

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

One Hundred And Seventeenth Legislature

OF THE

State Of Maine

VOLUME VII

SECOND REGULAR SESSION

Senate

March 14, 1996 to April 3, 1996

SECOND CONFIRMATION SESSION

August 1, 1996

SECOND SPECIAL SESSION

House of Representatives

September 5, 1996 to September 7, 1996

Senate

September 5, 1996 to September 7, 1996

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HOUSE AND SENATE LEGISLATIVE SENTIMENTS

STATE OF MAINE
ONE HUNDRED AND SEVENTEENTH LEGISLATURE
SECOND SPECIAL SESSION
JOURNAL OF THE SENATE

In Senate Chamber
Thursday
September 5, 1996

In compliance with a Proclamation of His Excellency, Governor **ANGUS S. KING, JR.**, the Senators convened in the Senate Chamber at ten o'clock in the morning and were called to order by the President, Jeffrey H. Butland of Cumberland.

Prayer by the Reverend Bruce E. Felt, Augusta Baptist Church, Augusta.

REVEREND BRUCE E. FELT: Let us pray. Our Father, we thank You that we live in a country where we may have the type of government that is being practiced here in our State House. We pray that You will guide this body of legislators today in their deliberations and discussions. May that which is right be done, without haste and without wrong motives. Help them, Lord, to think clearly and to avoid confusion, thus honoring You, that Your will may be done on earth even as in heaven. We pray through Jesus Christ our Lord. Amen.

Pledge of Allegiance led by **SENATOR CASSIDY** of Washington.

STATE OF MAINE
PROCLAMATION

WHEREAS, there exists in the State of Maine an extraordinary occasion arising out of the need to address certain forest practices, including clearcutting, in the State of Maine;

WHEREAS, the citizens of Maine will be required to vote at the November 5, 1996 election on a citizen-initiated referendum, "An Act to Promote Forest Rehabilitation and Eliminate Clearcutting," which proposes overly stringent controls that may devastate the forest industry and economy of Maine;

WHEREAS, a conservative analysis of the economic impacts of the provisions of the citizen-initiated referendum indicate that it is likely to result in the loss of over 15,000 jobs, a 4% statewide decline in annual wages and salaries (equivalent to an estimated loss of \$439 million in income), a 17% increase in the price of wood supplied to Maine's paper and lumber manufacturers, and an annual reduction in spruce, fir and hardwood harvests of more than 36% statewide;

WHEREAS, a responsible alternative legislative proposal has been developed that would strengthen restrictions on clearcutting, establish voluntary management audit programs to optimize the ecological and economic health of Maine forests for future generations, provide for ecological forest reserves on State-owned lands and establish the right to practice forestry in the State of Maine;

WHEREAS, this alternative proposal has broad support among landowners and environmental organizations, and would apply to forest practices throughout the State of Maine;

WHEREAS, this proposed legislation must be enacted by the 117th Legislature in order to be referred as a competing measure for consideration by the electors at the upcoming November 5, 1996 election;

NOW THEREFORE, I, **ANGUS S. KING, JR.**, Governor of the State of Maine, by virtue of the constitutional power vested in me as Governor, convene the Legislature of this State, hereby requesting the Senators and Representatives to assemble in their respective chambers at the Capitol in Augusta on Thursday, September 5, 1996 at 10:00 o'clock in the morning, in order to receive communications, and enact the proposed legislation submitted by the Governor containing these recommendations or substitute legislation that achieves the same objectives.

IN TESTIMONY WHEREOF, I have caused the Great Seal of the State to be hereunto affixed. Given under my hand at Augusta this fourteenth day of August in the Year of our Lord One Thousand Nine Hundred and Ninety Six.

S/ Angus S. King, Jr.
Governor

S/G. William Diamond
Secretary of State

S.C. 642

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

The Roll being called, the following Senators responded to their name:

ROLL CALL

Senators: **ABROMSON, AMERO, BUSTIN, CAREY, CARPENTER, CASSIDY, CLEVELAND, FAIRCLOTH, FERGUSON, GOLDTHWAIT, HALL, HARRIMAN, KIEFFER, LAWRENCE, LONGLEY, LORD, McCORMICK, MICHAUD, MILLS, PARADIS, STEVENS,** and the **PRESIDENT, Senator BUTLAND**

22 Senators having answered to the Roll, the President declared a quorum.

Out of order and under suspension of the Rules, on motion by Senator **KIEFFER** of Aroostook, the following Senate Order:

ORDERED, that a message be conveyed to His Excellency, Governor Angus S. King, Jr., informing him that a quorum of Senators is assembled in the Senate Chamber for the consideration of such business as may come before the Senate.

S.O. 45

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

The President appointed the Senator from Aroostook, Senator **KIEFFER** to deliver the message.

Off Record Remarks

Out of order and under suspension of the Rules, on motion by Senator **AMERO** of Cumberland, the following Senate Order:

ORDERED, that a message be conveyed to the House of Representatives informing that Body that a quorum of Senators is present for the consideration of such business as may come before the Senate.

S.O. 46

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

The President appointed the Senator from Cumberland, Senator **AMERO** to deliver the message.

Senate at Ease
Senate called to order by the President.

At this point the Senator from Aroostook, Senator KIEFFER reported that he had delivered the message with which he was charged.

Off Record Remarks

Senate at Ease
Senate called to order by the President.

At this point, the Senator from Cumberland, Senator AMERO reported that she had delivered the message with which she was charged.

Off Record Remarks

COMMUNICATIONS

The Following Communication:

**THE SENATE OF MAINE
STATE HOUSE STATION 3
AUGUSTA, MAINE 04333**

August 29, 1996

Jeffrey H. Butland
President of the Senate
117th Legislature
Dan A. Gwadosky
Speaker of the House
117th Legislature

Dear Mr. President and Mr. Speaker:

On August 29, 1996, one bill was received by the Secretary of the Senate.

Pursuant to the provisions of Joint Rule 308.2, the following bill was referred to the Joint Standing Committee on Taxation on August 29, 1996:

Bill "An Act to Amend the Law Concerning Tax Increment Financing" (S.P. 775) (L.D. 1894) (Presented by Senator CAREY of Kennebec) (Under suspension of the rules, cosponsored by Representative DAGGETT of Augusta and Senators: HARRIMAN of Cumberland, MILLS of Somerset; Representatives: CAMERON of Rumford, GWADOSKY of Fairfield, JACQUES of Waterville, JOSEPH of Waterville, MAYO of Bath, MITCHELL of Vassalboro, POULIN of Oakland, REED of Falmouth, VIGUE of Winslow) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.)

Sincerely,
S/May M. Ross
Secretary of the Senate
S/Joseph W. Mayo
Clerk of the House
S.P. 776

Which was READ and ORDERED PLACED ON FILE.
Sent down for concurrence.

The Following Communication:

**THE MAINE SENATE
OFFICE OF THE PRESIDENT
STATE HOUSE STATION 3
AUGUSTA, ME 04333**

April, 1996

The Honorable May M. Ross
Secretary of the Senate
State House Station #3
Augusta, ME 04333

Dear Madam Secretary:

Please be advised that I have made the following appointments:

Task Force on Paperwork Reduction in Nursing Facilities; Pursuant to Resolve 1995, Chapter 71:

Shelly Lezer of Brunswick
Debra Fornier of Portland
Nancy Mattis of Gorham

Advisory Committee on Gambling; Pursuant to Executive Order #8 FY 95/96:

Senator Vinton E. Cassidy of Calais
Senator John J. O'Dea of Orono

Please let me know if you have any questions regarding these appointments.

Sincerely,
S/Jeffrey H. Butland
President of the Senate
S.C. 643

Which was READ and ORDERED PLACED ON FILE.

The Following Communication:

**THE MAINE SENATE
OFFICE OF THE PRESIDENT
STATE HOUSE STATION 3
AUGUSTA, MAINE 04333**

May 29, 1996

The Honorable May M. Ross
Secretary of the Senate
State House Station #3
Augusta, ME 04333

Dear Madam Secretary:

Please be advised that I have made the following appointments:

Task Force on Production and Issuance of License Plates; Pursuant to Public Law 1995, Chapter 645:

Senator Albert G. Stevens, Jr. of Sabattus
Rep. Wesley Farnum of South Berwick

Maine Task Force on Mental Health; Pursuant to Executive Order #10 FY 95/96:

Senator Charles M. Begley of Waldoboro

Advisory Committee on State Employee Workers' Compensation Costs Management; Pursuant to Resolve 1995, Chapter 63:

Larry E. LaPlante of Presque Isle
Anthony M. Payne of Falmouth
Lee J. Cyr of Gorham

Kenneth D. Fox of Old Town
Please let me know if you have any questions regarding these appointments.

Sincerely,
S/Jeffrey H. Butland
President of the Senate
S.C. 644

Which was READ and ORDERED PLACED ON FILE.

The Following Communication:

**THE SENATE OF MAINE
OFFICE OF THE PRESIDENT
STATE HOUSE STATION 3
AUGUSTA, MAINE 04333**

June 28, 1996

The Honorable May M. Ross
Secretary of the Senate
#3 State House Station
Augusta, ME 04333

Dear Madam Secretary:
Please be advised that I have made the following appointments:
Study Group to Review and Make Recommendations on School Construction Issues; pursuant to Public Law 1995, Chapter 632.

Senator Joel Abromson of Portland
Task Force on Lead Poisoning Liability and Insurance; pursuant to Public Law 1995, Chapter 572.

Senator R. Leo Kieffer of Caribou
Skill Standards Board; pursuant to Public Law 1993, Chapter 392.

Terry D. McCabe of Bremen
Please let me know if you have any questions regarding these appointments.

Sincerely,
S/Jeffrey H. Butland
President of the Senate
S.C. 645

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

The Following Communication:

**THE SENATE OF MAINE
OFFICE OF THE PRESIDENT
STATE HOUSE STATION 3
AUGUSTA, ME 04333**

August 29, 1996
The Honorable May M. Ross
Secretary of the Senate
#3 State House Station
Augusta, ME 04333

Dear Madam Secretary:
Please be advised that I have made the following appointments:

Oil Spill Advisory Committee; pursuant to 38 MRSA, Chapter 551-A:

John Stuart of Portland
Oversight Committee on Performance-Based Contracting; pursuant to Public Law 1993, Chapter 737:

Senator Georgette Berube of Lewiston
Senator John Benoit of Rangeley
Patricia Small of Scarborough
Katherine Bubar of Bangor

Please let me know if you have any questions regarding these appointments.

Sincerely,
S/Jeffrey H. Butland
President of the Senate

S.C. 646

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

The Following Communication:

**117TH MAINE LEGISLATURE
AUGUSTA, MAINE 04333**

May 30, 1996

The Honorable May M. Ross
Secretary of the Senate
State House Station #3
Augusta, ME 04333

Dear Madam Secretary:
Please be advised that we have made the following appointment:

Motor Carrier Training Advisory Board; Pursuant to Public Law 1995, Chapter 376, Section 5:

Senator Albert G. Stevens, Jr. of Sabattus

Please let us know if you have any questions regarding these appointments.

Sincerely,
S/Dan A. Gwadosky
Speaker of the House
S.C. 647

S/Jeffrey H. Butland
President of the Senate

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

The Following Communication:
**117TH MAINE LEGISLATURE
AUGUSTA, MAINE 04333**

August 29, 1996
The Honorable May M. Ross
Secretary of the Senate
#3 State House Station
Augusta, ME 04333

Dear Madam Secretary:
Please be advised that we have made the following appointment:

Oversight Committee on Performance-Based Contracting; pursuant to Public Law 1993, Chapter 737:

Rep. Michael J. McAlevy of Waterboro
Please let us know if you have any questions regarding this appointment.

Sincerely,
S/Jeffrey H. Butland
President of the Senate

S/Dan A. Gwadosky
Speaker of the House
S.C. 648

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

The Following Communication:
**JOBS FOR MAINE'S GRADUATES, INC.
209 MAINE AVENUE
SUITE 200
FARMINGDALE, MAINE 04344**

April 8, 1996
May M. Ross
Secretary of the Senate
State House Station #3
Augusta, Maine 04333
Dear Madame Secretary:
Pursuant to Public Law, Chapter 348, please find attached Jobs for Maine's Graduates, Inc. 1995 Annual Report.

Last week we distributed the report to the Joint Standing Committees of Labor and of Education and Cultural Affairs, along with original cover letters for each member. At that time, I was informed that I needed to submit the same to you. I apologized for the delay.

Please do not hesitate to contact us if we can clarify any concerns, questions, or issues you may have.

Sincerely,
S/John Stivers, Jr.
Communications Officer

S.C. 649

Which was **READ** and, with Accompanying Report, **ORDERED PLACED ON FILE**.

The Following Communication:
**COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
#135 STATE HOUSE STATION
ROOM 114, STATE OFFICE BUILDING
AUGUSTA, MAINE 04333-0135**

May 7, 1996

The Honorable Jeffrey H. Butland
President of the Senate
State House Station #3
Augusta, Maine 04333

Dear President Butland:
Pursuant to the provisions of 1 M.R.S.A. Section 1007, I enclose herewith the report of the Commission on Governmental Ethics and Election Practices for the calendar years 1994 and 1995.

Sincerely,
S/Marilyn Canavan
Director
S.C. 650

Which was READ and, with Accompanying Report,
ORDERED PLACED ON FILE.

The Following Communication:
**BUREAU OF CORPORATIONS, ELECTIONS AND COMMISSIONS
DEPARTMENT OF THE SECRETARY OF STATE
101 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0101**

June 7, 1996
May M. Ross, Secretary of the Senate
Secretary of the Senate's Office
3 State House Station
Augusta, Maine 04333

Dear Ms. Ross:
Pursuant to Public Law 601, An Act to Place Penobscot Land in Trust, I am submitting to your office a certified resolution by the Tribal Council of the Penobscot Nation that the Penobscot Nation has agreed to the provisions of this act.

Sincerely,
S/Julie L. Flynn
Director of Corporations and Elections

**RESOLUTION
NUMBER 05-29-96-01
OF THE PENOBSHOT NATION**

WHEREAS, the Penobscot Nation is a federally recognized Indian Tribe; and
WHEREAS, the Penobscot Tribal Governor and Council is the duly authorized and elected governing body of the Penobscot Nation;
WHEREAS, the Penobscot Nation held a General Meeting May 29, 1996 for the purpose of approving or disapproving legislation that was enacted by the 117th Legislature for the State of Maine;
THEREFORE, BE IT RESOLVED, that the Penobscot Nation approved Resolution 05-29-96-01: H.P.-1306-L.D. 1787 An Act to Place Penobscot Land in Trust

CERTIFICATION

I, Lorraine Dana, hereby certify that I am the Tribal Clerk of the Penobscot Nation and official custodian of certain records, including Minutes of the Meetings of the Penobscot Indian Nation, a federally recognized and sovereign Indian Tribe and that the foregoing is a true, accurate and compared transcript of resolutions contained in the Minute Book of the Nation, adopted at a General Meeting of said Nation, duly held on the 29th day of May, 1996, and that the proceedings of said Nation, and that the said resolutions have not been amended or revoked and is in full force and effect.

S/Richard H. Hamilton
Governor
S/Lorraine Dana
Tribal Clerk
S.C. 651

Which was READ and ORDERED PLACED ON FILE.

The Following Communication:
**STATE OF MAINE
DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES
BUREAU OF ACCOUNTS AND CONTROL**

June 11, 1996

The Honorable Dan A. Gwadosky
Speaker of the House
117th Legislature
The Honorable Jeffrey H. Butland
President of the Senate
117th Legislature

Dear Mr. Speaker and Mr. President:
In accordance with Title 5, Maine Revised Statutes Annotated, Section 1547, I am pleased to submit the Financial Report of the State of Maine for the Fiscal Year ended June 30, 1995.

Attached to this letter is a memorandum specifying the improvements made to this Annual Report. These changes bring the State's financial reporting closer to GAAP/GASB compliance. At this time several bids from accounting firms are being evaluated, and one will be selected to help complete compliance for future Annual Reports. Total compliance with GAAP/GASB standards will be achieved when the State's fixed asset inventory is done in conjunction with adding the Fixed Asset module to the MFASIS accounting system, all of which is in process.

We are pleased to deliver these improvements and believe that the added information and schedules will be a benefit to everyone. Comments about any facet of this report are welcome.

Sincerely,
S/Carol F. Whitney
State Controller
S.C. 652

Which was READ and, with Accompanying Report,
ORDERED PLACED ON FILE.

The Following Communication:
**STATE OF MAINE
DEPARTMENT OF PUBLIC SAFETY
STATE HOUSE STATION 42
AUGUSTA, MAINE 04333**

June 19, 1996
May Ross
Secretary of the Senate
3 State House Station
Augusta, ME 04333

Dear Ms. Ross:
Please find enclosed a copy of the final application and strategy submitted to the Bureau of Justice Assistance for funding of the FY 96 Edward Byrne Memorial State and Local Law Enforcement Assistance Formula Grant Program.

The program requires that the application be submitted to the State Legislature or its designated body for review. Unless I receive further instructions, I will consider that the Department of Public Safety has fulfilled its obligation in this area.

Sincerely,
S/Alfred Skolfield
Commissioner

S.C. 653

Which was READ and, with Accompanying Report,
REFERRED to the Committee on APPROPRIATIONS AND FINANCIAL AFFAIRS.

The Following Communication:
STATE OF MAINE
DEPARTMENT OF PUBLIC SAFETY
STATE HOUSE STATION 42
AUGUSTA, MAINE 04333

June 27, 1996
May Ross
Secretary of the Senate
3 State House Station
Augusta, ME 04333

Dear Ms. Ross:
Please find enclosed a copy of the final application and Implementation Plan submitted to the Office of Justice Programs for funding of the FY 96 Residential Substance Abuse Treatment Grant Program. The program requires that the application be submitted to the State Legislature or its designated body for review. Unless I receive further instructions, I will consider that the Department of Public Safety has fulfilled its obligation in this area.
Sincerely,
S/Alfred Skolfield
Commissioner

S.C. 654

Which was **READ** and, with Accompanying Papers, **REFERRED** to the Committees on **APPROPRIATIONS AND FINANCIAL AFFAIRS** and **CRIMINAL JUSTICE**.

The Following Communication:
MAINE STATE LEGISLATURE
OFFICE OF FISCAL AND PROGRAM REVIEW
STATE HOUSE STATION #5
AUGUSTA, MAINE 04333

July 24, 1996

Honorable Jeffrey H. Butland
President of the Senate
3 State House Station
Augusta, Maine 04333-0003
Dear President Butland:

In early June 1996, we received a copy of the Bureau of Budget's revenue and expenditure projection for fiscal years 1996 through 1999. This report is a requirement of Title 5, section 1665 of the Maine Revised Statutes Annotated.

Attached please find a copy transmitted to us for your review.

Sincerely,

S/Dana C. Hanley
Senate Chair

S/George J. Kerr
House Chair
S.C. 655

Which was **READ** and, with Accompanying Report **ORDERED PLACED ON FILE**.

The Following Communication:
MAINE STATE LEGISLATURE
AUGUSTA, MAINE 04333

August 21, 1996
The Honorable Jeffrey H. Butland
The Honorable Dan A. Gwadosky
Maine Legislature
State House
Augusta, ME 04333

Dear President Butland and Speaker Gwadosky:
I am pleased to forward to you the enclosed report of the Select Committee to Study Rate Increases in Nursing Homes. During the course of its work the

Select Committee learned of rate increases in nursing facilities that have taken place or will take place during 1996. The committee did not find these increases to violate Private and Special Law 1995, Chapter 80. When Chapter 80 takes effect on January 1, 1997, all increases during 1996 including these will be used to total the rate increases since July 1, 1993.

Because this inquiry has raised policy questions beyond the scope of our authority, the Select Committee recommends that the 118th Legislature examine rate setting and rate equalization, the provision of timely and accurate information on nursing facilities to the public and the possibility of standardized contracts for basic nursing home services.

The Select Committee has enjoyed the able assistance of the Long Term Care Ombudsman Program, the Maine Health Care Association and the Department of Human Services. Members of the public and the nursing home industry provided valuable information to the Select Committee. We extend our thanks to all who participated.

Sincerely,
S/Georgette Berube, Chair

S.C. 656

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

The Following Communication:
MAINE STATE LEGISLATURE
OFFICE OF POLICY AND LEGAL ANALYSIS
STATE HOUSE STATION 13
AUGUSTA, MAINE 04333
COMMISSION ON HIGHER EDUCATION GOVERNANCE

September 4, 1996

The Honorable Jeffrey H. Butland
The Honorable Dan A. Gwadosky
Maine Legislature
State House
Augusta, ME 04333

Dear President Butland and Speaker Gwadosky:

This letter is to inform you that the Commission on Higher Education Governance has submitted the attached report of our study of higher education governance to the 117th Legislature, pursuant to Public Laws of 1995, chapter 395.

Sincerely,
S/Norman Fournier
Chair

S.C. 657

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

At this point, a message was received from the House of Representatives, borne by Representative Whitcomb of Waldo, informing the Senate that a quorum was present for the consideration of such business as might come before the House.

Senate at Ease
Senate called to order by the President.

Off Record Remarks

On motion by Senator **RAND** of Cumberland, **RECESSED** until the sound of the bell.

After Recess
Senate called to order by the President.

Senator **PENDEXTER** of Cumberland 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.

Off Record Remarks

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

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

On motion by Senator **LAWRENCE** of York, **RECESSED** until 1 o'clock this afternoon.

After Recess
Senate called to order by the President.

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

ORDERS

Joint Order

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

WHEREAS, recent tragic events at the Augusta Mental Health Institute and in the City of Waterville warrant an investigation by the Joint Standing Committee on Health and Human Services into the operation of the Augusta Mental Health Institute and the Department of Mental Health, Mental Retardation and Substance Abuse Services; and

WHEREAS, the Joint Standing Committee on Health and Human Services needs the authority to issue subpoenas and compel testimony; now, therefore, be it

ORDERED, the House concurring, that the Legislature delegates to the Joint Standing Committee on Health and Human Services, pursuant to the Maine Revised Statutes, Title 3, chapter 21, subchapter II, the power to administer oaths, issue subpoenas and take depositions in connection with the committee's study of the operation and administration of the Department of Mental Health, Mental Retardation and Substance Abuse Services, the Augusta Mental Health Institute and the agencies contracting to provide services to the department. The review is to be limited to the provisions of mental health services and to otherwise act as an investigating committee.

S.P. 777

Which was **READ**.

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

Senator **PENDEXTER**: This Joint Order is before you today because, as you know, the Health and Human Services Committee has been meeting since early June in response to several tragedies that have happened

in the mental health arena. It has become very clear, as we have worked through the process, that there are numbers of barriers before us that hinder us from getting appropriate answers to what we feel are appropriate questions. The Committee really doesn't have the tools to work with if we are really to get down to the issues of what is ailing our mental health system. We have been asked by leadership to look into the tragedies of the death, the murder I should say, of Wrendy Hayne, at AMHI; and also the tragedy around the Mark Bechard incident in Waterville. Not to specifically focus majorly on those two instances, but to be able to use what has happened in those cases to apply to the bigger picture. It's really clear, irregardless of who chairs the Committee or who sits on the Committee, that we have to position ourselves now, as we have to become more accountable to the public, as we are moving away from institutional settings, as we are allocating millions and millions of monies to agencies to care for our mentally ill, that the Committee has to be able to be in a position where it can at least have the dialogue with the Department. At this point it is the Department of Mental Health and Mental Retardation, but it could certainly be applied, also, to DHS. There is no question that these committees, or these departments, are always, always, dealing with confidential matters; and there needs to be a process whereby the Committee can have a dialogue with the Department relative to certain issues. Yes, some, at times, will have to be confidential; and there are ways that it can be handled in executive sessions so that certain people's privacies are protected. So, I ask you to support me in passing this joint order so that the Committee can get to work and go about our other lives. There is no question in my mind that with subpoena power and the tools that we need with which to work to ask the proper questions of the Department, or of certain agencies involved, that we can get our work done and we can all go home. So, I hope that you can support me in this joint order. Thank you.

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

Senator **PINGREE**: Thank you, Mr. President. Men and Women of the Senate. I find that I am going to have to respectfully disagree with the good Senator from Cumberland, Senator Pendexter. I want to speak briefly about my disagreement. I, too, sit on the Health and Human Services Committee. I, too, have spent much of the summer here, investigating some very tragic and sad incidents. I have also been on this Committee for the last two years. The first thing I would like to say is that our system of mental health, and the difficulties that we have had, should come as no surprise to all of us. For the last two years we have heard over and over again, about a Department that has not been well staffed, about funds that haven't been available, about a consent decree that has never been followed or listened to. This Committee should not be surprised that we have been faced with the tragic incidents that we have. My frustration is that by voting for this joint order, and asking us to continue with further investigation, further questioning, further committee time, only diverts all from what we all should know needs to be done. This is a department, and this is a system, that needs our attention and needs our action. Our Committee knows what we have

to change and what we have to do. We have had numerous people come before us who have worked in the system, whose families have been harmed by the system, and explain to us, over and over again, about a system that is broken. A system, as one Senator said, that is sick. It's time that we fix it. I don't think that asking for subpoena power, asking for more people to come before us and tell us what we already know, spending a lot of the State's dollars, and a lot of time in delaying what has to be done, is the right thing to do in this case. I think it is time for this Committee to just take action, do what has to be done, and move along before anything else tragic happens. We don't need more information. We don't need to spend more money. I ask that you vote against this joint order. Thank you.

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

Senator **CAREY:** Thank you, Mr. President. As many of you know, the failings of the AMHI people has caused the death of two people in the City of Waterville, and the near fatality of yet a third. If we, as the people's representatives in this State, can't find out what's happening; and I don't know who could; and I would like to direct a question through the Chair, if I may, to Senator Pendexter. Did the task force appointed by the Governor have the authority, or the privilege, of going through some of this confidential information that is not to our use? Thank you.

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:** Thank you, Mr. President. Men and Women of the Senate. In response to the good Senator from Kennebec, the task force that was put together specifically had the task of looking into the murder at AMHI. It was not charged with looking into the Waterville incident. They were able to do that because in the consent decree there is a provision in the law that says that if there is a death at AMHI that an "independent group" can be put together to investigate that death, and that they, indeed, have access to confidential information. The Joint Standing Committee that oversees the Department and the institution doesn't share such a privilege in the statutes. As you know, there was an attempt made to put a bill in, through the Legislative Council, a couple of weeks ago, which failed, which would have at least allowed the Committee to have access to confidential information in a very, very narrow focus, so that we could have the same privilege that the independent group had before us. With subpoena power, it still doesn't take care of the confidential problem; but at least it positions us in a way that we can go to court, whereby a judge can make the decision. He can weigh both sides of whatever issues there are, and he could allow the Committee to have access to some confidential information. That's the advice the A.G.'s office has been giving us. Without subpoena power, we have no legal right to talk to anybody. We have no legal right to ask for any documents. We can't look into anything. I must disagree with my seatmate. You know, one thing is very clear to me, and I don't know if it is clear to my seatmate, but it is very clear to me that Wrendy Hayne did not have to die. I guess what motivates me is the fact that I have to face her parents every so

often, at least once a week, when the Committee meets. Those people deserve answers. The system failed Wrendy Hayne. It is the Committee's duty to find out why. The only issue that is before us is the quality of care that is going on at AMHI, and patient safety. I have to say to you, as Chair of the Committee, I would not probably suggest that you put a family member there today; because I cannot guarantee you that your family member would be safe, or would be getting good care on September 5th of 1996. It behooves anybody in this Chamber to not give the Committee that has oversight the responsibility to ask the questions, to not give us the tools we have to work with.

You know, what's really bothering me now is this is getting partisan. That's really ruffling my feathers; because I have to say, for the two years I have chaired this Committee there are certain things in the Committee that we have always been able to work on on a non-partisan basis; and mental health has been one of them. Mental health is not a partisan issue. We all want to do the right thing for the people who are entrusted in our public system. We have to get it right. There is not one member on my Committee, whether they are Republican or Democrat, who cares any more than getting it right and making sure that we are putting our money; and we are getting the quality care we need, whether it's agencies that we contract with, or whether it's our own mental institution. We must not let AMHI get away with murder. Something is very wrong over there and there is no question that the McDowell report, that has raised all of our suspicions on the Committee, that something is very wrong over there; and we can't continue to ask questions. Nobody will speak to us unless they are subpoenaed. I can assure you of that. It's not about being punitive, or being negative, or whatever. It's the fact of the matter, it's about accountability. My seatmate makes the point that the system isn't well funded. That is wrong, Men and Women of the Senate. If you look at the national average, what we appropriate in our mental health system is above the national average. Furthermore, I have heard more than once, from the Department, that AMHI is overstaffed. The McDowell Report made it real clear that the murder was not a result of not enough staff. So, that is not an argument.

There were a lot of issues that need to be addressed in our mental health system. We are at a crossroads and we better get it right; because if we make the wrong decisions, we will be suffering for a long time. It really upsets me that this is getting partisan. It's not my fault that the elections are two months away; and it's becoming political, for whatever reason. We are elected to serve the people until December 3. If the Health and Human Services Committee has a job to do, then we ought to be allowed to do it. It really bothers me when mental health is not the issue anymore, because that is the issue. If any of you want to answer to Wrendy Hayne's parents, be my guest; because we failed their daughter. She was a severely disabled person with mental illness. Her parents depended on us, the State, to take care of her; and she got murdered in our institution. If that doesn't bother you then maybe you ought to think about why you are sitting here. It certainly bothers me. It's not a Republican issue, and it's not a Democrat issue. I'm not going to apologize because I am a Republican

Chair of the Committee and now it has become a Republican agenda. Excuse me. So, I ask you to vote for the right reasons. The reasons are: the Committee has absolutely no power to do anything, and perhaps there is nothing here; but we will never know if we can't have the discussions we need to have with the Department or with certain agencies. We will never know. I ask you to really think seriously before you vote no on this issue. Thank you.

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

Senator **BENOIT:** Thank you, Mr. President. May I please the Senate. Let's take a look at this order, see what it seeks. It seeks to give the Committee the power to administer an oath. Why do we have, in our society, an oath in the first place? Why? To get at the truth. That's why. The Committee wants the power of subpoena. Why do we have subpoenas in our society? To get at the truth. Pure and simple. We want the power of deposition. Why do we have the power of deposition in our society? To get at the truth. This order seeks tools for a legislative committee to get at the truth. That's all it asks for. The argument, so far, against it is that we shouldn't be surprised to see what's happening at AMHI. I will tell you something else. I'm on the Committee investigating over there. Surprised? Sure. But, I will tell you there is something worse that I am suffering under - frustration - trying to get at the truth of what happened. All we ask for now are some tools to get at the truth. If you hire a carpenter to put up a shed, and that carpenter shows up without tools, don't expect to get the job done right off. Thank you.

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

Senator **BUSTIN:** Mr. President, Ladies and Gentlemen of the Senate. I want to say, and it's really quite self-serving, that I am probably the only person sitting at these desks who has as intimate a knowledge of AMHI as anyone else. I work there. I represent those employees, you all know that. I pretty well know what is going on there, but do you know what? I was also chair of the Human Resources Committee when I first came into this Legislature. I wasn't an AFSME staff rep at that time. I didn't become one until 1991. I didn't have any problems getting the answers, and I didn't have any problems trying to ferret out what needed to be done and what didn't need to be done. I did have some problems getting some votes to do what needed to be done. The good Senator from Cumberland, Senator Pendexter, is questioning the partisanship of this, and indicating that, of course, it isn't a partisan issue. Of course it isn't a partisan issue. Caring isn't partisan. Caring is human. I hear that she cares about what goes on over there. I think the approach is all wrong. I think that even bringing up a partisan issue is all wrong. I think that that diverts us from approaching the problem in the way we need to approach the problem. Of course there is a problem. Anybody in their right minds knows that there is a problem and we need to address it. I do happen to serve on the Governor's stakeholders' task force. I think that we are doing some good work there. We have formed sub-committees. We are addressing the mandate that we had from the Governor. We are looking at the system as a whole and we are trying to integrate it. I had urged, and

wished, that we could integrate our committee with the Human Resources Committee in order to approach that problem in that manner. We have, as the good Senator from Knox, Senator Pingree, has said, is that of course there is a problem. We can approach it in the manner that you approach all problems and you have all of the information before you. You truly do have all of the information before you. Trust me, you do have all of the information before you. You can fix the system if you care to fix the system. We may disagree on how to do that. That's legitimate. I may have my views of how I think persons with mental illness need to be treated, and you may have your views of how you think they need to be treated. That is a legitimate argument; but to put it in as a partisan, covering up the facts guise, kind of mode, is not where it is at. Where it is at is looking at the system as a whole and trying to fix it, so that it approaches what is happening today in mental illness.

What really is the problem is that we don't always catch up with ourselves. What happened in the '70's was that we had some new medications, and that's why there was that push to push people out of the institutions, because now we had medications that could control some of the behaviors that the AMHI and BMHI were trying to control. Well, as time goes on, we will have more and more of those medications. They will get more sophisticated, and we will be able to treat more people outside. That is a natural progression. So, we need to be on top of things as a legislative committee, as a Legislature, to try to keep up with that natural progression. What I say to you is that you have the facts before you now. You do not need to have a kangaroo court in order to do that. That is what I would term this because, in fact, everybody brings up the Wrendy Hayne case. Well, I face the parents of Wrendy Hayne every Wednesday night when they go to the same meetings that I go to for the community. So, it's not only one Senator in here; but there is a couple of Senators in here who face that every week. I feel for those parents. Of course I feel for those parents. I feel for every parent who has lost a child in whatever manner. The fact of the matter is that that case is in court, and that is where it belongs. It does not belong in the Legislature. Thank you.

On motion by Senator **BUSTIN** of Kennebec, supported by a division of at least one-fifth of the members present and voting, a Roll Call was ordered.

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

Senator **LONGLEY:** Thank you, Mr. President, Men and Women of the Senate. Along the same lines of these issues belonging in the courts, I would just like to tell you that the most recent Supreme, and maybe one and only Supreme Court decision on confidentiality came out this summer. The gist of it was that when we go to our doctors what happens between our doctors and us is private and should be kept confidential. The Court went on to say, even more importantly, to encourage people who need mental health help to go for mental health help. We honor the confidentiality of mental health clients even more than we honor the confidentiality of physically sick patients. Lastly, I would like to pose a question through the Chair. Do we know what the fiscal note attached to this, of hiring so many lawyers to work it through the subpoena hearings, and courts?

THE PRESIDENT: The Senator from Waldo, Senator Longley, has posed a question through the Chair to any Senator who may care to respond. The Chair recognizes the Senator from Franklin, Senator Benoit.

Senator **BENOIT:** Thank you, Mr. President. May it please the Senate. So far, in the process, the Attorney General is our counsel. Of course he gets his pay the way he does every day for what he does. There are no extra charges here that I see.

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

Senator **BUSTIN:** I would like to pose a question through the Chair. Does anyone have knowledge that those people subpoenaed have a right to counsel and that that payment is made by the Legislature?

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 Knox, Senator Pingree.

Senator **PINGREE:** Thank you, Mr. President. I don't have knowledge about that, but I understand we have had several discussions about this in the Committee. In this case, the AG would not represent the Committee. We would have to hire outside, unbiased counsel; and the AG would represent the Department in this. I thought that I understood, although I could get clarification on that, that when we called witnesses, we also had to help support their counsel too. I would just like to go a little bit further and say that was one of the concerns I had, again, about the length of time that this process could take before we took action. I can imagine people being subpoenaed by the Committee and refusing to answer our questions, and having their counsel go to our counsel and say they can't answer these questions because it jeopardizes them in their work place or there are rules that prevent them from talking about it, or there are confidentiality laws that they would broach, and then we would be back in the same situation where we have been for a long time. That also brings me to this point of confidentiality. The way I read this document, this does not change our ability to access what is now confidential information, which we may or may not want to access and want to make public, for some of the reasons that have already been stated here today. So, one of the things that the Committee has talked about quite a bit this summer is, should we have access to more confidential information, would not be solved by this process. This will just allow us to call witnesses and require them to talk, which they may then fight us in court about, but will not require the Court to give us access to anymore information than we now have. Some information has been turned over to us by the family. Some information has already been procured by this Committee through court actions. So, we have pursued that course, looking for pieces of information that Committee members want to know.

I just want to say a couple of other things. I don't want to get into a discussion, this afternoon, of the entire system of mental health; because this is not the Committee, although this joint order did come to the floor. I don't think this is the time to talk about that. But, I want to reinforce what I said before; and I need to preface it by saying I feel tremendous compassion for all of the families, communities, and individuals who have been involved in tragedies in this situation. I sit on the same

Committee, look into their faces. I talk to the Burns family on the phone, and anyone else that I think it is important to talk to in my community, or others. I want to reiterate that I have tremendous sadness that anyone should be harmed by a system which, basically, we are all responsible for and need to take responsibility for. I want to say a couple of things about our system of mental health that I think contributed tremendously to the problems that we are facing today. While there is a lot of discussion that there is plenty of staff at AMHI now, and some people feel that this system is adequately funded, much of that happened only in recent times in response to the consent decree. From people who have talked to me about the history of this system, and we know it because of the consent decree that was put on us in 1988, it's not a population or a Department that we have focused our efforts about, or shown sufficient care for, for a long, long time. Now we are faced with taking responsibility for the mistakes that have been made for a very long time, and this Legislature was sitting all during that time and needs to understand that we can't put off the blame somewhere else on someone who we don't yet now know how to identify. I think that hundreds of administrative contracts with private providers all around the State, many of which do not have contract language in them that allows us proper oversight, are something we have to deal with; and we have to change and need to take action on immediately. Many of these pieces of information we can't access because we never said we wanted access to them when we made the original agreements with the providers who work for us and do our business. A second thing is, leaving AMHI as we have for such a long time, in a state of unknowing flux for all the people who work there, the people who stay there, the family members who depend on it, and the members in the community who want to know where they will go for long term care, is a travesty that this Legislature should take care of and hasn't taken care of for a long time, deciding what to do with this institution and how to care for people who need long term care, instead of saying, week after week, that maybe we will do this or maybe we will do that or maybe we will have doctors who come in month by month and then turn over work. Maybe we will have policies that there is no long term stability. This is something that legislatures have been unwilling to deal with and have been kept in flux for a long time. I think this contributes to the problems we have and is something we are not taking any steps to do anything about. That is only two things that concern me; but there are many, many, issues around parts of the consent decree, parts of important concerns about patients' rights, that have to be talked about in this context that we already know about, that we already could go a long ways towards solving. My only concern about doing this is that it just puts us that much further from making decisions and doing the tough things that we know have to be done. That's why I continue to oppose doing more of just sitting in Committee.

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

Senator **HANLEY:** Thank you, Mr. President, Men and Women of the Senate. If I could just take a moment and address one of the questions put forward by the good Senator from Kennebec, as far as the fiscal note. I have had an opportunity to talk with our staff, and a preliminary report based on the

numbers of times this power would be used, it would be nominal on the part of the Attorney General's office, and probably could be absorbed within their budget. Also, on the part of the Legislature, it would be relatively nominal, and would probably also be absorbed within the legislative budget.

While I'm on my feet, I would also like to respond, ever so briefly, to the case that the good Senator from Waldo, Senator Longley, brought up, and just want to draw the Chamber's attention to the fact that there is a lot of case law at the national, and also at the state level, dealing with what the rights of the State and federal government are, as far as in the expenditure of public funds for the best interest of the citizenry. There is a balance that is crafted in that instance, using the utilization of public funds, with respect to private funds. I think that's a distinction which needs to be made.

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

Senator **PENDEXTER:** Thank you, Mr. President. Men and Women of the Senate. A couple of things that need to be straightened out. The first is around the confidentiality issue. The Committee has worked through a whole waiver process whereby a family member wants to waive their right to confidentiality, then they may do so. We have legally done that. It has been approved by a judge. So, the Committee is in a position that if certain people would like to waive their confidentiality, which is their total right to do, then the Committee doesn't have a problem with confidentiality information. We are already going to be getting Wrendy Haynes' records. The family is turning over all of her records, her confidential records, to the Committee. There are about fourteen volumes. Volume 9 is going to be taken up in executive session only. Everything else will be public. That's the way the family wants it, because they feel so victimized by the system that they want it to be discussed in public. We have already been to court. The judge has blessed us and said yes, Committee, it is okay for you to have the records, Wrendy Hayne's records. It is okay for you to proceed. As a matter of fact, he is about ready to rule on whether a non-record hospital document will be passed over to the Committee. My sense is that it is looking pretty good. So, we already have precedence right now that the court is agreeing with the fact that the Health and Human Services Committee has all the legal rights to do what we are wanting to do, which is look into the murders, and the instances that have happened in our mental health system. The only other thing that I need to say is we can talk about stakeholder groups, we can talk about this group or that group, the fact of the matter is it is the Health and Human Services Committee that has the responsibility, and the obligation, to ask the questions. We are perfectly willing to work with everybody else, but it is our responsibility to do the work of overseeing the departments and overseeing the mental health institutions. I sit here and I hear some of you say, "I feel the pain of Wrendy Hayne's family. I face them every week as well." "Tremendous sadness". Well, you know, some of you really talk the talk well, but I am challenging you now to walk the walk. Thank you.

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

Senator **MCCORMICK:** Thank you, Mr. President.

May I pose a question through the Chair? Have there been any investigations into this murder? If so, how many? What have they found?

THE PRESIDENT: The Senator from Kennebec, Senator McCormick, 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:** There has been the McDowell Report, which was the investigation of the Wrendy Hayne murder. Then there was an internal review done through the Kennebec Valley Mental Health Center. They reviewed themselves relative to the Bechard murder. We do not have access to that because that is confidential.

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

Senator **BENOIT:** Thank you, Mr. President. May it please the Senate. Nothing in this order takes away a legal right of an individual at all. The right to counsel is not disturbed. No rights are affected by the oath power subpoena deposition. Some mention has been made, a moment ago, about a kangaroo court. See, this order seeks to create a body opposite a kangaroo court; because, to me, if you have a body gathering information by hauling people in, not administering an oath, you've got a kangaroo court. Haul them in without a subpoena. Just grab them and haul them in without legality. Haven't you got a kangaroo court? A kangaroo court cannot exist with legality. The more legality, the less kangaroo. It's as simple as that, as I see it. That's what we want in this order. Legality to get at the truth. So, as I see it, with the oath, the subpoena, the deposition, the kangaroo hops off into the distance and disappears. Thank you.

THE PRESIDENT: The pending question before the Senate is the motion by Senator **PENDEXTER** of Cumberland that the Joint Order receive **PASSAGE**.

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

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

NAYS: Senators: BERUBE, BUSTIN, CLEVELAND, ESTY, FAIRCLOTH, GOLDTHWAIT, LAWRENCE, LONGLEY, MCCORMICK, MICHAUD, O'DEA, PARADIS, PINGREE, RAND, RUHLIN

ABSENT: Senator: CIANCHETTE
19 Senators having voted in the affirmative and 15 Senators having voted in the negative, with 1 Senator being absent, the motion by Senator **PENDEXTER** of Cumberland, that the Joint Order receive **PASSAGE**, **PREVAILED**.

Sent down for concurrence.

Under suspension of the Rules, all matters thus acted on were sent forthwith.

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

**PAPERS FROM THE HOUSE
Joint Order**

Expression of Legislative Sentiment recognizing:

The Massabesic Athletic Boosters, parents and students of M.S.A.D. #57, for their achievement in the successful planning and completion of a lighted athletic complex. The hard work will provide the opportunity for all students to participate on the athletic field of their choice, at a level that encourages excellence from every athlete;

HLS 1423

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

Which was **READ**.

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

Senator LORD: Thank you, Mr. President. My Learned Colleagues. I represent all of the towns in S.A.D. 57. It may seem like a little sentiment, but there is a lot of work that the parents and students of S.A.D. 57 put in, and I believe they raised quite a lot of money to get the lights to light up their ballfield. I think it shows that a lot of people can work together and help to get something for the school, without coming to the district and the towns to get it. I think they deserve a lot of thanks and congratulations. Thank you.

Which was **PASSED**, in concurrence.

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

COMMUNICATIONS

The Following Communication:

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

August 20, 1996

Dan A. Gwadosky
Speaker of the House
117th Legislature
Jeffrey H. Butland
President of the Senate
117th Legislature

Dear Mr. Speaker and Mr. President:

On August 20, 1996, one bill was received by the Clerk of the House.

Pursuant to the provisions of Joint Rule 308.2, this bill was referred to the Joint Standing Committee on August 20, 1996, as follows:

Agriculture, Conservation and Forestry

Bill "An Act to Implement the Compact for Maine's Forests" (H.P. 1390) (L.D. 1892) (Presented by Representative SPEAR of Nobleboro) (Cosponsored by Senator PARADIS of Aroostook and Representatives: CROSS of Dover-Foxcroft, GOOLEY of Farmington, GOULD of Greenville, KILKELLY of Wiscasset, Senators: HARRIMAN of Cumberland, LONGLEY of Waldo, MICHAUD of Penobscot, MILLS of Somerset) (Governor's Bill)

Sincerely,

S/Joseph W. Mayo

Clerk of the House

S/May M. Ross

Secretary of the Senate

H.P. 1391

Which was **READ** and **ORDERED PLACED ON FILE**, in concurrence.

The Following Communication:

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

August 29, 1996

Dan A. Gwadosky
Speaker of the House
117th Legislature
Jeffrey H. Butland
President of the Senate
117th Legislature

Dear Mr. Speaker and Mr. President:

On August 29, 1996, one bill was received by the Clerk of the House.

Pursuant to the provisions of Joint Rule 308.2, this bill was referred to the Joint Standing Committee on August 29, 1996, as follows:

Labor

Bill "An Act to Conform the Maine Tip Credit to the Federal Tip Credit" (EMERGENCY) (H.P. 1392) (L.D. 1893) (Presented by Representative KERR of Old Orchard Beach) (Cosponsored by Senator AMERO of Cumberland and Representatives: CAMPBELL of Holden, FISHER of Brewer, TRUE of Fryeburg, WATERHOUSE of Bridgton, Senators: BUTLAND of Cumberland, FERGUSON of Oxford, STEVENS of Androscoggin) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.)

Sincerely,

S/Joseph W. Mayo

Clerk of the House

S/May M. Ross

Secretary of the Senate

H.P. 1393

Which was **READ** and **ORDERED PLACED ON FILE**, in concurrence.

The Following Communication:

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

September 3, 1996

Dan A. Gwadosky
Speaker of the House
117th Legislature
Jeffrey H. Butland
President of the Senate
117th Legislature

Dear Mr. Speaker and Mr. President:

On September 3, 1996, one bill was received by the Clerk of the House.

Pursuant to the provisions of Joint Rule 308.2, this bill was referred to the Joint Standing Committee on September 3, 1996, as follows:

Appropriations and Financial Affairs

Bill "An Act to Authorize the Department of Human Services to Accept Federal Funds and to Make Certain Expenditures" (EMERGENCY) (H.P. 1394) (L.D. 1895) (Presented by Representative KERR of Old Orchard Beach) (Cosponsored by Senator HANLEY of Oxford and Representative FITZPATRICK of Durham, Senator: PENDEXTER of Cumberland) (Governor's Bill)

Sincerely,

S/Joseph W. Mayo

Clerk of the House

S/May M. Ross

Secretary of the Senate

H.P. 1395

Which was **READ** and **ORDERED PLACED ON FILE**, in concurrence.

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

COMMITTEE REPORTS

House

Divided Report

The Majority of the Committee on **LABOR** on Bill "An Act to Conform the Maine Tip Credit to the Federal Tip Credit" (Emergency)

H.P. 1392 L.D. 1893

Reported that the same **Ought to Pass as Amended** by **Committee Amendment "A"** (H-923).

Signed:

Senators:

BEGLEY of Lincoln
MILLS of Somerset

Representatives:

WINSOR of Norway
JOYCE of Biddeford
JOY of Crystal
STEDMAN of Hartland
PENDLETON, JR. of Scarborough

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

Signed:

Senator:

RAND of Cumberland

Representatives:

HATCH of Skowhegan
TUTTLE, JR. of Sanford
SAMSON of Jay
LEMAIRE of Lewiston
CHASE of China

Comes from the House with the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill, under suspension of the Rules, **READ TWICE** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A"** (H-923).

Which Reports were **READ**.

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

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

Senator **RAND:** Thank you, Mr. President, Men and Women of the Senate. I hope you will reject that motion and you will agree with me that this bill should not pass. In the first instance, this bill, in my opinion, has no place in this special session. When we were polled as to whether we would attend a special session dealing with the forest industry, many of us agreed to that special session under the condition that that be the only bill that we take up. I do not believe that anyone could seriously say that the Governor would have called a special session to deal with this bill specifically.

This bill, if passed, would represent a very major and fundamental change in Maine's minimum wage policy, a policy that has been in place in this State for thirty years. One of the most glaring sights at the hearing yesterday was that, of the large number of people in attendance, only one was a waitress, the other part of this industry that will be affected by this bill, was present. I suggest to you, Men and Women of the Senate, that while one part of the industry represented in the hearing by the Maine Restaurant Association knew very well what was coming

up, knew about the hearing, had all of the information that they needed to get this bill before the Legislative Council and a hearing in the special session. The waiters and waitresses in this State did not know. They are not organized and they had no means of which to find out that this was going on. We would have been a much more productive hearing, and we would not be left with unanswered questions, which we are, if both sides had been adequately represented in this discussion. In lobbying for this bill, the Maine Restaurant Association, has said that if we don't pass it there will be terrible economic damage done to the restaurant business in the State of Maine. This is the exact argument that is used now, and has always been used by the Restaurant Association, and all groups who oppose any increase whatsoever in the minimum wage. They have never supported an increase in the minimum wage. Certainly, they are not about to support an increase in the minimum wage at this time. At what point they would support one is not clear.

As we have all taken this bill up in caucus, I think we all pretty much know what the bill would do. This bill would freeze the tipping wage in the State of Maine at \$2.13 an hour. Historically, for the past thirty years, Maine law has said that when other employees get an increase in the minimum wage, then those who receive tipping wages would receive one half, 50%, of that increase. In this instance, it would mean that those who make their living waiting tables would receive a twenty-five cent an hour increase in pay in October. I don't know what the history is why the restaurant industry was able to secure payment of a sub-minimum wage to their waitstaff. I really don't know how that came into being. It would have been interesting to find out this history; and if we had had an adequate amount of time to research this whole thing, we could have come up with it. But, it is very fair to say that we have one industry that has carved itself out a lovely little niche. They are allowed to pay their workers in the State of Maine, right now, \$2.13 an hour. When the minimum wage was passed and signed by President Clinton just a few weeks ago, every other business, except for some agricultural businesses, had to go along with that increase. Every single one. No one has this special exemption so that they only have to pay their people \$2.13 an hour. We were told by the Restaurant Association that Maine's minimum wage should comply and conform with the federal minimum wage. As we know, the Congress did amend the minimum wage bill to exclude the tipping wage for federal employees. The truth is that Maine's minimum wage has not always conformed with the federal. From 1971 to 1974, from 1975 to 1976, and from 1985 to 1991, Maine's minimum wage surpassed the federal law. We have been told that this twenty-five cent an hour increase to their employees will cause horrible hardship. Remember that from 1991 to 1995, taxable sales in restaurants rose from \$1,007,409,000 to \$1,184,000,000, which is a little bit more than a 17.5% increase. This represents an amount that is way above the rate of inflation. Where other businesses have been flat, or even losing ground, certainly our workers, due to inflation, have been ratcheting downward, here is an industry that is succeeding, and I am thrilled that they are; and yet they want to do away with the thirty year history of increasing their frontline workers' wage when the minimum wage is increased.

There are many questions that were left unanswered because of the time element involved here. It was unclear, even today, as to how benefits are paid under workers' comp and how the workers' comp premiums are evaluated and rated. Today I did get notification from the Labor Committee's L.A. that, indeed, workers' comp premiums are based, for the restaurant industry, on the wage income, the cash income, not cash in tips. So, we have a whole industry that has another little bonus. Not only are they paying people \$2.13 an hour, they are paying their worker's comp premiums, which is based, a good part, on salaries of \$2.13 an hour. That is a great savings. Who's making up the difference when it is time for injured employees to be paid benefits? As I said previously, the most glaring problem with this is the gross unfairness. We want to deny an increase in the minimum wage to between 10,000 and 12,000 Maine workers who deserve it. We heard a lot of testimony that waitstaff make between \$9 and \$20 an hour. Maybe they do, for a certain number of weeks in certain towns, especially coastal towns in the State. According to the Department of Labor, the average wage for waitstaff is \$5.47 an hour. It would have been interesting to have been able to question waiters and waitresses from various parts of the State to find out what is going on here. We heard from one side only, with the exception of one waitress. We did have several groups speak in opposition to this bill. They were the AFL-CIO, the Catholic Church sent a letter, the Association of Independent Neighborhoods, and the Maine Women's Lobby. With all due respect to these people, they are not waiters and waitresses. They are advocates and lobbyists. We have not had time to hear from the half of the people who are affected by this legislation.

There is another part of this that came up in the discussion and it is the Track Two Initiative that the federal government is going through. From what I gathered at the hearing, it has to do with \$6 to \$9 billion worth of income that is not being reported; and taxes are not being paid on this. I'm not clear as to whether they are talking about this \$6 to \$9 billion resting solely on the shoulders of waiters and waitresses who are not reporting tip income, or if it also includes employers who have to pay FICA and FUDA based on the total wages, which would include tips, of their employees. Clearly, it would be in their best interest to have the employees make a lower wage. If we had more time we could have checked this out more fully.

The bottom line is, when every other small business in this State must comply with the minimum wage, why, at this time, should we carve out a special exception, in the middle of a special session that was supposed to be just for the forest industry, to exempt one special group from paying what is already a sub-minimum wage? I urge you to reject this bill. If it has any merits whatsoever it can be brought back and we can have a full and open discussion. I would certainly like to see more than one waitress present at the public hearing. Thank you.

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

Senator MILLS: Mr. President, Men and Women of the Senate, and what I assume to be many former waiters and waitresses in this room. I have to begin by taking gentle issue with my seatmate on the

procedural posture of this bill. We have only four or five matters of any great substance before us in these two days. I'm only a freshman; but never, since my arrival, have I had more opportunity to reflect on the issues that have been presented to us than in this special session. I think this is the way we should do business. In the general session, and even worse, in the short general session, we had paperwork falling off our desks and no real opportunity to focus on one issue at a time. This, for me, is an absolute luxury. I think that we have had a really thorough opportunity to review the issues. They were very technical and very complex in regard to this matter of the tipped employees in Maine. You need to understand that the impact of our failing to pass this bill will be that all tipped employees in Maine will be receiving, on October 1, a 25 cent hourly raise that will be paid for out of the pocket of the employer, the restaurant; and the taxes associated with that 25 cent increase will also be paid by the employer. So, it is effectively closer to thirty cents or a little more. With that in mind I have really two minds about this bill, because, this is overly simplistic; but I need to think about waitstaff. That's what we were advised to call them because many of them are men, and waitpersons really doesn't quite do it for me, but waitstaff is a nice term that we were using yesterday, fall into two loosely structured economic categories, as far as I can tell. On the one hand we have some fairly well-to-do communities, largely aggregated on the coast, where everyone involved seems to be making a fair amount of money, both the owner of the enterprise and, indeed, the waitstaff who work there. We were told that waitstaff make anywhere from \$7 to \$15 an hour in the better establishments in Portland, Camden, and places like that, where people are accustomed to tip 15% and sometimes 20%, and treat waiters and waitresses with a great deal of respect and pay them accordingly. It doesn't seem to be consistent with the philosophy behind the minimum wage concept to mandate a twenty-five cent an hour raise for waitstaff who are fortunate enough to fall into that category. I must say, by way of reservation, I was dismayed to hear yesterday that practically no restaurant in the State pays benefits to any of its waitstaff. We didn't hear from anybody who is offering health insurance or, heaven forbid, a pension plan for any of these people. That aside, there are certainly restaurants in this State where the cash hourly wages, when you aggregate the check and the tips, is quite substantial, quite adequate, passes the straight-face test for a good wage. I won't quarrel with anybody who says that they really earn their money. They do. They work very, very, very hard for that \$7, \$8, \$9, \$10 or \$12 an hour, harder, probably, than many of us recognize; because they are trained not to show how hard they work. I have every sympathy for them, but I don't think it lies within the province of this Legislature to say we should regulate that economic relationship by dictating that they receive another twenty-five cents on top of what they are already making.

The other category, and this is the category that, quite frankly, troubles me. The waiters and waitresses who are working at most of the small establishments in small, rural towns, in Penobscot, Piscataquis, Somerset, Franklin, Aroostook, and Washington Counties, those counties where, if the restaurant raises the price of a cup of coffee by a

nickel, he will lose ten regular customers; because everybody in town is very price sensitive; and they don't tip very well; and the restaurant owners are just barely making it themselves. I suspect that many of the people who wait on tables or counters in those establishments are probably just barely making the minimum wage, or something just barely in excess of it. I doubt very seriously that their tips average out to more than several dollars an hour. That average is probably brought down by the fact that they have to get in early to do some prep work while there are no customers to be waited on, and they probably have to stay late to clean the counter and do whatever else has to be done after the customers have gone. So, when you average everything out, they probably aren't making a great deal of money. Those people are the people that I feel for and those are the very people that we should be considering when we think about the policies underlying the minimum wage legislation. Those are the very people I was thinking of a year and a half ago when we had this same issue in front of us, only in the context of whether we should raise the minimum wage generally. At that time, I was in favor of raising it, unilaterally, within this State, separate from the federal raise; because I felt that the minimum wage in this State, at that time and this, was being paid largely by employers who could very well afford to pay it. I was talking about Burger King, Dunkin' Donuts, and KFC and Pizza Hut, and all of these other places that I found to be paying it when I thought they could afford to pay more than \$4.25. They will be persuaded to do so under the federal law that was recently passed. My concern about the waitresses and waiters who work for the small restaurants and the small establishments is this, I know the owners of those very establishments. I know that many of them aren't taking home the minimum wage themselves for the hours that they put in to run the restaurant, or the lunch counter, or whatever it is. For us, as a legislature, to say that we dictate that those folks pay out another twenty-five cents an hour to their staff is problematic for me. It goes either way. I think that we are doing as much harm to these establishments that are on the edge of economic viability as we are doing good for the people who may work there. Bear in mind that the law is very clear that if the waiter or waitress does not make the minimum wage on tips and wages, the employer is obligated, by law, to make it up. I am sensitive to the idea that that may not be highly enforceable; but, nevertheless, that is the law. To say to someone who will make \$4.75 an hour that we should direct that the wage be higher than that, that the twenty-five cent raise should be given in circumstances where it may result in the closing of a restaurant that is on the edge of being able to make it is highly problematic for me. For that reason, I support passage of the current bill.

THE PRESIDENT: The Chair recognizes the Senator from Lincoln, Senator Begley.

Senator BEGLEY: Thank you, Mr. President. The comment of the bill being here, regardless of roll call, has no merit. We are here. The bill has importance to both sides. The fact that we had one person who said she represented, and did represent, a waitress is not necessarily the only testimony we heard from those employees. They were not here; but they did, through their employers, submit written

testimony that, hopefully, is part of the record, stating, rather frankly, that their position and their pay is adequate; and the employer is meeting the responsibilities; and that they are not overly interested in major changes dealing with the \$2.13 versus the \$2.38. There was testimony to that effect. The position of tipped wage earners, we asked on several occasions, is it true that legally no wage earner in this category is receiving less than minimum wage? The answer was yes; because legally the employer must meet that commitment, regardless of \$2.13 or \$2.38. Would it meet it with the \$2.13? Yes. Would it have to meet it with the \$2.38? Yes, depending entirely on what the bill finally ends up being. In regards to positions, employers yesterday, and today, were willing to submit to the record of the Committee actual pay schedules for their employees. This one happens to say that the employee earns over \$8.00 an hour. Is that typical across the State? Who the heck knows? There are other people who will tell you that they are working and earning only \$4.75. In general, the tipped wage earner, according to the categories as presented to us, is earning well over the minimum wage. Most of them have the connection with the employer, which is, generally speaking, excellent, to the point being that they are treated, hopefully, with respect. We heard testimony to that effect. They also received from many of the restaurant owners, beyond the tip, certain privileges in regards to that restaurant. One restaurant person testified that all of his employees, if they are working there during breakfast, lunch or dinner, receive that meal gratis. He feels that that is important for the morale of his restaurant and his employees. This goes on all over the State. I come from an area where there is a restaurant, a very popular restaurant. The employer has a list of prospective waitresses waiting for an opening. You don't find that if they are being abused or being underpaid. The position of the restaurant owners, simply remember please, that in general these workers are getting a wage definitely over the minimum wage. They are not screaming and hollering that they are being abused. Remember, please, that we, as a legislature, argued the minimum wage bill in this session, and said that when the federal government changes its regulation, we, the State of Maine, would go with it. The federal government did change and stated in there to freeze the point of \$2.13. That was the federal government, not the State of Maine. We, in our wisdom, when we accepted that proposal before us, should certainly agree to it now. Thank you.

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

Senator McCORMICK: Thank you, Mr. President. I had been hearing only from employers on this issue, and have received the mailing of the Maine Restaurant Association, so this morning I took it upon myself to call around to some restaurants, and visit some restaurants and talk to some waitresses; because I am like Senator Rand from Cumberland, and had not been part of the hearing, nor had I heard this lone waitress testify in favor of this bill. So, I have a district which is not on the coast. The district does not have any fancy restaurants where people get \$10 an hour tips, and I picked restaurants that I would consider working-class, rural restaurants. One in Gardiner, one in Lisbon, and then I stopped by a

local one on the way to work here. I found some very interesting things in my discussions. First I talked to Nancy, who is a waitress at a Gardiner restaurant. They all make more than the minimum wage. He pays them \$4.25 an hour, so this question is moot for them. They do not get paid the sub-minimum wage of \$2.13. She suggested that I call Marilyn, who works down in Lisbon Falls and who is a mature, seasoned waitress of like fifteen or twenty years. Marilyn was a wealth of information. She said all of the girls down there want this raise and that the tips are okay there but not like in the big restaurants. She said that only on Friday and Saturday do they make good tips of \$7.00. She thought that \$7.00 an hour was the best day that they have and that is only on Friday and Saturday. All the rest of the week they have trouble getting to the minimum wage. I said, "Do you know that it is the law that when your tips don't bring you up to the minimum wage that the employer has to make up the difference?" I asked this of all the waitresses I talked to, and every single one of them said, "Yes, but they don't." Every single person said, "they don't. We have a time card and it used to be that the time card used to have a place at the bottom where we would put down our tips and they would figure out the difference, but they don't even have a space for that anymore." That was at every single restaurant. Then, at the last restaurant here on the way to work, I heard yet another wrinkle, which is that in many cases, and each of the three waitresses that I spoke to there, work in jobs in addition to jobs that earn them tips. They work at washing floors, washing woodwork, or washing down things where they do not get any tips; and they work as a dishwasher often where they don't get tips. This particular restaurant pays the dishwasher, the utility person and the cashier the real minimum wage of \$4.25 an hour. These people get the minimum wage. When the waitresses work at dishwashing, which they do, because they only pay a dishwasher for two or three days a week, they do not. They are still making their sub-minimum wage of \$2.13 an hour and get no tips. That's the situation in reality here in Kennebec County. One of the waitresses even went so far, I reference Senator Begley's comment about how the waitresses seem to be happy with this, one of the waitresses said they had been talking with some girls over at Friendly's and were thinking of throwing up a picket around the State House this morning. So, let's be very clear. We know where the restaurant owners are on this; and I understand that; but, let's be very clear of where the people and the women who work in these jobs are on this, and the men, the 20% who are men. They are clearly in favor of getting a raise from \$2.13 an hour, which is so far below the minimum wage that it is embarrassing, to \$2.38 an hour.

I have done the math on this. For a restaurant with ten employees, that is \$2.50 an hour more. That's one beer. That's one large fries. For a whole day that is \$25 more. This, as the good Senator from Cumberland, Senator Rand, pointed out, in an industry that is 17.5% increase in profitability last year. I figured out from what Marilyn, the waitress from Lisbon said, I figured out her yearly income. This is a seasoned person. I didn't delve into her age over the phone, nor did I have one of those video phones; but I bet you that Marilyn is about fifty years old. By my calculations

of Marilyn doing well on the weekends with \$7.00 an hour, and making barely minimum wage during the week, Marilyn is taking in \$11,000 a year. That is sub-poverty wages. For a group of people who concerned ourselves with welfare reform, and are interested in having jobs and eliminating the category of the working poor, everyone that works should not be in poverty. This is an absolute necessity. So, I appreciate the Senator from Somerset's comments about who is making \$9.00 or \$20.00 an hour in tips. The people around here are not. I agree with you. I have no problem and I am sure every single waitperson on the coast is doing really well if they are working in a fancy restaurant. But everybody isn't. There are lots of working class restaurants. There are lots of lunch only and breakfast only restaurants that are people's sole wage; and for those people, I think it is just insulting that they are working at \$2.13 an hour and that it is the public policy of this country; and we are about to rubber stamp it here in Maine, to carve out of all other employees making the minimum wage and allowing the minimum wage to actually fluctuate with the economy. If you think about it, when we raise the minimum wage, when Congress raised the minimum wage this year, they were responding to pressure from the economy through the political process. We are basically saying, "Yes, everyone else's minimum wage can be geared to the economy, except for this group of people who are tipped employees. For them, we are freezing them forever at \$2.13 an hour." We are going to have to revisit this issue if we do this. I think it is much better to leave it as it is and I urge you to vote no on this proposal. Thank you.

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

Senator **FAIRCLOTH:** Thank you, Mr. President, Colleagues in the Senate. I also had the opportunity to do some research. I talked to a buddy of mine, who is one of the 20% who are waiters, rather than the 80% who are waitresses. We talked about this issue for quite some time. He has had seven years of experience in this field and he remarked upon many of the things which we have heard today. One, there are no benefits with this type of employment. That is a huge factor for anyone facing this type of work. He also noted that most of his colleagues in his work are women. A lot of times, as we know, these are the types of people who come from welfare, in many cases, to go to work. They are trying to do what we are all telling them, as politicians, they are supposed to do. It is very challenging; because, as this gentleman friend of mine described, you are in a situation a lot of times when you go to a restaurant, and this isn't just restaurants, by the way, that are in rural areas, there are restaurants in cities that put people in interesting situations, as well, where when you first start out in the business you maybe don't get the scheduled hours that you like, or you don't get the high volume hours where you are going to get the good tips. You may not even get a full time job. In fact, in many cases, you don't get a full-time job initially, so it takes a while to establish yourself and work yourself into the position where you even have a full-time job, even though you are hoping expressly to use this as a way to support yourself fully. These aren't merely people who are making money on the side. These are people who are trying to support themselves with this

income. That's the type of people we are talking about, a huge amount of people, between 10,000 and 12,000 people who are affected in this way; and we are talking about a quarter-an-hour raise. I understand the concerns that are raised, but I guess the concerns of these 10,000 to 12,000 people would seem to have a lot of impact. So, I talked to the Department of Labor to try to understand what the context was for this, what are the real value of these dollars. So, we went from 1978, just to choose that year, and that's not the year that had the highest real dollar value of the minimum wage, in fact, the highest real dollar value of the minimum wage was back in the 1960's, the early 1960's when we had very little inflation and low unemployment. From 1978, if you were to move that to today in 1996 dollars, the Department told me that today that would come out to \$6.51 for the minimum wage if we were to translate those 1978 dollars and \$3.28 for the sub-minimum waitstaff minimum wage. So, even in the best scenario for the waitstaff, if this does not pass, and the increase does go into effect, they would still be much behind what they would have been in 1978. So, in the best scenario for them, they are being treated to a rather harsh situation. In fact, according to the Department, it would be more than 21% less if the full increase were to go into effect. It would still be 21% less than what was the wage in 1978. That's if the full increase went into effect, not just for 1996, but also for 1997. I just don't see it. In that context, in the context that even if we allow this increase to go forward, it's still going to be 21% less than it was in 1978. I just don't see it as having that harsh of an impact on businesses; and I do, from direct discussions with a number of people, believe that the situation now has a harsh impact on a lot of Maine people. I think that's a key criteria and one that applies in large towns in Maine. Not every restaurant is the Asticou Inn. A lot of restaurants in the larger towns in this State do not pay the way that we might hope. They definitely don't provide the benefits and I think that we need to reject this measure at this time and allow the appropriate increase to take effect. 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. This is truly one of the difficult issues we get in the legislative session. I have gone over this issue in my mind many times. When I first looked at the bill, I thought it was just a technical bill to make the bill comply with federal law. As you can see here, it opens major public policy concerns. Each side has many good points. The restaurants are absolutely right. It's going to cost them more and those costs are going to be passed on to the customers. It's going to increase their withholding. It's true that people working at restaurants, getting this sub-minimum wage, are guaranteed the regular minimum wage. I have one restaurant owner I talked with at length who said it's always good to keep things as simple for small businesses, such as restaurants, as possible. This is going to be a change for them. The other side also has some good points. They are saying it is a pro-minimum wage bill. They are saying that a person who earns as little as \$20 in a pay period qualifies as a tipped employee, who gets \$20 in tips. I have heard a lot of debate about what

actually is the average wage for waiters and waitresses. The Department of Labor says it is \$5.47. The IRS says nationally it is \$8 an hour. I have seen estimates as high as \$9 and \$10 an hour. My guess is that it lies in between some of those. The opponents also argue that if do this, Maine will be the lowest of any state in New England. New Hampshire will be higher at \$2.38. Massachusetts will be higher at \$2.55. Vermont will be higher at \$2.52; and Rhode Island, at \$2.89. I also have to reflect on the fact that 70% of my constituents support increasing the minimum wage. That's a large block. I was talking to one tonight on the forestry referendum and she asked what we were doing. I explained what we were debating and she said it seems like a no-brainer. We are debating over paying waitresses an extra twenty-five cents an hour. I think that is the way it is perceived by the public. For me, it comes down to an issue of why do we have the 50% threshold in there in the first place. There had to be a valid public policy reason to do that, to base it on the federal minimum wage and the State minimum wage. I have yet to hear overwhelming public policy argument to abandon that and to freeze it into the future. I believe very deeply in the minimum wage. I believe very deeply that the resolution to the economic problems we have had over the past twelve years is the fact that wages have stagnated over the past twelve years. If you believe in increasing wages, you will not freeze this minimum wage. When we debated minimum wage, one of the examples I always used is the story I was told about two business people who went into a lunch counter. They were reading a newspaper and it said that so many hundreds of thousands of jobs were newly created in this country. The waitress behind the counter was frowning. They asked what she was frowning about, look at how well the economy was doing, look at all the new jobs that have been created. She said, "Yes, I know. I have three of them." That's what we are here about today. I, out of good conscience, cannot deny these people the minimum wage that was contemplated in Maine law. I would urge you to vote against this bill. 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 think there are two centrally important issues in which we need to focus. The first, and the primary one for me, is that public policy ought to be made with an opportunity for as much public input by all of the people that it affects, all of the people. This is a bill that never got advertised until September 1st, last Sunday, once and only once. The bill was heard yesterday, on September 4th, three day notice, with many people away on the weekend, or, if you are a waitperson, you were probably working, since that was a fairly substantial weekend. One of the illustrations about the opportunity and the ability to pay lobbyists is that when you are the organized industry, you can have advance notice of this. You can notify your membership. You can lobby and you can have powerful friends advocating for you on a moment's notice. I like to listen to the little person's voice. None of these waitpersons had any lobby here. None of them had any advance notice. None of them could organize their arguments, get out their supporters and present to us some information on which we could make studied judgements in three

days. Yes, maybe some of us had some time to reflect on the bill; but I certainly haven't had much time to hear from my constituents, particularly the people who work in this industry; and I understand there are some 10,000 to 12,000 in this State who work in this industry. I think they ought to have an opportunity to present some information. What do they really get compensated? I think they know. They take a paycheck home. They could tell us that. When do they make the big dollars? Is it just during the lucrative summer months or is that their annual salary that they have to live on? Do they generally, on an annual basis, make more than the minimum wage or less than the minimum wage? How much more? That would certainly be information that would be useful to me in trying to balance both the interests and needs of small business, as well as the interests and needs of the individuals who have to make a living to support their families. Whether or not they receive the wage increase, the cost of living has gone up. They have to pay more for their rent. They pay more for their automobiles. They pay more for their housing. They pay more for their clothing. That money has to come from somewhere if they are going to be able to meet their basic needs. They have a need, as well, that ought not to be just cast aside as insignificant because the employer has a need, too. They both have needs. But for the fact we had this special session, focused primarily on the clearcutting ban, we would not even be discussing this issue; and we would have the opportunity to have adequate notice and to have the little person, 80% of whom are women, the opportunity to talk to us, both back in our home districts over that coffee counter that we go to to talk about the issues, as well as the organized industry that can afford lobbyists and make contributions to campaigns. Waitresses don't have that advantage; but I think they ought to have the same opportunity in a democracy to at least express their point of view and to provide information so that the people who represent them can make more fully informed decisions. A three day notice doesn't do it for me.

Secondly, I think we need to recognize here, as well, that under this bill, particularly if we are concerned about the smaller establishments, the little coffee shop on the corner, the small restaurant, the convenience store that perhaps has a few tables, the minimum wage is going to be \$5.15 an hour on September 1, 1997. If they are not getting paid the minimum wage, they are going to have to pay the waitperson the difference. That's going to be affecting the cost of their business with this bill. So, we are not necessarily alleviating the impact on those small businesses at all; because they are still going to be obliged to go by the \$5.15 law anyways. It's much better to have the adequate information to make a more informed decision on that impact than it is to try to rush it through and only hear from one waitperson out of 10,000 or 12,000 in this State. I am not convinced that we need to act today and I hope that you are not convinced that we need to act today. I think we have ample time to look at this in the next legislative session; and, hopefully, many of you will be here with me to do that at that time.

THE PRESIDENT: The Chair recognizes the Senator from Lincoln, Senator Begley.

Senator BEGLEY: Once again, the issue is brought up in regard to the special session; and I will not continue that point except to say that if I had been

polled, we wouldn't be here at all. The small restaurant owner that testified before us, from a small town, with few waitresses, told us that if it goes through, believe him or not, he is going to be hurting. Is he hurting now? He says the last two years have been terrible. You hear the same story ad infinitum from small business people. "My wife and I work 9,000 hours a week." They are caught up in exactly the same point. They are not against the increased minimum wage. It's a federal law. That's the point. I have here a list of waitresses' hours from Augusta. Whatever you deem Augusta's rate in regard to the rest of Maine, I haven't the slightest idea. The average wage is from \$8.72, \$8.81, \$8.94, \$8.70 to \$9.02. Those people, most of them, work less than forty hours, because they don't want to work anymore. A possibility might be that they are using this as a technique, not as a particular living wage, that has never been said. A comment was made earlier that this person only earns \$11,000. How many hours? That was not mentioned. I haven't the slightest idea whether that was twenty hours a week for fifty weeks. I don't know. Unless I do know that, here is a legal document from the IRS, or whoever submitted this to the IRS, stating that position. My point, Ladies and Gentlemen, is that you hear they are working for \$2.13 an hour. These people aren't. The statement put out by an advocate against this bill states, quite naturally, that the Labor Department tells you the average is \$5 and something an hour, not the \$4.25, not the \$4.75. It will go up. It has to by law. My point, Ladies and Gentlemen, you are talking about small business. You are talking about jobs. You are talking about people who are, thank goodness, the excellent sales people of every restaurant. Every restaurant owner that spoke to us yesterday said the sales people are our business and they did talk to them. This woman from the other side of Augusta talked to her staff and asked them what they wanted her to say. Her staff said do what you are doing because you are doing it right.

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

Senator CARPENTER: I think this is hard to grasp, what is going on here is that rather than apples and oranges, I think we are comparing lobsters and steaks. Tipped persons work for tips because that's what they want to do. They prefer working for tips. They do get their raises. Every year they get a raise because the price of food has gone up. They automatically get more money under the structure that we have been under for years where you are tipping 10%, 15%, or 20% for meals. I have raised three daughters. They have all worked as waitresses and been very happy. They have never come home and said, "Gee, I wish they would increase the minimum wage." They pretty much put themselves through college, I had to help a little bit. I have one right now who is a physical therapist's assistant by trade. She is going to take that job as soon as the tip season is over at the beach. She says we don't have to get involved in the minimum wage because they are not concerned. If they were concerned about the minimum wage, they would go to work at McDonald's. It isn't bothering them. I think that any waitperson that is not making the minimum wage should go to work someplace where they can get the minimum wage under a system that isn't based on tips. Please vote to pass this bill with the majority report. Thank you.

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

Senator RAND: Thank you, Mr. President, Men and Women of the Senate. We have gone far afield, in some instances, from what this bill is all about. We are talking about an increase in the minimum wage which has a thirty year history in the State of Maine. This is not some new thing. We are talking about keeping Maine law exactly as it is. We are not talking about putting a new burden on employers. We are not talking about any change whatsoever. We are talking about keeping Maine law exactly as it is as it applies to people who make their living with these, so-called, tip-wage jobs. Remember that the definition is someone who makes \$20 in tips in a pay period. That is not a lot of money. I think now that this has been brought to our attention, this is something that we should be looking at, those of us who return, in the next session. We are talking about 10,000 to 12,000 people in this State who may, indeed, make \$20. But, we are talking about part-time work. They do not make \$20 for forty hours a week, 52 weeks out of the year. We are talking about part-time work. We are talking about a large number of people who are not eligible for unemployment as seasonal workers if they have not worked a full 26 weeks if the restaurant closes down after 25 and a half weeks. These people are not eligible for unemployment. God bless the waitstaff who can make \$20 an hour and maybe put some aside to get themselves through the winter, or the months that they are not able to service the tourists and receiving wages. Let's remember that tips are discretionary also. I could go into a restaurant and order a meal and the tab could come to \$40. Legally I could get up and walk out and leave no tip at all. It is discretionary. It is on the part of the diner. There is a responsibility for employers to pay their employees for the work that the employees do. For the past thirty years, in Maine, when there has been an increase in the general minimum wage, there has been an increase in the tip wages. As I said, it is only 50% of whatever the general wage increase is. Are we standing here now and being told that employers do not have this responsibility if they own a restaurant? That they somehow should magically become exempt from this? I don't think that that is right. I don't think it's fair. It's not fair to other small businesses who, in 1997, will be paying a minimum wage, and rightfully so. I personally wish it were higher. I don't know what kind of gods have smiled down on the people who own restaurants, but they certainly seem to be getting a little more labor for their dollar than the rest of the small business owners.

Another point that I want to stress that was made by one speaker. When employers, in the restaurant business, hire waitresses and waiters, very often this waitstaff is told that they have to report to work an hour or two before their actual waitressing job begins; because they have other duties that must be attended to. They have to fill the salt and pepper shakers. They have to clean the bathrooms, sometimes. They have to fill in as dishwashers. These are all jobs that, under Maine law, if it were a janitor or a cleaning person who was hired, would have to be paid the minimum wage, which in 1997 will be \$5.15 an hour. We have an industry that can have their tipped employees do these jobs for, at present, \$2.13 an hour. I do not feel it is unreasonable to

expect the employers to pay the sub-minimum wage of \$2.38 come October 1. If a business is that shaky, that they cannot afford to pay their employees \$2.38 an hour, I think that they best re-think the business that they are in. A statement was made that people work for tip wages because that is what they choose to do. That is what they want to do. I would say that people who own restaurants, own restaurants because that is what they choose to do. That is what they want to do. I see absolutely no reason why we should be messing with Maine law, particularly in a special session. It has worked well for thirty years and I hope that you will support me in voting against this bill. Thank you.

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

Senator BUSTIN: Thank you, Mr. President, Ladies and Gentlemen of the Senate. I rise, for one thing, to let the good Senator from Lincoln County, Senator Begley, know that there are people, other than waitresses, who do waitstaff service in Kennebec County. My son-in-law happens to be one of those. He happens to have two children and he sometimes works three shifts a day in order to make his money. I do not think, and someone can correct me if I am wrong, that he earns overtime rate on that \$2.13 when he does those three shifts. That's number one. Number two, and I think she is still behind me, I have a friend who I have known for some thirty odd years. Her children and my children grew up together. She owns and operates the Roseland Restaurant here in Augusta. She has lobbied me for this. I am in the unfortunate position of having to choose between a friend of that long, whose children know my children, and my son-in-law, who is a waitperson. It's not an easy choice; and it is not an easy choice for either the small businesses, the restaurants, that have to face this increase in paying out the wages, nor is it an easy choice for those of us who want to vote for the waitstaff in Maine. The fact of the matter is, well, let me say one other thing about Joyce Cote, who is the person from Roseland, what I said to her was when I was a waitress, and I waited tables from twelve years old on, I managed the local spa. I know you think spas are something different from what they were in my day; but, in my day, they could be small restaurant counters, and a prescription drugstore. I managed that at age sixteen and I got sixty cents an hour. Joyce very correctly knew immediately, and which a lot of you may know, that that was forty years ago. Of course it was. Of course she was right. The fact of the matter is that when we are talking about the minimum wage, you need to understand that we are talking about a floor, not a ceiling. That's where it is when you compare it to other industries who are paying over that. They don't have to worry about the minimum wage. They are already paying over that. Restaurants who are paying over that don't have to worry about the minimum wage. It's the people who do the other jobs in restaurants. The people who work overtime in restaurants and who do three shifts a day. It is those kinds of people that we are talking about. I can't vote, with all apologies to my friend, Joyce, I can't vote against those people who need to realize twenty-five cents more in their hourly wage than they are getting today. I can't do that. You make an assumption that because the United States Congress decided to freeze one class of workers in this United States, one class of workers,

that I should be happy about that. Well, I'm not. I am not happy about that and I have the opportunity to vote now and I choose to vote against this bill.

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

Senator **GOLDTHWAIT:** Thank you, Mr. President. It is too hot to be passionate, so I won't be; but I do want to bring up just a few numbers that I haven't heard in this debate, because I heard people refer to listening to the voices of the little people; and where I live, some of the little people are restaurant owners. Some of those restaurant owners are women. What I heard when I tried to sort out this bill in my head is that it jeopardizes the ability of those people, sometimes little, sometimes women, to run their restaurants. When I asked for some specific numbers about the cost of this to the restaurants, I specifically asked for real numbers, not simply numbers off the top of guesses. The numbers I got ranged from \$9,900 for a year to \$15,000 for a year in the cost to the restaurant of implementing this raise, should it happen. In keeping with my tradition of relating everything I possibly can to nurses, I also live in a community where, until a very few years ago, it was difficult to get any nursing help in the hospitals in the summer because all of the nurses quit and went to work in the restaurants. The information that I got in the last two days bears me out on that as well. Again, my area may be unique because it is so heavily touristed and there is a great competition for help; but it does seem that most people there are earning over the minimum wage and most restaurant employers are paying over their 50% of minimum, regardless of the law. As far as the people filling the salt and pepper shakers, it is the requirement of the law, as I understand it, that when all is said and done, a worker must be paid minimum wage for the hours that they work. So, regardless of the duty, and regardless of the composition of where that salary comes from, it must be minimum wage; and that is being increased, which I support, in the near future. So the hardship here will be on the restaurant owners, the providers of these jobs, and not on the employees. If there are employees who are working in restaurants who are not meeting the terms of that law, and who are not making up the wages to make minimum wage, that is an entirely separate issue which needs to be addressed, but which is beyond the scope of this bill. So, for those reasons, I would urge you to support this legislation. Thank you.

On motion by Senator **BEGLEY** of Lincoln, supported by a Division of at least one-fifth of the members present and voting, a Roll Call was ordered.

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

Senator **PINGREE:** Mr. President. I, too, understand that it is hot in here, that we have talked about this issue long enough; but I will speak briefly and wanted to make a few comments. I actually decided I was compelled to make some comments. This has been a very difficult issue for me, as it has been for everybody in this chamber; but I think I represent the one Senator in the chamber who was a waitress most recently. Three years ago I sold my business. I worked as a waitress; and that was one of five times that I have worked as a waitress in the State of Maine, so I have a lot of experience in this field and it has served me well many times. My two daughters also work as waitresses

every summer, and I watch them come home with cash in their hands, and I see what their paycheck looks like at the end of the summer. From my perspective I just want to say a couple of comments. The other point of view that I looked at this from was a member of the Health and Human Services Committee that crafted the welfare proposal. As has been said earlier in this debate, there is a direct relationship here to what we pay our lowest wage earners in this State and this kind of a bill. When I thought about the philosophy that we use to craft the welfare reform bill, we were saying we don't have enough money to continue paying for what we have been paying for and we need to ask people to go out to work, because State Government can no longer pay all those bills. I think what we are asking today is to ask restaurant owners, as well as all of us in the public who are going to pay five cents more for our eggs, if, in fact, this cost is passed on. We are asking everybody to share this responsibility so that, as has been said before, people who work aren't poor. People who work at these jobs don't have to be poor. I wanted to speak a little bit from my experience. I have never had a job where you didn't come early and stay late, where that was considered separate from the rest of your work. You always, in every restaurant I have ever worked in, set up the tables, filled the salt and pepper shakers, make the coffee, do a lot of jobs for the kitchen. It's just part of the shared work load. You do it early and you often stay at the end of the day to vacuum, to clean up, to do whatever needs to be set up for the next day. Those are added onto your job. That's not part of what goes into your tip wages. I agree with what many people say about seasonal businesses. It's a wonderful thing to work in a seasonal restaurant. You go home at the end of the night with cash in your pocket and it feels great. But, the fact is, for most people who work in coastal restaurants, at the end of the season the job is over. You can't collect unemployment. In fact, one of my co-workers goes to Florida every year to find work, to find wages down there where she can continue to work and collect tips and wages; because, in many seasonal communities, most of the restaurants have to shut down. So, what might look like very good money all summer long, unfortunately, is not there for you all year. Most people don't choose that, it's just the nature of coastal life. You put together other jobs and do what you can do.

The last thing I was remembering, when people talked about the differences across this State, and the kind of money you make and the way it can support your family, I do know for a fact that when you work in a seasonal business you bring home dollar bills; and you see ten dollar bills on the tables and you get very good tips. But one of my jobs was at Deering Ice Cream, working the lunch shift, and that's all there was to work. That's when I was a student at U.S.M. We got paid in quarters. That's all we made; and they didn't amount to ten dollars, twelve dollars, or fifteen dollars an hour. There are a lot of restaurants like that, where the wages just aren't as high as people say. In many restaurants, you are asked to put on your tip card, show enough tips to make sure that you come up to the prevailing wage, whatever it is. It is known by many waitresses as a common practice, as well as having to give back some of your wages at the end of the week. This is a difficult decision for me. I was in business for twelve years and know what it is like to

pay employees. I know how difficult it is to keep a business going. I have a lot of small restaurant owners who, I agree, are struggling and don't want to find any more costs or have to pay these bills; but I cannot, in good conscience, pass a welfare reform bill in one session and come back in the next session and say we are not going to share that burden.

THE PRESIDENT: The pending question before the Senate is the motion by Senator **BEGLEY** of Lincoln that the Senate **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in 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: **ABROMSON, AMERO, BEGLEY, BENOIT, CARPENTER, CASSIDY, FERGUSON, GOLDTHWAIT, HALL, HANLEY, HARRIMAN, HATHAWAY, KIEFFER, LORD, MICHAUD, MILLS, O'DEA, PARADIS, PENDEXTER, SMALL, STEVENS,** and the **PRESIDENT, Senator BUTLAND**

NAYS: Senators: **BERUBE, BUSTIN, CAREY, CLEVELAND, ESTY, FAIRCLOTH, LAWRENCE, LONGLEY, McCORMICK, PINGREE, RAND, RUHLIN**

ABSENT: Senator: **CIANCHETTE**

22 Senators having voted in the affirmative 12 Senators having voted in the negative, with 1 Senator being absent, the motion by Senator **BEGLEY** of Lincoln to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence, **PREVAILED**.

The Bill **READ ONCE**.

Committee Amendment "A" (H-923) **READ** and **ADOPTED**, in concurrence.

Which was, under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED, As Amended**, in concurrence.

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

Senate at Ease
Senate called to order by the President.

Off Record Remarks

On motion by Senator **LORD** of York, **RECESSED** until seven o'clock this evening.

After Recess
Senate called to order by the President.

Senate at Ease
Senate called to order by the President.

On motion by Senator **AMERO** of Cumberland, **RECESSED** for fifteen minutes.

After Recess
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:

Emergency

An Act to Conform the Maine Tip Credit to the Federal Tip Credit

H.P. 1392 L.D. 1893
(C "A" H-923)

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

THE PRESIDENT: The pending question before the Senate is **ENACTMENT**.

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

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: **ABROMSON, AMERO, BEGLEY, BENOIT, CARPENTER, CASSIDY, FERGUSON, GOLDTHWAIT, HALL, HANLEY, HARRIMAN, HATHAWAY, LORD, MICHAUD, MILLS, O'DEA, PARADIS, PENDEXTER, SMALL, STEVENS,** and the **PRESIDENT, Senator BUTLAND**

NAYS: Senators: **BERUBE, BUSTIN, CAREY, CLEVELAND, ESTY, FAIRCLOTH, KIEFFER, LAWRENCE, LONGLEY, McCORMICK, PINGREE, RAND, RUHLIN**

ABSENT: Senator: **CIANCHETTE**

Senator **KIEFFER** of Aroostook requested and received Leave of the Senate to change his vote from **YEA** to **NAY**.

This being an Emergency Measure and having received the affirmative vote of 21 Members of the Senate, with 13 Senators having voted in the negative, and with 1 Senator being absent, and 21 being less than two-thirds of the entire elected Membership of the Senate, **FAILED OF ENACTMENT**.

On motion by Senator **KIEFFER** of Aroostook, the Senate **RECONSIDERED** its action whereby the Bill **FAILED OF ENACTMENT**.

On further motion by the same Senator, the Senate **RECONSIDERED** its action whereby the Bill was **PASSED TO BE ENGROSSED, As Amended**, in concurrence.

On motion by Senator **MILLS** of Somerset, Senate Amendment "A" (S-601) **READ** and **ADOPTED**.

On motion by Senator **McCORMICK** of Kennebec, Senate Amendment "B" (S-602) **READ**.

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

Senator **McCORMICK:** Thank you, Mr. President. This amendment is an attempt to find a win-win situation here on this issue that has so divided us. It, basically, is taking the angst that I heard from many members about the division between people who make \$9 an hour in tips in some restaurants, and people who, like the waitresses I spoke of this morning, who do not make \$9 an hour in tips. Basically, the gist of the amendment is that if a person makes \$500 a month in tips, which is \$6 an hour in tips, then, if they make more than that, the minimum wage for those people would be frozen at \$2.13 an hour; and they would not get an unintended increase. But, for people who make under \$6 an hour in tips, the minimum wage increase to \$2.38 an hour would go into effect. Thank you.

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

Senator MILLS: Mr. President, Men and Women of the Senate. I have just been presented with the language and I have a couple of quick reactions to it. I admire the policy considerations behind it, but, in practice, the way that this is worded would be a bookkeeping and bureaucratic nightmare, I think, for both employees and employers in this field. Also, it would make a huge difference, it seems to me, whether someone makes \$500 in tips by working one day in the month or by working 31 days in the month. Under this bill all waitresses and waiters in the same monthly income category would be treated alike. This would be a major deficiency, it seems to me, in the structuring of this legislation. Thank you.

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

Senator McCORMICK: Thank you, Mr. President. The amendment, is structured, to redefine, in essence, what a tipped employee is. The Maine law defines a tipped employee as someone who currently makes \$20 a month in tips. That is a definition that then triggers the ability of the employer to pay this sub-minimum wage, which is called a tip credit. Basically, what we are doing here is triggering that as making \$500 a month in tips, be the trigger for whether a person would make the sub-minimum wage at the frozen level of \$2.13 an hour. Those would only be people who make over \$500 in tips. For people who make under that, we would allow an increase in the minimum wage, as all the fellow workers around them would be getting. I disagree with my good colleague from Somerset that this would be a bureaucratic nightmare. I think that, basically, there are going to be restaurants where, on average, this will not apply at all and everyone will know it. The Samosets of the world, the Cliff Houses of the world, the Roselands of the world and there are going to be restaurants that, on average, people know very easily that \$500 in tips was not accrued in one month by any employee there. That's the restaurants that I represent and that I talked to today. So, I lay this before you. I think it is a fair solution to this problem and I would urge you to vote for this amendment and I ask for the yeas and nays. Thank you.

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

THE PRESIDENT: The pending question before the Senate is the motion of Senator **McCORMICK** of Kennebec that the Senate **ADOPT** Senate Amendment "B" (S-602).

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

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:** BERUBE, BUSTIN, CAREY, CLEVELAND, FAIRCLOTH, LAWRENCE, LONGLEY, McCORMICK, MICHAUD, O'DEA, PARADIS, PINGREE, RAND
- NAYS: Senators:** ABROMSON, AMERO, BEGLEY, BENOIT, CARPENTER, CASSIDY, ESTY, FERGUSON, GOLDTHWAIT, HALL, HANLEY, HARRIMAN, HATHAWAY, KIEFFER, LORD, MILLS, PENDEXTER, RUHLIN, SMALL, STEVENS, and the PRESIDENT, Senator BUTLAND
- ABSENT: Senator:** CIANCHETTE

13 Senators having voted in the affirmative and 21 Senators having voted in the negative, with 1 Senator being absent, the motion of Senator **McCORMICK** of Kennebec to **ADOPT** Senate Amendment "B" (S-602), **FAILED**.

The Bill **PASSED TO BE ENGROSSED, As Amended, in NON-CONCURRENCE.**

Under suspension of the Rules, ordered sent down forthwith for concurrence.

Senate at Ease
Senate called to order by the President.

Off Record Remarks

Senator **HANLEY** of Oxford was granted unanimous consent to address the Senate off the Record.

Senator **KIEFFER** of Aroostook moved, pursuant to Senate Rule 25, that the Senate **SUSPEND THE RULES** for the purpose of **EXTENDING** until 9:30 o'clock this evening.

The Chair ordered a Division.

16 Senators having voted in the affirmative and 15 Senators having voted in the negative, and 16 being less than two-thirds of the membership present and voting, the motion by Senator **KIEFFER** of Aroostook to **SUSPEND THE RULES, FAILED**.

Off Record Remarks

Senate at Ease
Senate called to order by the President.

Off Record Remarks

On motion by Senator **BERUBE** of Androscoggin, **ADJOURNED**, in memory of the Honorable George F. Ricker of Lewiston, until Friday, September 6, 1996, at 9:00 o'clock in the morning.