

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

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
22nd Legislative Day
Thursday, February 26, 1998

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

Prayer by Reverend Dan Bowers, Hope Baptist Church, Manchester.

Pledge of Allegiance.

At this point, a message came from the Senate, borne by Senator PINGREE of Knox of that Body, proposing a Joint Convention of both Branches to be held in the Hall of the House at 10:00 in the morning for the purpose of extending an invitation to Major General Earl L. Adams, Commissioner of the Department of Defense, Veterans and Emergency Management to attend the Joint Convention and to make such communication as pleases him.

Thereupon the House voted to concur in the proposal for a Joint Convention to be held at 10:00 in the morning and the Speaker appointed Representative KONTOS of Windham to convey this message to the Senate.

The Journal of yesterday was read and approved.

SENATE PAPERS

Non-Concurrent Matter

Bill "An Act to Open a Discount State Liquor Store in Calais" (H.P. 277) (L.D. 341)

BILL and accompanying papers were **COMMITTED** to the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS** in the House on February 19, 1998.

Came from the Senate with that Body having **ADHERED** to its former action whereby the **BILL** and accompanying papers were **REFERRED** to the Committee on **LEGAL AND VETERANS AFFAIRS** in **NON-CONCURRENCE**.

The House voted to **RECEDE AND CONCUR**.

COMMUNICATIONS

The Following Communication: (H.C. 396)
118TH MAINE LEGISLATURE

February 23, 1998
Major General Earl Adams
33 State House Station
Augusta, ME 04333

Dear Major General Adams:

We are pleased to invite you to address a Joint Session of the 118th Maine Legislature on Thursday, February 26, 1998, recognizing the extraordinary efforts to alleviate damage and suffering caused by the severe ice storm of January 1998 and the exemplary conduct of the people of the state of Maine.

Your remarks are scheduled to begin at 10:00 a.m. We look forward to seeing you.

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

READ and ORDERED PLACED ON FILE.

The Following Communication: (H.C. 397)
**DEPT. OF DEFENSE, VETERANS
AND EMERGENCY MANAGEMENT
CAMP KEYES
AUGUSTA, MAINE 04333-0033**

February 24, 1998
Office of the Commissioner
The Honorable Mark W. Lawrence
President of the Senate
118th Maine Legislature
3 State House Station
Augusta, Maine 04333-0003
The Honorable Elizabeth H. Mitchell
Speaker of the House
118th Maine Legislature
2 State House Station
Augusta, Maine 04333-0002

Dear President Lawrence and Speaker Mitchell:

Thank you for your letter inviting me to address a Joint Session of the 118th Maine Legislature on February 26 to help recognize the efforts of those who responded so well during the January ice storm. I am pleased to accept your invitation and am deeply appreciative of this opportunity.

Sincerely,
S/Earl L. Adams
Major General
Commissioner

READ and ORDERED PLACED ON FILE.

**PETITIONS, BILLS AND RESOLVES REQUIRING
REFERENCE**

Pursuant to Statute

Department of Conservation

Representative BUNKER for the **Department of Conservation** pursuant to the Maine Revised Statutes, Title 5, section 8072 asks leave to report that the accompanying Resolve, Regarding Legislative Review of Chapter 501: Exemptions to Fire Bans and Permit Requirements for Outdoor Fireplaces and Grills, a Major Substantive Rule of the Department of Conservation (EMERGENCY)

(H.P. 1609) (L.D. 2236)

Be **REFERRED** to the Committee on **AGRICULTURE, CONSERVATION AND FORESTRY** and printed pursuant to Joint Rule 218.

Report was **READ and ACCEPTED** and the Bill **REFERRED** to the Committee on **AGRICULTURE, CONSERVATION AND FORESTRY** and ordered printed pursuant to Joint Rule 218.

Sent up for concurrence.

Pursuant to Statute

Department of Human Services

Representative MITCHELL for the **Department of Human Services** pursuant to the Maine Revised Statutes, Title 5, section 8072 asks leave to report that the accompanying Resolve, Regarding Legislative Review of Chapter 231: Rules Relating to Drinking Water, a Major Substantive Rule of the Department of Human Services (EMERGENCY)

(H.P. 1606) (L.D. 2233)

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.

**Pursuant to Statute
Department of Human Services**

Representative MITCHELL for the **Department of Human Services** pursuant to the Maine Revised Statutes, Title 5, section 8072 asks leave to report that the accompanying Resolve, Regarding Legislative Review of Rules Governing the Implementation of Hypodermic Apparatus Exchange Programs, a Major Substantive Rule of the Department of Human Services (EMERGENCY)

(H.P. 1607) (L.D. 2234)

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.

**Pursuant to Statute
Department of Marine Resources**

Representative ETNIER for the **Department of Marine Resources** pursuant to the Maine Revised Statutes, Title 5, section 8072 asks leave to report that the accompanying Resolve, Regarding Legislative Review of Chapter 2.10: Aquaculture Lease Regulations, Lease Categories and Environmental Baseline, a Major Substantive Rule of the Department of Marine Resources (EMERGENCY)

(H.P. 1608) (L.D. 2235)

Be **REFERRED** to the Committee on **MARINE RESOURCES** and printed pursuant to Joint Rule 218.

Report was **READ** and **ACCEPTED** and the Bill **REFERRED** to the Committee on **MARINE RESOURCES** and ordered printed pursuant to Joint Rule 218.

Sent up for concurrence.

**Pursuant to Statute
Public Utilities Commission**

Representative JONES for the **Public Utilities Commission** pursuant to the Maine Revised Statutes, Title 5, section 8072 asks leave to report that the accompanying Resolve, Regarding Legislative Review of Chapter 820: Requirements for Non-Core Utility Activities and Transactions Between Affiliates, a Major Substantive Rule of the Public Utilities Commission (EMERGENCY)

(H.P. 1611) (L.D. 2237)

Be **REFERRED** to the Committee on **UTILITIES AND ENERGY** and printed pursuant to Joint Rule 218.

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

Sent up for concurrence.

By unanimous consent, all reference matters requiring Senate concurrence having been acted upon were **ORDERED SENT FORTHWITH**.

ORDERS

On motion of Representative SPEAR of Nobleboro, the following Joint Order: (H.P. 1610)

ORDERED, the Senate concurring, that the Joint Standing Committee on Taxation shall report out legislation applying revenue from the Tobacco Tax Relief Fund established in the Maine Revised Statutes, Title 22, section 1546 and the Tax Relief Fund for Maine Residents established in Title 5, section 1518 to reduce the state sales tax.

READ.

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

Representative SPEAR: Madam Speaker, Ladies and Gentlemen of the House. One of the most talked about issues across this state is the tax relief while we are here in this session this year. One option for tax relief, as we know, is the sales tax. It is a tax that affects every single person in this state, every person. Passage of this order here will at least provide a vehicle for this subject to be debated in an open quorum. I was here in 1991 when the sales tax was increased from 5 to 6 cents. It was a so-called temporary tax. We have waited for a long while, when the state was in a position, when we could address this issue again. Now is that time. As I stated, dropping this tax is a tax that is going to help the most needy and also it is going to be a chance to stimulate the economy in this state and we will all be winners out of it. I think it is worthy that this issue can go back so that the Taxation Committee does have a vehicle to bring this out for a full discussion. I would request that the yeas and nays be taken when the vote is taken. Thank you.

Representative SPEAR of Nobleboro **REQUESTED** a roll call on **PASSAGE**.

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

Subsequently, Representative KONTOS of Windham reported that she had delivered the message with which she was charged.

Representative SAXL of Portland moved that the Bill be **TABLED** pending **PASSAGE** and later today assigned.

Representative DONNELLY of Presque Isle **REQUESTED** a division on the motion to **TABLE**.

The Chair ordered a division on the motion to **TABLE**.

A vote of the House was taken. 73 voted in favor of the same and 66 against, the Joint Order was **TABLED** pending **PASSAGE** and later today assigned. (Roll Call Ordered)

On motion of Representative GAMACHE of Lewiston, the following House Order: (H.O. 39)

ORDERED, that Representative Irvin G. Belanger of Caribou be excused February 12 for legislative business.

AND BE IT FURTHER ORDERED, that Representative Donald P. Berry, Sr. of Belmont be excused February 17 and February 18 for personal reasons.

AND BE IT FURTHER ORDERED, that Representative Joseph E. Brooks of Winterport be excused February 18 for health reasons.

AND BE IT FURTHER ORDERED, that Representative Joseph G. Carleton, Jr., of Wells be excused February 10 and February 12 for personal reasons.

AND BE IT FURTHER ORDERED, that Representative Scott W. Cowger of Hallowell be excused February 25 for legislative business.

AND BE IT FURTHER ORDERED, that Representative Lucien A. Dutremble of Biddeford be excused February 18 for health reasons.

AND BE IT FURTHER ORDERED, that Representative Albert P. Gamache of Lewiston be excused February 11, February 12, February 17, February 18 and February 19 for health reasons.

AND BE IT FURTHER ORDERED, that Representative Priscilla Lane of Enfield be excused February 19 for personal reasons.

AND BE IT FURTHER ORDERED, that Representative Glenys P. Lovett of Scarborough be excused February 23 and February 24 for personal reasons.

AND BE IT FURTHER ORDERED, that Representative Roy I. Nickerson of Turner be excused February 25 for personal reasons.

AND BE IT FURTHER ORDERED, that Representative Robert W. Spear of Nobleboro be excused February 11 for personal reasons.

AND BE IT FURTHER ORDERED, that Representative Richard H. Thompson of Naples be excused February 18 for personal reasons.

READ and PASSED.

REPORTS OF COMMITTEE

Divided Reports

Majority Report of the Committee on **MARINE RESOURCES** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-464)** on Bill "An Act Concerning Commercial Fishing in the Vicinity of Monhegan Island" (EMERGENCY)

(S.P. 743) (L.D. 2021)

Signed:
Senators:

GOLDTHWAIT of Hancock
MacKINNON of York

Representatives:

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

Minority Report of the same Committee reporting **Ought to Pass as Amended by Committee Amendment "B" (S-465)** on same Bill.

Signed:
Senator:

PENDLETON of Cumberland

Representatives:

PINKHAM of Lamoine
GOODWIN of Pembroke
LAYTON of Cherryfield

Came from the Senate with the Majority **UGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-464).**

READ.

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

The same Representative **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**: 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. 413

YEA - Ahearne, Bagley, Baker, Barth, Belanger DJ, Belanger IG, Berry DP, Berry RL, Bigl, Bodwell, Bolduc, Bouffard, Bragdon, Brennan, Brooks, Bryant, Buck, Bull, Bumps, Bunker, Cameron, Campbell, Carleton, Chartrand, Chick, Chizmar, Cianchette, Clark, Colwell, Cowger, Cross, Davidson, Desmond, Dexter, Donnelly, Driscoll, Dunlap, Dutremble, Etnier, Farnsworth, Fisk, Foster, Frechette, Fuller, Gagne, Gagnon, Gamache, Gerry, Gieringer, Gooley, Green, Hatch, Honey, Jabar, Jones SL, Jones SA, Joyce, Kane, Kerr, Kneeland, Kontos, Labrecque, LaVerdiere, Lemaire, Lemke, Lemont, Lindahl, MacDougall, Madore, Mailhot, Marvin, Mayo, McAlevey, McElroy, Meres, Mitchell JE, Morgan, Murphy, Muse, Nass, O'Brien, O'Neal, Ott, Paul, Peavey, Perkins, Perry, Pieh, Pinkham RG, Plowman, Poulin, Povich, Powers, Quint, Richard, Rowe, Samson, Sanborn, Saxl JW, Saxl MV, Shannon, Shiah, Sirois, Skoglund, Spear, Stanley, Stedman, Stevens, Taylor, Tessier, Thompson, Tobin, Townsend, Treadwell, Tripp, True, Tuttle, Underwood, Usher, Vedral, Vigue, Volenik, Waterhouse, Watson, Wheeler EM, Wheeler GJ, Winglass, Winn, Winsor, Madam Speaker.

NAY - Clukey, Goodwin, Jones KW, Kasprzak, Lane, Layton, Lovett, Mack, Pendleton, Pinkham WD, Savage, Snowe-Mello.

ABSENT - Bruno, Fisher, Joy, Joyner, McKee, Nickerson, O'Neil, Rines, Wright.

Yes, 130; No, 12; Absent, 9; Excused, 0.

130 having voted in the affirmative and 12 voted in the negative, with 9 being absent, Majority **Ought to Pass as Amended** Report was **ACCEPTED**.

The Bill was **READ ONCE**. **Committee Amendment "A" (S-464)** 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**.

Under further suspension of the rules the Bill was **PASSED TO BE ENGROSSED as Amended by Committee Amendment "A" (S-464)** in concurrence. **ORDERED SENT FORTHWITH**.

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

(H.P. 1176) (L.D. 1653)

Signed:
Senators:

PENDLETON of Cumberland
CATHCART of Penobscot
SMALL of Sagadahoc

Representatives:

RICHARD of Madison
BRENNAN of Portland
DESMOND of Mapleton
SKOGLUND of St. George
WATSON of Farmingdale

BAKER of Bangor
 McELROY of Unity
 BELANGER of Caribou

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

Signed:

Representatives:

BARTH of Bethel
 STEDMAN of Hartland

READ.

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

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

Representative JOY: Madam Speaker, Ladies and Gentlemen of the House. We continually hear reports of how we would like to reduce the size of government and that is one of the reasons that I put this bill in. The State Board of Education has done some admirable things in the time that they have been in existence. However, they were created to be an advisory board for the commissioner of education. As is typical of any board or agency that is created by this body, what happens is once they get into existence, they forget the original intent that they were created for and they start sprawling out and grasping new duties, new responsibilities until finally we get to a situation where we think we can't do without them. Such is the case with the State Board of Education. At one time they were in charge of vocational education. At one time they had an awful lot to do with teacher certification. They were given a charge to develop learning results. All sorts of things that were never intended to be one of their duties.

The thing that amazes me is that we never seem to realize that any time that one of these agencies are created that we need to keep them in line with what they were created for in the first place. It was reported to me that their budget this year is about \$90,000. However, in the last biennium we think it was about \$300,000 and prior to that \$200,000. These people do serve without pay, but they are all appointed positions. We had a discussion the other day on the possibility of electing these people. They said it would make them too political. I maintain that by being appointed, they certainly have a political role. I also question who they are really responsible to. During the testimony that was given in front of the committee, it was indicated that they were responsible to the Education Committee. However, they are appointed by the Chief Executive of this state. It was interesting also during this testimony that was given on this that only three people testified against my bill. One of them from the Department of Education. One from the Maine School Superintendents' Association and lo and behold the third one from the State Board of Education. I am not sure if it was an interest of perpetuating a job that he liked, but doesn't get paid for. He does get reimbursed for expenses.

I think this is one of the problems that I can see in government is the sprawl that occurs every time we create an agency. I don't know how many of you read the little book at the beginning of the year that told about our governmental agencies, but there are 493 pages of agencies, boards, commissions and so forth for 1.2 million people. Ladies and gentlemen, I think this is a good point to start. I think we need to start dismantling some of these boards and commissions that are ruling our lives and are taking over the policy making provision that has the role of this body. Madam Speaker, when the vote is taken, I request the yeas and nays.

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

Representative RICHARD: Madam Speaker, Men and Women of the House. As the previous speaker indicated, it may be time to dismantle some of the boards, but I don't think this is one of them. The State Board of Education, if they do create policy, that policy is administered by the Department of Education and the Education Committee of this Legislature has oversight over both the Department of Education and the State Board of Education. It certainly is true if any policy is created that this body does not agree with, this body can eliminate it. We have had an oversight review of both the State Board of Education and the Department of Education during this session of the Legislature. The Education Committee has not, at this time, found anything which they feel is unwarranted that the State Board of Education is doing. As I have said before, if we were to hire people to do the work that is being done by the State Board of Education, you would have to add a lot of people to the Department of Education. They do get a per diem, but they work for free. They do not get a salary. We have some people on that board that devote hours and hours and hours of time, at home, that is not compensated. They are a great help to the Education Committee and the research that they do for our committee. They are not paid staff, but they do a lot of work for our committee. I feel it would be most incorrect if we were to abolish this committee. Granted the work that they do has changed since there were first started, but if you read the law, that was created by this body has changed many times over the years. I do not feel that this is the time to abolish the State Board of Education.

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

Representative DONNELLY: Madam Speaker, Men and Women of the House. I find this debate very interesting so far. I have a question though the Chair to the Chair of the Education Committee.

The SPEAKER: The Representative may pose his question.

Representative DONNELLY: Madam Speaker, Men and Women of the House. I hate to display my ignorance on the floor of the House, but occasionally we do that. Could the Chair give us a description of what the Board of Education's responsibilities are? I heard so far that they help with things, but it seems to be an independent group that I am a little unclear about. I know some of the members on that board and they dedicate a lot of time and they are wonderful people, but what are their responsibilities? What is their purview of jurisdiction?

The SPEAKER: The Representative from Presque Isle, Representative Donnelly has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Madison, Representative Richard.

Representative RICHARD: Madam Speaker, Men and Women of the House. The answer to that question is in their mission statement to promote statewide leadership by advocating, promoting and improving education policy and lifelong learning for all Maine people, particularly its children.

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

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

The SPEAKER: The Representative may pose his question.

Representative MACK: Madam Speaker, Men and Women of the House. I would ask to anyone who could answer, we just heard what the mission statement was for the Board of

Education. That sounds wonderful, but how on Earth is that going to help the students in my district get a better education?

The SPEAKER: The Representative from Standish, Representative Mack has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Madison, Representative Richard.

Representative RICHARD: Madam Speaker, Men and Women of the House. I am not sure that I have a positive answer to that. I am not sure how the Representative voted on learning results, but if he is in favor of learning results, which we did pass in this body, it was the State Board of Education who did the leg work. I am not saying that it was their philosophy, but they did the leg work to get all of the work done for learning results. If you are opposed to that, then I guess you have a different answer from what I have. My answer is that they did a great deal to improve the education of the students of the State of Maine through the work that they have done with learning results. Another issue that will be coming before us, I think, before this Legislature leaves will be a very expensive bill regarding school construction and school repair. It is the State Board of Education, primarily the chairman of the State Board of Education, who has been chair of the Governor's commission that has brought that measure forward and it will be coming forward to this Legislature. The chairman of the State Board of Education has done hours and hours and hours of work trying to put all of this together. Some of you have worked with him. Some of you know what he has done. I think that you will find this has done a tremendous amount for the problem of our aging school buildings in the state. The State Board of Education works on certification and they are the people who flush out the problems and create new ideas for how certification will be handled. There are many other things that I am not sure everybody wants me to go through all of the details of everything that they do, but those are three major items.

The SPEAKER: The Chair recognizes the Representative from Wells, Representative Carleton.

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

The SPEAKER: The Representative may pose his question.

Representative CARLETON: Madam Speaker, Men and Women of the House. The Representative from Presque Isle asked a question about the responsibilities of the State Board of Education. As I understood the answer related to the mission statement of the State Board of Education, which I understood was to be an advocate for education. I assume there is something more here than just the mission statement. I would request the Chair of the Education Committee to tell us what the statutory responsibilities are.

The SPEAKER: The Representative from Wells, Representative Carleton has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Madison, Representative Richard.

Representative RICHARD: Madam Speaker, Men and Women of the House. I had that, but I have so many papers on my desk that I can't find it right this minute, but I can tell you that it is MRSA 20, Chapter 5. That is where you can find it. I can read to you some of the committees where we have members of the state board. They are on the ATM Policy Oversight Committee, Education Coordinating Committee, Education Research Institute Steering Committee, Jobs for Maine's Graduates Board of Directors, Learning Results Steering Committee, Maine Children's Alliance, Maine Coalition for Excellence in Education, Maine Internet Education Consortium, Maine Leadership Consortium, Mathematics and Science Allied Board of Directors, National Commission on Teaching in

America's future, Northeast Regional Lab, Professional Development Committee for Learning Results, State Telecommunications Policy Board, Task Force to Review the Applied Technology Centers, the Governor's School Facilities Commission, Charter Schools for School Choice Committee, Essential Programs and Services and School Funding Committee and Results Based Initial Teacher Certification.

The SPEAKER: The Chair recognizes the Representative from Wells, Representative Carleton.

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

The SPEAKER: The Representative may pose his question.

Representative CARLETON: Madam Speaker, Men and Women of the House. We have heard the mission statement and we have heard some of the committees that members of the board serve on and we have heard that we should look at Title 20 to determine what the statutory responsibilities of the board are. I know that is quite a long title in our statutes. I guess my question is, could the Chair of the Education Committee just give us a brief summary? I am not sure that I know, a brief summary of their responsibilities, aside from advocacy.

The SPEAKER: The Representative from Wells, Representative Carleton has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Portland, Representative Townsend.

Representative TOWNSEND: Madam Speaker, Men and Women of the House. Every year each member of this Legislature is distributed a copy of the Maine State Government Annual Report. The description of the purpose of the State Board of Education is located on Page 422. I would be happy to read it. It says, "The State Board of Education is authorized to act in advisory capacity to the commissioner of Education in matters concerning state laws relating to education. In addition, the State Board of Education is delegated to specific powers to make recommendations to the Legislature for the efficient conduct of public school, to approve the formation of school administrative districts, to establish requirements for approval under accreditation of elementary and secondary schools, to grant permission for school administrative units to enter into agreements for cooperative educational purposes, to act upon articles of agreement for creation of an interstate school district, to develop and adopt an agreement for a plan for this establishment for applied technical centers to approve standards for school construction, to approve projects for state construction aid, to approve the formation of community school districts, to obtain information regarding applications for granting degrees and making recommendations to the Legislature. Also, to serve as the state agency for administering Carl Perkins federal funds to serve as an appeals board for unclassified personnel and to establish the certification standards for teachers and other education personnel." Thank you.

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

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

The SPEAKER: The Representative may pose his question.

Representative MACK: Madam Speaker, Men and Women of the House. To the Chair of the Education Committee or anyone who would like to answer, I would like to ask if they feel that the local school districts are incompetent to educate the children on their own and it would not be able to function without the omnipotent advice of the State Board of Education and all their expensive consultants.

The SPEAKER: The Representative from Standish, Representative Mack 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. In response to that question, I don't think there is anybody on the Board of Education that is insensitive to the ability or the decision making capacity of people at local levels. In fact, my experience with the State Board of Education is that they have worked cooperatively in conjunction with local boards of education and local educators to make sure that every child in this state and every educator in their professional state has the opportunity to provide the best education that we can for children in the State of Maine. Just to expand on my answer, I don't think the question here is how much the state board does do or how much the state board doesn't do. The question is, do we need a State Board of Education? In the time that I have spent on the Education Committee, I have found the state board to be invaluable, not only in carrying out certain responsibilities that the Education Committee has asked them to do, but to provide advice and to provide objective data and information not only to this body, but the state government on where education is in this state and where we should be going. I hope that people will vote for the pending motion so that we can maintain the State Board of Education and move forward. 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 that the discussion has proved my point very well. They were originally created to be an advisory board to the commissioner of Education. We now find that they have fingers out in so many different areas that it is impossible to keep control of them. I urge you to defeat the pending motion and let's move on to abolish the State Board of Education. Thank you.

The SPEAKER: The Chair recognizes the Representative from Unity, Representative McElroy.

Representative MCELROY: Madam Speaker, Ladies and Gentlemen of the House. In reference to the good Representative Mack's question, I think probably local school boards can do much better without this body in operating their own affairs. I would say that over the 35 years that I have spent in education, there have been times when I have felt, as the good Representative from Crystal feels, that the State Board of Education could be eliminated. However, in the past few years and especially in the four years that I have been in this body, I feel very definitely that the State Board of Education is one of the greatest assets that education has in the State of Maine. It has worked tirelessly. There are representatives from all over the state for those people who are concerned about representation. Aroostook County, two months ago, had two. I think the Chief Executive has done well in selecting his representatives and made sure that they were geographically balanced. I think that people on it learned. They are concerned. They work without pay, as has been mentioned many times. I do believe that probably we could get much more data than what we have had currently available to explain or justify their existence. I don't really think their existence needs to be justified before this body. They justify their own existence by the energy, the effort and the time that they put into it. I would ask that you support the motion that currently is on the floor. Thank you very much.

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. 414

YEA - Ahearne, Bagley, Baker, Belanger DJ, Belanger IG, Berry DP, Berry RL, Bigl, Bodwell, Bolduc, Bragdon, Brennan, Brooks, Bryant, Bull, Bumps, Bunker, Chartrand, Chick, Chizmar, Cianchette, Clark, Clukey, Colwell, Cowger, Cross, Davidson, Desmond, Donnelly, Driscoll, Dunlap, Dutremble, Etnier, Farnsworth, Fisk, Frechette, Fuller, Gagne, Gagnon, Gamache, Gooley, Green, Hatch, Honey, Jabar, Jones KW, Jones SL, Kane, Kerr, Kontos, LaVerdiere, Lemaire, Lemont, Lindahl, Lovett, Madore, Mailhot, Marvin, Mayo, McAlevey, McElroy, McKee, Meres, Mitchell JE, Morgan, Murphy, Muse, O'Brien, O'Neal, O'Neil, Ott, Paul, Peavey, Pendleton, Perkins, Perry, Pieh, Pinkham RG, Poulin, Povich, Powers, Richard, Rines, Rowe, Samson, Sanborn, Savage, Saxl JW, Saxl MV, Shannon, Shiah, Sirois, Skoglund, Spear, Stanley, Taylor, Tessier, Thompson, Townsend, Tripp, True, Tuttle, Usher, Vigue, Volenik, Watson, Wheeler GJ, Winglass, Madam Speaker.

NAY - Barth, Buck, Cameron, Campbell, Carleton, Dexter, Foster, Gerry, Gieringer, Goodwin, Jones SA, Joy, Joyce, Kasprzak, Kneeland, Labrecque, Lane, Layton, Lemke, MacDougall, Mack, Nass, Pinkham WD, Plowman, Snowe-Mello, Stedman, Tobin, Treadwell, Underwood, Vedral, Waterhouse, Winsor.

ABSENT - Bouffard, Bruno, Fisher, Joyner, Nickerson, Quint, Stevens, Wheeler EM, Winn, Wright.

Yes, 109; No, 32; Absent, 10; Excused, 0.

109 having voted in the affirmative and 32 voted in the negative, with 10 being absent, the Majority **Ought Not to Pass** Report was **ACCEPTED** and sent up for concurrence.

Doctor of the day, Ardis Conner, D.O., Yarmouth.

IN CONVENTION

The President of the Senate, the Honorable Mark W. Lawrence, in the Chair.

The Convention was called to order by the Chair.

On motion by Senator Pingree of Knox, it was ORDERED, that a Committee be appointed to wait upon Major General Earl L. Adams, Commissioner of the Department of Defense, Veterans and Emergency Management and inform him that the two branches of the Legislature are in Convention assembled, ready to receive such communication as pleases him.

The Order was Read and Passed.

The Chair will appoint the following:

The Senator from Kennebec, Senator DAGGETT
 The Senator from Kennebec, Senator CAREY
 The Senator from Oxford, Senator FERGUSON
 The Rep. from Sanford, Rep. TUTTLE
 The Rep. from Lewiston, Rep. GAMACHE
 The Rep. from Lisbon, Rep. CHIZMAR
 The Rep. from Brewer, Rep. FISHER
 The Rep. from Buckfield, Rep. GAGNE
 The Rep. from Fairfield, Rep. TESSIER
 The Rep. from Fryeburg, Rep. TRUE
 The Rep. from Gorham, Rep. LABRECQUE
 The Rep. from Bucksport, Rep. BIGL
 The Rep. from Wallagrass, Rep. BELANGER

Subsequently, Senator Daggett from Kennebec, for the Committee, reported that the Committee had delivered the

message with which it was charged were pleased to report that Major General Earl Adams, Commissioner of the Department of Defense, Veterans and Emergency Management will attend forthwith.

ORDERS

On a motion of Senator LAWRENCE of York County, the following Joint Resolution: (J.C.R. 1) (Cosponsored by Speaker MITCHELL of Vassalboro, Sen. PINGREE of Knox County, Sen. KIEFFER of Aroostook County, Rep. SAXL of Portland, Rep. CAMPBELL of Holden, Sen. RAND of Cumberland County, Sen. AMERO of Cumberland County, Rep. KONTOS of Windham, Rep. DONNELLY of Presque Isle)

JOINT CONVENTION RESOLUTION RECOGNIZING THE EXTRAORDINARY EFFORTS TO ALLEVIATE DAMAGE AND SUFFERING CAUSED BY THE SEVERE ICE STORM OF JANUARY 1998 AND THE EXEMPLARY CONDUCT OF THE PEOPLE OF THE STATE OF MAINE AND THE OTHER STATES THAT CONTRIBUTED SO GREATLY

WHEREAS, from Monday, January 5, 1998 through Saturday, January 10, 1998, the State of Maine endured an ice storm, the length and severity of which is unprecedented in living memory. The ice storm produced downed trees, tree limbs and power lines throughout the State; and

WHEREAS, on January 8, 1998, the Honorable Angus S. King, Jr., Governor of the State of Maine, declared that a State of Emergency existed throughout the State due to the severe conditions and the associated loss of electrical power to many citizens; and

WHEREAS, the storm crippled the State's electric utility infrastructure, leaving almost half of its residents without power at the peak of the storm, thousands of whom remained without power for a week or more; and

WHEREAS, the storm severely impacted road conditions, making many routes dangerous or impassable, requiring response from local, county and state road crews; the state and county emergency management agencies; and the Maine Army National Guard, among others. Many secondary roads remained impassable due to downed trees and power lines; and

WHEREAS, state government offices were closed on January 8 and 9, 1998; innumerable businesses were closed during at least part of the storm; and emergency shelters were established throughout the State; and

WHEREAS, many employees of local and county government, including public works, police and fire departments; the Department of Defense, Veterans and Emergency Management; the Department of Transportation; and the Department of Public Safety worked extraordinarily long hours to clear roads of ice and debris, to ensure public safety and to provide much-needed emergency services to Maine people; and

WHEREAS, the Finance Authority of Maine; the Department of Labor; the Department of Human Services; the Department of Professional and Financial Regulation; the Honorable Albert Gore, Jr., Vice President of the United States; the Honorable Angus S. King, Jr., Governor of the State of Maine; United States Senator Olympia J. Snowe; United States Senator Susan M. Collins; United States Representative John E. Baldacci; United States Representative Thomas H. Allen; and many other public officials have worked and continue to work to assist those Maine people who suffered physically and financially from the storm; and

WHEREAS, Central Maine Power Company, Bangor Hydro-Electric Company, Bell Atlantic and other public and private entities, through their extraordinary organizational efforts,

combined with long hours of work, did an exemplary job rebuilding and repairing an electric and telephone infrastructure ravaged by this unprecedented ice storm; and

WHEREAS, thousands of individuals from Maine and other states responded with assistance, including the American Red Cross; the Salvation Army; the United States Department of Defense; and hundreds of utility repair and tree-trimming crews from Asplundh Tree Expert Company; Baltimore Gas and Electric; Blackstone Valley Electric; Boston Edison Company; Cianbro; Delmarva Power and Light Company; EUA Service Corporation; GPU Energy; Granite State Electric Company; Henkels & McCoy; Jersey Central Power and Light Company; Kennebunk Light and Power; Lucas Tree Experts; Madison Electric Works; Maine Public Service Company; Massachusetts Electric Company; Metropolitan Edison Company; Nantahala Power and Light Company; The Narragansett Electric Company; New Brunswick Power; New England Electric System; New England Power Service; Northeast Utilities; Nova Scotia Power, Inc.; Pennsylvania Electric Company; Potomac Electric Power Co.; Carolina Power and Light; Duke Power; Public Service of New Hampshire; the State's cable television companies; the Penobscot Nation; the Passamaquoddy Tribe; and many others have provided disaster relief to thousands of Maine citizens; and

WHEREAS, the Maine state media reported and distributed safety and public service information, including WGME, WCSH, WMTW and FOX51 and radio stations WGAN, WZAN, WMGX, WVOM, Maine Public Broadcasting Network and all those other unnamed heroes; and

WHEREAS, the Honorable William J. Clinton, President of the United States, declared the Maine counties of Androscoggin, Cumberland, Franklin, Hancock, Kennebec, Knox, Lincoln, Oxford, Penobscot, Piscataquis, Sagadahoc, Somerset, Waldo, Washington and York and a portion of Aroostook major disaster areas, and the Federal Emergency Management Agency is providing emergency assistance; and

WHEREAS, the people of the State are to be commended for responding to these events with resolve, determination, ingenuity, compassion and generosity, for always finding the time and resources to assist their friends and neighbors in need and for demonstrating the strong sense of community that makes Maine a special place; now, therefore, be it

RESOLVED: That We, the Members of the One Hundred and Eighteenth Legislature, now assembled in the Second Regular Session, take this opportunity to recognize the extraordinary efforts of local municipalities, including public works, police and fire departments; the Department of Defense, Veterans and Emergency Management; the Department of Transportation; the Finance Authority of Maine; the Department of Labor; the Department of Human Services; the Department of Professional and Financial Regulation; the Department of Public Safety; the Honorable Albert Gore, Jr., Vice President of the United States; the Honorable Angus S. King, Jr., Governor of the State of Maine; United States Senator Olympia J. Snowe; United States Senator Susan M. Collins; United States Representative John E. Baldacci; United States Representative Thomas H. Allen; Central Maine Power Company; Bangor Hydro-Electric Company; Bell Atlantic; the Honorable William J. Clinton, President of the United States; the Federal Emergency Management Agency; the American Red Cross; the Salvation Army; the United States Department of Defense; and hundreds of utility repair and tree-trimming crews from Asplundh Tree Expert Company; Baltimore Gas and Electric; Blackstone Valley Electric; Boston Edison Company; Cianbro Corporation; Delmarva Power and Light Company; EUA Service Corporation; GPU Energy; Granite State Electric Company; Henkels &

McCoy; Jersey Central Power and Light Company; Kennebunk Light and Power; Lucas Tree Experts; Madison Electric Works; Maine Public Service Company; Massachusetts Electric Company; Metropolitan Edison Company; Nantahala Power and Light Company; The Narragansett Electric Company; New Brunswick Power; New England Electric System; New England Power Service; Northeast Utilities; Nova Scotia Power, Inc.; Pennsylvania Electric Company; Potomac Electric Power Co.; Carolina Power and Light; Duke Power; Public Service of New Hampshire; WGME, WCSH, WMTW, FOX51, WGAN, WZAN, WMGX, WVOM, Maine Public Broadcasting Network; and the State's cable television companies; the Penobscot Nation; and the Passamaquoddy Tribe to alleviate damage and suffering caused by the severe ice storm of January 1998 and to recognize the exemplary conduct of the people of the State of Maine; and be it further

RESOLVED: That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to representatives of the Department of Defense, Veterans and Emergency Management; the Department of Transportation; the Finance Authority of Maine; the Department of Labor; the Department of Human Services; the Department of Professional and Financial Regulation; the Department of Public Safety; the Honorable Albert Gore, Jr., Vice President of the United States; the Honorable Angus S. King, Jr., Governor of the State of Maine; United States Senator Olympia J. Snowe; United States Senator Susan M. Collins; United States Representative John E. Baldacci; United States Representative Thomas H. Allen; Central Maine Power Company; Bangor Hydro-Electric Company; Bell Atlantic; the Honorable William J. Clinton, President of the United States; the Federal Emergency Management Agency; the American Red Cross; the Salvation Army; the United States Department of Defense; Asplundh Tree Expert Company; Baltimore Gas and Electric; Blackstone Valley Electric; Boston Edison Company; Cianbro Corporation; Delmarva Power and Light Company; EUA Service Corporation; GPU Energy; Granite State Electric Company; Henkels & McCoy; Jersey Central Power and Light Company; Kennebunk Light and Power; Lucas Tree Experts; Madison Electric Works; Maine Public Service Company; Massachusetts Electric Company; Metropolitan Edison Company; Nantahala Power and Light Company; The Narragansett Electric Company; New Brunswick Power; New England Electric System; New England Power Service; Northeast Utilities; Nova Scotia Power, Inc.; Pennsylvania Electric Company; Potomac Electric Power Co.; Carolina Power and Light; Duke Power; Public Service of New Hampshire; WGME, WCSH, WMTW, FOX51, WGAN, WZAN, WMGX, WVOM, Maine Public Broadcasting Network; the State's cable television companies; the Penobscot Nation; and the Passamaquoddy Tribe as tangible tokens of our appreciation.

READ and ADOPTED.

The Chair is pleased to present to you Major General Earl L. Adams, Commissioner of the Department of Defense, Veterans and Emergency Management.

Major General Earl L. Adams then addressed the Convention.

Mr. President, Madam Speaker, Honorable members of the 118th Legislature. I thought when I arrived here this morning, as I thought about this, I thought I would have a difficult task. However, after listening to the Clerk through that Resolution, my job is going to be easy. Possibly a lot of you saw on the news yesterday or in the newspapers this morning that Fidel Castro

addressed his parliament for 7 hours and 15 minutes yesterday. I assure you, I am not out to beat his record. I do thank you sincerely for the opportunity to address you this morning relative to ice storm '98. Also, a sincere thank you for the Joint Resolution recognizing the many agencies and individuals who brought us successfully through this disaster. A lot of those folks and their agencies are represented in the balcony this morning. I look at myself as a spokesman for all of those folks. My part was just one part in the total force that it took to deal with this emergency. However, I would maintain that Maine was ready for this disaster. Maine citizens were ready. Maine utilities were ready and Maine government was ready.

I would like to take a moment to kind of look at those issues. The key, of course, was our Maine citizens. As you would expect, our Maine citizens displayed their resourcefulness, innovation and caring for one another. A gentleman from the other side of the country, out in Tacoma, Washington, sent a brief note to Governor King part way through this disaster. It was basically a one liner. It said, "I had never met anybody from Maine who wouldn't make a good neighbor." Enclosed was a check for \$100 to help out with the disaster relief effort. I think that says a lot about Maine folks and those types of messages came, as you know as well as I, from many parts of the country. I understand or I have heard that at the peak of this emergency that we had nearly 800,000 people without power. It is interesting to note that only 3,000 of those required emergency shelter or went to emergency shelters. That means that there were 797,000 out there that were able to make it through their own resourcefulness and the support of their neighbors and friends. Again, that is why the shelters were set up for the folks that really needed the assistance. They needed the help that could be offered there that they could not get elsewhere.

I think it was also interesting, in that regard, as we talked about our Maine citizens that just a week ago I was up at Bangor participating in the festivities or the celebrations around the 100th Anniversary of the USS Maine. One of the visitors or invited guests at that event was Sergeant Kevin Tillman. Some of you may recall that Sgt. Tillman was a member of the 82nd Airborne that came back through Bangor seven years ago when all of our troops were returning from the Persian Gulf. The folks of Bangor turned out in mass to greet them, whether it was 3 o'clock in the afternoon or 3 o'clock in the morning. Different individuals up there a week ago asked Sgt. Tillman what he saw in his future and where he wanted to go in the military. His reply was, "I want to come to Maine and work for General Adams." It was not so much that he wanted to directly work for me. He just fell in love with the people of Maine. The people of Maine embraced him. As you recall when he came back through Bangor, he borrowed a saxophone from one of the high school band students and played a very moving rendition of the Star Spangled Banner. He has come back and did that again a week ago at Bangor, but, again, he realized and recognized the compassion, caring and the pride that our Maine citizens have. I think those attributes showed through very clearly as we dealt with the situation.

We did have a few unfortunate and tragic accidents, but there was no direct loss of life due to the disaster itself. No hypothermia losses or other types directly attributed. I think all we have to do is look at the newspapers or the news from the last couple of days from Florida to California and, again, I am not inferring they could have prevented the loss of life they suffered, but I think it makes us realize maybe how lucky, but also how prepared we may have been to take care of ourselves and to take care of our people that needed our assistance. Our people were certainly uncomfortable. They were inconvenienced and they

were stressed, but they overcame these issues and were able to stand up to the challenge that they faced.

Maine utilities. Maine utilities began immediate action under extremely difficult conditions and I don't have to tell anybody here what those conditions were like. We all lived through those days. Those folks were out there working around the clock to try to get our utility service back on line. They had the plans in place to reach outside and bring in outside resources. They brought those resources in from many other states. The National Guard was prepared and did assist some. I think sort of the high point of that was when the C-17s and the C-5As rolled into BNAS in Bangor carrying the North Carolina special vehicles that David Flanagan, of CMP, wanted to utilize to help speed up the process. When I first heard about this, I did not figure there was going to be an awfully good chance of success on that particular mission and the next thing I knew I got a message that the first C-5A would land at 12 noon the next day. I think the next major military exercise we have, I will see if David Flanagan will be available to help me out.

It was also interesting earlier this morning. I had a meeting with the representative from Boeing, the company that now is responsible overseas, the C-17 program. The C-17 is the newest transport aircraft in our fleet. Aside from the business that we had to do, one of the things he wanted to get were some pictures of those vehicles being off loaded down to Brunswick and at Bangor because this had never happened before where they had been utilized in this type of role. Maine leads the way again.

We all say on the news relative to those utility crews, the signs on street posts, on trees and what not with thank yous to those folks for the jobs that they were doing. We heard the stories about when a crew would get a few minutes to go into a restaurant and get a quick bite, that the patrons would stand up and applaud and cheer those folks for the job that they were doing. When I say the word utilities, I am also including here telephone line workers, radio and television folks and the cable folks that were all out there. These utilities were important to the recovery operation as well as to the well being of our citizens. All of those utility folks, I think, as the Resolution stated, certainly deserve our thanks and our praise for the job that they did.

Maine government, it worked. I think Governor King's leadership was obviously a key part of that. We started out right off quick encouraging people to check on their neighbors and this is something that continued right through the program at all levels of government so that we were making sure that people were not out there without protection or without assistance if they really needed it. The emergency declaration, it worked. The laws have been enacted by you and by previous legislators gave the Governor and the Executive Branch power to do what had to be done and do it under the power of that emergency declaration. Again, it was not used very much at all. It was there in the few times that it was needed and it made a very quick and very efficient to get the job done. I commend you folks for the foresight in that situation and the fact that that power was there and was certainly put to good use.

The emergency response team, it worked. If you are not familiar with it, the emergency response team is a group of individuals from the different departments throughout state government, many of whom are probably seated up in the balcony this morning. Those people have been identified over the years really. This is not something that just came into being with this particular disaster. Those folks have been identified. They have been trained with us and by us. When I say us, I mean the total emergency response community. They are dedicated people. They are ready. They carry beepers at all

times. Those beepers go off and it gives them a message to report to, what we call the bunker, over at the Emergency Management Office and go to work. These people were called in. They worked around the clock, 24 hours a day. Those first four or five days, the same people were there almost continuously and even after that, still a 24 hour shift until we were assured that everything was done that the state would need to do. I think we had a total effort by all state agencies and I purposely am not naming any agencies, the Resolution named those folks. They are here and I do that purposely because it was a total effort.

I called commissioners or other state representatives in the middle of the day as well as in the middle of the night. I always got the answer and I always got the assistance that we needed from those folks in our time of need. The Governor's Office was manned at all times, the weekends and holidays that were involved during this spread. If you called in there, Marilyn was answering with her cheerful voice. She took calls from irate citizens that had concerns or were getting stressed as I mentioned a few minutes ago. She also took calls from people complimenting us, as a state, on the job that we were doing. In addition to the state agencies themselves, we don't want to forget the other agencies that were involved with this. The Federal Emergency Management Agency came in very quickly. In fact, it was FEMA that arranged the C-17 and the C-5A flights that came in. They moved in here in force, spread throughout the state. They are still working as we speak here today to help out the municipalities and the individuals in the state that require assistance to the various programs that they offer. They have been working extremely closely with us and I think it is working out very, very well. A number of checks have already been issued to people that really need the assistance and many more will be issued as we go along. The Small Business Administration has been very much involved. FAME has been very much involved, of course and the US Department of Agriculture has been deeply involved in helping us, particularly in the recovery phase.

The emergency response system, it worked. The emergency response system that we got set up in the State of Maine is a very simple one. It says that you, at the local level, take care of everything that you can possibly take care yourself. If you need help, you to your county. Each county has an emergency management director. If he has the where with all or the means to satisfy the local requests, then he or she satisfies that request. If that county director can't handle it, then the director calls the state, again, in the emergency operations center and we kick our resources into action. The system worked. Again, the key is back down to Maine resourcefulness and innovation. The folks at the local level just did an outstanding job. The town managers, the local police, fire volunteers, the emergency medical technicians and all of these folks were doing the things that they were supposed to do at that local level so that all of the requests did not have to come up. Obviously we could not have begun to address the needs of everybody in the State of Maine throughout this disaster. It had to be done primarily at local levels. Again, I compliment those folks. Again, however, they have been put through exercises with us and on their own. The counties conduct exercises and we conduct exercises, drills. We help them and assist them in preparing plans and, again, in some cases, some municipalities better than others. Again, in lessons learned, I think all of us have learned lessons and are making changes where we feel it is necessary. These are the folks at local levels that were going door to door in helping out.

Of course the Red Cross was involved in this. The Salvation Army was involved in this emergency response system

throughout the state. The National Guard, obviously, was involved. Here again we have an organized, trained and an equipped force and this is part of the agreement that we have, that every state has with the federal government, what the federal government says is that we will give you military units and the military equipment and we will pay most of the bills so that those folks will be ready when we, the federal government, need them. However, if you Governor or you state need those folks, you declare an emergency and they are yours. All the equipment comes at no price tag. We have to pay for the fuel and what not and in this case our particular type units, engineer units, transportation units, helicopter units, really paid off because of the fore-structure that we do have in the state.

I think it also exemplifies the federal/state role of the National Guard because while our folks were in the State of Maine performing their duties relative to handing the emergency situation that we had in the state. We had 132 of our troops from the 101st Air Refueling Wing up in Bangor stationed over in France supporting the Bosnian operation. The same as our troops that came back last fall from Bosnia were performing their federal one. You obviously have not noticed it, but the last two or three weeks, I can assure you, the skies over the State of Maine have been very busy. The 101st Air Refueling Wing, Maine Air National Guard at Bangor, has been extremely busy doing the job on the federal side that they are supposed to do obviously because of the world situation.

A couple of questions that could be asked, could we have done better and did we learn some lessons? Obviously we did. We are acting on these. Governor King has already held an after action review with representatives of all the agencies that were talked about here this morning, the utilities, the state agencies, the outside agencies that were involved. They all got together and talked about things that could have made the operation go better. I am positive Central Maine Power, Bangor Hydro and the other utilities have done the same thing from their perspective. How can we change our plans? How can we tweak them so we can be prepared to respond better the next time. We have had a meeting with all the county directors and gone through the good things, the bad things and the things we need to correct. The emergency response team has been brought together and with them we went through the whole exercise from beginning to end in asking ourselves what we can do better.

Some issues obviously came up. One of them is shelters. We have to do a better job of planning our shelter operations. We had a lot of shelters. Some of them were not as well manned or equipped as maybe they should have been, but we are working with the Red Cross and municipalities and will address that issue. Information was a big problem or a big issue in this disaster. There has been some criticism in the newspapers about the Emergency Alert System. A lot of you may be familiar with the old EBS system, the Emergency Broadcast System, which is now called the Emergency Alert System. This is a system that is designed when there is an emergency and an alert is needed. It sort of pushes a button and all the radio and television stations across the state would give a two minute message that tells them that there is an emergency on the way. In other words, if there is a tornado coming across New Hampshire, the message might say that in 20 minutes, it is going to hit the southwest coast of Maine and in 30 minutes it would be in Portland or something. That is the type of message the EAS system is designed to meet. We did not really EAS in this situation. The weather forecasters down in Gray were telling us on Monday that we were in for trouble. I don't think any of us knew quite how much trouble we were in for, but they were telling us Monday and Tuesday and Wednesday

that it was going to continually get worse and, of course, they hit it right on the button.

The system that we needed was the Public Information System. Of course, the problem there was the fact that, again, power was lost and a lot of stations went off the air, towers went down, backup fuel ran out, backup batteries were used for a while, but then they went dead. Again, we have been meeting already for two or three times with the broadcast folks seeing what we, as a state, can possibly do to help them in exchange for programs that would get information out to our folks. I am sure there are a lot of folks, a lot of citizens in the State of Maine that maybe did not have battery operated radios that have them now.

There is going to be a piece of legislation you are going to see in the next day or two, it should be printed, it is an LD that establishes an emergency management assistance compact. Believe me, this is not a knee jerk reaction to this situation. It is something that we have been working on for a couple of years. It is something the National Governor's Association has been in on and helping to develop. About half of our states have now adopted this emergency management compact. What it does is it establishes the framework, procedures, liability, compensation, licenses. All of these different things are addressed in the compact. When this particular event hit us, we realized right off quick that one of our primary needs was going to be additional generators. We knew we did not have enough in our military structure in Maine, even after we went to the other state agencies that had generators. We knew we were going to use them all up. We got on the phone with my counterpart in Massachusetts and said I need some generators and he said they were on the way. However, then the lawyers had to step in. Again, it was necessary because there were liability issues, compensation issues and all these things. There were faxes back and forth and finally we got an agreement that he signed, I signed and the generators were on the way. That process did not hold them up. However, in the future if we do have this emergency assistance compact, in being, then it is going to make it very easy. That state has it. We got it and it just comes into effect. It would be in effect anyway. We can get reaction from other states much more rapidly.

I would say that we had offers from all over the country for assistance from other National Guard organizations and other military organizations around the country. I see some Navy uniforms up in the balcony up there. Again, the Navy folks at Brunswick and other services from all over the state came in and offered assistance to us and to the citizens of Maine. Another issue I think that we are dealing with now is the issue of trees. The damage that has been done to our forests and to individual property. The trees on individual property and what effect is it going to have on tourism next fall? The leaf peepers. The widow makers that are still out there hanging precariously throughout our forest. The effect it is going to have on increased danger of forest fires with these branches and limbs lying on the ground that are going to dry out and pose more of a threat to our forest. How much debris in on our rivers and in our lakes that when the spring runoff starts from the snow melt and snow pack that is up north and starts coming south or how many trees are weakened along the shores of those water bodies that are going to come down and block dams or block spillways and cause us flooding issues? We are looking at those issues, but they are types of issues that we are going to have to deal with.

In total, when we start talking money, relative to this disaster, we took a count yesterday and when you look at everything across the board, the utilities, the state expenditures, everything rolled up as much as we could, we are in the vicinity of \$135

million and counting for this disaster. State agencies experienced a \$12.7 million bill on this thing. The communities, at this stage, are at \$17.2 million and the IFG Program, the Individual Family Grant Program, is at about \$2 million. All of these issues together, I think you can see when I started out saying that I thought that Maine reacted very well to this, I believe that thoroughly, not because Earl Adams reacted well. It was because these folks us here and you folks reacted well. Again, I talked to a number of you folks throughout this disaster and you were calling, but, again, you were calling to assist your neighbors, your constituents and citizens of the State of Maine. We couldn't always satisfy the requests that you may have had, but we had an explanation. I hope a satisfactory one when we didn't have the resource that you might have been looking for. I appreciate the professionalism that everybody, not only the Legislature, but throughout the State of Maine displayed through this event.

Tonight at the Civic Center you are going to have the opportunity to honor the true heroes of this disaster and their families. We certainly don't want to forget those folks. All these people I talked about responding, whether it be in the utility business or the state business or whatever the case may be, had families back home trying to fend for themselves while these folks were out taking care of others in the State of Maine.

In closing, I would only say, Maine, be very, very proud. You done good.

The Honorable Elizabeth H. Mitchell, Speaker of the Maine House, then addressed the Convention.

Thank you Mr. President, Major Adams and Distinguished Members of this Body and our very special guests. It is so humbling to be able to stand here and try to say thank you on behalf of all of you to the men and women of this state who lived through such a very, very hard time. I am honored and I am humbled. I am also going to be very brief.

I am going to talk to you a little bit about images. I think that helps transport us back to the good and the bad, that we all went through. As I think of the images of that storm, they are contrasting because there were images of beauty and images of sheer terror as trees came down about us. Words made images and I will never forget the description when we all stood here, all ears, when David Flanagan described what had happened. The image that came into the mind when he said the words was a neutron bomb dropping on our entire utility infrastructure. It was so devastating. What a big image. The image of darkness. My goodness, how long those nights were and yet the image of beauty, candles and the fireplace. How much fun it was that first night to play scrabble by the fireplace and how awful it was by the 10th or the 11th night to do that.

The sounds of silence. No radio. No Nintendo. No games and those of you that didn't have boom box with batteries, you had no radio at all. Complete silence that was beautiful, but awesome. The other sounds of rifle cracking sounds of trees falling in your yard. It is very frightening. The most vivid images to me were faces. At the beginning, the courageous faces and then you began to see the wear and tear in the corners of people's eyes as they tried to entertain children, as they tried to take care of the elderly, as they took care of their neighbors. Many of you in this room worked for fire departments and emergency services. You were out there on the front lines day in and day out. The faces were always determined. The sense of humor that got us through it and there are two quick images I will share with you that helped us get through the hard times. I was working late here one evening. As you know the State House

cable was underground and managed to stay with power. The Lady of Wisdom was up there flickering.

I walked out the door and I saw the cutest little toddler you have ever seen in his pajamas and his big winter boots. His mom, who works in my office, had come in and scrubbed out the dirtiest shower you have ever seen in your life and it is never used by anybody so that she could give her kids a shower. He was in the rotunda dancing around in his little pajamas and his big boots having the biggest party you have ever seen. It was great sense of humor and great resourcefulness. The final sense of humor scene I will share with you is that I do live in the country and I do have two old horses. I looked out one day and this was toward the end of our disaster and the yellow lights were flickering and one of those utility trucks was out there. I say, "Oh no, it is coming back." I looked out to see two men hopping out of the truck to pose for a photo with my horse. They are not from Maine, but I am so glad they were here. We all think of that. We think of the quilt. As the Secretary of the Senate read through this list of names, it is a quilt isn't it? All the threads that held us together.

I am going to close with something. Not so long ago, we lost another local hero. I started to think about what a hero is. We are all heroes. Sometimes we are unsung heroes and heroines, but it is the things you do every day to make life better. At the funeral of this very dear local hero, Waterville, Maine, I received this brochure. I am going to share with you something that was on his eulogy. It is by Ralph Waldo Emerson because that is my tribute on behalf of the House to all the heroes. "To laugh often and much. To win the respect of intelligent people and the affection of children. To earn the appreciation of honest critics and endure the betrayal of false friends. To appreciate beauty and to find the best in others. To leave the world a better place, whether by a healthy child, a garden patch or a redeemed social condition. To know that even one life has breathed easier because you have lived. This is to have succeeded." Congratulations to the most successful people that I have ever met.

The Honorable Mark W. Lawrence, President of the Maine Senate, then addressed the Convention.

To say that the ice storm of 1998 was one of the worst natural disasters in recent Maine history is an understatement. What it really proved to the people in Maine was that it will be remembered in the positive way that we, as a people, stood together and achieved so much in such a short period of time.

We have all heard all the stories of neighbors helping neighbor and the local stories of communities that came together as a united family to see each other through the hard days. I also want to give a special thanks to the legislators who spent time in their districts helping their constituents cut through some of the red tape that we saw and needed to have happen to get the resources. It was very frustrating for us here in the Legislature. It is difficult to legislate. You can't legislate neighbors being good neighbors. We came back here to the Legislature to find a disaster that was really beyond anything we could do. You can't make laws. You have to hope what is put in place and what you have put in place, as General Adams said, over the years, will happen. The people who have been put in place to make it happen will see that it happens. They did in the State of Maine and we are very lucky that they did that.

All these stories were great stories of the great effort of many people. The dedication shown by these hard working men and women of all organizations that are here today in our gallery, was second to none.

The ice storm of '98 brought about a camaraderie and a commitment of the many public and private organizations who combined efforts and were a true example of a government and private sector that can work together to get the job done.

The representatives of all these fine organizations and the many other unnamed heroes who responded to the ice storm with resolve, determination, ingenuity, perseverance, generosity and compassion are to be commended beyond any of our ability to commend them.

There is one story that stuck in my mind as we heard the stories come out of the ice storm. That was a story, I believe it was carried on one of the local news stations, of a CMP crew that was in Portland. It was maybe a crew of a dozen workers. They had been working for about 11 hours in a neighborhood in Portland. They broke for meal and they came into one of the local diners to have some food and get some hot coffee and to rejuvenate themselves. Upon entering the diner, they received a spontaneous standing ovation from the diners in the restaurant. This small gesture, by those in the restaurant, who knew what this CMP crew was giving and that they were giving their all and that they wanted them to know how much it was really appreciated. That small gesture took that exhausted crew and reinvigorated them and gave them the courage and determination when they finished their meal to go back out because they knew what was going on out there. This was only day four that this happened on. They had to go out there day after day after day after that in their commitment.

This Joint Convention is our standing ovation for the people in the gallery who have come here today to receive our recognition for a job that they did that was extremely well done. For going above and beyond the call of duty. For helping Maine weather the ice storm of 1998. All the people of Maine owe a great debt to you and the people you represent. The people here, not pun intended, are only the tip of the ice burg of the people who came to Maine and the Maine people who helped us.

I am going to ask some of the people in the gallery to stand up. I would like, as I do, for all of you to ignore the rule that prevents you from turning your back to the presiding officer and turn around and watch these people as they stand up and know who were the people that helped us so much during the ice storm. I am going to ask you to hold your applause until we have them all standing in the gallery.

Bonnie Bickford, Executive Director United Valley Chapter, American Red Cross; Ginger Lengenfelder, Executive Director Portland Chapter, American Red Cross; Bill Frenier, Manager, Asplundh Company; Carl Asplundh, III, Vice President, Asplundh Company; Robert S. Briggs, President, Bangor Hydro Electric Company; Robert L. Platt, Director of Field Service Operations, Bangor Hydro Electric Company; Jerry Macomber, Line Superintendent, Bangor Hydro Electric Company, Chuck Repucci, Lineman, Bell Atlantic; Peter Whitney, Engineer, Bell Atlantic; John Helm, Lineman, Bell Atlantic; Ralph Cutler, Splicer, Bell Atlantic; Lieutenant A. Ballard, Public Works Officer, Brunswick Naval Air Station; Ensign Marc Bernath, Public Works Operations, Brunswick Naval Air Station; John Dunn, Petty Officer 1st Class, Brunswick Naval Air Station; Hank Gregory, Petty Officer 2nd Class, Brunswick Naval Air Station; Ray Murphy, Disaster Preparedness Officer, Brunswick Naval Air Station; Sara Burns, Chief Operating Officer, Central Maine Power; Tony Martin, First Class Lineman, Central Maine Power; David Flanagan, CEO, Central Maine Power; Ed LePage, Project Superintendent, Ciambro; Charlie Chapman, Senior Supervisor, Davey Tree; Mike Smith, Senior Supervisor, Davey Tree; Lori Howlett, Clerk IV, Department of Transportation; Dan Robbins, Assistant Traffic Engineer, Department of Transportation; Jeff

Naum, Field Operations Manager, Department of Transportation; Judy Williams, Director, Bureau of Family Independence, Department of Human Services; Connie Mayette, Hearing Examiner/Bureau of Insurance, Department of Professional and Financial Regulation; Michael Webber, Line Superintendent, Duke Engineering Services; Edward Rauer, Chief of Logistics, FEMA; Steve Friend, Marketing and Sales Manager, Henkels & McCoy; Butch Cole, Area Manager, Henkels and McCoy; Gene Ellis, Organizer, IBEW Local 567; John Hume, Construction Manager, Lucas Tree; Arthur Batson, President, Lucas Tree; James Cornforth, Line Foreman, Madison Electric; Martin Berry, Assistant Line Foreman, Madison Electric; Major John McKenney, Deputy Chief of Staff, Maine Army National Guard; Colonel Mark Gilbert, Chief of Staff, Maine Army National Guard; William Page, President, Maine Fire Chiefs Association; John Covert, Radio Technician, Maine State Police; Tom Poto, Radio Technician, Maine State Police; Fred Hammel, Project Manager, Massachusetts Electric Construction Company; Tom Smitherman, Vice President of Generation, Transmission and Distribution, Nantahala Power and Light; Morris Leathers, Plant Services Manager, Northland Telephone; Rick Roda, Owner, Ocean State Tree Service; Fred Becker, Fire Chief, Penobscot Indian Nation; Brenda Fields, Sub Chief, Penobscot Indian Nation; John Giroux, Director, Winslow Public Works, Representing the Maine Municipal Association; Philip Van Brunt, Disaster Coordinator for Maine, Salvation Army; Captain John Bennett, Commanding Officer, Salvation Army in Lewiston; Doug Rafferty, News Anchor, WGME-Channel 13.

At the conclusion of the addresses, the Major General Earl Adams withdrew amid the applause of the Convention, the audience rising.

The purpose for which the Convention was assembled, having been accomplished, the Chair declared the same dissolved.

The Senate then retired to its Chamber amid the applause of the House, the audience rising.

The House was called to order by the Speaker.

Majority Report of the Committee on **LABOR** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-814)** on Resolve, Instructing the Workers' Compensation Board to Study and Make Recommendations Regarding the Occupational Disease Law

(H.P. 610) (L.D. 835)

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 Resolve.

Signed:

Representatives:

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. I will try to be as brief as possible and give you just the facts on this particular report. By the title it may seem to be quite a huge thing that we are trying to accomplish. Actually what we are trying to accomplish is to get a definition for occupational disease. We have four different departments working together. There are over eight different definitions of occupational disease on the books within three departments. We tried to start to study this issue and it is humongous. There is lots and lots of information available and the committee process is such that it would probably take us two or three years on our own to try to study all of this information. What we would like to get down to is a report from this group including Labor Standards, Bureau of Health, Bureau of Insurance and Workers' Comp staff to try to come out with a definition for occupational disease. In the course of the hearing and so forth, we found that there were many problems. One of which is, in the state there is occupational disease doctors that nobody seems to know who they are. We managed to find three of them who came to our hearings and told us that it would be very helpful if we could at least find a definition for occupational disease. Few of the members of the committee felt that we didn't have to set up this study committee, which there is no fiscal note on except for a reporting date back to the Labor Committee with whatever the recommendations may be. I ask that you definitely pass this. I think it is needed. Having the departments work together would expedite this report and make it available for the next Legislature. I ask you to join me in voting for this. Thank you.

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

Representative JOYCE: Madam Speaker, Men and Women of the House. The entire Labor Committee agrees that we need one definition of occupational disease, but last year when we carried this bill over, we set up a study group to work throughout the summer to try and come up with one. They came back with nine different recommendations. They said that it is premature right now to come up with a definition because we don't have the data. They gave us nine different recommendations on how to collect the data through 1998 and then in 1999, we can look at the data and formulate one definition. This bill isn't needed. Their recommendations from this study group says that they recommend that this bill Ought Not to Pass. They have already offered to meet regularly through 1998 without this legislation. We feel that this legislation accomplishes nothing that is not already being done.

I request a roll call.

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 Jay, Representative Samson.

Representative SAMSON: Madam Speaker, Men and Women of the House. I stand in support of LD 835. Occupational disease is a problem in the State of Maine as anywhere else in the world. People suffer from short-term and long-term problems from workplace hazards. We do not have a clear definition of what occupational disease is. It is my understanding that there is probably eight different definitions. All you have to do is clear this up. There is no fiscal note to this. It is necessary so that the next Legislature can look at this problem and understand what occupational disease is. I recommend that we vote Ought to Pass. 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. 415

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

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

ABSENT - Dexter, Joyner, Nickerson, Underwood, Winn, Wright.

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

86 having voted in the affirmative and 59 voted in the negative, with 6 being absent, the Majority **Ought to Pass as Amended** Report was **ACCEPTED**.

The Bill was **READ ONCE**. **Committee Amendment "A" (H-814)** was **READ** by the Clerk and **ADOPTED**. The Bill was assigned for **SECOND READING** Monday, March 2, 1998.

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

**ENACTORS
Act**

An Act Concerning Commercial Fishing in the Vicinity of Monhegan Island

(S.P. 743) (L.D. 2021)
(C. "A" S-464)

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

Representative MACK of Standish **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: 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. 416

YEA - Ahearne, Bagley, Baker, Barth, Belanger DJ, Belanger IG, Berry DP, Berry RL, Bigl, Bodwell, Bolduc, Bouffard, Bragdon, Brennan, Brooks, Bruno, Bryant, Buck, Bull, Bumps, Cameron, Campbell, Carleton, Chartrand, Chick, Chizmar, Cianchette, Clark, Colwell, Cowger, Cross, Davidson, Desmond, Dexter, Donnelly, Driscoll, Dunlap, Dutremble, Etnier, Farnsworth, Fisher, Fisk, Foster, Frechette, Fuller, Gagne, Gagnon, Gamache, Gerry, Gieringer, Gooley, Green, Hatch, Honey, Jabar, Jones SL, Jones SA, Joyce, Kane, Kerr, Kneeland, Kontos, Labrecque, LaVerdiere, Lemaire, Lemke, Lemont, Lindahl, Lovett, MacDougall, Madore, Mailhot, Marvin, Mayo, McAlevey, McElroy, McKee, Meres, Mitchell JE, Morgan, Murphy, Muse, Nass, O'Brien, O'Neal, O'Neil, Ott, Paul, Peavey, Pendleton, Perkins, Perry, Pieh, Pinkham RG, Plowman, Poulin, Povich, Powers, Quint, Richard, Rines, Rowe, Samson, Sanborn, Saxl JW, Saxl MV, Shannon, Shiah, Sirois, Skoglund, Snowe-Mello, Spear, Stanley, Stedman, Stevens, Taylor, Tessier, Thompson, Townsend, Treadwell, Tripp, True, Tuttle, Usher, Vedral, Vigue, Volenik, Watson, Wheeler EM, Wheeler GJ, Winglass, Madam Speaker.

NAY - Bunker, Clukey, Goodwin, Jones KW, Joy, Kasprzak, Lane, Layton, Mack, Pinkham WD, Savage, Tobin, Waterhouse, Winsor.

ABSENT - Joyner, Nickerson, Underwood, Winn, Wright.

Yes, 132; No, 14; Absent, 5; Excused, 0.

132 having voted in the affirmative and 14 voted in the negative, with 5 being absent, the Bill was **PASSED TO BE ENACTED**, signed by the Speaker and sent to the Senate. **ORDERED SENT FORTHWITH.**

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

JOINT ORDER - Relative to reporting out legislation by the Joint Standing Committee on Taxation applying revenue from the Tobacco Tax Relief Fund and the Tax Relief Fund for Maine Residents to reduce the state sales tax

(H.P. 1610)

Which was tabled by Representative SAXL of Portland pending **PASSAGE**. (Roll Call Ordered)

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

Representative DONNELLY: Madam Speaker, Men and Women of the House. Just to do a refresher on what this item was of earlier. It is the item for a Joint Order to allow the Taxation Committee to come out with a bill. Thank you.

The SPEAKER: The Chair recognizes the Representative from South Portland, Representative Cianchette.

Representative CIANCHETTE: Madam Speaker, Ladies and Gentlemen of the House. I rise today to support the Joint Order and ask you to join me. Just to begin with a little bit of historical perspective, I would like to start by going back only a year. Our committee, as you know, have an endeavor of comprehensive tax reform. The Tax Committee recognized the need to review and realign our entire tax code. I agreed with that endeavor. During that process, in a bipartisan fashion, we gently euthanized many bills dealing with sales tax and particularly one bill that dealt specifically with a reduction in the sales tax to 5 percent. We thought we would have an opportunity to bring these issues back in front of us. Comprehensive reform proved to be a very large and complex issue, one notwithstanding many

hours of hard work, it proved to be too large and too complex to complete in one session. Unfortunately, what this left us with was virtually an vehicle to address many important issues regarding sales tax. We were relegated to reporting out our recommendation, that barely saw the light of the day before it was placed in a file.

That brings us to where we are today. The good Representative from Waterville, my colleague on the Taxation Committee spoke yesterday on another issue about fairness. In fact, I think we hear about fairness every single day when we spend time in this hall. I think allowing our committee an opportunity to study the sales tax issue, as a stand alone issue, at this time, is a fair thing to do. Many of us, I dare say most of us, have heard the sentiment from around the state that many people want us to reduce the sales tax. Wouldn't it be fair for the citizens to know that their legislators had an opportunity, at this late moment, to study it in committee? I think so. I was approached as late as quarter of ten last night at my house with a phone call. Someone asked if they could drop by and bring me some information, at that late hour, because they felt so strongly that we needed to reduce the sales tax. I explained to him where the process was and that we would fight to try to have the opportunity to analyze that issue. Is it not fair to provide an opportunity for a bill to have a public hearing dealing with this issue. Is it not fair for this body to thoroughly deliberate such an important issue. I think the answer is yes. I think our constituents deserve an opportunity or deserve to know that we took this opportunity to debate this issue thoroughly.

We have heard it put many ways about promises and things like that. In my opinion, the Legislature shook that hands of the citizens several years back and we made an agreement when we shook their hands. That is that this Legislature needed help. When we said we didn't need the help anymore, we would return the favor. Said differently, what the Legislature said was, when the occasion arises, we will rise to the occasion. I ask you, are we being true to this institution that we all serve within with such devotion to not do all that we can to maintain its integrity by honoring our commitments? There are those who will say that we don't have the financial ability or the condition to do it and there are those of us who believe we do. Shouldn't the Joint Standing Committee on Taxation, a policy committee that is devoted solely to working on issues of this nature, be allowed to debate and analyze this issue and report out its recommendations?

I would like to change the focus just briefly and talk about a handout that I hope you have all receive this morning that I asked to be distributed. It is called *The Effects of Cutting the 6 Percent Maine General Sales Tax to 5 Percent*. This handout speaks specifically to the regressive nature of our sales tax. By far the most regressive tax of all of our major taxes. From this, you can see that the lowest 20 percent in the total income group, that is family income ranging below \$25,000 would benefit the most. The second 20 percent, that is family incomes from \$25,000 to \$36,000, receive that next highest benefit and so on down the line or up the line until the top 1 percent will benefit the least. I personally believe the people at the lower end of this income scale should have the additional dollars in their pockets, the additional disposable income that they would receive from a 1 cent reduction.

We have all heard that Maine is a high tech state. The Chief Executive Officer has said repeatedly that our total tax burden is too high and we must begin to put in on a glide path to a lower level. Let's let the Tax Committee work on these issues, as I said before, as a stand alone issue. Let it stand on its own merit and recommend to you, the full Legislature, whether this is a

proven way for us to address this effort and to deal with the funds in our Tax Relief Fund. We have an opportunity right now to maintain the trust of the people of the State of Maine. This institution deserves to have the trust of the people. The next time that we want to extend our hand, as a legislative body, and ask the citizens to shake it, we want them to trust us. We don't want them to bite our hand. They could because we are not the hand that feeds them. They are the hand that feeds state government. Thank you and I urge you to support passage of his.

The SPEAKER: The Chair recognizes the Representative from Bucksport, Representative Bigl.

Representative BIGL: Madam Speaker, Ladies and Gentlemen of the House. I would like to have this go on and be debated in front of you and in the other house. I want this for two reasons. I will give you a little background. One, you all received from me, a year ago, a little booklet. It had 50 states in it. It completely outlined the overview of the tax structure for married couples of all ages. One thing that came out very, very quickly was, as has already been told to you, very regressive in the lower 20 percent. It isn't easy as I go out and do like all of you do visiting with my constituents. It is not easy to go out there and see how they live. The kinds of money that they need to live on. The kinds of jobs that they would like to have. They own no homes. It is hard to give them relief there. Most of them pay very little, if any, income tax. It is hard to give them relief there. The only place that I can find to help those constituents in my area is to look at the sales tax. As a matter a fact, I have been talking around here about giving them special exemptions getting down to 2 percent and give them cards that when you walk into the store that they could hand the card to the clerk and say, here is my card, cut me down to 2 percent. I can actually give them something in their pocket. I would like to have the opportunity to bring that to the floor so we can discuss putting that money into their pocket. Thank you.

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

Representative BUCK: Madam Speaker, Ladies and Gentlemen of the House. There is another reason that I think we should support this sales tax exemption. We heard earlier from the good Representative from South Portland about the issue of fairness. I needn't repeat what he already said, but I think we ought to think long and hard about the issue of fairness and how we are going to reduce these taxes. Under the proposal that we have presently before us in terms of raising the standard deduction and the homestead exemption, they are good proposals and I would never myself, personally, vote against any kind of a tax relief program that returns taxpayer money to the people. The problem with that is that there are many taxpayers of Maine that will not be able to benefit from that particular program. Reducing the sales tax affects each and every citizen of Maine. It is a program that will affect every one of them. It is something in terms of fairness that we should do.

Last year I asked the State Planning Office what affect a 1 cent reduction would have on the sales tax in terms of economic growth. The answers that I received are interesting. To the question of the reduction of 1 cent, at the time it was going to cost the state \$100 million in lost revenues that they anticipate at the end of the fiscal year, we would gain back \$36 million in additional sales tax revenues because of the increase in retail sales particularly in the border communities.

The other interesting thing and I think the main point I want to make here is that a 1 cent reduction in sales tax will create 900 new jobs in Maine. This, by the way, is coming from the State Planning Office. Those 900 new jobs would be 400 retail jobs

and 500 jobs in other sectors of our economy. It seems to me that that particular point alone should have us all endorsing this proposal. We can have tax reduction for all the people of Maine and at the same time we can have economic growth and provide new jobs for Maine people. I would urge you to seriously consider this proposal.

The SPEAKER: The Chair recognizes the Representative from Kittery, Representative Lemont.

Representative LEMONT: Madam Speaker, Ladies and Gentlemen of the House. I rise today in support of the order. In the State of Maine we have three major taxes, income, property and sales tax. We are fortunate enough in the Taxation Committee to have a piece of legislation that deals with both the property and income tax. The sales tax is the missing piece of this puzzle. We very much need to have this recommitted to committee to have the opportunity to discuss in committee and debate the third piece of taxation in the State of Maine. I know we all want tax relief for the State of Maine. We all support that. I truly believe that the sales tax is the way to go. I would like the opportunity to debate this in committee once again and effectively draft legislation that benefits all the citizens of the State of Maine concerning tax relief. I will not stand here today and debate all the merits of the sales tax reduction. We have heard this earlier from previous speakers, but I would hope you would all help support us and our efforts to bring meaningful tax relief to the citizens of the State of Maine. Thank you.

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

ROLL CALL NO. 417

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

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

ABSENT - Joyner, Nickerson, Underwood, Wright.

Yes, 70; No, 77; Absent, 4; Excused, 0.

70 having voted in the affirmative and 77 voted in the negative, with 4 being absent, the Joint Order **FAILED PASSAGE.**

Representative KONTOS of Windham assumed the Chair.
The House was called to order by the Speaker Pro Tem.

Majority Report of the Committee on **LEGAL AND VETERANS AFFAIRS** reporting **Ought to Pass** on Bill "An Act to Improve Voter Participation"

(H.P. 1455) (L.D. 2046)

Signed:
Senator:

DAGGETT of Kennebec

Representatives:

CHIZMAR of Lisbon
BIGL of Bucksport
GAGNE of Buckfield
TUTTLE of Sanford
TRUE of Fryeburg
TESSIER of Fairfield
FISHER of Brewer

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

Signed:

Senators:

FERGUSON of Oxford
CAREY of Kennebec

Representatives:

LABRECQUE of Gorham
BELANGER of Wallagrass
GAMACHE of Lewiston

READ.

Representative TUTTLE of Sanford moved that the House **ACCEPT** the Majority **Ought to Pass** Report.

Representative BELANGER of Wallagrass **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 PRO TEM**: 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. 418

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

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

ABSENT - Joyner, Kerr, Nickerson, Underwood, Wright.

Yes, 75; No, 71; Absent, 5; Excused, 0.

75 having voted in the affirmative and 71 voted in the negative, with 5 being absent, the Majority **Ought to Pass** Report was **ACCEPTED**.

The Bill was **READ ONCE** and was assigned for **SECOND READING** Monday, March 2, 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. 756) (L.D. 2034) Bill "An Act to Correct Errors and Inconsistencies in Licensing Requirements for Licensed Insurance Professionals and Insurers" Committee on **BANKING AND INSURANCE** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-462)**

(H.P. 1374) (L.D. 1923) Bill "An Act to Improve Employment Tax Increment Financing" Committee on **TAXATION** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-818)**

(H.P. 1413) (L.D. 1977) Bill "An Act to Revise the Hazardous Occupations Provisions of the Child Labor Laws" Committee on **LABOR** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-813)**

(H.P. 1442) (L.D. 2006) Bill "An Act to Expand the Potato Licensing Laws to Include Rotation Crops" Committee on **AGRICULTURE, CONSERVATION AND FORESTRY** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-817)**

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. 721) (L.D. 1964) Resolve, to Ensure that Services for the Deaf and Hard of Hearing Are Provided in an Efficient, Accessible and Cost-effective Manner (EMERGENCY) (C. "A" S-460)

(H.P. 1493) (L.D. 2092) Bill "An Act to Clarify Certain Laws Pertaining to the Department of Environmental Protection, Bureau of Land and Water Quality" (C. "A" H-812)

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 the House Paper was **PASSED TO BE ENGROSSED AS AMENDED** and sent up for concurrence.

BILLS IN THE SECOND READING

House As Amended

Bill "An Act to Amend the Membership Requirement for the Cumberland County Budget Advisory Committee"

(H.P. 1388) (L.D. 1941)

(C. "A" H-811)

Reported by the Committee on **Bills in the Second Reading**, read the second time, the House Paper was **PASSED TO BE ENGROSSED AS AMENDED** and sent up for concurrence.

Bill "An Act Regarding the Taxation of Goods Purchased in Connection with the Operation of a High-stakes Beano or High-Stakes Bingo Game"

(H.P. 1307) (L.D. 1855)
(C. "B" H-810)

Was reported by the Committee on **Bills in the Second Reading** and **READ** the second time.

On motion of Representative BARTH of Bethel, was **SET ASIDE**.

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

Representative BARTH: Madam Speaker, Men and Women of the House. I would like to read into the record just a couple of short paragraphs from the letter I received from a constituent, which then leads to a question that I would like answered to anyone who could answer it. The letter states and this is regarding LD 1855, "An Act Regarding the Taxation of Goods Purchased in Connection with the Operation of a High-stakes Beano or High-Stakes Bingo Game." I quote, "The substance of the bill varies from the title in a very critical way." If the bill simply provided that goods purchased in connections with the operations of a high-stakes bingo game operated by a federally recognized Indian tribe shall be exempt from taxation, I might not object, but instead the version of the bill provided to me states that a tribe operating a high-stakes bingo is operating in its governmental capacity. Under Title 30, Section 6026 (1), Internal tribal matters including tribal government shall not be subject to regulation by the state. My concern is that passage of LD 1855 will result in the tribes' claiming that the operation of high-stakes bingo is therefore no longer subject to regulation by the state. Surely the Legislature does not intend such a result. If anyone can answer whether or not this is true about this bill, I would appreciate it. Thank you.

The SPEAKER PRO TEM: The Representative from Bethel, Representative Barth has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Sanford, Representative Tuttle.

Representative TUTTLE: Madam Speaker, Men and Women of the House. The gentleman is correct.

Representative BARTH of Bethel **REQUESTED** a roll call on **PASSAGE TO BE ENGROSSED as Amended**.

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

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

Representative BUCK: Madam Speaker, Ladies and Gentlemen of the House. I would like to ask a question for anyone who can answer it. Based upon the response the good Representative from Bethel received, my concern is the same as his, I guess. I would like to know, definitely, if we pass this bill, what affect it will have if two or three years from now one of the Indian Nations decides to implement gambling on some of their land. Does this mean that the state has no authority in that? Does it mean that the state will not have any ability to tax part of that revenue like we presently do with our lottery operations? Could anybody definitely answer those two questions please?

The SPEAKER PRO TEM: The Representative from Yarmouth, Representative Buck has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Sanford, Representative Tuttle.

Representative TUTTLE: Madam Speaker, Men and Women of the House. It is a good question. Representative Buck had been a member of the Legal and Veterans Affairs Committee in past Legislatures and I would assume that Representative Buck

that our committee would have the authorization to be involved in that situation. I think if any changes of that nature would have to be addressed by this Legislature at that time.

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

Representative SPEAR: Madam Speaker, Ladies and Gentlemen of the House. In further answer to that question, the amendment that is here specifically tightens it be no games. The original bill was more broad and we were concerned about it. The amendment that is on there specifically tightens it to just bingo or beano games. We felt and the Bureau of Revenue Services says that it is heightened to just that. That is why we feel comfortable with the amendment. Thank you.

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

Representative BUCK: Mr. Speaker, Ladies and Gentlemen of the House. I don't want to belabor this, but I do have a real concern over it. The good Representative from Nobleboro indicated that the amendment tightens the bill, but as I read both the bill and the amendment, I don't see it. It still doesn't answer that lingering question about, in the future, what happens if the Indian Nations decide to implement gambling? I am even wondering if perhaps we might get an Attorney General's opinion on this before we proceed further.

The SPEAKER PRO TEM: The Representative from Yarmouth, Representative Buck has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Fryeburg, Representative True.

Representative TRUE: Madam Speaker, Ladies and Gentlemen of the House. Having been one that has taken the time to read the Indian's and we have on several occasions had an opportunity to vote relative to the things which have been brought up by Representative Barth and Representative Buck. I feel that certainly the State of Maine is protected under that and certainly it would not abrogate the duties of the Legislature.

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

Representative ROWE: Madam Speaker, Men and Women of the House. I rise to help try to answer the question to the best of my ability. I am on the Majority Ought Not to Pass Report. I will be voting against this, but to help answer the question, I believe it is true that the Bureau of Taxation, the Executive Director or Director of the Bureau, did recommend a change that is in the Minority Report, which does deal with this issue and it makes it a very narrow exemption that deals with the sale of tangible personal property, which is for use by the tribe only indirectly in the use of high-stakes beano or high-stakes bingo games. High-stakes beano and bingo are defined in statute. That is very clear. It must be at a facility owned solely by the tribe. If you have a facility and there is private ownership, the part of the equipment that is purchased by the private owners will not get the tax exemption. I think it is true that this is crafted very narrowly to achieve the single purpose of exempting from sales tax the personal property that is purchased in a facility owned by a federally recognized Indian tribe or nation, the items that are used for bingo or beano.

Originally, in the original bill there were some concerns and I think everybody had these concerns that were involved. The Attorney General came in and they specifically referenced the Maine Indian Claims Settlement Act. There was some concern that the original bill could have some unintended consequences that were very serious in nature. I think that is what has been eluded to today. It is my belief that this amendment is drafted so

narrowly that it would not have those unintended consequences. I do intend to vote against this. Thank you.

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

Representative BARTH: Madam Speaker, Men and Women of the House. My concern is not what is taxed, whether it is limited to high-stakes bingo only. My concern is the concern of my constituent that, I will read it again. "Tribe operating high-stakes bingo is operating in its governmental capacity." If that is the case, then under Title 30, which I mentioned before, tribal government shall not be subject to regulation by the state. I haven't really gotten an answer to that other than the good Representative from Sanford said that this was correct. If that is the case, are we opening a can of worms that goes far beyond the Indian Lands Settlement Act by allowing them or freeing them from government regulation? I am not even talking about taxation. This, to me, goes far beyond that. Thank you.

The SPEAKER PRO TEM: The Representative from Bethel, Representative Barth has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Nobleboro, Representative Spear.

Representative SPEAR: Madam Speaker, Men and Women of the House. In response to his question, I believe that I can answer it in this way. For the past 10 years, they have not paid this sales tax because they have been considered a governmental entity. The Bureau of Governmental Services has determined them to be, in their opinion, a business, a business venture. If it was going to be determined a business venture, it would have to have the statute changed to allow this exemption. They always have been considered a governmental venture. Thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Penobscot Nation, Representative Loring.

Representative LORING: Madam Speaker, Ladies and Gentlemen of the House. It was not the intent of this bill to make a subtle try to allow us to get into casinos or whatever later on. We are simply trying to protect the assets that we have now. We are trying to protect them from being taxed. We use the money from these games to help support the services on the tribe, police, fire and emergency services. We pay a fee to the state for bingo in lieu of tax in the amount of \$50,000 a year. This taxation would amount to double taxation. I would urge that you vote for the passage of this bill.

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

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

The SPEAKER PRO TEM: The Representative may pose her question.

Representative PLOWMAN: Madam Speaker, Men and Women of the House. Could someone tell me if, based on what I just heard from one of the good Representatives, the tribe has already been designated as a municipality or a corporation and therefore, already has tax-exempt status. Is that what I understand?

The SPEAKER PRO TEM: The Representative from Hampden, Representative Plowman has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from the Penobscot Nation, Representative Loring.

Representative LORING: Madam Speaker, Ladies and Gentlemen of the House. The answer to that question is yes. We have been recognized as a municipality for some things. We maintain our government status as a separate government in other things.

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

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

The SPEAKER PRO TEM: The Representative may pose her question.

Representative PLOWMAN: Madam Speaker, Men and Women of the House. For persons who are familiar with the Maine Indian Claims Settlement Act, could you explain to me from where the ability to host and continue to have high-stakes bingo flows. Is it an issue where the state under its jurisdiction has allowed this activity or is this an issue where the tribe has claimed sovereignty and wishes under the government to claim sovereignty for tribal bingo under its tribal governmental mantle versus its municipal governmental mantle? My question is, from where does the authority come?

The SPEAKER PRO TEM: The Representative from Hampden, Representative Plowman has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Portland, Representative Rowe.

Representative ROWE: Madam Speaker, Men and Women of the House. If the question is, where does the authority come for federally recognized Indian tribes to operate high-stakes beano and bingo operations? It is in Maine statutes. There is a specific statute which expressly authorizes the Chief of the State Police to issue licenses to operate high-stakes beano and bingo operations to any federally recognized Indian tribe. That is not available to others. Thank you.

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

Representative PLOWMAN: Madam Speaker, Men and Women of the House. Based on the explanation just given, I would urge you to defeat the passage of this bill. At this point, we will be looking at a question as to whether the government of the State of Maine will continue to be able to regulate high-stakes bingo or whether the sovereignty of the tribe will prevail and the State of Maine will lose its ability to regulate high-stakes bingo. I object, not to the tax status, but to the language that may be enabling language, which has not been considered and which would affect the Indian tribal contract between the State of Maine, the tribes and the federal government. Thank you.

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

Representative GAGNON: Madam Speaker, Men and Women of the House. I think some of these issues were of concern to the committee also. That is why we struck the bill in the Minority Report, most of the details. We placed the exemption in the tax code. It is simply that. It is a tax-exemption for high-stakes beano operator Indian tribes. That is what is in the amendment. We clarified it. It is the same type of exemption that you would find in hospitals, churches or whatever else you can find in the tax code. Specifically our purpose and specifically for sales tax. Thank you Madam Speaker.

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

Representative SPEAR: Madam Speaker, Ladies and Gentlemen of the House. Once again, it is very simple. For the past years, they have not been paying this tax. It is money we will not be losing because they have not been paying. The reason this is coming up is because the Bureau of Revenue Services changed status from, they believe that instead of a municipal government, it is a business enterprise. If it is going to be like that, even though this money is still going to go for their government. Therefore, they need that exemption if their

government is going to be able to operate like the other towns here in the State of Maine. That is the simple reason why this is being done. This amendment tightens it up to be very specific to what it is as you have already heard here. I would urge you to pass this to be Engrossed. Thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Bethel, Representative Barth. 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 BARTH: Madam Speaker, Men and Women of the House. I have no objection to the tax exemption. That is not the issue. What I am afraid of and what my constituents are afraid of is that the way the bill is written that it could lead to problems down the road. That is my objection. That is why I am against the bill in its present form. Thank you.

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

Representative ROWE: Madam Speaker, Men and Women of the House. I apologize for getting up again. I simply want to say that the Representative from Bethel, I understand his concern. It is my opinion and I believe that this is the opinion of individuals, that that is not an issue. This bill has been narrowly drafted. It doesn't say anywhere in this amendment that the operations of high-stakes beano or bingo is considered a government operation. It is not in the amendment. I am voting against the bill, but I am telling you if you are voting against the bill because you have the fears that the Representative from Bethel has, I would suggest that that shouldn't be a fear. Again, we discussed this on the committee. The amendment has been narrowly drafted. I am just trying to eliminate some confusion if you have it. That is my opinion and I believe that is the opinion of the other members of the committee who voted for this. I believe that was the opinion of the attorneys that were consulted by the Executive Director of the Bureau of Taxation and the Attorney General's Office. You can contest anything and challenge anything legally. Sure you can do that. I am just suggesting that I believe the thing is narrowly crafted so that it does not open a can of worms with respect to losing other tax status with respect to the governmental operation of the federally recognized Indian tribes in Maine. Thank you.

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

ROLL CALL NO. 419

YEA - Ahearne, Bagley, Belanger DJ, Bigl, Bolduc, Bouffard, Brooks, Bruno, Bryant, Bull, Cameron, Chick, Chizmar, Clark, Colwell, Davidson, Desmond, Dexter, Driscoll, Dunlap, Dutremble, Fisher, Frechette, Gagne, Gagnon, Gamache, Gerry, Goodwin, Gooley, Hatch, Honey, Jabar, Jones KW, Jones SL, Jones SA, Joyce, Kane, LaVerdiere, Layton, Lemaire, Lindahl, Lovett, Mailhot, McKee, Meres, Mitchell JE, O'Brien, O'Neal, O'Neil, Pendleton, Perkins, Pieh, Pinkham RG, Pinkham WD, Poulin, Povich, Powers, Quint, Richard, Rines, Samson, Sanborn, Savage, Saxl MV, Shannon, Shiah, Sirois, Skoglund, Snowe-Mello, Spear, Stanley, Stedman, Stevens, Tessier, Thompson, Tobin, Tripp, True, Tuttle, Usher, Volenik, Watson, Wheeler GJ, Winglass, Winsor, Madam Speaker.

NAY - Baker, Barth, Belanger IG, Berry DP, Berry RL, Bodwell, Bragdon, Brennan, Buck, Bumps, Bunker, Campbell, Carleton, Chartrand, Cianchette, Clukey, Cross, Donnelly, Farnsworth, Fisk, Foster, Fuller, Gieringer, Joy, Kasprzak, Kneeland, Labrecque, Lane, Lemke, Lemont, MacDougall, Mack, Madore, Marvin, McAlevey, McElroy, Morgan, Murphy, Nass, Ott,

Peavey, Plowman, Rowe, Saxl JW, Taylor, Townsend, Treadwell, Vedral, Waterhouse, Wheeler EM.

ABSENT - Cowger, Etnier, Green, Joyner, Kerr, Kontos, Mayo, Muse, Nickerson, Paul, Perry, Underwood, Vigue, Winn, Wright.

Yes, 86; No, 50; Absent, 15; Excused, 0.

86 having voted in the affirmative and 50 voted in the negative, with 15 being absent, the Bill was **PASSAGE TO BE ENGROSSED as Amended** and sent up for concurrence.

By unanimous consent, all matters having been acted upon were **ORDERED SENT FORTHWITH**.

UNFINISHED BUSINESS

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

HOUSE DIVIDED REPORT - Majority (11) **Ought to Pass as Amended by Committee Amendment "A" (H-809)** - Minority (2) **Ought Not to Pass** - Committee on **EDUCATION AND CULTURAL AFFAIRS** on Bill "An Act to Clarify the Law Regarding the Discipline of Exceptional Students"

(H.P. 1006) (L.D. 1398)

TABLED - February 25, 1998 (Till Later Today) by Representative RICHARD of Madison.

PENDING - Motion of same Representative to **ACCEPT** the Majority **TO PASS AS AMENDED** Report.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Farmingdale, Representative Watson.

Representative WATSON: Madam Speaker, Men and Women of the House. I rise to oppose the pending motion and ask you to consider carefully the issue before us. Needless to say with the minority vote of two, we can assume that most of the committee felt comfortable with supporting this bill regarding the discipline of exceptional students. Unfortunately, I did not share their certainty. For me, so many questions went unanswered. Even the bills sponsor had the same expectations as many of us on the committee that the Department of Education would have completed their process of seeking public input in a timely manner. Maine state special education regulations are going through the process of being rewritten to assure compliance with the federal law, IDEA. This process will be final by July 1, 1998. All educators and families will have an equal opportunity to address suspension in the rulemaking process. Isn't this why we have a process to address such issues? Do we need another law to complicate the issue itself?

You all received a printout of the schedule for this information-gathering to occur. Two days ago it began in Orono and the of the nine sites listed, Augusta is slated for March 9 for this public forum. It is a little late if we pass this bill today. I need to know more before I can conveniently decide to stop providing valuable services based solely upon economic consideration. We certainly have ample information from those who control administrative services. There were too few spokespersons for those families whom these changes would affect before our committee. Currently schools can and often do provide uninterrupted services to students if they have been suspended. Case by case, and in the best interest of the students, this change proposed would require that these services only be provided when suspensions total more than 10 days in a school year. I am in the business of educating students, shouldn't we look at ways to support our students with

challenging behaviors? Children are our future. Children with disabilities and even children with the severe disabilities can grow up to become good citizens with the right support. If this bill is passed, it may compound already difficult efforts being made on behalf of these students. I would urge my good colleagues to please vote against the pending motion and do not be supportive of what appears to be a quick fix to a very complex educational issue. Thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Houlton, Representative Clukey.

Representative CLUKEY: Madam Speaker, Ladies and Gentlemen of the House. I am the sponsor of this bill. It was carried over from the last session and I hope you will support it. Equal access to education for students with special needs was established as a federal right in 1977. The idea was fairly simple under what is now called the Individuals with Disabilities Education Act. Children with disabilities would receive special help with tutors. Now, 20 years later, the law is being used and abused in ways its planners never imagined. Originally designed to force public schools to embrace thousands of severely disabled children, special education is now dominated by students who have only minor learning or behavior disabilities. Many so broadly defined they could apply to virtually any child at some point. It is true that many special education students are genuinely disabled. Discovering a disability like dyslexia, for example, has been a turning point in a career in a launching pad to success for many students who, at one point, thought they just could not read. Studies have shown that 80 percent of the general population could be found to have a learning disability under the broad guidelines that now currently exist.

Specialists define learning disabilities as a gap between potential and performance, yet there is nothing in the law to define how much of a gap constitutes a disability. I would like to read an article from a major newspaper last year in which they talked about Special Ed. They talked about a student that had been classified as learning disabled. I quote, "His profile in state hearing records describe him as well-liked by his teachers and peers. An active member of his school and community. He is in several school organizations, plays sports and is in the band. He has an honest track and has gotten all A's. Six months into his freshman year, he got a 65 on an Algebra II quiz. The poor grade, according to his profile, was due in large part to problems with concepts and quadratic equations in the Pythagorean Theorem, which may be related to his disability. A learning disability, in turn, was characterized as difficulty sorting main idea concepts within a series of details, Attention Deficit Disorder." I quote that just to show you how easy it is for a student to be put in special education.

Originally the program cost roughly \$1 million per year nationwide. Today special education is costing US taxpayers about \$60 million a year. The split is roughly \$3 million from the federal government and \$57 million from the state and local units. For every dollar spent on education in the United States, 20 cents goes to these programs. Per pupil about twice as much is spent on the 5 million special education students in the United States then on the 52 million regular students. In Maine in 1997, 218,560 total students, there were 33,055 students receiving special education at a cost of \$128.5 million per year. During the last five years, while the total student population in Maine was increasing by 1 percent, the number of students receiving special education increased by 14 percent. It went from \$98 million to \$128 million per year. These figures are from state and local districts only and do not include federal funds.

If anyone is familiar with what goes on in our schools today, would know that we have a serious discipline problem in many of

our schools. It is hard for me to believe what some of our school officials and teachers have to put up with on a daily basis. Teachers are routinely verbally or even physically assaulted. Some schools have had to even install cameras on school buses to ensure the safety of drivers or other students. There are 14 categories of special education in Maine, but only three categories make up 81 percent of all the special education students, learning disability, speech and language and behavior impaired. While it is true that a lot of discipline problems in school can be attributed to regular students, these three categories of special education students are very much capable of causing major disruptions in the classroom or on school buses or on the school yard. They do so on a regular basis. These three classifications of special education students impose an additional burden on schools because under the federal act, Charlie has been labeled as needing special education regardless of how minor the disability, he or she can't be suspended by the public school system for more than 10 cumulative days in any one school year without a continuation of their special education program. What this usually means is the student is sent home with a full-time tutor after the 10 days.

The federal rules are restrictive enough, but Maine has gone a little better than this. In Maine a special education student can't be sent home for even one day without a tutor, no matter how disruptive the behavior or how minor the disability. It makes no difference if the behavior was a manifestation of the students disability or not. The student is a special education student. He simply cannot be sent home no matter what, unless he goes with a full-time tutor. There have been several rulings and studies over the past few years that have supported the contention that Maine's rules go way beyond federal requirements under the IDA in the area of discipline. One study was commissioned by the Maine Administrative Services with Children with Disabilities. You have a letter on your desk now that was put out by them. They support my bill. It was done by Eric Hurlin of the law firm of Drummond, Woodsum and MacMahon of Portland. Hurlin is considered to be one of the most knowledgeable attorneys in the state regarding special education laws. The same firm did a similar study for Maine School Management concerning the legality of my bill, LD 1398. They said my bill was perfectly consistent with federal law. An advisory ruling from the United States Department of Education, 1995, pointed out that Maine rules go beyond federal requirements. This was also pointed out in a publication of the Maine Principal's Association in 1997 entitled *Schools Offer Principals* and most recently the Maine Attorney General ruled that this bill is consistent with federal law. In spite of the urging of the local administrators of Special Ed., the Maine School Management, the Maine Principal's Association and others over the past few years. In spite of the hardship this is causing in our schools, the Maine Department of Education has consistently refused to change these rules. LD 1398 will force them to change this regulation and bring it in line with federal requirements.

I would like to just address the information you have been getting regarding the Alliance for the Mentally Ill. I have great respect for these people. I am glad that somebody is looking out for these types of children. I think what they have been putting out is a misrepresentation of my bill. If you believe that large numbers of mentally disabled students that have multiple handicaps, students that have serious disabilities are going to be suspended from school because of my bill, I think you should vote against it, I would, myself. If you believe, as I do, that teachers and administrators in these schools treat these children with concern, compassion and the program is very narrowly

defined, they are not suspended from school, then you should vote for my bill.

Ladies and gentlemen of the House, I ask you to support this legislation and get school administrators and teachers the tools to ensure that all children, including children with disabilities have safe schools and an orderly learning environment. Thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Saco, Representative Kane.

Representative KANE: Madam Speaker, Men and Women of the House. Disabled children, those who are behaviorally impaired, are not easy to manage. That is an accepted fact. The progress over the last 20 and 25 years calls for all of us, including school systems and communities to assist and support in a management of this behavior. The proposed legislation is maybe well intended, certainly to make it more easy and convenient for school administration and teachers, but it is misguided and it represents substantial regression in what we have learned and what we have developed on behalf on the civil rights of disabled children. Remember the these are not adults who are just deliberately challenging the system. These are children whose neurological or emotional deficits, by and large, impair their judgment and impair their ability very often to conform. When they are disruptive of the educational process for other children, they should indeed be managed. The behavior does need to be managed. The children ought not to be rejected and excluded from the school systems because of this, without support. This represents, in my judgment, a serious abdication of responsibility for our local schools. Think for a moment of where the burden of the management of these children's behavior gets shifted. It gets shifted exclusively back onto families. Children getting suspended without support and having to stay at home, working parents, what are they supposed to do? We have come a long way. We have come way too far to turn the tide and begin to develop such regressive policy. I urge you to defeat the pending motion. Thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Mapleton, Representative Desmond.

Representative DESMOND: Madam Speaker, Men and Women of the House. LD 1398, "An Act to Clarify the Law Regarding the Discipline of Exceptional Students" does not take anything away from the students with disabilities. It does give teachers and school administrators some guidelines when dealing with unruly students. In hearings and work sessions of the Education Committee we heard from school personnel that had been verbally and physically attacked by students. They felt their hands were tied as far as disciplining these students was concerned. They felt the law, parents and school administrations were not supportive. Having been an educator for many years, I have seen any manner of disabled student, some mild and some severely. There have been no pull out programs at that time to accommodate these disabilities and the class sizes were upwards to 40. Those were different times. Schools are asked to take on more and more of what used to be the responsibility of the parents and the community. The schools need help. The rights of all students must be protected. Special education rules and requirements must be spelled out. Exceptional students do need more attention and understanding than regular students. We cannot make everything equal. Equal is not always fair and we must be fair. Exceptional students may have problems that are disruptive to the classroom. This behavior is related to the disability. However, the exceptional student who misbehaves intentionally there must be consequences for this misconduct. It is unreasonable to assume that it is all right for one student to

dominate the class and jeopardize any chance for learning to take place.

Ultimately, what is learned by the child with the disability? It is that he or she has power to monopolize and there will be recurring episodes. This is not a healthy attitude. We are not doing this child a favor at all. The rest of the students will realize that they are being short changed. This is not fair to any of the students, including those with disabilities. You can make compelling arguments for leaving a misbehaving student in the classroom if they have a disability. That is an easy course to imagine if you have never been a teacher with 30 to 40 students in the classroom who all have the right to an environment that is safe and conducive to learning. You can probably remember a time when you were in the classroom and there were students that took up all the time with the teacher. The new federal regulations titled, Individuals with Disabilities Education Act, states that the right to free appropriate public education for children with disabilities who have been suspended or expelled from school begins on the 11th school day in a school year that they are removed from their current educational placement.

LD 1398 would bring Maine regulations in regard to children with disabilities more in line with federal. The first 10 days, whether consecutively or cumulatively, they will not have a tutor. A student who has been identified as one with a disability may not be suspended or expelled for any behavior that is related to that student's disability. If the misconduct is unrelated to the student's disability, the school is free to proceed with the same discipline it would apply to non-disabled students. There is no requirement that services be provided the student outside of the school. Remember, this may be a suspension for one day. The student would be without help for that one day. Students are not suspended and sent home to an empty house, whether they have disabilities or whether they do not. Parents are called and must make provisions for the student. It is especially important for regular students, teachers, staff and the exceptional students themselves to have some recourse to deal with violent behavior. We are not talking about just routine everyday behavior. We are talking about violent behavior. The Maine Administrator for Services for Children with Disabilities, MADSEC, do support this bill that will assist in applying discipline more fairly and equitably to all students without harming students with special needs. I ask for your support for the Ought to Pass report. Thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Portland, Representative Farnsworth.

Representative FARNSWORTH: Madam Speaker, Ladies and Gentlemen of the House. I have been involved in disabilities services for approximately 30 years of my career. One of the things that I have learned over the years has been the fact that absence from programming for people with disabilities is extremely traumatic. It actually will result in regression. People say that one day, I think the issue boils down to the need to have consistent ongoing programming for these individuals. One of the points that I think really needs to be made clear and Representative Kane eluded to it is that one of the basis concepts that goes along with a disability, that is the concept of adaptive behavior. When you look at the definition for people with developmental disabilities, which is a broad range of differing kinds of disabilities. It is a federal definition. One of the primary categories or criteria is what they call adaptive behavior skills. That is the ability to take a social situation or a learning situation and adjust appropriately to that. Of course, when those skills are not there, that can create some major problems in terms of an individuals adjustment. The original planning around PL 94142, which was the original bill supporting education for our handicapped children was to basically say that each individual

child needs to have their own education planned to address their particular needs. Those needs not only include what is occurring educationally, but what occurs behaviorally. I think it is important to understand that I think this bill is an essential primarily because each individual's plan needs to address the behavioral issues that may be going on and a plan to intervene appropriately. I do not believe that expulsion from school for one day or two days is the answer. I do believe that effective individualized educational planning is the answer and that that is where the intervention needs to occur on the part of the educational professionals. I think it is also very important that we take a look at the need to suit the individual punishment or disciplinary action to the individual child in this particular situation and that a blanket approach like this is offering really is not the answer. I would urge you to vote against this particular bill.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Fryeburg, Representative True.

Representative TRUE: Madam Speaker, Ladies and Gentlemen of the House. I would like to answer two or three things that have been said this afternoon to see if I can't straighten them out or someone to straighten me out. In dealing with this type of youngster and I am proud to say that I probably did this, in fact, I know I was the first private school to have a department of special education and so we looked very thoroughly into the rules and regulations and there are two or three things that have come up and got my mind to thinking while people were speaking about this issue. Number one, is the fact that it is true that these people are under IEPs. It is not true that all of these people don't know the difference between right and wrong. If you wait for new IEPs, in most schools, it takes time. They are not set up. They are not changed quickly. A long time ago I learned that if you don't punish people within a couple of days or the day that the punishment should be weeded out, that it is not going to be successful.

The second thing is I don't believe that if the principals or the superintendents want to act that that these people need to be out of their school setting without having proper tutelage. I believe an IEP can dictate to DHS. Maybe that is the reason that we all got a letter not supporting this. I hope not. Secondly, being in two districts whenever we send anybody home that didn't have the wherewithal to be tutored, the towns would pick it up just like they would if somebody came in and said they don't have food.

The other thing is if you are a true teacher and the person who is in charge of these people ask you to help these people while they are out, if it is necessary, I don't believe that you would be turned down. Personally, I believe that the federal mandate is certainly stringent enough and that we need not go beyond that. It is true that we have come a long way with these people. I want to tell just a little story. When I first formed this at my school, we didn't have the buildings that we have today. They were at the back of a wooden building and they had to go out the back door and we built things whereby they could do that easily. We had criticism from some new people moving in town to say that you know, they are going out the back door and everyone else is going out the front door and that is not the way it ought to be. There was rarely a day that I did not, when this was first set up, visit with these young people so that they knew who I was and I knew who they were. I met with those people and I said, what about it? Do we change things? Most of those people said that they don't want to be different. I didn't change how they left because they were satisfied with it only somebody from the outside. I hope you think a long time about this. I certainly hope that you will support the bill at hand. Thank you.

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

Representative STEDMAN: Madam Speaker, Ladies and Gentlemen of the House. I sit beside Representative Desmond on the Education Committee and I swear she stole my notes. So, rather than repeat it all. I would just second her comments that she made and urge you to vote in favor of this legislation. Thank you.

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

Representative BRENNAN: Madam Speaker, Men and Women of the House. I stand here today and ask you to oppose the pending motion. The reason why is this is an important bill. We spent a little bit of time in the committee talking about this bill because it affects so many children around the state. I think it is important for the people that are here today and listening to this debate that we recognize and understand the significance of this bill. What it would do, if it is enacted, it would take away the educational support services for children with disabilities who are suspended. At the same time, let me make this clear. This bill does nothing to change current policy that allows principals, school administrators and school districts to appropriately discipline children with special needs. If a child is being disruptive in a classroom and they have a special need, you can remove them from the classroom. It is not an issue here about whether or not they can be appropriately disciplined.

The question is when that discipline occurs what type of services are still provided to the child? Let me give you an example. Many of you are familiar with Tourette's Syndrome. That is where somebody, in this case it would be a child, involuntarily, because of their disorder may utter profanities. They make comments of a racial nature. They make a number of comments that are totally inappropriate within a school setting. Under this bill, if it were to pass, that student with Tourette's Syndrome could be removed from the classroom, removed from school, not receive any support services and not receive any tutoring or educational services. That is not fair and that is not right because that child is not in control of their behavior. Representative Kane pointed out quite clearly that, many instances when a child is acting out in this nature, it is not of their own free will. It is not of their own conscious decision, but it is related to their disability.

Again, I would argue to you and this situation with a child with Tourette's Syndrome, it would be unfair to suspend that child and not provide educational services or the support services that they would be required. Secondly and more importantly, this bill is premature and there is no compelling reason to pass it today. As Representative Watson clearly pointed out, the Department of Education has taken not only this issue, but all issues related to special education to rulemaking. They started the process of public hearings on Monday night and they will have a number of public hearing across the state over the next several months. The purpose of those public hearings is to look at the recently passed federal legislation and to look at Maine's current practices and have a discussion about whether or not we continue with those practices and how they relate to the federal regulations that will be passed. This issue will be discussed and will be taken to rulemaking within that context. Again, I would submit to you that this issue is being treated unfairly because it is being singled out in all of our special education legislation for consideration by this Legislature at this time while all of the other special education issues are going to be discussed by the Department of Education through rulemaking. I would argue today that this pending motion is premature and it is unnecessary at this point. People are concerned about this issue. It will be addressed through rulemaking. For this Legislature to act on this prematurely, on an issue that affects so

many children, I really argue, at this point, caution and allow us to review this issue on the context of all the special education that we require.

I would be supporting this legislation if I thought it would be moving us forward in terms of addressing the needs of special education children and, in fact, all the children in the state. It is a step backwards. We have had this policy in place for at least 10 years in this state. It has worked relatively well. Clearly and I would not dispute the fact that some school districts feel that it has been an undue burden, but for the most part, it has worked well and school districts have been able to respond. I urge you today to vote against the pending motion and allow us to have the public discussion on this issue. Thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Wayne, Representative McKee.

Representative MCKEE: Madam Speaker, Men and Women of the House. I didn't intend to speak on this until my good colleague, Representative Brennan, spoke about the teacher who would have the Tourette Syndrome student in her class. Let me assure all of you sitting here that every single teacher out there today in classrooms across the state, not only has had a course in mainstreaming, but has had these students in their classes every single day since they have been teaching. I have had Tourette Syndrome students. At the beginning of every year, every teacher is given a list of students who have handicaps, special needs and disabilities. I would agree with my good colleague that 83 percent of students that do have special needs, are students with learning disabilities. We have learned a great deal about teaching these students in our classrooms. My husband, in fact, is a coordinator of special education in a nearby district. We have discussed this bill before. On your desk also is a fact sheet from MADSEC, the Maine Administrations of Services for Children with Disabilities. This group who deals with these students on a daily basis, as I do and others who sit here, support this proposed legislation. I am going to be voting yes along with the majority on the Education Committee. I don't think it is premature. I do think we are going to have some excellent conversations during the next month on what is happening regarding students with special needs. I do think that this is a step forward for those students. We talk a lot about how we can enable these students from time to time. I hope all of you sitting there have faith in us as teachers and that we do recognize not only Tourette's Syndrome, but many, many other disabilities as well. Join me in supporting this along with the majority on the Education Committee.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Unity, Representative McElroy.

Representative MCELROY: Madam Speaker, Ladies and Gentlemen of the House. I have three piles of notes in front of me. The hour is late and I am going to try to consolidate all of these. Although I sit beside Representative Brennan, I want to assure you that my notes are not the same notes that he came forth with. I first would start off by indicating to you that a concerned educator that by the time you get up in the morning until you go to bed at night, young people are foremost in your day-to-day activities. You are concerned with their environment, their well being. You are concerned with their safety. You are aware of the need for consistency, you are aware of the need for continuity and you are aware of the need for equality. Yet, you must see those individuals as individuals. You must see them as young adults going through the path of life. You must see these individuals in the need of guidance, direction and certainly you need to see these individuals in need of love.

I want to read to you a note that I received from an individual just two days ago. He said, "Dear Representative McElroy, I am

particularly concerned that some groups are claiming that this bill would seriously disrupt the lives of children who are seriously emotionally disturbed. LD 1398 would simply bring Maine into accordance with the Individuals with Disability Act and the amendments of 1997. Schools operated by the federal government in the schools in the vast majority of the state have operated under the conditions provided for in this bill without causing any noticeable harm to seriously, emotionally disturbed children. Under LD 1398, an interim alternative education setting, IAEA, and a functional behavioral assessment would be arranged for students suspended for 10 cumulative days within one school year as required by IDEA amendments of 1997. Federal requirements adequately assure a taxpayer funded appropriate education for seriously emotionally disturbed students. It is not necessary for Maine to exceed the federal requirements in this area. To do so provides inequality and places a physical and human resource burden upon local schools." I would add my own personal editorial to this. Common sense and good educational practice, these two should always go together and go hand in hand, both emphatically support this motion.

I would now like to turn to the legislation. There is nothing in this legislation that requires that services be stopped. I will read the legislation, part of it, not all of it. "When an exceptional student is suspended for 10 days or less for a violation of school rules, the school board is not required to provide a tutor, transportation or any other aspect of the student's special education program." I will go back again and emphasize. The school board is not required. It does not say that the school board shall not. It is permissive. It allows boards to do that. I would propose to you that good school boards will not automatically remove services from any child with or without handicaps. There is a little bit of common sense and human involvement in education still. I would say that it is time that this legislation was enacted. It is not a quick fix. It has been needed for probably at least 20 years since we first started dealing with it. At this time I would ask that we have a roll call on this and I would also ask that you support the motion currently on the floor. Thank you very much.

Representative McELROY of Unity **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 PRO TEM: The Chair recognizes the Representative from Caribou, Representative Belanger.

Representative BELANGER: Madam Speaker, Men and Women of the House. The bill before you restores much needed equity to the discipline of students, not total equity, but it is a measure of equity. The bill simply allows schools to suspend a student, a special education student, for up to 10 days cumulative, that is not 10 days this month and 10 days next month and 10 days next spring. That is cumulative days in a school year. It is not necessary for Maine to go beyond federal requirements. Students with disabilities are well protected by other state and federal regulations. Issues of concern that have been expressed today can be expressed through the PET Process. Potential problems can be addressed by that process in advance of occurrence. I would submit to you, men and women of the House, that there are some acts, such as violence that take place in schools that require the immediate removal of that student regardless of their learning ability or disability. What this bill will do is it will enable teachers and school people to handle that situation without having to have someone sit in school because they can't find a tutor for three days and then

implement discipline three days later. The good Representative from Fryeburg pointed out that in order for discipline to be effective, it has to be immediate in some situations. In all situations, under the present law, that is not possible. I would also submit that the good Representative Watson that spoke earlier and talked about not having a lot of advocates at the public hearing or the work session for the students. There is a reason for that. It is because the impact is very minimal. I urge your support of the pending motion.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Bangor, Representative Saxl.

Representative SAXL: Madam Speaker, Men and Women of the House. We have heard much good debate on the floor on this issue. I would just like to remind everybody about the committee process and how valuable that is in our deliberation and ask you if you would have the Clerk read the report.

Representative SAXL of Bangor **REQUESTED** that the Clerk **READ** the Committee Report.

The Clerk **READ** the Committee Report in its entirety.

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

Representative RICHARD: Madam Speaker, Men and Women of the House. I would like to clear up a few issues that have been stated here. First of all, last year we had several bills pertaining to special education. Many of these requested that Maine bring its special education laws into agreement with federal regulations. Because Congress was in the process of revising their laws, we were asked to defer until this year. We felt it was a good idea. We carried this bill over until this year so we could know what federal regulations might be. In that light, I would like to point out to you that you had passed out to you a letter from the commissioner. Note that that letter was dated April 2, 1997. That agrees with what we were doing last year. There has been a change since April 2, 1997. Congress now has passed its regulations. The rules have been promulgated and the time for comment is concluded. We asked the Attorney General's Office to give us a ruling of whether or not this legislation would be in compliance with federal regulations. He looked at the bill that you have before you and recommended that we delete one word, deliberate. The adjective that modifies that word misconduct. That is what the Committee Amendment does. It deletes the word deliberate.

He gave us several sheets of information and you have one sentence taken out of context on the blue sheet that you were given. It is referring to paragraph 612A1. He mentions that line in his presentation that he gave us and he said that creates some ambiguity. He goes on to say in reference to that and another section of the law that it is a general rule of statutory construction that specific statutory language prevails over general language. Second and more importantly, a broad interpretation of 612A1 is inconsistent with the legislative history of the 1997 reauthorization and with the proposed federal regulations. The Senate Chair of the committee that dealt with this said on the floor of the Senate, "The obligation under Section 612A1, to provide a free appropriate public education suspended or expelled should not be construed to prevent schools from suspending children with disabilities for up to 10 days consistent with the provisions in the other section to which it appeared to be ambiguous." The Attorney General concluded by saying that therefore the provisions of LD 1398, which allow for the cessation of educational services for 10 days or less and which require the Maine Department of Education to eliminate inconsistent regulatory language, etc., are not contrary to federal IDEA statute so long as students without disabilities are subject to the same disciplinary measures.

In reference to this October 22, 1997 proposal, the proposed regulations provide the best current guidance on how the Secretary of Education, the administrator responsible for enforcing IDEA requirements nationwide interprets the new statute. We have had reference made to the fact that perhaps this is premature. The department is out there having input from the public. The department has assured me that they will follow federal regulations on this item. The schools do need some guidelines to be uniform in how they are going to handle this. That is what this is all about, is to offer guidelines to the schools on how this should be handled. I have faith in the teachers in the State of Maine that they do recognize a child with Tourette Syndrome and that they know how to deal with that aspect of a child's behavior. I have a great deal of respect for the people who work daily with disabled children. I think it is important that we keep in mind that the Education Committee must think of all the children in the schools in our state. It was said that this affects so many children around the state. It does. All of them. I urge you to vote with the majority of the committee and the roll call has been called for and I would also ask for a roll call.

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

Representative BRENNAN: Madam Speaker, Men and Women of the House. I have to respectfully disagree with the Representative from Madison regarding the Attorney General's position. First, it is my understanding that the federal law has been passed, but at this point, their proposed regulations, the regulations have not been promulgated and not been finalized and are being commented on nationally and have been hotly disputed. Even though the Attorney General in this state reached a certain opinion, that opinion has been disputed in a letter to us to the committee by the Maine Advocacy Services attorney who deals every day with these particular cases who strongly believes that the State Attorney General misinterpreted the federal legislation. I don't think it is fair to represent, at this particular point, that these issues have been resolved or that they are clear. I even have on my desk right now a letter from Trent Lott to the US Department of Education questioning certain parts of the proposed regulations by the Federal Department of Education. He is very concerned about certain parts of the regulations that have been proposed by the Department of Education. I don't want anybody to be under the misimpression at this point that we are "overexceeding federal regulations" when, in fact, those regulations have not been finalized at this particular point. Thank you.

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

Representative BERRY: Madam Speaker, Men and Women of the House. First of all, I would like to state that I have the greatest respect for the Education Committee, all of the members of the committee. I mean no disrespect to them. They are individuals and I respectfully disagree and plan to oppose the pending motion. One of the points that Representative McElroy brought to our attention was that this is not required by the school board. Representative Clukey then stated that this promotes equity. I see a little difference of opinion on that. To me, it doesn't work the same. I was in the committee room during the public hearings. I was there for another bill, but I sat through this bill as well. To my memory, the debate and support of this bill was all related to budget issues for the school. To me, that was missing the focus of what is important to me. I think the parents of these students struggle with their needs every day, day and night. It may be inconvenient for the school system to have to deal with them in a special way. I think it is worth it. I

think we have to support the parents as well as the students in this. Thank you.

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

Representative RICHARD: Madam Speaker, Men and Women of the House. I do not want to prolong this, but I do want to respond to a comment that was made. The rules for this law, federally, have been promulgated and have been commented on. The time for comment is over. It is done. I did not say that the rules have been finalized. The time for comment has. I would like to repeat, the Attorney General's assistant said that the proposed regulations, however, provide the best parent guidance on how the Secretary of Education interprets the new statute. Thank you.

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

Representative CHARTRAND: Madam Speaker, Men and Women of the House. I would like to say that I do think whatever has happened with the federal regulations, it is not a question in my mind that the Maine rules and regulations will be rewritten in order to respond to the federal regulations over the next few months. From the debate here today, it is clear it is a controversial issue. It is not a black and white issue. I don't think it is as black and white on either side as some speakers have said. I think if this bill passed, it might help some children and it may harm some. I think this dialog should be continued in the wider context of the special education community in Maine and the community of disabled children over a longer period of time. It is no question that it is a controversial issue and one that requires a lot of thought. I think the process that is currently under way to redraft Maine rules and regulations, which is happening and which isn't finished, should allow this issue to be debated in that forum before we make a law on it. It would ask that you vote against passage of this bill for that reason, that there is a dialog happening now and it is not over. It should continue without us cutting it short by legislating this change. Allow the community of Maine to have input into the department on this issue. Allow rules to be promulgated and should those rules not meet what you consider the right way, a bill introduced into the next session. I would ask you to vote against the motion.

The SPEAKER PRO TEM: 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. 420

YEA - Ahearn, Bagley, Baker, Barth, Belanger DJ, Belanger IG, Berry DP, Bigl, Bodwell, Bolduc, Bouffard, Bragdon, Bruno, Buck, Bull, Bumps, Bunker, Cameron, Campbell, Carleton, Chick, Chizmar, Cianchette, Clark, Clukey, Cross, Davidson, Desmond, Donnelly, Driscoll, Dunlap, Etnier, Fisher, Foster, Frechette, Fuller, Gagne, Gamache, Gieringer, Gooley, Hatch, Honey, Jabar, Jones KW, Jones SL, Jones SA, Joy, Joyce, Kasprzak, Kerr, Kneeland, Kontos, Labrecque, Lane, LaVerdiere, Layton, Lemaire, Lemke, Lemont, Lindahl, Lovett, MacDougall, Mack, Madore, Mailhot, Marvin, Mayo, McAlevey, McElroy, McKee, Mitchell JE, Murphy, Nass, O'Neal, Ott, Paul, Peavey, Pendleton, Perkins, Pieh, Pinkham RG, Pinkham WD, Poulin, Povich, Richard, Samson, Sanborn, Savage, Saxl JW, Saxl MV, Shannon, Skoglund, Snowe-Mello, Spear, Stanley, Stedman, Stevens, Taylor, Tessier, Thompson, Tobin, Treadwell, Tripp, True, Tuttle, Usher, Vigue, Volenik, Waterhouse, Wheeler EM, Wheeler GJ, Winglass, Winsor, Madam Speaker.

NAY - Berry RL, Brennan, Brooks, Bryant, Chartrand, Colwell, Cowger, Dexter, Farnsworth, Gagnon, Gerry, Goodwin,

Green, Kane, Meres, Morgan, Muse, O'Brien, O'Neil, Plowman, Powers, Quint, Rines, Rowe, Shiah, Townsend, Watson.

ABSENT - Dutremble, Fisk, Joyner, Nickerson, Perry, Sirois, Underwood, Vedral, Winn, Wright.

Yes, 114; No, 27; Absent, 10; Excused, 0.

114 having voted in the affirmative and 27 voted in the negative, with 10 being absent, the Majority **Ought to Pass as Amended** Report was accepted.

The Bill was **READ ONCE**. **Committee Amendment "A" (H-809)** was **READ** by the Clerk and **ADOPTED**. The Bill was assigned for **SECOND READING** Monday, March 2, 1998.

The following items were taken up out of order by unanimous consent:

PETITIONS, BILLS AND RESOLVES REQUIRING REFERENCE

The following Bill was received and upon the recommendation of the Committee on Reference of Bills was **REFERRED** to the following Committee, ordered printed and sent up for Concurrence:

BUSINESS AND ECONOMIC DEVELOPMENT

Bill "An Act to Create the Kennebec Regional Development Authority" (EMERGENCY)

(H.P. 1612) (L.D. 2238)

Presented by Speaker MITCHELL of Vassalboro.

Cosponsored by Senator MILLS of Somerset and Representatives: MADORE of Augusta, POULIN of Oakland, VIGUE of Winslow, Senator: CAREY of Kennebec.

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

CONSENT CALENDAR

First Day

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

(H.P. 1439) (L.D. 2003) Bill "An Act to Clarify and Enhance Certain Municipal Powers Regarding Solid Waste Disposal" (EMERGENCY) Committee on **UTILITIES AND ENERGY** reporting **Ought to Pass as amended by Committee Amendment "A" (H-822)**

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

The following Joint Order: (S.P. 835)

ORDERED, the House concurring, that when the House and Senate Adjourn they do so until Monday, March 2, 1998, at 10:00 o'clock in the morning.

Came from the Senate **READ** and **PASSED**.

READ and **PASSED** in concurrence.

SENATE PAPERS

Bill "An Act to Improve the Delivery and Effectiveness of State Correctional Services"

(S.P. 834) (L.D. 2232)

Came from the Senate, **REFERRED** to the Committee on **CRIMINAL JUSTICE** and ordered printed.

REFERRED to the Committee on **CRIMINAL JUSTICE** in
concurrence.

On motion of Representative COWGER of Hallowell, the House adjourned at 1:10 p.m., until 10:00 a.m., Monday, March 2, 1998 pursuant to the Joint Order (S.P. 835) and in honor and lasting tribute to Hon. Francis Perry of Mexico and Hallowell.