

MAINE STATE LEGISLATURE

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

Volume II

First Special Session

May 16, 1997 - June 20, 1997

Second Regular Session

January 7, 1998 - March 18, 1998

ONE HUNDRED AND EIGHTEENTH LEGISLATURE
SECOND REGULAR SESSION
20th Legislative Day
Tuesday, February 24, 1998

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

Prayer by Representative Gary J. Wheeler, of Eliot.

Pledge of Allegiance.

The Journal of yesterday was read and approved.

COMMUNICATIONS

The Following Communication: (S.P. 832)

118TH MAINE LEGISLATURE

February 19, 1998

Senator Sharon Treat

Representative Steven Rowe

Chairpersons

Joint Standing Committee on Natural Resources

118th Legislature

Augusta, Maine 04333

Dear Senator Treat and Representative Rowe:

Please be advised that Governor Angus S. King, Jr. has nominated George A. Smith of Mount Vernon for reappointment as a member of the Maine Outdoor Heritage Fund Board.

Pursuant to Title 12, M.R.S.A., subsection 7788, this nomination will require review by the Joint Standing Committee on Natural Resources 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 **NATURAL RESOURCES**.

READ and **REFERRED** to the Committee on **NATURAL RESOURCES** in concurrence.

PETITIONS, BILLS AND RESOLVES REQUIRING REFERENCE

Pursuant to Resolve

Task Force on Registration of

In-home Personal Care and Support Workers

Representative MUSE for the **Task Force on Registration of In-home Personal Care and Support Workers** pursuant to Resolve 1997, chapter 29 asks leave to report that the accompanying Bill "An Act to Implement the Recommendations of the Task Force on Registration of In-home Personal Care and Support Workers"

(H.P. 1602) (L.D. 2228)

Be **REFERRED** to the Committee on **HEALTH AND HUMAN SERVICES** and printed pursuant to Joint Rule 218.

Report was **READ** and **ACCEPTED** and the Bill **REFERRED** to the Committee on **HEALTH AND HUMAN SERVICES** and ordered printed pursuant to Joint Rule 218.

Sent up for concurrence.

REPORTS OF COMMITTEE
Divided Reports

Majority Report of the Committee on **EDUCATION AND CULTURAL AFFAIRS** reporting **Ought Not to Pass** on Bill "An Act to Make the State Board of Education Elected"

(H.P. 962) (L.D. 1325)

Signed:

Senators:

PENDLETON of Cumberland

CATHCART of Penobscot

SMALL of Sagadahoc

Representatives:

RICHARD of Madison

BRENNAN of Portland

DESMOND of Mapleton

WATSON of Farmingdale

BAKER of Bangor

BARTH of Bethel

McELROY of Unity

BELANGER of Caribou

Minority Report of the same Committee reporting **Ought to Pass as Amended by Committee Amendment "A" (H-801)** on same Bill.

Signed:

Representatives:

SKOGLUND of St. George

STEDMAN of Hartland

READ.

Representative RICHARD of Madison moved that the House **ACCEPT** the Majority **Ought Not to Pass** Report.

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

Majority Report of the Committee on **LABOR** reporting **Ought to Pass as Amended by Committee Amendment "B" (H-804)** on Bill "An Act to Amend the Prevailing Wage Laws"

(H.P. 1037) (L.D. 1454)

Signed:

Senators:

CATHCART of Penobscot

TREAT of Kennebec

MILLS of Somerset

Representatives:

HATCH of Skowhegan

BOLDUC of Auburn

RINES of Wiscasset

STANLEY of Medway

CLARK of Millinocket

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

Signed:

Representatives:

PENDLETON of Scarborough

JOYCE of Biddeford

TREADWELL of Carmel

LAYTON of Cherryfield

READ.

Representative HATCH of Skowhegan moved that the House **ACCEPT** the Majority **Ought to Pass as Amended** Report.

The **SPEAKER**: The Chair recognizes the Representative from Skowhegan, Representative Hatch.

Representative HATCH: Madam Speaker, Men and Women of the House. This particular bill is a holdover from last year. It was not carried over. It was held over by the Appropriations Committee. It was sent back to committee in much of the same

vote as we had last year came out of committee in regards to this bill. The current law says that prevailing wage must be paid on construction jobs in the state. All this bill does is require that they also add in the benefit packages to come up with a prevailing wage. You will notice that there is a fiscal note on this bill. We are having some discussions right now with the department in regards to this. Therefore, I would submit that this probably will not be the fiscal note. It will be either much lower or none at all before we get done with the bill between the House and the Senate. In having said that, if there is any questions or anything that you would like to have answered, there are people here who can give you those answers. I would just ask that you vote for this bill and we will be amending the bill here in the House, probably at the next reading on this bill. Thank you.

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

Representative JOYCE: Madam Speaker, Men and Women of the House. The practical effect of this bill is going to be to prevent small contractors from bidding on jobs that involved federal funds. I don't think it is reasonable to expect a small contractor with one or two employees to pay the same type of benefits to their employers as large companies can, such as pension, 401, profit sharing or even health insurance or holidays and vacations. It is going to force these small contractors out of business. I request a roll call. Thank you.

Representative JOYCE of Biddeford **REQUESTED** a roll call on the motion to **ACCEPT** the Majority **Ought to Pass as Amended 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 Berwick, Representative Wright.

Representative WRIGHT: Madam Speaker, Men and Women of the House. This will not put small contractors at a disadvantage. If anything, this will level the playing field for them. What this will do is this will allow all contractors to know what the bids will be before they go into it. This is based on the Davis Bacon Bill. It was put in place in the 1930s by the Republican Congress to make sure that wages in local areas weren't driven down by out of state contractors. What it would do is add benefits to the prevailing wages, it doesn't say that the companies would have to pay the benefits, just that they would have to pay the amount of money that the benefits would be worth, as many of these workers that work on these contracting jobs are seasonal workers. They don't work year round. They are not eligible for the company benefits as they are. The workers work nine or ten months a year and then they are laid off. What this would do is it would allow them to collect money so they could buy their own benefits if the company doesn't offer them. It is a fair bill. It is an equitable bill. What it would do is it would even out so that the large contractors and the small contractors would be on the same playing field. Thank you.

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

Representative WATERHOUSE: Madam Speaker, Ladies and Gentlemen of the House. I just thought I would mention a publication that I read just recently. It had to do with the prevailing wage and the position that the National School Board Association took pertaining to the prevailing wage. They would actually like to see the prevailing wage repealed, not extended. It increased the cost of school construction. We come up here all the time and debate for more money for education and more money for school construction and here we have a national board that deals with those issues saying that the prevailing

wage adds quite a bit to the cost of doing that. I hope that you would vote against the pending motion. Thank you.

The SPEAKER: The Chair recognizes the Representative from Scarborough, Representative Pendleton.

Representative PENDLETON: Madam Speaker, Ladies and Gentlemen of the House. This issue is before us and it is kind of a complicated one. Our minimum prevailing wage in the State of Maine is set by the Department of Labor, the Labor Standards Unit. The Labor Standards Unit every year sends out questionnaires and I have a sample what they sent out in 1995. In 1995, they sent out 2,328 forms to construction firms. When it all boiled down, they found out that 1,436 of these firms had gone out of business or had less than five trade workers. Two hundred and eighty-one survey forms were not even returned at all and 611 forms were used in their calculation. This represented about 45 percent of the total universe. Of that total universe, they felt that it represented some 9,800 workers in the trade fields. From this, they managed to use the forms that they had, but they eliminated the little guys. They only used the ones that had five or more employees. Therefore, they skewed their sample to the bigger firms, which had the tendency to pay a higher wage. The Department of Labor, themselves, when they came in to testify on this bill said that they spoke initially in opposition to it and when it got sent back to us, they came in the second time around and said that we can do this, but we will have to add staff. One of the things that we all have to remember on benefits is everybody's benefit package is different. I don't know how they are going to set up a prevailing wage as to the cost of that. We had testimony here two years ago when we were talking about insurance packages for employers on how the deductible section of the insurance package can affect what the cost of that health care premium would be. I would imagine it would be the same in others. All I would like to say is I am in opposition to this. I think statistically they are not doing a very good job collecting the data. I think they will do an extremely poor job collecting the data on health benefits. Thank you very much.

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

Representative PERKINS: Madam Speaker, Colleagues of the House. Regarding benefits discussions, there is an article in the January 1998 *Maine Townsman* on employee benefits and I was going to get copies to everybody and didn't realize this was part of this bill until I heard this discussion. The benefits that people derive is an overlooked part of the package. A couple of years ago I put in a bill that would demand that every time a public workers' salary was stated, the dollar value of the benefits would be stated at the same time. Well, that got pulled back a bit and we couldn't do it for all public workers because municipal workers and so forth would be a mandate. We pulled it back in. It did pass only for legislative workers, legislators and state workers. Now, when you see printed in the paper advertisements for jobs with the state, you will see the salary and the dollar value of the benefits. It also got watered down further to only include, I believe, insurance and perhaps one other aspect, but not what most people would say the whole benefit package related to private workers. The only way it looks to me like you can talk about the value of benefits is compared with what? Compared with the self-employed and this article here is decent to look at. They talk about what the federal government statistics are and the dollar value of the benefits. One of the last ones they talk about is the City of Ellsworth. Public workers in the City of Ellsworth, they calculate if you take in the dollar value of all of the benefits, including sick pay and holidays, it is 45.8 percent of payroll. Forty-five point eight percent of payroll if you

take into account all the benefits. In this particular bill, as Representative Pendleton said, it depends on what kind of things you include. If you compare it with private workers or self employed, it is a considerable chunk of payroll. Thank you.

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

Representative LEMAIRE: Madam Speaker, Men and Women of the House. Thank you. I find this an interesting conversation and an interesting debate. I am listening to people say that the prevailing wage should go and we had this fight two years ago. We talked about shoddy out of state companies coming in and doing poor jobs. I am absolutely amazed at the National School Board Association coming and talking about having these companies coming in and building their schools, when we want the best, the most qualified and experienced professional trade people doing this job. These people work nine months a year. One of the worst problems in this country is health care. Why shouldn't we be paying the people who are working on our state construction jobs benefits to assist them in taking care of their families and themselves in that area? Frankly, the large construction companies and even the smaller ones, no one is saying they have to pay it. We don't know what these packages are going to consist of. We certainly should be addressing the issue of benefits, not only for them, but for everybody who needs health insurance. I just find this an interesting debate.

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

Representative WRIGHT: Madam Speaker, Men and Women of the House. Just to answer a few of the questions. This is not a mandate. This would not affect any municipal projects, it would just be state projects. As far as the forms, it is voluntary return. If companies don't return the forms, it is like anything else, we can't make them. You just received a couple of handouts. One is a two-sided one and on one side the one that looks very complicated, that is the present State of Maine form. On the opposite side is the federal form, which is also sent out to all the contractors. As you can see, it is much simpler. All they are is a couple of columns added in to figure out what benefits are paid and what the hourly rate is. As far as cost, there have been several studies done, one done by the federal government that shows that higher paid, highly skilled workers may cost less on projects. They took the top 26 states in dollar volume for highway construction and despite a differential of 81 percent in the pay rate, \$9.76, compared to \$17.65. In the higher paid states it was \$123,000 less per mile to build this. This is because you have highly skilled workers, highly paid workers and workers that take pride in their work. I hope you will help support this bill and help support the workers of Maine. Thank you.

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

ROLL CALL NO. 405

YEA - Ahearne, Bagley, Baker, Berry RL, Bolduc, Bouffard, Brennan, Brooks, Bryant, Bull, Bunker, Chartrand, Chick, Chizmar, Clark, Colwell, Cowger, Davidson, Desmond, Driscoll, Dunlap, Etnier, Fisher, Frechette, Fuller, Gagne, Gagnon, Gamache, Gerry, Goodwin, Hatch, Jabar, Jones KW, Jones SL, Kane, Kerr, Kontos, LaVerdiere, Lemaire, Lemont, Mailhot, Meres, Mitchell JE, Morgan, Muse, O'Neal, O'Neil, Paul, Perry, Pieh, Poulin, Povich, Powers, Quint, Richard, Rines, Rowe, Samson, Sanborn, Saxl JW, Saxl MV, Shannon, Shiah, Sirois,

Stanley, Stevens, Tessier, Thompson, Townsend, Tripp, Usher, Volenik, Watson, Wheeler GJ, Winn, Wright, Madam Speaker.

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

ABSENT - Barth, Belanger DJ, Bodwell, Carleton, Dutremble, Farnsworth, Fisk, Green, Lemke, Lovett, McElroy, McKee, Plowman, Skoglund, Tuttle.

Yes, 77; No, 59; Absent, 15; Excused, 0.

77 having voted in the affirmative and 59 voted in the negative, with 15 being absent, the Majority **Ought to Pass as Amended Report was ACCEPTED.**

The Bill was **READ ONCE. Committee Amendment "B" (H-804)** was **READ** by the Clerk and **ADOPTED.** The Bill was assigned for **SECOND READING** Wednesday, February 25, 1998.

Majority Report of the Committee on **MARINE RESOURCES** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-802)** on Bill "An Act to Increase the Cap on the Total Acreage of Aquaculture Leases That May Be Held by One Person"

(H.P. 1434) (L.D. 1998)

Signed:
Senators:

GOLDTHWAIT of Hancock
PENDLETON of Cumberland
MackINNON of York

Representatives:

ETNIER of Harpswell
VOLENIK of Brooklin
PIEH of Bremen
BAGLEY of Machias
PINKHAM of Brunswick
HONEY of Boothbay

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

Signed:
Representatives:

PINKHAM of Lamoine
PERKINS of Penobscot
GOODWIN of Pembroke
LAYTON of Cherryfield

READ.

On motion of Representative ETNIER of Harpswell the Majority **Ought to Pass as Amended Report was ACCEPTED.**

The Bill was **READ ONCE. Committee Amendment "A" (H-802)** was **READ** by the Clerk and **ADOPTED.** The Bill was assigned for **SECOND READING** Wednesday, February 25, 1998.

CONSENT CALENDAR

First Day

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

(S.P. 690) (L.D. 1925) Bill "An Act to Make Additional Allocations from the Public Utilities Commission Regulatory Fund for the Fiscal Year Ending June 30, 1998" (EMERGENCY) Committee on **UTILITIES AND ENERGY** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-457)**

(S.P. 744) (L.D. 2022) Bill "An Act to Make Corrections to the Laws Governing the Maine Bail Code" (EMERGENCY) Committee on **CRIMINAL JUSTICE** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-459)**

(S.P. 752) (L.D. 2030) Bill "An Act to Promote the Receipt of Federal Funds and to Clarify the Maine Juvenile Code" Committee on **CRIMINAL JUSTICE** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-458)**

(H.P. 132) (L.D. 174) Bill "An Act to Increase Health Insurance Benefits for Retired Educators" Committee on **LABOR** reporting **Ought to Pass**

(H.P. 55) (L.D. 80) Bill "An Act to Protect Internal Waters of the State" Committee on **NATURAL RESOURCES** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-805)**

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

CONSENT CALENDAR
Second Day

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

(S.P. 739) (L.D. 2017) Bill "An Act to Provide Access to Veterinary Education for Maine Students" (C. "A" S-456)

(H.P. 1423) (L.D. 1987) Bill "An Act to Amend Review Criteria Used by the Public Utilities Commission" (C. "A" H-803)

(H.P. 1505) (L.D. 2127) Bill "An Act to Make a Nonresident Municipal Shellfish License Fee No More than 1 1/2 Times the Resident Fee" (C. "A" H-800)

No objections having been noted at the end of the Second Legislative Day, the Senate Paper was **PASSED TO BE ENGROSSED AS AMENDED** in concurrence and House Papers were **PASSED TO BE ENGROSSED AS AMENDED** and sent up for concurrence.

ENACTORS
Emergency Measure

An Act to Restore the Requirement That Certain Expenditures of the Waldoboro Utility District Be Approved by District Vote

(H.P. 1382) (L.D. 1937)

Reported by the Committee on **Engrossed Bills** as truly and strictly engrossed.

On motion of Representative KONTOS of Windham, **TABLED** pending **PASSAGE TO BE ENACTED** and later today assigned.

Emergency Measure

An Act Concerning Elver Fishing

(S.P. 736) (L.D. 2014)
(C. "A" S-454)

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. 127 voted in favor of the same and

1 against, and accordingly the Bill was **PASSED TO BE ENACTED**, signed by the Speaker and sent to the Senate.

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

An Act to Restore the Requirement That Certain Expenditures of the Waldoboro Utility District Be Approved by District Vote

(H.P. 1382) (L.D. 1937)

Which was **TABLED** by Representative KONTOS of Windham pending **PASSAGE TO BE ENACTED**.

Reported by the Committee on **Engrossing Bills** as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary a total was taken. 116 voted in favor of the same and 1 against, and accordingly the Bill was **PASSED TO BE ENACTED**, signed by the Speaker and sent to the Senate.

Mandate

An Act to Amend the Charter of the Bingham Water District
(H.P. 1426) (L.D. 1990)
(C. "A" H-791)

Reported by the Committee on **Engrossed Bills** as truly and strictly engrossed. In accordance with the provisions of Section 21 of Article IX of the Constitution, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 128 voted in favor of the same and 3 against, and accordingly the Mandate was **PASSED TO BE ENACTED**, signed by the Speaker and sent to the Senate.

Act

An Act Regarding Contract Procedures
(S.P. 770) (L.D. 2071)

Reported by the Committee on **Engrossed Bills** as truly and strictly engrossed, **PASSED TO BE ENACTED**, signed by the Speaker and sent to the Senate.

TABLED AND TODAY ASSIGNED

The Chair laid before the House the following item which was **TABLED** and today assigned:

Bill "An Act to Implement the Recommendations of the Interagency Committee on Outdoor Trash Burning"
(H.P. 1408) (L.D. 1972)

TABLED - February 23, 1998 by Representative WHEELER of Bridgewater.

PENDING - ADOPTION OF HOUSE AMENDMENT "A" (H-806) TO COMMITTEE AMENDMENT "A" (H-797).

The **SPEAKER**: The Chair recognizes the Representative from Bridgewater, Representative Wheeler.

Representative WHEELER: Madam Speaker, Ladies and Gentlemen of the House. I am presenting House Amendment "A" to Committee Amendment "A" because of the paragraph "J" in Committee Amendment "A." The summary of Committee Amendment "A," the amendment requires a forest ranger or fire warden when issuing a permit for residential outdoor burning of highly combustible trash to consider the public health risk from toxic chemicals and smoke plume in accordance with guidelines issues by the Department of Environmental Protection. The practicality of locating the incinerator at least 300 feet from any

abutting property, boundary and at least 150 feet from a residential dwelling.

In the original bill, paragraph "J" read, "The proximity to any allowable burning with respect to property lines and residential dwellings must" that is the word I have a problem with too, "be a minimum of 300 feet." This would have been a mandate so I believe the committee changed the wording of this paragraph so it would not become a mandate. They substituted must for the practicality of locating the incinerator at least 300 feet from any abutting property boundary and at least 150 feet from any residential dwelling. The definition of practicality applies to what has been proposed and seems feasible, but has not been tested. Practicality has no hard and fast answer and leaves the feasibility use of this section to two individuals, the forest ranger and the fire warden. Enforcement of this section could be left up to the biased opinion of one individual.

I wanted to read to you the opinion of one of the fire warden's in my district. This fire warden just happens to come from my town. This was a survey done by an inter-agency study group and prepared by the Maine Department of Environmental Protection. This warden was asked for his comments on open burning barrels and this was what he had to say. "Do away with the stinking polluting, sickening, undesirable burn barrel. A state ID is needed so town wardens will not get prosecuted trying to enact and enforce the above mentioned desire." I asked this individual if he would be in favor of the local towns requiring an ordinance for this regulation or this practicality of issuing a permit on the feet from the dwelling and the boundary lines. He said he wouldn't want Bridgewater to make an ordinance because he knows that Bridgewater would vote to have open burning. I agree with him. What bothers me most in his comments was that he says he now burns garbage in a barrel. I don't really know where the guy is coming from.

You might ask me why I am doing this, trying to change a 13 to 0 committee report. First, I believe it is my job. I was sent down here to represent the people and when I see something that my constituents would not be in favor of, it is my job to do what I can to change things. Again, I am doing what I think the people want me to do. I strongly support home rule. People back home want fewer regulations. I don't think we need to over govern our local people. Let them make up their own minds. It is easier to correct a problem at a local level of government than it is at the state level. Believe me, I know. I have tried to do that. I think if a person is dissatisfied with what is going on at the local community and they can't get any results from their local town selectmen, then you have the opportunity to go get a petition. Most of the small towns that I represent, you would need less than 100 signatures. If the state, in turn, were not to correct the problem that you thought you had, you would have to go out and get over 50,000 signatures or if you went through the whole process of trying to get your Representative to do what is right and I tried to do that and it didn't work.

Your local community is where you can get the most done, I believe. Another reason why I personally do not want to leave a regulation of this nature up to one individual. Without House Amendment "A," one individual could effectively stop burning in burn barrels without the vote of a local community, causing all kinds of problems in rural towns in Maine. All House Amendment "A" does is provide for home rule or local control. Leaving the decision to adopt this guideline up to the local communities. I would ask that you support House Amendment "A" and put the control back to the local communities. Thank you.

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

Representative ROWE: Madam Speaker, Men and Women of the House. As the Chair of the Natural Resources Committee, I stand in opposition to this amendment. I understand the good Representative from Bridgewater, his intent. That is why we tabled it yesterday, took it back and visited this amendment. I feel the amendment would serve to greatly nullify the committee's work, Committee Amendment "A" to the original report. As you have heard, it is a unanimous report. The committee substantially modified the recommendations of the backyard burning study group, which had a mandatory setback requirement of 300 feet. In other words, the burn barrel being 300 feet from abutting property lines and abutting residences. This all came about last session when we put out a Resolve to study this issue and the Department of Conservation's Bureau of Forestry's Fire Control Division surveyed over 546 surveys went out around the state and they got back 536 of them. That is 98 percent return. I read the same thing that the Representative from Bridgewater had from the fire warden in Bridgewater.

The report represented the vast majority of the communities around the state. We took that report and basically modified it to make it, not must, but shall consider. The amended bill that you have before you today simply says that in addition to the other criteria that the state fire marshal or the town forest fire wardens or forest rangers shall consider is one other and that is the health risk associated with the smoke plumes from burn barrels. These are risks. There was a lot of studying done last summer and the report back to our committee showed that there are dioxins and feurons. These are carcinogens, as you know. They are also fine particulate matter that can and does cause respiratory disease. There are almost 9,000 burn barrels around the state that we know of. There are probably a lot more that we don't know of. What this does is simply says that a town fire warden shall consider the health affects of the placement of barrels. Under current law, you may not know, it already says that the incinerator must have been inspected and approved by a municipal fire chief, town forest fire warden or forest ranger using the criteria established by the director of the Bureau of Forestry for safe operation. All we are doing is adding another criteria and again, that is shall consider the health effects and shall consider the practicability of the setbacks.

What impractical means is you can't do it. If you can't do it, you can't do it. That is what shall consider the practicability is. I think it is pretty straight forward. Again, I think this amendment severely nullifies the effect of this bill and I would ask for you to vote against the amendment. Thank you.

The SPEAKER: The Chair recognizes the Representative from Lebanon, Representative Chick.

Representative CHICK: Madam Speaker, Ladies and Gentlemen of the House. My concern here has been, forever since I can remember living on a farm in Lebanon, that burning is something that we do every year. I am well aware of the current safety rules to prevent forest fires, but my concern here would be how far reaching will this become in preventing me or other people that live in rural communities from having the benefit of burning materials. Thank you.

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

Representative COWGER: Madam Speaker, Colleagues of the House. With all due respect to my colleague from Bridgewater and nearby seat mate, as well, I urge you to defeat the pending motion so that we can go on and accept the unanimous committee report. This issue, I believe, is a classic example of a job well done in our committee. The initial opinions in our committee ranged from banning the outdoor burning of trash all together to doing absolutely nothing. This required to

come to an agreement, as you can imagine, a great deal of effort and everybody had to compromise on our committee. I believe that is what government is all about. We concluded that banning outdoor burning of trash in Maine was impractical, especially given our rural nature with the strong tradition for independence, as the Representative just stated.

The results of this study that was done last summer indicated some very important facts. There are some harmful health effects from burning household trash in close proximity to residences. To balance all these issues and to continue to allow strong local control, we very carefully selected language that was purely discretionary on the part of the local fire warden, but required them to consider the health effects of the toxic smoke from backyard burn barrels when citing a burn barrel. This allows, as I think we would all agree, local control and flexibility when citing a burn barrel in one's community just as the current statute operates. The Committee Amendment or the committee motion, which was an amended version of the original bill, merely asks the local fire warden to consider the most appropriate location for a burn barrel on a parcel specific basis.

The amendment before you would only allow health effects to be considered if a municipality has adopted an ordinance specifying that criteria. I feel strongly that it is incumbent upon us as Representatives of the people of the State of Maine to inform all the citizens of this state of the toxic effects of backyard burning, not just informing those that have adopted a local ordinance recognizing this concern. I urge you to join the chairman and the members of the committee in defeating the pending motion so that we can go on to adopt the unanimous committee Ought to Pass as amended Report. Thank you.

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

Representative MERES: Madam Speaker, Ladies and Gentlemen of the House. I would like to take a few minutes to walk you through some of the dialog that went on regarding this issue. When the bill first came to our committee dealing with the outright banning of burning, I was opposed to that. We worked very hard on the committee at the time and then during the summer to work out practical solutions to the problems that really do exist on this issue. I was involved with the group that met during the summer on this issue. We had a wide range of people in that group. It wasn't just a group of people who agreed with each other. We had many views and we worked through that and came out of that group with a unanimous consensus, which was amazing in itself. That is before a bill was presented back to our committee this year.

The problem that we face and the problem that you are facing is what happens in rural areas where backyard burning is a heritage, where backyard burning is economically necessary. There are places in the state, islands and other places, where they don't have the same access to curbside pickup of their trash and other things. It is necessary. Those are all very relevant issues and they were relevant during the total discussion that we had and no one in no way come out of our committee wanting to encumber those people. The other reality that came out of that group was that we have an issue that is a health risk. You can look at it and roll your eyes and say that you always say this. What you fail to realize is that there are many new, complicated compounds that are end products that we are burning today that we weren't burning 50 years ago or 25 years ago or 10 years ago. There is a lot of education as to what is safe to burn and what isn't and why.

One of the things that I didn't realize, and I live in a rural area, I don't have a trash barrel, but we do burn things there, occasionally, in the spring. The way the smoke travels and the

importance of where you burn. I didn't realize it. I always felt it was kind of fine to find a nice space and get comfortable. You aren't going to catch your forest on fire and burn. I didn't realize, as a member of the committee, how relevant it was to keep your burning far enough away from your own house. I didn't know that. I think it is important information. I think the point that we are trying to make here is we are not dealing with burning or leaves or other issues or anything like that. We are focusing strictly on backyard incinerators and we are trying to let people realize that they should be conscience of where they put them. It is really easy to put a burn barrel close enough to your house so you can run out in the wintertime and you are not going to freeze. That might not be the best thing to do. It might not be the best thing to put it next to your neighbors house. If you have another place on the other side of your house where it would go, so the same health effects wouldn't affect them. I find that a very, very consciously rational thing to do.

I want to assure you that the intention of the committee and the intention of the people that work with us wasn't to ban it, wasn't to create a statewide moratorium on it. It was basically to listen to the facts and the scientific information that we dealt with and we had people on there from the state toxicologists on down who did a lot of research and really kept us focusing on the relative issues and didn't let us get off track into wild areas. To come to you with something that practical, that is not going to, in any way, dictate that we are trying to force people not to burn and that we are working diligently with communities for incentives to help find alternate sources for some of the trash that they are having problems dealing with in an economical way.

I am very, very proud of the work we did in our committee and I would ask you to think seriously, not only about some of the fears you have, but the reality of the fact that we have to be conscious for our own personal health and longevity, that we encourage ourselves, our families and other people to understand the risks before they make a decision on where they are going to put a barrel. I would encourage you to defeat this amendment. Thank you.

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

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

The SPEAKER: The Representative may pose his question.

Representative PERKINS: Madam Speaker, Men and Women of the House. Are there currently any restrictions on what may burn in a trash barrel?

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 Freeport, Representative Bull.

Representative BULL: Madam Speaker, Men and Women of the House. To the good Representative from Penobscot, we had a bill last year that did severely restrict the burning of any non-highly combustible products throughout the state. Last year it passed through this chamber. It banned the burning of any plastics, metal and food waste. Right now, under current law, the only thing that is allowed to be burned are highly combustibles, such as paper, cardboard. Nothing to do with yard waste. The ability to burn highly combustible products, paper and cardboard products, is limited in statutes to towns that do not have municipal trash collection services.

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

Representative DEXTER: Madam Speaker, Men and Women of the House. The sky will not fall if you adopt this amendment. Believe me. I represent an area slightly larger than

the State of Rhode Island. Just to go to speak from Kingfield to Rockwood, I would log 250 miles. We have plenty of laws in place right now to take care of these burn barrels. I am a firm believer in home rule. Besides, if some of my people are cleaning out the attic and either the wife or the husband finds those old love letters, we ought to have a place to burn them before we get in trouble.

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

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

The SPEAKER: The Representative may pose his question.

Representative BERRY: Madam Speaker, Men and Women of the House. I was just wondering about the appropriateness of this amendment in including the director. "The director may consider the criteria set forth in this paragraph only if the municipality in which the proposed burning is located has adopted an ordinance specifying these criteria for outdoor burning." I don't believe it is the director that is going to be issuing permits. It is the forest ranger or the town warden, I believe. I don't know if that is appropriate and clear. Thank you.

The SPEAKER: The Representative from Livermore, Representative Berry has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Bridgewater, Representative Wheeler.

Representative WHEELER: Madam Speaker, Men and Women of the House. In the summary of the amendment it says that this amendment provides for forest ranger and fire wardens that they may consider the additional criteria for using a permit for outdoor burning only if the municipality in which the property is located has adopted an ordinance specifying the additional criteria. Thank you.

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

Representative ROWE: Madam Speaker, Men and Women of the House. I rise a second time just to respond to that too. I had not noticed that before. I would simply point out that had I noticed that, I would have brought it to the good Representative's attention. The statute lists criteria that the Director of the Bureau of Forestry shall consider. This would amend that. Then there is a delegation provision that says the Director of the Bureau of Forestry may delegate the issuance of permits to forest rangers or town forest fire wardens. I would agree with the Representative from Livermore that to have a municipality restrict what the Director of the Bureau of Forestry can or cannot do would be totally inappropriate. Thank you.

The Chair ordered a division on the motion to **ADOPT House Amendment "A" (H-806) to Committee Amendment "A" (H-797)**.

Representative WHEELER of Bridgewater **REQUESTED** a roll call on the motion to **ADOPT House Amendment "A" (H-806) to Committee Amendment "A" (H-797)**.

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 Adoption of House Amendment "A" (H-806) to Committee Amendment "A" (H-797). All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 406

YEA - Ahearne, Bagley, Barth, Belanger DJ, Belanger IG, Berry DP, Bigl, Bragdon, Bruno, Buck, Bumps, Cameron, Campbell, Cianchette, Clark, Clukey, Cross, Dexter, Donnelly, Dunlap, Foster, Gerry, Gooley, Honey, Jones SA, Joy, Joyce, Joyner, Kneeland, Labrecque, Lane, Layton, Lemke, Lemont, Lindahl, MacDougall, Mack, Madore, Marvin, Mayo, McAlevey,

McElroy, Murphy, Nass, Nickerson, O'Brien, O'Neal, Ott, Peavey, Pendleton, Pinkham RG, Pinkham WD, Savage, Skoglund, Snowe-Mello, Spear, Stanley, Stedman, Taylor, Tobin, Treadwell, True, Usher, Vedral, Waterhouse, Wheeler EM, Wheeler GJ, Winglass, Winsor.

NAY - Baker, Berry RL, Bolduc, Bouffard, Brennan, Brooks, Bryant, Bull, Bunker, Chartrand, Chick, Chizmar, Colwell, Cowger, Davidson, Desmond, Etnier, Fisher, Frechette, Fuller, Gagne, Gagnon, Gamache, Gieringer, Goodwin, Green, Hatch, Jabar, Jones KW, Jones SL, Kane, Kasprzak, Kerr, Kontos, LaVerdiere, Lemaire, Mailhot, McKee, Meres, Mitchell JE, Morgan, Muse, O'Neil, Paul, Perkins, Perry, Pieh, Poulin, Povich, Powers, Quint, Richard, Rines, Rowe, Samson, Sanborn, Saxl JW, Saxl MV, Shannon, Shiah, Sirois, Stevens, Tessier, Thompson, Townsend, Tripp, Vigue, Volenik, Watson, Winn, Wright, Madam Speaker.

ABSENT - Bodwell, Carleton, Driscoll, Dutremble, Farnsworth, Fisk, Lovett, Plowman, Tuttle, Underwood.

Yes, 69; No, 72; Absent, 10; Excused, 0.

69 having voted in the affirmative and 72 voted in the negative, with 10 being absent, **House Amendment "A" (H-806) to Committee Amendment "A" (H-797) was NOT ADOPTED.**

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

Representative WATERHOUSE: Madam Speaker, Ladies and Gentlemen of the House. I move that this bill and all its accompanying papers be Indefinitely Postponed.

The SPEAKER: The Representative's motion is out of order. The pending question is adoption of Committee Amendment "A." The Chair recognizes the Representative from Bridgton, Representative Waterhouse.

Representative WATERHOUSE: Madam Speaker, Ladies and Gentlemen of the House. I move Indefinite Postponement of this amendment. I don't want to say, here we go again, but here we go again. I can't see why this can't be handled by local ordinances. We say that the people back home don't know well enough that there is a danger with these chemicals and they can't be trusted to do it on their own. The policy is good. I support the effort and I think it is the wrong way to do it. I was just talking to one of my towns this morning, the town manager. He had read both amendments that I had faxed him yesterday. He said this would put more restrictions on the local community, which it obviously will. One of the key things for me and I brought to his attention also was Part 2A on the amendment, technical and Financial Assistance Programs. This is discriminatory to rural towns. I don't know how many of your towns have municipal trash pickup, but mine certainly don't. None of mine do. This directs preference to those communities that have that for financial assistance for recycling and waste reduction. I don't know if it is the two Maines phenomena or what. It is not fair. A lot of the rural communities cannot afford to have trash pickup. We shouldn't be punishing them because we want to see a policy put into effect that we consider good. I think it is a good policy. The debate should circle around whether the local communities can handle that or whether we want to do it from the state level. Most communities would argue that we can handle it and they don't need us telling them what to do. Thirdly, we shouldn't be punishing those communities who can't afford, in their budget, to pick up their trash. I hope you vote to Indefinitely Postpone. Thank you.

Representative WATERHOUSE of Bridgton moved that **Committee Amendment "A" (H-797) be INDEFINITELY POSTPONED.**

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

Representative BULL: Madam Speaker, Men and Women of the House. Very quickly, this amendment that we passed in committee, the bill that we passed in committee, is not telling the towns that they have to do anything. It is simply requesting that they look at the health effects from the burning of highly combustible materials in their backyard and look at the practicality of locating the burn barrels away from dwellings and abutting property lines. This is not saying to the towns that you have to do this. It is not forcing the town to do anything. It is not punishing the towns if they don't do this. It is simply asking them to look at this. Already in statute there are a list of criteria that local communities need to look at before issuing any permits for burning. There is already A-1 for criteria that must be addressed. Are those unfair to local communities? These are criteria that have been on the books for many years that the towns would have to look at. All we are doing is simply adding one more thing that we want the towns to look at when issuing these permits. Ladies and gentlemen, I ask you to please support the committee, in the unanimous committee report of 13 to 0, on this issue that is trying to address this problem. Thank you ladies and gentlemen. Please defeat the pending motion.

The Chair ordered a division on the motion to **INDEFINITELY POSTPONE Committee Amendment "A" (H-797)**.

A vote of the House was taken. 58 voted in favor of the same and 70 against, the motion to **INDEFINITELY POSTPONE Committee Amendment "A" (H-797)** did not prevail.

Subsequently, **Committee Amendment "A" (H-797)** was **ADOPTED**.

The Bill was assigned for **SECOND READING** Wednesday, February 25, 1998.

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

HOUSE DIVIDED REPORT - Majority (11) Ought Not to Pass - Minority (2) Ought to Pass as Amended by Committee Amendment "A" (H-801) - Committee on EDUCATION AND CULTURAL AFFAIRS on Bill "An Act to Make the State Board of Education Elected"

(H.P. 962) (L.D. 1325)

Which was tabled by Representative RICHARD of Madison pending her motion to **ACCEPT** the Majority **Ought Not to Pass** Report.

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

Representative LEMKE: Madam Speaker, Men and Women of the House. The bill before you, which has the Majority Report from the Education Committee not to pass, is actually a relatively straightforward piece of legislation. I do believe it would restore the Board of Education to what, in its inception, was its historical role, which for many years was its role. In the 20th century increasingly became confused to a moment, if you will, of ultimate confusion today. The State Board of Education was created in 1846 with one member from each county of the state. The reason for this was in the beginning of the movement for public education there was a great concern that there be an element of local control and a local say in the formulation of education policy.

Over the years, and I will refer you for those who are interested to the annual report that wonderful white book we have on page 379, but over the years, this board was continually reconfigured and ultimately was abolished through a period of time and was reconstituted in 1949. In 1957, the authority to appoint the members was shifted from the Legislature to the Governor's Office where it resides today. I give you that little

piece of history because what this bill proposes is that the State Board of Education, instead of being an appointed body by the Governor, be popularly elected and that each member of the board be elected from each of the counties of the State of Maine. What that would accomplish would be to put the public back into public policy making and education again. We have a tendency and it has developed an education instead of a front end was sort of a back end loader when it comes to the public. We develop all kinds of policy up here and through various bureaucratic entities including the board and then we take it back and "try to educate the public as to why this is a good idea for them in the districts."

I think it would save us a lot of time. We would be able to build a much greater consensus for public policy and education if we allowed the people to be involved at the very beginning. This may be viewed as radical, but only if you figure democracy is radical. I see this as a very radical proposal. If it is okay on the local level, which obviously it is for school boards to be elected, why should there not also be an elective board for the State of Maine. This basically, I believe, would strengthen local control. It would also give full regional representation at the outset in any development of public policy and education.

Thirdly, and I mentioned this earlier, there has been some confusion over the years exactly what the role of the State Board of Education is. Again, if you look in the nice white book, it will say it is an advisory board, but then it goes on to say that over time powers have been delegated to it in various ways. Until we reach the point today where it sort of hybrid, it is not clear if it is advisory or if, in fact, it is advocacy. I use the word advocacy because even proponents of the board have used that term over and over in describing its role in the formulation of education policy, including curriculum in the State of Maine. It seems to me that if it is formulating policy and is assuming a policy making role, then we should recognize that in law instead of sort of topsy turvy that develops over time. Secondly, if it is going to be making policy and has the experience with it, that is fine as long as it is elective and by majority decision the recommendations that it passes on to us.

Finally, this does not take away from the Legislature any of its prerogative to finally have the say on what education policy will be. The recommendations for that will come through this elective entity with public involvement from the grassroots up first. As I said at the beginning and I hope there is some agreement, this is really quite a modest proposal. It is one, definitely one, within the democratic tradition of the State of Maine in terms of local control. I hope you give it due consideration. I therefore urge you to vote against the pending motion so we can move on to get the public involved at the beginning in public education policy making.

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

Representative RICHARD: Madam Speaker, Men and Women of the House. I feel I need to explain why the majority of the committee voted against this proposed legislation. We now have a State Board of Education that is appointed by the Governor according to statute. A statute that was passed by the Legislature that has nine members who are appointed and in the law it says that they should be broadly represented of the public and the regions of the state. This proposed legislation would give us 16 members. Granted, that would make more people. That would also cost more money. I also want to remind you that the State Board of Education serves at no pay. They do get a per diem, but they do not get a salary. The State Board of Education is a great help in doing research for both the Committee on Education and for the Department of Education.

They spend hours and hours of time doing work for which they are not paid. If they were going to campaign for these positions, which they would have to do if they were elected. They would campaign just as you and I have campaigned. That would not be at no expense. It would cost them money to campaign.

It was mentioned in the committee and I think it is a very good supposition that if you were to elect the State Board of Education and they would have to campaign for this job, it would not be very long before you would have a bill before this Legislature to see that these are paid positions. We feel that the State Board of Education is doing an excellent job. One of the things which is very strong on the state board is you do not work for a region. You work for all of the students of all of the state. Even though the members of the state board sometimes do not agree with each other, they would never debate things along political lines. It is very possible that you can be a member of the State Board of Education and not even know the politics of all of the other members on the board. That does not come into the issue. There is no caucusing and no decision making along that line. Everything is decided on what is best for the education of the students of the State of Maine. People look at this wholly from a state point of view, not from a regional point of view.

Therefore, those are some of the reasons why the majority of the members of the Committee on Education decided that this bill should not pass. Thank you.

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

Representative PERKINS: Madam Speaker, Colleagues of the House. We have a severe problem. I am not positive that this bill is the solution. The problem as I see it is a year ago there were several bills in front of the Education Committee dealing with school choice. One of which was mine, which would call for only a pilot program in one district in the whole state, just one pilot program to try it at elementary school. We had the voucher system in high schools in my district and in others. It is alive and well. It works beautiful. A little competition goes a long ways. These bills were all lumped together. Several of them were just killed outright. The last analysis of the Education Committee and the department, as I understood it, was concerned enough to put this out for a study and the study committee was chosen by the Board of Education. It sounds pretty good, right. I wish you could see the list of people on that study committee of school choice. I think there is about 15 people. I am honestly telling you that I don't believe there was one out of the 15 from an alternative view of schooling of education. These were all mainstream people. There was not one person representing the home school interest. We have two or three home schooling associations around the state. Not one person from that side of it. I am pretty sure this is true, not one person from the private school side of the issue. It was so biased it makes me realize that something has to be done if we are assuming that that board is a board that looks at all sides of the issues. I think this may do it by having them elected. Thank you.

The SPEAKER: The Chair recognizes the Representative from St. George, Representative Skoglund.

Representative SKOGLUND: Madam Speaker, Ladies and Gentlemen of the House. My name is on the Minority Report. I am backing Representative Lemke's suggestion that the Board of Education be elected. The State Board of Education is indeed composed of outstanding Maine citizens, but I must agree with the comments of the Representative from Penobscot that they do seem to be of the same mindset. I asked one of them pointedly in the Education Committee, do you have discussions on differences in educational philosophy? No. We essentially

agree. That was my understanding of her response. There is no diversity of opinion on that board now. Some people like it that way. I would love it if they represented my particular view point, but it seems that, understandably, they have been chosen because they espouse what has been the current trend in education, greater state control and more consolidation. That is legitimate and those are perfectly acceptable viewpoints. I just happen to disagree. I think the only way we are going to get a different viewpoint represented or any variety of viewpoints on that board is to have them elected. Thank you.

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

Representative LEMKE: Madam Speaker, Men and Women of the House. I rise only to respond to some remarks by the good Representative from Madison and also in response to a statement by the good Representative from Penobscot. Representative Richard pointed out that there may be some cost involved if there are popular elections for these individuals. I have to say, as I have said on the floor before on similar issues involving elective positions, that when we get to the point where we are making the argument against a popular election in a democratic society because it might cost too much money, then we are getting ourselves into a very difficult position.

Secondly, if you consider the problems that develop because we do not have a public input at the outset in policy formulation and the amount of time and development that is involved and costly and we might very well save money if we have the public involved as this bill proposes. I hope which ever way you vote on this legislation, you are not worried that democracy is too expensive.

The good Representative from Penobscot said that he was not sure, but perhaps this would be a solution to the problem he saw in the formulation of policy today. No one can stand up for any piece of legislation in this body, as we all know, and say whatever the legislation is that they proposed that it is the definitive solution. I am certainly not going to do that today. I think it would go a tremendous direction towards that more than the system we have today if we have the public involved in public policy making. There is no guarantee in life ever, but in a democratic society the more democratic we make it, the better the solutions we can at least hope to expect.

Finally, the good Representative from Madison pointed out that the present board, I am sure of worthy people, although I would ask any of you how many you could name, despite the fact that they are making policy for you. The board has no debate or seldom has debate over educational issues. I think this gets right to the heart of the point, which the good Representative from St. George pointed out. Unless we assume there is uniformity or opinion on all education issues in the State of Maine, it is somewhat surprising that you would have an entity where there is no debate over education policy, which would tend to at least build upon the supposition that there is a mindset and that there is one established goal or guiding principle, if you will, of the board as it exists. In a democracy, a diversity of opinion is very important and I think this would promote it again. It is another reason for supporting this.

In conclusion, this is a democratic proposal. I think it moves us away from the increasing bureaucratization of education policy making, the increasing movement that shuts people out of their own education of their kids at the outset. I would urge you to vote against the pending motion. Madam Speaker, I would request that when the vote is taken, it be taken by the yeas and nays. Thank you.

Representative LEMKE of Westbrook **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 Madison, Representative Richard.

Representative RICHARD: Madam Speaker, Men and Women of the House. I would like to respond to the mention made that there were no members of those who were interested in charter schools or school choice on this committee. I do have this report in front of me and I quickly have been scanning through it. There were members of charter schools and school choice organizations, people who are promoting this, present at almost every meeting of this committee. They were given the freedom of input and their input was respected and if anybody wants to read this report, I have it here on my desk.

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

Representative PERKINS: Madam Speaker, Colleagues of the House. Not to belabor this, but the good Representative from Madison, I hope you recognize that she said people from the opposing views were invited and they were there in attendance. The point is I think out of about 15 on the committee that was chosen by the board, I don't believe there were any representatives of alternative views on that board. That was what I was trying to point out. Thank you.

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

Representative BRENNAN: Madam Speaker, Men and Women of the House. I just want to reassure everybody that this debate has nothing to do with school choice and charter schools. We will have that debate at some other point and some other time in the Legislature. What I don't think has been mentioned is that this bill has a fundamental flaw and that point was pointed out to us by our legislative staff that it potentially violates the constitution in terms of one person one vote. If you have a representative on the state board in a statewide election and a representative comes from each one of the counties, you obviously can see the problems that you would have with population distribution as a result of that. While there is some discussion about the State Board of Education in terms of being

reformed, some discussion about how to make it more responsive, this bill is fundamentally flawed and, again, we think it would violate the constitution. Thank you.

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

ROLL CALL NO. 407

YEA - Bagley, Baker, Barth, Belanger IG, Berry RL, Bigl, Bolduc, Bouffard, Brennan, Brooks, Bruno, Bryant, Bull, Bumps, Bunker, Cameron, Campbell, Chick, Chizmar, Cianchette, Clark, Clukey, Colwell, Cowger, Cross, Davidson, Desmond, Donnelly, Driscoll, Dunlap, Etnier, Farnsworth, Fisher, Frechette, Fuller, Gagne, Gagnon, Gamache, Gieringer, Gooley, Green, Hatch, Honey, Jabar, Jones KW, Jones SL, Joyner, Kane, Kerr, Kneeland, Kontos, Labrecque, LaVerdiere, Lemaire, Lindahl, Madore, Mailhot, Marvin, Mayo, McElroy, McKee, Meres, Mitchell JE, Morgan, Murphy, Muse, O'Brien, O'Neil, Ott, Paul, Pendleton, Perry, Pieh, Poulin, Povich, Powers, Quint, Richard, Rowe, Samson, Sanborn, Savage, Saxl JW, Saxl MV, Shannon, Shiah, Sirois, Spear, Stanley, Stevens, Taylor, Tessier, Thompson, Townsend, Tripp, Usher, Vigue, Volenik, Watson, Wheeler GJ, Winglass, Winn, Winsor, Wright, Madam Speaker.

NAY - Ahearne, Belanger DJ, Berry DP, Bragdon, Buck, Chartrand, Dexter, Foster, Gerry, Goodwin, Jones SA, Joy, Joyce, Kasprzak, Lane, Layton, Lemke, Lemont, MacDougall, Mack, McAlevey, Nass, Nickerson, O'Neal, Peavey, Perkins, Pinkham RG, Pinkham WD, Rines, Skoglund, Snowe-Mello, Stedman, Tobin, Treadwell, True, Vedral, Waterhouse, Wheeler EM.

ABSENT - Bodwell, Carleton, Dutremble, Fisk, Lovett, Plowman, Tuttle, Underwood.

Yes, 105; No, 38; Absent, 8; Excused, 0.

105 having voted in the affirmative and 38 voted in the negative, with 8 being absent, the Majority **Ought Not to Pass** Report was **ACCEPTED** and sent up for concurrence.

On motion of Representative MADORE of Augusta, the House adjourned at 10:45 a.m., until 9:00 a.m., Wednesday, February 25, 1998.