes the Representative from Bowdoinham, Representative Shiah.

Representative SHIAH: Mr. Speaker, Ladies and Gentlemen of the House: Just a note on this bill. The working group that worked on this bill, and there were scores of people, have not recommended the change from 100 to 120, that was put in at the last minute by the department after some lobbying by the utility industry. Therefore, I would urge people, as Representative Heeschén said this is a substantial enough issue that we should amend the bill back to the original 100 kilovolt line. So, I would urge people to vote no on this indefinite postponement and go on to accept the amendment. Thank you.

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

Representative KONTOS: Mr. Speaker, Men and Women of the House: Just for your information, since you heard me say earlier that I was troubled by this section after Representative Heeschén and I had talked. I did speak to the Director of the State Planning Office, who is strongly promoting this particular piece of legislation, and as he tried to describe the advantages of the bill I told him about my concerns with these particular sections. He acknowledged to me that these were not major points in the bill for him or the people that he had worked with when they presented the bill to the Natural Resources Committee. My response, in terms to the question about timing, is that if the change is so valid then it can be made a year from now when there can be a more adequate review, hopefully by a number of jurisdictions that would be involved. I would love to hear what the Public Utilities Commission has to say. They did not, to my knowledge, have an opportunity to participate during the public hearing on this bill because it went to another committee. That uncertainty alone should give you some reason to vote no on this particular motion before us. Since there is no immediate need to take this action at this time, and I would rather see us err on the side of caution in this case. Thank you.

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

Representative STONE: Mr. Speaker, Ladies and Gentlemen of the House: I thought I would read a section of this bill to you to eliminate some of the confusion. It states here, "In any case of permanently installed power generating facilities, in addition to meeting the requirements of section 480, they must also have been approved by the Public Utilities Commission under Title 35-A." It's my

experience in the brief time I have been on the Utilities and Energy Committee that we rely heavily on the Public Utilities Commission, and I can assure you if this bill requires approval from the Public Utilities Commission the Public Advocate is going to be involved. There is going to be ample testimony from all sides and I don't think it will come easy to anybody and it seems to me that there is certainly an ample amount of protection. Thank you.

The SPEAKER: The Chair recognizes the Representative from Wilton, Representative Heesch. Having spoken twice now requests unanimous consent to address the House a third time. Is there objection? Chair hears no objection, the Representative may proceed.

Representative HEESCHEN: Mr. Speaker, Men and Women of the House: I just wanted to clarify that Representative Stone said the PUC does adequate review, and I want to repeat that the PUC review focuses on economic issues. To the extent that environmental issues and siting issues come into it at all, it is only in terms of the cost that they may create. The only environmental review that these get now is through the DEP site process. So, the jurisdictions are clear enough, there is not overlap in what they are doing.

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

ROLL CALL NO. 352

YEA - Aikman, Ault, Bailey, Barth, Bigl, Buck, Bunker, Cameron, Carleton, Chick, Clark, Clukey, Cross, Damren, Dexter, Donnelly, Driscoll, Farnum, Fisher, Gieringer, Gould, Greenlaw, Guerrette, Jones, S.; Joy, Joyce, Joyner, Kerr, Kneeland, Labrecque, Lane, Layton, Lemont, Libby JD; Lindahl, Look, Lumbra, Madore, Marshall, Marvin, Mayo, McAlevy, McElroy, Morrison, Murphy, Ott, Paul, Peavey, Pendleton, Perkins, Pinkham, Plowman, Poirier, Poulin, Reed, G.; Reed, W.; Rice, Robichaud, Savage, Simonneau, Spear, Stedman, Stone, Taylor, True, Tufts, Underwood, Vigue, Waterhouse, Wheeler, Whitcomb, Winglass, Winsor.

NAY - Adams, Ahearne, Benedikt, Berry, Bouffard, Brennan, Carr, Chartrand, Chizmar, Cloutier, Davidson, Desmond, Etnier, Fitzpatrick, Gates, Gerry, Gooley, Green, Hartnett, Hatch, Heesch, Jacques, Johnson, Jones, K.; Keane, Kilkelly, Kontos, LaFountain, Lemaire, Lemke, Luther, Meres, Mitchell EH; Nadeau, Nass, O'Neal, Povich, Richard, Richardson, Rosebush, Rowe, Samson, Saxl, J.; Saxl, M.; Shiah, Sirois, Stevens, Thompson, Townsend, Treat, Tripp, Tuttle, Tyler, Vollenik, Watson, Winn, The Speaker.

ABSENT - Birney, Campbell, Chase, Daggett, DiPietro, Dore, Dunn, Gamache, Heino, Hichborn, Joseph, Libby JL; Lovett, Martin, Mitchell JE; Nickerson, O'Gara, Pouliot, Ricker, Strout, Truman.

Yes, 73; No, 57; Absent, 21; Excused, 0.

73 having voted in the affirmative and 57 voted in the negative, with 21 being absent, House Amendment "A" (H-885) was indefinitely postponed.

The Bill was passed to be engrossed as amended by Committee Amendment "A" (H-876) and sent up for concurrence. Ordered sent forthwith.

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

#### BILLS IN THE SECOND READING

##### As Amended

Bill "An Act to Establish the Education Reform Act of 1995" (H.P. 807) (L.D. 1124) (C. "A" H-882)

Was reported by the Committee on Bills in the Second Reading, read the second time.

On motion of Representative CAMERON of Rumford was set aside.

On further motion of the same Representative, the House reconsidered its action whereby Committee Amendment "A" (H-882) was adopted.

The same Representative presented House Amendment "A" (H-888) to Committee Amendment "A" (H-882) which was read by the Clerk and adopted.

Committee Amendment "A" (H-882) as amended by House Amendment "A" (H-888) thereto was adopted.

The Bill was passed to be engrossed as amended by Committee Amendment "A" (H-882) as amended by House Amendment "A" (H-888) thereto and sent up for concurrence.

#### ENACTORS

##### Emergency Measure

An Act Regarding the State Government Computer System (H.P. 1377) (L.D. 1885)

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. 116 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.

#### ORDERS

On motion of Representative BUNKER of Kossuth Township, the following Joint Order (H.P. 1382)

**ORDERED**, the Senate concurring, that Bill, "An Act to Allow the Removal from Public Office of Certain Elected County Officials," H.P. 1240, L.D. 1700, and all its accompanying papers, be recalled from the Governor's desk to the House.

Was read and passed and sent up for concurrence.

#### REPORTS OF COMMITTEES

##### Divided Report

Majority Report of the Committee on Judiciary reporting "Ought to Pass" as amended by Committee Amendment "A" (H-887) on Bill "An Act to Prohibit the Photographing or Videotaping of Jury Deliberations" (EMERGENCY) (H.P. 1360) (L.D. 1868)

Signed:

Senator:

Representatives:

FAIRCLOTH of Penobscot  
LaFOUNTAIN of Biddeford  
WATSON of Farmingdale  
PLOWMAN of Hampden  
HARTNETT of Freeport  
MADORE of Augusta  
NASS of Acton

Minority Report of the same Committee reporting "Ought Not to Pass" on same Bill.

Signed:

Senators:

Representatives:

MILLS of Somerset  
PENDEXTER of Cumberland  
TREAT of Gardiner  
JONES of Bar Harbor

RICHARDSON of Portland

Was read.

Representative TREAT of Gardiner moved that the House accept the Minority "Ought Not to Pass" Report.

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

**SENATE PAPERS****Non-Concurrent Matter**

Bill "An Act to Establish the Penobscot County Budget Committee" (S.P. 613) (L.D. 1617) which was passed to be engrossed as amended by Committee Amendment "A" (S-476) as amended by House Amendment "A" (H-855) thereto in the House on March 28, 1996.

Came from the Senate with that Body having adhered to its former action whereby the Bill was passed to be engrossed as amended by Committee Amendment "A" (S-476) in non-concurrence.

Representative CLARK of Millinocket moved that the House Adhere.

Representative LANE of Enfield moved that the House Recede and Concur.

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

A vote of the House was taken. 69 voted in favor of the same and 36 against, the motion to Recede and Concur did prevail.

**ENACTORS****Emergency Mandate**

Resolve, for Laying of the County Taxes and Authorizing Expenditures of Androscoggin County for the Year 1996 (H.P. 1374) (L.D. 1883) (S. "A" S-540)

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. 106 voted in favor of the same and 3 against, and accordingly the Mandate was finally passed, signed by the Speaker and sent to the Senate.

An Act to Facilitate the Implementation of a Logo Sign Program on the Interstate (H.P. 1359) (L.D. 1864) (C. "A" H-849)

An Act to Amend the Laws Concerning Enhanced 9-1-1 (S.P. 766) (L.D. 1877)

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 items which were tabled earlier in today's session:

Bill "An Act to Improve the Child Development Services System" (S.P. 753) (L.D. 1866) (C. "A" S-534) which was tabled by Representative MITCHELL of Vassalboro pending passage to be engrossed as amended.

On motion of Representative MITCHELL of Vassalboro, the House reconsidered its action whereby Committee Amendment "A" (S-534) was adopted.

The same representative presented House Amendment "A" (H-886) to Committee Amendment "A" (S-534) which was read by the Clerk.

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

Representative MITCHELL: Mr. Speaker, Men and Women of the House: Child Development Services is a very complex organism that attempts to serve parents and children, children from birth to five, children who are not in school. It is important that I point that out to you because in some of our earlier discussions with colleagues in the House, they were thinking in terms of special education, things that were going on in the school. This bill deals with services for children who need special assistance, whether it's speech, hearing, or other special issues while they are very, very young. An important part of that remedial activity is with the caregivers, the parent, the people who are with the children more times than the short time that a special professional goes in to help. The committee worked four long, hard days on this particular piece of legislation and I'm sure they have many pieces in this legislation that are quite good. There is one issue, however, which I have great problems with and the amendment that I propose to you today would remove this section and return this particular piece to the status quo.

The current law says that local boards determine who will provide the services to the children in their region. This amendment would say they can decide it, however, there are strings attached. It says the preferences for contracting out, and you have to meet certain criteria before you can hire someone on staff. You probably can't find your bill, only because I was presenting this amendment was I able to dig mine out of the big pile, so please bear with me. I know it's late and this is an important issue, so I would like to read to you what the proposed change is. It will take just a moment. "The Board of Directors has the authority to hire, fire and supervise the staff of the regional site and to develop and adopt personnel policies for its employees." That's the current law. Local people are able to decide what is best for serving the children in their districts. The Committee Amendment changes that with this sentence and these subparagraphs. "Professional therapists may be employed as site staff when the board and the State Intermediate Education Unit finds that," and there are three criteria, "That site staff therapists are needed to perform the evaluations of children to ensure appropriate service plans or therapists serving children on a contractual basis are unable to provide the required services, or, C, site staff therapists are able to provide the services at a substantial savings." Cheaper than those people that you contract out with. It is clearly a bias to contracting out.

Let me share with you my concerns. My next door neighbor is a speech therapist, and one of the best that I have ever met. She has the same credentials as any person who runs a private agency on the outside. She is employed by Northern Kennebec Child Development Center and serves mostly Northern Kennebec and Somerset Counties. She travels to the homes of the children, and she told me two reasons why that local board decided to hire her on staff rather than contracting out. When they were contracting out it was a little more expensive,

believe it or not, and so she probably would be okay under these provisions, but why change the balance, and they didn't get the same service. She told a story of a young man with a head injury who, before she was on staff, the young child had only 30 minutes a week at the Reddington Fairview Hospital, because that's all the time they had available for him. He made some progress but very little. Now that she is on staff she drives to his home, stays with him for one hour a week and while she is there she teaches the parents, babysitters, or whoever else is in contact with this child when she is not there. In a short bit of time this child is now beginning to do some signing and some speaking. It is clear that for Northern Kennebec County to have her on staff, driving to the homes, is better than having a contractual arrangement with the hospital. The other thing is in one city in her district, this is an absolute honest case of, names will be withheld, two private providers refused to deal with one child because they said he was too difficult, so this person on staff has taken that over. I am not saying that contracting out is good or bad. I am not saying that hiring on staff is good or bad. I just think that local boards should be able to make that decision. If you adopt my amendment you will keep that in place and I would urge your support of this amendment. Thank you.

The SPEAKER: The Chair recognizes the Representative from Northport, Representative Lindahl.

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

The SPEAKER: The Representative may pose his question.

Representative LINDAHL: Thank you. Do these people who are hired become state employees?

The SPEAKER: The Representative from Northport, Representative Lindahl 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 the people who work for CES, it's a special federal designation called IEU, Intermediate Educational Units, and they are employees of those units but they are not state employees.

On motion of Representative CARLETON of Wells, tabled pending adoption of House Amendment "A" (H-886) to Committee Amendment "A" (S-534) and later today assigned.

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

Bill "An Act to Improve the Child Development Services System" (S.P. 753) (L.D. 1866) (C. "A" S-534) which was tabled by Representative CARLETON of Wells pending adoption of House Amendment "A" (H-886) to Committee Amendment "A" (S-534).

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

Representative BRENNAN: Mr. Speaker, Men and Women of the House: I urge you, and strongly urge you, to oppose this amendment. There are a number of reasons why. The very first one is that the Education Committee spent two and a half months working on this bill. In fact, there was not even a bill submitted at the beginning of the session to address issues related to Child Development Services,

but because there were so many concerns raised by parents, raised by providers, and raised by local sites regarding Child Development Services, the committee held public hearings and work sessions and then specifically crafted a bill that we believe takes at least a modest step toward ensuring some accountability into the system. Representative Mitchell is exactly right, this issue is somewhat complicated, and for people who have been on the Education Committee, they have dealt with CDS and CDS issues for the last three, four, or five years. What this amendment would do is basically strip out a part of the bill that sets in place conditions under which a "local site" would hire on-site staff. The reason that we felt it was important to have those conditions in there is that the conditions that are in there really mirror current practices that are currently in place. We were concerned that without having those in place that there could be the hiring of more people on staff in an infrastructure that would develop that the state could not support over a period of time.

The other point that I want to make is that it repeatedly says that these are local boards that make local decisions. As I mentioned before, these are called IEUs, Intermediate Educational Units. Those are federal designations. There is a considerable amount of interaction between the Department of Education and those local sites and the provision of those services. So it is not simply a question of local control and local boards making decisions. The committee listened to a considerable amount of testimony from parents and providers regarding this issue and a whole host of issues related to CDS. The Committee Report was twelve to one in favor of the bill that is before you now. Again, this whole issue of whether to hire people in house or continue to contract out is simply a modest attempt to put some parameters around the hiring and at the same time it asks the Department of Education to review this issue and to come back to the Legislature in January of next year and to make a recommendation as to whether or not the hiring of service providers in house is cost-effective, or whether or not maintaining the current system of contracting out with local business persons, local providers and local nonprofits continues to work.

I also have to say that the three conditions that are laid out under which somebody could continue to hire a staff person in house, here are the three conditions, that they need to continue to do evaluation of services, but secondly, where ever there is a waiting list and children are not being served a local site can continue to hire somebody in house, and lastly, that the local site shows that there is an identified substantial savings by hiring somebody in house, they can do that. By putting these three conditions in here, again it's not substantially different from the current practice that occurs between the Department of Education and local sites in determining when they contract out and when people are hired in house. So, I urge you to oppose the pending amendment because we discussed this issue over and over and over again and the committee felt that this was a reasonable and moderate attempt to put some accountability into the system. Thank you.

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

Representative MITCHELL: Mr. Speaker, Men and Women of the House: I appreciate your indulgence for this is a very important issue. I respect the committee. I have not attempted to interfere with any part of the bill except for this one part which I have a great deal of difficulty with. It was my understanding that there was one local unit in the state that was having problems. I urge you not to legislate for all of us because of a problem in one area. The other thing that bothers me the most is it says that you can hire a staff person in house only if it is cheaper. It might have been cheaper to take the kid to the Reddington Fairview Hospital for 30 minutes than to send someone to their home for an hour. Where is the benchmark for the quality of service for the child? I just don't think it's here and I don't think it's about whether or not we are favoring people on staff or whether we are hiring from a nonprofit agency, the issue is what is best for the child. I would ask for a roll call.

Representative MITCHELL of Vassalboro requested a roll call on adoption of House Amendment "A" (H-886) to Committee Amendment "A" (S-534).

The SPEAKER: The Chair recognizes the Representative from Wayne, Representative Ault.

Representative AULT: Mr. Speaker, Men and Women of the House: Both of the previous speakers have told you the absolute truth. The Education Committee worked long and hard on this issue and the amendment that is being presented was one of the many subjects that we did discuss before issuing a twelve-to-one report on this particular legislative document. The fact of the matter is that the sites are currently hiring staff and this legislation, the twelve-to-one report, permits boards to hire professional therapists on site, instead of contracting out, for three reasons, as Representative Brennan cited. Cost would, for us, be the third criteria, but again, to review the criteria, number one would be that therapists are needed to perform evaluations, number two, they could hire professional therapists if contracted therapists were unable to provide the services within federal time lines, and the third would be if the on site therapist can perform services at a substantial savings to the CDS site. Finally, it would require the commissioner to establish a method to accurately assess whether it is truly cheaper to hire staff rather than contract with independent therapists. The department has changed the mission of CDS from outreach and referral to direct-service provider. They use the argument of cost reduction to hire in house but if you look at the budget summary for CDS, for each of the CDS sites, and take the 96 requests for funds and divide it by the child count, you will find the CDS site with the most in house providers, five, has the highest per child cost. We questioned the department's figures and their strategy and simply asked that they come back with a cost analysis of in-house versus independent contractor to substantiate the direction that they are taking. I urge you to vote against the adoption of House Amendment "A." Thank you.

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 Portland, Representative Brennan.

Representative BRENNAN: Mr. Speaker, Men and Women of the House: I just want to clarify a couple of points. The situation that Representative Mitchell alluded to earlier about the person that is hired currently in the mid-coast area, and that has been going to somebody's house and delivering services, there is absolutely nothing in this bill that would prevent a local site from continuing to hire somebody under those circumstances. There is nothing in the bill that would prevent that from continuing to occur. Thank you.

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

ROLL CALL NO. 353

YEA - Adams, Ahearne, Benedikt, Bunker, Carr, Chartrand, Chizmar, Clark, Driscoll, Green, Hatch, Jacques, Johnson, Jones, K.; Kerr, Lemaire, Lemke, Libby JD; Look, McAlevy, Mitchell EH; Nadeau, Paul, Povich, Richard, Rosebush, Samson, Saxl, M.; Shiah, Thompson, Tuttle, Volenik, Watson, Winn, The Speaker.

NAY - Aikman, Ault, Bailey, Barth, Berry, Bigl, Bouffard, Brennan, Buck, Cameron, Carleton, Chick, Cloutier, Clukey, Cross, Damren, Davidson, Desmond, Donnelly, Etnier, Farnum, Fisher, Fitzpatrick, Gates, Gerry, Gieringer, Gooley, Gould, Greenlaw, Guerrette, Hartnett, Heesch, Jones, S.; Joy, Joyce, Joyner, Keane, Kilkelly, Kneeland, Kontos, Labrecque, LaFountain, Lane, Layton, Lemont, Lindahl, Lovett, Lumbr, Luther, Madore, Marshall, Marvin, McElroy, Meres, Murphy, Nass, O'Neal, Ott, Peavey, Pendleton, Perkins, Pinkham, Plowman, Poirier, Poulin, Reed, G.; Rice, Richardson, Robichaud, Rowe, Savage, Saxl, J.; Simoneau, Sirois, Spear, Stedman, Stevens, Stone, Taylor, Townsend, Treat, Tripp, True, Tufts, Tyler, Underwood, Vigue, Waterhouse, Wheeler, Whitcomb, Winglass, Winsor.

ABSENT - Birney, Campbell, Chase, Daggett, Dexter, DiPietro, Dore, Dunn, Gamache, Heino, Hichborn, Joseph, Libby JL; Martin, Mayo, Mitchell JE; Morrison, Nickerson, O'Gara, Pouliot, Reed, W.; Ricker, Strout, Truman.

Yes, 35; No, 92; Absent, 24; Excused, 0.

35 having voted in the affirmative and 92 voted in the negative, with 24 being absent, House Amendment "A" (H-886) to Committee Amendment "A" (S-534) was not adopted.

Subsequently, Committee Amendment "A" (S-534) was adopted.

The Bill was passed to be engrossed as amended by Committee Amendment "A" (S-534) in concurrence.

#### 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.

Bill "An Act to Improve the Provisions of Mental Health Services to Patients Residing in the Community" (H.P. 1358) (L.D. 1863)  
(Committee on Human Resources suggested)

TABLED - March 20, 1996 (Till Later Today) by Representative LEMKE of Westbrook.

PENDING - Reference.

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

Representative LEMKE: Mr. Speaker, Men and Women of the House: I wish to thank the Speaker for allowing this bill to be tabled for some time. It was tabled pending reference because essentially this bill was killed in committee soon after a public hearing, prior to the actual printing and reference of the bill on the floor, if you follow me. There were 60 cosponsors of this bill and I wish to thank all of them for doing that. They did that within one day. They actually went before the committee before the time was up to actually get cosponsors. That indicated there was a great concern in this area. I felt I owed it to them to see if there were some way to preserve the bill, or at least the intent of the bill, which was to introduce more accountability into our mental health system. I have, during the last two weeks, had an opportunity to speak to a number of concerned parties, not only within, but outside of this institution that are concerned on this issue. We came to the conclusion that even though this bill might gain support through various parliamentary means it is best at this late hour in the session not to pursue the issue without the clarity, without the time, without the deliberations that is needed to come up with a good bill. I want to be consistent. I have been making that argument for several weeks about another bill that will be pending soon before this Legislature, and I think it is right also to apply what I say about others to myself. Therefore, I am going to say now that we will work to get a bill for the next session. However, Mr. Speaker, I move that we indefinitely postpone this bill and all of its accompanying papers. Thank you.

On motion of Representative LEMKE of Westbrook, the Bill was indefinitely postponed and sent up for concurrence.

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On motion of Representative MADORE of Augusta the House adjourned at 9:00 p.m. until Saturday, March 30, 1996 in honor and lasting tribute to the memory of Senator Edmund Muskie of Rumford and Lucienne B. Tardiff of Augusta.