

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

One Hundred And Seventeenth Legislature

OF THE

State Of Maine

VOLUME IV

FIRST REGULAR SESSION

Senate

May 2, 1995 to June 16, 1995

Reading of the Journal of Thursday, May 11, 1995.

**STATE OF MAINE
ONE HUNDRED AND SEVENTEENTH LEGISLATURE
FIRST REGULAR SESSION
JOURNAL OF THE SENATE**

In Senate Chamber
Tuesday
May 16, 1995

Off Record Remarks

Senate called to Order by the President, Jeffrey H. Butland of Cumberland.

PAPERS FROM THE HOUSE

Non-concurrent Matter

Prayer by Father Ed Thomson of Saint Patrick's Church in Lewiston.

Bill "An Act to Amend the Maine State Retirement System Laws to Authorize the Buy-back of Time Served in the Peace Corps or VISTA Programs"

S.P. 260 L.D. 696
(C "A" S-82)

FATHER ED THOMSON: Good morning. It is a real privilege for me to be here this morning. I would just like to tell you one little story, because I have noticed in the paper lately, you have all been very busy with auto emissions and wondering what we are going to do as a State. Well, in the middle East, of course, they have a lot of camels in that area. It seems there was a man, and his old camel was very slow, so he went to a camel dealer to get a new camel. They struck a deal and the guy said to come back the next day and pick up your new camel. He came back the next day and picked it up. The dealer said, "Like a new car, I am going to have to give you some instructions. When you want your camel to get up, say 'wow'. When you want your camel to go fast, say 'wow wow'. When you want your camel to stop, say 'amen'." So, he got on the camel, and he said "wow". The camel got up and slowly began to lumber out across the desert. Then he said "wow wow", and the camel took off like a bullet. Now he knew why he needed a new camel. All of a sudden, as he is racing along, he sees a ravine coming, and he's forgotten the word to stop the camel. So, being a pious muslim, he begins his prayers to Allah. Just as he comes to the edge of the ravine he finishes his prayer and he says "Amen". The camel stops dead. He looked up over the camel, at the ravine, "wow". Remember that, sometime it may help you out. Let us pray.

In Senate, April 27, 1995, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-82).**

Comes from the House with the Bill and Accompanying Papers **INDEFINITELY POSTPONED, in NON-CONCURRENCE.**

On motion by Senator **KIEFFER** of Aroostook, Tabled 1 Legislative Day, pending **FURTHER CONSIDERATION.**

COMMUNICATIONS

The Following Communication: S.C. 172

**STATE OF MAINE
ONE HUNDRED AND SEVENTEENTH LEGISLATURE
COMMITTEE ON JUDICIARY**

May 11, 1995

Oh God, our Creator, you have breathed life into humankind and gave us stewardship over this world. We ask your blessing upon the men and women of this august body as they deliberate the very sensitive and serious issues that face this State. Give them grace of wisdom and patience, of courage and perseverance. Enable them to protect our forests, and to protect our seashore and our lakes, and our way and quality of life. Give them the wisdom to care for our children, for the abandoned, for the lost, for the mentally ill, for the lonely. They serve us. They serve us well. Bless them this day. Amen.

The Honorable Jeffrey H. Butland
President of the Senate of Maine
117th Maine Legislature
State House
Augusta, Maine 04333

Dear Mr. President:

Pledge of Allegiance led by **SENATOR AMERO** of Cumberland.

In accordance with 3 M.R.S.A., Section 157, and with Joint Rule 38 of the 117th Maine Legislature, the Joint Standing Committee on Judiciary has had under consideration the nomination of Honorable Susan W. Calkins of Portland, for appointment as a Justice of the Maine Superior Court.

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

YEAS: Sen. 2 Mills of Somerset,
Pendexter of Cumberland

Rep. 10 Treat of Gardiner, Lemke of
Westbrook, Richardson of
Portland, Jones of Bar
Harbor, LaFountain of
Biddeford, Watson of
Farmingdale, Plowman of
Hampden, Hartnett of
Freeport, Madore of
Augusta, Nass of Acton

NAYS: 0

ABSENT: 1 Sen. Faircloth of Penobscot

Twelve members of the Committee having voted in the affirmative and none in the negative, it was the vote of the Committee that the nomination of Honorable Susan W. Calkins of Portland, for appointment as a Justice of the Maine Superior Court be confirmed.

Signed:

S/S. Peter Mills
Senate Chair

S/Sharon Anglin Treat
House Chair

Which was READ and ORDERED PLACED ON FILE.

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEAS: Senators: None

NAYS: Senators: ABROMSON, AMERO, BEGLEY, BENOIT,
BUSTIN, CAREY, CARPENTER,
CASSIDY, CIANCHETTE, CLEVELAND,
FERGUSON, GOLDTHWAIT, HALL,
HARRIMAN, HATHAWAY, KIEFFER,
LAWRENCE, LONGLEY, McCORMICK,
MICHAUD, MILLS, PARADIS,
PENDEXTER, RAND, SMALL, STEVENS,
and the PRESIDENT, Senator
BUTLAND

ABSENT: Senators: ESTY, FAIRCLOTH, HANLEY, LORD,
O'DEA, PINGREE, RUHLIN

EXCUSED: Senator: BERUBE

No Senators having voted in the affirmative and 27 Senators having voted in the negative, with 7 Senators being absent and 1 Senator having been excused, and None being less than two-thirds of the Membership present, it was the vote of the Senate that the Committee's recommendation be ACCEPTED and the nomination of Susan W. Calkins, for appointment as a Justice of the Maine Superior Court, was CONFIRMED.

The Secretary informed the Speaker of the House.

The President noted the absence of Senator BERUBE of Androscoggin, and excused her from the following Roll Call vote.

SENATE PAPERS

Bill "An Act Concerning Reports of Material Transactions and Other Provisions of the Maine Insurance Code"

S.P. 561 L.D. 1528

Presented by Senator ABROMSON of Cumberland (GOVERNOR'S BILL)
Cosponsored by Representative: VIGUE of Winslow

Reference to the Committee on BANKING AND INSURANCE suggested and ORDERED PRINTED.

Which was referred to the Committee on BANKING AND INSURANCE and ORDERED PRINTED.

Sent down for concurrence.

THE PRESIDENT: The Joint Standing Committee on JUDICIARY has recommended the nomination of Susan W. Calkins of Portland be confirmed.

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

In accordance with 3 M.R.S.A., Chapter 6, Section 151 and with Joint Rule 38 of the 117th Legislature, the vote will be taken by the Yeas and Nays.

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

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

Is the Senate ready for the question?

Bill "An Act to Modify and Update Certain Laws Pertaining to Inland Fisheries and Wildlife" (Emergency)

S.P. 562 L.D. 1530

Presented by Senator HALL of Piscataquis
Cosponsored by Senator: MICHAUD of Penobscot,
Representative: GREENLAW of Standish

Submitted by the Department of Inland Fisheries and Wildlife pursuant to Joint Rule 24.

Reference to the Committee on INLAND FISHERIES AND WILDLIFE suggested and ORDERED PRINTED.

Which was referred to the Committee on INLAND FISHERIES AND WILDLIFE and ORDERED PRINTED.

Sent down for concurrence.

Bill "An Act to Clarify Early Retirement Incentives"

S.P. 563 L.D. 1531

Presented by Senator SMALL of Sagadahoc
Cosponsored by Senators: AMERO of Cumberland, CARPENTER of York, ESTY, JR. of Cumberland, HARRIMAN of Cumberland, KIEFFER of Aroostook, LORD of York, MICHAUD of Penobscot, PARADIS of Aroostook, Representatives: AULT of Wayne, BARTH, JR. of Bethel, BIRNEY of Paris, BRENNAN of Portland, DESMOND of Mapleton, DORE of Auburn, GREEN of Monmouth, JOY of Crystal, LEMAIRE of Lewiston, MARTIN of Eagle Lake, OTT of York, REED of Falmouth, STEVENS of Orono

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.

Reference to the Committee on LABOR suggested and ORDERED PRINTED.

Which was referred to the Committee on LABOR and ORDERED PRINTED.

Sent down for concurrence.

ORDERS

Joint Resolution

On motion by Senator MICHAUD of Penobscot.
Cosponsored by: Representative GOULD of Greenville, Senator HATHAWAY of York, Senator LORD of York, Senator RUHLIN of Penobscot, Representative BERRY of Livermore, Representative DAMREN of Belgrade,

Representative GREENLAW of Standish, Representative MARSHALL of Eliot, Representative MERES of Norridgewock, Representative NICKERSON of Turner, Representative POULIN of Oakland, Representative SAXL of Bangor.

S.P. 564

JOINT RESOLUTION RECOGNIZING THE ASSOCIATION OF STATE FLOODPLAIN MANAGERS

WHEREAS, the Association of State Floodplain Managers is an organization of professionals involved in floodplain management, flood hazard mitigation, the National Flood Insurance Program and flood preparedness, warning and recovery; and

WHEREAS, the association has become a respected voice in floodplain management practice and policy in the United States because it represents the flood hazard specialists of local, state and federal government, the research community, the insurance industry and the fields of engineering, hydrologic forecasting, emergency response, water resources and others; and

WHEREAS, the association is meeting in Portland at the invitation of the Maine State Floodplain Management Program and the New England Floodplain and Storm Water Managers Association; and

WHEREAS, this conference will provide an excellent educational opportunity to those individuals in New England who are involved in administering floodplain and storm water management at the local and state levels of government; provide an opportunity to network with others from other regions of the country; and provide an opportunity to get involved with helping to develop policy on floodplain and storm water management through the association's committees; now, therefore, be it

RESOLVED: That, We, the Members of the 117th Legislature of the State of Maine now assembled in the First Regular Session, extend our best wishes to the members of the Association of State Floodplain Managers and offer our warmest regards and high hopes for success in the advancement of the association's goals to reduce the loss of human life and property damage resulting from flooding, to preserve the natural and cultural values of the floodplains and to avoid the actions that exacerbate flooding; and be it further

RESOLVED: That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to the President of the Association of State Floodplain Managers for the conference that will take place May 22 to May 26, 1995.

Which was READ and ADOPTED.

Sent down for concurrence.

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

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

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

On motion by Senator **LAWRENCE** of York, **ECESSED** until 11:30 o'clock in the morning.

After Recess

Senate called to order by the President.

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

COMMITTEE REPORTS

Senate

Ought to Pass As Amended

Senator **BENOIT** for the Committee on **CRIMINAL JUSTICE** on Bill "An Act to Establish Responsibility for the Investigation of the Use of Deadly Force by Law Enforcement Officers"

S.P. 448 L.D. 1221

Reported that the same **Ought to Pass as Amended** by **Committee Amendment "A" (S-145)**.

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

The Bill **READ ONCE**.

Committee Amendment "A" (S-145) **READ** and **ADOPTED**.

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

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

PAPERS FROM THE HOUSE

House Papers

Bill "An Act to Prohibit the Stocking of Alewives in Hogan Pond and Whitney Pond in the Town of Oxford" (Emergency)

H.P. 1086 L.D. 1529

Reference to the Committee on **INLAND FISHERIES AND WILDLIFE** suggested and **ORDERED PRINTED**.

Comes from the House, under suspension of the Rules, **READ TWICE** and **PASSED TO BE ENGROSSED**, without reference to a Committee.

Which was under suspension of the Rules, **READ ONCE**, without reference to a Committee.

Under further suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED**, in concurrence.

Under suspension of the Rules, sent forthwith to the Engrossing Department.

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

PAPERS FROM THE HOUSE

House Papers

Bill "An Act Requiring Doctors of Naturopathic Medicine to Be Licensed by the Naturopathic Board of Examiners and Regulating Naturopathic Health Care Practice"

H.P. 1087 L.D. 1532

Reference to the Committee on **BUSINESS AND ECONOMIC DEVELOPMENT** suggested and **ORDERED PRINTED**.

Comes from the House, referred to the Committee on **BUSINESS AND ECONOMIC DEVELOPMENT** and **ORDERED PRINTED**.

Which was referred to the Committee on **BUSINESS AND ECONOMIC DEVELOPMENT**, in concurrence.

Bill "An Act to Amend the Laws Regarding Child Placing Agency Disclosure of a Child's Background for the Purpose of Adoption"

H.P. 1080 L.D. 1522

Bill "An Act Requiring that Certain Nonprofit Corporations Provide for the Disposal of Assets"

H.P. 1081 L.D. 1523

Bill "An Act to Increase Access to Public Information"

H.P. 1083 L.D. 1525

Bill "An Act to Allow Involuntary Commitments at Hospitals under Contract with the Department of Mental Health and Mental Retardation"

H.P. 1084 L.D. 1526

Reference to the Committee on **JUDICIARY** suggested and **ORDERED PRINTED**.

Come from the House, referred to the Committee on **JUDICIARY** and **ORDERED PRINTED**.

Which were referred to the Committee on **JUDICIARY**, in concurrence.

Bill "An Act to Strengthen Oversight of Maine Elections and Campaign Finance Laws" (Emergency)

H.P. 1085 L.D. 1527

Resolve, to Create an Advisory Commission to Review Long-term Liquor Policies and Pricing

H.P. 1082 L.D. 1524

Reference to the Committee on **LEGAL AND VETERANS AFFAIRS** suggested and **ORDERED PRINTED**.

Come from the House, referred to the Committee on **LEGAL AND VETERANS AFFAIRS** and **ORDERED PRINTED**.

Which were referred to the Committee on **LEGAL AND VETERANS AFFAIRS**, in concurrence.

COMMITTEE REPORTS

House

Divided Report

The Majority of the Committee on **BANKING AND INSURANCE** on Bill "An Act to Require Liability Insurance Carriers to Disclose to Claimants Limits of Liability and Policy Coverage Prior to Initiation of Suit"

H.P. 392 L.D. 527

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

Signed:

Senators:

ABROMSON of Cumberland
SMALL of Sagadahoc

Representatives:

VIGUE of Winslow
CHASE of China
GATES of Rockport
CAMPBELL of Holden
GUERRETTE of Pittston
JONES, JR. of Pittsfield
LUMBRA of Bangor
MAYO, III of Bath
SAXL of Portland
MITCHELL of Vassalboro

The Minority of the same Committee on the same subject reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-100)**.

Signed:

Senator:

MCCORMICK of Kennebec

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

Which Reports were **READ**.

On motion by Senator **ABROMSON** of Cumberland, the Majority **OUGHT NOT TO PASS** Report **ACCEPTED**, in concurrence.

Divided Report

The Majority of the Committee on **CRIMINAL JUSTICE** on Bill "An Act to Establish a Presumption That the Owner of a Motor Vehicle Is the Driver If That Vehicle Is Involved in a High-speed Chase"

H.P. 266 L.D. 368

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

Signed:

Senators:

BENOIT of Franklin
O'DEA of Penobscot

Representatives:

CLARK of Millinocket
GOOLEY of Farmington
JOHNSON of South Portland
MCALEVEY of Waterboro
PEAVEY of Woolwich
THOMPSON of Naples
WHEELER of Bridgewater

The Minority of the same Committee on the same subject reported that the same **Ought to Pass as Amended by Committee Amendment "B" (H-223)**.

Signed:

Senator:

HALL of Piscataquis

Representatives:

WATERHOUSE of Bridgton
BUNKER, JR. of Kossuth Township
CLUKEY of Houlton

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

Which Reports were **READ**.

Senator **BENOIT** of Franklin moved that the Senate **ACCEPT** the Majority **OUGHT NOT TO PASS** Report, in concurrence.

THE PRESIDENT: The Chair recognizes the Senator from Franklin, Senator Benoit.

Senator **BENOIT:** Thank you Mr. President. May it please the Senate. Here is a bill that has a new title, and I guess the title says it all, really. An Act to Create a Traffic Infraction Against the Owner of a Motor Vehicle When the Motor Vehicle is Involved in a High Speed Chase. I'm asking the Senate to support the Majority Ought Not to Pass, for these several reasons. I can't bring myself to vote on a bill that will make my constituents guilty of an offense, albeit a traffic infraction, solely on the basis of ownership of a motor vehicle. That's what this law is intending to do, in order to diffuse high-speed chases in this State. In order to get at the problem of high-speed chases, and have the officers end the chase, this bill goes after the registered owner of the motor vehicle involved. Here's the dilemma that I see for the officer, you can put yourself in the officer's shoes; you are pursuing a motor vehicle at high speeds; and this bill indicates that the officer should, upon taking the license plate, stop the chase. You know there are going to be times when the officer, for good reason, should not end a chase. There are circumstances that would warrant the officer to continue. Yet, if the officer, if this law were to pass, did not terminate the chase after being in a position to take the license plate, and there should be a bad accident with some serious bodily injury involved, to an innocent person or what have you, or a death, the officer is then on the line, if you

will, for a suit. The question being, "Officer, why didn't you stop this chase? You had a chance to take the license plate number." So, the officer is in a dilemma here. What should he, or she, do under these circumstances, if this becomes law, continue the chase and stand the possibility of a suit if something should develop, a mishap of serious consequences, or terminate the situation?

I don't believe that this is the way to go about it. That is, to proceed against the owner of the vehicle solely upon ownership, hoping that you are going to force the owner to turn up the other person, should somebody be driving the vehicle at that time other than the owner. I see a situation where, if this is law, the owner of the vehicle could cover up for a member of the family who may have been driving during the chase, or some friend of the family who is involved, if you will, because then, you see, the infraction charges against the registered owner brings a fine against that person, and that person can cover up for the more serious offense of eluding a police officer, a much more serious crime. It is a crime, this is a civil violation if this is law. So, you have a situation where, instead of helping law enforcement communities, concerning high-speed chases, you put on the books a statute that comes against the owner, solely because of ownership, and charges that person with a traffic infraction civil violation.

I like the idea that we can use these spike pads that you have, perhaps, heard about. An officer who is involved in a high-speed chase can call ahead, someone can throw the pads in the road. These pads have been successfully used to stop the vehicle because of the puncture of the tires of the vehicle being pursued. So, in a nutshell, it is a bill that intends to diffuse high-speed chases, but really brings about more problems than it solves. So, I would ask you, respectfully, to support the Majority Ought Not to Pass Report. Thank you.

Off Record Remarks

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

Senator **HALL:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I rise today to ask you to vote against the Ought Not to Pass motion, so that we can pass the Ought to Pass as Amended by Committee Amendment "B" Report. My reasons are this: that this would be a tool for law enforcement to use. A couple of terms ago the Legislature decided that passing a stopped school bus was a very, very serious offense; and they passed a law like this. This bill is drafted after that. If the school bus driver jots down your license plate number, as having passed that stopped school bus, you can be charged, as the owner of that vehicle, with a traffic infraction. Well, I personally feel that high-speed chases on our

highways is equally as important as passing a stopped school bus, if not more so. The only thing worse than having one speeding motor vehicle going down the highway, at one hundred plus miles an hour, is having two going that speed. This is exactly what happens in high-speed chases. Presently, the officer has to prove operation of that vehicle that he is chasing. If this law passes, in order to prosecute that operator, he is still going to have to prove operation. But, presently, if he is close enough to write down the license plate number, and one of two things happens, the fellow driving the speeding vehicle outruns the officer, or if, because of safety reasons, they are coming into a town or whatever the case may be, they may get into a high traffic situation, the officer breaks off the chase. Presently he will go, or have someone else go, to the residence of whoever that plate tag told them who owned it. If the owner of that vehicle says, "I'm not going to talk to you. I'm not going to tell you anything. You prove who was operating my car." the officer has no choice but to turn and walk away. End of story, regardless, if he can't prove operation. If we was to pass this, then he would have a tool to use, a tool to tell the owner of that motor vehicle, "Now look, this was a dangerous situation. Someone could have been killed. If you refuse to cooperate I do have a law that says that you can be charged, as the owner of that vehicle, with a traffic infraction." Although a lot less serious, I think it will be used in that manner. If the person the officer is talking to was the operator, he still is not going to admit that he was operating that motor vehicle, but at least he was charged with something, he wasn't let go, scott-free, and thumbed his nose at you and I and our law enforcement community. If he was not the operator, most anyone with common sense and decency would tell the officer who was operating his car. He surely, is not going to want to be charged with something that he is innocent of. I think cooperation will come forth, more so than what is happening now. Yes, maybe the father will stand up, if he is going to be the type of father who is going to say, "Well, I'm not going to tell you my son, who I can't control, was operating. I'm not going to get him in trouble." If he is of that mind, and of that attitude, he surely is not helping his son, because his son will be out there doing it again next weekend, or whenever. So, he could be charged with a traffic infraction if that is the route that he decides to travel. There are situations where high-speed chases are warranted, where, if that subject is not stopped, he is pretty apt to go on and cause someone some harm. Maybe he just robbed a bank. We just had a situation last weekend, in my area, where a fellow with a shotgun tried to rob two gentlemen. They didn't have any money so he took their car. Twice, they put the spikes out to try and stop the individual. They knew whose car it was, it was a stolen car. There is a provision in the amendment, if it is a stolen car the owner is off the hook. In the amendment, also, there is a liability clause, taking the liability away from the car owner. This particular individual went around the first spikes, into the ditch, and almost hit an officer. Twenty-five miles later they laid the spikes out again, and he again went around the spikes. Luckily, they did catch him because the car ran out of gas twenty miles before he reached the Canadian border. He would have never entered Canada,

I can assure you. Probably in Canada there would have been a full road-block, I mean a full road-block, he wouldn't have gotten in. Luckily he ran out of gas and was apprehended.

There are times when high-speed chases ensue from a stop sign violation, ten miles over the speed limit, or whatever. Most of the time the operator is found to be driving after suspension. Maybe he has illegal tags on his plates, minor traffic infractions, but they elect to run. When they do, more serious violations occur. We have all seen or heard of tragic mishaps from these high-speed chases. I contend that some high-speed chases will be stopped by the officer. At least he is going to be thinking, "I'm going to be able to do something later about this." But, if you go up to that door, and you are told to get lost, after you have just run down the road at one hundred and twenty miles an hour, I can tell you, it doesn't give you a very good feeling. I have been in those situations. I know. Let's help the law enforcement community, let's give them a little tool to work with. I urge you to vote against the present motion. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator O'Dea.

Senator O'DEA: Thank you Mr. President, Men and Women of the Senate. I would urge you to vote with the motion that is on the floor this afternoon, to support the Ought Not to Pass motion, and I will tell you why. This bill, while it has a certain amount of visceral appeal to it, I suppose on one level, really goes a little bit farther than what I, at least, am comfortable with. This bill isn't about whether or not people should go out and operate a motor vehicle recklessly, or whether or not people should engage in high-speed chases, or even whether or not people should be polite to law enforcement officers who are investigating crimes; in this case, a Class C crime, failure to stop for an officer, which I believe is a felony in the State of Maine, already; the issue is whether or not we want to make our constituents who own a piece of property, a motor vehicle, guilty of an offense simply because somebody misused their property. That's the issue, whether or not somebody's property was misused by another person. I would urge you to support the Ought Not to Pass motion today.

THE PRESIDENT: The Chair recognizes the Senator from Franklin, Senator Benoit.

Senator BENOIT: Thank you Mr. President. May it please the Senate. I would like to respond to the good Senator from Piscataquis, Senator Hall's, comments very briefly. Senator Hall says enactment of this bill will give the law enforcement community a tool. It sure will. The tool will be a monkey wrench, as I see it, because you are going to make the officer's position much more difficult, under a set of circumstances where in a high-speed chase the officer has got a hard enough situation at the time in deciding whether or not voluntarily, whether they got the plate or not, to terminate the chase. Now you are going to throw into the situation a monkey wrench because the officer, if this is law, has got to make the decision during the chase, having taken down the license plate number, or having been close

enough to do so, now what do I do - continue the chase or terminate it? There may be very good reasons for continuing that chase to a conclusion. As Senator O'Dea has just mentioned, I can't vote for this bill, because to do so is to vote for a cover-up. As he points out correctly, right now eluding an officer is a Class C offense, a fine of up to \$5,000, and up to five years in jail can be covered up by a traffic infraction if a parent wishes to do so for a family member or a relative. Yes, the admission, although it be wrong, yes, I can be charged with a traffic infraction, I'm the owner, period. I will cover up for somebody. Somebody else was driving the vehicle at the time, but I will pay a fine, a small amount, and cover up for somebody else who should really be charged with a felony situation. It's apples and oranges, in conclusion, as I see it, in trying to compare the school bus law to this bill. After all, when a school bus is passed it is stopped, the lights are flashing, it is taking on or letting off children. It's stopped, it isn't chasing anything. This bill is a chase bill. It's apples and oranges, it's different, it can't be compared that way. Respectfully, I urge you to please support the Majority Ought Not to Pass Report.

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

Senator HALL: Thank you Mr. President. Very quickly, anyone who would vote for this motion of Ought Not to Pass, I will expect will introduce a bill next session to repeal the law that we have on the school bus. Because your argument that you have given me thus far is that because you are the owner of a motor vehicle you could be charged with something, whether you was operating or not, and the argument should be the same thing for the school bus passing law, because it is exactly the same. It is no different. My other comment, in reference to the officer making the decision whether to break off the chase or not, this statute will make no difference whether he will stop. He is still going to have to consider the same things that he is considering now as to whether he breaks that chase off or not. This is something that is going to be used after the chase has been terminated, not during. This is not going to be on his mind, he has still got to weigh why he is chasing that individual, how much risk are we involving the public while this is going on? Those are the two major things that he has to consider. If he doesn't know exactly, if it started from a traffic infraction, he may break that chase off anyways, and as well he should. But, if it is an armed bank robber or a kidnapper that is a different situation. This isn't going to make any difference one way or the other. This is simply going to be a tool later down the road. The argument that someone is going to take this rap to cover up for their son is hogwash, it's as simple as that. You are still innocent in this country until proven guilty. If that officer can prove that Johnny was driving that car, Johnny is going to be charged with that Class C felony, not the old man, no way. The only time that this would come into place is when the officer cannot prove who was operating that motor vehicle. Please vote against this motion.

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

Senator CARPENTER: Thank you Mr. President, Men and Women of the Senate. I have listened to this debate for the last few minutes and seems to me that I'm thinking of it in an entirely different manner than police officers and judges and lawyers. I have seen the results of one high-speed chase. I was not involved in it, thank the Lord, but it did cost the life of a police officer in Lebanon, Maine. These high-speed chases just aren't worth it. They aren't worth it to innocent people, by-standers, people on the side of the road. Sure, somebody has had a traffic violation and they take off, in the past the police officers were encouraged to pursue. I get the feeling now that most police departments are encouraging them to break off the chase. I think this bill, if passed, is the only way you can break off the chase and still feel that you are satisfied that you are going to have someone responsible for the action. Maybe it will be a cover-up for a son, maybe it will turn out to be that, but I still think it saves lives when you can break a chase off. I have seen it and I urge you to vote against the Majority motion. Thank you.

THE PRESIDENT: The pending question before the Senate is the motion by Senator BENOIT of Franklin that the Senate **ACCEPT** the Majority **OUGHT NOT TO PASS** Report, in concurrence.

The Chair ordered a Division.

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

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

21 Senators having voted in the affirmative and 10 Senators having voted in the negative, the motion by Senator BENOIT of Franklin to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report, in concurrence, **PREVAILED**.

Divided Report

The Majority of the Committee on **CRIMINAL JUSTICE** on Bill "An Act to Prohibit the Use of State Money and Personnel to Conduct Warrantless Searches by Helicopters"

H.P. 555 L.D. 756

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

Signed:

Senators:
 BENOIT of Franklin
 HALL of Piscataquis
 O'DEA of Penobscot

Representatives:

CLARK of Millinocket
BUNKER, JR. of Kossuth Township
CLUKEY of Houlton
GOOLEY of Farmington
MCALEVEY of Waterboro
PEAVEY of Woolwich
THOMPSON of Naples
WATERHOUSE of Bridgton
WHEELER of Bridgewater

The Minority of the same Committee on the same subject reported that the same Ought to Pass as Amended by Committee Amendment "A" (H-226).

Signed:

Representative:

JOHNSON of South Portland

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

Which Reports were READ.

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

Divided Report

The Majority of the Committee on HUMAN RESOURCES on Bill "An Act to Limit Copayments for Participants in Medicaid Managed Care Demonstration Projects"

H.P. 233 L.D. 313

Reported that the same Ought to Pass as Amended by Committee Amendment "A" (H-198).

Signed:

Senator:

PINGREE of Knox

Representatives:

FITZPATRICK of Durham
JOHNSON of South Portland
SHIAH of Bowdoinham
ETNIER of Harpswell
MITCHELL of Portland
JONES of Bar Harbor

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

Signed:

Senators:

PENDEXTER of Cumberland
BENOIT of Franklin

Representatives:

JOYNER of Hollis
MARVIN of Cape Elizabeth
WINGLASS of Auburn
LOVETT of Scarborough

Comes from the House with the Majority OUGHT TO PASS AS AMENDED Report READ and ACCEPTED and the Bill PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-198).

Which Reports were READ.

Senator PINGREE of Knox moved that the Senate ACCEPT the Majority OUGHT TO PASS AS AMENDED Report, in concurrence.

THE PRESIDENT: The Chair recognizes the Senator from Knox, Senator Pingree.

Senator PINGREE: Thank you Mr. President. Very briefly, I think that this amendment and bill is a good idea. While I am someone who sees the usefulness in co-payments with Medicaid, what we are doing in this State is applying for a 1915B waiver from the federal government, which will allow us to put many of our Medicaid cases now under managed care. Basically co-payments are there to decrease people's use of medical services. Managed care does that itself. Managed care, as we all know, is a gatekeeper type of system which forces everyone to regulate the amount of use they take of our health care systems. So, I think this is a good idea. The Committee Amendment was something the Department requested as part of its waiver request process. The federal government requires that you do not ask for co-payments in a managed care system. So, basically we are trying to get into compliance with federal law as we go into the waiver process, which I think will be a cost-saver and a health care advancement for the State of Maine. So, I urge you to vote in favor of this bill as it is amended.

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

Senator PENDEXTER: Thank you Mr. President, Men and Women of the Senate. I rise to urge you to vote against the pending motion, so that we may go on to accept the Ought Not to Pass Report. I'll start out by saying that there are various waivers that we can apply for at the federal level with which we can apply managed care to our Medicaid population. To try to keep this as simple as possible, because nothing the feds do is simple, basically we are now in the process, and have pretty much completed and are going to be approved shortly for what we call the 1915B waiver. The 1915B waiver allows us to do managed care for the Medicaid portion that AFDC recipients receive. So, it just basically deals with the AFDC population. For whatever reason that the federal government does what it does, with this particular waiver we are not able to charge co-pays. They prohibit us from doing that. Now, down the road there are some people who have an agenda to seek another waiver which is called an 1115 waiver. This, again, allows us to do managed care for Medicaid population. What an 1115 waiver does is it is more

flexible in what it allows states to do. In this particular waiver process we would be allowed to charge co-pays. So, you are being misled when you are told that we have to become in compliance with the feds, because it all depends on what waiver you are talking about. There are some waivers that would allow us to charge co-pays, and there are some waivers that don't. The particular one, the 1915B one, which we will be processing shortly, does not allow us, because of the feds, to do the co-pays. However, there is nothing down the road that says that we can't do it in some other scenario, like I have described. I think it will be unfortunate for us to put ourselves in a situation where we automatically make an assumption that we just are not going to charge co-pays, because in the scenario of doing the managed care situation, co-pays always should be an option on the table, with which we talk about how we might manage the process. We do not have to do this to be in compliance with the feds. A waiver example is being used as let's go ahead and be in compliance, however, I say to you there are other situations where we don't have to do that. I feel very strongly, no matter what type of population we are dealing with, we all have to start taking some personal responsibility on how we use health care. Whether you are poor or middle-class or rich, I feel it is important that everybody should have to pay a little something for what they are getting in health care. It is all about personal responsibility, and I happen to be a big supporter of that, so, I would ask you to vote against the pending motion so that we may go on to accept the Ought Not to Pass Report. Thank you.

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

Senator **MCCORMICK:** Thank you Mr. President, Men and Women of the Senate. I don't think anybody is misleading anybody. We have two choices for the waivers that we are applying for. The previous administration, Governor McKernan's administration, chose the 1115 waiver, that is the more narrow waiver, that is a waiver that does not allow one to expand coverage and save money and control costs on other populations. Governor King, and Commissioner Concannon, have chosen the 1915B waiver, which allows more flexibility in controlling costs, expanding Medicaid to populations of a little bit above poverty, and thereby controlling their costs. I, for one, think that is very important. It is a question of whether we allow this administration to go forward with their health care policy, and their way of attempting to control costs. I think that the 1915B waiver is definitely the more preferable. It will expand coverage and it will control more costs. That is what it is all about. So, please support the pending motion.

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

Senator **MILLS:** Thank you Mr. President. I have one question for anyone who might care to answer it. I have got the bill in front of me with the Committee Amendment. It looks as though the bill is drawn so that the co-payment would be eliminated only in the event that this particular waiver, that is the 1915B, were applied for and granted, and not otherwise.

That is a question. As I see it, it looks as if the bill is that narrowly crafted, so that if we didn't get the waiver we could still charge co-payments. Am I correct?

THE PRESIDENT: The Senator from Somerset, Senator Mills, has posed a question through the Chair to any Senator who may care to respond. The Chair recognizes the Senator from Cumberland, Senator Pendexter.

Senator **PENDEXTER:** Thank you Mr. President, Men and Women of the Senate. If we pass this bill, we will not be able to charge co-pays on the 1115 waiver. I feel that that ties our hands. I can't justify why we would want to do that.

THE PRESIDENT: The pending question before the Senate is the motion of Senator **PINGREE** of Knox that the Senate **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence.

The Chair ordered a Division.

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

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

16 Senators having voted in the affirmative and 17 Senators having voted in the negative, the motion of Senator **PINGREE** of Knox to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence, **FAILED**.

The Minority **OUGHT NOT TO PASS** Report **ACCEPTED** in **NON-CONCURRENCE**.

Sent down for concurrence.

Divided Report

Eight Members of the Committee on **JUDICIARY** on Bill "An Act to Amend the Laws Governing Wrongful Death Caused by Truck Drivers"

H.P. 292 L.D. 396

Reported in Report "A" that the same **Ought to Pass as Amended by Committee Amendment "A" (H-212)**.

Signed:

Senators:
MILLS of Somerset
FAIRCLOTH of Penobscot

Representatives:
TREAT of Gardiner
JONES of Bar Harbor
LAFOUNTAIN, III of Biddeford
WATSON of Farmingdale
HARTNETT of Freeport
MADORE of Augusta

Three Members of the same Committee on the same subject reported in Report "B" that the same **Ought Not to Pass**.

Signed:

Senator:

PENDEXTER of Cumberland

Representatives:

NASS of Acton

PLOWMAN of Hampden

Two Members of the same Committee on the same subject reported in Report "C" that the same **Ought to Pass as Amended by Committee Amendment "B" (H-213)**.

Signed:

Representatives:

RICHARDSON of Portland

LEMKE of Westbrook

Comes from the House with the **OUGHT TO PASS AS AMENDED** Report "A" **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-212)**.

Which Reports were **READ**.

Senator **MILLS** of Somerset moved that the Senate **ACCEPT** Report "A" - **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-212)**, in concurrence.

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

Senator **MILLS:** Thank you Mr. President, Men and Women of the Senate. I have a file on my desk that is about three and one-half inches thick that the Clerk was kind enough to bring down on this measure. We had one public hearing down in Room 113, and the matter was so contentious that it filled the room, the hallway, and the adjoining room. Many, many people were not able to hear the presentations because it was a matter of such public interest. The bill that was initially presented to us dived into the law of homicide and made a very special manslaughter provision that would apply only to the trucking industry in certain circumstances. It created, as it was drafted and as it was presented to us, it created obviously a lot of resistance from the trucking industry. It created a bit of controversy and one can easily understand why, if you are a member of an industry like that, that you would be concerned and, indeed, disturbed that someone would take our homicide law and try to create a special class of manslaughter that would apply only to one specific industry. As we were working with this bill, and we were working with the various parties and interests, we learned that there is already a Class E violation, that is a misdemeanor crime, for someone, for a truck driver, who violates the trucking regulations that are adopted by the State of Maine. These can be regulations that appear in

federal form, or regulations that are generated by the State Department of Transportation, but in any case regulations that are adopted by this State. Indeed, we have examples before us of truckers who were convicted of a Class E crime under this existing statute in circumstances where the consequences of that violation were very serious, including death. The problem that we found is that the District Attorney who must, in the first instance, make a judgement about charging a truck driver, is given only two tools to work with when there has been a death resulting from a safety violation. He can charge the Class E misdemeanor, which is a relatively minor offense, and if he does so he runs the risk of generating some measure of public outrage if there has been a death or serious injury caused by the violation, or he can go all the way to the top of the criminal scale and charge Class A manslaughter, which is a crime that carries with it a very heavy sanction. We had examples of both that were told to us and that we discovered through our own investigations.

A classic case was one that occurred in northern Maine, where a fellow put too many logs on the top of his truck. He drove under an underpass, several of the logs came off when they struck the underpass, because the truck was loaded too high, in violation of these very regulations. One of the logs came into the car that was immediately behind him and killed a passenger. The District Attorney had the choice of charging a Class E misdemeanor or charging Class A manslaughter. He went to the Grand Jury, the Grand Jury indicted for Class A manslaughter. He took the same case to a jury of twelve people in Penobscot County, all twelve voted to convict, and the man now stands convicted of Class A manslaughter for that offense. Many of us on the Committee felt that there was a need for something in between, for an intermediate charging category, for something that will give the District Attorney a choice of a better range of alternatives for charging in these situations. Also, something that would expose the trucker, perhaps, to somewhat less by way of criminal liability than the all or nothing choices that existing laws give to the District Attorney and to the State. We then went to the traffic offense section of the statutes, and we did something that is very parallel to the OUI law. When you are charged with OUI, your offense is typically a misdemeanor, however, if, while you are operating under the influence, you cause the death or a serious bodily injury of another person on the highway, or someone in your car, then they elevate the crime to a Class C charge, and you are charged accordingly. It becomes a more serious crime because of the consequences flowing from your illegal act.

What we have crafted here is a statute that is very parallel for the trucking situation. It says that if you are in deliberate violation, and it can only be a deliberate or intentional or knowing violation that triggers responsibility under this law, if you are guilty of deliberately violating a safety regulation, and it must also be a safety regulation, not just any old regulation, it has to be a safety regulation of the sort that would predictably, or foreseeably result in harm to someone else. So, it's only a narrow class of regulations that are invoked, or used, by this statute to

generate criminal liability. If you violate the statute, the existing Class E criminal statute, and you do so knowingly, or intentionally, and if that violation results in the death or serious bodily injury to somebody else on the highway, then you may be charged with this intervening Class C standard of criminal liability. It is a more serious crime, but it doesn't go up to Class A or Class B. It also says, and this is an important factor for the Committee, that if the trucker is ordered to violate a safety regulation, that is if the person who supervises the trucker says to him I want you to go out and do something, run over your hours or what have you, and it is known that this is a violation of a recognized safety precaution, and if it is foreseeable that that violation could result in death or serious harm to someone else on the highway, then the supervisor may also be charged. It is not easy to get a conviction under this statute. We have several of what I call verbal filters, so that the DA will have to prove certain elements in each case, and he has to prove them all, but at least it does give him charging authority, or authority to bring an indictment against someone whose intentional conduct in direct violation of a known safety precaution, has resulted in death or serious injury on the highway. This statute fills a serious void in our present scheme, or arrangement, of criminal traffic laws applicable to the trucking industry. It is an important statute. In a certain sense I think it is also important to those who are in the trucking industry, because now when there has been a violation of the sort that I have described, involving the logs for instance, there is a much stronger likelihood that the case will result in a Class C felony, rather than a Class A felony, which, as we all know, is so serious. So, I think that it yields a more appropriate result in these difficult cases. Thank you.

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

Senator PENDEXTER: Thank you Mr. President, Men and Women of the Senate. I rise to oppose the pending motion and I think I do have a reputation of highway safety issues, whether I feel that this particular bill does not address highway safety issues. I was a member that served on the task force that the Governor put together to look at the whole issue of tired truckers. The task force has come out with some recommendations which our Governor will be presenting to the Committee on Transportation. There are seven recommendations from the task force. We looked at various options, we looked at the way this bill was originally presented and we discussed a lot of criminal aspects of this issue, and it pretty much came down to the fact that we felt since existing laws were already in force that that would certainly take care of 90% of the problem. The biggest problem I have with this legislation is that it continues to support what we refer to as 49 code of the federal regulations, part 395, which is basically your log book rules and regs. Those are written by the federal government, enforced by the federal government. We have no control over those rules and regs. This particular legislation builds on those federal rules and regs. I would share with you that they were written in 1935, they are 60 years old. The trucking industry certainly has changed in 60

years. I just don't feel comfortable passing legislation that continues to enforce something that we, in the highway safety arena, all agree are probably outdated. The fact that a trucker is following his log doesn't mean he is a safe driver, and I will give you an example. A trucker can get on the road at six o'clock in the morning, drive until four in the afternoon, needs to be off the road for eight hours, doesn't mean he has to sleep, he just has to be off duty, they can literally get back on the road at midnight to drive. It's those kinds of scenarios that continue to be perpetuated with these outdated federal regulations. I just have a problem creating further penalties that substantiate these rules and regs. The particular incident that brought this legislation to us, which was the Wal-Mart driver incident, I would share with you that that driver was still legal. He intended to violate his log, but at the time of his accident had not violated his log. So, I would share with you, here is an example of a trucker, a very unfortunate incident, but he was legal, and this bill wouldn't even affect that scenario which is why we are having this discussion in the first place. The federal government is conducting, there are at least two or three studies going on even as we speak, relative to not just log books but sleeping disorders, apnea, what is it that makes tired truckers tired? We need to look at the broader picture of this whole sleep disorder issue, and not just focus on hours of service on and off the road. So, I do oppose this legislation, basically because I feel if we pass it it doesn't necessarily guarantee, anymore than it does today, that we are going to have safer truckers on the road. I would say that the way to address this issue is to give our government, the State Police, the resources with which to enforce our existing laws, and then we will be making an effect on highway safety. Thank you.

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

Senator FAIRCLOTH: Thank you Mr. President, Colleagues of the Senate. I just want to emphasize that under current law there is available the possibility of prosecution for a Class A felony, for manslaughter, in certain situations. The original bill would have expanded that to a special category that would apply to the trucking industry. I had concerns about that, as many people did. This report is a very moderate change, and alteration, to provide what I think is a much more moderate piece of legislation. As to the concerns expressed by the good Senator from Cumberland, Senator Pendexter, I would just note that the report before us would not allow for the use of criminal prosecution of some arcane federal regulation that doesn't relate to safety. The specifics of this proposal would say that the violation would have to have, in fact, caused the death or serious bodily injury, and that it was reasonably foreseeable that the death or injury would be a consequence of the violation. So, we are talking about a very moderate proposal, which, as the good Senator from Somerset, Senator Mills, has pointed out, in fact, may provide a more reasonable application of the criminal statutes to the trucking industry than is currently the case. It is really an intermediary measure, a good compromise, the Committee met, I think, more times on this piece of legislation than on any other piece of legislation

thus far this session. We worked long and hard on it. I would not support it if I did not think it was a conservatively crafted piece of legislation, and I think that is exactly what we have. That's why I will support it. Thank you.

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

Senator **CLEVELAND:** Thank you Mr. President, Men and Women of the Senate. I rise to support the motion on the floor, and I do so because I think there is a critical piece, within this legislation, that is important. Let me read the sentence from the Statement of Fact, which I understand fully, is the intent and the outcome of the law, as written. That sentence says, "The provisions of this law applies to truck operators, supervisors, and truck companies who violate the rules, or who knowingly permit the violation of the rules." I think what is also important is that under current law there is very little recourse to provide incentives for the operators of companies, who knowingly allow their drivers to drive beyond safety regulations. A number of members of my family make a living, or have made a living, in a trucking industry. They have reported to me that on many occasions they have been ordered by their employer to drive way beyond what was reasonable, because a shipment was in the yard that had to be delivered and an employee didn't come in, or another truck was broke down on the road, or the truck driver who was supposed to drive didn't show up. They are required to take that load out and run another load. In some instances where they have been required to drive for 36 hours straight, at the request and direction of their employer. Anyone recognizes that that is irresponsible. Unfortunately, it puts the employee in an untenable position, because they are trying to support their family. They fully realize, should they refuse to take that run which they have just been told they must take, they are going to lose their job and they are not going to be able to support their family, pay the grocery bill, or pay the mortgage. So, they proceed to go ahead and do it. A number of truckers have called me and everyone of them has also expressed to me that their employers have required that they violate the law as part of their employment. We need a measure that is in between a Class A crime and a misdemeanor, to make the statement that this is important, and this is serious, and people must be held accountable. An 80,000 pound rig on the road, driven by someone who is exhausted, and doing so simply because they are trying to support their family, puts all of our families, all of the families of the people of this State, and beyond our borders, at risk. There is no need for that kind of action. The industry must clearly understand they have a responsibility to supervise their employees in a way that ensures that the safety regulations established are met, and that it is not simply a cost of business to pay a fine because it is a Class E misdemeanor. That is no longer acceptable. Rather, we must abide by the laws to protect the health and safety of our families. This provision is reasonable, it's accountable, it's only enforceable if they can provide the evidence in a court of law to show that they have violated the law, and they have been proven in a court of law to do so, and the individuals will be held accountable.

I suggest to you that there are those companies who are willing to pay fines for misdemeanors, for it's a cost of doing business. I suggest to you there are far fewer that will be willing to do so, or not accept their responsibility in supervising employees, if they were given a vacation in one of the State's motels, in Thomaston or other places of incarceration, for knowingly putting the public at risk and resulting in a death or serious bodily injury. I hope you will support the motion on the floor.

THE PRESIDENT: The pending question before the Senate is the motion by Senator **MILLS** of Somerset that the Senate **ACCEPT** Report "A" - **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-212)**, in concurrence.

The Chair ordered a Division.

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

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

24 Senators having voted in the affirmative and 8 Senators having voted in the negative, the motion by Senator **MILLS** of Somerset, to **ACCEPT** Report "A" - **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-212)**, in concurrence, **PREVAILED**.

THE BILL READ ONCE.

Committee Amendment "A" (H-212) **READ** and **ADOPTED**, in concurrence.

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

Off Record Remarks

Senate at Ease

Senate called to order by the President.

On motion by Senator **LAWRENCE** of York, **RECESSED** until 4:30 o'clock in the afternoon.

After Recess

Senate called to order by the President.

Off Record Remarks

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

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

PAPERS FROM THE HOUSE

Joint Order

The following Joint Order: H.P. 1088

ORDERED, the Senate concurring, that the Joint Standing Committee on Appropriations and Financial Affairs report out a bill related to "community corrections," as defined in the Maine Revised Statutes, Title 34-A, section 1210, to the House.

Comes from the House **READ** and **PASSED**.

Which was **READ** and **PASSED**, in concurrence.

(See Action Later Today)

COMMUNICATIONS

The Following Communication: S.C. 173

**STATE OF MAINE
HOUSE OF REPRESENTATIVES
AUGUSTA 04333-0002**

May 16, 1995

Honorable May M. Ross
Secretary of the Senate
117th Legislature
Augusta, Maine 04333

Dear Madam Secretary:

The Speaker appointed the following conferees to the Committee of Conference on the disagreeing action of the two branches of the Legislature on Bill "An Act to Increase the Tax Exemption on Church Properties" (H.P. 284) (L.D. 388):

Representative TUTTLE of Sanford
Representative TRIPP of Topsham
Representative MURPHY of Berwick

Sincerely,

S/Joseph W. Mayo
Clerk of the House

ORDERS

Joint Order

On motion by Senator **AMERO** of Cumberland, the following Joint Order:

S.P. 565

ORDERED, the House concurring, that the Joint Standing Committee on State and Local Government report out legislation concerning procedures for municipal secession to the Senate.

Which was **READ** and **PASSED**.

Sent down for concurrence.

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

COMMITTEE REPORTS

House

Ought to Pass

The Committee on **HUMAN RESOURCES** on Bill "An Act to Amend the Adult Protective Services Act to Allow Referrals of Cases of Abuse, Neglect and Exploitation to Law Enforcement Agencies"

H.P. 710 L.D. 967

Reported that the same **Ought to Pass**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED**.

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

The Bill **READ ONCE**.

The Bill **TOMORROW ASSIGNED FOR SECOND READING**.

The Committee on **STATE AND LOCAL GOVERNMENT** on Bill "An Act to Establish Minimum Qualifications for the Office of Sheriff"

H.P. 790 L.D. 1107

Reported that the same **Ought to Pass**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED**.

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

The Bill **READ ONCE**.

The Bill **TOMORROW ASSIGNED FOR SECOND READING**.

Ought to Pass As Amended

The Committee on **BANKING AND INSURANCE** on Bill "An Act to Require Prior Notice of Cancellation of Group Health Insurance Policies" (Emergency)
H.P. 765 L.D. 1039

Reported that the same **Ought to Pass as Amended** by **Committee Amendment "A" (H-231)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-231)**.

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

The Bill **READ ONCE**.

Committee Amendment "A" (H-231) **READ** and **ADOPTED**, in concurrence.

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

The Committee on **BUSINESS AND ECONOMIC DEVELOPMENT** on Bill "An Act to Ensure Disclosures under the Used Car Information Laws"
H.P. 859 L.D. 1190

Reported that the same **Ought to Pass as Amended** by **Committee Amendment "A" (H-236)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-236)**.

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

The Bill **READ ONCE**.

Committee Amendment "A" (H-236) **READ** and **ADOPTED**, in concurrence.

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

The Committee on **CRIMINAL JUSTICE** on Bill "An Act to Amend the Laws Specifying the Place of Imprisonment"

H.P. 602 L.D. 812

Reported that the same **Ought to Pass as Amended** by **Committee Amendment "A" (H-233)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-233)**.

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

The Bill **READ ONCE**.

Committee Amendment "A" (H-233) **READ** and **ADOPTED**, in concurrence.

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

The Committee on **NATURAL RESOURCES** on Bill "An Act to Amend Certain Laws Pertaining to the Department of Environmental Protection, Bureau of Hazardous Materials and Solid Waste Control" (Emergency)

H.P. 614 L.D. 824

Reported that the same **Ought to Pass as Amended** by **Committee Amendment "A" (H-227)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-227)**.

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

The Bill **READ ONCE**.

Committee Amendment "A" (H-227) **READ** and **ADOPTED**, in concurrence.

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

The Majority of the Committee on STATE AND LOCAL GOVERNMENT on Bill "An Act to Make Any Recorded Tapes of Legislative Sessions or Legislative Hearings Public Information"

H.P. 967 L.D. 1376

The Committee on NATURAL RESOURCES on Bill "An Act to Amend the Toxics in Packaging Law" H.P. 766 L.D. 1040

Reported that the same Ought Not to Pass.

Signed:

Senators:
AMERO of Cumberland
CARPENTER of York
LONGLEY of Waldo

Reported that the same Ought to Pass as Amended by Committee Amendment "A" (H-234).

Representatives:
DAGGETT of Augusta
ROSEBUSH of East Millinocket
ROBICHAUD of Caribou
SAVAGE of Union
YACKOBITZ of Hermon
AHEARNE of Madawaska
SAXL of Bangor
LANE of Enfield

Comes from the House with the Report READ and ACCEPTED and the Bill PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-234).

Which Report was READ and ACCEPTED, in concurrence.

The Bill READ ONCE.

The Minority of the same Committee on the same subject reported that the same Ought to Pass as Amended by Committee Amendment "A" (H-230).

Signed:

Representative:
GERRY of Auburn

Committee Amendment "A" (H-234) READ and ADOPTED, in concurrence.

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

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

Which Reports were READ.

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

The Committee on UTILITIES AND ENERGY on Bill "An Act to Require Uniform Public Access and Tax Status for Water Districts" H.P. 311 L.D. 415

Reported that the same Ought to Pass as Amended by Committee Amendment "A" (H-228).

Comes from the House with the Report READ and ACCEPTED and the Bill PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-228).

Which Report was READ and ACCEPTED, in concurrence.

The Bill READ ONCE.

Committee Amendment "A" (H-228) READ and ADOPTED, in concurrence.

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

On motion by Senator BUSTIN of Kennebec, the Senate RECONSIDERED its action of earlier in the day whereby it PASSED the Joint Order in reference to ordering the Joint Standing Committee on Appropriations and Financial Affairs to report out a bill related to "community corrections," as defined in the Maine Revised Statutes, Title 34-A, section 1210, to the House. (H.P. 1088)

On further motion by same Senator, Tabled until Later in Today's Session, pending PASSAGE.

Divided Report

Divided Report

The Majority of the Committee on JUDICIARY on Bill "An Act to Ensure Children's Rights Concerning Visitation and Access"

H.P. 341 L.D. 461

Reported that the same **Ought to Pass as Amended** by **Committee Amendment "A" (H-211)**.

Signed:

Senator:
PENDEXTER of Cumberland

Representatives:
TREAT of Gardiner
JONES of Bar Harbor
WATSON of Farmingdale
HARTNETT of Freeport
MADORE of Augusta
NASS of Acton
RICHARDSON of Portland
LAFOUNTAIN, III of Biddeford
PLOWMAN of Hampden
LEMKE of Westbrook

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

Signed:

Senators:
MILLS of Somerset
FAIRCLOTH of Penobscot

Comes from the House with the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-211)**.

Which Reports were **READ**.

On motion by Senator **PENDEXTER** of Cumberland, the Senate **ACCEPTED** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence.

The **BILL READ ONCE**.

Committee Amendment "A" (H-211) **READ** and **ADOPTED**, in concurrence.

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

Divided Report

The Majority of the Committee on **JUDICIARY** on Bill "An Act Concerning Grandparents' Rights of Visitation and Custody"

H.P. 364 L.D. 484

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

Signed:

Senators:
MILLS of Somerset
FAIRCLOTH of Penobscot

Representatives:
TREAT of Gardiner
JONES of Bar Harbor
LAFOUNTAIN, III of Biddeford
WATSON of Farmingdale
HARTNETT of Freeport
MADORE of Augusta
NASS of Acton

The Minority of the same Committee on the same subject reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-210)**.

Signed:

Senator:
PENDEXTER of Cumberland

Representatives:
LEMKE of Westbrook
RICHARDSON of Portland
PLOWMAN of Hampden

Comes from the House with the Minority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-210)**.

Which Reports were **READ**.

Senator **MILLS** of Somerset moved that the Senate **ACCEPT** the Majority **OUGHT NOT TO PASS** Report in **NON-CONCURRENCE**.

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

Senator **MILLS:** Just briefly. This is a difficult bill to understand because it is so narrow. It has been interpreted by many people as a bill for or against grandparents, and it's really nothing of the kind. One of the actions that we did earlier this session was to extend the experimental law that we had placed on the books to grant grandparents rights to intervene in court, to enforce rights of visitation in regard to their grandchildren in certain circumstances, so that is a right that we have generally validated in this session. This bill deals with the peculiar situation where you have grandparents whose own children are involved in a DHS protective custody situation, and where the grandchildren themselves are being taken from their own parents for cause. At present grandparents may continue, as a matter of right, to visit with their grandchildren, and be visited by them. If they need court enforcement they can go to court and get the right to visit with them, and that continues up until the time when the court may make a finding that the parents of the kids are unfit, and that there is no hope of rehabilitating the family, and parental rights are terminated. As many of you know, that takes quite a bit of time. It's a lengthy process. The Department of Human Services, in exploring the

options that it has in regard to the children, looks as a matter of first or second resort to the other members of the family, including the grandparents as possible custodians for these children. At present, when the curtain comes down and the court adjudicates the parents as being unfit and unrehabilitatable, and the children are taken away from their parents and put into foster care, and the Department of Human Services becomes the legal custodian, or legal guardian, of the children, and the process then begins to focus on adoption, at that juncture in our current law the grandparents, who may or may not have been involved up to this point in time, lose the right to go into court and insist on further and continuing visitation rights. This bill would withdraw that and say that they have the right to go into court thereafter, and continue to make contact with the kids, even while they are in foster care and looking for adoptive parents. It's a bill that has some surface appeal. Many of us on the Committee were concerned, however, that if the grandparents, for whatever reason, had chosen not to become custodians themselves, if the grandparents had not come forward during the phase when the DHS was studying the family, then one might have reason to suspect the motivations of grandparents that would come forward afterwards. Our concern was that it would keep controversy about the custody of the children alive, and keep them in litigation, at a time when the goal should be shifted toward placement of the children into more permanent circumstances. It is an awkward situation. We were concerned that perhaps the grandparents, in some cases, might be motivated to act on behalf of their children who have lost custody of their own children. We also reflected that the grandparents, themselves, are not necessarily excluded from the children's lives, that is the foster parents, the Department of Human Services, may, if they wish, continue, voluntarily, to allow the children to associate freely with the grandparents, if it seems to be in the best interest of those grandchildren. There is nothing that prevents that relationship from continuing. What gets cut off is the grandparents right of access to the court system to bring a piece of litigation to enforce rights. Very, very few people in our society have the right to intervene and bring a court action for visitation. We don't let aunts and uncles do it. We don't let brothers and sisters do it. We don't let close family friends do it. Up until recently, we never let grandparents do it. It's a rather new thing to begin with.

Anyway, the bill is a fairly narrow one. It has pros and cons to it. Our sense, most of us on the Committee, or a majority on the Committee felt that it was doing perhaps more harm than good for the young children to allow litigation to continue, and that is exactly what the bill would allow, it would allow litigation over the issue of access between the grandparents and the children. We thought it might possibly be detrimental under the circumstances that are defined in this bill. Thank you.

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

Senator **FAIRCLOTH:** Thank you Mr. President, Colleagues of the Senate. I want to preface my remarks by noting that I was the sponsor of the

legislation, the so-called grandparents rights legislation, which removed the sunset on the law which allow grandparents to intervene in general cases to participate in issue of visitation with their grandchildren. So, I strongly favor that policy, I think it is a good thing. But what we are talking about here that is of concern, has to do with the issue of termination of parental rights, and it is a very serious issue. To me there is probably no more sad proceedings in any court of law than terminating a parents rights to their child. It's not something that is done lightly, so I just want to go through the process. I had the honor to serve as an Assistant Attorney General for a little while in this capacity, handling child protective cases, and, frankly, if this legislation passes I am gravely concerned that children would be harmed by it. In child protective cases, for the Department to bring an action for child protection at all, not so far as termination of parental rights but merely to bring a child protective action, there must be physical abuse, or sexual abuse, or neglect of some type. When I say neglect I'm not talking about forgetting to take somebody to the movies, we're talking about serious issues of chronic neglect. During that process, under current law, grandparents are free, and often do, seek to participate as custodians of the children, and, if it rises to that severe situation of termination of parental rights, they are also free to say we, or I, would like to be the custodial parent after a termination of parental rights. These processes, I should note, last usually quite some time. The Department, by law, must seek to reunify the child with their parent, that is a statutory mandated goal. Their job is not to take the kid away, their job is to deal with an issue, hopefully resolve it, and return the child to the parents. So, it is a long and unfortunate set of circumstances that leads to the final decision of saying reunification won't work and we are going to terminate parental rights. They must do so by a very tough standard. We are all familiar with the term "beyond a reasonable doubt", which a law professor once described to me as being like 98% certain. The standard for termination of parental rights is probably the next toughest standard, about 75% or 80% certain, and it is very difficult, some would say it's even tougher than 75% or 80% certain because judges are so wary to take away a child. So, this is a long and difficult process. If, during the course of that, you allow for the grandparents, who all along can petition to participate, to litigate about the termination, to participate after the termination of parental rights, I think you will see even more delays with regard to these children than you see now. I can tell you, from my own experience, and from the testimony of the Attorney General's office, and the Department of Human Services, and probably from many of your experiences, that children who are subject to termination of parental rights, who are subject to this abuse, often have a terrible time getting adopted at all, which is the ultimate goal for children in that situation. I believe, and I am very concerned, that what would happen here is that the kids, the children, would be even more delayed in getting closure of their situation and moving on to another adoption, and that would be harmful to them. From the Attorney General's testimony they talked about how the child would have trouble closing in such a situation, and would create a huge conflict

within the child. The point of the TPR is when they make that unfortunate decision to make a change and move on in the child's life, and this would prevent that. I think it would also create a chilling effect for potentially adoptive parents because they would find that here is the biological family still involved in this after the TPR, and they are going to question how they are going to deal with that situation as potentially adoptive parents. I also am very concerned about the potential for abuse of this situation, when parents who are physically or sexually abusing, who are found by clear and convincing evidence to have physically or sexually abused their child, or neglected their child, can use the grandparents as a conduit to get at that child again after the TPR. I think that is a potential for very significant danger to the child. I respect those on the other side of this issue, I know they express a legitimate concern, but I think this is the wrong way to do it and I am very concerned that if this were to pass children would be hurt, so I join in the motion of the good Senator from Somerset, Senator Mills, on the Ought Not to Pass Report. Thank you.

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

Senator PENDEXTER: Thank you Mr. President, Men and Women of the Senate. I disagree strongly with my two colleagues on the Judiciary Committee. I'll give you the non-legal perspective on this. Very simply, under current law when parental rights are terminated, grandparents are no longer grandparents. If a judge feels that it is in the best interest of the child, he cannot grant visitation rights to a grandparent who has an existing relationship with that child. I disagree that this would be used as a devious scenario with parents because the judge is the one who makes the decision. If he, or she, truly feels that there is a justifiable and a good relationship with the grandparents, in the judge's opinion, I just have confidence that the judge will be able to figure it out whether this is going to be used as a devious scenario with the parents. The judge will make that decision and the judge is ruling in the best interest of the child. We are dealing strictly with children who are in DHS custody. Yes, the scenario is now that they are going to be adopted, but they very often languish in foster homes for years, and years, and years. You could have the best grandmother in the world before you and the judge could not say or grant that grandmother visitation rights. I think that's wrong. I think if the grandchild has a really good relationship, it is to the best interest of that child to be able to continue some kind of a connection with an adult that they have a positive relationship with. I don't understand what the big concern is. When that adoption does happen then the new parents will decide what the visitation will be, but you need to remember that we often have DHS cases that don't get adopted right away. Wouldn't it be nice for that grandchild to be able to visit with the grandmother or the grandfather. The judge makes the decision so I feel very confident that this will not be used as a devious tool with the existing parent and I ask you to vote against the pending motion in the interest of kids, because this is what this is all about. Thank you.

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

Senator CAREY: Thank you Mr. President, Members of the Senate. I do have a question that I would like to ask. If, in fact, in one of these cases there is a little six-year old boy and a five-year old girl who are brother and sister, and they get put into DHS's hands, I would assume it is up to DHS to either keep them together or send one to a foster home in Presque Isle and the other to one in Scarborough or something. Is my understanding correct on that?

THE PRESIDENT: The Senator from Kennebec, Senator Carey, has posed a question through the Chair to any Senator who may care to respond. The Chair recognizes the Senator from Cumberland, Senator Pendexter.

Senator PENDEXTER: This is not really the issue in the bill. DHS will always try to keep siblings together to the best of their ability. What this would address with those scenarios would be that if there was an appropriate grandparent figure who would, in the best interest of the child, provide a positive interest, or a positive scenario in that kid's life, that the judge could grant visitation rights to those grandparents. That's the issue. Thank you.

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

Senator BUSTIN: Thank you Mr. President. I would like to pose a question through the Chair. I notice that the bill, L.D. 484, really refers to grandparents being able to get parental rights and responsibilities, but that the amendment wipes out everything after the enacting clause and then just puts in the right to have visitation rights before adoption, and then that all terminates after adoption. So, my question is, what happened? What slipped betwixt the cup and lip?

THE PRESIDENT: The Senator from Kennebec, Senator Bustin, has posed a question through the Chair to any Senator who may care to respond. The Chair recognizes the Senator from Somerset, Senator Mills.

Senator MILLS: Mr. President, Men and Women of the Senate. We are a long way down the stream from the original bill. I would be happy to review it with you elsewhere, but as I recall the original bill had to do with granting the grandparents rights in a wide variety of situations. As I remember we came down to this one particular area where we achieved some division. I think everyone was unanimous in rejecting the other portions of the bill, and I am happy to stand corrected by anyone else who attended the Committee sessions, but my memory is that this is the only portion of the existing bill that people had an interest in pursuing to the floor.

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

Senator BUSTIN: I would like to pose another

question. If, in fact, they have rejected the original bill, which is really the rights of grandparents to have parental responsibilities and rights, am I to assume that there is nothing in law that allows grandparents to either become adoptive parents or to gain those parental rights and responsibilities?

THE PRESIDENT: The Senator from Kennebec, Senator Bustin, has posed a question through the Chair to any Senator who may care to respond. The Chair recognizes the Senator from Cumberland, Senator Pendexter.

Senator **PENDEXTER:** Thank you Mr. President. This particular bill just deals with visitation rights of grandparents, however, they also have the option to become foster parents if they so choose. That's in existing law.

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

Senator **MILLS:** Mr. President, Men and Women of the Senate. I think I have the answer. The language that was the substance of the bill that was repeated over, and over, and over again was that the court may award parental rights and responsibilities to a grandparent or grandparents upon a finding and so on. That is existing law. When the parents themselves lose the right to be parents, both the DHS and the court system, look to close relatives, and most commonly to grandparents as the next best source for parental care. My memory of the bill put forward some language that did nothing, it simply iterated, or set forth, things that were already in the law. We didn't need to act on it, it wasn't necessary. The only part of the bill that did anything new was the part that has been laid before this body this afternoon.

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

Senator **FAIRCLOTH:** Thank you Mr. President. Just to answer the good Senator from Kennebec's question from another angle, I don't know if it will fully answer the question. But, if the question is can grandparents seek to adopt a child, the answer, I believe, is yes, and seek to have visitation. Again, I just want to emphasize that a child protection case is a long process, sometimes encompassing years, often much longer than it should be for the best interest of the child. My concern is, of course, that this will make it even longer and adverse to the best interest of the child. During all those months, and often years, the grandparent, throughout, is free to come in and say, "I can take care of this child. I can visit with this child. I can become the custodial person to deal with this child, and potentially become the adoptive parent of this child if a termination of parental rights occurs." So, all those options are out there. All we are asking is that after the termination of parental rights occurs, is there visitation with someone who did not achieve that status as the adoptive parent. That's where I think the potential harm comes in for the child psychologically, not to mention the tremendous delay. Thank you.

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

Senator **BUSTIN:** Thank you Mr. President. Thank you for answering all of those questions. I'm not sure that I have all of the fine tuning of the legal system within this brain of mine, and I appreciate those who do have the ability to draw those fine lines, unfortunately I happen to be on the firing line of grandparents and parents who have come to me, in child abuse and child custody cases, that really would rend your heart, and I'm sure everyone in this chamber has probably heard one of them or another, but it seems to be this particular issue that is brought to me more often than not. I really would prefer not to vote on either of these positions and have the bill come before me so I could vote on the bill itself, because that sounds pretty sound to me. The reason that I say that is I'm a grandmother, I'm a grandmother of eleven and a half children, no, eleven and three-quarters I guess it is now. Are you telling me I'm going to be denied rights to visitation if any of those parents get into some kind of trouble with law, or with the Department of Human Services? Even if adopted, I don't have any right to see my blood? That's what this is really about. I know that gets somewhat emotional, but until you can address my problem as a grandmother, I don't think you have addressed it and, frankly, I'm in a dilemma as to what to vote here. I just wanted to share that with you.

THE PRESIDENT: The Chair recognizes the Senator from Franklin, Senator Benoit.

Senator **BENOIT:** Thank you Mr. President. May it please the Senate. Getting emotional about being a grandparent, and grandchildren, doesn't make you a bad person at all. The day that you find me voting against grandparents is the day that I will probably be in a different body than this one. Thank you.

THE PRESIDENT: The pending question before the Senate is the motion of Senator **MILLS** of Somerset that the Senate **ACCEPT** the Majority **OUGHT NOT TO PASS** Report in **NON-CONCURRENCE**.

The Chair ordered a Division.

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

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

7 Senators having voted in the affirmative and 23 Senators having voted in the negative, the motion of Senator **MILLS** of Somerset to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report in **NON-CONCURRENCE**, **FAILED**.

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

The **BILL READ ONCE**.

Committee Amendment "A" (H-210) **READ** and **ADOPTED**, in concurrence.

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

Divided Report

The Majority of the Committee on **LABOR** on Bill "An Act Concerning Sick Leave and Vacation Benefits" H.P. 388 L.D. 523

Reported that the same **Ought to Pass as Amended** by **Committee Amendment "A" (H-140)**.

Signed:

Senators:

BEGLEY of Lincoln
MILLS of Somerset
RAND of Cumberland

Representatives:

HATCH of Skowhegan
CHASE of China
JOY of Crystal
LEMAIRE of Lewiston
PENDLETON, JR. of Scarborough
SAMSON of Jay
STEDMAN of Hartland
TUTTLE, JR. of Sanford

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

Signed:

Representatives:

JOYCE of Biddeford
WINSOR of Norway

Comes from the House with the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-140)**.

Which Reports were **READ**.

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

The **BILL READ ONCE**.

Committee Amendment "A" (H-140) **READ** and **ADOPTED**, in concurrence.

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

Divided Report

The Majority of the Committee on **LEGAL AND VETERANS AFFAIRS** on Bill "An Act to Allow Election Officials to Request Identification from Prospective Voters"

H.P. 251 L.D. 353

Reported that the same **Ought to Pass as Amended** by **Committee Amendment "A" (H-43)**.

Signed:

Senators:

FERGUSON, JR. of Oxford
STEVENS, JR. of Androscoggin

Representatives:

NADEAU of Saco
LABRECQUE of Gorham
GAMACHE of Lewiston
FISHER of Brewer
CHIZMAR of Lisbon
TRUE of Fryeburg
LEMONT of Kittery
BUCK of Yarmouth
MURPHY of Berwick

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

Signed:

Senator:

MICHAUD of Penobscot

Comes from the House with the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-43)**.

Which Reports were **READ**.

Senator **FERGUSON** of Oxford moved that the Senate **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence.

The same Senator requested a Division.

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

Senator **LAWRENCE:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I guess someone once said, "We're having deja vu all over again." If you recall, this is the bill we had a lengthy debate on. This is the bill that would require people to, if challenged, have some form of I.D. when they go in to vote, otherwise their vote is a challenged vote and set off to the side. It was sent back to the Legal Affairs Committee, and my understanding is they stuck to their position that they wanted to pass this bill. I appreciate consistency, but I would strongly urge voting against the Majority report, and voting **Ought Not to Pass**, and killing this bill. Thank you.

THE PRESIDENT: The pending question before the Senate is the motion of Senator **FERGUSON** of Oxford that the Senate **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence.

A Division has been requested.

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

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

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

Senator **KIEFFER:** Thank you Mr. President. I move this be tabled 1 Legislative Day.

THE PRESIDENT: The Chair would rule that that motion is out of order.

15 Senators having voted in the affirmative and 16 Senators having voted in the negative, the motion of Senator **FERGUSON** of Oxford to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence, **FAILED**.

The Minority **OUGHT NOT TO PASS** Report **ACCEPTED** in **NON-CONCURRENCE**.

Sent down for concurrence.

Divided Report

The Majority of the Committee on **STATE AND LOCAL GOVERNMENT** on **RESOLUTION**, Proposing an Amendment to the Constitution of Maine to Create the Office of Lieutenant Governor

H.P. 82 L.D. 118

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

Signed:

Senators:

AMERO of Cumberland
CARPENTER of York
LONGLEY of Waldo

Representatives:

DAGGETT of Augusta
LANE of Enfield
SAVAGE of Union
YACKOBITZ of Hermon
ROBICHAUD of Caribou
SAXL of Bangor

The Minority of the same Committee on the same subject reported that the same **Ought to Pass** as **Amended by Committee Amendment "A"** (H-202).

Signed:

Representatives:

AHEARNE of Madawaska
LEMKE of Westbrook
GERRY of Auburn
ROSEBUSH of East Millinocket

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

Which Reports were **READ**.

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

Divided Report

The Majority of the Committee on **STATE AND LOCAL GOVERNMENT** on Bill "An Act Concerning Municipal Rent Control"

H.P. 474 L.D. 655

Reported that the same **Ought to Pass** as **Amended by Committee Amendment "A"** (H-200).

Signed:

Senators:

AMERO of Cumberland
CARPENTER of York

Representatives:

DAGGETT of Augusta
ROSEBUSH of East Millinocket
ROBICHAUD of Caribou
LANE of Enfield
SAVAGE of Union
YACKOBITZ of Hermon
AHEARNE of Madawaska

The Minority of the same Committee on the same subject reported that the same **Ought to Pass** as **Amended by Committee Amendment "B"** (H-201).

Signed:

Senator:

LONGLEY of Waldo

Representative:

GERRY of Auburn

Comes from the House with the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A"** (H-200).

Which Reports were **READ**.

On motion by Senator **AMERO** of Cumberland, the Senate **ACCEPTED** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A"** (H-200) Report, in concurrence.

The **BILL READ ONCE**.

Committee Amendment "A" (H-200) READ and ADOPTED, in concurrence.

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

The Bill READ ONCE.

The Bill TOMORROW ASSIGNED FOR SECOND READING.

**Senate
Change of Reference**

Senator BENOIT for the Committee on CRIMINAL JUSTICE on Bill "An Act to Increase the Penalties for Certain Crimes Involving Alcohol and Illegal Drugs" S.P. 323 L.D. 904

Reported that the same be REFERRED to the Committee on INLAND FISHERIES AND WILDLIFE.

Which Report was READ and ACCEPTED.

The Bill REFERRED to the Committee on INLAND FISHERIES AND WILDLIFE.

Sent down for concurrence.

Ought to Pass

Senator GOLDTHWAIT for the Committee on BUSINESS AND ECONOMIC DEVELOPMENT on Bill "An Act Concerning Placement of Modular Homes" S.P. 109 L.D. 285

Reported that the same Ought to Pass.

Which Report was READ and ACCEPTED.

The Bill READ ONCE.

The Bill TOMORROW ASSIGNED FOR SECOND READING.

Ought to Pass As Amended

Senator FERGUSON, JR. for the Committee on LEGAL AND VETERANS AFFAIRS on Bill "An Act to Amend Certain Provisions of the Law Relating to Defense" S.P. 384 L.D. 1061

Reported that the same Ought to Pass as Amended by Committee Amendment "A" (S-144).

Which Report was READ and ACCEPTED.

The Bill READ ONCE.

Committee Amendment "A" (S-144) READ and ADOPTED.

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

Senator PINGREE for the Committee on MARINE RESOURCES on Bill "An Act Concerning the Sale of Double Gauge Lobster Measures" S.P. 429 L.D. 1197

Reported that the same Ought to Pass as Amended by Committee Amendment "A" (S-143).

Which Report was READ and ACCEPTED.

The Bill READ ONCE.

Committee Amendment "A" (S-143) READ and ADOPTED.

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

Divided Report

Senator MICHAUD for the Committee on LEGAL AND VETERANS AFFAIRS on Bill "An Act to Allow Candidates to Donate Surplus Campaign Funds to Charitable and Educational Institutions" S.P. 340 L.D. 945

Reported that the same Ought to Pass.

Which Report was READ and ACCEPTED.

The Majority of the Committee on UTILITIES AND ENERGY on Bill "An Act to Facilitate Charging Electric Utility Customers Based on Actual Usage" S.P. 31 L.D. 61

Reported that the same Ought Not to Pass.

Signed:

Senators:

CARPENTER of York
HARRIMAN of Cumberland
CLEVELAND of Androscoggin

House As Amended

Representatives:

KONTOS of Windham
TAYLOR of Cumberland
O'NEAL of Limestone
POULIN of Oakland
STONE of Bangor
HEESCHEN of Wilton
POIRIER of Saco

Bill "An Act Regarding School Employees Serving on School Boards"

H.P. 14 L.D. 8
(C "A" H-218)

Resolve, to Require the Department of Agriculture, Food and Rural Resources to Establish a Revolving Loan Fund to Increase Agricultural Growth in the State

H.P. 653 L.D. 876
(C "A" H-225)

Bill "An Act to Amend the Law to Provide for the Notification of Immediate Family Members of Homicide Victims"

H.P. 732 L.D. 1006
(C "A" H-222)

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

The Minority of the same Committee on the same subject reported that the same Ought to Pass as Amended by Committee Amendment "A" (S-142).

Signed:

Representatives:

ADAMS of Portland
GIERINGER, JR. of Portland
LUTHER of Mexico

Which Reports were READ.

The Majority OUGHT NOT TO PASS Report ACCEPTED.

Sent down for concurrence.

Senate

SECOND READERS

Bill "An Act to Amend the Charter of the Somerset Woods Trustees to Eliminate the Cap on the Value of Holdings"

S.P. 352 L.D. 980

Which was READ A SECOND TIME and PASSED TO BE ENGROSSED.

Sent down for concurrence.

Bill "An Act to Amend Laws Regarding False Claims for Payment or Approval by the Department of Human Services"

S.P. 462 L.D. 1258

Which was READ A SECOND TIME.

On motion by Senator PENDEXTER of Cumberland, Senate Amendment "A" (S-147) READ and ADOPTED.

Which was PASSED TO BE ENGROSSED, As Amended.

Sent down for concurrence.

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

House

Bill "An Act to Expand the Membership of the Loring Development Authority of Maine"

H.P. 162 L.D. 210

Bill "An Act to Allocate the State Ceiling Governing the Issue of Private Activity Bonds" (Emergency)

H.P. 856 L.D. 1187

Bill "An Act to Amend the Income Eligibility Criteria of the Small Community Wastewater Program"

H.P. 915 L.D. 1291

Bill "An Act to Clarify the Supervision of Juveniles Under Observation"

H.P. 924 L.D. 1305

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

Senate As Amended

Bill "An Act Preventing the Increase of Any Processing or Permitting Fees in the Department of Environmental Protection" (Emergency)

S.P. 113 L.D. 288
(C "A" S-134)

Bill "An Act to Change the Restricted Area around Aquaculture Pens from 500 to 300 Feet"

S.P. 268 L.D. 719
(C "A" S-139)

Bill "An Act to Further Restrict the Illegal Harvest of Cultivated Oysters" (Emergency)

S.P. 363 L.D. 989
(C "A" S-138)

Bill "An Act to Repeal the Salmon Aquaculture Monitoring and Research Fund" (Emergency)

S.P. 366 L.D. 992
(C "A" S-140)

Bill "An Act to Amend the Law Concerning the Pricing of Discontinued and Test-market Liquor Items"

S.P. 372 L.D. 1049
(C "A" S-141)

Bill "An Act Regarding the Schedule of the Distribution of Funds from the Maine Environmental Trust Fund" (Emergency)

S.P. 468 L.D. 1264
(C "A" S-132)

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

Sent down for concurrence.

Resolve, to Establish a Paper Industry Council
S.P. 382 L.D. 1059
(C "A" S-136)

Which was **READ A SECOND TIME.**

On motion by Senator **HARRIMAN** of Cumberland, the Senate **RECONSIDERED** its action whereby it **ADOPTED** Committee Amendment "A" (S-136).

On further motion by the same Senator, Senate Amendment "A" (S-146) to Committee Amendment "A" (S-136) **READ.**

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

Senator **HARRIMAN:** Thank you Mr. President. Very briefly, Ladies and Gentlemen of the Senate. This bill is an opportunity for the Paper Industry Council to come to life and begin to actually implement the recommendations that they made to us earlier in the session on the future of Maine's paper industry. The amendment, I ask for you to support, simply clarifies that the members of this Council, which will include some legislators, that their cost of travel and

reimbursement will be identified as coming out of the Legislative Council's budget. That just clarifies where the funds will be coming from. Thank you.

On further motion by the same Senator, Senate Amendment "A" (S-146) to Committee Amendment "A" (S-136) **ADOPTED.**

Committee Amendment "A" (S-136) as Amended by Senate Amendment "A" (S-146), thereto, **ADOPTED.**

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

Sent down for concurrence.

Bill "An Act to Authorize Certain Employees of the Department of Corrections to Use Deadly Force"
S.P. 454 L.D. 1250
(C "A" S-133)

Which was **READ A SECOND TIME.**

On motion by Senator **BUSTIN** of Kennebec, Tabled 1 Legislative Day, pending **PASSAGE TO BE ENGROSSED AS AMENDED.**

Senate at Ease

Senate called to order by the President.

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

ENACTORS

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

An Act to Authorize Community Service Work as a Sentencing Alternative

H.P. 20 L.D. 14
(C "A" H-169)

An Act to Amend the Laws Regarding Consent Agreements of the Department of Environmental Protection

H.P. 167 L.D. 215
(C "A" H-220)

An Act to Permit Law Enforcement Officers to Transport Truants Back to School

H.P. 204 L.D. 263
(C "A" H-114)

An Act to Clarify Professional Liability
H.P. 231 L.D. 311
(C "A" H-172)

On motion by Senator HANLEY of Oxford, placed on the SPECIAL APPROPRIATIONS TABLE, pending ENACTMENT.

An Act to Increase Police Authority in Certain Cases of Disorderly Conduct
H.P. 357 L.D. 477
(C "A" H-173)

An Act to Include Individuals with Property in a Living Trust in the Maine Residents Property Tax Program
S.P. 192 L.D. 501
(H "A" H-195 to C "A" S-52)

An Act to Clarify Protection of Surface Waters in the Licensing of Solid Waste Facilities
H.P. 409 L.D. 566
(C "A" H-180)

An Act to Amend the General Sentencing Provisions
H.P. 592 L.D. 802
(C "A" H-204)

An Act to Ban the Tripping of Equines
S.P. 316 L.D. 897
(C "A" S-107)

On motion by Senator HANLEY of Oxford, placed on the SPECIAL APPROPRIATIONS TABLE, pending ENACTMENT.

An Act to Protect Maine's Maritime Heritage
H.P. 708 L.D. 965

An Act to Provide Adequate Counseling for Minors Incarcerated for Sex Offenses
H.P. 535 L.D. 731
(C "A" H-170)

An Act to Preserve the Confidentiality of Records Relating to Forest Fire Arson Investigations
H.P. 724 L.D. 998
(C "A" H-219)

An Act to Amend the Displaced Homemakers Act
S.P. 369 L.D. 1046

On motion by Senator HANLEY of Oxford, placed on the SPECIAL APPROPRIATIONS TABLE, pending ENACTMENT.

An Act to Require Unanimous Approval by the Hancock County Commissioners to Change the Recommendations of the Budget Committee
S.P. 422 L.D. 1145
(H "A" H-206)

An Act to Improve the Well-being of Communities by Providing Adequate Services for Victims of Sexual Assault, Incest, Rape and Child Sexual Abuse and Enhance Community Education and Prevention Programs Statewide
H.P. 640 L.D. 863
(C "A" H-190)

An Act to Abolish the Local Government Records Board and to Assign Its Functions to the Archives Advisory Board
H.P. 988 L.D. 1396
(H "A" H-197)

On motion by Senator HANLEY of Oxford, placed on the SPECIAL APPROPRIATIONS TABLE, pending ENACTMENT.

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

An Act to Grant Certain Federal Officers Limited Authority to Enforce Maine Law
H.P. 67 L.D. 103
(C "A" H-205)

An Act to Fully Fund the Maine Human Rights Commission and the Civil Rights Unit in the Attorney General's Office
S.P. 333 L.D. 914
(C "A" S-98)

On motion by Senator HANLEY of Oxford, placed on the SPECIAL APPROPRIATIONS TABLE, pending ENACTMENT.

On motion by Senator HANLEY of Oxford, placed on the SPECIAL APPROPRIATIONS TABLE, pending ENACTMENT.

An Act to Allow the Imposition of Any Term of Years or Life for Certain Attempted Murders
H.P. 152 L.D. 200
(C "A" H-184)

An Act to Provide a 3-day Nonresident Small Game Hunting License
H.P. 734 L.D. 1008
(C "A" H-217)

On motion by Senator HANLEY of Oxford, placed on the SPECIAL APPROPRIATIONS TABLE, pending ENACTMENT.

An Act to Provide Road Maintenance to Baxter State Park

H.P. 783 L.D. 1100
(C "A" H-207)

On motion by Senator STEVENS of Androscoggin, placed on the SPECIAL HIGHWAY TABLE, pending ENACTMENT.

Emergency

An Act to Create a Purple Heart License Plate

H.P. 102 L.D. 137
(S "A" S-123 to C "A" H-154)

On motion by Senator AMERO of Cumberland, Tabled Unassigned, pending ENACTMENT.

Emergency

An Act to Change the Commissions Payable to the State from Off-track Betting

S.P. 240 L.D. 637
(C "A" S-95)

On motion by Senator HANLEY of Oxford, Tabled 1 Legislative Day, pending ENACTMENT.

Emergency

An Act to Amend the Laws Regarding the Procedures for Emergency Admissions to a Mental Hospital

H.P. 611 L.D. 821
(C "A" H-191)

This being an Emergency Measure and having received the affirmative vote of 29 Members of the Senate, with 1 Senator having voted in the negative, and 29 being more than two-thirds of the entire elected Membership of the Senate, was **PASSED TO BE ENACTED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

Emergency

An Act to Repeal the Sunset Provision Regarding Drug Recognition Technicians and Amend the Definition of Drugs in the Operating-under-the-influence Statutes

S.P. 332 L.D. 913
(C "A" S-84)

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

Senator HANLEY: Thank you Mr. President, Men and Women of the Senate. Normally this item, since it does have a fiscal note, would be placed on the Special Appropriations Table. This is just to inform you that upon a presentation by the Criminal Justice Committee, the Committee had an opportunity to discuss the fiscal impact and voted to exempt this bill from the Special Appropriations Table.

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

Emergency

An Act to Clarify the Display of Social Security Numbers on Insurance-related Identification Cards

S.P. 345 L.D. 950
(C "A" S-103)

This being an Emergency Measure and having received the affirmative vote of 26 Members of the Senate, with 2 Senators having voted in the negative, and 26 being more than two-thirds of the entire elected Membership of the Senate, was **PASSED TO BE ENACTED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

Emergency

An Act to Increase Capitalization of the Seal Harbor Water Company

S.P. 424 L.D. 1147

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

Emergency

An Act to Provide for Certain Amendments to Laws Affecting the Finance Authority of Maine

H.P. 835 L.D. 1166
(C "A" H-235)

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

Emergency

An Act to Further Encourage Electric Rate Stabilization

H.P. 1037 L.D. 1456
(C "A" H-229)

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

Senator **HANLEY:** Thank you Mr. President, Men and Women of the Senate. I want to just alert you that the Joint Standing Committee on Appropriations had an opportunity to meet with representatives from the Joint Standing Committee on Utilities and Energy, as well as representatives from the Finance Authority of Maine, to discuss why we should not have this item be placed on the Special Appropriations Table. After questions posed to members of the Committee and to the Finance Authority of Maine, we took a vote from the Committee and opted to exempt this bill from the Special Appropriations Table.

This being an Emergency Measure and having received the affirmative vote of 29 Members of the Senate, with 1 Senator having voted in the negative, and 29 being more than two-thirds of the entire elected Membership of the Senate, was **PASSED TO BE ENACTED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

Emergency

An Act to Prohibit the Stocking of Alewives in Hogan Pond and Whitney Pond in the Town of Oxford
H.P. 1086 L.D. 1529

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

Resolves

Resolve, to Create a Task Force to Review the State's Involuntary Commitment Law

H.P. 662 L.D. 885
(C "A" H-187)

Resolve, to Name a Mountain in the Town of Oxford
H.P. 848 L.D. 1179

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

Resolve, to Implement the Recommendations of the Healthy Start Task Force

H.P. 405 L.D. 540
(C "A" H-185)

On motion by Senator **HANLEY** of Oxford, placed on the **SPECIAL APPROPRIATIONS TABLE**, pending **FINAL PASSAGE**.

ORDERS OF THE DAY

Unfinished Business

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

The Chair laid before the Senate the first Tabled and Specially Assigned (May 11, 1995) matter:

HOUSE REPORTS from the Committee on **STATE AND LOCAL GOVERNMENT** on Bill "An Act to Ensure Courteous Treatment of the Public by State Employees"
H.P. 294 L.D. 398

Majority - Ought to Pass As Amended by Committee Amendment "A" (H-176). (8 members)

Minority - Ought Not to Pass. (3 members)

Tabled - earlier in the day by Senator KIEFFER of Aroostook.

Pending - ACCEPTANCE OF EITHER REPORT.

(In House, May 9, 1995, the Minority OUGHT NOT TO PASS Report READ and ACCEPTED.)

(In Senate, May 10, 1995, Reports READ.)

Senator LONGLEY of Waldo moved that the Senate ACCEPT the Minority OUGHT NOT TO PASS Report, in concurrence.

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

Senator LONGLEY: Thank you Mr. President. Basically I moved the Ought Not to Pass Report because we don't need the law. The provision is basically already on the books as is, under the total quality management scheme of things, it makes a long list. One of the lists is about learning people skills. Basically, for that simple reason, I say why throw another law on the books when it is already there. Representative Lane, from the other chamber, deserves credit for going back to the drawing board, but again, I come back to the point that it is surplus legislation. What we have is already on the books and we don't need more. Thank you.

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

Senator AMERO: Thank you Mr. President. First of all, I would ask you Ladies and Gentlemen, to vote down the Minority Ought Not to Pass position so that we can talk about the changes that were made in this bill, which basically say that employees will have the opportunity, and priority will be given within the TQM program, to customer training programs. It

is more a symbolic thing than anything else, but it does say that this is a top priority, and we want to make sure that employees of the State do have the opportunity to have customer training.

THE PRESIDENT: The pending question before the Senate is the motion by Senator LONGLEY of Waldo that the Senate ACCEPT the Minority OUGHT NOT TO PASS Report, in concurrence.

The Chair ordered a Division.

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

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

21 Senators having voted in the affirmative and 12 Senators having voted in the negative, the motion by Senator LONGLEY of Waldo to ACCEPT the Minority OUGHT NOT TO PASS Report, in concurrence, PREVAILED.

The Chair laid before the Senate the second Tabled and Specially Assigned (May 11, 1995) matter:

HOUSE REPORTS from the Committee on **NATURAL RESOURCES** on Bill "An Act to Change Certain Provisions of the Saco River Corridor Law" (Emergency)
H.P. 324 L.D. 445

Majority - Ought to Pass As Amended by Committee Amendment "A" (H-151). (9 members)

Minority - Ought to Pass As Amended by Committee Amendment "B" (H-152). (4 members)

Tabled - May 10, 1995 by Senator KIEFFER of Aroostook.

Pending - ACCEPTANCE OF EITHER REPORT.

(In House, May 4, 1995, PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "B" (H-152).)

(In Senate, May 9, 1995, Reports READ.)

Senator LORD of York moved that the Senate ACCEPT the Majority OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-151) Report in NON-CONCURRENCE.

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

Senator LORD: Thank you Mr. President, my Learned Colleagues. First of all, I would like to ask my colleagues in the Senate a question. If you owned a lot on a pond, or a lake, or a river, and your next door neighbor had a camp, or a cottage, that was within 100 feet of the water, and you applied for a permit from the Planning Board, or the

Commission or selectmen or whoever it is, and they said yes, you can build your house, or your camp, but it has got to be 350 feet from the water, how would you feel? This happened with a constituent of mine. He's from Cornish. He has a lot on the Saco River. He applied to build a cottage and they said he could build it if he built it 350 feet back. I don't think this is right. I think it should be changed. This amended report would change that, down from 500 feet to 350 feet.

I would like to give you another example. There's a fellow who owns a cottage on a peninsula that goes up into the flowage from the Ossipee Lake, down to the Little Ossipee River. There's quite a steep slope going into his cottage, so he went to the Saco River Corridor Commission and asked for a permit to hot top his driveway. They refused him. They said they were afraid that there might be some oil that would come out of the hot top and into the river. Now anybody knows if you keep going up a steep grade you're going to get some erosion, and you're going to have silt going into the river, but that seems to be alright. These are the things that are happening folks. I've had a number of people, in the ten years that I have been up here, that have complained that the Saco River Corridor is taking too much land away from their authority, and they are sick and tired of it.

I want you to look at the Commission itself. The Commission is made up of twenty towns. Each town has a member and an alternate. I haven't got the 1994 figures, because I tried to get them through my source of information, and I couldn't seem to get them, but in 1993 there was one regular member and eight alternates who were never appointed. I want you to look at the monies that have been allotted from the towns to the Saco River Corridor. In 1993 eleven paid their assessment, the other nine didn't. I contacted two of the towns this year already that have stopped paying, Shapleigh and Newfield, and I talked to the selectman from Hollis a week ago Sunday, and I asked him if he was going to pay. He said no. I asked him why he didn't want to do that. He said because it was repetition. With shoreland zoning, with the Resource Protection Zone, with the building lot size, with the Planning Board, and with the Code Enforcement Officer it is just duplication. This is what is happening. I think it's time that we started to look at what is going on up there. I might say that the by-laws were changed in 1988, and seven people make a quorum in the Saco River Corridor, seven people. That means that a majority of four people can regulate the action from the New Hampshire line to the Atlantic Ocean. I don't believe that this is right either. In the meeting in April, there was a couple from Saco who put an application in to build an addition on their house. They wanted to put an addition on their bathroom on the front side, and a deck on the back, and an addition to their garage. They're on the sewerage system, they were 573 feet away from the water, and it was tabled. This is the action that goes on. It's no wonder we don't have any economy in York County if actions like this go on everywhere else. I think it's time that we did something. The only change that we made in the Committee, as a matter of fact, there was a study by the Audit and Program Review Committee, and they took the estuary off the

river, and we put it back on. We thought that was good. The only other change that the Committee made was my amendment to reduce the 500 feet that they control, down to 350 feet. That means if you had a 100 foot lot, you still could go back 250 feet. If you had a 50 foot lot, you would have to go back 300 feet. With the 500 feet, if you have a 50 foot lot, you have to go back 450 feet. I think it's time that we changed this and I hope that you will vote for my motion. Thank you.

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

Senator HATHAWAY: Thank you Mr President, Ladies and Gentlemen of the Senate. On behalf of the 150,000 people in the State of Maine, who drink the water from the Saco River, I would like to ask you today for your help. I would like to ask your help in protecting our river, and our heritage, and in protecting our drinking water supply. At the same time, help us in streamlining the permit process. The Saco River is the primary drinking source in the summertime for about 150,000 people. It covers Biddeford, Saco, Old Orchard Beach, Scarborough, Kennebunk, Kennebunkport, and Wells. It soon could be the primary supply for all of York County. In most cases surface water systems are protected either by the purchase of land or easements around the water supply. Portland did this with Sebago Lake. A river situation poses a quite different problem. For the last twenty years it has been the Saco River Commission who has actually acted as the protection for this water source. I would like to say that it has been the current 500-foot jurisdiction that has been in effect for that time, that has protected our water supply. Under the Majority Report, any degradation in the water quality, by lowering the jurisdiction, could cost all of us millions of dollars in treatment costs. It may be necessary to put in new treatment facilities, or it could be necessary to pay millions of dollars in DEP clean-up costs. Those costs would be borne by all of the taxpayers of this State. Recently, in Limerick, thirty-one contaminants were found in the water supply. The National Guard had to truck in water, and new wells had to be dug to supply the drinking supply. I think maintaining the 500-foot jurisdiction would serve as an ounce of prevention. As we know, an ounce of prevention is worth a pound of cure.

Second, I would like to say that the Minority Report, and not the Majority Report, supports local control. It lets the communities, not the State or the DEP, give out permits. The Minority Report streamlines government by letting DEP waive the shoreland zoning for towns on the River, so that you only have to go one place for your permit, and not two. This is a leaner, but not a meaner, solution. I think our best option today to streamline government, and to protect our water, is to support the Minority Report, and on behalf of the 150,000 people in this State who drink the water from the Saco River, we ask for your help. Thank you.

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

Senator RUHLIN: Thank you Mr. President, Ladies

and Gentlemen of the Maine Senate. First of all, I would like to share some information with you that is not common knowledge, I believe. A little bit of history of the water quality of the Saco River. Twenty years ago, the Saco River was a Class C river, when we refer to water quality. That means there can be a certain level of bacteria colorform, there can be a certain level of unsettled solids, there can be a certain level of a chemical oxygen demand. The State of Maine wisely, through its environmental protection works, established water quality for the Saco River that upgraded the water quality to its present condition of Class B. That had nothing to do with the Saco River Commission. That had nothing to do with the treatment plant or treating people's drinking water. What it was was a recognition that the rivers of this State are, in fact, our great natural resource and should be protected and treated as such. So, that was the Maine DEP, acting through the Department of Environmental Protection, that did, in fact, upgrade the water quality of the Saco River. As we stand here tonight, before we pass either report or do anything, the environmental protections along the Saco River Corridor are less than what exists now in the Natural Resource Protection Act or the Shoreland Zoning Act. Either report that you pass here tonight will improve the existing environmental protection along the Saco River. What you actually see, frankly, between Report A, which is the Majority Report, and the Report that gives those environmental protections to the river, is a turf fight, if you will. You have twenty communities who are tired of duplicative efforts, who are tired of being pushed around and told by a Commission, which has been called arrogant and overbearing, and that is my understanding why nine of those communities have refused to pay the Commission, that's why we had a Commission bail-out bill before us. By the way, I supported the bail-out at that point, and this chamber did, because the Commission should be there. It has a legitimate function, but it doesn't have to exercise that function to the disregard of all others rights along that river. To show that point, I'll just give you an example of how it works. This all happened in the last two weeks. There is a person who owns a cement building, of which there was liquid coming out of that building and running into the Saco River. There was a citizen who notified the Commission and asked that Commission to come and investigate that leaching that was coming out of that building, no the Saco River Commission can't do that. We don't have the money to do that, but a year ago, let me tell you, they had the money to go and prevent an aged lady from building a 200 foot wheelchair ramp to go down and enjoy the river. She had had a stroke, was no longer ambulatory, and she wanted to have access to the river that she grew up on, with her grandchildren swimming in the river, and they denied her a permit to build a wheelchair ramp down to the river. These are the types of things that made me decide that the good Chair, and the majority of the members of the Natural Resources Committee, did know what they were talking about. I watched the Committee move very carefully. They protected the flood plain, it is exactly now, in both reports of this legislation, as it has always been. I know the newspapers claim otherwise, but those people writing newspapers often don't read laws.

The other thing that we are doing is both reports add additional environmental protections to this river. I hope you will take all these items into consideration. And take into consideration that a simple majority of four, out of a quorum of seven, would actually run this Commission from the New Hampshire border to the Atlantic Ocean in Biddeford and Saco. I hope tonight, when you vote, you will look at true environmental protection and deny any positive credits to turf wars. Thank you.

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

Senator **McCORMICK:** Thank you Mr. President, Men and Women of the Senate. The good Senator from York gave us a couple of examples of what concerns him about this situation and this bill. Let me give you another example. The example is, let's say we pass the Majority Report here tonight in 1995, and we change the jurisdictional boundary of the Saco River Commission, from 450 feet to 250 feet, my example, although hypothetical, is this; that one decision could lead to the Saco river being downgraded from an A and AA river to a B and C river. Because, as the good Senators have described, many towns get their drinking water from the Saco River. This is going to cause, sometime in the future, maybe even two to three years down the line, the towns along the Saco River that draw their water from it to put in purification devices and treatment plants, costing millions of dollars, literally millions of dollars. Clean water is a resource and cleaning up water is very expensive. And, because almost every aquifer in York County is under the Saco River, and in this jurisdictional protection zone, the aquifers could become contaminated, costing millions of dollar to future tax payers. And, because the river gets degraded from an A, to a B or C river, tourism in York County drops off and affects other businesses that depend on it, because people no longer want to come in droves to York County to canoe and recreate along the Saco River. So, tourism and the standard of living in York County degrade.

The good Senator from York has described one example, I have given another. Our action here tonight has great consequences. Please vote against the Majority Report so we can move on to passing the Minority Report, which is, as has been described, a streamlining of State government, a condensing, a one-stop shopping if you will. I was left with the impression, from listening to the Senator from York, that in fact this 450-foot corridor is a set-back. It is not a set-back. The example that he gave of his constituent that was asked to have a 350 foot set-back, it is not a set-back, it is a jurisdictional guideline. In fact, the Saco River Commission, in the last twenty years, twenty years mind you, has only turned down 4% of its applications. In fact, it rather seeks to do what the Cobbossee watershed entity in my county seeks to do, which is to put in place performance standards, and to ask people to cut down the run-off into the river in other ways; doing the driveways differently, doing the set-backs differently, locating differently. Those are all bona fide ways of dealing with development, not limiting development. The commissions that are working well, and I pose to you the Saco River is one, and the Cobbossee Watershed

District, which protects many lakes and watersheds, protect the phosphorus level and the contaminants to lakes and rivers in that fashion.

The other thing I want you to consider is this. There is no river with a 250-foot jurisdictional limit that is as clean as the Saco River. We have a precious resource now. If it is degraded it will cost millions of taxpayer dollars to bring back the quality, to bring back the ability to draw water from this resource. A quorum was also said to be a problem in the Saco River Commission. In fact, only three times in twenty-two years has there not been a quorum. So, in fact, this Commission is not holding up development by its internal workings. I would like to just say that it is micromanaging of the legislature to even think about involving itself at the level of wondering about quorums of a body that is empaneled to protect the Saco River. Once again, just to reiterate them. The Minority Report steamlines permitting, it allows towns to become exempted from shoreland zoning because the Saco River Commission puts in place what I have just described to you as performance standards that work here, in Kennebec County, and I'm sure can work, if we will allow them to, in York County. What we seek to do up here, which is the standard now, is to not say no to development, but instead to create the development in a way that does not pollute the waterway. Thank you.

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

Senator GOLDTHWAIT: Thank you Mr. President. I'm inclined to support the Minority Report, except I have one remaining problem, and that is the quorum issue. I differ with the good Senator from Kennebec, Senator McCormick, in that it is micromanagement. I hope someone will correct me if I have my facts confused, but my understanding is that there are twenty-two communities involved with the river in the territory of the Commission; that each community has a seat on the Commission, appointed by the selectmen; I'm with that so far, but it falls apart when, as I understand it, seven people can have a meeting, and of those seven, four will be a quorum. So, if a quorum were the majority of the communities in the Commission area, that would work for me, but if that number does, in fact, get reduced to four of those twenty-two communities representing a quorum, that's where I run into trouble. Thank you.

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

Senator LORD: Thank you Mr. President, my Learned Colleagues. I just can't stand here and not have a remark in regards to some of the comments that the good Senator from Kennebec made. First of all, if you go on Route 5, and you go over the bridge on Route 5 and go toward Saco, you come to what they call the Boon Road. The Boon Road winds down around and finally comes down onto a flat, on that flat there were at least five or six dairy farms. Probably, at one time, there was between five and six hundred cows, that were milked down there. Right now there is only one herd left that I know of, and that is a friend of mine. But, for years those cows had pastured down there and I imagine they went into the water. They went into the water and they drank.

When something goes in the front end, something has got to go out the back end, we all know that. I have an idea that probably something like that went into the river at one time or another. Now, what is being raised down there is sweet corn and grain corn. Those fields are fertilized, and if you go under the underpass going towards Perry, just as soon as you go under the underpass if you look to the right you see the river, and right along side the river is fields. For years, and years, and years those fields have been fertilized, both with fertilizer and dairy enrichment, and those fields, at more than one time, have been flooded. So, when you talk about saving the river, anybody might think there are no houses along there. Well, if you go on the other side of the overpass, from there right down to Route 1, there are houses one right after the other, right on the river. You can't throw a rock right from their dooryard right into the river. If you remember a couple of years ago, there was a car that rolled into the river. I don't know whether it was on the Boon Road or the River Road, but it's the same thing on the Biddeford side, a car rolled down into the river and there was a youngster in there and a fellow went down there and saved him. So, when they talk about how precious this is, and how much we are protecting it up in the hitherland by keeping all these builders way back, it's ridiculous folks. A week ago Friday, I sat right here, and I talked with a fellow from Bar Mills, part of Buxton. He sent me a letter that he wanted to talk to me on a pollution problem. So I called him up and asked him what his problem was. He said the Rogers Fiber Company sets right on the river, and it has been discontinued, the roof is leaking, the windows are all broke out, and there has been a lot of chemicals in there. He said he can see stuff running right into the river. He asked what he should do. I told him to call the DEP, go get the DEP out there and find out what is going into the river and see whether it is hazardous or not and do something. They are going to have a meeting this Thursday night and they want me to go. I don't believe I'll be able to go, I imagine I might be working until nine or ten o'clock, I don't know, but I asked them if they contacted the Saco River Corridor. He said they did. I asked him what they said. He said Mrs. Ricker, who is the Executive Director, said they couldn't do anything like that because they haven't got the money. So folks, I'm telling you this is what is happening. I just don't understand why they think that by reducing that down to 150 feet it is going to cause all this stuff. I know it isn't, and you know it isn't. It's bunk. Thank you.

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

Senator LAWRENCE: Thank you Mr. President, Men and Women of the Senate. My knees always quake a little when I have to stand up against "the Lord", but I'm afraid this time I must disagree with my good colleague from York, Senator Lord, and ask you to oppose the Majority Report, and go on to accept the Minority Report. Just to clarify one question that was raised by the Senator from Hancock, Senator Goldthwait, it is true, under the Saco River Corridor Commission, that seven of the twenty-two towns constitute a quorum. The point that should be made is that under either report that is the case.

Neither report changes that. So whether you vote for the Majority or the Minority, it remains seven being a quorum. That's not the issue in this case. Perhaps that underlines my concern. A number of people have mentioned concerns with the Saco River Corridor Commission and the way it functions. If that's the truth, then maybe something should be done to change that, to change the number of the quorum, to address those issues. That's not what is being done here. What is being challenged is the jurisdiction from the river, the distance from the river, of the Saco River Corridor Commission. Really, the good Senator from Penobscot, Senator Ruhlin, is absolutely right. It is a turf battle. It is a turf battle over how we regulate this river and whether we have, in that area from 250 feet to 500 feet, whether we have 22 regulatory bodies, or whether we have one, the Saco River Corridor Commission that sets up a management plan for the river and takes care of the problems along the river. That's really the question here. I can understand the upriver communities not wanting that type of regulation because it benefits the downriver communities. But, the truth of the matter is, if you are going to have regulation on the river, it has got to be uniform throughout the river, and it has got to be at a distance that allows them to do what they need to do. So, I hope you will reject the Majority Report, and go on and accept the Minority Report. Thank you.

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

Senator RUHLIN: Thank you Mr. President, Ladies and Gentlemen of the Maine Senate. There have been some comments I would like to just review for a moment. First of all, we are told about this difference and that difference, by various people, between the reports. Please listen, both reports will strengthen existing environmental protections to the Saco River, point one. Point two, 90% of our Class A rivers in the State of Maine, are Class A in water quality, I'm not talking about recreational quality. A Class A river, by the way, is pristine in nature. That's the very definition of Class A under our Water Quality Act. Those Class A rivers survive very well as Class A rivers with 250-foot set-backs. In many cases they have a 100-foot set-back. What it is that is important, and what you should be aware of, is is somebody going to put a house on a spring that is going to run into it? Is somebody going to put a camp on an intermittent waterway that will run into it? Is somebody going to build a septic tank that doesn't function properly? We have those protections for the Saco River, and other rivers in the State of Maine, presently in place. It is strictly a turf war. The difference between the Majority Report and the Minority Report, the Majority Report says 250 feet, the Minority Report says 500 feet. That's the difference, a turf war. It's pure and simple.

Now, I had a comment that I really do have to reply to, from the good Senator from Kennebec County. We were talking about water quality. Believe me, I have spent a lot of time studying water quality, I am familiar with it, I enjoy working with it. Most of the Saco River is a Class B river for water quality, it exists as a Class B. That's an

upgrade from its previous Class C. Where the water district takes out their water, it is a Class B. I specifically asked the representative of that independent, privately-owned, water system if, in fact, they would have to do any additional treatments under the federal Clean Water Act. They have been treating, lo and behold, their water there for some forty years now. Oh, my goodness, it's not so pristine as I thought it was. They have been treating it with Chlorine and everything else for all these years to supply the water. So, we are going to protect it, we are not going to have camps built on springs, as has always been the case. We will do that by State law. We are going to do these other protections by State law. You could get down, other than you want the continuity of government for the length of the river, not the width of the river, the length of the river, from ocean to mountain. That's what you really want, and toward that end, I asked those people, there are two environmental groups that I am aware of that are concerned that I would consider dropping this to 250, as a Committee member. I asked them, I have worked with the restoration of the Atlantic Salmon, which are coming back to the Saco River, tell me one thing one thing I am doing to endanger the restoration of the Atlantic Salmon, a fish that requires very clean water, one of the most clean water fish that exist. Tell me one single thing. I went to the Atlantic Salmon Federation, tell me one thing, just one. Do you know what they came up with? Zero. The Audubon Society came to me and said they were afraid of water quality, that somebody could get something that could run into the reservoir. Show me one, just one, give me one example where that will happen. Do you know how many they came up with? Zero. So, I ask you to take those considerations in mind when you vote tonight on this bill. Thank you.

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

Senator McCORMICK: Thank you Mr. President. First of all, I have to clarify something. We are not talking about a set-back here. I think that the good Senator from Penobscot is describing it in a way that makes one think that we are talking about a set-back of 500 feet on the Minority Report. We are not. If you are inclined to support the Minority Report, you are not voting for no development within 500 feet of the river. You are not doing that. What you are voting for is to allow the Saco River Corridor Commission to have jurisdiction, and to apply performance standards, to lower pollution into the river water within a 500 foot corridor. I say to you that makes good sense. It is state of the art conservation. It does not say no to development, it just helps development be done in a way that does not pollute this very important water way. Secondly, I have to disagree, and I actually have to correct, and it pains me to correct the good Senator from Penobscot, because he is almost always right. However, in the case when he said that most of the Saco River is a Class B river, he unfortunately was not right. Because in fact, and I have it right in front of me, and I asked the Commissioner that is here, and I checked with the other person, it is actually, most of the Saco River is Class A or Class AA waterway. The best that we have, and we need not jeopardize it, especially when we have a report on

the floor that does not stop development, it allows development. It allows development in a way that does not hurt our water. Thank you.

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

Senator **HATHAWAY:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I would just like to add two points to the good Senator from Penobscot, Senator Ruhlin, about the example of the disabled lady. I think it is quite obvious, if she wanted to build a ramp to the water she would still come under the jurisdiction, under either the Majority or the Minority Report, of the Saco River Corridor Commission. Neither bill would change that. Unfortunately, if she were to do so under the Majority Report, she would have to get two permits, because only the Minority Report streamlines the permitting process. I would like to point that out. There are some problems, of course, with the Commission. They know that I think that. These can be improved, but there has never been any question about the end result, never any question about the quality of the water. We have a choice. We are right now, as the good Senator said, we are investing millions of dollars in restoring salmon to the Saco River. We can spend money restoring salmon, or we can have the potential, in the future, if we do lower the jurisdiction, of spending those monies on treatment costs and clean-up. All we are asking is that tonight we have a great opportunity to protect our water by doing nothing, just leaving us alone, leaving things the way they are. We can streamline government and we can protect our clean water. Thank you.

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

The President noted the absence of Senator **BERUBE** of Androscoggin, and excused her from today's Roll Call votes.

THE PRESIDENT: The pending question before the Senate is the motion of Senator **LORD** of York that the Senate **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A"** (H-151) Report in **NON-CONCURRENCE**.

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

A vote of No will be opposed.

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEAS: Senators: **AMERO, BEGLEY, BENOIT, CAREY, CARPENTER, CIANCHETTE, FERGUSON, GOLDTHWAIT, HALL, HANLEY, KIEFFER, LORD, RUHLIN, SMALL, and the PRESIDENT, Senator BUTLAND**

NAYS: Senators: **ABROMSON, BUSTIN, CASSIDY, CLEVELAND, ESTY, FAIRCLOTH, HARRIMAN, HATHAWAY, LAWRENCE, LONGLEY, McCORMICK, MICHAUD, MILLS, O'DEA, PARADIS, PENDEXTER, PINGREE, RAND, STEVENS**

EXCUSED: Senator: **BERUBE**

15 Senators having voted in the affirmative and 19 Senators having voted in the negative, with No Senators being absent and 1 Senator having been excused, the motion of Senator **LORD** of York to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A"** (H-151) Report in **NON-CONCURRENCE, FAILED**.

The Minority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "B"** (H-152) Report **ACCEPTED**, in concurrence.

The Bill **READ ONCE**.

Committee Amendment "B" (H-152) **READ** and **ADOPTED**, in concurrence.

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

The Chair laid before the Senate the fourth Tabled and Specially Assigned (May 11, 1995) matter:

SENATE REPORT from the Committee on **HUMAN RESOURCES** on Bill "An Act to Expand Eligibility for Benefits under the Adoption Assistance Program" (Emergency)

S.P. 247 L.D. 644

Report - **Ought to Pass as Amended by Committee Amendment "A"** (S-109).

Tabled - May 10, 1995 by Senator **KIEFFER** of Aroostook.

Pending - **ACCEPTANCE OF THE REPORT**.

(In Senate, May 9, 1995, the Report **READ**.)

Which Report was **ACCEPTED**.

The Bill **READ ONCE**.

Committee Amendment "A" (S-109) READ and ADOPTED.

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

The Chair laid before the Senate the fifth Tabled and Specially Assigned (May 11, 1995) matter:

HOUSE REPORTS from the Committee on BANKING AND INSURANCE on Bill "An Act to Include Short-term Health Insurance Policies in the Continuity Laws"
H.P. 321 L.D. 442

Majority - Ought to Pass As Amended by Committee Amendment "A" (H-124). (7 members)

Minority - Ought Not to Pass. (5 members)

Tabled - May 10, 1995 by Senator KIEFFER of Aroostook.

Pending - the Motion by Senator McCORMICK of Kennebec to ACCEPT the Minority OUGHT NOT TO PASS Report, in NON-CONCURRENCE.

(In House, May 9, 1995, PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-124) AS AMENDED BY HOUSE AMENDMENT "A" (H-161), thereto.)

(In Senate, May 10, 1995, Reports READ.)

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

Senator ABROMSON: Thank you Mr. President, Ladies and Gentlemen of the Senate. I would urge that you vote no to the Ought Not to Pass Report, so that we may vote yes to the Report as amended by Committee Amendment "A". I would like to speak briefly just to advise that basically what we are talking about here is a very limited product. A product that is currently not available in this State. It is a product designed for a specific market, for college students and those between insurance coverage, and/or employment. The product, as I mentioned, is not currently available on the market, and a lower-cost alternative is what this provides. For a brief example, a male, age 40, with a \$500 deductible, with this product would be paying \$115 a month. The only other available product is from Blue Cross/Blue Shield at \$233 a month. For a female, age 24, the \$500 deductible would be \$65 a month with this product, it would be \$187 a month with Blue Cross/Blue Shield. I think that basically what we are talking here is it would give an alternative to people who are between insurance policies.

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

Senator McCORMICK: Thank you Mr. President. This bill will allow short-term health insurance policies to be exempt from Maine's laws, and in five very important ways. One, they will be exempt from guaranteed issuance. They will be exempt from guaranteed renewal. They will be exempt from our pre-existing condition exclusion laws, which are one of the most important to your constituents, parts of our insurance reform. Four, they will be exempt from the insurance reform that prevents insurers from pricing policies based on health status, based on age, and based on occupation. These policies will be exempt from all that. Now, what effect will this have on the market? It will have a terrible effect on the market. It will return the market to competition based on avoiding risk, rather than competition based on managing risk, something that we have been trying to get the health insurance market to for a long time. We have done that in Maine. It will create churning in the market, which means lots of turnover, lots of constant searching for the lowest priced policy. In this case, the lowest priced policy will be a paper tiger. It will be a fraud almost. Perpetrated on people who think that they are buying into Maine's contract with people who pay their money and stay insured, which is that you will always be guaranteed issuance and guaranteed renewal. The pre-existing condition cannot be imposed upon you over and over again, and that insurance rates will not be based on your health status. That is the contract that we have made up until this time, and this bill, small but powerful, will undermine that, will dissolve any kind of stability we have in the market. I would like to quote, lest you do not believe just me, from the Superintendent of Insurance letter to the Committee. "This bill would drive up the cost of guaranteed renewable policies," the kind of policy that every other insurer offers, "possibly to the point where carriers would be forced out of this market. It would defeat much of the recent health care reform measures adopted in Maine."

Lastly, to the point made by the good Senator from Cumberland, Senator Abromson, about the price of these policies. Yes, absolutely, you get what you pay for. You get nothing in these policies so it's costing you less. However, there are low-cost options. That is why we have sought to kill this bill other times, last session when it was before us, because there are, in fact, low-cost options. A person can increase one's deductible and get a low-cost insurance policy. That exists in Maine now, and they are guaranteed issuance, guaranteed renewal, they do come under our pre-existing exclusion laws, and that is very important to the health of the market. So, please keep in mind what the Superintendent of Insurance believes about this bill, and please join me in voting to pass the Minority Ought Not to Pass Report. I ask for the Yeas and Nays. Thank you.

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

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

Senator **ABROMSON**: I just want to point out that there is one more, a sixth exemption, that the good Senator from Kennebec has forgotten, and that is availability. Thank you.

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

Senator **HARRIMAN**: Thank you Mr. President. Good evening Ladies and Gentlemen of the Maine Senate. A few weeks ago we had a bill in the chamber that would have extended the community rating laws to people who took the risk of providing jobs here in Maine, and who have twenty-six to fifty employees. Perhaps you may recall that I was supporting that measure, which ultimately was defeated. So you may ask yourself why would I stand up to ask you to join me in defeating the pending motion to allow limited short-term health insurance policies. If you will share with me just a minute or two of your time, I would like to give you some first-hand experiences, because when I am not serving here in this Senate I help people prepare for the future with their financial affairs, and very often they are employees who leave one company and go to another, or who move into Maine and start their own business. They discover that the only source of health insurance that they have is through one single source, Blue Cross/Blue Shield, and they do a fine job, but the rates, because of the community rating system, are relatively high. When really what they need is coverage to get them through from their prior employer to their new employer. Many companies in Maine have a waiting period, either a thirty-day or a ninety-day, and in some companies even six months that you must go through a probationary period before you qualify for their group health insurance programs. You may also be interested to know that federal law, under RISA, the Retirement Income Security Act, adopted in 1976, has some interesting provisions in it that were expanded a few years ago that say if you leave the employment of a company, or you are the dependants of a deceased employee of a company, under what is known as COBRA, which I don't understand what the acronym means, but essentially federal law says that for an additional 2% of your companies group insurance rates, you can personally keep your health insurance in force for up to eighteen months. Or, if you are the dependants of a deceased employee, you can keep them for 24 months. That's what most people do if they come from a relatively large employer, who is required by federal law to offer these benefits, most employees take that option, because it is still cheaper than prevailing community rating rates.

Do you know what else happens? They run for it. They say they will take the risk and go uninsured, because to buy a community rated policy for sixty days, or ninety days, doesn't make sense, it costs too much. They will take the risk, and that is when they end up uninsured, pre-existing condition without health insurance, and that situation goes on more than you might imagine. This bill simply sends a message that if you need coverage for a very short period of time, one year or less, here is available the coverage that is affordable because the message in Maine is we don't want you to go without health insurance. I hope you will join me in defeating the pending motion. Thank you Mr. President.

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

Senator **McCORMICK**: Thank you Mr. President. There is a misconception here. There is nothing that is preventing insurers from marketing short-term policies in Maine, absolutely nothing. That is legal to do. What this bill seeks to do is to allow insurers who market these short-term policies to be exempt from Maine's insurance reform laws, which is guaranteed issuance, guaranteed renewal, pre-existing condition exclusions. That, I believe, is the question before us. Do you want these short-term policies exempted from those very important parts? Do you want people to consider that in every other way, when they buy health insurance, they are covered, the policy must be issued again to them, even if they become sick, that pre-existing condition exclusions cannot be imposed on them over and over and over again once they have served one out? But the minute they would buy one of these short-term policies, if we were to allow these short-term policies to be exempted from these rules, and that's what this bill does, it just exempts them from these rules, the minute we allow that we will inject confusion into the market. We will throw the market back to one of competition on avoiding risk rather than managing risk. The price of these policies has been mentioned over and over again. Basically, I think the good Senator from Cumberland would agree, that we are only talking about one niche here, and that is the niche of what is called, in the insurance industry, "the young immortals". That is the only market for these rates. As Blue Cross testified in our work session, these policies may hold down the price on the young immortals, but they do that by raising the cost to everyone else. In insurance everything is connected, and we have, until this point, and I hope that we continue past tonight, in Maine our contract with our people, who we are trying to get to be insured, has been this, if you promise to stay insured we will promise our laws will protect you and promise that if you become sick your policy can still be issued to you and once you serve out your pre-existing condition exclusion it can never be imposed upon you again if you keep yourself insured. These policies would completely negate that, and we cannot do that, it will undermine the market. Please vote positively on the Ought Not to Pass Report. Thank you.

THE PRESIDENT: The pending question before the Senate is the motion of Senator **McCORMICK** of Kennebec that the Senate **ACCEPT** the Minority **OUGHT NOT TO PASS** Report in **NON-CONCURRENCE**.

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

A vote of No will be opposed.

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEAS: Senators: **BUSTIN, CLEVELAND, ESTY, FAIRCLOTH, GOLDTHWAIT, LAWRENCE, LONGLEY, McCORMICK, MICHAUD, O'DEA, PINGREE, RAND, RUHLIN**

NAYS: Senators: ABROMSON, AMERO, BEGLEY, CAREY, CARPENTER, CASSIDY, CIANCHETTE, FERGUSON, HANLEY, HARRIMAN, HATHAWAY, KIEFFER, LORD, MILLS, PENDEXTER, SMALL, STEVENS, and the PRESIDENT, Senator BUTLAND

ABSENT: Senators: BENOIT, HALL, PARADIS

EXCUSED: Senator: BERUBE

13 Senators having voted in the affirmative and 18 Senators having voted in the negative, with 3 Senators being absent and 1 Senator having been excused, the motion of Senator **McCORMICK** of Kennebec to **ACCEPT** the Minority **OUGHT NOT TO PASS** Report in **NON-CONCURRENCE, FAILED.**

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

The Bill **READ ONCE.**

Committee Amendment "A" (H-124) **READ.**

House Amendment "A" (H-161) to Committee Amendment "A" (H-124) **READ** and **ADOPTED**, in concurrence.

Committee Amendment "A" (H-124) as Amended by House Amendment "A" (H-161) thereto, **ADOPTED**, in concurrence.

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

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

JOINT ORDER - relative to ordering the Joint Standing Committee on Appropriations and Financial Affairs to report out a bill related to "community corrections," as defined in the Maine Revised Statutes, Title 34-A, section 1210, to the House. (H.P. 1088)

(In Senate, earlier in the day, **READ** and **PASSED**, in concurrence. Subsequently **RECONSIDERED**.)

(In House, May 16, 1995, **READ** and **PASSED**.)

Which was **PASSED**, in concurrence.

On motion by Senator **CARPENTER** of York, **ADJOURNED** until Wednesday, May 17, 1995, at 9:30 o'clock in the morning.