

# 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  
12th Legislative Day  
Wednesday, April 16, 1997

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

Prayer by Reverend Bartram Dilks, Calvary Tabernacle UPC, Rockland.

Pledge of Allegiance.

Doctor of the day, Eric Nicholas, M.D., Mars Hill.

The Journal of yesterday was read and approved.

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**SENATE PAPERS**

The following Communication: (H.C. 177)

Maine State Senate  
State House Station 3  
Augusta, Maine 04333  
April 15, 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 Adhered to its previous action whereby it Accepted the Majority Ought Not To Pass Report from the Committee on Taxation on Bill "An Act to Include Slide-in Truck Campers in Property That May Be Included in the Trade-in Allowance Credit" (H.P. 62) (L.D. 87).

Sincerely,

S/Joy J. O'Brien

Secretary of the Senate

Was read and ordered placed on file.

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The following Communication: (H.C. 178)

Maine State Senate  
State House Station 3  
Augusta, Maine 04333  
April 15, 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 Adhered to its previous action whereby it Accepted the Minority Ought Not To Pass Report from the Committee on State and Local Government on 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).

Sincerely,

S/Joy J. O'Brien

Secretary of the Senate

Was read and ordered placed on file.

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Bill "An Act to Assist At-risk Students and Strengthen Their Families" (S.P. 605) (L.D. 1802)

Came from the Senate, referred to the Committee on **Appropriations and Financial Affairs** and Ordered Printed.

Was referred to the Committee on **Appropriations and Financial Affairs** in concurrence.

Bill "An Act to Include Flunitrazepam in the List of Schedule W Drugs" (S.P. 603) (L.D. 1800)

Came from the Senate, referred to the Committee on **Criminal Justice** and Ordered Printed.

Was referred to the Committee on **Criminal Justice** in concurrence.

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Bill "An Act to Adopt Long-range Changes in the Methods by Which Whitewater Rafting Trips Are Allocated among Licensees" (S.P. 604) (L.D. 1801)

Came from the Senate, referred to the Committee on **Inland Fisheries and Wildlife** and Ordered Printed.

Was referred to the Committee on **Inland Fisheries and Wildlife** in concurrence.

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Bill "An Act to Encourage the Payment of Delinquent Taxes" (S.P. 606) (L.D. 1803)

Came from the Senate, referred to the Committee on **Taxation** and Ordered Printed.

Was referred to the Committee on **Taxation** in concurrence.

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**Refer to the Committee on Transportation**

Report of the Committee on **State and Local Government** on Bill "An Act to Reimburse Part-time Police Departments" (S.P. 199) (L.D. 627) reporting that it be referred to the Committee on **Transportation**.

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

On motion of Representative CAMPBELL of Holden, tabled pending acceptance of the Committee Report and later today assigned.

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**Divided Report**

Majority Report of the Committee on **State and Local Government** reporting "**Ought to Pass**" as amended by Committee Amendment "A" (S-73) on RESOLUTION, Proposing an Amendment to the Constitution of Maine to Require the Election of the Secretary of State in Statewide Elections (S.P. 122) (L.D. 401)

Signed:

Senator: LIBBY of York

Representatives: AHEARNE of Madawaska

FISK of Falmouth

BAGLEY of Machias

GERRY of Auburn

BUMPS of China

GIERINGER of Portland

KASPRZAK of Newport

SANBORN of Alton

DUTREMBLE of Biddeford

LEMKE of Westbrook

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

Signed:

Senator: NUTTING of Androscoggin

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

Was read.

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

On further motion of the same Representative, tabled pending his motion to accept the Majority "**Ought to Pass**" as amended Report and specially assigned for Thursday, April 17, 1997.

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**Divided Report**

Majority Report of the Committee on **Taxation** reporting "**Ought Not to Pass**" on Bill "An Act to Improve Access to Higher Education for Maine Students" (S.P. 240) (L.D. 809)

Signed:

Senators: RUHLIN of Penobscot  
DAGGETT of Kennebec  
MILLS of Somerset

Representatives: TRIPP of Topsham  
TUTTLE of Sanford  
ROWE of Portland  
GAGNON of Waterville  
MORGAN of South Portland  
BUCK of Yarmouth  
CIANCHETTE of South Portland  
SPEAR of Nobleboro  
LEMONT of Kittery

Minority Report of the same Committee reporting "**Ought to Pass**" as amended by Committee Amendment "A" (S-111) on same Bill.

Signed:

Representative: GREEN of Monmouth

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

Was read.

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

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

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**Non-Concurrent Matter**

Resolve, Authorizing the Transfer of Land from the State to the Freeman Ridge Cemetery Association (EMERGENCY) (H.P. 1255) (L.D. 1782) which was referred to the Committee on **Agriculture, Conservation and Forestry** in the House on April 14, 1997.

Came from the Senate referred to the Committee on **State and Local Government** in non-concurrence.

The House voted to Recede and Concur.

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**Non-Concurrent Matter**

Bill "An Act to Ban Partial Birth Abortions" (H.P. 390) (L.D. 535) on which Report "C" "**Ought to Pass**" as amended by Committee Amendment "B" (H-164) of the Committee on **Judiciary** was read and accepted and the Bill passed to be engrossed as amended by Committee Amendment "B" (H-164) in the House on April 14, 1997.

Came from the Senate with Report "A" "**Ought Not to Pass**" of the Committee on **Judiciary** read and accepted in non-concurrence.

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

Representative AHEARNE: Madam Speaker, Ladies and Gentlemen of the House. I think we should Adhere on this bill. I believe that we have sent a strong message that we believe this bill has merit and I believe that a strong message such as the

motion to adhere is the best motion. I hope that you would let it go. Thanks.

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

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**COMMUNICATIONS**

The following Communication: (S.P. 607)  
118th Maine Legislature  
April 14, 1997

Senator Peggy Pendleton  
Representative Shirley Richard  
Chairpersons  
Joint Standing Committee on Education and Cultural Affairs  
118th Legislature  
Augusta, Maine 04333

Dear Senator Pendleton and Representative Richard:

Please be advised that Governor Angus S. King, Jr. has nominated Ward I. Graffam for appointment as a member of the Maine Maritime Academy Board of Trustees.

Pursuant to P.L. 1975, Chapter 771, Section 428, this nomination will require review by the Joint Standing Committee on Education and Cultural Affairs and confirmation by the Senate.

Sincerely,  
S/Mark W. Lawrence  
President of the Senate  
S/Elizabeth H. Mitchell  
Speaker of the House

Came from the Senate, read and referred to the Committee on **Education and Cultural Affairs**.

Was read and referred to the Committee on **Education and Cultural Affairs** in concurrence.

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

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**PETITIONS, BILLS AND RESOLVES REQUIRING REFERENCE**

The following Bills and Resolves 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:

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**Banking and Insurance**

Bill "An Act to Make Maine Health Insurance Laws Consistent with Federal Laws" (EMERGENCY) (H.P. 1278) (L.D. 1808) (Presented by Speaker MITCHELL of Vassalboro) (Cosponsored by Senator KIEFFER of Aroostook and Representatives: DAVIDSON of Brunswick, MAYO of Bath, Senators: ABROMSON of Cumberland, MURRAY of Penobscot) (Governor's Bill)

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**Education and Cultural Affairs**

Bill "An Act to Change the School Calendar" (H.P. 1275) (L.D. 1805) (Presented by Representative DONNELLY of Presque Isle) (Cosponsored by Senator PENDLETON of Cumberland and Representatives: BRENNAN of Portland, KERR of Old Orchard Beach, McELROY of Unity, MITCHELL of Vassalboro, STEDMAN of Hartland, TRUE of Fryeburg, Senators: AMERO of Cumberland, MacKINNON of York)

**Judiciary**

Bill "An Act to Amend Maine's Involuntary Commitment Laws" (H.P. 1276) (L.D. 1806) (Presented by Representative BRENNAN of Portland) (Cosponsored by Senator HARRIMAN of Cumberland and Representatives: ETNIER of Harpswell, MADORE of Augusta, THOMPSON of Naples, WINGLASS of Auburn, Senators: DAGGETT of Kennebec, LaFOUNTAIN of York, MILLS of Somerset, MITCHELL of Penobscot) (Governor's Bill)

Bill "An Act to Provide for Commitment of Sexually Violent Predators" (H.P. 1277) (L.D. 1807) (Presented by Representative PLOWMAN of Hampden) (Cosponsored by Representatives: BAKER of Bangor, BODWELL of Brunswick, GERRY of Auburn, MacDOUGALL of North Berwick, MACK of Standish, UNDERWOOD of Oxford, WATERHOUSE of Bridgton)

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

**SPECIAL SENTIMENT CALENDAR**

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

Recognizing:

Linda Kuzyk, a 5th-grade teacher at Crescent Park School in Bethel, who has received the 1997 Presidential Award for Excellence in Science, and in extending our congratulations and best wishes to her; (HLS 250) by Representative BARTH of Bethel. (Cosponsor: Senator FERGUSON of Oxford)

On objection of Representative BARTH of Bethel, was removed from the Special Sentiment Calendar.

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

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

SENATE REPORT - Committee on **State and Local Government** on Bill "An Act to Reimburse Part-time Police Departments" (S.P. 199) (L.D. 627) which was tabled by Representative CAMPBELL of Holden pending acceptance of the Committee Report.

-In Senate, Bill referred to the Committee on **Transportation**

Subsequently, the Committee Report was accepted and the Bill was referred to the Committee on **Transportation** in concurrence. Ordered sent forthwith.

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

**BILL RECALLED FROM GOVERNOR**

(Pursuant to Joint Order - House Paper 1268)

An Act to Designate Square Dancing as the Official Folk Dance of Maine (H.P. 111) (L.D. 135) (C. "A" H-30)

- In House, Passed to be Enacted on April 1, 1997.

- In Senate, Passed to be Enacted on April 2, 1997.

On motion of Representative AHEARNE of Madawaska, the Bill was referred to the Committee on **State and Local Government**. Ordered sent forthwith.

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

Divided Report - Committee on **Taxation** - (12) members "**Ought Not to Pass**" - (1) member "**Ought to Pass**" as amended by Committee Amendment "A" (S-111) on Bill "An Act to Improve Access to Higher Education for Maine Students" (S.P. 240) (L.D. 809) which was tabled by Representative TRIPP of Topsham pending his motion to accept the Majority "**Ought Not to Pass**" Report.

The SPEAKER: The Chair recognizes the Representative from Topsham, Representative Tripp.

Representative TRIPP: Madam Speaker, Men and Women of the House. The only reason I am delaying this is that I know Representative Green would like to speak on the other side of this issue and out of courtesy to her, I will do that. In the meantime, I will explain that this is a good bill on the surface. The problem is it has a \$5 million fiscal note in the first year and it continues. It is limited to only students that are enrolled in the University of Maine System. Representative Green apparently is here. I will then stop and say that the reason that we didn't pass this was basically the fiscal note.

The SPEAKER: The Chair recognizes the Representative from Monmouth, Representative Green.

Representative GREEN: Madam Speaker, Ladies and Gentlemen of the House. First, I do seriously apologize. However, I would like to address LD 509. There is a reason that I voted the way I did against my colleagues. It had to do with the principles of standing behind what you say, you believe. According to very good testimony from Representatives from FAME, we have approximately 40,000 students on a regular basis who are looking for funds for higher education. When FAME looks at applications and has a very strict rule for who is applicable, they usually get 26,000 who they deem highly eligible for aid. The problem with that is that we only have money for 12,000. You will hear rhetoric all the time about how important education is to the children of this state and to the economic development of this state and yet when it comes to actually standing behind what we say, we do not fund it. That is why I voted "Ought to Pass" as amended. I strongly suggest that you think seriously about whether or not the students in your district deserve a little help. There are students who are on the edge, that \$2,000, which really doesn't sound like a lot. When you are looking at higher education costs, \$2,000, is not a lot. Anywhere between \$10,000 and \$25,000 a year, depending on where students go and \$2,000 isn't that much. For some students, it is the difference between getting that degree and not. Thank you very much.

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

A vote of the House was taken. 69 voted in favor of the same and 37 against, the Majority "**Ought Not to Pass**" Report was accepted in concurrence.

**REPORTS OF COMMITTEES**

**Divided Report**

Majority Report of the Committee on **Taxation** reporting "**Ought Not to Pass**" on Bill "An Act to Require Public Utilities to Pay Excise Tax on Motor Vehicles to the Town in Which the Motor Vehicle is Permanently Stationed" (H.P. 82) (L.D. 107)

Signed:

Senators: RUHLIN of Penobscot  
DAGGETT of Kennebec  
MILLS of Somerset

Representatives: TRIPP of Topsham

GREEN of Monmouth  
 ROWE of Portland  
 MORGAN of South Portland  
 TUTTLE of Sanford  
 LEMONT of Kittery  
 BUCK of Yarmouth

Minority Report of the same Committee reporting "**Ought to Pass**" as amended by Committee Amendment "A" (H-200) on same Bill.

Signed:

Representatives: GAGNON of Waterville  
 SPEAR of Nobleboro  
 CIANCHETTE of South Portland

Was read.

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

The SPEAKER: The Chair recognizes the Representative from Topsham, Representative Tripp.

Representative TRIPP: Madam Speaker, Men and Women of the House. This bill would treat all public utilities in the same fashion as any other corporation or partnership as far as excise taxing vehicles. What it would allow is for corporations such as NYNEX, that was operated by an employee in the small Town of Clinton, to have to pay that excise tax to Clinton on that vehicle instead of having it done the way it is done today. Usually, a large corporation pays its excise tax in the community where its office is stationed. There is testimony against this indicated that it would be a costly procedure for these companies to have to pay in every community where there vehicles were located instead of just one. Thank you.

The SPEAKER: The Chair recognizes the Representative from Nobleboro, Representative Spear.

Representative SPEAR: Madam Speaker, Ladies and Gentlemen of the House. I would urge you to vote against the "Ought Not to Pass" report so we can move forward to accept the "Ought to Pass" report. This bill is a very important bill in my opinion. It is a fairness bill. In 1987, the Legislature enacted legislation that said that corporations and partnerships had to pay excise tax in a place where the main office of that corporation was located, except that if that organization had additional permanent places of business where the motor vehicles were customarily kept. The excise tax would have to be paid to the place that additional place of business was located. What it is, that all private business has to pay excise tax wherever their trucks or vehicles are located. The exception is public utility corporations. They were exempt. There are many communities that house garages or any types of locations for these vehicles throughout the state. These towns provide the infrastructure, roads and a lot of other things that will enable these people to operate in those communities, yet, they get absolutely no money for it. This, once again, is a fairness issue. It is only fair that these communities that put the effort in to put the infrastructure there for these vehicles and it is fair that they pay their excise tax in those communities. Why should private people have to do it when these public ones do not? I would urge you to vote against the "Ought Not to Pass" report. Thank you.

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

Representative SAVAGE: Madam Speaker, Men and Women of the House. I support the testimony just given to you by Representative Spear and I would like to add the fact that I believe, I stand to be corrected, that these public utilities vehicles are exempt from the posted roads. Bear in mind that when you have some of these heavy pieces of equipment beating up the roads in these communities, much more so than some of you

might realize, I also would like to have each of you think about, is there a facility in your community or within your district that houses some of the public utility vehicles? Please support Representative Spear on this issue. Thank you.

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

Representative GAGNON: Madam Speaker, Men and Women of the House. I am also on the Minority Report on this and I think I agree with Representative Spear that this is a fairness issue. In my home city, we have a base for NYNEX telephone trucks and those trucks stay in the city, they service the city and they are paying excise tax to the City of Portland. This is an exception only for utilities. Primarily, it is the big three utilities that can take advantage of it. I really think it is a fairness issue. It is not just the individual trucks that might be parked in somebody's yard in some small town. There are a number of these substations or regional offices across the state and the excise on those vehicles are being paid at a central location. I would encourage you to vote against the pending motion.

The SPEAKER: The Chair recognizes the Representative from Lamoine, Representative Pinkham.

Representative PINKHAM: Madam Speaker, Men and Women of the House. I stand today to oppose the "Ought Not to Pass" on this bill. The testimony you already heard is absolutely right. These trucks, in my town alone, Bangor Hydro has a station and there are 12 big trucks, plus many small vehicles that pay excise tax to Bangor, which are stationed in Lamoine. This time of year, when the roads are posted due to the frost and breaking up the roads, these trucks are allowed to travel over those roads because they are public utility vehicles. They do a lot of damage, but they pay no excise tax to these small towns. It affects many small towns in the state that are losing excise tax that they need for infrastructure. I would like to see this bill pass. It would help the small towns in fixing up their roads. Thank you.

The SPEAKER: The Chair recognizes the Representative from Ellsworth, Representative Povich.

Representative POVICH: Madam Speaker, Ladies and Gentlemen of the House. I would like to share a letter from the City of Ellsworth supporting LD 107. "The City of Ellsworth supports LD 107, An Act to Require Public Utilities to Pay Excise Tax on Motor Vehicles for the Town in Which the Motor Vehicle is Permanently Stationed." Like most communities, excise taxes paid in Ellsworth are used to support the maintenance on municipal roads. Many public utilities garages, or otherwise, keep their vehicles, including heavy trucks, in communities such as Ellsworth. These municipalities do not receive excise taxes from the public utilities to support their road maintenance budgets. Requiring excise taxes to be paid in the community in which the motor vehicle is stationed would provide some compensation to the community for the use of the roads in the town." My footnote to this is we express solidarity with our brothers and sisters in the neighboring Town of Lamoine. Thank you.

Representative SPEAR of Nobleboro 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. 98

YEA - Baker CL, Berry RL, Bolduc, Bouffard, Brennan, Bull, Chartrand, Chizmar, Colwell, Cowger, Davidson, Dunlap, Etnier, Farnsworth, Gamache, Gieringer, Green, Hatch, Jones KW, Kontos, Lemaire, Lemke, Lemont, Madore, Mailhot, Mitchell JE,

Morgan, O'Neal, O'Neill, Paul, Pendleton, Perry, Powers, Quint, Richard, Rowe, Saxl JW, Saxl MV, Shiah, Taylor, Tessier, Townsend, Tripp, Tuttle, Watson, Wright, Madam Speaker.

NAY - Ahearne, Bagley, Baker JL, Barth, Belanger DJ, Belanger IG, Berry DP, Bigl, Bodwell, Bragdon, Bruno, Buck, Bumps, Bunker, Cameron, Campbell, Chick, Cianchette, Clark, Clukey, Cross, Desmond, Dexter, Driscoll, Dutremble, Fisher, Foster, Frechette, Fuller, Gagne, Gagnon, Gerry, Goodwin, Gooley, Honey, Jabar, Jones SA, Joy, Joyce, Joyner, Kane, Kasprzak, Kerr, Kneeland, Labrecque, Lane, LaVerdiere, Layton, Lindahl, Lovett, MacDougall, Mack, Marvin, Mayo, McAlevey, McElroy, McKee, Meres, Murphy, Muse, Nass, Nickerson, Ott, Peavey, Perkins, Pieh, Pinkham RG, Pinkham WD, Plowman, Poulin, Povich, Rines, Samson, Sanborn, Savage, Shannon, Sirois, Skoglund, Snowe-Mello, Spear, Stanley, Stedman, Thompson, Tobin, Treadwell, True, Underwood, Usher, Vedral, Vigue, Volenik, Waterhouse, Wheeler EM, Wheeler GJ, Winglass, Winsor.

ABSENT - Brooks, Carleton, Donnelly, Fisk, Jones SL, O'Brien, Stevens, Winn.

Yes, 47; No, 96; Absent, 8; Excused, 0.

47 having voted in the affirmative and 96 voted in the negative, with 8 being absent, the motion to accept the Majority "Ought Not to Pass" Report was not accepted.

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

The Bill was read once. Committee Amendment "A" (H-200) was read by the Clerk and adopted. The Bill was assigned for second reading Thursday, April 17, 1997.

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**Divided Report**

Majority Report of the Committee on **Business and Economic Development** reporting "Ought to Pass" on Resolve, to Implement the Recommendations of the Commission to Study Poverty Among Working Parents with Regard to Microenterprise Needs (H.P. 266) (L.D. 330)

Signed:

Senators: JENKINS of Androscoggin

MacKINNON of York

RAND of Cumberland

Representatives: VIGUE of Winslow

BODWELL of Brunswick

MURPHY of Kennebec

FARNSWORTH of Portland

CAMERON of Rumford

SIROIS of Caribou

SHANNON of Lewiston

WRIGHT of Berwick

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

Signed:

Representatives: MacDOUGALL of North Berwick

MACK of Standish

Was read.

On motion of Representative VIGUE of Winslow the Majority "Ought to Pass" Report was accepted.

The Bill was read once and was assigned for second reading Thursday, April 17, 1997.

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**Divided Report**

Majority Report of the Committee on **Taxation** reporting "Ought Not to Pass" on Bill "An Act to Exclude Transfers of

Motor Vehicles Owned by S Corporations from Sales Tax" (H.P. 779) (L.D. 1067)

Signed:

Senators: RUHLIN of Penobscot

DAGGETT of Kennebec

MILLS of Somerset

Representatives: TRIPP of Topsham

GREEN of Monmouth

ROWE of Portland

GAGNON of Waterville

MORGAN of South Portland

SPEAR of Nobleboro

LEMONT of Kittery

TUTTLE of Sanford

Minority Report of the same Committee reporting "Ought to Pass" as amended by Committee Amendment "A" (H-202) on same Bill.

Signed:

Representatives: BUCK of Yarmouth

CIANCHETTE of South Portland

Was read.

Representative TRIPP of Topsham moved that the House accept the Majority "Ought Not to Pass" Report.

On motion of Representative SAXL of Portland, tabled pending the motion of Representative TRIPP of Topsham to accept the Majority "Ought Not to Pass" Report and later today assigned.

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**Divided Report**

Majority Report of the Committee on **Taxation** reporting "Ought Not to Pass" on Bill "An Act to Provide a Credit or Refund for Special Fuel Tax Paid for Special Fuel Used on a Toll Highway" (H.P. 803) (L.D. 1091)

Signed:

Senators: RUHLIN of Penobscot

DAGGETT of Kennebec

MILLS of Somerset

Representatives: TRIPP of Topsham

TUTTLE of Sanford

GREEN of Monmouth

ROWE of Portland

GAGNON of Waterville

MORGAN of South Portland

SPEAR of Nobleboro

LEMONT of Kittery

CIANCHETTE of South Portland

Minority Report of the same Committee reporting "Ought to Pass" as amended by Committee Amendment "A" (H-201) on same Bill.

Signed:

Representative: BUCK of Yarmouth

Was read.

Representative TRIPP of Topsham moved that the House accept the Majority "Ought Not to Pass" Report.

The SPEAKER: The Chair recognizes the Representative from Topsham, Representative Tripp.

Representative TRIPP: Madam Speaker, Men and Women of the House. This bill would allow an exemption on special fuel for trucks using toll highways. Currently they use diesel fuel, which is what the special fuel area of the tax would apply to. We feel this is an area which is going to be very difficult to administer and the committee felt very strongly and we urge you to "Ought Not to Pass" this report.

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

Representative BUCK: Madam Speaker, Ladies and Gentlemen of the House. I stand, urging you not to accept the "Ought Not to Pass" report for the following reasons. This is a clear case of double taxation. When these folks purchase their fuel they pay a highway tax that we all pay in Maine. When they enter the Maine Turnpike, they pay another tax by paying that toll. Clearly, it is a case of taxing these people twice. We heard testimony in committee that it would be a bureaucratic nightmare in terms of collecting the tax. I am convinced that it isn't. The reporting requirements now for these trucks is such that the amount of miles traveled on the Maine Turnpike is already reported. It would not be difficult for them to determine how to administer the bureaucratic functions of collecting the tax. I simply view it as a fairness issue. We should not be taxing these people twice. Thank you.

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

Representative CHARTRAND: Madam Speaker, Men and Women of the House. On the Transportation Committee this year we have seen a number of bills from different municipalities based on the conditions of their roads. We have had some areas where roads are being proposed to be turned back to the municipalities and the towns and cities are complaining that the roads are in awful shape and they cannot possibly support them. We have had other bills that are on our way with roads being closed to truck traffic because they can't support those heavy loads during the spring. The crux of all these bills is that people all over the state are complaining that there is simply not enough being done to our roads to support the traffic that needs to go over them. The answer we have, to tell most of these supporters, is that there simply is not enough money in the Highway Fund these days to do the job that is required. This bill will make a \$6 million dent in that Highway Fund for this coming biennium, if it passes, and who knows what the fiscal note would be in the future. What I can tell you is that it will be a lot more difficult to even deal with the issues that we have before us, never mind those we must take on in the future in the Highway Fund, given the income we have now. A bill like this would cut \$6 million out of it is doing exactly the wrong thing we need to do for our infrastructure in Maine. I would contest the idea that it is a double taxation for these vehicles because the gas tax is levied on all vehicles in the state that purchase gas and it is based on their driving wherever they go with that gasoline. Whereas, the tolls on the Maine Turnpike or other tollways, are solely for the preservation and maintenance of those ways. They are two different types of fees. This bill doesn't deal at all with the motor vehicles that you and I drive also, that are not diesel, and also pay both tolls and gas tax.

The other problem that I see with it is that many commercial trucks currently do receive a toll discount on the Maine Turnpike based on their usage per month, which is greater than most of us who drive occasionally. Commuters in vehicles, cars can receive a discount and regular commercial truck operators receive toll discounts. That would even further reduce the idea of a double taxation. For any number of reasons, including those cited by Representative Tripp and the Taxation Committee, I would urge you to support the "Ought Not to Pass" report on this. 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. This is, as the Gentleman from Yarmouth said, a clear case of double taxation. Also, I would like to say that these trucks, because they have to pay the tax on not

only their fuel but on the turnpike, are more apt to go on the side roads that he said are in disrepair. Those side roads are less able to handle these big heavy trucks than the turnpike. Also, the consumers of Maine are going to have to pay more for their goods because it costs more to have them transported through the state. I urge my fellow members to vote against the "Ought Not to Pass" motion and I request the yeas and nays.

Representative MACK of Standish 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 Fryeburg, Representative True.

Representative TRUE: Madam Speaker, Ladies and Gentlemen of the House. If anyone would please answer a question relative to has there been a fiscal note figured out on this particular bill?

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. 99

YEA - Ahearn, Bagley, Baker CL, Baker JL, Belanger DJ, Belanger IG, Berry DP, Berry RL, Bigl, Bolduc, Bouffard, Bragdon, Brennan, Brooks, Bruno, Bull, Bumps, Bunker, Cameron, Campbell, Chartrand, Chick, Chizmar, Cianchette, Clark, Clukey, Colwell, Cowger, Davidson, Desmond, Driscoll, Dunlap, Dutremble, Etnier, Farnsworth, Fisher, Frechette, Fuller, Gagne, Gagnon, Gamache, Goodwin, Gooley, Green, Hatch, Honey, Jabar, Jones KW, Joyce, Joyner, Kane, Kerr, Kneeland, Kontos, Labrecque, LaVerdiere, Lemaire, Lemont, Lindahl, Lovett, Madore, Mailhot, Mayo, McElroy, McKee, Meres, Mitchell JE, Morgan, Murphy, Muse, O'Neal, O'Neil, Paul, Peavey, Perry, Pieh, Plowman, Poulin, Povich, Powers, Quint, Richard, Rines, Rowe, Samson, Sanborn, Savage, Saxl JW, Saxl MV, Shannon, Shiah, Sirois, Skoglund, Spear, Stanley, Stevens, Taylor, Tessier, Thompson, Townsend, Tripp, True, Tuttle, Usher, Vedral, Vigue, Volenik, Watson, Wheeler GJ, Winglass, Winn, Wright, Madam Speaker.

NAY - Barth, Bodwell, Buck, Cross, Dexter, Foster, Gerry, Gieringer, Jones SA, Joy, Kasprzak, Lane, Layton, MacDougall, Mack, Marvin, McAlevey, Nass, Nickerson, Ott, Pendleton, Perkins, Pinkham RG, Pinkham WD, Snowe-Mello, Stedman, Tobin, Treadwell, Underwood, Waterhouse, Wheeler EM, Winsor.

ABSENT - Carleton, Donnelly, Fisk, Jones SL, Lemke, O'Brien.

Yes, 113; No, 32; Absent, 6; Excused, 0.

113 having voted in the affirmative and 32 voted in the negative, with 6 being absent, the motion to accept the Majority "Ought Not to Pass" Report was accepted 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 Require the Deputy Commissioner of Inland Fisheries and Wildlife to be Appointed by the Governor and Confirmed by the Senate" (H.P. 923) (L.D. 1266)

Signed:

Senators: NUTTING of Androscoggin  
GOLDTHWAIT of Hancock  
LIBBY of York

Representatives: BUMPS of China



FIKSK of Falmouth  
BAGLEY of Machias  
KASPRZAK of Newport  
SANBORN of Alton  
DUTREMBLE of Biddeford

Minority Report of the same Committee reporting "**Ought to Pass**" on same Bill.

Signed:

Representatives: AHEARNE of Madawaska  
GERRY of Auburn  
GIERINGER of Portland  
LEMKE of Westbrook

Was read.

Representative AHEARNE of Madawaska moved that the House accept the Minority "**Ought to Pass**" Report.

On further motion of the same Representative, tabled pending his to accept the Minority "**Ought to Pass**" Report and specially assigned for Thursday, April 17, 1997.

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

Expression of Legislative Sentiment recognizing Linda Kuzyk, a 5th-grade teacher at Crescent Park School in Bethel (HLS 250) which was tabled by Representative BARTH of Bethel pending passage.

The SPEAKER: The Chair recognizes the Representative from Bethel, Representative Barth.

Representative BARTH: Madam Speaker, Ladies and Gentlemen of the House. I had asked that this sentiment be set aside or tabled until later in today's session and that time is now because the recipient is here with us and will be introduced shortly. I would just like to add my congratulations to Mrs. Kuzyk for her outstanding teaching. I would also invite any member of this House to come to Bethel and visit the Crescent Park Elementary School. I think you would be amazed. I think you would find all that is good and all that we want our schools to be present, active and working in Bethel. Thank you Madam Speaker.

Subsequently, was read and passed and sent up for concurrence.

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#### CONSENT CALENDAR First Day

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

(S.P. 50) (L.D. 160) Bill "An Act to Fund Research Regarding the Reinstatement of a Meat Inspection Program" Committee on **Agriculture, Conservation and Forestry** reporting "**Ought to Pass**"

(S.P. 62) (L.D. 172) Bill "An Act to Provide for Long-range Revenue Forecasts" Committee on **Appropriations and Financial Affairs** reporting "**Ought to Pass**" as amended by Committee Amendment "A" (S-105)

(S.P. 118) (L.D. 397) Bill "An Act to Change the Burden of Proof for Timber Trespass and Timber Theft Violations" Committee on **Judiciary** reporting "**Ought to Pass**" as amended by Committee Amendment "A" (S-103)

(S.P. 191) (L.D. 609) Resolve, Concerning Reauthorization of the \$9,000,000 Bond Issue for Construction of Water Pollution Control Facilities (EMERGENCY) Committee on **Appropriations and Financial Affairs** reporting "**Ought to Pass**" as amended by Committee Amendment "A" (S-104)

(S.P. 219) (L.D. 678) Bill "An Act to Amend the Laws Relating to Auctioneers" Committee on **Business and Economic Development** reporting "**Ought to Pass**" as amended by Committee Amendment "A" (S-107)

(S.P. 241) (L.D. 810) Bill "An Act to Clarify the Duties of the Office of the Public Advocate" Committee on **Utilities and Energy** reporting "**Ought to Pass**" as amended by Committee Amendment "A" (S-109)

(S.P. 315) (L.D. 1055) Resolve, Directing the Office of Tourism and Community Development and the Maine Tourism Commission to Include Lewiston as Part of Southern or South-central Maine Committee on **Business and Economic Development** reporting "**Ought to Pass**" as amended by Committee Amendment "A" (S-106)

(S.P. 355) (L.D. 1174) Bill "An Act to Enhance Live Animal and Embryo Exports From Maine" Committee on **Agriculture, Conservation and Forestry** reporting "**Ought to Pass**" as amended by Committee Amendment "A" (S-102)

(S.P. 395) (L.D. 1292) Bill "An Act to Extend the Removal Deadline for Certain Repaired Concrete Underground Oil Storage Tanks" Committee on **Natural Resources** reporting "**Ought to Pass**" as amended by Committee Amendment "A" (S-108)

(H.P. 307) (L.D. 371) Bill "An Act to Clarify the Definition of Qualified School for Telecommunications Network Purposes" Committee on **Utilities and Energy** reporting "**Ought to Pass**"

(H.P. 515) (L.D. 706) Bill "An Act to Amend the Washington County Budget Advisory Committee" Committee on **State and Local Government** reporting "**Ought to Pass**"

(H.P. 777) (L.D. 1065) Bill "An Act to Require Law Enforcement Officers to Inform a Person Who Fails to Submit to a Blood Test about the Informed Consent Law" Committee on **Criminal Justice** reporting "**Ought to Pass**"

There being no objections, the above items were ordered to appear on the Consent Calendar of Thursday, April 17, 1997 under the listing of Second Day.

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#### CONSENT CALENDAR Second Day

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

(S.P. 80) (L.D. 219) Resolve, to Establish Qualifications for Constitutional Officers (C. "A" S-99)

(S.P. 141) (L.D. 420) Bill "An Act to Improve the Reporting of General Use Pesticide Sales" (C. "A" S-96)

(S.P. 277) (L.D. 885) Bill "An Act to Amend the Qualifications of the Administrator of the Maine Veterans' Homes" (C. "A" S-97)

(H.P. 400) (L.D. 545) Bill "An Act to Enhance the Penalty for Operating a Motor Vehicle after Habitual Offender Revocation When the Actor Has Had a Prior Conviction for Operating after Revocation or Operating under the Influence within the Previous 10 Years" (C. "A" H-199)

(H.P. 661) (L.D. 914) Bill "An Act Regarding Penalties for Failure to Yield the Right-of-way to an Emergency Vehicle" (C. "A" H-198)

(H.P. 791) (L.D. 1079) Bill "An Act to Create the Cobscook Bay Transit District" (C. "A" H-197)

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

(H.P. 618) (L.D. 843) Bill "An Act to Regulate Money Transmitters and Amend Consumer Credit Laws" (C. "A" H-203) On motion of Representative CAMERON of Rumford, was removed from the Second Day Consent Calendar.

The Committee Report was read and accepted. The Bill was read once. Committee Amendment "A" (H-203) was read by the Clerk and adopted.

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

Representative CAMERON of Rumford presented House Amendment "A" (H-213), which was read by the Clerk and adopted.

The Bill was passed to be Engrossed as amended by Committee Amendment "A" (H-203) and House Amendment "A" (H-213) and sent up for concurrence.

**BILLS IN THE SECOND READING**

Bill "An Act to Prohibit an Employer from Hiring Replacement Workers During a Strike" (H.P. 41) (L.D. 66)

**As Amended**

Bill "An Act to Remove Instant Lottery Ticket Vending Machines" (H.P. 248) (L.D. 312) (C. "A" H-170)

Bill "An Act to Amend the Laws Regarding the Licensure of Hearing Aid Dealers and Fitters" (H.P. 396) (L.D. 541) (C. "A" H-196)

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

**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.

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 14, 1997 by Representative HATCH of Skowhegan.

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

Representative PENDLETON of Scarborough 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 Jay, Representative Samson.

Representative SAMSON: Madam Speaker, Men and Women of the House. Professional strikebreaking is now prohibited under Maine law and has been since 1965. What this bill does is it defines what a strikebreaker is and that is someone who provides more than 100 employees more than three times in five years. Exempted in this act are critical employees such as security guards, special maintenance for special equipment and permanent employees. This bill also repeals the criminal penalties in this act and brings it to a civil penalty. The reason for this is that in times of strikes when the District Attorney is probably busy it would be better not to invoke the District

Attorneys in this and allow civil action to take place for injunctive relief or to enforce the chapter in this law. Thank you.

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

**ROLL CALL NO. 100**

YEA - Ahearne, Bagley, Baker CL, Baker JL, Belanger IG, Berry RL, Bigl, Bodwell, Bolduc, Bouffard, Brennan, Brooks, Bruno, Bull, Bunker, Cameron, Chartrand, Chick, Chizmar, Clark, Colwell, Cowger, Davidson, Desmond, Driscoll, Dunlap, Dutremble, Etnier, Farnsworth, Fisher, Frechette, Fuller, Gagne, Gagnon, Gamache, Gerry, Goodwin, Gooley, Green, Hatch, Honey, Jabar, Jones KW, Kane, Kasprzak, Kerr, Kontos, Lane, LaVerdiere, Lemaire, Lemont, Madore, Mailhot, Mayo, McAlevey, McKee, Meres, Mitchell JE, Morgan, Muse, O'Neal, O'Neil, Paul, Perkins, Perry, Pieh, Pinkham RG, 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, Winglass, Winn, Wright, Madam Speaker.

NAY - Barth, Belanger DJ, Berry DP, Bragdon, Buck, Bumps, Campbell, Cianchette, Clukey, Cross, Dexter, Foster, Gieringer, Jones SA, Joy, Joyce, Joyner, Kneeland, Labrecque, Layton, Lindahl, Lovett, MacDougall, Mack, Marvin, McElroy, Murphy, Nass, Nickerson, Ott, Peavey, Pendleton, Pinkham WD, Plowman, Savage, Snowe-Mello, Spear, Stedman, Taylor, Tobin, Treadwell, True, Underwood, Vedral, Waterhouse, Wheeler EM, Winsor.

ABSENT - Carleton, Donnelly, Fisk, Jones SL, Lemke, O'Brien.

Yes, 98; No, 47; Absent, 6; Excused, 0.

98 having voted in the affirmative and 47 voted in the negative, with 6 being absent, the motion to accept the Majority "**Ought to Pass**" Report was accepted.

The Bill was read once and assigned for second reading Thursday, April 17, 1997.

HOUSE DIVIDED REPORT - Majority (10) "**Ought Not to Pass**" - Minority (3) "**Ought to Pass**" as amended by Committee Amendment "A" (H-191) - Committee on **Judiciary** on Bill "An Act to Remove Immunity for Fraudulent Testimony or Perjury" (H.P. 119) (L.D. 143)

TABLED - April 15, 1997 (Till Later Today) by Representative JABAR of Waterville.

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

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

Representative WATERHOUSE: Madam Speaker, Ladies and Gentlemen of the House. Not too long ago, we had a commission that met in the State Office Building dealing with the family law. For those of you who sat through that hearing there was quite a bit of gripping testimony. A lot of the testimony that I heard had to do with fraudulent testimony by different people in child abuse cases or whatever. I introduced a bill and it has to do with the Maine Tort Claims Act. As you probably know a lot of government employees have immunity from liability. We do when we speak on the floor of the House. The standard for the immunity is acting in good faith. This bill, the amendments to the bill, includes intentional and willful malice and bad faith, which means that people who go to testify in some of these cases, caseworkers or whatever else, that have this immunity from liability under the Maine Tort Claims Act will not have that

immunity if they testify in these cases with intentional malice and bad faith.

It covers several sections of the Maine Tort Claims Act and it amends the child abuse and neglect reporting statute and puts them there. The reporting of child abuse and neglect in the investigations and proceedings relating to child abuse and neglect if the person intentionally makes false reports or gives false testimony in the report of the testimony is provided maliciously or in bad faith. I can't imagine not supporting the Minority Report and voting against this Majority Report. Do we really want to give people who testify in these cases, intentionally, maliciously and fraudulently, protection from immunity? I think not. I urge you to vote against the pending motion and go on to the Minority Report who will hold people accountable as they should be when they testify in such a manner. Thank you.

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

Representative THOMPSON: Madam Speaker, Men and Women of the House. With all due respect to my friend from Bridgton, I can imagine someone voting for this report because I am on this report. To put it simply, if you look at the title of this bill, it is to remove immunity for fraudulent testimony of perjury. To put it simply, the law already does that. There is no immunity for fraudulent testimony or perjury in the law right now. This is a bill that is totally unnecessary. Currently, in Title 14, Section 8111, which is the Maine Tort Claims Act it says, "An employee or government entity shall be immune from personal civil liability and this is one of the reasons. For any intentional act or omission within the source and scope of employment, provided that such immunity shall not exist in any case in which an employee's actions were found to have been in bad faith." Bad faith is a lower standard than perjury and it is lower than fraud. If you already have a lower standard than fraud or perjury and it is not necessary to pick out one class of workers and change the immunity law, which it really does not do a change, it just singles out one class of workers to identify them in statute. It ignores that it applies not just to those workers, but to every state employee. It is a totally unnecessary bill and I urge you to support the "Ought Not to Pass" report.

The SPEAKER: The Chair recognizes the Representative from Acton, Representative Nass.

Representative NASS: Madam Speaker, Men and Women of the House. I am on the side that is urging you to vote against the "Ought Not to Pass" report. We heard testimony at the public hearing on this bill about the difficulty in proving bad faith. It is not our intention to pick on any particular class of employee, it is just the recognition of the difficulty or the lack of interest in trying to pursue a bad faith claim. This essentially makes it more clear as to what type of immunity is available for state workers and what kinds of actions are not covered by the Tort Claims Act. I would urge that you vote against the pending motion.

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

Representative WATERHOUSE: Madam Speaker, Ladies and Gentlemen of the House. With all due respect to my chair, my friend, Representative Thompson, I would argue the point that bad faith is a lower standard. I have from the National Support Center for Legal Services Corporation, a nationwide legal organization, that says that the legal standards of bad faith is nearly impossible to meet. That legal firm or organization recognizes that bad faith is almost impossible to meet and a lot of other states around the country had the bad faith in these types of statutes and just recently a number of states ratcheted that up and put in malicious, intentional, willful and likewise words to make it harder for someone to give this type of

testimony and have the immunity. If we have the bad faith standard, it is my contention and I could argue that by citing legal opinions on that that it is not a high standard or should I say a low standard. It is a hard standard to overcome. This extra language put in there would make it harder for somebody to testify in this manner. I urge you to vote against the Majority Report. Thank you.

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

Representative POWERS: Madam Speaker, Men and Women of the House. As a member of the Majority "Ought Not to Pass" Report, I would like to share with you two pieces of the testimony that we did here. From the Department of the Attorney General, we received the information that, again, as Representative Thompson has said, this is an unnecessary piece of legislation. I am quoting now, "The state has never contended that the giving of fraudulent testimony is within the discretion of any police officer or governmental employees. In our view, discretionary community could not be invoked in such a case." Further, from the Department of Human Services, we receive the information that Representative Thompson has also pointed out. "This is an unnecessary piece of legislation because police officers and governmental employees giving fraudulent testimony would be outside their scope of employment and, therefore, not have immunity for that act." I urge you to support the "Ought Not to Pass" report.

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

Representative THOMPSON: Madam Speaker, Men and Women of the House. I ask you to take a look at the Minority Report and look at the language that is in there. The key words are intentionally, which is already in the current law. Malice and bad faith, which is still in the Minority Report. What we are adding is the standard of malice. I am a lawyer and I will tell you that in Maine malice is much harder to prove than bad faith. This is one of those occasions where you hear a lot of people stand up and say that I am not a lawyer, but, I am a lawyer and I tell you that, without a doubt, in my mind that bad faith is easier to prove than malice.

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

Representative WATERHOUSE: Madam Speaker, Ladies and Gentlemen of the House. I find it interesting that the good Representative Thompson says that because, if you look at the fiscal note and I cringe telling people to refer to fiscal notes on bills, but I will anyway. For some strange reason the Attorney General's Department has put a fiscal note on here saying that they would require an additional General Fund appropriation because they need one assistant Attorney General position and general operating expenses to handle the expected increase in the workload resulting from increases in the number of lawsuits brought against state employees. If this is going to lower the standard from good faith, or whatever, and you are going to have it harder to prove these cases, why would the caseload increase? Why does the Attorney General look at this as an increased litigation bill because people would be able to litigate more easily? I guess I don't see the connection. Thank you very much.

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

Representative THOMPSON: Madam Speaker, Men and Women of the House. To put it simply, by identifying a certain class of people, you are encouraging lawsuits against that class of people. That is why the Attorney General anticipates additional lawsuits being filed.

Representative JOY of Crystal 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. 101**

YEA - Ahearne, Bagley, Baker CL, Baker JL, Belanger DJ, Belanger IG, Berry DP, Berry RL, Bigl, Bolduc, Bouffard, Brennan, Brooks, Bruno, Bull, Bumps, Bunker, Cameron, Chartrand, Chick, Chizmar, Clark, Clukey, Colwell, Cowger, Cross, Davidson, Desmond, Driscoll, Dunlap, Dutremble, Etnier, Farnsworth, Fisher, Frechette, Gagne, Gagnon, Gamache, Goodwin, Gooley, Green, Hatch, Honey, Jabar, Jones KW, Kane, Kerr, Kneeland, Kontos, LaVerdiere, Lemaire, Lemont, Lindahl, Madore, Mailhot, Mayo, McElroy, McKee, Mitchell JE, Morgan, Muse, O'Neal, O'Neil, Ott, Paul, Peavey, Perry, Pieh, Poulin, Povich, Powers, Quint, Richard, Rines, Rowe, Samson, Sanborn, Saxl JW, Saxl MV, Shannon, Shiah, Sirois, Skoglund, Spear, Stanley, Stevens, Taylor, Tessier, Thompson, Townsend, Tripp, True, Tuttle, Usher, Vigue, Volenik, Watson, Wheeler EM, Wheeler GJ, Winglass, Winn, Wright, Madam Speaker.

NAY - Barth, Bodwell, Bragdon, Buck, Campbell, Cianchette, Dexter, Foster, Gerry, Gieringer, Jones SA, Joy, Joyce, Joyner, Kasprzak, Lane, Layton, Lovett, MacDougall, Mack, Marvin, McAlevey, Meres, Murphy, Nass, Nickerson, Pendleton, Perkins, Pinkham RG, Pinkham WD, Plowman, Savage, Snowe-Mello, Stedman, Tobin, Treadwell, Underwood, Vedral, Waterhouse.

ABSENT - Carleton, Donnelly, Fisk, Fuller, Jones SL, Labrecque, Lemke, O'Brien, Winsor.

Yes, 103; No, 39; Absent, 9; Excused, 0.

103 having voted in the affirmative and 39 voted in the negative, with 9 being absent, the motion to accept the Majority "**Ought Not to Pass**" Report was accepted and sent up for concurrence.

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

TABLED - April 15, 1997 (Till Later Today) by Representative KONTOS of Windham.

PENDING - Passage to be Enacted.

On motion of Representative MITCHELL of Portland, the rules were suspended for the purpose of reconsideration.

On further motion of the same Representative, the House reconsidered its action whereby the Bill was passed to be engrossed.

The same Representative presented House Amendment "A" (H-206) which was read by the Clerk and adopted.

The Bill was passed to be engrossed as amended by House Amendment "A" (H-206) in non-concurrence and sent up for concurrence.

**TABLED AND TODAY ASSIGNED**

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

HOUSE DIVIDED REPORT - Majority (12) "**Ought Not to Pass**" - Minority (1) "**Ought to Pass**" as amended by

Committee Amendment "A" (H-185) - Committee on **Education and Cultural Affairs** on RESOLUTION, Proposing an Amendment to the Constitution of Maine to Ensure the Rights of Parents to Direct the Upbringing and Education of Their Children (H.P. 341) (L.D. 463)

TABLED - April 15, 1997 by Representative KASPRZAK of Newport.

PENDING - Motion of Representative RICHARD of Madison to accept the Majority "**Ought Not to Pass**" Report. (Roll Call Ordered)

The SPEAKER: The Chair recognizes the Representative from Hartland, Representative Stedman.

Representative STEDMAN: Madam Speaker, Ladies and Gentlemen of the House. First of all, I would like to thank the House for being willing to table this yesterday while I was absent. I felt it was my duty to be a dissenting voice on this bill after it had been heard by the Committee on Education and Cultural Affairs. First of all, I thought the bill should have been presented to State and Local Government as it was originally designated. The issue in this bill, "A Resolution Proposing an Amendment to the Constitution to Ensure Parental Rights in the Upbringing of their Children, Including the Education Component of that Upbringing." It concerns citizen's rights and if it should be passed, it would send out to referendum the opportunity for the citizens of Maine to voice their opinions on this important issue. The amendment that is noted adds the usual referendum fiscal note.

My second reason for being a dissenting vote is I felt compelled to allow the sponsor to present her case before the whole body assembled. The deterioration of parental control over the lives of their children continues unabated and many parents run into brick walls when they object to invasion of their rights as though others know better than parents as to when it comes to what to do with all of Maine's children. This is the reason for my position and I ask that you give the sponsor a fair hearing on this issue. Thank you.

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

Representative KASPRZAK: Madam Speaker, Men and Women of the House. Thank you for giving me the opportunity for stating my case before the entire House. I felt this was not an education issue, but a basic fundamental right issue, which usually is considered in my committee, State and Local Government. We consider Constitutional Amendments and such. I would ask first that you would vote against the pending motion to accept the "Ought Not to Pass" report.

It is my opinion, that because it was not referred to the proper committee because of one word in the title and then the angle at which it had to be presented, the point was missed entirely. The core issue is the need for law to recognize parental rights as a fundamental right. The role of parents in the raising and rearing of their children is of inestimable value and deserving of both praise and protection by all levels of government, I believe. Parents face increasing intrusion into their legitimate decisions and prerogatives by government agencies in situations that don't involve traditional understandings of abuse and neglect, but simply are conflicts of parenting philosophies. Government should not interfere in the decision actions of parents without compelling justification. The traditions of our civilization recognizes that parents have the responsibility to love, nurture, train and protect their children. Like all groups, relationships, communities, organizations. The more responsibility one takes, the less the others will do and gradually give up their own sense of responsibility, which is what I think government has done thus far.

Fathers no longer feel compelled to provide for their wives and children. The state will step in. Parents are no longer deemed capable of parenting their children without classes to teach them how to love and nurture their very own young. Moms are no longer required to entertain, teach and nurture their own preschoolers because we have programs like headstart. There is no longer the need to get out of bed to send them off to school for the day because the school will prepare and serve their breakfast for them. What will be next? Will there be a program to take the baby from their mother right there in the hospital because the government knows best how to care for this little one? Parents all over the United States hope that a new law will strengthen their efforts to reclaim their own children from the arms of experts they no longer trust.

I heard that there were many in opposition to this in the hearing. It brought out such groups as People for the American Way to oppose a bill presented by a brandnew legislator in the State of Maine. I don't understand it. We were afraid of what could happen if parents were to claim the responsibility of raising up their own children. Fear get real, I cannot understand this. Some arguments were brought to the hearing that people might decide to impose or dictate curriculum to their school. That was not the point. It is not the intention of this bill. Children would have the option to opt out or consider curriculum. Parents would have the opportunity to look at some curriculum their children are involved with. The argument was brought forth that there would be additional litigation. I say there is a need for uniformity, a recognized principle in place, to help resolve, not cause, new disputes. If honored by the government, it should significantly lessen litigation.

Children's rights. I think it is obvious, because of the past few days' arguments here on the floor, that I am certainly not a person who would cause or bring forth any sort of legislation that could bring harm to children. I think that is an absurd idea. Most parents are good parents and there are already statutes in place to protect children from bad parents. I think we ought to give parents the opportunity to be good parents and give them the freedom to bring up their children. The argument was also brought up that the wording was vague or how would it be enforced? My argument was that courts have always interpreted constitutional principles. How would parents be defined? States already have parents defined in statute. I don't think that is an argument either.

Again, I would just ask that you consider this bill to protect parents rights' and not the governments right to bring up our children. I think this is a constitutional principle, a basic right of parents to bring up their children. I should also say you are not giving them the right right here. You are allowing this to go out to referendum so that the state, the parents of this state, might vote on this bill. Thank you for your consideration.

The SPEAKER: The Chair recognizes the Representative from Madison, Representative Richard.

Representative RICHARD: Madam Speaker, Men and Women of the House. I feel it is necessary for me to rise to explain the Majority Report on this piece of legislation. I stood in this same spot last year and said if there were a loving mother and father in every home where there is children, we would not have the problems in our school system that we have today. I still repeat that statement and I agree with what the previous speaker said that most parents are good. However, there are so many that are not. We all know about the abuse of children. We all know that the reason why we have to have some legislation to protect these children. It is our concern that this piece of legislation would repeal the legislation that we have that protects abused children. It was previously stated, something about the free breakfast in school. Many of us are very much aware that

the free meals that some children receive in school are the only meals that they receive all day. We would not want to pass any legislation that would prevent those children from receiving those free meals.

Lastly, I would like to say that this piece of legislation may have been presented by a new legislator, but this piece of legislation, the exact piece of legislation has been presented in 33 other states. At the time of the hearing it had not been passed in any state. It had been put out to study in Indiana. If any state has passed it since that hearing, we have not been told of that. I would urge you to vote with the Majority Report. Thank you.

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

Representative PERKINS: Madam Speaker, Colleagues of the House. This looks to me like one of the most important bills that we have had in front of us. I would urge your support of the bill and urge you to vote against the "Ought Not to Pass." People's fundamental rights, as we all heard, and as we all know, are being eroded and there are hundreds of reasons, there are always compelling reasons, but this seems to me that we would be making a stand. What concerns me is now not only do we have compulsory schooling from age 5 to 16 or 17, now there is talk of 3 year olds or 4 year olds. I just don't like the direction. I have one question, if I may, for anyone who might care to answer. If this were to be passed to amend the Constitution, how would this affect compulsory schooling? Does anybody have an idea on that?

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 Brennan.

Representative BRENNAN: Madam Speaker, Men and Women of the House. That was one of the concerns, at least, that I had when I read the bill, that it was so vaguely worded that it could affect compulsory schooling, because what it says the right of the parents will not be abridged. Thank you.

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

Representative JOY: Madam Speaker, Ladies and Gentlemen of the House. I think this bill was submitted with the intent of trying to repair the devastation that has been placed upon families all across the country. Day after day we find more and more things that erode the basic unit of our civilization, the family. I was very pleased to cosponsor this bill and also spoke on behalf of it. I think this is a major step toward returning the structure of the family and giving parents back their rights that have been taken away from them by legislation, government agencies and lots of things that have been out there for just one sole purpose and that is to destroy the unity of the family. Madam Speaker, I request a roll call when the vote is taken.

The SPEAKER: The Chair recognizes the Representative from Bethel, Representative Barth.

Representative BARTH: Madam Speaker, Ladies and Gentlemen of the House. I am on the Majority "Ought Not to Pass" Report, as you can see. Although I have all of the sympathy in the world for the proponents of this, I have a little problem with tampering with the Constitution, as most of you know from previous positions I have taken on other issues. I think what we have to commit to, because this problem is real, is what this bill attempting to resolve. I think we have to look at all of the laws, rules and regulations which we have passed over the years and which we will pass in the future and look at them from the perspective of the family of parents, whether it be single-parent family or two-parent family, or whatever, and make sure that we are not taking the responsibility away from them because

that is the problem. That is the problem with the child who can't get any kind of food, except through the school breakfast and lunch program, for example, is the breakdown of responsibilities. Those parents are not responsible. Somehow we have to make them be responsible. I think that is the way we have to look at future legislation, current legislation and even past legislation. Thank you.

Representative BRENNAN of Portland moved that the Bill and all accompanying papers be indefinitely postponed.

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

Representative BRENNAN: Madam Speaker, Men and Women of the House. As has been already mentioned, one of the problems with the Constitutional Amendment is that it is very vague and it is not very specific. There was not any specific problems that were brought to the committee in terms of what this Constitutional Amendment needed to address. As Representative Richard already pointed out, one of my primary concerns is that it would really undermine the state's ability to protect children. Even though there was an effort to bring forward an amendment to address that issue, as it is currently written, it would really undermine the state's ability to enforce its child welfare responsibilities. I urge you to vote for Indefinite Postponement.

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

Representative LANE: Madam Speaker, Ladies and Gentlemen of the House. First of all, I would like to address the issue of vagueness. This is not a statute. It is an amendment to the Constitution. Let me just, for example, read one of the vague articles in our Constitution and that is the power inherent in the people. This also addresses the concern about tampering with the Constitution. Section 2, Article 1, "Declaration of Rights. All power is inherent in the people; all free governments are founded in their authority and instituted for their benefit; they have therefore an unalienable and indefeasible right to institute government, and to alter, reform, or totally change the same, when their safety and happiness require it." I heard someone from the Senate yesterday talk about the referendum problem and that when you send something out to referendum that it doesn't have the due process that we go through in the Legislature of argument, debate and hearing from all sides that it is a take it or leave it as it is. Therefore, I think it is very valuable that this particular referendum to come before us as a Legislature. I do agree with others who have said this before that this perhaps should not have gone to the Education Committee, who viewed it from the point of view of education and not from the point of view of going out to referendum, as is the right of the people.

I have heard from so many people and am concerned myself at the encroachment on family rights that is occurring in our society. We have the Children's Cabinet, Goals 2000, Outcome Based Education, Children's Defense Fund, Children's Alliance, encroachment of DHS and some of these are by Executive Order with no legislative input, some by rulemaking through the DHS. I also find objectionable that a lot of legislation that we are bringing forth are based on presumption that the majority of parents don't know how to take care of their children and don't know how to raise their children, nurture them and love them. Also, as we consider our future and moving into the 21st Century, we are all scrambled trying to find the best form for our society to move in. The best way to move forward in our new century and as a society and as a family unit. Missing in this debate are parents. The biggest stakeholder of all and they have no say. I think it is a time in our society where we can at least send this out to referendum to give parents the opportunity to

say, yes, I want to be assured, as a parent, that I have the sole responsibility.

At this point, I would like to read to you the bill. "The rights of parents to direct the upbringing and education of their children may not be infringed. The Legislature has the power to enforce the provision of this section by appropriate legislation." I would suggest to you that this is not going to erode all the protections of the state towards unprotected children. It is not going to say that we can no longer feed them breakfast. It is not going to say that we cannot find ways of providing daycare. It is simply bringing the parents and the family to the table as we discuss the all important issue of what we want family to mean in the 21st Century. I urge you to vote against the motion to Indefinitely Postpone this bill and all its papers. I urge you to support the right of the people of Maine to go to the polls and vote on this issue. Thank you.

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

Representative PLOWMAN: Madam Speaker, Men and Women of the House. As a parent I am insulted that the government feels that they have to tell me how to raise my children. Are the parents of Maine savages that they don't understand how to raise their own children? Does the government allow that there be someone who steps between a parent and a child to make decisions that involve the parent and the child? I am protected by the Constitution for many of my decisions and the decision that are used that I make about my children. Do these arguments sound familiar? Yes, they do. You heard them this week. I ask you to vote against this motion. Thank you.

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

Representative JOY: Madam Speaker, Ladies and Gentlemen of the House. I have a little calendar here that sits on my desk. I notice that the message for today's date is, no job can compete with the responsibility of shaping and molding a new human being. I think it is very appropriate for the debate that is taking place. Madam Speaker, I request a roll call when the motion is taken and I urge people to defeat the motion.

Representative JOY of Crystal requested a roll call on the 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 Skowhegan, Representative Hatch.

Representative HATCH: Madam Speaker, Men and Women of the House. I think just looking at this bill has been enough for me. I would encourage you to vote for the Indefinite Postponement. It is very vague. It doesn't tell us much what it is going to do. I am really offended. I have always been a good parent. I have two daughters. I have a granddaughter. I want you to know that I knew exactly where my kids were, what they were doing, and what they were doing in school just about every day, because I checked with the teachers. I was on the school board. I was involved. I don't see where this is going to do anything except be a great expense to the state to send it out to people. If you are going to do something like this, then let's get it down in writing so we know what we are talking about. Thank you.

The SPEAKER: The Chair recognizes the Representative from Madison, Representative Richard.

Representative RICHARD: Madam Speaker, Men and Women of the House. I would like to repeat what Representative Barth said earlier. At no time, in any debate, that we have in education are we considering doing anything that is going to

prevent a parent from being a good parent. That is important if you consider this. We are interested in what good parents do for their children. We are concerned about what this bill would do if it were passed.

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

Representative PERKINS: Madam Speaker, Colleagues of the House. Just briefly, I must say something about this. The term that this is too vague. The vagueness issue keeps coming up. The US Constitution just read it. The provisions, they are broad. Our very first constituted document in this country, the Declaration of Independence, talks about our inalienable rights to life, liberty and the pursuit of happiness. These are broad, but the Constitution isn't meant to be fine tuned. These are broad fundamental rights and this is a very important one here, I think.

The SPEAKER: The Chair recognizes the Representative from Bremen, Representative Pieh.

Representative PIEH: Madam Speaker, Men and Women of the House. I would support this bill if it said that every child has the right to a healthy upbringing and quality and education and that right may not be infringed. I think we are trying to take care of our children with what we have. Thank you very much.

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. 102**

YEA - Ahearne, Baker CL, Baker JL, Barth, Belanger IG, Berry DP, Berry RL, Bigl, Bolduc, Bouffard, Brennan, Brooks, Bruno, Bull, Bunker, Cameron, Campbell, Chartrand, Chick, Chizmar, Cianchette, Clark, Colwell, Cowger, Cross, Davidson, Desmond, Driscoll, Dunlap, Dutremble, Etnier, Farnsworth, Fisher, Frechette, Gagne, Gagnon, Gamache, Green, Hatch, Jabar, Jones KW, Joyce, Joyner, Kane, Kerr, Kontos, Labrecque, LaVerdiere, Lemaire, Lemke, Lemont, Lindahl, Lovett, Madore, Mailhot, Marvin, Mayo, McAlevey, McElroy, McKee, Mitchell JE, Morgan, Muse, O'Neal, O'Neil, Ott, Paul, Peavey, Pendleton, Perry, Pieh, Poulin, Povich, Powers, Quint, Richard, Rines, Rowe, Samson, Sanborn, Savage, Saxl JW, Saxl MV, Shannon, Shiah, Sirois, Skoglund, Spear, Stanley, Stevens, Taylor, Tessier, Thompson, Townsend, Tripp, Tuttle, Usher, Vigue, Volenik, Watson, Wheeler GJ, Winglass, Wright, Madam Speaker.

NAY - Belanger DJ, Bodwell, Bragdon, Buck, Bumps, Clukey, Dexter, Foster, Gerry, Gieringer, Goodwin, Gooley, Honey, Jones SA, Joy, Kasprzak, Kneeland, Lane, Layton, MacDougall, Mack, Meres, Murphy, Nass, Nickerson, Perkins, Pinkham RG, Pinkham WD, Snowe-Mello, Stedman, Tobin, Treadwell, True, Underwood, Vedral, Waterhouse, Wheeler EM, Winn, Winsor.

ABSENT - Bagley, Carleton, Donnelly, Fisk, Fuller, Jones SL, O'Brien, Plowman.

Yes, 104; No, 39; Absent, 8; Excused, 0.

104 having voted in the affirmative and 39 voted in the negative, with 8 being absent, the Bill and all accompanying papers was indefinitely postponed and sent up for concurrence.

HOUSE DIVIDED REPORT - Majority (9) "**Ought Not to Pass**" - Minority (4) "**Ought to Pass**" - Committee on **Banking and Insurance** on Resolve, to Review Health Insurance Benefits Mandated by the State (H.P. 994) (L.D. 1386)

TABLED - April 15, 1997 by Representative SAXL of Bangor.

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

The SPEAKER: The Chair recognizes the Representative from Raymond, Representative Bruno.

Representative BRUNO: Madam Speaker, Men and Women of the House. The last time we looked at mandated benefits, as a state, was 1991, five years ago. We need to look at it again. Medical advances have come a long way and a number of mandates that we have imposed has increased. All we are asking to do to take a look at mandates in the aggregate. When bills come to Banking and Insurance and we say, how much is this going to cost? We sit there and say it is not going to increase the cost that much. Every mandate eventually adds up to a large number. This bill isn't about whether or not you believe in certain mandates. I voted for some of the mandates, but what I want to know is in the aggregate, all the mandates that we have, on health insurance, what does it cost the payer of the premium? You walk around the state and talk to business people who pay insurance premiums and they say that their premiums are skyrocketing because of mandates.

The Bureau of Insurance has told our committee that mandates only add up to about 6 percent of the total cost of premiums. That was based on figures from five years ago. I want to know what it costs today. I am not arguing whether a mandate is good or whether it is bad. I just want to know what is it costing me today, in today's dollars. That is why I am on the Minority Report. I think it deserves a look. I ask you to vote against the pending motion to accept the Minority "Ought to Pass" Report.

The SPEAKER: The Chair recognizes the Representative from Brunswick, Representative Davidson.

Representative DAVIDSON: Madam Speaker, Men and Women of the House. I would just like to address a couple of the points brought up by Representative Bruno. This bill, actually, I commend Representative Waterhouse for bringing this issue to the table. I am not going to say it is a bad idea. In fact, when it first came up it was something that I thought I could support and support fairly easily. When you take a step back and you look at what we have done with regards to mandates in this state and how many times this has been studied, you need to ask yourself a number of questions. Number one, is it worth the amount of money, \$75,000 to put this study out? This is a major, major study. Number two, have there been any recent studies in recent years that you can direct the type of questions that Representative Bruno was asking, what does it cost to do these mandates? What is the burden on those of us who are insured under any of the plans in the state? How do HMOs deal with these things? What I would say to you today is 100 percent of taking a step back and having absolutely no prior opinion coming into this, is that this bill is completely and totally unnecessary.

If you want to read studies, you can come to my desk and I will give you studies. I will give you studies from 1987, 89 and 91. Things that have been sent out to privatize. Things that have come back January 1, 1996 regarding all of the mandates. I will give them to you. If you want to know what they cost, I will show them to you.

A couple of other points. There is a process right now that we go through that doesn't allow whimsical passage of mandates. When a mandate comes to us, we debate it, get a public hearing, we treat it like any other bill and then by statute it is sent over to the Bureau of Insurance. The Bureau of Insurance, for example, I will just pull out a mandate, right now. We have a mandate on postmastectomy stays in hospitals. We have a public hearing on it. We have a worksession on it and then we frame the types of questions that the committee, in its judgment to set policy on health care policy in its judgment, not the Bureau of Insurance, like this bill requests, ask questions and direct the Bureau of Insurance on how we should study this. Those questions come back to us answered and we make a

decision on our own. Thirteen members of the committee and 186 members of the Legislature, of whether that should become law or not or whether should mandate that for different types of health plans.

The Banking and Insurance Committee has done a fantastic job this year of taking a step back in a bipartisan manner. I can't even remember the last time we had a Divided Report come to the floor of this House. Within what I see as fantastic work by the committee, we have done some major, major changes in Banking laws and in insurance. The reason why I point that out is that the department is completely strapped. They don't have time to go back and perform another study that I really strongly believe is totally unnecessary. If your goal is, I am not saying this is the goal of the sponsor or this is the goal of the people on the Minority Report, to go back and look at certain mandates that should be repealed or revisit certain mandates to see what they should cost, there is a mechanism to do that. Bring a bill forward that is not the shotgun approach to look at all mandates that I believe is going to waste a lot of time for the department. It is going to be one more study and these studies were not piecemeal kind of put together. The last commission was comprised of 19 members representing the insurance industry, providers, legislators, consumers, business and labor representatives, Department of Insurance, Department of Human Services and I guess I will leave it at that.

If you want to look at how we deal with future mandates and your problem is piecemeal approach to health policy, that you are mandating this and you are mandating that, then we should have a commission that looks at that and sets a standard for how the state is going to mandate that. It sets some goals or some benchmarks. It is not to look in the rearview mirror like this bill does and it is not the mandate of the department to do it. I just feel that this is a bad vehicle for a problem that I am not sure exists at this point. Thank you Madam Speaker.

The SPEAKER: The Chair recognizes the Representative from Pittsfield, Representative Jones.

Representative JONES: Madam Speaker, Men and Women of the House. I am a member of the Banking and Insurance Committee and voted with the Majority "Ought Not to Pass" Report on this issue before us. My reasoning is as follows: All mandates have been previously researched and well debated by the Bureau of Insurance and our committee. Several of which as recent as last session. In my opinion, readdressing these issues at this time is an unnecessary expense and I urge you to support the pending motion. Thank you very much.

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

Representative MAYO: Madam Speaker, Ladies and Gentlemen of the House. This brings back memories of the previous session, the 117th Legislature, when Banking and Insurance seemed to be involved in debating many, many bills. I feel compelled to answer some of the points raised by the good Representatives from Brunswick and Pittsfield. There is a cost involved with this, but since the last time that this issue was really seriously studied, which was in 1991, two things have taken place in the State of Maine. This body has approved 12 mandates since 1991 and it is currently as a result of the work of the Banking and Insurance Committee looking at anywhere from three to seven more, which may come to the floor at this session or at the short session of the 118th. Also since 1991, we have seen the advent of managed care. In my particular district and in basically the whole of the midcoast area, we are a little different than some parts of the state. We are approaching 50 percent managed care because of the type of employers that we have. We have not looked at the mandate question with regard to

where it is headed with managed care and we have not looked at these 12 mandates.

I think the time is right to do a good study. Yes, the bureau does study each and every mandate before it comes to this body, but it has not looked at them in the aggregate for a number of years. Those people in this body who attended the small business conferences in the fall, sponsored by the executive, heard over and over again about the problems of increasing costs of insurance. The two problems that the business people at those conferences raised with the legislators was the cost of health insurance and the cost of workers' comp insurance. Workers' comp has moved from number one to number two, but it was still there. They were very concerned about the high cost of health insurance. They were also concerned, as we all are, with the fact that we have more than 150,000 people in this state without health insurance today. That is something that we, at some point, are going to have to address as a body. They are telling us and it may be anecdotal, we don't know, that one of the things that is driving them away from purchasing health insurance for their employees are the mandates that we, as a Legislature, have passed. Yes, I have voted for most, if not all, mandates since I have been here because I happen to agree that most of them are very good. I do believe earnestly and honestly that the time is now right for this body to take a serious look at this issue before we pass many more mandates.

I would urge that you do not accept the Majority "Ought to Pass" Report and that you allow us to go on with the Minority Report. Thank you.

The SPEAKER: The Chair recognizes the Representative from Brunswick, Representative Davidson.

Representative DAVIDSON: Madam Speaker, May I pose a series of questions through the Chair?

The SPEAKER: The Representative may pose his questions.

Representative DAVIDSON: Thank you Madam Speaker. My question is for Representative Mayo or Representative Bruno or anyone who would like to address these questions. Representative Mayo brought up in his testimony that since 1991, 12 mandates have been passed into statute. My first question is, what mandates that were passed since 1991 citing Public Law Chapter 701 have not been studied thoroughly by the department? Second question is more philosophical about the Maine Health Data Organization and its inception, in that it is responsible for studying all types of medical information and data and providing reports to all members of the Legislature, about the impact on those on the population of the State of Maine? My third question deals with what Representative Mayo brought up about the advent of managed care in Maine and what mandates out of all the mandates that have been passed weren't covered by the Millman and Robertson Study in 1996? I was under the impression all were included. This was a major study of all mandates in the State of Maine with regards to managed care. Thank you Madam Speaker.

The SPEAKER: The Representative from Brunswick, Representative Davidson has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Bath, Representative Mayo.

Representative MAYO: Madam Speaker, Ladies and Gentlemen of the House. I did not copy down all of the questions of the good Representative, however, I can answer a number of them. In the 12 mandates that we have approved since the last major study, each and every one of those did individually have a mandate study done by the bureau. That is not the issue. That is not what I stated when I stood on my feet previously. We have looked at them individually. We have not looked at them accumulatively. There is a big difference when you look at the relationship to health care costs. In a partial



answer to some of the other questions, which unfortunately, my mind tended to run together, I would state this. The Maine Health Care Reform Commission, which most of us are well aware of that we had a couple of years ago, they proposed that a study be done on the cumulative affects of mandates. However, that and most of what the commission were involved in did not go forward either through the Banking and Insurance Committee or through this body. I will repeat. I think the time is right. It is an issue, which affects this state and in fact, most employers and it is time to take a look at it. I have not heard any business people complain to me about the cost of this study given the high cost of health care in this state, both on an individual business basis and on a cumulative basis. Thank you.

The SPEAKER: The Chair recognizes the Representative from Saco, Representative O'Neil.

Representative O'NEIL: Madam Speaker, Redoubtable Members of the House. I, too, am a member of the committee of unanimous reports. I had one of our colleagues stop me in the hall a couple of days ago to ask me about mandates and how this affects municipalities. I said that you have to take a step back and realize that this is only dealing with insurance when we, as a Legislature, mandate that insurance companies doing business in the State of Maine must cover a certain malady or procedure in their health insurance policies. I proceeded to explain why the Majority Report came out the way it did. Some of the points I made were that this is not a study, as Representative Davidson and Representative Bruno said, to determine the pros or cons necessarily of individual or collective mandates. It is more as Representative Davidson called it, a shotgun approach. It is about initiating a study.

If you look at the 117th Legislature, 85 studies that doesn't include task forces, were proposed. Fifty-nine of them were passed and the studies were conducted and we have yet to see the results of those 59 in their entirety. I wonder how many of you folks get tired of studies. Given the fact that every mandate that we decide we might want to look at gets studied by the bureau and given the fact that in 1991 and 1994 we have gotten data and we gotten studies and given the fact that just this session a representative from the Bureau of Insurance gave us data that said that at the most insurance mandates cost policy holders 6 percent. I say at the most because many of those mandates are universally covered anyway and that detracts from that 6 percent number. We don't know. It could be 4 percent. I suppose that the impetus for the bill was to tell us exactly what that number is, whether it is 4 percent or 6 percent to my way of thinking and to the majority on the committee, it wasn't worth creating this massive study at a \$75,000 cost.

I have in my hands the Mental Health Mandate Study that they conducted for the 115th. They put a lot of work into it. My father used to have a saying when he would see me running around without any real aim or any method to get where I am going. He would say three words, "Ready, aim, fire." As I grew up, I came to realize what he meant was point yourself in the right direction first. Just as an indictment can't come without some just cause or a law enforcement officer can't go to a judge without cause for a search warrant. We have to really question why we need the comprehensive aggregate study. The public hearing had the Bureau of Insurance, Rick Diamond, came and testified that they usually come in neither for nor against, but they took a stand on this one and said that indeed, they were against the bill for many of the reasons I just mentioned. To me, it is pie in the sky and it is flawed in that it doesn't have enough direction. If this bill were a hunter, it would lose its license to hunt for failure to identify its targets. Just remember, ready, aim, fire. Thank you.

The SPEAKER: The Chair recognizes the Representative from Holden, Representative Campbell.

Representative CAMPBELL: Madam Speaker, Men and Women of the House. I have been serving on the Banking and Insurance Committee for four years. I have been there while the 12 mandates have been put upon the citizens of Maine affecting the insurance policy rate. Mandates, individually, as we look at them both for study and cost affect benefits are justified from both the cost and the benefit. Committees in a lot of cases, as you have probably begun to understand are advocates for their issues. I concur completely with Representative Mayo. We do need a comprehensive study on how all these mandates affect individual policy holders, businesses, employee benefit packages and as I looked at each one of those 12, they all had tremendous merit, but now we have the 12 and we are looking for three and seven more, we do need to find out exactly what kind of an affect this has on policy holders. I would encourage you to go with the Minority Report.

The SPEAKER: The Chair recognizes the Representative from Waterboro, Representative McAlevey.

Representative McALEVEY: Madam Speaker, Ladies and Gentlemen of the House. I make it a practice not to stand and talk on issues I know nothing about and I am going to break that rule right now. I defer to my colleagues on both sides of the aisle when it comes to insurance matters. It is very, very detailed, but there is the crux of the matter. We have been accused of not seeing the trees through the forest. As far as I am concerned it is the other way around. Let's take a look at that forest now that we have planted some of those trees. I can't make a decision in a vacuum. I need to hear from you and I need to hear from my constituents, but for that very reason we need this study. I haven't the slightest idea what the impact is. If you look at the numbers of people in this body that are either freshman or sophomore, I dare that there are maybe one or two that may know that answer and for that very reason, whether it costs \$75,000 or what, we should have that information because if we act on insurance matters without having that information, we are not availing ourselves to the potential of having more information available to us. You make a better decision when you have all that information. I would ask you to revisit those trees that you planted in that forest and step back and give us a chance to look at that forest.

The SPEAKER: The Chair recognizes the Representative from Raymond, Representative Bruno.

Representative BRUNO: Madam Speaker, Men and Women of the House. In answering the Representative from Brunswick, the Maine Health Data Organization has nothing to do with setting mandates. All they do is collect data concerning emergency room visits, what kind of office procedures are done on patients and it has nothing to do with mandates. That is the answer to that question concerning the Maine Health Data Organization. I just want to remind the body that the Maine Health Care Reform Commission in 1995, in its final report, said, "In the interest of making coverage as affordable as possible, we believe it is important to take stock in a statutory mandate and to reassess their value in light of the most current information available." That is the point. The last time we looked at this was 1991 and we do look at every mandate on an individual basis. The point is what is the aggregate cost of all of them? I wasn't here last session, but you passed a mandate on PKU. It was minuscule. The cost of it was minuscule. When you spread it out over all the policies in the State of Maine, but when you add it on top of all the other mandates we have, it adds up to big number in premiums. That is all we are asking, just to look at it in the aggregate. Thank you.

Representative MAYO of Bath 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 Bangor, Representative Saxl.

Representative SAXL: Madam Speaker, Men and Women of the House. I vowed I wasn't going to stand up and speak on this, but like many others before me, I have broken that vow. The question is do we need this study? The answer is no. The Bureau of Insurance says that they don't want to study this issue because one, they studied it in the last report in 1992 and they discussed the issue of mandates related to HMOs in 1995. The individual studies include reports of social, financial impact and the medical advocacy of the proposed mandate. The bureau provides an objective report and does not take a position either for or against the mandate, but this study requires that the bureau take the position and in that way the request for the study is flawed so the bureau is opposed to it on those grounds as well as is the majority of the committee. We really feel that this is an unnecessary thing to come forward at this time and is a waste of the time of the department and they would prefer, as well, not to have that done. I would ask you to follow my light.

The SPEAKER: The Chair recognizes the Representative from Pittsfield, Representative Jones.

Representative JONES: Madam Speaker, Men and Women of the House. Just briefly, I have not only heard all of the debate on the Banking and Insurance Committee, but I have also, for more than 25 years, an agent so I have some practical experience on this issue and I can tell you folks that no matter what the results are and no matter what it costs us, but you have heard from Rick Diamond, probably the best authority on this issue, saying that it is 6 percent and probably much less. I can tell you folks that this is not the vehicle to lower costs. This is not the vehicle to help our small businessmen. I am concerned with our small businessmen. There are other vehicles, other tools. I am talking about deductibles and copay. This is how you really lower the cost, not about worrying about 6 percent on mandates.

The SPEAKER: The Chair recognizes the Representative from Medway, Representative Stanley.

Representative STANLEY: Madam Speaker, Men and Women of the House. I stand before you to agree. I was on the Majority Report of "Ought Not to Pass." I agreed to go with that. The reason why is because being a first-term legislator here and being on the Banking and Insurance Committee and looking at a large number of mandates about 20 have been passed over the last 22 years. I think that we ought to hold off on this and wait for a few years and look at it after we have all these other mandates in and then maybe then take a big, serious, hard look at it. At this point in time, I see no need of it. It is a waste of time and a waste of money for the Bureau of Insurance to conduct a study on stuff that is still out there, that is going to be addressed every year until we get it all addressed and settled out I think we are better off just to leave it as it is. I urge your support. Thank you.

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

**ROLL CALL NO. 103**

YEA - Ahearne, Bagley, Baker CL, Baker JL, Berry DP, Berry RL, Bolduc, Bouffard, Brennan, Brooks, Bull, Bunker, Chartrand, Chizmar, Clark, Colwell, Cowger, Davidson, Desmond, Driscoll, Dunlap, Dutremble, Etnier, Farnsworth, Fisher, Frechette, Gagne, Gagnon, Gamache, Goodwin, Green, Hatch, Jabar, Jones KW, Jones SA, Joyce, Joyner, Kane, Kerr, Kneeland, Kontos, LaVerdiere, Lemaire, Lemke, Lindahl,

Madore, Mailhot, Marvin, Meres, Mitchell JE, Morgan, Muse, O'Neal, O'Neil, Paul, Peavey, Perkins, Perry, Pieh, Plowman, 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, Bigl, Bodwell, Bragdon, Bruno, Buck, Bumps, Cameron, Campbell, Chick, Cianchette, Clukey, Cross, Foster, Gerry, Gieringer, Gooley, Honey, Joy, Kasprzak, Labrecque, Lane, Layton, Lemont, Lovett, MacDougall, Mack, Mayo, McAlevey, Murphy, Nass, Nickerson, Ott, Pendleton, Pinkham RG, Pinkham WD, Savage, Snowe-Mello, Spear, Stedman, Taylor, Tobin, Treadwell, True, Underwood, Vedral, Waterhouse, Wheeler EM, Winglass, Winn, Winsor.

ABSENT - Belanger IG, Carleton, Dexter, Donnelly, Fisk, Fuller, Jones SL, McElroy, McKee, O'Brien.

Yes, 89; No, 52; Absent, 10; Excused, 0.

89 having voted in the affirmative and 52 voted in the negative, with 10 being absent, the Majority "**Ought Not to Pass**" Report was accepted and sent up for concurrence.

An Act to Enhance the State's Moose Hunt (H.P. 774) (L.D. 1051) (C. "A" H-151)

TABLED - April 15, 1997 by Representative PAUL of Sanford.

PENDING - Passage to be Enacted.

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

Representative LEMKE: Madam Speaker, Men and Women of the House. I urge you to vote against the pending motion for a number of reasons. Before I begin, I am not one of those to get into revealing personal confessions or that type of thing. I think it is necessary so you know where I am coming from on this issue. I was raised in the country, Knox County, as well as in Houlton, Maine and Bangor. I know how to hunt. I know how to use the firearm. I am not antihunter. Given the facts of my family, I wouldn't last if I were antihunter, but I am not. However, I do think it is time to draw the line on this issue as we have on others in terms of the expansion of the moose hunt. There is a handout that I believe is being handed out now, or if not, I would request that it be, which gives you the data on the moose hunt since it was first initiated. In the beginning there were 700 permits limited to residents. In 1980-81 there was no hunt then in 1982 it was raised to 1,000 permits and allowed 10 percent nonresidents. Subsequent to that, there was a referendum on this issue, a number of "quote unquote" environmental groups indicated that they would not be bothered, in effect, if the number were kept at 1,000. Subsequent to that, as you can see from the handout that is being passed out, the hunt has progressively gone up. Around 1990-91, it went up to about 1,200 and now we are at 1,500, with 10 percent nonresident.

My question here is, where is the limit? There was an understanding in the beginning that there was a limit. Apparently there is none today. I think we have a problem with the credibility of the department, Fish and Wildlife, on this. We are told or you will be told, that this is an issue that biologists and experts should make the determination upon. Ladies and gentlemen, I have no problem with experts, but I have learned there are experts and then there are experts. For example, back in 1978 when there was an issue over sludge spreading in Westbrook in a residential neighborhood, a biological expert, testified in Westbrook that there would be no problem whatsoever, but low and behold this same expert said there would be a problem if it was located near Hannaford Brothers. Go figure. I have become a little bit gun shy on experts. I have

definitely learned around this place to be gun shy when you are hearing about bureaucrats making policy. There is no way I can equal the good Representative Jacques, but some of you may recall his speech on this subject in his last session on the floor. Whether or not he is here, I fully concur with his spirit. Let the Legislature determine if we are keeping faith, not what bureaucrats say.

I have a sneaking suspicion that what is really involved here is more than biological science, but dollar signs. I would like to quote to you from a noted conservationist, not an environmentalist, but a conservationist because what we are dealing with here is one of Maine's natural resources. In fact, one that is emblazoned on the flag behind the Speaker. It is associated with Maine everywhere. I don't know why we didn't think of that for the license plate now, that we think of it. We are kind of tied to birds, not mammals on license plates. It is a natural resource and I would like to quote a noted conservationist. "Maine has been stripping her forests and murdering her land. Shipping away the fertility of her soil and the stuff, which she should have made materials for her own ingenuity and skill. Snatching at the new advantage and hating not what was to come." That quotation was from noted conservationist in our history from an address he made in 1876 at the Centennial Exhibition in Philadelphia entitled, *Maine, Her Place in History*. The speaker was Joshua Chamberlain.

One other quote, if you will bear with me, because I figure around this place that even if I get one vote if I am with Chamberlain, I am willing to go for it. From Sis Deane's recent biography of Joshua Chamberlain entitled, *His Proper Place*. She deals with the fact that he visited with the Penobscot and was influenced by the Penobscot as a child and as a young man. "He learned their language and seemed to be influenced by their way of life, for although young Joshua was a natural hunter and good with a rifle, he, like the Penobscot, never killed game for sport. He also developed a respect for nature and spent hours exploring the woods, studying trees, flowers and wildlife because it would have been embarrassing for a boy his age to admit he was in the woods for that sole purpose, he said he almost always carried his rifle with him, hunting being an acceptable excuse."

Ladies and gentlemen, what I am arguing against is an extension of the moose hunt. I am not arguing on the floor today against the moose hunt. I hope it is perfectly clear that I am not making an antihunter statement because that would be against my tradition and my practice. My wife allowed me to wear this. This is what I wear at home most of the time in a different version if it helps make a statement. I am not one of those people that goes on TV every two years and wears one of these shirts and never does again on various issues. Think of our tradition. Think of whether the Legislature or bureaucrats should rule. Think what is most representative of the State of Maine and I urge you to vote against the pending motion.

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

Representative CROSS: Madam Speaker, Ladies and Gentlemen of the House. I probably won't be as eloquent as our previous speaker, but I will try to tell you to the best of my knowledge, the way it is. The biologists, of which I have faith in regards to the moose where the previous speaker apparently doesn't, but I think the thing that really gets me to believe them is if I was going to look for an expert in the moose hunt, I wouldn't try to find a carpenter. I would go to the biologists. The biologists say that we can kill up to 4,000 moose a year and no problem. I happen to be one who they were trying to get it to be a 3,000 limit this year and I said, no way. In fact, I wanted to stick to the 1,500. I finally conceded because of the emphasis

put on that they could handle 4,000 moose kill. I said I would go to 2,000 and that is as far as I will go.

The committee, again, I believe it was pretty close to being unanimous, if not a unanimous opinion. I think the money we need, the department needs it because it is funded by itself and the fees from these added licenses would, without a doubt, be going to keep us, hopefully, in the black instead of the red. Again, as I said, I am not as eloquent as the previous speaker, but let's use some common sense. If they say 4,000 and we are only half way there, is that any reason to stop it? I don't think it is. Thank you.

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

Representative PERKINS: Madam Speaker, Men and Women of the House. I have to admit to something. Sometimes when I get up to speak on an issue, it is not something that I know a whole lot about. I will have to admit that. I might have feelings about it, but this is a matter I have had some experience in managing moose. As the good Representative from Dover-Foxcroft said, the biologists tell us that we could actually harvest quite a few more than the number we are talking about. Just to put things into perspective, the best estimates and I don't think people argue with this is that we have around 35,000 moose in Maine. The last time I looked the Country of Sweden harvested on an annual basis upwards of 30 percent of their herd every year. The good Representative Lemke, I love to hear him talk poetry and history, it is beautiful, but to keep this in perspective he mentioned this as a natural resource. I agree, of course it is, but remember folks that it is a renewable natural resource. I just want to point out something on the evening news one time that as big a problem in this state as domestic violence is, huge problem, I heard a statistic that there are more people hospitalized in the last year by running into moose than there were through domestic violence in the State of Maine. Thank you.

Representative PAUL of Sanford requested that the Clerk read the Committee Report.

The Committee Report was read by the Clerk in its entirety.

The SPEAKER: The Chair recognizes the Representative from Sanford, Representative Paul.

Representative PAUL: Madam Speaker, Ladies and Gentlemen of the House. LD 1051, "An Act to Enhance the State's Moose Hunt." The bill does the following. It increases the maximum number of moose permits from 1,500 to 2,000. It requires that a Maine resident must purchase a Maine hunting license before entering an application in the moose lottery. It allows a subcommittee to be named after the moose lottery drawing. Lastly, it directs the Department of Inland Fisheries and Wildlife to change the moose lottery to give applicants who were unsuccessful in previous lotteries a better chance of winning. So, for every year that you enter the lottery, if you are not drawn, the following year you are credited with one point for each year. There is no maximum on the number of points. It gives you a better chance of being drawn.

Ladies and gentlemen, I would like to share with you a study that was compiled. The author of this study is John Sutton, medical doctor and associate professor of surgery at the Dartmouth Medical School. Dr. Sutton explains its premise that, in northern New England, there is a 10 times greater likelihood of being injured by hitting a moose than by hitting a deer with your vehicle. Dr. Sutton joined forces with colleagues from the Maine Medical Center in Portland, Eastern Maine Medical Center in Bangor and made some intriguing findings. According to their studies published last summer in the archives of surgery, what they called moose motor vehicle collisions or MMVCs most commonly occur after dark and between the months of April and

October. After observing a growing number of media reports about moose motor vehicle accidents the surgeons at the three centers decided to review the literature to see if they could determine any pattern in what they believe is an increasing public health problem for this area. With the help of wildlife experts from two states, researchers looked at the moose motor vehicle accident statistics and from 1980 to 1991, they were checking the location, the time of day and seasonable occurrence of such collisions, which are known as moose strikes within the community.

To determine the medical outcome of moose motor vehicle accident victims the researchers reviewed information from trauma registry for patients hospitalized between January 1990 and June 1994 in New Hampshire and Maine. They found that 70 percent of those who were hospitalized suffered head and facial injuries and 17 percent had cervical spine injuries and 9 percent died. A contributing factor is faster speed limits, improved roads, lack of adequate visibility on roadways and this may be playing a role in the increased collisions. In Maine, for example, researchers found that while overall accidents decreased by 14 percent from 1987 to 1993, the number of animal-related crashes increased by 52 percent, but probably the main reason for the increase in crashes is the growth in the moose population. Biologists estimate now that in 1995, the moose population in Maine was 35,000 about 15,000 more than the 1980 estimate of 20,000. Wildlife specialists say factors in the increase in the moose population include both in woodland and wetland habitat and changing in hunting and trapping regulations.

The habits of moose help explain why there is a greater risk of these accidents in April and October. For instance, in spring and early summer moose crave salt and often find it in the spring runoff on roads that were diced with salt. In addition, moose yearlings abandoned by their mothers in the spring and summer often wander into the roadways as they try to manage on their own. During the mating season, in September and October, moose activity increases. The size and speed of moose, they can weigh up to 1,200 pounds and trot as fast as 30 miles per hour combined to make a momentum that makes it nearly impossible for them to stop quickly or to swerve. Also, unlike most wildlife, moose do not have a natural flight response and they will often stand in harm's way when they are threatened by anything, including oncoming vehicles. People riding in passenger cars are most vulnerable to sustaining injury when in a collision with a moose because of the moose's high center of gravity, typically the animals do not hit the bumper of the car, but they come through the windshield right into the passenger compartment. The study found significant evidence that passengers in rear seats of vehicles and in light trucks were less likely to be injured in these accidents.

A couple of days ago, I was asked by the good Representative from Westbrook, why in the world would anybody want to shoot a moose? As I told you a minute ago, the estimated population is 35,000. It is the responsibility of the Inland Fisheries and Wildlife Department to monitor these animals so that we can continue to have a relatively disease free herd. A lot of the scientific monitoring takes place every fall when moose are examined at the tagging and weighing stations by state biologists. Not everyone wants to go out and shoot a moose, but those who do should have the privilege to do so. In the fall of the year when the moose are in the prime state a successful hunt can add greatly to the staple of family, their friends and relatives and the hunter gains a trophy animal.

The moose is a great tourist attraction. It is a marvelous animal to be observed and take pictures of. The animal moose harvest also helps cut down on the moose motor vehicle

accidents that we often read in the papers where people are seriously injured or die from the collision. We cannot sustain a healthy herd by letting the moose population overrun the state. We need, at this time, to increase our harvest of moose by 500 moose. To do less would be irresponsible. Maine is the place to be to shoot a moose, whether by camera or by fall hunting. Let's do the right thing today and pass this bill. Madam Speaker, when the vote is taken, I request the yeas and nays.

Representative PAUL of Sanford 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 Westbrook, Representative Lemke.

Representative LEMKE: Madam Speaker, Men and Women of the House. The good Representative from Old Orchard said to do the right thing and let's go to lunch. I agree with the good Representative from Old Orchard Beach. I said I would keep it to three sentences and the good Representative from Winslow said what about your sentences? These are short sentences. I argued on behalf of common sense on the floor the other day on behalf of the coyote bill and I do that today. As far as the issue of the expansion of the herd and people getting hurt or killed because of that it is a very simple factor involved here folks. It is true. If you harvest more moose and you upset the breeding pattern, you create more moose, but then you also create more possibility for exactly the kind of problems that have been explained.

The SPEAKER: The Chair recognizes the Representative from Bethel, Representative Barth.

Representative BARTH: Madam Speaker, Ladies and Gentlemen of the House. I apologize. Whether you like it or not we already manage our moose herd the same as we do our deer herd, upland game birds, fish, ducks, rabbits, squirrels and you name it we manage it. We have to given the times and the population pressures we are under. Don't worry about management when you are dealing with this bill, because if we raise the limit, we can better manage the moose herd so that it will remain healthy, has already been stated. Some of you will be concerned about dollars. Yes, I would just use Africa as a comparison and there are many people on that continent who have said that the savior of the large populations of the really large animals, elephants, rhinos, etc., depend on income generated through the sportsmen who go there to hunt those very same animals. I would urge your support for this bill. Thank you.

The SPEAKER: The Chair recognizes the Representative from Limestone, Representative O'Neal.

Representative O'NEAL: Madam Speaker, Ladies and Gentlemen of the House. I am not an expert, but moose combined with black flies equal a very dangerous situation. The central part of Aroostook County, where I reside, the number of moose is only exceeded by the number of black flies. The moose try to escape the black flies by leaving the woods and find comfort in the middle or the sides of our local roads. I would like to share with you a report from two years ago that show that 39 moose were killed by vehicles in a three month period. Examples would include a brand new pickup truck. The proud owner was enjoying his first ride when a large moose escaping the aforementioned black flies ran into the side of his new vehicle. He stopped and found the head of the animal beside him in the seat. Another example would be a young mother and two small children and another one due in a few months. A moose crossed in front of her small car and was hit. The moose rolled up the front of the car and crushed the vehicle. The

mother and the children were saved, but only after waiting for the jaws of life. That moose walked away.

We now have a new ingredient to add to the sad situation, broccoli. Broccoli is a large part of our agricultural mix. Moose love broccoli. Black flies love moose and now with the large herds, we see more moose on the highways. Seeing 30 or 40 moose on the highways at one time is common. We need the broccoli for the seasonal crop. The Department of Environmental Protection will not let us use a chemical to get rid of the black flies. I support the increase to save human lives. We welcome the good Representative Lemke and his fellow constituents from Westbrook to come north to either hunt or take pictures, but I suggest a hunters safety course for whoever shot the moose on your version of the state seal. Thank you.

The SPEAKER: The Chair recognizes the Representative from Old Town, Representative Dunlap.

Representative DUNLAP: Madam Speaker, Men and Women of the House. If it should placate the situation at all, I was offering to take the House Chair of Appropriations to lunch, if he is that hungry. I was earlier greatly excited being able to observe the heights of rhetorical incongruity exhibited by my good colleague from Westbrook, who, in such high relief, contradicted himself that he is not an antihunter and that he does not necessarily trust the biologist, but he asked us to vote for common sense. The simple fact of the matter is that we, in the Inland Fisheries and Wildlife Committee, questioned the biologists on this and they told us two things that are of great importance and that is that in 1985 the population stood at a little over 13,000 moose and since that time the latest figures that just came out recently was that the population would be reaching around 39,000 and that in the presence of an annual moose hunt and that hunt could be increased as high as 4,000 without ever having suffered a decrease in the population. There is nothing unsound about this. All the reasons have been given previously and I will not revisit them and I would urge you to support the pending motion. Thank you.

The SPEAKER: The Chair recognizes the Representative from Gorham, Representative Labrecque.

Representative LABRECQUE: Madam Speaker, Ladies and Gentlemen of the House. I am getting extremely irritated. I don't happen to think this is a laughing matter. You are selling your moose herd for \$26,000 additional dollars to the Fish and Game Department. They have a hole of somewhere around \$94,000. Yesterday you passed a bill in here that decimates the Liquor and Lottery Commission and creates \$1 million hole. Where is the justice?

The SPEAKER: The Chair recognizes the Representative from Rumford, Representative Cameron.

Representative CAMERON: Madam Speaker, Ladies and Gentlemen of the House. I apologize for delaying the debate. I came in here today intending to vote for this and the more I listen, the more uncomfortable I am in voting for it. I hear that we have all kinds of accidents because of moose and I ask you, is that a reason to kill them? We have accidents with dogs. We have accidents with cats, but they don't harm the people in the car, so we don't kill them. Because we hit moose in their natural environment, because we don't drive sensibly, now we must kill them and get them out of the way. That is troubling to me. While I agree with a lot of the things that have been said about questioning the numbers, I question the number in the herds that we hear from the department as well, but I do believe that we can afford, in some areas of Maine, to maybe have a larger herd and a larger kill. I don't necessarily think that is the reason to do it because they are getting in our way. They are a natural part of Maine. They are on our seal. Just to raise money and because

they are in our way and we are running into them because we don't drive right is not the reason to kill them.

I live in the country, in the woods, and I see moose. I don't see as many as I would like to see, but oftentimes in an evening, for lack of entertainment, I will drive up to Rangeley, just to see the moose. I know they step out into the road. I don't drive very fast, but believe me the tourists are going by me like I am tied and normally I am a fast driver. I am not criticizing anybody, but when you know you live in an area where they are, I think as the only species that has the ability to think, we need to take the responsibility to drive sensibly because we know they are going to step out into the road. Yes, the black flies drive them out into the road, but that is the way life is folks. Many of you grew up in Maine and you never saw a moose until about 20 years ago. The only place I ever saw them was on the state seal. I am happy as I can be to see them in the road. I am tickled to death to see them.

I had a person call me last summer who just bought a brand new truck. He was enraged because he was driving up the road I live on and a moose stepped out and he hit it and it stove up his truck. The guy has driven out of control for as long as I have known him. That is not the moose's fault. The moose was the one in control, not him. The moose wasn't speeding, but he demanded that I come down here and do something about raising the limit to get them out of the way. I am sorry, but I have a problem with doing that. As I said when I came in here today, I was going to vote for this. But when I came in here today hearing some of the arguments of why we are doing this, for money and the fact that they are in the way, I have a problem with that. We all want to be perceived, at least, as supporting our environment and caring about our wildlife. The message that I have heard here today is we care about them as long as they don't get in our way. As a result, I am going to change my vote and I am not going to support the increase. Thank you.

The SPEAKER: The Chair recognizes the Representative from Oxford, Representative Underwood.

Representative UNDERWOOD: Madam Speaker, Men and Women of the House. I am not going to take a lot of your time here. I would just like to respond to a couple of the comments that were just made. First off, the committee did not, in my view, pass this bill unanimously because we are selling our moose. We passed this bill because the herd has been increasing consistently over the past several years. The information that we have gotten from the department is that we can withstand to take 4,000 moose out of the population, by hunting, a year without hurting the population. This is strictly a management bill. It has nothing to do with money. Yes, there is going to be some extra money coming into the department and that is a nice benefit. It has everything to do with managing our herd at a reasonable level. Thank you.

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

**ROLL CALL NO. 104**

YEA - Bagley, Baker CL, Baker JL, Barth, Belanger DJ, Berry DP, Berry RL, Bigl, Bodwell, Bolduc, Bouffard, Bragdon, Bruno, Bull, Bumps, Campbell, Chartrand, Chick, Chizmar, Cianchette, Clark, Clukey, Colwell, Cowger, Cross, Davidson, Desmond, Driscoll, Dunlap, Dutremble, Etnier, Fisher, Foster, Frechette, Gagne, Gagnon, Gamache, Goodwin, Gooley, Green, Hatch, Honey, Jabar, Jones KW, Joy, Joyce, Joyner, Kane, Kasprzak, Kerr, Kneeland, Kontos, Lane, LaVerdiere, Layton, Lemont, Lindahl, MacDougall, Mack, Madore, Mailhot, Marvin, Mayo, McAlevey, Meres, Murphy, Nass, Nickerson, O'Neal, O'Neil, Ott, Paul, Peavey, Perkins, Perry, Pieh, Pinkham RG, Poulin, Povich, Rines, Rowe, Samson, Sanborn, Savage,

Saxl JW, Saxl MV, Shannon, Shiah, Sirois, Skoglund, Spear, Stanley, Stedman, Taylor, Tessier, Thompson, Tobin, Townsend, Treadwell, True, Tuttle, Underwood, Usher, Vedral, Volenik, Waterhouse, Watson, Wheeler EM, Wheeler GJ, Winglass, Winn, Winsor, Wright, Madam Speaker.

NAY - Ahearn, Brennan, Buck, Cameron, Farnsworth, Gerry, Gieringer, Labrecque, Lemaire, Lemke, Lovett, Mitchell JE, Morgan, Muse, Pendleton, Pinkham WD, Plowman, Powers, Quint, Richard, Snowe-Mello, Stevens, Tripp, Vigue.

ABSENT - Belanger IG, Brooks, Bunker, Carleton, Dexter, Donnelly, Fisk, Fuller, Jones SL, Jones SA, McElroy, McKee, O'Brien.

Yes, 114; No, 24; Absent, 13; Excused, 0.

114 having voted in the affirmative and 24 voted in the negative, with 13 being absent, the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

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

**ENACTORS**  
**Emergency Measure**

An Act to Establish the Administrative Operating Budget for the Maine State Retirement System for the Fiscal Year Ending June 30, 1998 (H.P. 234) (L.D. 298) (C. "A" H-176)

Was reported by the Committee on **Engrossed Bills** as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 124 voted in favor of the same and 0 against and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

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

At this point, the Speaker appointed Representative THOMPSON of Naples to serve as Speaker Pro Tem on Thursday, April 17, 1997.

On motion of Representative BOLDUC of Auburn, the House adjourned at 12:55 p.m., until 9:00 a.m., Thursday, April 17, 1997.