

MAINE STATE LEGISLATURE

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House Legislative Record
of the
One Hundred and Eighteenth Legislature
of the
State of Maine

Volume I

First Regular Session

December 4, 1996 - March 27, 1997

First Special Session

March 27, 1997 - May 15, 1997

ONE HUNDRED AND EIGHTEENTH LEGISLATURE
FIRST SPECIAL SESSION
8th Legislative Day
Wednesday, April 9, 1997

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

Prayer by Reverend Walden C. Chandler, First Baptist Church, St. George.

Pledge of Allegiance.

Doctor of the day, Steven I. Weisberger, D.O., Jonesport.

The Journal of yesterday was read and approved.

SENATE PAPERS

The following Communication: (H.C. 146)

Maine State Senate
State House Station 3
Augusta, Maine 04333

April 8, 1997

The Honorable Elizabeth H. Mitchell

Speaker of the House
118th Maine Legislature
2 State House Station
Augusta, Maine 04333

Dear Speaker Mitchell:

In accordance with Joint Rule 506, please be advised the Senate today confirmed, upon the recommendation of the Joint Standing Committee on Business and Economic Development, the nomination of R.P. Field Rider of New Gloucester for appointment to the Finance Authority of Maine.

Thank you for your attention to this matter.

Sincerely,

S/Joy J. O'Brien

Secretary of the Senate

Was read and ordered placed on file.

The following Communication: (H.C. 147)

Maine State Senate
State House Station 3
Augusta, Maine 04333

April 8, 1997

The Honorable Elizabeth H. Mitchell

Speaker of the House
118th Maine Legislature
2 State House Station
Augusta, Maine 04333

Dear Speaker Mitchell:

In accordance with Joint Rule 506, please be advised the Senate today confirmed, upon the recommendation of the Joint Standing Committee on Business and Economic Development, the nomination of Peter C. White of East Winthrop for reappointment to the Real Estate Commission.

Thank you for your attention to this matter.

Sincerely,

S/Joy J. O'Brien

Secretary of the Senate

Was read and ordered placed on file.

The following Communication: (H.C. 148)

Maine State Senate
State House Station 3
Augusta, Maine 04333

April 8, 1997

The Honorable Elizabeth H. Mitchell
Speaker of the House
118th Maine Legislature
2 State House Station
Augusta, Maine 04333

Dear Speaker Mitchell:

In accordance with Joint Rule 506, please be advised the Senate today confirmed, upon the recommendation of the Joint Standing Committee on Business and Economic Development, the nomination of Richard J. McGoldrick of Cape Elizabeth for reappointment to the Finance Authority of Maine.

Thank you for your attention to this matter.

Sincerely,

S/Joy J. O'Brien

Secretary of the Senate

Was read and ordered placed on file.

The following Communication: (H.C. 149)

Maine State Senate
State House Station 3
Augusta, Maine 04333

April 8, 1997

The Honorable Joseph W. Mayo

Clerk of the House
State House Station 2
Augusta, Maine 04333

Dear Clerk Mayo:

Please be advised that the Senate today Insisted to its previous action whereby it referred to the Committee on Business and Economic Development, in Non-Concurrence, Bill "An Act to Review Registration of Certified Nursing Assistants" (H.P. 1206) (L.D. 1706).

Sincerely,

S/Joy J. O'Brien

Secretary of the Senate

Was read and ordered placed on file.

Bill "An Act to Further Maine's Welfare Reform Initiatives and Establish Maine's Temporary Assistance for Needy Families Program" (EMERGENCY) (S.P. 587) (L.D. 1757)

Came from the Senate, referred to the Committee on **Health and Human Services** and Ordered Printed.

Was referred to the Committee on **Health and Human Services** in concurrence.

The House recessed until the Sound of the Bell.

(After Recess)

The House was called to order by the Speaker.

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

SPECIAL SENTIMENT CALENDAR

In accordance with House Rule 519 and Joint Rule 213, the following item:

Recognizing:

Anita Hopkins, of Augusta, who has received a Presidential Award for Excellence in Mathematics and Science Teaching. Mrs. Hopkins is a pre-first and first grade teacher at the Hussey

School in Augusta who received this award in the category of elementary mathematics for her exceptional talent, leadership abilities and dedication as a teacher. We extend our congratulations and wish her many more successful years of teaching; (HLS 275) by Representative O'BRIEN of Augusta. (Cosponsors: Senator DAGGETT of Kennebec, Representative MADORE of Augusta, Speaker MITCHELL of Vassalboro)

On objection of Representative O'BRIEN of Augusta, was removed from the Special Sentiment Calendar.

The SPEAKER: The Chair recognizes the Representative from Augusta, Representative O'Brien.

Representative O'Brien: Madam Speaker, Ladies and Gentlemen of the House. I am very proud today to stand and make my remarks. As many of you may know, I have five children and four are in the public school system. My 7-year old Cameron, who is a page here today, is in Mrs. Hopkins class. It is a pre-first first grade class at Hussey School in Augusta. Never, with all my children, have I been so impressed with a teacher as I have with Anita Hopkins. I say this, not because she is my sister, but probably despite the fact that she is my sister. What makes her so special? I was asked that when I was passing the word around that she received this very distinguished award. What makes her so special? I went into her class unbeknownst to her on a day that she was out and I spoke to her class. I asked them, Why is she so special? Why do you think she won this award? I got some interesting answers. "She teaches us fifth grade stuff, stuff like geometry, fractions and static electricity and we learn it." I challenge the members of the House, I won't embarrass you by asking you individually, but I challenge you to spell turquoise and fuchsia and leprechaun because these kids in first grade and pre-first grade are doing that.

Mrs. Hopkins expects the students to learn. She exposes them to many, many things and they do learn. Mrs. Hopkins students also know that each one of them is very, very special, unique and respected. Whatever their backgrounds or their circumstances, they come into her class on an equal footing. They feel safe, loved and valued. As one child said, "She puts us in time out, but we still know that she loves us." Also, learning in Mrs. Hopkins class is fun. They do really cool stuff. They do popcorn parties where they learn about the history of popcorn and learn the different uses for popcorn. They made leprechaun traps because they knew that in the wee hours of March 17th, the very wee hours, the leprechaun would come. They designed traps to catch them. Low and behold they didn't catch leprechauns, but there were signs that one had been there, little footprints and little crumbs. Learning is fun in her class.

To sum it all up one child said, "Every kid should be able to have Mrs. Hopkins as a teacher." I say, wouldn't that be great. I am very proud to speak, despite the fact that she is my little sister. Thank you.

Was read and passed and sent up for concurrence.

Divided Report

Majority Report of the Committee on **State and Local Government** reporting "**Ought Not to Pass**" on Bill "An Act to Change the Selection Process and Qualifications for State Auditor" (S.P. 35) (L.D. 33)

Signed:

Senators: NUTTING of Androscoggin
GOLDTHWAIT of Hancock
LIBBY of York

Representatives: AHEARNE of Madawaska
BAGLEY of Machias
GERRY of Auburn

SANBORN of Alton
DUTREMBLE of Biddeford

Minority Report of the same Committee reporting "**Ought to Pass**" as amended by Committee Amendment "A" (S-75) on same Bill.

Signed:

Representatives: BUMPS of China
FISK of Falmouth
GIERINGER of Portland
KASPRZAK of Newport

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

Was read.

On motion of Representative AHEARNE of Madawaska the Majority "**Ought Not to Pass**" Report was accepted.

On motion of Representative BUMPS of China the House reconsidered its action whereby the Majority "**Ought Not to Pass**" Report was accepted.

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

Representative BUMPS: Madam Speaker, Men and Women of the House. As you know or as most of you probably know, the Committee on State and Local Government has considered many bills this session pertaining to the selection of and qualifications for the Constitutional Officers and the State Auditor. As a committee we have attempted to eliminate duplications and in many cases report out proposals that incorporate suggestions from several bills. This LD is one of those proposals. LD 33 is taken directly from the recommendations of the 1991 Special Commission on Governmental Restructuring. The 22-member special commission on Governmental Restructuring was created by the Legislature and appointed by the Governor and presiding officers in May of 1991. The vast majority of the commission's recommendations have been implemented, but a few, such as changing the selection of our Constitutional Officers, have not. The commission recommended to change the selection of the State Auditor to be appointed by the Governor and confirmed by two-thirds of the full Legislature. This bill does just that. It also requires the State Auditor be a certified public accountant or certified internal auditor at the time of appointment.

In addition, this bill has asked that the Auditor be nominated by the Governor and confirmed by two-thirds of the Legislature and it would require that this state official be qualified upon taking their office. Madam Speaker, I would ask that when the vote be taken, it be taken by the yeas and nays and I would ask also, my fellow members of the House, to defeat the "Ought Not to Pass."

The same Representative requested a roll call on the motion to accept the Majority "**Ought Not to Pass**" Report.

More than one-fifth of the members present expressed a desire for a roll call which was ordered.

The SPEAKER: The Chair recognizes the Representative from Madawaska, Representative Ahearne.

Representative AHEARNE: Madam Speaker, Ladies and Gentlemen of the House. I hope that the House accepts the Majority "Ought Not to Pass" and let me explain my reasoning. For the qualifications of State Auditor, the State and Local Government Committee accepted a unanimous committee report to set up a study commission to look into exactly that, not only for the State Auditor, but also for the other Constitutional Officers and until we hear from them, I see no reason why we need to enact the current bill before us. Not only are they going to look at the State Auditor, but they are going to look at the State Treasurer, the Attorney General and the Secretary of State. In

regard to the selection process, I believe that there are certain duties that the State Auditor performs that has to be completely independent from the Executive. For those reasons, ladies and gentlemen, I believe that this bill is not necessary and furthermore, Madam Speaker, I move that this bill and all its accompanying papers be indefinitely postponed.

Representative AHEARNE of Madawaska moved that the Bill and all accompanying papers be indefinitely postponed.

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

Representative DONNELLY: Madam Speaker, Men and Women of the House. As I understand it, referencing a piece of legislation, another piece of legislation that we are really not debating here today, that has a fiscal note on it and hasn't even been approved anywhere outside the committee, as far as I know. I don't remember seeing it on the floor and I don't remember seeing it passed or funded. That is really not the issue here. The issue here today is do we believe that the position of State Auditor, one of our highest fiscal and most important positions in the state, has minimum qualifications? People will argue back and forth on are we going to have minimum qualifications for people who are elected and things like that. I think we have the opportunity, as we are popularly elected, to explain to the people of the State of Maine why our particular situation merits, those of us who are here and those of us who aren't, that ran. What unique qualifications we have in the broad scope. That does not happen with the Constitutional Officer's position.

In some of the testimony there were folks who were concerned that it was going to be too narrow and it was only going to be CPAs and the committee members who are on the other report, the "Ought to Pass" report, thought that there were newer qualifications that maybe met the needs. It is not necessarily the one that I would have done, but the certified internal auditors and that is also somebody who would be qualified. These reports that are done by the Office of State Auditor are not just for the Appropriations Committee, the Governor and the different departments to read, but they are also a statement of fiscal responsibility and responsiveness that goes down to people who judge our credit rating. That is particularly important. As someone in my outside life that works in a financial atmosphere, when I deal with clients, I like audited reports by a CPA because it says something about the quality of the bookkeeping and if there is an independent person who is in a noted profession for professionalism and respected that is taking their position on the line and said that these are high quality marks. This matter, we don't have that in state government.

The former State Auditor, Rodney Scribner, was a CPA and was well respected within the profession. A lot of people didn't agree with everything he had in his report, but nobody disagreed with the methodology chosen to get to there. Believe it or not, having CPA under your name on the report that is signed when it goes out of state, when the person is not personally known does matter. Qualifications do matter in positions like these. They are highly professional and some even see that the State Auditor is the top accountant in the state. It is the person who should be the height of professionalism in that profession. To set a minimum qualification that is this small is not asking too much. It is to set a standard by which the people of the State of Maine can feel confident that at least somebody with a bare minimum qualifications are met.

Shortly, you will be handed a piece of paper that explains what minimum qualifications are for other people that work in the Department of Audit. I think we will be embarrassed to learn that the lowest paid position in the Department of Audit has more

strict qualification requirements than the State Auditor. That shouldn't stand. We ought to at least have the boss have higher qualifications than the employee who is the lowest on that employment scale. I hope that you would vote to increase the professionalism of the office to set minimum qualifications for that office to assure the highest quality person is in that job and to help the people of the State of Maine assure that when we do select that person that they are the best for the job. I hope you will vote against the pending motion and vote to set higher standards for the State of Maine.

The SPEAKER: The Chair recognizes the Representative from Union, Representative Savage.

Representative SAVAGE: Madam Speaker, Men and Women of the House. I would like to point out to you that of the 50 states, Maine is the only state who chooses their State Auditor this way. I would think that would be something you would like to give a little thought to. I also want to say that in my other life I do bookkeeping for several organizations and each of those require a CPA to do the annual audit. Why should the people of Maine expect any different? Thank you.

Representative AHEARNE of Madawaska requested a roll call on his motion to indefinitely postpone the Bill and all accompanying papers.

More than one-fifth of the members present expressed a desire for a roll call which was ordered.

The SPEAKER: The Chair recognizes the Representative from Enfield, Representative Lane.

Representative LANE: Madam Speaker, Ladies and Gentlemen of the House. I really trust when we vote on this issue and I am asking you to vote against the motion to indefinitely postpone the bill and papers, that it doesn't become politicized. This is a practical bill. If I have someone do my taxes, I want to make sure and I do make sure, not that I have a whole lot of money out there to handle, that they are the most well-qualified person I can get. I check their credentials. This bill isn't about politics. Really, it is about common sense and upgrading the Office of State Auditor to the level where it should be for the people of the State of Maine. Thank you.

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

Representative TOWNSEND: Madam Speaker, Men and Women of the House. A lot has been mentioned today about qualifications. I would like to speak to the other side of the bill, which has to do with how the State Auditor is chosen. I view it as highly inappropriate for the State Auditor to be answerable to the Governor. The very purpose of the position is to maintain an independent voice who is not responsible to the Executive. Wedding those two is extremely inappropriate and I will be voting for the motion. Thank you.

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

Representative BUMPS: Madam Speaker, Men and Women of the House. I feel compelled to respond to at least a few of the statements that have been made over the past few minutes. The first is the concern that this office would be, I am not sure exactly how to put it, but responsible solely to the Governor. If you read the bill that is before you carefully you will see that sure, the Governor will nominate a person to fill the State Auditors position, but then that nomination comes before the full Legislature and it will require a two-thirds vote. The same way that we require it now for confirmation of the State Auditor. The second thing that I would like to address is this issue of a commission. While that is not the issue before us, it has been raised and I want to set the record straight. There is no assurance that any commission will ever be formed, currently, to study the qualifications and selection process for any state office.

I would suggest to you that there is nothing wrong, even if that commission is formed, which I certainly and truly hope that it is. There is absolutely nothing wrong with us, in the meantime, placing a very minimum qualification on this office that the person who hold that position be a certified public accountant or a certified internal auditor.

Finally, I would suggest to you that the State of Maine is perhaps the only entity, business or the corporation in this state that would even consider hiring somebody with complete disregard for their qualifications and then to allow them months upon months to obtain the qualifications that they should have had when they took that position. Madam Speaker, I would urge all of my members of this House to vote against the pending motion to Indefinitely Postpone. Thank you very much.

The SPEAKER: The Chair recognizes the Representative from Newport, Representative Kasprzak.

Representative KASPRZAK: Madam Speaker, Men and Women of the House. I would ask that you would support the Minority Report on this bill because, to me, it is a common sense bill. Anything has got to be better than the way that we select our Auditor now. I was appalled when I discovered how we go about it. If you have friends in the right place, then you are in, qualifications or no qualifications. Anything has got to be better than that. In regard to the commission coming up, maybe you will say yes to that and maybe you won't. Let's have something in place so that we can be sure that there are qualifications and that the process is at least more democratic. Thank you.

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

ROLL CALL NO. 82

YEA - Ahearn, Bagley, Baker CL, Baker JL, Berry RL, Bolduc, Bouffard, Brennan, Brooks, Bull, Bunker, Chartrand, Chizmar, Clark, Colwell, Cowger, Davidson, Desmond, Driscoll, Dunlap, Etnier, Farnsworth, Fisher, Frechette, Fuller, Gagne, Gagnon, Gamache, Gerry, Goodwin, Green, Hatch, Jabar, Jones SL, Kane, Kerr, Kontos, LaVerdiere, Lemaire, Lemke, Mailhot, McKee, Mitchell JE, Morgan, Muse, O'Neal, O'Neil, Paul, Perry, Pieh, Poulin, Povich, Powers, Quint, Richard, Rines, Rowe, Samson, Sanborn, Saxl JW, Saxl MV, Shannon, Shiah, Sirois, Skoglund, Stanley, Stevens, Tessier, Thompson, Townsend, Tripp, Tuttle, Usher, Vigue, Volenik, Watson, Wheeler GJ, Wright, Madam Speaker.

NAY - Barth, Belanger DJ, Belanger IG, Berry DP, Bigl, Bodwell, Bragdon, Bruno, Buck, Bumps, Cameron, Campbell, Chick, Cianchette, Clukey, Cross, Dexter, Donnelly, Fisk, Foster, Gieringer, Gooley, Honey, Jones SA, Joy, Joyce, Joyner, Kasprzak, Kneeland, Labrecque, Lane, Layton, Lemont, Lindahl, Lovett, MacDougall, Mack, Madore, Marvin, Mayo, McAlevey, McElroy, Meres, Murphy, Nass, Nickerson, O'Brien, Ott, Peavey, Pendleton, Perkins, Pinkham RG, Pinkham WD, Plowman, Savage, Snowe-Mello, Spear, Stedman, Taylor, Tobin, Treadwell, True, Underwood, Vedral, Waterhouse, Wheeler EM, Winglass, Winn, Winsor.

ABSENT - Carleton, Dutremble, Jones KW.

Yes, 79; No, 69; Absent, 3; Excused, 0.

79 having voted in the affirmative and 69 voted in the negative, with 3 being absent, the Bill and all accompanying papers were indefinitely postponed in concurrence.

Divided Report

Majority Report of the Committee on **State and Local Government** reporting "**Ought Not to Pass**" on RESOLUTION, Proposing an Amendment to the Constitution of Maine to

Change the Process for the Selection of the State Treasurer (S.P. 36) (L.D. 34)

Signed:

Senator: NUTTING of Androscoggin

Representatives: AHEARNE of Madawaska

BAGLEY of Machias

GERRY of Auburn

SANBORN of Alton

DUTREMBLE of Biddeford

LEMKE of Westbrook

Minority Report of the same Committee reporting "**Ought to Pass**" as amended by Committee Amendment "A" (S-81) on same RESOLUTION.

Signed:

Senators: GOLDTHWAIT of Hancock

LIBBY of York

Representatives: BUMPS of China

FISK of Falmouth

GIERINGER of Portland

KASPRZAK of Newport

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

Was read.

On motion of Representative AHEARNE of Madawaska, the Majority "**Ought Not to Pass**" Report was accepted.

On motion of Representative FISK of Falmouth, the House reconsidered its action whereby the Majority "**Ought Not to Pass**" Report was accepted.

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

Representative FISK: Madam Speaker, Men and Women of the House. I will be brief. As mentioned before, State and Local Government had a myriad of bills that came pertaining to the method and qualifications of the Constitutional Officers. This is a simple bill and I would just like to make two brief points. The first being that the role and the duty of State Treasurer is intelligently linked with many of the functions of the Executive Branch and working concurrently and currently occurring in the state Administration and Financial Services. As a matter a fact, the 1991 Special Commission on Governmental Restructuring recommended that the State Treasurer's Office be merged into the Department of Administration and Financial Services and that the Treasurer be appointed by the Commissioner. The second brief point I would like to make is just a state-by-state comparison. Thirty-seven states have Treasurers that are elected by the public. Nine are appointed by the Governor and only four states, including Maine, have their Treasurer elected by the Legislature. With these two points in mind, I would ask and urge that you point against the pending motion. Madam Speaker, I would ask for the yeas and nays.

The same Representative requested a roll call on the motion to accept the Majority "**Ought Not to Pass**" Report.

More than one-fifth of the members present expressed a desire for a roll call which was ordered.

The SPEAKER: The Chair recognizes the Representative from Madawaska, Representative Ahearn.

Representative AHEARNE: Madam Speaker, Ladies and Gentlemen of the House. I believe that the reason why the Treasurer is selected by the Legislature is merely to provide a check against the power of the Executive. I believe the Executive already currently holds enough authority as it is and this will provide, if we leave it the way things are, vote for the pending motion, I believe keeping it as it is would remain independent of the executive and the Legislature and not provide

the Executive with additional duties and the Legislature does need this check and balance. Thank you.

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

Representative DONNELLY: Madam Speaker, Men and Women of the House. I think some people think the Treasurer does things that they don't do from hearing the debate. The Treasurer works with folks down in another state and on Wall Street to help invest our funds, to work for a financial policy, but the Treasurer is not a check on Executive Authority. The Treasurer is not a policy setting position. The Treasurer's position is not one that is called to debate if the Governor is acting in the best interest in the state or not. I would think the State Auditor's position that this House decided not to have as minimum qualification was one which was more of a check because it actually went into check to see if they were complying with laws and were generally accepted accounting principles. The Treasurer's Office is one that probably makes sense to work with the Governor's Office. The Treasurer's Office is investing the state's funds. The Governor is ultimately responsible for that. The Legislature works with a member of the Executive and is ultimately responsible for that. The Legislature sets the policy. We approve or disapprove of funding for things and then we give it the members of the Executive and all departments there within to oversee that is lobbying carried forward. The Treasurer is not, again, a check on that. It ought to be where the State Treasurer and member of the Executive elected by a majority or at least a large plurality of the people of the State of Maine work hand and glove and it shouldn't be a political position. It is another one in the utmost professionalism is required and experience is demanded.

To be honest with you, dealing with some of those investment bankers and the different possibilities for investing state funds, it is not as simple as deciding in your own paycheck if you are going to take \$20 and put it into a mutual fund and see if it is categorized by high, low or minimum risk. It is a lot more complicated. As we saw in Orange County, California, there was a Treasurer who started to play with a thing called derivatives. It was a great scare after that about counties, towns and cities being involved in a financial instrument of that complexity because it was beyond that Treasurer's ability to be involved in that. It is one that has had tremendous success for Orange County of California for a long time. As you know, if you do any investing, that usually things that have a very large upside also have a very large downside. If you know how to work with a derivative product, you can limit the risk, but you need to have the experience dealing in the financial market and the market to understand what those risks are and balance them off.

It seems to me, asking for the minimum qualifications, that it would at least have somebody be familiar with the terminology and have some experience and background in the profession with which they will be doing on behalf of the people of the State of Maine and then asking that they work in concert with a member of the Executive at the Legislature's leave is a good idea. It is such a good idea that it came directly from a bipartisan report from 1991 and this is one of their specific recommendations on the Governmental Reform Commission. It was a largely touted report, which is now gathering dust on shelves. The merits of the proposals in that report are no less important today than they were yesterday. I think we ought to move forward and enact some real reform. This is a reform we can go home and be proud we enacted. Thank you.

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

Representative TOWNSEND: Madam Speaker, Men and Women of the House. I wanted to mention briefly that I have

looked at the LD and the amendment and I see nothing in either which addresses the issue of qualifications for State Treasurer. Secondly, again, I think it is extremely important that the State Treasurer remain independent of the Executive. We had a long and maybe not scintillating, but informative, session yesterday on the issue of bonds in response to legislation which was put in to assure that there would be accountability over bonds and how they are spent. We learned that the State Treasurer, State Auditor and the Attorney General are all responsible for monitoring the expenditure of state bonds. I think it is important that they remain independent of the Executive. Furthermore, I want to remind you that in the early 1990s it was the State Treasurer who predicted a shortfall in state government financing. The administration, at the time, denied that such a thing was the case. We all now know who was correct. I think independence is vital. Thank you.

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

ROLL CALL NO. 83

YEA - Ahearn, Bagley, Baker CL, Baker JL, Berry RL, Bolduc, Bouffard, Brooks, Bull, Bunker, Chartrand, Chizmar, Clark, Colwell, Cowger, Davidson, Driscoll, Dunlap, Etnier, Farnsworth, Fisher, Frechette, Fuller, Gagne, Gagnon, Gamache, Gerry, Goodwin, Green, Hatch, Jabar, Jones SL, Kane, Kerr, Kontos, LaVerdiere, Lemaire, Lemke, Mailhot, McKee, Mitchell JE, Morgan, Muse, O'Neal, Paul, Perry, Pieh, Poulin, Povich, Powers, Quint, Richard, Rines, Rowe, Samson, Sanborn, Saxl JW, Saxl MV, Shannon, Shiah, Sirois, Skoglund, Stanley, Stevens, Tessier, Thompson, Townsend, Tripp, Tuttle, Usher, Vigue, Volenik, Watson, Wheeler GJ, Wright, Madam Speaker.

NAY - Barth, Belanger DJ, Belanger IG, Berry DP, Bigl, Bodwell, Bragdon, Bruno, Buck, Bumps, Cameron, Campbell, Carleton, Chick, Cianchette, Clukey, Cross, Desmond, Dexter, Donnelly, Fisk, Foster, Gieringer, Gooley, Honey, Jones SA, Joy, Joyce, Joyner, Kasprzak, Kneeland, Labrecque, Lane, Layton, Lemont, Lindahl, Lovett, MacDougall, Mack, Madore, Marvin, McAlevey, McElroy, Meres, Murphy, Nass, Nickerson, O'Brien, Ott, Peavey, Pendleton, Perkins, Pinkham RG, Pinkham WD, Plowman, Savage, Snowe-Mello, Spear, Stedman, Taylor, Tobin, Treadwell, True, Underwood, Vedral, Waterhouse, Wheeler EM, Winglass, Winn, Winsor.

ABSENT - Brennan, Dutremble, Jones KW, Mayo, O'Neil.
Yes, 76; No, 70; Absent, 5; Excused, 0.

76 having voted in the affirmative and 70 voted in the negative, with 5 being absent, the Majority "Ought Not to Pass" Report was accepted in concurrence.

Divided Report

Majority Report of the Committee on **State and Local Government** reporting "Ought Not to Pass" on RESOLUTION, Proposing an Amendment to the Constitution of Maine to Require That Constitutional Officers Be Appointed by the Governor (S.P. 121) (L.D. 400)

Signed:

Senator: NUTTING of Androscoggin
Representatives: AHEARNE of Madawaska
BUMPS of China
FISK of Falmouth
BAGLEY of Machias
GERRY of Auburn
SANBORN of Alton
GIERINGER of Portland

KASPRZAK of Newport
DUTREMBLE of Biddeford

Minority Report of the same Committee reporting "**Ought to Pass**" as amended by Committee Amendment "A" (S-76) on same RESOLUTION.

Signed:

Senators: GOLDTHWAIT of Hancock
LIBBY of York

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

Was read.

On motion of Representative AHEARNE of Madawaska the Majority "**Ought Not to Pass**" Report was accepted in concurrence.

Non-Concurrent Matter

RESOLUTION, Proposing an Amendment to the Constitution of Maine to Provide for the Direct Popular Election of Constitutional Officers (H.P. 290) (L.D. 354) on which the Majority "**Ought to Pass**" as amended Report of the Committee on **State and Local Government** was read and accepted and the Bill passed to be engrossed as amended by Committee Amendment "A" (H-137) in the House on April 3, 1997.

Came from the Senate with the Minority "**Ought Not to Pass**" Report of the Committee on **State and Local Government** read and accepted in non-concurrence.

On motion of Representative AHEARNE of Madawaska, the House voted to insist.

Non-Concurrent Matter

Bill "An Act to Include Nontraditional Medical Alternatives under Health Maintenance Organization and Medicaid Coverage and to Allow the Patient to Choose the Method of Treatment" (H.P. 1226) (L.D. 1738) which was referred to the Committee on **Health and Human Services** in the House on April 3, 1997.

Came from the Senate referred to the Committee on **Banking and Insurance** in non-concurrence.

The House voted to Recede and Concur.

PETITIONS, BILLS AND RESOLVES REQUIRING REFERENCE

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

Agriculture, Conservation and Forestry

Bill "An Act to Improve Management of Maine's Forests" (H.P. 1246) (L.D. 1766) (Presented by Representative SHIAH of Bowdoinham)

Appropriations and Financial Affairs

Bill "An Act to Authorize a General Fund Bond Issue to Make Necessary Improvements to the State House" (H.P. 1241) (L.D. 1761) (Presented by Speaker MITCHELL of Vassalboro) (Cosponsored by Senator MICHAUD of Penobscot and Representatives: KERR of Old Orchard Beach, KONTOS of Windham, Senators: LAWRENCE of York, PINGREE of Knox) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.)

Education and Cultural Affairs

Bill "An Act to Amend the Structure of the University of Maine System" (H.P. 1245) (L.D. 1765) (Presented by Representative BROOKS of Winterport) (Cosponsored by Senator LIBBY of York and Representatives: BAKER of Bangor, BARTH of Bethel, BRAGDON of Bangor, LaVERDIERE of Wilton, LEMKE of Westbrook, MACK of Standish, Senator: BENNETT of Oxford)

Health and Human Services

Resolve, Establishing the Task Force to Evaluate the Creation of a Centralized State Office of Advocacy Services (H.P. 1242) (L.D. 1762) (Presented by Representative ROWE of Portland)

State and Local Government

Bill "An Act to Establish an Office of Regulatory Reform within the Executive Branch" (H.P. 1244) (L.D. 1764) (Presented by Representative MACK of Standish) (Cosponsored by Senator LIBBY of York and Representatives: BOLDUC of Auburn, BROOKS of Winterport, CAMPBELL of Holden, FRECHETTE of Biddeford, LANE of Enfield, LAYTON of Cherryfield, SNOWEMELLO of Poland, TREADWELL of Carmel)

Taxation

Bill "An Act to Establish the Local Option Lodging Tax" (H.P. 1243) (L.D. 1763) (Presented by Representative KERR of Old Orchard Beach) (Cosponsored by Senator MURRAY of Penobscot and Representatives: BRENNAN of Portland, BULL of Freeport, MARVIN of Cape Elizabeth, MAYO of Bath, TOWNSEND of Portland, Senators: ABROMSON of Cumberland, CAREY of Kennebec) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.)

By unanimous consent, all reference matters requiring Senate concurrence having been acted upon were ordered sent forthwith.

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

REPORTS OF COMMITTEES

Divided Report

Majority Report of the Committee on **Health and Human Services** reporting "**Ought to Pass**" on Bill "An Act to Require that Day Care Facilities for Children and Infants Be Smoke Free" (H.P. 848) (L.D. 1153)

Signed:

Senators: PARADIS of Aroostook

LONGLEY of Waldo

MITCHELL of Penobscot

Representatives: MITCHELL of Portland

BROOKS of Winterport

FULLER of Manchester

KANE of Saco

PIEH of Bremen

QUINT of Portland

LOVETT of Scarborough
JOYNER of Hollis
SNOWE-MELLO of Poland

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

Signed:

Representative: BRAGDON of Bangor
Was read.

Representative MITCHELL of Portland moved that the House accept the Majority "**Ought to Pass**" Report.

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

Representative BRAGDON: Madam Speaker, Ladies and Gentlemen of the House. I do not rise often to speak in this Chamber, but on this report I feel compelled to do so. Not only to explain my reasons for being in the minority, but to ask for your vote against the pending motion. Current state law outlaws smoking in any daycare facility, licensed or registered, in any room where children can be or are while the daycare is in operation. This bill, however, would ban smoking in any adjacent room where smoke could potentially waif into a room where children are. During the hearing I asked the Department of Human Services and they confirmed that this would indeed ban smoking in part of the house when a daycare is in operation. Essentially this bill would ban smoking for relatives or parents living upstairs above the daycare facility. It would apply to an apartment rented out located on the second floor. Ladies and gentlemen of the House, this is not about regulating daycare facilities. This is about regulating private homes. At the hearing we heard from no parent that stated that the current state law banning smoking in rooms where children is present is not effective and no one testified that this bill was necessary. Ladies and gentlemen, I believe this bill is not necessary and is overly burdensome. Madam Speaker, I request a division and when the vote is taken, I request the yeas and nays.

Representative BRAGDON of Bangor requested a roll call on the motion to accept the Majority "**Ought to Pass**" Report.

More than one-fifth of the members present expressed a desire for a roll call which was ordered.

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

Representative MITCHELL: Madam Speaker, Ladies and Gentlemen of the House. I will try to be brief. This is 12-to-1 report. I beg to differ that this is a private home when people open their homes up for a business, especially to serve children who are particularly vulnerable to second-hand smoke. I believe we owe them the protection of making sure that that second-hand smoke is not affecting their developing lungs. Thank you.

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

ROLL CALL NO. 84

YEA - Ahearne, Bagley, Baker CL, Baker JL, Belanger IG, Berry DP, Berry RL, Bigl, Bodwell, Bolduc, Bouffard, Brennan, Brooks, Bruno, Bull, Bunker, Cameron, Chartrand, Chick, Chozmar, Clark, Clukey, Colwell, Cowger, Davidson, Desmond, Donnelly, Driscoll, Dunlap, Etnier, Farnsworth, Fisher, Fisk, Frechette, Fuller, Gagne, Gagnon, Gamache, Gerry, Gieringer, Goodwin, Gooley, Green, Hatch, Honey, Jabar, Jones SL, Joyner, Kane, Kerr, Kneeland, Kontos, LaVerdiere, Lemke, Lemont, Lindahl, Lovett, Madore, Mailhot, McElroy, McKee, Meres, Mitchell JE, Morgan, Murphy, Muse, Nickerson, O'Brien, O'Neal, Paul, Peavey, Perkins, Perry, Pieh, Pinkham RG, Plowman, Poulin, Povich, Powers, Quint, Richard, Rines, Rowe, Samson, Sanborn, Saxl JW, Saxl MV, Shiah, Sirois, Skoglund,

Snowe-Mello, Spear, Stanley, Stevens, Tessier, Thompson, Tobin, Townsend, Tripp, Tuttle, Usher, Vedral, Vigue, Volenik, Watson, Wheeler GJ, Winglass, Winn, Wright, Madam Speaker.

NAY - Barth, Belanger DJ, Bragdon, Buck, Bumps, Campbell, Carleton, Cianchette, Cross, Foster, Jones SA, Joy, Joyce, Kasprzak, Labrecque, Lane, Layton, Lemaire, MacDougall, Mack, Marvin, McAlevey, Nass, Ott, Pendleton, Pinkham WD, Savage, Shannon, Stedman, Taylor, Treadwell, True, Underwood, Waterhouse, Wheeler EM, Winsor.

ABSENT - Dexter, Dutremble, Jones KW, Mayo, O'Neil.

Yes, 110; No, 36; Absent, 5; Excused, 0.

110 having voted in the affirmative and 36 voted in the negative, with 5 being absent, Majority "**Ought to Pass**" Report was accepted.

The Bill was read once and assigned for second reading Thursday, April 10, 1997.

CONSENT CALENDAR

First Day

In accordance with House Rule 519, the following items appeared on the Consent Calendar for the First Day:

(S.P. 123) (L.D. 402) Bill "An Act to Amend the Family Medical Leave Laws" Committee on **Labor** reporting "**Ought to Pass**" as amended by Committee Amendment "A" (S-88)

(H.P. 810) (L.D. 1098) Bill "An Act to Facilitate Implementation of an Automated Hunters' and Anglers' Data Base System for Hunting and Fishing Licenses and Registrations" Committee on **Inland Fisheries and Wildlife** reporting "**Ought to Pass**"

(H.P. 830) (L.D. 1135) Resolve, Regarding Legislative Review of Chapter 374, Rules Regarding the Traffic Movement Standard of the Site Location of Development Law, a Major Substantive Rule of the Department of Environmental Protection, Bureau of Land and Water Quality (EMERGENCY) Committee on **Natural Resources** reporting "**Ought to Pass**"

(H.P. 81) (L.D. 106) Resolve, Establishing the Commission to Review the Effectiveness of Statewide Confidentiality Laws Dealing with the Care of People with Mental Illness Committee on **Health and Human Services** reporting "**Ought to Pass**" as amended by Committee Amendment "A" (H-158)

(H.P. 280) (L.D. 344) Bill "An Act to Amend the Report Criteria for a Municipality's Annual Postaudit" Committee on **State and Local Government** reporting "**Ought to Pass**" as amended by Committee Amendment "A" (H-159)

(H.P. 448) (L.D. 598) Bill "An Act to Create the Crime of Sexual Misconduct with a Child under 14 Years of Age" Committee on **Criminal Justice** reporting "**Ought to Pass**" as amended by Committee Amendment "A" (H-156)

There being no objections, the above items were ordered to appear on the Consent Calendar of Thursday, April 10, 1997 under the listing of Second Day.

BILLS IN THE SECOND READING

As Amended

Bill "An Act to Require Overtime Pay for Employees of Large Agricultural Employers" (H.P. 283) (L.D. 347) (C. "A" H-155)

Bill "An Act to Increase the Number of High-stakes Beano Games" (H.P. 426) (L.D. 576) (C. "A" H-146)

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

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

UNFINISHED BUSINESS

The following matters, in the consideration of which the House was engaged at the time of adjournment yesterday, have preference in the Orders of the Day and continue with such preference until disposed of as provided by House Rule 502.

Bill "An Act to Establish the Maine Single-payor Health Care Plan and to Restructure the State Tax System" (H.P. 1229) (L.D. 1741)

- In House, Referred to the Committee on **Banking and Insurance** and the Committee on **Taxation** on April 3, 1997.

- In Senate, Referred to the Committee on **Banking and Insurance** in non-concurrence.

TABLED - April 8, 1997 (Till Later Today) by Representative KONTOS of Windham.

PENDING - Further Consideration.

The House voted to Recede and Concur.

Bill "An Act to Increase Health Insurance Benefits for Retired Educators" (H.P. 132) (L.D. 174) (C. "A" H-154)

TABLED - April 8, 1997 (Till Later Today) by Representative JOYCE of Biddeford.

PENDING - Passage to be Engrossed.

Representative JOYCE of Biddeford presented House Amendment "A" (H-157), which was read by the Clerk.

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

Representative JOYCE: Madam Speaker, Men and Women of the House. This amendment just adds one sentence to the bill that we passed yesterday. It says we will pay 30 percent of the health insurance for retired teachers as long as the amount does not exceed 30 percent of the health insurance that we pay for retired state employees. Thank you.

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

Representative LEMAIRE: Madam Speaker, Men and Women of the House. Thank you. The reason this bill went in in the first place without the amendment was that we wanted to establish parity with the state workers. It is really interesting that you have teachers for some reason or other, teachers live for a very long time and a lot of them retired at \$4,000 and \$6,000, which they have half that amount to live on. You know what insurance and health care is. It is incredible to think. I don't even know the ramifications of this bill, but I have a feeling I might if I looked into it further. I urge you to defeat this. I mean it is ridiculous. Thank you Madam Speaker.

Representative CLARK of Millinocket moved that House Amendment "A" (H-157) be indefinitely postponed.

The same Representative requested a roll call on his motion to indefinitely postpone House Amendment "A" (H-157).

More than one-fifth of the members present expressed a desire for a roll call which was ordered.

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

Representative JOYCE: Madam Speaker, Men and Women of the House. The vast majority of municipalities have their health insurance through the MEA and Maine School Management and organizations like that, but there are a few municipalities that still buy their health insurance through more private health insurance companies. This will prevent the bill from essentially handing out a blank check to these municipalities saying we will pay 30 percent of whatever plan you

want to have. There are some municipalities that will have more expensive plans than the average state employee plan. This will put a cap on it. We are not reimbursing municipalities if they want to have a Cadillac of a plan.

The SPEAKER: A roll call has been ordered. The pending question before the House is to Indefinitely Postpone House Amendment "A" (H-157). All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 85

YEA - Ahearne, Bagley, Baker CL, Baker JL, Belanger DJ, Belanger IG, Berry RL, Bolduc, Bouffard, Brennan, Brooks, Bull, Bunker, Chartrand, Chizmar, Clark, Colwell, Cowger, Davidson, Desmond, Driscoll, Dunlap, Etnier, Farnsworth, Fisher, Frechette, Fuller, Gagne, Gagnon, Gamache, Gerry, Goodwin, Green, Hatch, Honey, Jabar, Jones SL, Kane, Kerr, Kontos, LaVerdiere, Lemaire, Lemke, Lemont, Lovett, Madore, Mailhot, McKee, Meres, Mitchell JE, Morgan, Muse, O'Neal, Paul, Pendleton, Perry, Pieh, Poulin, Povich, Powers, Quint, Richard, Rines, Rowe, Samson, Sanborn, Saxl JW, Saxl MV, Shannon, Shiah, Sirois, Skoglund, Stanley, Stevens, Tessier, Thompson, Townsend, Tripp, True, Tuttle, Usher, Volenik, Watson, Wheeler GJ, Wright, Madam Speaker.

NAY - Barth, Berry DP, Bigl, Bodwell, Bragdon, Bruno, Buck, Bumps, Cameron, Campbell, Carleton, Chick, Cianchette, Clukey, Cross, Donnelly, Fisk, Foster, Gieringer, Gooley, Jones SA, Joy, Joyce, Joyner, Kasprzak, Kneeland, Labrecque, Lane, Layton, Lindahl, MacDougall, Mack, Marvin, McAlevey, McElroy, Murphy, Nass, Nickerson, O'Brien, Ott, Peavey, Perkins, Pinkham RG, Pinkham WD, Plowman, Savage, Snowe-Mello, Spear, Stedman, Taylor, Tobin, Treadwell, Underwood, Vedral, Waterhouse, Wheeler EM, Winglass, Winn, Winsor.

ABSENT - Dexter, Dutremble, Jones KW, Mayo, O'Neil, Vigue.

Yes, 86; No, 59; Absent, 6; Excused, 0.

86 having voted in the affirmative and 59 voted in the negative, with 6 being absent, House Amendment "A" (H-157) was indefinitely postponed.

Subsequently, the House Paper was Passed to be Engrossed as Amended by Committee Amendment "A" (H-154) and sent up for concurrence.

An Act to Amend the Maine Health Data Organization Laws (EMERGENCY) (S.P. 560) (L.D. 1693)

TABLED - April 8, 1997 (Till Later Today) by Representative SAXL of Portland.

PENDING - Passage to be Enacted.

On motion of Representative KONTOS of Windham, tabled pending Passage to be Enacted and later today assigned.

TABLED AND TODAY ASSIGNED

The Chair laid before the House the following items which were tabled and today assigned:

Expression of Legislative Sentiment recognizing Presque Isle High School Girls Basketball Team (HLS 246)

TABLED - April 3, 1997 by Representative DONNELLY of Presque Isle.

PENDING - Passage.

Subsequently, was passed and sent up for concurrence.

HOUSE DIVIDED REPORT - Majority (12) "**Ought Not to Pass**" - Minority (1) "**Ought to Pass**" - Committee on **Judiciary** on Bill "An Act to Amend the Maine Tort Claims Act to Specifically Include Members of the Maine State Retirement

System Medical Boards and Other Designated Physicians in the Definition of Employee" (H.P. 548) (L.D. 739)
 TABLED - April 8, 1997 by Representative THOMPSON of Naples.

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

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

Representative PLOWMAN: Madam Speaker, Men and Women of the House. I ask you to oppose the report before you on the "Ought Not to Pass," LD 739, "An Act to Amend the Maine Tort Claims Act to Specifically Include Members of the Maine State Retirement System Medical Boards and Other Designated Physicians in the Definition of Employee." The Maine Tort Claims Act provides protection for employees of the state and limits recovery to \$300,000 in instances where they might be found liable. The Maine State Retirement System, in order to process the many claims that had to be processed in the last couple years, have hired on extra physicians to consult and move these cases forward. They are essentially doing the work of state employees and I believe that they should be covered under the Tort Claims Act. Unfortunately, I am the sole member not concurring with the "Ought Not to Pass." If we have someone hired by a state agency to do a job that is a state-related job, then they should be provided all the protections afforded any state employee. I would ask you to reject this motion and move on to pass the bill. Thank you.

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

Representative THOMPSON: Madam Speaker, Men and Women of the House. This bill would extend the Maine Tort Claims Act to include coverage for independent contractors. These are not employees of the State of Maine. These are people that are brought on as independent contractors to review medical records. We have to assume that, as physicians, they are carrying their own malpractice insurance and it is not a good idea. The committee voted 12-to-1 against this bill. I would ask that you support the "Ought Not to Pass" report.

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

Representative PLOWMAN of Hampden requested a roll call on the motion to accept the Majority "Ought Not to Pass" Report.

More than one-fifth of the members present expressed a desire for a roll call which was ordered.

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

ROLL CALL NO. 86

YEA - Ahearne, Bagley, Baker CL, Baker JL, Belanger DJ, Belanger IG, Berry DP, Berry RL, Bigl, Bodwell, Bolduc, Bouffard, Bragdon, Brennan, Brooks, Bruno, Bull, Bumps, Bunker, Cameron, Carleton, Chartrand, Chick, Chizmar, Cianchette, Clark, Clukey, Colwell, Cowger, Cross, Davidson, Desmond, Donnelly, Driscoll, Dunlap, Etner, Farnsworth, Fisher, Fisk, Foster, Frechette, Fuller, Gagne, Gagnon, Gamache, Gerry, Gieringer, Goodwin, Gooley, Green, Hatch, Honey, Jabar, Jones SL, Joyce, Joyner, Kane, Kerr, Kneeland, Kontos, Labrecque, LaVerdiere, Lemaire, Lemke, Lemont, Lindahl, Lovett, MacDougall, Mack, Madore, Mailhot, Marvin, McAlevey, McElroy, McKee, Meres, Mitchell JE, Morgan, Murphy, Muse, Nass, Nickerson, O'Brien, O'Neal, Ott, Paul, Peavey, Perkins, Perry, Pieh, Pinkham RG, Poulin, Povich, Powers, Quint, Richard, Rines, Rowe, Samson, Sanborn, Savage, Saxl JW, Saxl MV, Shannon, Shiah, Sirois, Skoglund, Snowe-Mello,

Spear, Stanley, Stevens, Taylor, Tessier, Thompson, Tobin, Townsend, Tripp, True, Tuttle, Usher, Volenik, Waterhouse, Watson, Wheeler EM, Wheeler GJ, Winglass, Winn, Wright, Madam Speaker.

NAY - Barth, Buck, Campbell, Dexter, Jones SA, Joy, Kasprzak, Lane, Layton, Pendleton, Pinkham WD, Plowman, Stedman, Treadwell, Underwood, Vedral, Winsor.

ABSENT - Dutremble, Jones KW, Mayo, O'Neil, Vigue.

Yes, 129; No, 17; Absent, 5; Excused, 0.

129 having voted in the affirmative and 17 voted in the negative, with 5 being absent, the Majority "Ought Not to Pass" Report was accepted.

An Act to Amend the Laws Regulating the Installation and Inspection of Septic Systems (H.P. 442) (L.D. 592) (C. "A" H-96)
 TABLED - April 8, 1997 by Representative KONTOS of Windham.

PENDING - Passage to be Enacted.

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

Representative WATERHOUSE: Madam Speaker, Ladies and Gentlemen of the House. I noticed this bill the other day when it was on the calendar and I read the original bill. The original bill just had some language in it that required anybody who was putting in a subsurface wastewater disposal system, not operated until the municipality had verified that the system was actually constructed, according to the plan originally submitted for construction. I have no problem with that. The amendment that replaces the bill and what it does is it raises a fee from \$50 to \$100. I can tell you one thing from my first term in the 117th when I got back home the thing that people were really jumping on me about was an increase in fee that went under the hammer that I didn't catch on snowmobiles on nonresident registration fee. I don't know if you remember it or not. It went from \$20 to \$60. I thought I would give everybody a chance, if they wanted to vote for this, that is fine. If you don't like fee increases, you can vote against it. Madam Speaker, I request a roll call please.

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

More than one-fifth of the members present expressed a desire for a roll call which was ordered.

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

Representative ROWE: Madam Speaker, Men and Women of the House. What the good Representative said was true in that this Committee Amendment does replace the bill. It does increase the fee for basically an inspection by the local Plumbing Inspector of a septic system that is being constructed the maximum from \$60 to \$100. Let me tell you just a little bit about this. The original bill, the committee had concerns about, that there was a problem. That problem is that the department is a Division of Health Engineering, within the Bureau of Health, is constrained by that \$60 fee. They cannot, obviously, require any more to be charged for a permit. Therefore that will only pay for one inspection upon the installation of a new septic system. We understand that one inspection is not enough. This was a 12-to-1 vote. The distending member being a member of the other body. All 10 members of this body agreed with this. This will allow the municipalities to inspect the construction of the septic system twice and maybe in some times, three times.

As you may know, those of you who are familiar with septic systems, you know they are very expensive, complicated and often the result of a defective septic system doesn't show up until years later and then it is thousands of dollars to repair it. The

testimony we heard is that if there is at least two inspections and sometimes three to make sure the cover was done properly this may eliminate many of those problems. I believe this bill is good. It has a positive environmental impact, positive health impact and maybe most importantly it is, I believe, in the financial interest of the owner to make sure that the septic system is constructed according to code. That is what this bill does. It allows DHS to increase the fee from \$60 to \$100, otherwise the plumbing inspectors at the municipal level will not be able to do more than one inspection because that is how they are funded, through this fee. I strongly encourage you to support Enactment. Thank you.

The SPEAKER: The Chair recognizes the Representative from Standish, Representative Mack.

Representative MACK: Madam Speaker, Great Honorable Men and Women of the House. I also rise against this amendment. My area of Standish is one of the fastest growing areas of Maine. It is not the fastest in new home starts. The people who are moving to Standish are mostly young families just starting out. These are the working families that are trying to make ends meet. They have saved up and they are trying to buy their first homes. An extra \$40 might not seem like a huge amount when you think of the total of a home, but these families, just starting up, are trying to make ends meet and are working hard on their gas bills, their cars, their mortgage and they have young children coming up and this extra \$40 is another tax that they really cannot afford. To address the concerns that they will make sure that these are installed correctly, of course, they will. People realize that septic system problems would be expensive and of course they want to make sure that their septic systems are installed properly, but they really cannot afford another \$40 tax. A lot of you might have districts that have sewer systems that don't have to deal with this. This will affect anybody in a rural area that has septic systems who are building a new house or putting a new septic system in. The people cannot afford this extra tax and I urge you to vote against the amendment. Thank you.

The SPEAKER: The Chair recognizes the Representative from Hallowell, Representative Cowger.

Representative COWGER: Madam Speaker, Men and Women of the House. I am also on the Natural Resources Committee and, again, it was 12-to-1 divided report. Someone who buys a new home typically makes a major investment in their septic system, somewhere on the order of \$5,000 to \$10,000 in many cases. The current fee as Representative Rowe has said, only allows a single inspection by the municipal plumbing inspector. I feel it is imperative that we take care to provide adequate means to inspect these systems because it is a major investment for homeowners. It is an increase in fee, but 75 percent of those fees goes to local municipalities to help them with their expenses and to allow the local plumbing inspectors to do an additional inspection. It is an optional increase. If the municipality chooses not to enact the fee, the fee can stay at the \$60 level. I urge your support on this measure. It is very important to give a town the flexibility to provide additional inspections.

I also want to read just one sentence from the Department of Human Services. They came and testified at our public hearing. They said, "Clearly, one inspection is not sufficient to assure that the system has been installed as designed or in compliance with the rules." They went on to say, "There would be better protection of everyone's interest if the rules required a minimum of four inspections." We didn't go that far in our committee. We felt that giving the towns the option to have a slightly higher amount of income to cover two inspections goes a great deal

towards protecting our environment and the homeowner's investment. Thank you.

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

Representative WATERHOUSE: Madam Speaker, Ladies and Gentlemen of the House. I will just speak very briefly. I used to be in the heavy construction industry. I used to install septic systems. When we had them inspected we had to leave them uncovered with the crushed stone and the pipe and it had to be a certain pitch to them. We had a distribution box and you would put some hay on the bed depending on what the inspector wanted done. In fact, in those days, a lot of times the inspector, because of his scheduling or whatever, couldn't get to us in time and a lot of times it held up the job quite a bit, but we knew we had to leave it uncovered so the inspector could come and take some stone off the pipe and put the level on it and put some water in the distribution box to make sure the water flowed properly. I never saw an inspector come to a site more than one time. Never. That may happen nowadays, but back when we used to put them in and they are expensive systems to put in, but contractors knowing that they are going to have the inspector come by that one time and look at the whole system.

They system is in and it is hooked up to the septic tank and to the house and so forth and so on. He is going to come and check all of that stuff at one time. For the life of me I can't understand why an inspector has to be there four times. If he does, boy that must really hold up construction. I can't imagine somebody leaving a system around like that when they are trying to backfill or grade around a house and the rest of that waiting for four times inspection from an inspector that is probably very busy and has to go to a lot of other construction sites. I would say to you that certainly, from my experience being in the construction industry, that one inspection is certainly enough to protect not only the state's interest and the municipality's interest, but certainly the homeowner's interest. Thank you very much.

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

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

The SPEAKER: The Representative may pose his question.

Representative LINDAHL: Thank you Madam Speaker. I see in the amendment where the fee is increased from \$60 to \$100. Where does it guarantee that there will be more inspections?

The SPEAKER: The Representative from Northport, Representative Lindahl has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Portland, Representative Rowe.

Representative ROWE: Madam Speaker, Men and Women of the House. It is a good question that the Representative has posed. That is not in statute. That will be through rulemaking with the Department of Human Services, Bureau of Health. They have unable to do that through rulemaking to the present time because of that \$60 cap. What they will do, if this bill is passed, they will promulgate new rules or amend the rules to say that if you charge the \$100 there will be at least two inspections. So, therefore, it won't be in statute. It will be in the rules, but it will give the Bureau of Health the flexibility to do that. Currently, they do not have it. Thank you.

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

Representative JOY: Madam Speaker, Ladies and Gentlemen of the House. This is another one of those bills that has a cute little thing called a fee increase in it. During the last session of the Legislature we had 55 bills which either created

new fees or added fees to things that already existed. I suggest to you that a fee is merely another name for a tax. We are increasing the tax burden on our people either through fees or through an out and out tax. I urge you to defeat the pending motion. Madam Speaker, I would request a roll call.

The SPEAKER: A roll call is in order. The Chair recognizes the Representative from Greenville, Representative Jones.

Representative JONES: Madam Speaker, Ladies and Gentlemen of the House. Having been a code enforcement officer in rural Maine and having done many of these inspections, first of all I need to tell you there are very good reasons why second and occasionally third inspections are necessary. We are talking about public safety here. We are not talking about a tax. I will be supporting this in lieu of the fact that I have been on many of these inspections when there certainly has been a need that a second inspection needs to be done for the simple change in a site plan. Thank you.

The SPEAKER: The Chair recognizes the Representative from Dover-Foxcroft, Representative Cross.

Representative CROSS: Madam Speaker, Ladies and Gentlemen of the House. There again, here we go, trying to put one bill in to cover the whole State of Maine. One hundred dollars may not mean much in southern Maine, but \$100 in rural Maine is a lot of money. Somewhere along the line you are trying to have one bill to cover the whole state. It just doesn't work. Thank you.

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

Representative MERES: Madam Speaker, Ladies and Gentlemen of the House. I hear today a tax is a tax is a tax. I am here to say that this is not the case. There are reasons. I think if people are very concerned about this, they should have come to our hearing and they should understand that we have many different types of people on our committee. We all agreed that this is reasonable. This is a consumer protection focus. We have here people that testified that had severe problems and very expensive resolutions. It is very difficult to go back and correct these things if there is no documentation. I would really seriously ask whether or not we have to be so negative as to think of everything as a tax and not to consider that we are doing something that is going to be a benefit to the people who are spending, the new families and whoever is building, because once you create a situation that is imperfect because of a lack of inspection or because of a lack of concerns, it is hard to remedy. If you think about it, most of the people who are building houses do not have the opportunity to stay and be present and observe day in and day out. They depend on these inspections to make sure that things are done correctly because they have signed off on them as a type of approach that they want to see in their homes. I would be very cautious about voting against this. Thank you.

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

Representative WRIGHT: Madam Speaker, Men and Women of the House. I too work in construction and have put my fair share of septic systems in and when they fail and they are not it does not run up hill.

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

Representative PERKINS: Madam Speaker, May I pose a question through the Chair?

The SPEAKER: The Representative may pose his question.

Representative PERKINS: Thank you Madam Speaker. This second inspection that is going to come along in rulemaking, when would that be done? At what stage of the system building would that be done? Does anybody have any idea?

The SPEAKER: The Representative from Penobscot, Representative Perkins has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Portland, Representative Rowe.

Representative ROWE: Madam Speaker, Men and Women of the House. In response to the question, I can't say specifically. What I would like to do is provide you with information of testimony that was provided to us by the Bureau of Health. The Bureau of Health testimony was that there would be better protection of everyone's interest if there were an amendment before inspection and the first was before any construction takes place. They talked about checking that the plant is a reasonable representation of the actual site, that the benchmark for elevation and horizontal control are present and that the system that is staked out meets the pertinent setback requirements. That is not done now and I doubt that that will be one of the two. I expect the other two will be during the construction phases. The second suggestion was after all site preparation had been completed. The third was after the fill and components had been placed but before the system is covered and the fourth would have been a driveby inspection to make sure that the site work had been completed and that the cover had been properly laid. It is my understanding that this will cover two inspections and basically you can't do four with \$100 because you can't pay the municipal plumbing inspector. I can't say specifically, as I say here today. I know they are limited to two and they will determine the specific times and the construction phase that would provide the most benefit to the consumer.

Again, I agree. This is not a bill to give money to any department. This was because we heard from consumers that there was a problem and that there was some defective installation done and it would have been caught had there been a subsequent inspection. It was only caught years later when there were problems with respect to the septic systems and leakage. I agree, I don't see this as a tax. I see it as something that is going benefit the individual. This is an additional \$40. These things do cost sometimes over \$5,000 to install. I think it behooves us if the consumers, we heard from consumers, that have said there ought to be more inspections, the local plumbing inspectors say they can only do one because we are not compensated for more than one, but we think we need to do more than one and then we hear from the Bureau of Health. I think for all these reasons it is important to support the enactment. Thank you.

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

Representative KERR: Madam Speaker, May I pose a question through the Chair?

The SPEAKER: The Representative may pose his question.

Representative KERR: Thank you Madam Speaker. Is there anything in current law that would prohibit a building inspector or code enforcement officer from doing a second inspection?

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

Representative ROWE: Thank you Madam Speaker. I am not a code enforcement officer and I might defer that we have a couple on the committee if they have a specific answer to this question. My thinking would be that the inspections are done by individuals who are trained in inspecting septic systems. The licensed plumbing inspectors and just that and that is what they focus on. Those are the people best trained and that is who this bill would fund. This is the way they are funded through this

particular permit. I defer to other members of the committee that may have additional information on that point. Thank you.

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

Representative JOY: Madam Speaker, May I pose a question through the Chair?

The SPEAKER: The Representative may pose his question.

Representative JOY: Thank you Madam Speaker. My question is this. Have we any facts or figures on the percentages of these installations that have been made that have failed?

The SPEAKER: The Representative from Crystal, Representative Joy has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Greenville, Representative Jones.

Representative JONES: Madam Speaker, Ladies and Gentlemen of the House. I don't think we have those statistics but I can tell you that there has been a number in our area and nothing is worse than having it happen in the dead of winter. The good Representative from Alton, Representative Sanborn had several just last week that she had to address. In regards to Representative Kerr's question, no, there is nothing in the state's statute that says you can't do a voluntary second inspection. Thank you.

The SPEAKER: The Chair recognizes the Representative from Hallowell, Representative Cowger.

Representative COWGER: Madam Speaker, Men and Women of the House. I just want to reemphasize that this fee is an optional bill. I believe the control remains in the hands of each municipality. If a municipality chooses not to raise the fee and require two inspections, that is their choice. Generally speaking as a former code enforcement officer, myself, there isn't sufficient income to give local code enforcement officers the time to do two inspections. This would allow local towns and local municipalities and local cities to enact a higher fee to cover their costs. Thank you.

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

Representative LAYTON: Madam Speaker, May I pose a question through the Chair?

The SPEAKER: The Representative may pose his question.

Representative LAYTON: Thank you Madam Speaker. Isn't what we are talking about here the plumbing permit costs that is going to go from \$60 to \$100 of which a portion of that goes through the LPI and this really doesn't have anything to do with inspections and how many you get because in most rural communities, at least I can speak from 10 years of experience as a town manager, that the LPI is around all the time. Aren't we really talking an increase in the fee?

The SPEAKER: The Representative from Cherryfield, Representative Layton has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Greenville, Representative Jones.

Representative JONES: Madam Speaker, Ladies and Gentlemen of the House. There are some towns that a portion of those fees go to an LPI, but the majority of the towns in the State of Maine those fees go directly to the town.

The SPEAKER: A roll call has been ordered. The pending question before the House is Passage to be Enacted. All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 87

YEA - Ahearne, Bagley, Baker CL, Baker JL, Berry RL, Bigl, Bolduc, Brooks, Bull, Bumps, Bunker, Chartrand, Chizmar, Clark, Colwell, Cowger, Davidson, Desmond, Driscoll, Dunlap, Etnier, Farnsworth, Fisher, Frechette, Fuller, Gagnon, Gamache, Green, Hatch, Jabar, Jones SL, Kane, Kontos, LaVerdiere, Lemaire,

Lemont, Mayo, McKee, Meres, Mitchell JE, Morgan, Muse, Nickerson, O'Brien, O'Neal, Perry, Pieh, Povich, Powers, Quint, Richard, Rines, Rowe, Samson, Sanborn, Saxl JW, Saxl MV, Shannon, Shiah, Sirois, Skoglund, Stanley, Stevens, Tessier, Thompson, Townsend, Tripp, Usher, Volenik, Watson, Wheeler GJ, Winn, Wright, Madam Speaker.

NAY - Barth, Belanger IG, Berry DP, Bodwell, Bouffard, Bragdon, Bruno, Buck, Cameron, Campbell, Carleton, Chick, Cianchette, Clukey, Cross, Dexter, Donnelly, Fisk, Foster, Gagne, Gerry, Gieringer, Goodwin, Gooley, Honey, Jones SA, Joy, Joyce, Joyner, Kasprzak, Kerr, Kneeland, Labrecque, Lane, Layton, Lemke, Lindahl, Lovett, MacDougall, Mack, Madore, Mailhot, Marvin, McAlevey, McElroy, Murphy, Nass, Ott, Paul, Peavey, Pendleton, Perkins, Pinkham RG, Pinkham WD, Plowman, Poulin, Savage, Snowe-Mello, Spear, Stedman, Taylor, Tobin, Treadwell, True, Tuttle, Underwood, Vedral, Waterhouse, Wheeler EM, Winglass, Winsor.

ABSENT - Belanger DJ, Brennan, Dutreble, Jones KW, O'Neil, Vigue.

Yes, 74; No, 71; Absent, 6; Excused, 0.

74 having voted in the affirmative and 71 voted in the negative, with 6 being absent, the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

HOUSE DIVIDED REPORT - Majority (9) "**Ought to Pass**" - Minority (4) "**Ought Not to Pass**" - Committee on **Labor** on Bill "An Act to Prohibit an Employer from Hiring Replacement Workers During a Strike" (H.P. 41) (L.D. 66)

TABLED - April 8, 1997 by Representative HATCH of Skowhegan.

PENDING - Acceptance of Either Report

Representative HATCH of Skowhegan moved that the House accept the Majority "**Ought to Pass**" Report.

On further motion of the same Representative, tabled pending her motion to accept the Majority "**Ought to Pass**" Report and specially assigned for Thursday, April 10, 1997.

HOUSE DIVIDED REPORT - Majority (9) "**Ought to Pass**" - Minority (4) "**Ought Not to Pass**" - Committee on **Labor** on Bill "An Act to Prohibit the Employment of Professional Strikebreakers" (H.P. 88) (L.D. 113)

TABLED - April 8, 1997 by Representative HATCH of Skowhegan.

PENDING - Acceptance of Either Report.

Representative HATCH of Skowhegan moved that the House accept the Majority "**Ought to Pass**" Report.

On further motion of the same Representative, tabled pending her motion to accept the Majority "**Ought to Pass**" Report and specially assigned for Thursday, April 10, 1997.

Bill "An Act Requiring Qualified Investigation of Certain Truck-related and Bus-related Fatalities" (H.P. 469) (L.D. 640)

TABLED - April 8, 1997 by Representative KONTOS of Windham.

PENDING - Adoption of Committee Amendment "A" (H-149)

On motion of Representative KONTOS of Windham, tabled unassigned pending adoption of Committee Amendment "A" (H-149).

ORDER

LEGISLATIVE RECORD- HOUSE, April 9, 1997

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

On motion of Representative MITCHELL of Portland, the following Joint Order: (H.P. 1247) (Cosponsored by Representative BRUNO of Raymond)

ORDERED, the Senate concurring, that Bill, "An Act to Review Registration of Certified Nursing Assistants," H.P. 1206, L.D. 1706, be recalled from the Legislative Files to the Senate.

Was read. A two-thirds vote being necessary, a vote of the House was taken. 112 voted in favor of the same and 9 against, the Joint Order was passed and sent up for concurrence.

On motion of Representative O'NEAL of Limestone, the House adjourned at 12:20 p.m., until 9:00 a.m., Thursday, April 10, 1997.