

# MAINE STATE LEGISLATURE

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

**Volume III**

**Second Regular Session**

March 19, 1998 - March 31, 1998

**Second Special Session**

April 1, 1998 - April 8, 1998

**Appendix**  
**House Legislative Sentiments**  
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ONE HUNDRED AND EIGHTEENTH LEGISLATURE  
SECOND REGULAR SESSION  
41st Legislative Day  
Thursday, March 26, 1998

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

Prayer by Honorable Elaine Fuller, Lector, St. Matthew's Church, Hallowell.

Pledge of Allegiance.

Doctor of the day, B.J. Semmes, M.D., South Portland.

The Journal of yesterday was read and approved.

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**SENATE PAPERS**

**Non-Concurrent Matter**

Bill "An Act Concerning the Taking of Marine Resources by Members of the Passamaquoddy Tribe" (EMERGENCY)

(H.P. 1523) (L.D. 2145)

**PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-983)** in the House on March 23, 1998.

Came from the Senate **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-983) AS AMENDED BY SENATE AMENDMENT "A" (S-599)** thereto in **NON-CONCURRENCE**.

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

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**COMMUNICATIONS**

The Following Communication: (H.C. 468)

**STATE OF MAINE  
ONE HUNDRED AND EIGHTEENTH LEGISLATURE  
COMMITTEE ON LABOR**

March 25, 1998

The Honorable Mark W. Lawrence

President of the Senate

The Honorable Elizabeth H. Mitchell

Speaker of the House of Representatives

118th Legislature

State House

Augusta, Maine 04333-0003

Dear Mr. President and Madam Speaker:

The Joint Standing Committee on Labor has completed its review of the Maine State Retirement System under the State Government Evaluation Act pursuant to Title 3 Maine Revised Statutes, chapter 35. The committee found that the retirement system is operating within its statutory authority.

Sincerely,

S/Senator Mary R. Cathcart

S/Representative Pamela H. Hatch

**READ and ORDERED PLACED ON FILE.**

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The Following Communication: (S.C. 673)

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

March 25, 1998

The Honorable Elizabeth H. Mitchell

Speaker of the House

118th Maine Legislature

2 State House Station

Augusta, Maine 04333

Dear Speaker Mitchell:

In accordance with Joint Rule 506, please be advised that the Senate today confirmed, upon the recommendation of the Joint Standing Committee on Marine Resources the nomination of Lori Armbrust Howell of Eliot for appointment as a Member of the Marine Resources Advisory Council.

Thank you for your attention to this matter.

Sincerely,

S/Joy J. O'Brien

Secretary of the Senate

**READ and ORDERED PLACED ON FILE.**

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The Following Communication: (S.C. 675)

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

March 25, 1998

The Honorable Joseph W. Mayo

Clerk of the House

State House Station 2

Augusta, ME 04333

Dear Clerk Mayo:

Please be advised that the Senate has Insisted and Joined in a Committee of Conference on the disagreeing action between the two bodies of the Legislature on the Bill, "An Act to Improve Voter Participation" (H.P. 1455) (L.D. 2046).

The President has appointed as conferees on the part of the Senate the following:

Senator Carey of Kennebec

Senator Cleveland of Androscoggin

Senator Ferguson of Oxford.

Sincerely,

S/Joy J. O'Brien

Secretary of the Senate

**READ and ORDERED PLACED ON FILE.**

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Reference is made to Bill "An Act to Improve Voter Participation"

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

In reference to the action of the House on Tuesday, March 24, 1998, whereby it Insisted and Asked for a Committee of Conference, the Chair appoints the following members on the part of the House as Conferees:

Representative TUTTLE of Sanford

Representative TESSIER of Fairfield

Representative TRUE of Fryeburg

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**SPECIAL SENTIMENT CALENDAR**

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

**Recognizing:**

Sheila Lyman, of Livermore Falls, a teacher at Leeds Central School in grades 4, 5 and 6, who is a nominee for Maine Teacher of the Year, and in extending our congratulations and best wishes to her;

(HLS 1303)

Presented by Representative BERRY of Livermore.

Cosponsored by Senator NUTTING of Androscoggin, Representative NICKERSON of Turner.

On **OBJECTION** of Representative BERRY of Livermore, was **REMOVED** from the Special Sentiment Calendar.

**READ.**

On motion of the same Representative, **TABLED** pending **PASSAGE** and later today assigned.

Sharon Hathaway, of Turner, a teacher at Leavitt High School, SAD #52, who has been selected as one of the regional finalists for the 1999 Maine Teacher of the Year award, and in extending our congratulations and best wishes to her;

(HLS 1304)

Presented by Representative NICKERSON of Turner.  
Cosponsored by Senator NUTTING of Androscoggin.

On **OBJECTION** of Representative NICKERSON of Turner, was **REMOVED** from the Special Sentiment Calendar.

**READ.**

On motion of the same Representative, **TABLED** pending **PASSAGE** and later today assigned.

**REPORTS OF COMMITTEE**

**Divided Reports**

Majority Report of the Committee on **BUSINESS AND ECONOMIC DEVELOPMENT** reporting **Ought Not to Pass** on Bill "An Act to Prohibit Discrimination against Osteopathic Physicians and Provide Patient Choice"

(S.P. 772) (L.D. 2099)

Signed:

Senators:

JENKINS of Androscoggin  
MacKINNON of York  
RAND of Cumberland

Representatives:

VIGUE of Winslow  
BODWELL of Brunswick  
MURPHY of Kennebunk  
FARNSWORTH of Portland  
CAMERON of Rumford  
SHANNON of Lewiston  
MacDOUGALL of North Berwick  
MACK of Standish  
WRIGHT of Berwick

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

Signed:

Representative:

SIROIS of Caribou

Came from the Senate with the Minority **OUGHT TO PASS** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY SENATE AMENDMENT "A" (S-597).**

**READ.**

On motion of Representative KONTOS of Windham, **TABLED** pending **ACCEPTANCE** of either Report and later today assigned.

Majority Report of the Committee on **EDUCATION AND CULTURAL AFFAIRS** reporting **Ought Not to Pass** on **RESOLUTION**, Proposing an Amendment to the Constitution of Maine to Require the Legislature to Provide a Statewide System of Uniform and High-quality Education

(S.P. 517) (L.D. 1601)

Signed:

Senators:

PENDLETON of Cumberland  
SMALL of Sagadahoc

Representatives:

RICHARD of Madison  
BRENNAN of Portland  
SKOGLUND of St. George  
WATSON of Farmingdale  
BARTH of Bethel  
McELROY of Unity  
STEDMAN of Hartland

Minority Report of the same Committee reporting **Ought to Pass as Amended by Committee Amendment "A" (S-576)** on same Resolution.

Signed:

Senator:

CATHCART of Penobscot

Representatives:

DESMOND of Mapleton  
BAKER of Bangor  
BELANGER of Caribou

Came from the Senate with the Majority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED.**

**READ.**

On motion of Representative RICHARD of Madison the Majority **Ought Not to Pass** Report was **ACCEPTED** in concurrence.

Majority Report of the Committee on **STATE AND LOCAL GOVERNMENT** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-590)** on Bill "An Act to Improve the Integrity of Notaries Public"

(S.P. 771) (L.D. 2098)

Signed:

Senators:

NUTTING of Androscoggin  
GOLDTHWAIT of Hancock  
LIBBY of York

Representatives:

AHEARNE of Madawaska  
DUTREMBLE of Biddeford  
BAGLEY of Machias  
SANBORN of Alton  
GIERINGER of Portland  
BUMPS of China  
FISK of Falmouth  
KASPRZAK of Newport

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

Signed:

Representative:

GERRY of Auburn

Came from the Senate with the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-590).**

**READ.**

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

The Bill was **READ ONCE.** **Committee Amendment "A" (S-590)** 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-590)** in concurrence.

Majority Report of the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-1068)** on Bill "An Act Concerning the Maine State Housing Authority's Share of the Transfer Tax"

(H.P. 1465) (L.D. 2056)

Signed:

Senator:

CLEVELAND of Androscoggin

Representatives:

LEMAIRE of Lewiston

STEVENS of Orono

TOWNSEND of Portland

BERRY of Livermore

KERR of Old Orchard Beach

POULIN of Oakland

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

Signed:

Senators:

BENNETT of Oxford

MICHAUD of Penobscot

Representatives:

OTT of York

MARVIN of Cape Elizabeth

WINSOR of Norway

KNEELAND of Easton

**READ.**

Representative KERR of Old Orchard Beach moved that the House **ACCEPT** the Majority **Ought to Pass as Amended** Report.

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

Representative KERR: Madam Speaker, Men and Women of the House. What this bill does, it restores the amount of the real estate transfer tax paid to the Housing Authority from the main fund that was temporarily altered to help balance the state budget. This fund is used for the housing needs of lower income families in the state. Currently, under current law, because of the modification the current formula is 10 percent, comes right off the top and goes to the county. There's 67.5 percent goes to the state and when I say 67.5 percent, that's 75 percent of the 90 percent that's left. The other 22.5 percent goes to the Maine State Housing Authority. That was one of the changes that was made in the early '90s during tough economic times to generate more money for the general fund. What this bill does is simply restore going back to paying our bills, restores the Housing Authority to its original purpose. We would divide it, 10 percent going to the county, 45 percent going to the state and 45 percent going to the home fund. I would urge your support in accepting the Majority Ought to Pass Report.

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

Representative DONNELLY: Thank you Madam Speaker, may I pose a question through the Chair?

The SPEAKER: The Representative may pose his question.

Representative DONNELLY: Thank you Madam Speaker. To the Representative from Old Orchard Beach, Representative Kerr, could you tell us what the fiscal note is on this and what the percentage is currently and what it used to be?

The SPEAKER: The Representative from Presque Isle, Representative Donnelly has posed a question through the Chair to the Representative from Old Orchard Beach, Representative Kerr. The Chair recognizes that Representative.

Representative KERR: Madam Speaker, Men and Women of the House. There is no fiscal note in this biennium. What's happened is you take and you go back from the 62 and a half percent to the state, the 22 and a half to the home fund and you go back to the original formula, which would be 45, 45 and 10, the structural gap would increase over the next biennium by about \$5 million. Well let's not lose sight that the whole purpose of this fund they increased the amount that is paid on the transfer tax and the original formula was to make sure that the funds went to the Housing Authority, so that we could address the needs of these low income families in the state. That was the whole purpose of raising the tax to begin with. And again, this does nothing more than restore this home fund back to the proposal prior to 1991. Thank you.

The SPEAKER: The Chair recognizes the Representative from Cape Elizabeth, Representative Marvin.

Representative MARVIN: Madam Speaker, Ladies and Gentlemen of the House. The concern that I have is one that the good Representative from Old Orchard Beach just articulated. We're going to increase our structural gap by another \$5 million over the next two years. Beyond that, I think we just need to think in the greater terms about whether or not we have a commitment to people owning their own homes. Now Maine has the largest percentage of home ownership in the entire country. Do we need to continue to fund up a program that's going to make it so more and more people are able to buy their own homes? Do we overtax one group of people so another group of people can buy a home? I don't think so. I think that's not the role of government to be deciding who buys homes and who doesn't. They're two things together, but especially increasing the structural gap. I can not be supportive and I would ask that you defeat the pending motion.

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

Representative TOWNSEND: Madam Speaker, Men and Women of the House. In the lean years of the early 1990s, we did a lot of gimmicks to balance the budget. We robbed a lot of piggy banks. One of the most well known examples was the diversion of money from the highway fund into the general fund to pay for state police. Another example was the robbing of the underground oil fund, which is a special levy on oil products and is dedicated to the purpose of cleanup of oil spills and oil leakage. I would put this particular issue in the same category. We simply dipped into another source of revenue and diverted it into the general fund. We needed it then. It wasn't such a terrible thing to do then, but in the last few years we have been trying to pay our bills and putting this fund back to where it was before we robbed it is merely a matter of paying our bills. The issue of whether people have a right to own homes, it seems to me is an entirely different discussion and one in which we might want to have a public hearing, but as far as the issue of the structural gap goes, it wasn't our money to begin with. It never was the general fund's money. We simply robbed it, then made that formula permanent. This bill puts the formula back to its previous state. We're paying our bills and I urge you to support the majority ought to pass motion.

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

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

The SPEAKER: The Representative may pose his question.

Representative DONNELLY: Thank you Madam Speaker. To the Representative from Portland, Representative Townsend, is that the same thing that happened to the sales tax?

The Chair ordered a division on the motion to **ACCEPT the Majority Ought to Pass as Amended Report**.

Representative KERR of Old Orchard Beach **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 York, Representative Ott.

Representative OTT: Madam Speaker, Men and Women of the House. I think it's a good policy to try to correct the so called gimmicks that we had to institute in the early '90s because of the budget crisis and I think we're trying to do that but you reach a point in this process where there are a number of competing interests and I think for those of us who were on the Minority report, it was a matter of establishing priorities. We talk about the crisis need that we have to repair our buildings. The number of people who are on waiting listings for various programs in the Department of Human Services and at some place you have to draw a line and say, "We're going to make that tough decision." This is one of the places that the minority of us on the Appropriations decided that we could go no further, plus I understand there are a number of people who want to be first home owners and I think that that's an admirable goal and objective for those who want seek to improve their lot in life, but I think that we have to allow people to try to pull themselves up by their own bootstraps, and my final point is that I did not hear a crisis need for the expansion of this program. Therefore, I hope that you will defeat the pending motion. Thank you.

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

Representative TOWNSEND: Madam Speaker, Men and Women of the House. Just to clarify, this does not expand a program, it merely returns funds to a formerly dedicated account. It returns it to what it was prior to the fact when we robbed it. Voting against this bill will do nothing to provide services to people who are on waiting lists. It will not give you cash for this biennium with which to fix buildings. It is merely a change in the formula, effective beginning of the next biennium.

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

Representative BERRY: Madam Speaker, Men and Women of the House. I support the pending motion. The home fund has been helpful, I'd say, Mrs. Berry is in the House today, we took out a first home buyers loan in 1983 and I don't think we've been a drain on the community. I think we've paid back our loan and we've refinanced to better our position. It gave us a chance to start off our beginnings as many have. It's not just the home fund, it's not just first home buyers. This also includes the fix-me program, which has a positive effect on the state as that it keeps our elderly people in their homes as long as they can if they have property where they have limited income and they need help fixing their roof. It gives them some money to work with at very low interest. It's a savings to our state, it helps them and I would like to think that we would support them in that effort. As the Representative from Portland said, it's not a new program. It's putting the money back where it belongs, in my mind, and I think it's had a positive effect on Maine citizens and gives them a good start in life.

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

Representative KERR: Madam Speaker, Men and Women of the House. I think this bill has taken off on a life by itself. What I

would like to do is just focus on exactly what this bill does. A tax was raised some years ago to establish the home fund. Real estate brokers and people that are involved in real estate agreed to the tax increase for a specific purpose. When that tax was raised it was stated then that 10 percent would go back to county government, 45 percent would go to state for the general fund and 45 percent would go to the home fund. It wasn't clear in the early '90s during the tough economic times, as the Representative from Portland has stated, we did some things that we weren't happy about. I know that earlier, depending on the sales tax, that was one of the issues, for those that weren't here during those tough times, we took money that went back to general purpose aid for education in school districts, we took the June payment, we pushed it into July. We sold a portion of the turnpike, which we already owned, we sold it to the Turnpike Authority for \$16 million. Those were decisions that those of us that were here didn't like. We could do nothing about it. We had to do it. There was no other options. We made those reductions. Because we are faced with such a surplus, we felt that at least we could begin the process to make corrections in the budgets in the past. This is the beginning of that process. It may be a small step but it's a significant step. As we work through the budget process and we get LD 1950 up here, you'll see more of that, but this bill is important. We should do this. We must do this, and as far as the structural gap when we talk about spending, remember 62.5 percent of the 90 percent goes to the general fund. Many of you are concerned about the appetite of government growing. This is one way to decrease it. So again I would urge your support on the pending motion.

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

#### ROLL CALL NO. 515

**YEA** - Aheame, Bagley, Baker, Belanger DJ, Berry DP, Berry RL, Bouffard, Brennan, Brooks, Bruno, Bryant, Bull, Bunker, Cameron, Chartrand, Chick, Chizmar, Cianchette, Clark, Colwell, Cowger, Davidson, Desmond, Dexter, Driscoll, Dunlap, Etnier, Farnsworth, Fisher, Fisk, Fuller, Gagne, Gagnon, Gamache, Gerry, Gieringer, Goodwin, Green, Hatch, Jones SL, Kane, Kerr, Kontos, Lemaire, Lemke, Lindahl, Mack, Madore, Mailhot, Mayo, McAlevey, McElroy, McKee, Morgan, Muse, Nass, O'Brien, O'Neil, Paul, Peavey, Pendleton, Perkins, Perry, Pieh, Poulin, Povich, Powers, Richard, Rines, Rowe, Samson, Sanborn, Saxl JW, Saxl MV, Shannon, Shiah, Sirois, Skoglund, Stanley, Stevens, Tessier, Townsend, Tripp, Tuttle, Usher, Vigue, Volenik, Watson, Winn, Wright, Madam Speaker.

**NAY** - Barth, Belanger IG, Bigl, Bodwell, Bragdon, Buck, Bumps, Campbell, Carleton, Clukey, Cross, Donnelly, Foster, Gooley, Honey, Jones SA, Joy, Joyce, Joyner, Kasprzak, Kneeland, Labrecque, Layton, Lemont, Lovett, MacDougall, Marvin, Murphy, Nickerson, Ott, Pinkham RG, Pinkham WD, Savage, Snowe-Mello, Spear, Stedman, Taylor, Tobin, Treadwell, True, Underwood, Vedral, Waterhouse, Wheeler EM, Wheeler GJ, Winglass, Winsor.

**ABSENT** - Bolduc, Dutremble, Frechette, Jabar, Jones KW, Lane, LaVerdiere, Meres, Mitchell JE, O'Neal, Plowman, Quint, Thompson.

Yes, 91; No, 47; Absent, 13; Excused, 0.

91 having voted in the affirmative and 47 voted in the negative, with 13 being absent, the Majority **Ought to Pass as Amended Report was ACCEPTED**.

The Bill was **READ ONCE**. Committee Amendment "A" (H-1068) 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" (H-1068)** and sent up for concurrence.

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

**SPECIAL SENTIMENT CALENDAR**

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

**Recognizing:**

that March 26, 1998 is Organ and Tissue Donor Awareness Day in Maine. We acknowledge the generosity of those who have donated in the past and those who have offered donations in the future to give countless people a second chance at life. We extend our appreciation to the people who dedicate their time in making it possible for a donor bank to be available for people in need of a transplant;

(SLS 469)

On **OBJECTION** of Representative JONES of Greenville, was **REMOVED** from the Special Sentiment Calendar.

**READ.**

The **SPEAKER**: The Chair recognizes the Representative from Greenville, Representative Jones.

Representative JONES: Madam Speaker, Ladies and Gentlemen of the House. I rise today to bring attention to an issue which is literally an issue of life and death, an issue which has profoundly affected my life. Thirteen years ago my son, David, received a kidney transplant from his father, because of his father's generous donation, my son David is here today. If one of us was to experience an accident or other misfortune that required a lifesaving transplant operation, we would be joining a waiting list of approximately 58,000 people. The current numbers are staggering. 38,700 people are awaiting a kidney transplant, 10,059 are awaiting a liver transplant, 4,020 are awaiting a heart transplant, 2,756 are awaiting a lung transplant. Sadly, less than half of these 58,000 will receive a transplant this year. Why? Experts say this is simply a lack of public awareness. Thankfully, a number of organizations are working to change that. This April 19th through the 25th will be the national organ and tissue donor awareness week. In addition, today, it is organ and tissue donor awareness day in the statehouse. I hope you will take the time to visit with the transplant recipients and their families in the old museum room today. In the gallery, I would like to recognize Dean James Carrigan, who is the Dean of Bates College, and a member of the faculty in history. Dean Carrigan is also the recipient of two heart transplants. In addition, former House member and current Senator, Beverly Daggett, received a kidney several years ago as well. They are both a testament to the benefits of modern medicine and a wonderful example of what is right with the organ and tissue donor program. I would like to close today by reading a very brief poem by Robert Taft, it is entitled, "To Remember Me."

"Give my sight to the man who has never seen a sunrise, a baby's face or the love in the eyes of a woman. Give my heart to a person whose own heart has caused nothing but endless days of pain. Give my blood to the teenager who was pulled from the wreckage of his car, that he might live to see his grandchildren play. Give my kidneys to the one who depends on a machine to exist from week to week. Take my bones, every muscle, every fiber and nerve in my body and find a way to make a crippled

child walk. Explore every corner of my brain, take my cells if necessary and let them grow so that someday a speechless boy will shout at the crack of a bat and a deaf girl will hear the sound of rain against her window. Burn what is left of me and scatter the ashes to the wind to help the flowers grow. If you must bury something, let it be my faults, my weaknesses and all the prejudices against my fellow man. Give my sins to the devil. Give my soul to God. If by chance you wish to remember me, do it with a kind deed or word to someone who needs you. If you do all I have asked, I will live forever." Thank you.

Was **PASSED** in concurrence.

Majority Report of the Committee on **HEALTH AND HUMAN SERVICES** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-1066)** on Bill "An Act to Provide for Confidentiality of Health Care Information"

(H.P. 1225) (L.D. 1737)

Signed:  
Senators:

PARADIS of Aroostook  
LONGLEY of Waldo  
MITCHELL of Penobscot

Representatives:

MITCHELL of Portland  
BROOKS of Winterport  
FULLER of Manchester  
KANE of Saco  
PIEH of Bremen  
QUINT of Portland  
JOYNER of Hollis  
BRAGDON of Bangor  
SNOWE-MELLO of Poland

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

Signed:  
Representative:

LOVETT of Scarborough

**READ.**

On motion of Representative KONTOS of Windham, **TABLED** pending **ACCEPTANCE** of either Report and later today assigned.

Majority Report of the Committee on **STATE AND LOCAL GOVERNMENT** reporting **Ought to Pass** on Bill "An Act to Implement the Recommendations of the Maine Commission on Outstanding Citizens"

(H.P. 1620) (L.D. 2250)

Signed:  
Senators:

NUTTING of Androscoggin  
GOLDTHWAIT of Hancock

Representatives:

LEMKE of Westbrook  
DUTREMBLE of Biddeford  
BAGLEY of Machias  
SANBORN of Alton  
GIERINGER of Portland  
BUMPS of China  
FISK of Falmouth  
KASPRZAK of Newport  
AHEARNE of Madawaska

Minority Report of the same Committee reporting **Ought to Pass as Amended by Committee Amendment "A" (H-1064)** on same Bill.

Signed:  
Senator:

LIBBY of York

Representative:

GERRY of Auburn

**READ.**

On motion of Representative AHEARNE of Madawaska the Majority **Ought to Pass** Report was **ACCEPTED**.

The Bill was **READ ONCE**.

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** and sent up for concurrence.

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

**UNFINISHED BUSINESS**

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

An Act to Adopt Long-range Changes in the Methods by Which Whitewater Rafting Trips Are Allocated among Licensees (S.P. 604) (L.D. 1801) (C. "A" (S-530)

TABLED - March 25, 1998 (Till Later Today) by Representative KONTOS of Windham.

PENDING - **PASSAGE TO BE ENACTED**.

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

Bill "An Act to Facilitate Delegation of the Federal Waste Discharge Permitting Program"

(H.P. 1291) (L.D. 1836)

- In House, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-910)** on March 18, 1998.

- In Senate, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-910)** and **SENATE AMENDMENT "A" (S-562)** in **NON-CONCURRENCE**.

TABLED - March 25, 1998 (Till Later Today) by Representative ROWE of Portland.

PENDING - Motion of same Representative to **RECEDE** and **CONCUR**.

On motion of Representative ROWE of Portland, the House voted to **RECEDE**.

**Senate Amendment "A" (S-562)** was **READ** by the Clerk.

On motion of Representative ROWE of Portland, **Senate Amendment "A" (S-562)** was **INDEFINITELY POSTPONED**.

The SPEAKER: The Chair recognizes the Representative from Kennebunk, Representative Murphy.

Representative MURPHY: Madam Speaker, Men and Women of the House. I think there are many of us in this body that hold to our principle, or actually we call it an absolute rule that government becomes more focused, more efficient, less costly as it moves closer to the people, but I think as we serve in

this body, we find there's an exception to every rule. All throughout the 1980s we had seen programs move from the federal to the state level. We supported that. We've seen here programs move from the state level to the local level. We've supported that. In this particular case, what this bill proposes to do is to shift power to a state agency from the federal government, an agency that doesn't understand the word partnership, doesn't understand focus, more efficient, less costly, and user friendly and I think as we look at the condition of the Maine economy, we look at attitudes on the part of Maine citizens toward its state government, I think some of those negatives can be laid at the doorstep of the DEP and their attitudes.

I had received a letter from my local sewer district asking me to vote against this shift of power, or permitting, from the federal to the state level and my first reaction was, you got to be kidding. You got to be kidding. There's got to be a typo, something is wrong. I called and they said that in every permitting instance where it involved the federal government, they were efficient, friendly and prompt. They said their problems start with the dual permitting on the state level and they said that's where the problems reside. We're looking at a proposal here that calls for six new DEP positions. I think an additional two further down the road. Many of you in the last few days have seen the printout as to what happens to your local sewage district and I think the DEP has discovered there's gold in that sewage. As many of you, look at that, will see that on the local level some of your fees which are going to be charged your local district and in some cases your local businesses are going to come back in monthly or quarterly bills. Some of those double, triple. For some of your local businesses there's a 28, 30, 48 fold increase in the fee level. It runs across every grain in my body to say leave the permitting with the federal level, but in this particular instance it's more focused, it's more efficient, it's more cost effective and it's more user friendly. This is a bad bill. We all have personal agendas for why we came to Augusta and this Legislature. To increase the empire building within the DEP, I don't think is one of those major agenda items.

Representative CLARK of Millinocket **PRESENTED House Amendment "A" (H-1035) to Committee Amendment "A" (H-910)**, which was **READ** by the Clerk.

The SPEAKER: The Chair recognizes the Representative from Millinocket, Representative Clark.

Representative CLARK: Madam Speaker, Men and Women of the House. All this amendment does is strip off the fee increases that is entitled in Committee Amendment "A". As the good Representative from Kennebunk pointed out these fees are going up dramatically. These fees are applied to municipalities, paper companies, food canning processing plants and things of that sort. Just for a couple of examples, the City of Bath, their publicly owned facilities will go from \$730 to \$2,566 to \$3,100. Now I'm not just doing this for a certain company that I work for or anything like that, I'm doing it for my constituents back home. MDI High School in Bar Harbor, the current fee is \$90, it will go up to \$192 the first year, \$196 the second year. My own municipality Millinocket will go from \$730 to \$819 to \$985 and as everybody knows in this chamber the mill in Millinocket is up for sale and that rate right now clearly speaking is \$2,200. That is going up to \$36,000 to \$44,000. Now let me tell you something, we're trying to sell that mill to keep employment in the Town of Millinocket. How can we add employment when people want to come in and buy this property, or buy the mill and they've got the additional fees? I hope that you guys will consider House Amendment "A."



The same Representative **REQUESTED** a roll call on his motion to **ADOPT House Amendment "A" (H-1035) to Committee Amendment "A" (H-910).**

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 Bath, Representative Mayo.

Representative **MAYO:** Madam Speaker, Men and Women of the House. I share many of the sentiments of the good Representative from Kennebunk who spoke earlier on this subject and I rise this morning in support of the Representative from Millinocket's amendment. You have heard previously that the passage of this bill will add eight new positions at DEP, six in the first year and two in the second year. It will increase fees between \$500,000 and \$600,000 over the current fees for municipal treatment plants and industrial discharges. LD 1836 replaces a federal discharge permit for which, currently, there is no charge with a state license with significant fees approaching \$600,000. Much of the confusion today exists with the dual license system, as the result of DEP a few years back adopting different and more expensive rules which now require that the municipalities and the businesses have to keep two sets of books. Previous to the change in rules, they kept one set of books, but did have to file twice, once with the state and once with the federal government. We're giving DEP an additional eight people and an additional \$600,000. Recently in the paper many of us read about DEP's track record and how it has handled its part of this responsibility. The Natural Resources Council of Maine did a study on how DEP was, in fact, handling its responsibilities in this area. While many of you know that often times I do not agree with NRCM, in this case I think what they found bears repeating. Thirty-six of the state's municipal sewage plants in 11 of 21 industries, including paper mills, canneries, and electronics manufacturers were releasing excess levels of toxic chemicals. In 1995, nearly a third of all the plants failed to submit some or all of the required tests, DEP is not able to handle this situation currently and we're going to allow them as the result of the passage of 1836 to establish a large bureaucracy, to have responsibility in this area. Ladies and gentlemen this is foolhardy. We do not need to go forward and hire six or eight new employees.

I'd like to quote from a letter dated the 23rd of January, 1998, from Ralph Fleck, the general manager of Georgia Pacific in Woodland. I quote, "We are having a very difficult time in justifying the additional expense to our company the delegation would bring at this time. Our fees for a five year permit would increase from approximately \$11,000 to \$250,000 over a five year period." This is a company that many of us know, because we read it in the paper recently, that has had to shut down part of its operation for awhile due to problems and they're trying to work these out so that the 600 jobs that they have in Washington County can be maintained and as a result of this bill we're going to increase their expenses over a five year period by nearly \$250,000. Some other increases that are going to take place under this: The Anson-Madison Sanitary District is paying currently \$1,100, in the second year of this bill it will be paying \$11,000; The City of Biddeford is paying \$1,100 currently, it will go to \$3,900 and you can go on and on with these increases. There are some, yes, that will show a decrease, but ladies and gentlemen, when we're all done we will have increased fees on municipalities and Maine businesses by nearly \$600,000 and established a new area within DEP with eight new employees. I urge your acceptance of House Amendment "A" so we can move forward on this particular issue. Thank you.

Representative **COWGER** of Hallowell moved **House Amendment "A" (H-1035) to Committee Amendment "A" (H-910) be INDEFINITELY POSTPONED.**

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

Representative **COWGER:** Madam Speaker, Colleagues of the House. I urge you to join me and the Chair of our committee in passing the pending motion which is indefinite postponement and going on and supporting this unanimous committee report. This legislation simply delegates a federal permitting system for waste water discharges that is presently handled by EPA to be combined with an existing state permitting program. I strongly believe that a successful bill can be obtained when you bring together a wide variety of opinions based on, for instance, geographical representation, from the Representative from Portland to the Representative from Norridgewock. Also from diversity of ecological approaches, from the Representative from Wayne to the Representative from Gray. Also from different legislative experience, from the Representative from Kingfield to the Representative from Dixfield. This legislation was unanimously supported by the Natural Resources Committee and reflects many hours of incorporating the concerns of the committee members, incorporating the concerns we've heard on the floor here this morning.

We were all able to support this bill for three basic reasons. One, permitting efficiency will be improved, that's less government. Number two, the costs of the program are going to be fairly distributed and I want to address that in detail. Number three, state delegation will result in cleaner environment. We passed out several handouts the other day, there was a florescent orange one which also gives you a broad feeling for the support of this bill, but regarding the improving the efficiency of permitting, the present program at DEP has been woefully understaffed. The program has been plagued with long delays in issuing permits and has had problems in successfully implementing the current waste water discharge laws. While DEP has been rightfully criticized for not living up to their current responsibilities, funding the delegation of the federal permit program will go a long way to resolving this problem. The new proposed positions at DEP to be funded by this legislation will go toward fully staffing the existing waste water control program. Only two of the new positions which will not be filled right away are required to handle the additional duties proposed by delegation. A single state administered program will mean that one stop applications, licenses and reports will be available for waste water dischargers. This will be a local control program operated by DEP staff within Maine who will be more responsive to applicants and local concerns whether than bureaucrats at EPA in Boston. DEP staff have knowledge of specific circumstances on a local level and are able to respond more rapidly to applicant's needs. Licensing, compliance, inspection, technical assistance and pollution prevention programs will now be integrated and the end result will be more efficient delivery of government service. As I'm sure you'll all agree, the most controversial part of this legislation has to do with costs and I'm not going to sidestep that issue. There are additional costs to take on the administration of the program and to provide efficient service to businesses while continuing to protect our environment. But waste water licensing fees have not been adjusted for over a decade. They do not reflect who is contributing pollutants to state waters and they're currently unfairly distributed amongst dischargers. The fee schedule in this bill more accurately reflects fees based on who is polluting into our state's waters. Under the proposed system, municipalities who are responsible for 21 percent of the polluting load are going to pay roughly the same amount 22 percent of the

total fees collected. Major industrial sources with direct discharges amounting to almost 80 percent of the polluting load are not going to pay 80 percent, they're paying 59 percent of the total fees collected. They presently pay a very small portion of the program and indeed while some industrial dischargers are facing substantial increases in fees, most of them have come to our committee and expressed a willingness to pay these fees in exchange for the increased efficiencies with a single permit program and the ability to deal with a Maine DEP staff versus a federal EPA staff. Because of an equitable distribution of fees and this is very important, most municipalities and small businesses will see their permit fees go down under the proposed fee structure. Overall, 176 of the 380 permit fees covered by this program are going to decrease from current levels. I want to repeat that, 176 of the 380 permit fees in this program are going to go down. I believe we all share the responsibility to protect our state's waters and we must accept, yes, there is a cost to do this right. The Appropriations Committee has wisely included a general fund appropriation to help adequately fund the existing program at DEP and the new flow and pollutant based fee schedule will fund the balance of the delegation program.

Finally one last point about the environment, the environmental benefit is what I'm sure all of us in this chamber are really concerned about. Maine has traditionally been a leader in environmental enforcement of waste water discharge laws, but recent investigation by the Natural Resources Council uncovered DEP's failure to implement the surface water toxic control program which this body mandated in 1994 but has never adequately funded. DEP has not followed up with dischargers of toxic effluence to make sure the proper tests were performed and that a regular testing schedule was maintained. Most importantly, DEP has not consistently regulated toxic discharges where they have been detected, nor have they opened up licenses for modification when toxic discharges have been a problem. Only by adequately funding the waste water discharge program will we effectively protect our state's waters from excessive pollution and discharges of toxic substances. Maine's motto demands that we be leaders, but 43 other states have already obtained delegation of this federal program and their businesses as well as their waters have benefited. Let's not be the last state to efficiently and effectively implement our environmental laws with regard to waste water pollutants and toxic releases. Please join me in supporting the unanimous committee report. If our diverse committee can see the benefits of this legislation, I hope the rest of you as my colleagues can too. Madam Speaker, I ask that people join me in supporting indefinite postponement and going on to support the unanimous report.

The SPEAKER: The Chair recognizes the Representative from Calais, Representative Driscoll.

Representative DRISCOLL: Madam Speaker, Men and Women of the House. There are parts of this bill that are bad. I'm standing up here once again trying to protect the people in my county. This bill is going to hurt the county as regards to the economy in my area and jobs. The situation at GP is bad. The market is down, the market is soft. They can not compete with the market overseas, therefore, anything like this that's going to increase their costs is going to hurt the mill. At the present time they are going to shut down a paper machine for a week. During the last month they laid off 70 personnel, in fact, they fired them. The Steuben Mill has been up and down also this spring. I'd just like to read you a short piece from Ralph Fleck, the general manager's letter. "Earlier this week my company announced plans to suspend operations at the Woodland, Orient, and Steuben facility until April. This down time is caused by very

high costs at the facility including cost for wood fiber. My facility faces those very same cost pressures and it is my job to do everything I can to control every expense we face. By controlling cost, I am working to secure the jobs of more than 600 Washington County men and women who depend on me for their livelihood. I simply can not support a 2,200 percent increase in our permit fees. This is not chicken feed. Our children are leaving the area and if GP goes down it'll be like a ghost town down there. This is our only real industry that we have in that area. We're trying to preserve jobs in Washington County. Over 13 percent unemployment, they have let go 70 employees, which I just stated, in the last month. The mill has been down off and on this spring. The paper machine is going down. The market is soft so they have to control costs. This is not controlling costs. It's going from 11,000 the first year to 250,000 over five years and that ain't hay. This LD would increase their costs." Once again DEP is causing the loss of jobs in my area, sending my children south. I hope you will defeat this motion.

Representative DRISCOLL of Calais **REQUESTED** a roll call on the motion to **INDEFINITELY POSTPONE House Amendment "A" (H-1035) to Committee Amendment "A" (H-910)**.

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

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

Representative LANE: Madam Speaker, Men and Women of the House. I'd like to address a few things I've heard, perhaps I'm going to refer to the fact that there is an elephant in the living room. I don't know if any of you are aware of what that means but we tend to tip toe around certain things, and I want to address first of all the unanimous committee report which I find interesting. The thing is certain unnamed individuals of the committee told me it was a bad bill, vote against it. I'd also like to address the willingness to pay, seeing I was told certain unnamed individuals and companies really didn't want to say too much because they wanted to maintain a good relationship with the DEP for future. This bill and certain mills, which will remain unnamed, went to the executive office to point out what this might cost, and probably will cost jobs in their mill, because they simply can't afford the 2,200 percent fee increase. They were told well you're just going to have to buy the technology. Well ladies and gentlemen, that technology is not yet readily available so we are telling these mills that they have to buy something that isn't available yet. Now, do we have something that works, now far be it from me, to stand up in defense of the EPA, far be it from me to say I'd rather have the federal government in here, which goes to show me how bad this bill is and I urge you to save jobs. Vote against the indefinite postponement. Thank you.

The SPEAKER: The Chair recognizes the Representative from Dixfield, Representative Bryant.

Representative BRYANT: Madam Speaker, Ladies and Gentlemen of the House. I rise today to urge you to vote for the pending motion. We're all concerned about jobs, but I think the funding on this program is important. It's fair, it brings in line with everybody's interest. The people in the State of Maine have an interest in taking care of the water that gets processed and that's reflected in the general fund. Also in the fees is reflected fairness, the volume of water with the toxicity relates to the rate and also the federal government has an interest in this and their funds are in there so we're all concerned about jobs but I believe this is a good bill. It also allows companies to reduce paperwork. It allows them to save money and save time and that's important. What this bill also does is allow the State of Maine to get their

hands around the 780 million gallons of water that gets processed. We all are concerned, but I believe we worked hard on this bill, it's a unanimous report, so I urge you to vote with the pending motion and get onto the majority report. Thank you.

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

Representative ROWE: Madam Speaker, Men and Women of the House. I would also encourage you to vote for the pending motion to indefinitely postpone House Amendment "A", which basically this Amendment would take out all the fee adjustments in the bill. It would leave the delegation with no additional fees for additional resources which would make delegation impossible to enforce.

You've heard a lot from individuals talking about how much the waste water discharge fees would go up and I'm sure they've received phone calls. I think that's good, you're representing the folks who call from you. I think you've been given some improper information with respect to the size of the increase, in fact, as I look at this sheet, I see nothing over \$50,000 a year and I've heard in the hundreds of thousands. That's true in other states, in Wisconsin there's paper companies that pay over a half a million dollars for the same thing that we're talking about here.

The reason this is a decent bill, I think there are two reasons, even if we didn't have the delegation, what it does is adjust the fee structure for these waste water discharge permits. Now the fees are imposed, there's no consideration for quantity of pollutants discharged, toxic pollutants are not considered. Multiple discharge points are not considered. It's a one size fits all and sure that's why a lot of facilities are happy with it. They get a lot for very little and what this bill attempts to do is provide some equity. The fees are based on 21 discharge groups. The fees are paid based on the quantity of pollutants discharged, in other words based on the annual flow. So clearly if you are a large discharger you're going to pay more than a small one. It makes a lot of sense to me because it's going to take more resources to monitor that and to administer the federal program. Basic fees adjusted will reflect the potential for the water quality impact. There will be fees for toxic pollutants based on the quantity discharged and the relative toxicity. This will encourage pollution prevention and flow reduction because obviously the fee is based in part upon the flow, as you reduce the flow the fee would be reduced. There's a lot of support for this bill, I must tell you. You heard from some of the paper companies, at least from what I've heard, I don't believe this to be disputed, almost three-quarters of the paper companies support this bill in this state. The Maine Municipal Association originally opposed the bill, they've withdrawn their opposition after we made some adjustments to the fee structure. I initially did not support the bill in committee, I had some concerns about it. It was reworked, there were several of us that really asked tough questions. We wouldn't put this bill in front of you if we thought it was simply putting more positions and building up the bureaucracy within the Department of Environmental Protection, but that's not what we're doing. You've heard today, why change things because we can get our discharge permit free under the EPA, well that's not true. You have to pay to prepare the application, submit it and to the extent there are additional costs, you will pay them. The fact of the matter is the EPA may not be doing the best job at enforcing the federal waste water discharge permits or even reviewing the applications. Maine is one of only a few states, I think there's only nine states left that do not have the delegation authority to administer the national pollutant discharge elimination system. For every person you've heard today speak against the bill, I would suggest there are many more out there that would speak for it if you were to check with them. I'm not going to go over the list. There are clearly some municipalities

and sanitation districts that would say our fees are going to increase. Some are going to increase as much as ten times. Well you know that's because they are getting a good deal now because there is no regard for the toxicity of the chemicals. There's no regard for the flow levels so what this is doing is it's basically adjusting the fees for reality and no two facilities are the same and this bill recognizes that. So I understand what you've heard today, but I'm just going to tell you, this committee did not take this bill lightly, we do not carry the water of the DEP. We do scrutinize these bills. We did work this bill over and what you have is a pretty decent bill and I would ask you to vote for the pending motion to indefinitely postpone this House Amendment. Thank you.

The SPEAKER: The Chair recognizes the Representative from Kennebunk, Representative Murphy.

Representative MURPHY: Madam Speaker, Men and Women of the House. If my vote on this issue depended solely upon the fee increase, actually in Kennebunk we see a slight decrease, \$19.00 in the first year and then it moves up to \$827, so that's not the level that we see from other towns. I oppose this and I will get to the specific communication I had from the sewage district. There's a question of DEP's capability of administering this program. Over the past several years the DEP through the mismanagement of its present permitting program has managed to accumulate a deficit of more than \$200,000. This has been a result of not relicensing existing facilities and therefore not being able to collect license fees. When we talk about lack of user friendliness, there is also a history which lacks consistency and cooperation with the Kennebunk sewer district. The DEP performed a river study of the Mousan River in 1995. The study, issued in February 1996, was inconclusive and all parties, DEP and Kennebunk sewer district agreed that more study in the summer of 1996 was needed and that the February study would not be used to make any water quality judgements. Eight months later during the EPA licensing public comment period, the DEP in its sign off on water quality issues relied on the February study to make comments. The result was a stricter chlorine requirement. The February date of study was used despite giving the Kennebunk sewer district assurance that the data would not be used for that purpose. In addition the Kennebunk sewer district has been waiting since September 1996 for the results of the summer 1996 river study. I've been here for three different administrations, a Democrat, a Republican and now an Independent. All three of those governors made campaign promises to eliminate red tape, to make Maine State Government user friendly. A Democrat, a Republican, and an Independent have not be able to accomplish that goal. If we could have the same enthusiasm for building the DEP bureaucracy and powers, if we could have that same enthusiasm in the private sector of growing jobs we wouldn't see this 10 to 13 percent unemployment rate in many regions of this state. This is a good amendment, I hope we support it.

The SPEAKER: The Chair recognizes the Representative from Winslow, Representative Vigue.

Representative VIGUE: Madam Speaker, Ladies and Gentlemen of the House. Let me tell you what happened in the 115th when these bills came up. I used to get numerous calls. I got numerous calls in the 116th. I got numerous calls in the 117th. Ladies and gentlemen, I have not as yet received a call on this. You know why, because you have silenced my mill, it doesn't exist any more. If you continue along this path, that's exactly what you're going to do with the remainder of the mills, the remainder of the jobs that we have in this state and these are the highest paying jobs that we have. Ladies and gentlemen, I would have loved to have received some of these calls, telling me how they felt concerning this issue, but I have not received

any calls. My mill is silent. Ladies and gentlemen I will be opposing the Indefinite Postponement of this amendment. I thank you for your time.

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

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

The SPEAKER: The Representative may pose her question.

Representative RICHARD: We have received on our desk a yellow paper with quotes on it and I'd like to know where these quotes came from. Did they come from the committee hearing or were they taken out of the paper or where did they come from?

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

Representative COWGER: Madam Speaker, Men and Women of the House. All these quotes were taken from testimony presented before our committee, written testimony, or letters of support.

The SPEAKER: A roll call has been ordered. The pending question before the House is the motion to Indefinite Postponement House Amendment "A" (H-1035) to Committee Amendment "A" (H-910). All those in favor will vote yes, those opposed will vote no.

**ROLL CALL NO. 516**

YEA - Baker, Berry RL, Bigl, Bolduc, Brennan, Brooks, Bryant, Bull, Bunker, Chartrand, Chizmar, Colwell, Cowger, Davidson, Desmond, Dunlap, Etnier, Farnsworth, Fisher, Fisk, Foster, Fuller, Gagne, Gagnon, Green, Kane, Kontos, Lemaire, Lindahl, Mailhot, McKee, Mitchell JE, Morgan, Muse, O'Neil, Pendleton, Pieh, Povich, Powers, Quint, Richard, Rowe, Saxl JW, Saxl MV, Shannon, Shiah, Sirois, Skoglund, Snowe-Mello, Stevens, Tessier, Townsend, Tripp, Volenik, Watson, Winn, Wright.

NAY - Ahearne, Bagley, Barth, Belanger DJ, Belanger IG, Berry DP, Bodwell, Bouffard, Bragdon, Bruno, Buck, Bumps, Cameron, Campbell, Carleton, Chick, Cianchette, Clark, Clukey, Cross, Dexter, Donnelly, Driscoll, Gamache, Gerry, Gieringer, Goodwin, Gooley, Hatch, Honey, Jones SL, Jones SA, Joy, Joyce, Joyner, Kasprzak, Kerr, Kneeland, Labrecque, Lane, LaVerdiere, Layton, Lemke, Lemont, Lovett, MacDougall, Mack, Madore, Marvin, Mayo, McAlevey, McElroy, Murphy, Nass, Nickerson, O'Brien, Ott, Paul, Peavey, Perkins, Perry, Pinkham RG, Pinkham WD, Plowman, Poulin, Rines, Samson, Sanborn, Savage, Spear, Stanley, Stedman, Taylor, Tobin, Treadwell, True, Tuttle, Underwood, Usher, Vedral, Vigue, Waterhouse, Wheeler EM, Wheeler GJ, Winglass, Winsor, Madam Speaker.

ABSENT - Dutremble, Frechette, Jabar, Jones KW, Meres, O'Neal, Thompson.

Yes, 57; No, 87; Absent, 7; Excused, 0.

57 having voted in the affirmative and 87 voted in the negative, with 7 being absent, the motion to **INDEFINITELY POSTPONE House Amendment "A" (H-1035) to Committee Amendment "A" (H-910) FAILED.**

A roll call having been previously ordered on the motion to **ADOPT House Amendment "A" (H-1035) to Committee Amendment "A" (H-910)** was taken now:

The SPEAKER: A roll call having previously been ordered. The pending question before the House is adoption of House Amendment "A" (H-1035) to Committee Amendment "A" (H-910). All those in favor will vote yes, those opposed will vote no.

**ROLL CALL NO. 517**

YEA - Ahearne, Bagley, Barth, Belanger DJ, Belanger IG, Berry DP, Bodwell, Bouffard, Bragdon, Bruno, Buck, Bumps,

Cameron, Campbell, Carleton, Chick, Cianchette, Clark, Clukey, Cross, Dexter, Donnelly, Driscoll, Gamache, Gerry, Gieringer, Goodwin, Gooley, Honey, Jones SL, Jones SA, Joy, Joyce, Joyner, Kasprzak, Kneeland, Kontos, Labrecque, Lane, LaVerdiere, Layton, Lemke, Lemont, MacDougall, Mack, Mailhot, Marvin, Mayo, McAlevey, McElroy, Morgan, Murphy, Nickerson, Ott, Paul, Peavey, Perkins, Perry, Pinkham RG, Pinkham WD, Poulin, Rines, Sanborn, Spear, Stanley, Stedman, Taylor, Tobin, Treadwell, True, Tuttle, Usher, Vedral, Vigue, Waterhouse, Wheeler EM, Wheeler GJ, Winglass, Winsor, Madam Speaker.

NAY - Baker, Berry RL, Bigl, Bolduc, Brennan, Brooks, Bryant, Bull, Chartrand, Chizmar, Colwell, Cowger, Davidson, Desmond, Dunlap, Etnier, Farnsworth, Fisher, Fisk, Foster, Fuller, Gagne, Gagnon, Green, Hatch, Kane, Lemaire, Lindahl, Lovett, Madore, McKee, Mitchell JE, Muse, Nass, O'Brien, O'Neil, Pendleton, Pieh, Povich, Powers, Quint, Richard, Rowe, Samson, Savage, Saxl JW, Saxl MV, Shannon, Shiah, Sirois, Skoglund, Snowe-Mello, Stevens, Tessier, Tripp, Volenik, Watson, Winn, Wright.

ABSENT - Bunker, Dutremble, Frechette, Jabar, Jones KW, Kerr, Meres, O'Neal, Plowman, Thompson, Townsend, Underwood.

Yes, 80; No, 59; Absent, 12; Excused, 0.

80 having voted in the affirmative and 59 voted in the negative, with 12 being absent, **House Amendment "A" (H-1035) to Committee Amendment "A" (H-910) was ADOPTED.**

**Committee Amendment "A" (H-910) as Amended by House Amendment "A" (H-1035) thereto was ADOPTED.**

The Bill was **PASSED TO BE ENGROSSED as Amended by Committee Amendment "A" (H-910) as Amended by House Amendment "A" (H-1035) thereto in NON-CONCURRENCE** and sent up for concurrence.

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By unanimous consent, all matters having been acted upon were **ORDERED SENT FORTHWITH** with the exception of matters being held.

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

**HOUSE DIVIDED REPORT - Majority (12) Ought to Pass as Amended by Committee Amendment "A" (H-1066) - Minority (1) Ought Not to Pass - Committee on HEALTH AND HUMAN SERVICES on Bill "An Act to Provide for Confidentiality of Health Care Information"**

(H.P. 1225) (L.D. 1737)

Which was **TABLED** by Representative KONTOS of Windham pending **ACCEPTANCE** of either Report.

On motion of Representative MITCHELL of Portland, the Majority **Ought to Pass as Amended** Report was **ACCEPTED.**

The Bill was **READ ONCE. Committee Amendment "A" (H-1066) was READ** by the Clerk.

Representative BRUNO of Raymond **PRESENTED House Amendment "A" (H-1069) to Committee Amendment "A" (H-1066)**, which was **READ** by the Clerk.

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

Representative BRUNO: Madam Speaker, Men and Women of the House. The first thing I'd like to do is thank the Health and Human Services Committee for working on such a large bill and I know they worked on it for over 12 months and we appreciate it and I want to make sure that I comfort you in telling you that I do not want to change the bill at all. I actually support most of the bill, but as a pharmacist I have to tell you, I have some concerns

on my ability to practice pharmacy the way the bill is currently drafted.

My amendment adds in for oral authorization on what is known in this bill as sales and marketing. I'm not sure what sales and marketing means? As a pharmacist if I offer someone a lower price prescription, is that sales and marketing. There's no definition of sales and marketing. Do I need to get a written request from that person just to be able to offer them the lower price alternative? What my bill does and for those of you who have never worked in a pharmacy, most of the dialogue that goes on between a pharmacist and the patient is oral. Nothing, very rarely, are things in writing. There are other parts of the bill that I am concerned with, but I think we can live with, but for now, I think we need to be able to maintain and continue the relationship we currently have with all our patients that come in the store and so I would ask your support on this amendment.

The same Representative **REQUESTED** a roll call on his motion to **ADOPT House Amendment "A" (H-1069) to Committee Amendment "A" (H-1066)**.

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

Representative MITCHELL of Portland moved that **House Amendment "A" (H-1069) to Committee Amendment "A" (H-1066)** be **INDEFINITELY POSTPONED**.

The Chair ordered a division on the motion to **INDEFINITELY POSTPONE House Amendment "A" (H-1069) to Committee Amendment "A" (H-1066)**.

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

Representative SHANNON: Madam Speaker, Men and Women of the House. I rise to encourage you to vote against indefinite postponement of this amendment. The good Representative from Raymond raises serious concerns for the delivery of professional services in the pharmacy business. We currently have a law on the books that requires patient counseling, in fact all of that is oral. They have to sign if they don't want to be counseled on the use of their medication. They don't have to sign if they're asking for advice or looking for advice from that pharmacist and I certainly support the inclusion of the words oral in this bill. It's a necessity for the continuation of good patient care in pharmaceutical delivery field.

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

Representative KANE: Madam Speaker, Men and Women of the House. The process that this bill was arrived at was very long, extremely inclusive of all professions including pharmacist, the insurance companies, the medical professions and one of the reasons for providing some flexible language with respect to implied consent was in order for pharmacists to be able to communicate with persons, in terms of providing helpful information without having to get written or even oral authorization. The key thing to remember and the committee was very clear on this as we went through this process was the awareness that drug companies, drug pharmacy houses in the past have collected information from pharmacies and have targeted patients directly in order to move their own products. This is the practice that this law is attempting to protect the consumer from. It is not attempting to prevent a pharmacist from being helpful in providing the most appropriate lesser cost prescriptions to any particular customer, but it is clearly designed to prevent wholesale marketing by drug companies in using information that may be provided by pharmacists in order to effect changes in prescription behavior, so I urge you to support the Indefinite Postponement.

Representative CAMPBELL of Holden **REQUESTED** a roll call on the motion to **INDEFINITELY POSTPONE House Amendment "A" (H-1069) to Committee Amendment "A" (H-1066)**.

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 Manchester, Representative Fuller.

Representative FULLER: Madam Speaker, Ladies and Gentlemen of the House. The amendment that we are debating right now relates to a section in this bill relative to marketing or sales. This is an issue I attended many, many, many meetings in the course of this bill being developed and we had another subcommittee of our committee that chaired this. One of the big issues that we heard about consistently was people being targeted as Representative Kane indicated. I'm aware that oral consent is one option for getting permission to market stuff directly to people. I guess I'm concerned about whether or not something might happen like has happened with telephone slamming. That there be some kind of presumption that somebody did give their oral consent and when in fact they really didn't intend to be targeted directly by drug companies trying to change the products that they're purchasing. I urge that we support indefinite postponement of this amendment.

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

Representative BRUNO: Madam Speaker, Men and Women of the House. I agree totally. I don't think we ought to be selling information to drug companies and identifying people so they can be targeted. That's not what we want to do. As a pharmacist, I don't support that, but I do want to be able to continue my relationship with my patients and having a conversation with them without asking them to put in writing that it's okay for me to talk to them. The other thing I don't want to do is when someone other than the patient comes in that I have to be able to get them to go home and have the patient sign something for me to talk to them. This is just a practicality issue. In the course of filling two hundred prescriptions a day, you can not be asking everyone to sign something and then be asking us to counsel them and do everything else that state law already requires us to do. This is just an ease of practice issue for a pharmacist who works twelve hours a day, usually, and knows everybody by name that comes in, but yet what you're asking them to do is making them sign something. It just doesn't make sense, so I ask that you vote against Indefinite Postponement and support me in my amendment. Thank you.

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

Representative MITCHELL: Madam Speaker, Men and Women of the House. The Representative from Raymond, Representative Bruno, I'm sure has no intent of abusing this provision, the problem is, is that many other pharmacist chains have abused this provision. That's why we need it. In Massachusetts, there's a case going on against CVS and if you notice in today's Bangor Daily News, someone is suing CVS for releasing their information for the purposes of marketing. That is the only thing that this applies to, it is not to talk to your pharmacist, it is not to talk about prescriptions, it is only for marketing. We're asking that you limit the ability for pharmaceutical companies to market directly based on your information given to the pharmacist.

The SPEAKER: A roll call has been ordered. The pending question before the House is the motion to Indefinitely Postpone House Amendment "A" (H-1069) to Committee Amendment "A" (H-1066). All those in favor will vote yes, those opposed will vote no.

**ROLL CALL NO. 518**

YEA - Ahearne, Bagley, Baker, Berry RL, Bolduc, Bouffard, Brennan, Bryant, Bull, Bunker, Chartrand, Clark, Colwell, Cowger, Davidson, Desmond, Driscoll, Dunlap, Etnier, Farnsworth, Fuller, Gagne, Gagnon, Goodwin, Green, Jones SL, Kane, Kerr, Kontos, LaVerdiere, Lemaire, Lemke, McKee, Mitchell JE, Morgan, Paul, Pieh, Povich, Powers, Quint, Richard, Rowe, Samson, Sanborn, Saxl JW, Saxl MV, Sirois, Skoglund, Stanley, Stevens, Townsend, Tripp, Tuttle, Usher, Volenik, Watson, Winn, Wright, Madam Speaker.

NAY - Barth, Belanger DJ, Belanger IG, Berry DP, Bigl, Bodwell, Bragdon, Brooks, Bruno, Buck, Bumps, Cameron, Campbell, Carleton, Chick, Chizmar, Cianchette, Clukey, Cross, Dexter, Donnelly, Fisher, Fisk, Foster, Gamache, Gerry, Gieringer, Gooley, Hatch, Honey, Jones SA, Joy, Joyce, Joyner, Kasprzak, Kneeland, Labrecque, Layton, Lemont, Lindahl, Lovett, MacDougall, Mack, Madore, Mailhot, Marvin, Mayo, McAlevey, McElroy, Murphy, Muse, Nass, Nickerson, O'Brien, O'Neil, Ott, Peavey, Pendleton, Perkins, Perry, Pinkham RG, Pinkham WD, Plowman, Poulin, Rines, Savage, Shannon, Shiah, Snowe-Mello, Spear, Stedman, Taylor, Tessier, Tobin, Treadwell, True, Underwood, Vedral, Vigue, Waterhouse, Wheeler EM, Wheeler GJ, Winglass, Winsor.

ABSENT - Dutremble, Frechette, Jabar, Jones KW, Lane, Meres, O'Neal, Thompson.

Yes, 59; No, 84; Absent, 8; Excused, 0.

59 having voted in the affirmative and 84 voted in the negative, with 8 being absent, the motion to **INDEFINITELY POSTPONE House Amendment "A" (H-1069) to Committee Amendment "A" (H-1066) FAILED.**

The SPEAKER: A roll call has been ordered. The pending question before the House is adoption of House Amendment "A" (H-1069) to Committee Amendment "A" (H-1066). All those in favor will vote yes, those opposed will vote no.

**ROLL CALL NO. 519**

YEA - Barth, Belanger DJ, Belanger IG, Berry DP, Bigl, Bodwell, Bolduc, Bragdon, Brooks, Bruno, Buck, Bumps, Cameron, Campbell, Carleton, Chick, Chizmar, Cianchette, Clukey, Cross, Dexter, Donnelly, Fisher, Fisk, Foster, Gamache, Gieringer, Goodwin, Gooley, Hatch, Honey, Jones SA, Joy, Joyce, Joyner, Kasprzak, Kneeland, Labrecque, Lane, Layton, Lemont, Lindahl, Lovett, MacDougall, Mack, Madore, Marvin, Mayo, McAlevey, Murphy, Muse, Nass, Nickerson, O'Brien, O'Neil, Ott, Peavey, Pendleton, Perkins, Perry, Pinkham RG, Pinkham WD, Plowman, Poulin, Rines, Savage, Shannon, Snowe-Mello, Spear, Stedman, Taylor, Tessier, Tobin, Treadwell, True, Underwood, Vedral, Vigue, Waterhouse, Wheeler GJ, Winglass, Winsor.

NAY - Ahearne, Bagley, Baker, Berry RL, Bouffard, Brennan, Bryant, Bull, Bunker, Chartrand, Clark, Colwell, Cowger, Davidson, Desmond, Driscoll, Dunlap, Etnier, Farnsworth, Fuller, Gagne, Gagnon, Gerry, Green, Jones SL, Kane, Kerr, Kontos, LaVerdiere, Lemaire, Lemke, Mailhot, McKee, Mitchell JE, Morgan, Paul, Pieh, Powers, Richard, Rowe, Sanborn, Saxl JW, Saxl MV, Shiah, Sirois, Skoglund, Stanley, Stevens, Townsend, Tripp, Tuttle, Usher, Volenik, Watson, Winn, Wright, Madam Speaker.

ABSENT - Dutremble, Frechette, Jabar, Jones KW, McElroy, Meres, O'Neal, Povich, Quint, Samson, Thompson, Wheeler EM.

Yes, 82; No, 57; Absent, 12; Excused, 0.

82 having voted in the affirmative and 57 voted in the negative, with 12 being absent, **House Amendment "A" (H-1069) to Committee Amendment "A" (H-1066) was ADOPTED.**

Representative LOVETT of Scarborough **PRESENTED House Amendment "B" (H-1073) to Committee Amendment "A" (H-1066)**, which was **READ** by the Clerk.

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

Representative LOVETT: Madam Speaker, Ladies and Gentlemen of the House. The legislation that you consider today on confidentiality is one that many people with extremely diverse interests worked on very hard. Many are insurers, professional groups, consumer groups, drug companies, and health care facilities. The interested parties group on confidentiality was convened back in August and they met numerous times between then and now. I applaud them and I thank all of them who took part in this. While the legislation has many admirable components, many of which I can support, it also has one section that I find so troublesome that I can not in good conscience support it for fear of the negative consequences it may have later, down the road. This is the section on disclosure of confidential information without prior authorization. This section allows health care practitioners and health care facilities to disclose confidential records with the oral consent of a patient or implied by the individual's conduct to other health care practitioners and facilities. So if your health care practitioner or health care facility determines by your conduct that you have given consent then this is allowable to release your medical records to another practitioner or facility. It concerns me that a patient's behavior will determine consent, especially mental health patients. This creates a bad situation for consumers who have every right to know where and when confidential records are going. This also creates a terrible conflict for mental health professionals whom many of which are required by their codes of ethics and their licensure law to have written authorization for the disclosure of confidential patient information. The language in this bill on disclosure without authorization may in fact according to the Board of Examiners of Physiologists the state agency which licensed physiologists in Maine lead to the sanctioning of physiologists. If they do not disclose to their clients the conflict between how they handle confidential information according to their licensure law and this law. The Department of Mental and Retardation and Substance Abuse Services also felt there was a conflict and have been excluded from the bill so that all the practitioners either employed or contracted must follow a more stringent law of written authorization only. My goal is to help the consumer and the health care practitioners. Some of the parties involved have not wanted to remove the language inferred from the individual's conduct. So after meeting with the representatives of the Maine Medical Association, the Maine Physiologists Association, the Maine Civil Liberties Union, and the Maine Association of Mental Health Services a compromise was put together, which is the amendment I am presenting to you today. This compromise will exclude mental health care practitioners as licensed in the State of Maine from this language as it appears in the Department of MHMRSAS as well as HIV. Safeguarding the confidentiality of health information, while a new concept to many, has always been a cornerstone of treatment for the mentally ill. Without the security of knowing that the information shared with their therapist is confidential, many mental health patients would not seek help for fear of how that information would be used. This amendment will protect both consumers and practitioners and I urge you to vote for this amendment.

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

Representative BRAGDON: Madam Speaker, Men and Women of the House. In response to the Representative from Scarborough, Representative Lovett's amendment, I think it is

important for you to understand what exactly this bill does and why I feel that her amendment is unnecessary and may be harmful. First, current Maine statute provides minimal protection to health care information for anyone. This bill for the first time puts into statute that the State of Maine believes that all health care information is confidential and deserves to be protected at a very high standard. What this bill seeks to do for the first time again is to create a high standard for all health care information and create a base for practitioners to follow when disclosing or releasing health care information. It's important to understand that all we are doing is creating a base, a high base, but a base level of conduct that practitioners need to follow. This bill for the first time puts into the law that patients are allowed to add additional comments to their health care record. Patients are allowed to request that certain sensitive health care information, this would include mental health information, can be withheld from their record when the practitioner discloses those records or releases those records to somebody else. This bill puts into law for the first time that when a practitioner or facility releases those records, they must specify specifically who they are releasing those records to and for what purpose and they are required by law not to release more information than is necessary to meet that request. I think you will all agree that this bill puts into place important protections for the consumer when dealing with health care information. The problem I have with the amendment posed by the Representative is that it exempts out for certain practitioners one provision of the bill. I think it's very important to understand what exactly this provision of the bill does. I'd like to just briefly read to you the provision of the bill, because I think this is critical in understanding why this amendment is not needed.

Disclosure without written authorization, the bill provides this. A practitioner in a health care facility can disclose information to another health care practitioner or facility for diagnosis, treatment or care of the individual when that disclosure is outside the office practice or organization of the health care practitioner facility when authorization is given orally or maybe inferred by the individual's conduct. What this is doing is it is allowing people who are involved in the treatment and care of the individual to have health care information passed between the practitioners or the facilities in keeping with what's in the best interest of the patient. What the amendment seeks to do is to say that certain professions can not use this provision and I believe, creates an administrative nightmare requiring that every time health care information is disclosed by these certain practitioners that it must be disclosed only with oral or written consent. Let me give you just a brief situation on why it's important to have implied consent in health care information. I as a general physician may refer you as a patient to a specialist. I would then tell you to go to the receptionist out front, talk to him or her and have him or her schedule you an appointment with the specialist. If you as a patient go out front and schedule that appointment, say with a psychiatrist, it's then implied by your conduct that you want me as your GP to forward your health care records on to that psychiatrist so that when he or she evaluates you, they'll have all the information necessary. Under this provision you would have to specifically ask the patient or receive written consent for that very quick interaction between the health care practitioner and the patient and I believe create an administrative nightmare. Ladies and Gentlemen of the House, I would urge you strongly to vote against this amendment.

Representative BRAGDON of Bangor **REQUESTED** a roll call on the motion to **ADOPT House Amendment "B" (H-1073)** to **Committee Amendment "A" (H-1066)**.

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 Waterboro, Representative McAlevey.

Representative **McALEVEY**: Madam Speaker, Men and Women of the House. The people of Maine are entitled to medical privacy, including the right to control who gets access to the medical information. The right to privacy concerning our medical records is fundamental. A Times CNN poll found that 87 percent of the Americans believe that patients should be asked for permission every time any medical information is used. The unauthorized use and abuse of this information is already widespread. Most people would be alarmed to know that many pairs of eyes are scanning what you thought was privileged communications with their doctor. According to Time Magazine, trading in health care information has already become a 40 billion dollar industry. A report by the Institute of Medicine noted that the roster of parties claiming a need to know what is in an individual's medical records was too numerous to list and the situation is only getting worse day by day. Now is the time for this legislature to protect Maine people. LD 1737, with this amendment is a good start towards protecting our consumers.

Now I'm an information broker in my other life. You know the difference between being an information broker and a licensed private detective, about \$40 an hour more. I can legitimately purchase health care information that's in the public domain, because once this information is sold to an insurance company, they're no longer under any obligation to whom they sell it to. They then sell it to the public domain. I won't trade in this information, most professionals in my field will not either, either as flak information or public information so I would urge you to support this amendment to Committee Amendment "A." If you're in the slightest doubt as how to vote on this, I would ask you to err on the side of the consumer and protect our consumers. Thank you.

The **SPEAKER**: The Chair recognizes the Representative from Manchester, Representative Fuller.

Representative **FULLER**: Madam Speaker, Men and Women of the House. As has already been noted by previous speakers, the availability of electronic transmission concerning genetic testing, increasing use of people's medical information for marketing purposes have all resulted in people being justifiably concerned about confidentiality of medical information. I totally agree with the previous speaker's comments that we, as consumers, have a right to expect that our medical information will be held confidential. I would like to assure you that this bill itself assures that medical information for the first time by statutes will be held confidential. Disclosure is permitted only when authorized by the patient when otherwise authorized by law. The goal of this bill is to create a system where consumers are protected and where there is a minimum set of standards for all health care practitioners and providers under which information may, I have to stress that very carefully, under which information may, not must, be disclosed. Current provisions concerning confidentiality of medical information exists either in ethical standards for various practitioners, agency rules, various statutes or not at all. This legislation is an important beginning to address the issues of confidentiality of our health care information.

As also noted there were a series of meetings of interested parties that started last summer at which a group of 30 to 50 people met regularly assisted by a professional facilitator to discuss the provisions and the two bills that came together addresses issues of confidentiality. I would point out that I was the only legislator that attended all of those meetings which were approximately every two weeks. The final report was prepared which provides a foundation for the draft before this body today. In addition to the summer and fall meetings with the

subcommittee of the Health and Human Services Committee held at least eight work sessions before presenting a compromise bill to the full committee. I chaired that subcommittee which also included Representative Kane, Representative Bragdon, Representative Joyner. Each of those work sessions was also attended by usually 20 or more people. There was such a high level of interest in what we were arriving at. During all these discussions and negotiations, many interests including consumers, health care practitioners and providers with a variety of professional disciplines, health insurers regulators, were present and their input was invited. Not only did they sit in the room closed mouth, but we asked for them to participate in these discussions. No group won on every point, such is not the nature of a compromise on a complex issue. However, enough common ground was found to produce an important piece of legislation protecting the interest of Maine's citizens.

Another point about this bill was that is extremely important is that this bill addresses disclosure of individually identifiable medical information. The bill is whole-heartedly supported by the Maine Medical Association, the Maine Hospital Association and numerous other groups. Some organizations are less comfortable with certain parts of this bill, it is a compromise, but we tried very hard to address everyone's concerns without compromising the confidentiality protection intended. One of the most important provisions of the bill sets forth the requirements of any disclosure authorization from a patient or other representative is asked to sign. The bill sets forth what must be included in the form, how long it is valid and the requirements of execution. That does not presently exist in our today's health care system. Of particular significance is the requirement that the authorization forms includes the nature of the information to be disclosed and the identity or descriptions of the persons receiving the information. No longer will providers have to respond to requests for an entire patient record without any idea of whether the entire record is required or the legitimate purpose of the requester. Many of you have heard from some constituents or interest groups that the bill is not strong enough or that it is too strong. Such is the nature of compromise. As noted earlier and by a previous speaker, this bill sets a minimum standard under which information may be disclosed for those professionals, and again I stress, may be disclosed. For those professionals and associations who believe higher standards should be imposed, section 1711, C.2, in this bill states clearly nothing in this section prohibits a health care practitioner or health care facility from adhering to ethical or professional standards provided that these standards do not decrease the protection of confidentiality granted by this section. The section refers to a whole confidentiality section. The other issue which you've heard about is the implied consent provision. It is critically important to understand that the subparagraph in this bill on implied consent is in the section on disclosure without written authorization when the information is to another health care practitioner or facility for diagnosis, treatment or care of the individual. That is the only purpose under which authorization may be "implied from the individual's conduct." For example, let me give you another example of implied consent, when you take your prescription to a pharmacist and this is the issue that Representative Bruno addressed, and he has a question about what the doctor has ordered, particularly knowing what other medications you may be receiving ordered by another physician, implied consent gives the pharmacist the authorization to contact your physician without having to call you first to get your permission. That is what implied consent means. I would remind you that many prescriptions are taken to a pharmacy by family members or friends, particularly for the elderly and people returning home from a hospital stay so do not suggest it would

be a simple thing to get a written authorization from the patient. I am well aware that the Maine Psychological Association opposes implied consent provision, certainly they can abide by whatever higher standards expected of their particular discipline. I'm also aware that not all mental health professionals agree with their position. I would like to respond to the professional disciplines that are specifically listed in House Amendment 1073, which is House Amendment "B" to Committee Amendment "A."

I'm a registered nurse myself. I'm a member of the Maine State Nurses Association and I tried to find out who took the position that a clinical nurse specialist licensed under the provisions of Title 32, etc., supports the amendment. I have information concerning the Chair of the governmental relations committee from the Maine State Nurses Association that they have not seen this amendment. They have not discussed it and I have serious questions about who authorized that provision in this bill.

I have also heard from, relative to the physicist support of this bill, that the physicist can live with this amendment, but they would rather support the Majority Report on the bill. They feel that this amendment is really not in the best interest of patient care.

This bill is a major step in protecting Health Care Consumers, implied consent is absolutely necessary to allow the day to day functioning of our health care system and is in the best interests of patients. I ask you to vote down the proposed amendment, which is before you now and go on to adopt the LD with the Committee Amendment "A."

Representative KANE of Saco moved that **House Amendment "B" (H-1073) to Committee Amendment "A" (H-1066) be INDEFINITELY POSTPONED.**

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

Representative KANE: Madam Speaker, Ladies and Gentlemen of the House. There's been a great deal of misinformation circulated regarding the issue of implied consent. This is a bill that had the overwhelming support of bipartisan support of the majority 12 - 1. It was the product of nine months of very intensive work by the entire health care industry in Maine. This amendment, contrary to what's been implied is not supported by the Medical Association, it is not supported by the National Association of Social Workers, and as you just heard, by the Nursing Association. It's a product of a great deal of compromise and consensus over a long period of time with only one group not getting what they wanted. Every other professional group and every other participant in the process gave a little. Everybody gave a little in order to come out with a universal product that covered all professions and all health care communications. Now we're faced with creating an exception that can blow a hole in the integrity of this whole process.

I'd like to elaborate on the issue of implied consent. I'm a licensed clinical social worker and I have been a mental health therapist and administrator for over 35 years. It is important to understand the context in which the flexibility afforded by this implied consent provision is placed. It applies only to sharing information with another professional or appropriate program staff for the benefit of diagnosis and treatment of the person. Any professional who has a professional relationship with a person must have a basis for interpreting the person's assent to the sharing usually from a discussion of the possible need to consult with another professional as Representative Bragdon amply described earlier and the person acknowledging out of this communication a willingness to go along with it without having to verbally or in writing approve it. In therapy, ladies and gentlemen, a great deal of nonverbal communication takes place and any mental health professional in order to sustain a healthy



therapeutic relationship surely understands and respects the intent and willingness of the person they're attempting to serve. As Representative Fuller indicated most mental health professionals have a practice consistent with their own professional and ethical standards of securing written or oral approval and are not required by this law to do anything differently. As Representative Bragdon pointed out, this provides only a fundamental floor that must guide the behaviors of all health care professionals that provides for some flexibility when it is in the best interests of the patient. Most importantly, it's important to treat mental health professionals the same as any other professionals and not to have different standards in mental health treatment. The mental health field, which I have been a part for over 35 years, has been working very hard to be an integral part of the health care professions. This provision does nothing more than treat all other mental health professionals the same way other health care professionals are being treated and as a mental health professional, I think it is a disservice to mental health professionals not to hold them to the same fundamental basic standards that all others are held to. The process of arriving at this bill was long and very, very inclusive and I hope, ladies and gentlemen, that you will support the move for Indefinite Postponement and not to fracture or fragment the integrity of this confidentiality legislation. Thank you.

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

Representative PIEH: Madam Speaker, Men and Women of the House. I'm very pleased to say that I was not a member of this subcommittee. I participated in reading the minutes through the summer and was pleased to see that we had legislative representation through these ongoing and challenging meetings. I then came to the public hearing and listened while organization after organization after organization got up and supported this compromise effort. I then attended a work session where the tension, I just listened to the subcommittee and their work session, the tension in the room of all these organizations working hard together to support coming out with this bill that is before you, a lot of energy and time went in and I was very pleased that someone else was doing that hard work. When I sit here and look at a potential amendment of any kind attached to this bill, I do worry about it compromising that effort and that compromise by all these organizations. I would request that the Clerk read the report, Madam Speaker, and I would like you just to listen to it as it goes through and hear what a representation, an excellent cross-section and a knowledgeable cross-section of this body put together that report and I encourage you to support the indefinite postponement. Thank you.

Representative PIEH of Bremen **REQUESTED** that the Clerk **READ** the Committee Report.

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

The SPEAKER: The Chair recognizes the Representative from Poland, Representative Snowe-Mello.

Representative SNOWE-MELLO: Madam Speaker, Men and Women of the House. I do appear on the Majority Report. This has been a real struggle for me, this issue. I truly respect and honor everyone who has worked on this committee. Ladies and Gentlemen of the House, originally I was the only one that voted against this and then I came back to committee and I listened and I was thinking about sticking to it, but I lost sight of my goals, I guess. I didn't want to ruin the whole bill these people worked so hard all summer and all fall, but I had real gut feelings that I was really concerned about. The Majority Report Amendment allows for implied conduct for all information except HIV information. I believe that exception of HIV for reasons of discrimination are the same issues of discrimination surrounding mental or behavioral conditions. This applies to two standards,

implied conduct, what is it? Who defines implied conduct? The patient or the practitioner. Is it a nod? Is it a word? Is it a movement? A tone of voice? Is implied conduct a reaction to a straight-forward question of, may I have your authorization to disclose information, or a reaction to a conversation about talking to another professional? I am standing here before you to inform you that my goal is to protect the consumer. I was most concerned with the emotion of implied consent, you see Ladies and Gentlemen of the House, I had a very, very good friend of mine who was released, actually fired from a position at a health care facility due to delicate information that was released without authorization by a mental health care practitioner. Therefore, before you make your vote on this, please think, think hard. I think this amendment is justified, I really do, I think its because so many other organizations also have that same gut feeling that I had and I really do not want to discredit the work that they have done. I think it was a very, very difficult process they went through. This is a very delicate issue to tackle. Thank you.

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

Representative QUINT: Madam Speaker, Men and Women of the House. I think it's important to note that this is a consumer bill. Everybody keeps talking about how we need to watch out for the patients and the consumers. This, in fact, is a consumer bill and it provides many of those protections people are referring to. As the good Representative from Waterboro stated, a lot of this information is currently available on the Internet or through other methods of securing it. LD 1737 for the first time in statutes restricts access to much of that information that's currently available. That's because this is a consumer bill.

I want to talk a little bit about the difficulty of balancing the expedient quick and cost effective delivery of health care and confidentiality. Sharing information between professionals who provide a carousel of services, if you will, need to consult among one another to ensure that the delivery of services and health care to the patient that they are currently working with get that information. It would be extremely unfortunate that if someone who is providing mental health services to a client, or patient of theirs had to ensure that they had gotten oral or written consent before they could proceed or participate in a critical or emergency situation requiring their immediate attention. I think it's important that if we raise the bar of information that professionals share amongst each other under the spirit of consumer protection, we also may be unknowingly interrupting the balance of delivery of health care through an expedient process. I would strongly encourage you to think about that.

I also want to talk a little bit and applaud the psychologists for the high level and manner by which they historically have handled confidential information either through assured oral consent or in most cases written consent. I applaud them for that and I think that that standard is certainly appropriate based on their own professional and ethical standards. However, do we want to put those professional standards in Maine Statutes? I'm not so sure that that's something we want to do. I would strongly encourage you to support the indefinite postponement of this amendment.

The SPEAKER: The Chair recognizes the Representative from Winterport, Representative Brooks.

Representative BROOKS: Madam Speaker, Ladies and Gentlemen of the House. Like my friend across the aisle, Representative Snowe-Mello, I find myself in the somewhat unenviable position, awkward position, of signing on to the Majority Report and now coming back to you and saying that once again I'm in a position that I can't support indefinite postponement of this amendment.

When we first started discussing in the Health and Human Services Committee the report from the subcommittee, the sense that I had, and I still do have is a sense of high regard of praise and support for the phenomenal amount of work the subcommittee did and ultimately what the full committee did in its public hearing and in its work session. A great deal of information was brought to us that makes this legislation, LD 1737, to me makes a significant change and a very needed, long awaited change in the confidentiality provisions of all medical health information. Again, I too, am in the information business, being a somewhat different business than my friend Representative McAlevey. I frequently stand here and try to get people in this chamber to divulge more information. What I'm finding is that my concerns in the beginning about the mental health aspects of this legislation have never ever really gone away. I signed onto the Majority Report because I didn't want it to appear that I was uncomfortable with LD 1737 and I am not. I think it's a bill that needs to move forward. It's a bill that we need, a law that we need. There were two parts of that bill that concern me. One of the pieces was the marketing information and we dealt with that in the previous vote. The other is the mental health. I know that we have spent a significant amount of time in the past in this body and in many other chambers making absolutely certain that information about mental health treatment, mental health diagnosis is appropriately protected. When I brought this issue up in committee, and I brought it up since with members of the committee and with those folks that line the hallways out there, I have on numerous occasions been told that the provisions of protection are already in there. Well, I guess my response to that is, if they are in fact already in there, then I don't see that we're making a significant change in the legislation adding this amendment. If it's already in there then what are we doing? We're not destroying a really good bill, I think we are adding to a really good bill. Representative Lovett mentioned a number of organizations that she believes supports this legislation, now another Representative Snowe-Mello brought up the Alliance for the Mentally Ill. I, too, have that handout and what it jogged for me is the fact that several days ago I called the AG's Office and asked for an opinion, oral, not written, about implied conduct. That to me is the sticking point in this bill. There is a section of this bill that talks about implied consent. It talks about what medical practitioner can share in the way of information. I have no problem with people sharing either my information or someone else's information about gall bladders. I have a lot of problems with people sharing information about HIV tests, HIV diagnosis. That's exempted in that implied consent provision and I have a ton of problems with any medical practitioners sharing information about treating me for depression, or anything else. That's why I believe that we should vote against indefinite postponement and allow this amendment to be attached to the bill. Again, as I have said before, and as other people have said to you this morning, it is in there. Then what are we doing adding this provision to protect? We have spent our lives, I think, trying to protect information on mental health. I don't want this to jeopardize all the work that we have put into confidentiality. It had also been mentioned on a couple of occasions to me that is a new change, this is a new law. This is a significant upgrade protecting confidentiality about medical records. Then why don't we let this sit there for awhile and then come back and take a look at it and if it isn't appropriate, I hope to be back in this body again and if I have the opportunity to serve on Health and Human Services Committee, I hope to be able to work on mental health organizations and go back and take a look at the law that will result from this legislation. I don't want to go back and find out that we've got to put emergency

stuff through to protect people because there's a hole in the law. This is a new bill, a new law, let's let it become law with the amendment and when we go back later and if we find out there are no problems, we can amend it accordingly. But why do we want to put through a bill that has a hole in it? To me that nagging concern that I have had ever since that wonderful subcommittee came back is that we are opening the door to allow release of mental health information between practitioners.

I happen to be in a very, very fortunate place to have a health facility in my home town that has a number of doctors and I call them my primary care physicians and I've seen them on a number of occasions for physical ailments. Frankly, I don't want anyone in that office knowing if there comes a need for me to be treated by a doctor at Acadia Hospital unless I tell them it's appropriate. Either in writing or orally. I don't want that information shared in the little town of Winterport where there are 3,000 people and where all of the workers reside. I hope that you will join with me in voting against indefinite postponement so that we can get on and attach House Amendment "B" to the Bill so that it will provide to the mental health patients out there appropriate kinds of protection that we have always had in the past.

Representative BRAGDON of Bangor **REQUESTED** a roll call on the motion to **INDEFINITELY POSTPONE House Amendment "B" (H-1073) to Committee Amendment "A" (H-1066)**.

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 indefinite postponement of House Amendment "B" (H-1073) to Committee Amendment "A" (H-1066). All those in favor will vote yes, those opposed will vote no.

#### ROLL CALL NO. 520

YEA - Ahearn, Bagley, Baker, Berry RL, Bolduc, Bouffard, Bragdon, Bryant, Bull, Bumps, Bunker, Campbell, Carleton, Chartrand, Cianchette, Clark, Colwell, Cowger, Cross, Davidson, Desmond, Driscoll, Dunlap, Etnier, Fuller, Gagnon, Green, Hatch, Jones SL, Jones SA, Kane, Kerr, Kontos, LaVerdiere, Lemaire, Lemke, Madore, Marvin, McKee, Mitchell JE, Morgan, O'Neil, Ott, Perry, Pieh, Povich, Powers, Quint, Richard, Rowe, Samson, Sanborn, Saxl JW, Saxl MV, Shiah, Sirois, Skoglund, Stanley, Stevens, Tessier, Townsend, Tripp, Tuttle, Usher, Vigue, Watson, Wright, Madam Speaker.

NAY - Barth, Belanger DJ, Belanger IG, Berry DP, Bigl, Bodwell, Brennan, Brooks, Bruno, Buck, Cameron, Chick, Chizmar, Clukey, Dexter, Donnelly, Farnsworth, Fisher, Fisk, Foster, Gagne, Gamache, Gerry, Gieringer, Gooley, Honey, Joy, Joyce, Joyner, Kasprzak, Kneeland, Labrecque, Lane, Layton, Lemont, Lindahl, Lovett, MacDougall, Mack, Mailhot, Mayo, McAlevey, McElroy, Murphy, Muse, Nass, Nickerson, O'Brien, Peavey, Pendleton, Perkins, Pinkham RG, Pinkham WD, Plowman, Poulin, Rines, Savage, Shannon, Snowe-Mello, Spear, Stedman, Taylor, Tobin, Treadwell, True, Underwood, Vedral, Volenik, Waterhouse, Wheeler EM, Wheeler GJ, Winglass, Winn, Winsor.

ABSENT - Dutremble, Frechette, Goodwin, Jabar, Jones KW, Meres, O'Neal, Paul, Thompson.

Yes, 68; No, 74; Absent, 9; Excused, 0.

68 having voted in the affirmative and 74 voted in the negative, with 9 being absent, the motion to **INDEFINITELY POSTPONE House Amendment "B" (H-1073) to Committee Amendment "A" (H-1066) FAILED**.

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

Representative BRAGDON: Madam Speaker, Ladies and Gentlemen of the House. Very, very briefly, I don't want to belabor this argument. The bill that we have before us is a very comprehensive bill creating lots of protection for the practitioner. I firmly believe the amendment we have before us creates an administrative nightmare for the practitioner. I would urge you to vote against this adoption.

The SPEAKER: A roll call having previously been ordered. The pending question before the House is adoption of House Amendment "B" (H-1073) to Committee Amendment "A." (H-1066). All those in favor will vote yes, those opposed will vote no.

**ROLL CALL NO. 521**

YEA - Baker, Barth, Belanger DJ, Belanger IG, Berry DP, Bigl, Bodwell, Brennan, Brooks, Bruno, Buck, Cameron, Campbell, Carleton, Chick, Chizmar, Clukey, Dexter, Donnelly, Farnsworth, Fisher, Fisk, Foster, Gagne, Gamache, Gerry, Gieringer, Honey, Joy, Joyce, Joyner, Kasprzak, Kneeland, Labrecque, Lane, Layton, Lemont, Lindahl, Lovett, MacDougall, Mack, Madore, Mailhot, Mayo, McAlevey, McElroy, Murphy, Muse, Nass, Nickerson, O'Brien, Peavey, Pendleton, Perkins, Pinkham RG, Pinkham WD, Plowman, Poulin, Rines, Savage, Shannon, Snowe-Mello, Spear, Stedman, Taylor, Tobin, Treadwell, True, Underwood, Usher, Vedral, Volenik, Waterhouse, Wheeler EM, Wheeler GJ, Winglass, Winn.

NAY - Ahearn, Bagley, Berry RL, Bolduc, Bouffard, Bragdon, Bryant, Bull, Bumps, Bunker, Chartrand, Cianchette, Clark, Colwell, Cowger, Cross, Davidson, Desmond, Driscoll, Dunlap, Etnier, Fuller, Gagnon, Gooley, Green, Hatch, Jones SL, Jones SA, Kane, Kontos, LaVerdiere, Lemaire, Lemke, Marvin, McKee, Mitchell JE, Morgan, O'Neil, Ott, Paul, Perry, Pih, Povich, Powers, Quint, Richard, Rowe, Samson, Sanborn, Saxl JW, Saxl MV, Shiah, Sirois, Skoglund, Stanley, Stevens, Tessier, Townsend, Tripp, Tuttle, Watson, Winsor, Wright, Madam Speaker.

ABSENT - Dutremble, Frechette, Goodwin, Jabar, Jones KW, Kerr, Meres, O'Neal, Thompson, Vigue.

Yes, 77; No, 64; Absent, 10; Excused, 0.

77 having voted in the affirmative and 64 voted in the negative, with 10 being absent, **House Amendment "B" (H-1073) to Committee Amendment "A" (H-1066) was ADOPTED.**

**Committee Amendment "A" (H-1066) as Amended by House Amendment "A" (H-1069) and House Amendment "B" (H-1073) thereto was 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" (H-1066) as Amended by House Amendment "A" (H-1069) and House Amendment "B" (H-1073) thereto and sent up for concurrence.**

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

**SENATE PAPERS  
Non-Concurrent Matter**

Bill "An Act to Implement the Recommendations of the Maine Commission on Children's Health Care" (EMERGENCY)  
(H.P. 1595) (L.D. 2225)

**PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1008) in the House on March 24, 1998.**

Came from the Senate **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1008) AS AMENDED BY SENATE AMENDMENT "A" (S-615) thereto in NON-CONCURRENCE.**

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

**Non-Concurrent Matter**

Resolve, Authorizing the Transfer of the Old Hancock County Jail on State Street, Ellsworth from Hancock County to the Ellsworth Historical Society  
(H.P. 1630) (L.D. 2258)

**PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1020) in the House on March 24, 1998.**

Came from the Senate **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1020) AS AMENDED BY SENATE AMENDMENT "A" (S-606) thereto in NON-CONCURRENCE.**

On motion of Representative POVICH of Ellsworth, the House voted to **RECEDE AND CONCUR.**

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

The House recessed until 2:00 p.m.

(After Recess)

The House was called to order by the Speaker.

**SENATE DIVIDED REPORT - Majority (12) Ought Not to Pass - Minority (1) Ought to Pass - Committee on BUSINESS AND ECONOMIC DEVELOPMENT on Bill "An Act to Prohibit Discrimination against Osteopathic Physicians and Provide Patient Choice"**

(S.P. 772) (L.D. 2099)

Which was **TABLED** by Representative KONTOS of Windham pending **ACCEPTANCE** of either Report.

Representative VIGUE of Winslow moved that the House **ACCEPT** the Majority **Ought Not to Pass** Report.

The SPEAKER: The Chair recognizes the Representative from Winslow, Representative Vigue.

Representative VIGUE: Madam Speaker, Ladies and Gentlemen of the House. This is quite a convoluted piece that came before our Committee and it's created a position that I'm not quite comfortable with, namely that I end up having to debate against members of my own committee and this kind of makes me a little bit queasy.

If you will allow me to, I will tell you what we have been involved with. We had an issue in the Lewiston area that brought about legislation upon the osteopathic physicians dealing with an issue of being allowed to practice in these two hospitals. The primary, this as John Brewer, he's the President of the Maine Osteopathic Association, you've got a letter on your desk, and if you take the second paragraph and read the first two lines, that initially the Maine Osteopathic Association supports enactment of L.D. 2099, primarily to address discrimination against DOs by the two Lewiston/Auburn hospitals. With this in mind we looked at the proposed legislation and what it did was

ask for us to get involved in getting DOs to be accepted in these two hospitals. We heard the testimony, we listened to all the different issues that were brought up and then found out that a vote was coming up on March 12th so what we did, we tabled the proposed legislation. I asked Representative Shannon to go to Lewiston, he's from Lewiston, and talk to both hospitals and find out what the problem was. Representative Shannon came back and said we are taking a vote on March 12th. We said okay, if you're taking a vote on March 12th, what is the reason for continuing with this work session and writing legislation that is not necessary. The doctor's said we will vote on March 12th and allow DOs to come in as a fully licensed working doctor. We said fine, let's table it, wait for the vote, so we tabled it and waited for the vote on March 12th. The vote came in and both hospitals voted in favor of allowing DOs full capability of practicing in these hospitals. We were very comfortable with this and based on this, we voted the bill Ought Not to Pass. In the bill were parts that really did not belong to our Committee, namely, it touched the different jurisdictions of Banking and Insurance, they were dealing with HMOs, PPOs, and allowing for restricting the gatekeepers and what gatekeepers do, so we felt this was not part of our area of jurisdiction, therefore, we voted the bill Ought Not to Pass and we ended up with a 12 - 1 vote, so I'm asking you to go along with this and vote Ought Not to Pass and allowing the forces that were opposed to work their hospitals the way they are capable of doing. I am asking for your support.

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

Representative WRIGHT: Madam Speaker, Men and Women of the House. To start with, I'll have to say something that not too many people say on the floor of the House, I was wrong. I was wrong when I voted Ought Not to Pass. I feel that I was misinformed during this process. We didn't hear the whole story. We didn't have the work session that should have been held. Things happened under the cover of darkness that should be brought out into the light of day. First of all the change that took place took place only under the threat of legislation. This is something that had been tried for nearly two years and the two hospitals involved would not change. It was only after the threat of legislation that they did change. What they did they changed their bylaws, but as we all know bylaws can be changed again, all it takes is a simple majority vote. There were promises made. There were promises made by the Hospital Association, by the Medical Association, but yesterday I was told of another promise that was made by the same Hospital Association and an issue that came up, not in this legislature but one in the past. What I'm talking about is the tax and match, or the sick tax. There were promises made that all the hospitals agreed that they would follow our lead and do what was right and now I understand that there is one hospital that has changed and it has taken this under threat of litigation against the state and that hospital is Central Maine Medical, one of the very hospitals that made this promise again. What this does is very simply, it assures that all the physicians have access. Yes, all 39 hospitals do give access to Osteopaths now, but as I said before, that can change. Also, they don't get vote privileges there. They have all the credentials that are required and yet there are still times when they can not practice their medicine. What it also does, it assures the doctors that have access to be serviced by HMOs because an HMO will not back a doctor if he does not have access to a hospital. The doctors want this as a security, the security that they can come in and practice their medicine, serve our people and take care of people in the rural parts of the state. The other part of security that we need is for students at our only medical university, UNE at Biddeford. I've received many calls from the students saying that without the security they're unsure that they will have access

to practice in the state and therefore, why should they when they can go to 24 other states that have similar legislation that we're proposing, why should they come to service our people? That's very important. We are not breaking new ground, twenty-four other states have similar legislation. As for the parts of the bill that do not deal directly with the HMOs if you look in your amendments all those other parts have been stripped out, because as I said, we did not have the work session that this bill deserves. I do feel, however, that there was enough discussion in the committee that the one thing that we can do is work with the hospitals because we discussed that in detail. I ask you to reject the Majority Ought Not to Pass, pass the Minority and assure that the people of Maine have full access to the doctors of their choice and the doctors have full access to the hospitals.

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

Representative JONES: Madam Speaker, Men and Women of the House. I also request that the pending motion be defeated in order that we might discuss the Minority Report. LD 2099 is "An Act to Prohibit Discrimination Against Osteopathic Physicians and Provide Patient Choice." It was pointed out at the hearing that only two hospitals had not officially voted on this issue, but were in the process of doing so. They now have voted to accept the DOs and it was felt and rightly so, probably, that the situation had been resolved and that there was no longer need for legislation. Another concern was that hospitals and other health organizations in Maine should not be dictated to as whom they admit to their staffs and that is exactly the way it should be. When selecting and interviewing perspective positions, it should be their credentials, not their MD or DO labels, that should be the determining factor in whether or not they are accepted at a given hospital. This was pointed out in testimony at the hearing a few weeks ago by a Doctor MacAvee of Portland, a surgeon of 30 years and former President of the American Medical Association. I can't imagine a man more qualified in this area to testify on this behalf. Even though at the present time the hospitals in Maine do have osteopathic doctors on their staffs, they are not always accorded the same courtesies as medical staff members. This, according to the testimony, again at the public hearing by an osteopathic surgeon. This was in a Portland hospital, a Portland osteopathic surgeon, but another important reason, and probably the most important that I would like to see this bill considered is this: The University of New England at Biddeford is the only medical school in the State of Maine and it's turning out very qualified young men and women. My daughter happens to be one who graduated from there three years ago. One of 84 and is now finishing her residency in a large hospital in Kingsport, Tennessee. In fact, this year she was selected chief resident, this year in the medical training hospital where half of the interns are MDs and the other half DOs. We hear so much today from lawmakers, educators, business people, the fact that too many of our brightest young people are leaving the state because there are no positions for them here commensurate with their training. Here we have an institution in our state that trains annually 80 or more highly qualified and I might add, badly needed physicians each year and too many of them will go out of state to find facilities where they will be welcomed without reservation.

My daughter has passed the required medical exams and has credentials to practice in three states, Tennessee, Virginia and North Carolina. She has accepted the contract with a family practice clinic in North Carolina, so will not be coming back to Maine for at least four years, but should she want to return in the future, she just might think twice if hospitals do not accept her credentials as an osteopathic doctor. I do not think that any of us want that to happen to the many and capable young

physicians being trained in Biddeford, Maine. Therefore, I sincerely ask you to defeat the pending motion and vote as 24 other states in the nation have enacted similar legislation. Thank you.

Representative JONES of Pittsfield **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 Kennebunk, Representative Murphy.

Representative **MURPHY**: Madam Speaker, Men and Women of the House. I'm finally glad to move away from trees, but as you can tell from the committee members we're not very enthusiastic about debating this issue. I've had the extraordinary experience of serving on a committee that is nonpartisan, that has worked to resolve issues and to solve those issues before they come to the floor. I can honestly say that I support physicians, all physicians. If we step back 25 years ago, 10 years ago, 5 years ago, it was open warfare between those two paths of medicine and we've seen tremendous positive things happen in the last few years. I had the good fortune to serve on a study committee this summer and this fall with our good Chairman and that was to try and open up to the public the two medical boards and there was a tremendous amount of tension at the beginning of the meetings, but I saw that by the time we completed our work in November that there was an increased respect for the two medical boards, the two medical paths, to the point that the medical board was talking we can start combining some of our functions, the investigative side and probably, maybe, shortly before or after the turn of the century, we may even combine our two medical boards. Now when you talk about turf, the allopathic physicians talking in a public meeting about bringing the allopathic physicians in to a joint board. To me that expressed a real growing respect and trust between former enemies. As a member of that committee, I have to make an apology and I've made that apology to Representative Jones. We had a great deal of pressure, as all the committees did to get our bills out on that particular Friday and we had finished up that morning. We had scheduled a work session and I think most of us had in our mind that the two hospitals that had their vote and all 39 hospitals now admitted osteopathic physicians to their staff. I think all of us felt because we had heard at the end of a very good hearing a reference by osteopathic physicians from Maine Medical, that there were in his observation, that at that particular hospital, being an osteopath there were problems within the hospital walls. If that had been a hearing, it started out with that same kind of tension and by the time we got done, I think I made a comment at the end, let's tie a ribbon on this hearing because you had allopathic praising osteopathic and vice versus. It was one of the most positive hearings I think I have ever had opportunity to witness and I think every member of that committee complimented the public that was there. We waited, we held the bill. I think that vote would have occurred in Lewiston without the bill. In 37 hospitals that had already taken place before a bill was introduced, the times are changing and the doctors in those hospitals realize that. In my mind that Friday, with that vote, as far as I was concerned with this particular bill, given the time restraint, given the coming deadline, that addressing that bill, that was the end of it. I wanted to know more, hoping to come back to this body about what we had had a fleeting reference made to at the close of that hearing. It was 11:00, we were scheduled for 1:00, I guess I maybe told myself that the public wouldn't be there because this was just going to be ratification of something that we had decided already. The Committee got together, I think almost all members of the

Committee and we reported the bill "Ought Not to Pass." We learned after that weekend, that people were there at 1:00 that wanted to partake in the work session. We never heard what they had to say. I very much would like to hear. It's something that all of us are going to monitor, but the restraints were such that the bill had to come back out and the issue had been resolved.

Now you have a yellow sheet that Representative Shannon and I had had distributed this morning. It's real important for you to take a look at the two attached white pages. You know that when you work in a committee and when a lobbyist approaches you that they are looking you in the eyes and they're saying, this is what our objective is. This is Plan A and there's no discussion of Plan B and from the osteopathic board, the third page, the second page is the lobbyist and the lobbyist in that letter is talking and the board is talking that when that barrier is removed, the issue is resolved. So when we came back that following week, we had committee members who had been told the issue's resolved. It's done. We also had members saying, well we're hearing a different point of view that this issue is alive. I had talked with that lobbyist last week and said you're talking to people with two different voices and you begin to tear a committee apart when that happens. I am real concerned and I guess I'm angry in terms of what misrepresentation or going to a Plan B or Plan C, not from members of this body, or members of our committee, but what a lobbyist speaking out of both sides of the mouth can do to a committee that's worked well together. This legislation is not needed. The 39 hospitals have changed their bylaws and osteopathic physicians are admitted to all hospitals in Maine.

If any of those doctors change their vote and reverse their bylaws, they will have angered a committee, they will have angered members of this body and I don't think anyone would want to do anything so foolish. There's also an element of conflict in personalities between members of our committee and this body and the other end of the hall and that you should be aware of that. I think there's a little bit of anger that we come out with bipartisan reports, or nonpartisan reports. I think that's a compliment to our chairman. There are people that don't like that. I like it. I have really enjoyed serving on that committee. What's going to happen now, you really have two choices. If this bill is kept alive, then you will probably establish a precedence that within those four walls of the hospital, the Maine Legislature is going to be involved in every credentialing decision.

Now there's allopathic physicians who want to do surgery and within that hospital the trustees make decisions, you don't have the right residency, you don't have the right training, or you have everything going for you, but you're not good in surgery and we're not going to let you work surgery, or we're not going to let you work in the emergency room. That's done doctor by doctor by doctor. Do you want to go into those staffing meetings, those shift meetings and have the legislature involved in every one of those credentialing decisions about who's going to work on every floor and what the shifts are going to be within that hospital?

Let me give you a different option. When people work together they develop admiration and respect and trust in each other and in those two hospitals where the osteopathic weren't admitted, they're now going to go in and they're going to practice and we heard from Representative Jones, the pride he shares in his daughter. I wish we could get her back here to practice in Maine. She's a tremendous physician and when those tremendous osteopathic physicians get into Maine hospitals were they were denied before, they're going to amaze their allopathic colleagues and I think working together in surgery, making rounds, the emergency room, those old bitter rivalries are going to disintegrate. What's happened in the last week, week and a

half, with this bill, and I think I made an analogy in a work session. We reached a point of high tide, of really good feelings within the medical profession when we finished up on this bill and the tide is beginning to ebb and those bitter wounds have been reopened. Talking with a lot of you in the last day or two, you've said, my favorite physician is doctor so and so, an osteopathic physician. My favorite physician is an allopathic physician. When those men and women start working together, whether they're coming out of UNE in Biddeford, or whatever medical schools they're coming out of, when they start working together for health solutions and proper health care in the State of Maine, I think we're going to see that trust, that confidence and those old bitter rivalries begin to disintegrate. I think if we begin to step inside those four walls of the hospital, we're going to fuel that, and that bitterness will become intense and I think in the long term our patients and the doctors themselves are going to be hurt. I would urge you, let's pass the Ought Not to Pass Report. Let's let these good men and women who are in this medical profession in all 39 Maine hospitals start working together and building that trust. Thank you.

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

Representative SHANNON: Madam Speaker, Men and Women of the House. I feel it a privilege to speak after the good Representative from Kennebunk who so clearly and eloquently outlined the committee feeling on this bill. He states the case as it occurred and I rise only to speak to a couple of other issues.

I will not judge a body for entering into litigation on an issue which they feel is not legal and therefore, I'm going to leave that out of this discussion, but I will say that it takes a two-thirds vote of the professional staff, board of directors, or administrative staff any of those three levels at any of these hospitals to affect a change in their bylaws and it takes a vote of all three to have it implemented, which was one of the drawbacks in getting this process finished in Lewiston. All three of those groups at the hospital had to agree to this. It has now been incorporated in the bylaws and the physicians alone can not remove it from the bylaws, though the statement that they're afraid that it will change back and that's the reasons why osteopaths have gone forward wishing for this bill to pass holds less water than it did before. The second reason why they might have gone forward, that they are afraid this group would also change its mind. I don't want to be accused of painting everybody with the same brush, but my experience in labor negotiations as a school committee member has taught me that often the bargaining teams, or the boards of directors of groups do not relay truthful information to the membership all the time and let me just say that not all professional organizations have to be watched about the word they give.

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

Representative WRIGHT: Madam Speaker, Men and Women of the House. I, too, want to clear up a few items. We're told about a note sent by the osteopaths' lobby concerning some issues that came up during negotiations and that's exactly what they were negotiations. Like any good business deal, negotiations continue until the deal is struck. If you look at one of the papers I sent out earlier today, you'll notice the date on that one, March 23rd. That's the position of the board after they invited a lobbyist from the Maine Medical Association into their board to hear their discussions and it was only after some incidents that took place at that meeting after the hospitals voted that they decided to go forward with this and they were not the first ones to push this. I spoke with them and I told them that I felt that this should go forward. I sat down in the other body last night and listened to testimony and one of the Senators from the

Lewiston area said that he, too, later last year had sat in on some of the board's with those doctors and what they told him were, we don't need you, we know what we are doing. We know that we should keep these people out, and it was only after the threat of legislation that these were changed. As far as the vote, yes one hospital, the vote was 70 to 1 to allow them to come in, but at the other hospital it was 41 to 20 so there is still a great amount of distrust there and the credentials of the osteopaths.

One of these very hospitals in Lewiston had a DO training their allopaths, but she herself could not practice in that hospital. She moved on to a hospital where she was allowed to work and many of her patients followed her. They traveled 50 or more miles to visit her, because that's how much they trust her. Most of the hospitals did allow them in, but there is not equal treatment inside of there, so it does come down to promises. Promises made, promises broken and promises that we should be making. The promise broken by the Hospital Association that all their hospitals were on board and now they're not and the promises made to our students, to our people, to our physicians that you deserve the best treatment, the treatment from the physicians you want to see. I urge you to defeat this motion and move on with the Minority Ought to Pass.

The SPEAKER: The Chair recognizes the Representative from Winslow, Representative Vigue.

Representative VIGUE: Madam Speaker, Ladies and Gentlemen of the House. I must respond to a couple of comments made by my good friend and committee member, Representative Wright.

One of them was in reference to under cover of darkness. One thing I have never done is done anything under cover of darkness in that committee. Anybody that knows me knows that even the people that were never at the hearings the members of the committee, I would have my clerk, I would have my legal analyst bring them up to date so they would know what was going on. I have never done anything under cover, everything has been in the open and anybody who wanted to be involved in subcommittees were involved in subcommittees. There was never anything done under cover.

To show that we did not in any way discriminate against the osteopathic positions, last year we fought against the Executive of the State to fund the medical numbers that we have at the University of Vermont and also to fund the doctors here at our New England School of Medicine. We put the money back in there to fund these students, so we are not in any way discriminating against the students. The problem that we have here is that it is very, very dangerous and unnecessary for the Legislature to be dictating credentialing decisions. Not too many years ago, within my lifetime, it was something unheard of that MDs would go to the osteopathic hospital or the other way around. It is presently being done. The osteopaths have not opened as much as the MDs have, but we now have got people that are working both hospitals. What is necessary here, is for the people involved to earn the respect of the other and this we can not legislate. You are going to earn the right to practice in a hospital. I play hockey with a young doctor that is an MD at the Thayer Unit. Last year he left, he left for one year and the reason he left was to get credentialing, to get the capability of doing something else in the operating room, to get to be better. We can not tell these people how to run hospitals. We can not tell people how to run an army. This is something that you run because you're involved, so ladies and gentlemen, I would ask you to accept the Majority Ought Not to Pass Report.

Representative VIGUE of Winslow **REQUESTED** that the Clerk **READ** the Committee Report.

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

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

Representative JONES: Madam Speaker, Men and Women of the House. Never in my wildest dreams did I think I would be standing in this House and discussing an opposite position from my good friend from Kennebunk. I envy him and I wish that I could express myself with the ease that he does and if I could my position would be a piece of cake in this piece of legislature, I can tell you that.

It had already been mentioned about the votes in Lewiston. Folks think about it, it's been mentioned in one hospital 20 plus, I believe it was 21 or 22 doctors and nurses voted no, not quite ready to admit you. And then both sides of the mouth was mentioned again, most eloquently from my very good friend. Both sides of the mouth from a lobbyist. I think I know which lobbyist, but I can't say for a great certainty, I was at the hearing. I visited with the lobbyist, there was two there, I visited with one of them prior, a great friend of mine and who I have great respect for, he told me and then again when he got up to testify to the full committee and any committee member can vouch for this, he said, you know this is kind of too bad that we're having this hearing today, because we all agree with 80-85 percent of what's going on. The only issue is the hospitals and he told me prior that if we took the hospitals out of it, the reason being that in a matter of just a short while, they're going to be voting on this issue and the mission will be accomplished. That's what he testified, everything is fine except if we could just exclude the hospitals and now, think about it, a short time later, what is the only thing that is left? It is the hospitals. We shall not discriminate against a hospital. It was mentioned about not good in surgery, Betsy, she's been around, she can do surgery, it would make your hair stand up some of stories she has told me, but what I'm saying is that most of these osteopaths, they're caring people. They want to go in, most of them, to family practice. They want to be the doctor, like many of us can remember that know their doctor by their first name and vice versa. That is the kind of people they are.

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

The SPEAKER: The Representative may pose his question.

Representative JONES: Thank you, Madam Speaker. I read in the information distributed at the request of my colleagues from Lewiston and Kennebunk and I quote, "It is unfair to impose credentialing mandates on the one hand and to increase their liability on the other." My question is this, could anyone help me with a script on how best to explain to my DO daughter and her many associates that their participation in a Maine hospital might well increase the hospital's liability?

The SPEAKER: The Representative from Pittsfield, Representative Jones has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Lewiston, Representative Shannon.

Representative SHANNON: Thank you Madam Speaker, I'll endeavor to answer the question and would ask leave to speak after.

The SPEAKER: The Representative may proceed.

Representative SHANNON: Madam Speaker, Men and Women of the House. I don't think the issue is that the liability is increased if the qualified physician is certified, but that by now codifying certification you remove the ability in some instances and perhaps that's several years away for hospitals limiting those and perhaps exposing themselves to greater risks. It's not in law yet. I hope that this body continues to leave it that way and I must say the first day I saw the title of this bill and read it, I said, oh my God, who can vote against this. It's got the D word and the C word in the title. It's got discrimination that they want you to prevent and choice that they want you to ensure. Nobody in

their right mind could stand and speak against this bill until you get inside. In spite of all the testimony and all of the debate here today, which I want to thank everybody for keeping very civil, I applaud both sides, I think one thing must be remembered and if I could give credit to the author, I would, but this comes from many, many years ago, but it's still true. Any man convinced against his will holds his first opinion still and of those 21 doctors out of the 63 that voted at the hospital in Lewiston, I'm convinced against their will, that something is correct. They'll believe what they believed before. We will not legislate equal treatment for other doctors, because they will only earn it in the hearts of those that feel that they do not deserve it through sharing time and service with them. I believe that we will accomplish that and I believe we will accomplish better medical care and better choice of care for all Maine citizens by putting this bill where it belongs, which is as the motion stands and moving forward and allowing these medical professionals to work together, to improve their relationships, to trust one another more, and to continue along the path of better medical services for all citizens in Maine. I encourage you to join me when I vote in favor of the motion currently on the floor.

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

Representative FARNSWORTH: Madam Speaker, Ladies and Gentlemen of the House. There were a lot of process issues that have come to light and certainly do not represent something that I feel really great about, however, that is past and I think we need to take the step forward and take a look at just how much we can micromanage in the issues of a local hospital around the establishment of the quality of the physicians that they would like to provide services on their staff. Certainly we've taken an important first step. They have determined that they're going to allow physicians whether it be from the allopathic side, or from the osteopathic side to be in the hospital working together. I think the really critical part that bothers me is that from an organizational point of view, that's about as far as we could possibly deal with legislatively. The issues now boil down to a matter of establishing mutual trust and self-respect and a respect for the differences as well as the similarities that exist between these two major paths of medicine. I think that at this particular point we need to allow the hospitals, whether it be in Lewiston-Auburn, or whether it be in any other part of the state to continue to work toward bringing these two paths of medicine together as the professionals that have chosen this course and I think that we need to vote Ought Not to Pass on this particular bill. Thank you very much.

The SPEAKER: The Chair recognizes the Representative from Kennebunk, Representative Murphy.

Representative MURPHY: Madam Speaker, Men and Women of the House. Representative Jones and I have not looked forward to today and we've been touching base a couple times of day leading up to this and I really don't feel comfortable with this, but I think I've had the harder task today because I'm debating against a man who has a great deal of love and pride in his heart for his daughter and it's hard to debate a person operating from such conviction.

It's pretty hard to speak for our committee that if you ask the question, do we on the committee support discrimination? No. By our hearing, by the public dialogue that took place, we feel that maybe we helped open up the door of opportunity in two hospitals where it was denied. The two boards have an even tougher task ahead of them, because I think the dust in the fight that's been kicked up by this bill, the aftermath of this bill is going to take a lot of healing and it's going to take a lot of good will. I also think that however you resolve this bill, I would hope that our

chairman would call for another committee dinner, because I think our committee needs another dinner. Thank you.

The SPEAKER: The Chair recognizes the Representative from North Berwick, Representative MacDougall.

Representative MACDOUGALL: Madam Speaker, Men and Women of the House. I wasn't going to get up to speak and I suppose a lot of people say that, but I really wasn't. This bill did come to our committee and I think something in the debate today is a little more primary, because it's what hit me at first at the public hearings, which I had to leave early to present a bill elsewhere.

There were several patients who came talking about their limited access, because of those two hospitals that wouldn't allow osteopaths in for practice. That's been remedied as you've heard and so I guess my question today, as we've discussed this again, or which button I'm going to push, it comes down to how do we best, we've bridged that gap of patient access, but patient choice. For it to really be choice, you have to have a community of health care providers that are working side by side voluntarily, because they respect one another, because they know they are working as a team, however you want to word it. That is something you can't legislate and try as I might, I would love to push a little button and make that all happen. I think the words have been uttered by a few speakers previous to me and that's the word trust and trust is very hard, it's very difficult to earn. One of the ingredients to trust is time. I think these two hospitals have made a step, certainly in the right direction, I think we're all in agreement to that. There's some that are having difficulty trusting that decision, they're afraid that tomorrow perhaps they'll change back. It's a little unsettling when your concern is that access for patient care that we all heard in committee. I think that's at root for all of us, our concern is the patients and that they get proper care and have proper choice of who cares for them.

For me, as we're getting down to the final time to vote here, this particular bill I think will mitigate against that trust. By supporting the pending motion of Ought Not to Pass we allow that time. We allow that time for that trust to build, because folks, you can't force it. I think the hospitals and the MDs have made a legitimate and concerted effort to step forward and to make a commitment. I think an Ought to Pass on this bill will fly right in the face of developing that relationship of trust and I'll just finish up with in early December there was a board meeting with the Maine Osteopathic Association, a copy should be on your desk, it was passed out by Representatives from Kennebunk and Lewiston, and Doctor James Kerse reported to the Board that they had attended a legislative committee meeting and so forth, but what I want to point out is he expressed that he didn't want to force this issue down only through a legislative venue, due to the fact that he felt that the end result would not help us in the long run. There's a sentence down at the bottom of the page that the Board's intent was to ensure the patient access to the physician provider of their choice would be assured. I think ladies and gentlemen, in the spirit of those two sentences and in the spirit of developing the trust if we go with the pending motion, Ought Not to Pass, allow this thing to work. Allow the professionals to learn to dedicate themselves to one another and to trust one another, that the ultimate question in this bill of the patient access, patient care, the best thing we can do is support that motion and allow that trust to develop. Thank you.

The SPEAKER: The Chair recognizes the Representative from Buckfield, Representative Gagne.

Representative GAGNE: Madam Speaker, Ladies and Gentlemen of the House. You've heard pretty much the committee debating itself. I wanted you to hear from someone outside the committee. I'm a cosponsor of this bill. I first got

involved with an osteopathic physician from Norway, who called me up and I went to talk with him, he also came over here last fall. This has been going on a lot longer than just in our session here. He talked with the good Senator from Kittery and we spent some time organizing this bill and presenting it to the committee. There was definitely strong prejudice. There was plenty of time for something to be done at the Lewiston hospitals last year, even last fall when we started the process and had the discussions here. In fact, I can remember years ago, even growing up in Lewiston/Auburn that no one would even think that an osteopathic physician was someone that you want to be near, so that prejudice has been around for years and years and years and you're right, it's not going to heal overnight, but those of you who say you can't legislate a way to prevent discrimination, you can and you have. Title 9, in the school, allowing girls athletic equality. You do it even in the United States in protecting racial discrimination, because we still don't feel it in our heart, but we had better behave because the law says so. I really feel that you've got the same thing here. There is discrimination, that is the right word to be in here and I think there is something that needs to be done and sometimes, as you have already heard, it's only because they came here that Lewiston got a little nervous about it and I think you've got to still hold it over their heads that we need this law. Vote against the pending motion.

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

Representative O'NEIL: Madam Speaker, Men and Women of the House. A little bit of food for thought, in case anybody's hungry, just a couple of morsels here. First let me preface by saying I'm a diehard advocate for patient choice. I serve on the Banking and Insurance Committee that didn't get this bill. I voted for chiropractic mandates and others too. Patient choice is key to me.

Secondly, I live in Saco and have lots of people who work at UNE and lots of students at UNE and UNE is a big economic part of the Biddeford-Saco twin city area, but I support the motion on the floor to accept the Ought Not to Pass and I'll tell you why. This is the food for thought. There seems to be a notion out here that osteopaths are down-trodden in Maine and they really aren't. In the medical community, Maine has about 300 of them practicing and that's more than they have in Massachusetts, ladies and gentlemen, Massachusetts, is what, 10 times bigger than Maine and it's the medical Mecca of the Northeast of America, of the world. We have a high participation rate of DOs in Maine, so let's dispel the notion that DOs are in rough shape here, because they really aren't, despite the fact that they have all these 39 hospitals, so please vote with the committee on this.

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

Representative BERRY: Madam Speaker, Men and Women of the House. I will be brief, but I did take the time to speak to the committee on this issue. I guess I'm speaking to you now as a patient of an osteopathic doctor. I think they have given me some treatment to some symptoms that the medical doctor couldn't do without drugs and I'll be grateful for that treatment. I spoke to the committee about that, actually during my last visit to the doctors, Representative Jones' daughter was doing part of her training there and oversaw some of that. It was pretty interesting. The State of Maine is the home of the University of New England in Biddeford and many osteopathic doctors graduate from there. I'm just surprised that we would oppose a concept that would open up a club. There seems to be a couple of clubs here that they want to discriminate against the osteopaths when they are very well qualified. The patient will still have the choice to receive treatment from the individual. From my own perspective, it's been meaningful for me to have the



option to be able to receive that treatment and I oppose the pending motion.

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

Representative FARNSWORTH: Madam Speaker, Ladies and Gentlemen of the House. I don't think it's anybody on the committee is challenging the value of osteopathic physicians. I don't think that's an issue at all. I think the issue is whether or not these two branches of medicine can work out a trust relationship so that they can be working together in the same hospital and in fact medical environment. I think that's the big issue and it boils down to whether or not that is something that can be legislated, or is it something that has to be worked out on an interpersonal relationship basis. It's my particular impression from years of working in different kinds of organizations that those kinds of relationships are something that have to be worked out on an individual basis as people work together and that's the point that I am making that we don't have a role in trying to legislate that particular kind of direction.

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

**ROLL CALL NO. 522**

YEA - Barth, Belanger DJ, Berry DP, Bigl, Bodwell, Bouffard, Brennan, Brooks, Bryant, Buck, Bull, Bumps, Cameron, Campbell, Carleton, Chartrand, Chick, Chizmar, Cianchette, Clukey, Colwell, Cowger, Davidson, Dexter, Etnier, Farnsworth, Fisher, Fisk, Foster, Frechette, Gagnon, Gamache, Gieringer, Gooley, Green, Honey, Jones SL, Joyner, Kane, Kasprzak, Kerr, Labrecque, Lane, LaVerdiere, Layton, Lemaire, Lemont, Lindahl, Lovett, MacDougall, Mack, Madore, Mailhot, Marvin, Mayo, McKee, Mitchell JE, Morgan, Murphy, Muse, Nass, Nickerson, O'Brien, O'Neil, Ott, Paul, Peavey, Pendleton, Perkins, Pieh, Pinkham WD, Plowman, Povich, Powers, Quint, Richard, Rines, Rowe, Sanborn, Savage, Saxl JW, Saxl MV, Shannon, Shiah, Snowe-Mello, Spear, Stevens, Townsend, True, Vedral, Vigue, Waterhouse, Watson, Winglass, Winn, Winsor, Madam Speaker.

NAY - Ahearne, Bagley, Baker, Belanger IG, Berry RL, Bolduc, Bragdon, Bruno, Clark, Cross, Desmond, Donnelly, Driscoll, Dunlap, Fuller, Gagne, Gerry, Goodwin, Jones SA, Joy, Joyce, Kneeland, Kontos, Lemke, McAlevy, McElroy, Meres, O'Neal, Perry, Pinkham RG, Poulin, Samson, Sirois, Skoglund, Stanley, Stedman, Taylor, Tessier, Tobin, Treadwell, Tripp, Tuttle, Underwood, Usher, Volenik, Wheeler EM, Wheeler GJ, Wright.

ABSENT - Bunker, Dutremble, Hatch, Jabar, Jones KW, Thompson.

Yes, 97; No, 48; Absent, 6; Excused, 0.

97 having voted in the affirmative and 48 voted in the negative, with 6 being absent, the Majority **Ought Not to Pass** Report was **ACCEPTED** in **NON-CONCURRENCE** and sent up for concurrence.

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

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

**ENACTORS**  
**Emergency Mandate**

An Act to Amend the Laws Regarding Reimbursement to the Counties for Community Corrections

(H.P. 40) (L.D. 65)  
(H. "A" H-1022 to C. "A" H-919)

Reported by the Committee on **Engrossed Bills** as truly and strictly engrossed. In accordance with the provisions of Section 21 of Article IX of the Constitution, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 104 voted in favor of the same and 1 against, and accordingly the Mandate was **PASSED TO BE ENACTED**, signed by the Speaker and sent to the Senate.

**Acts**

An Act to Establish a Requirement That Holders of Lobster Fishing Licenses Must Own or Control the Vessel from Which They Conduct Authorized Activities

(H.P. 1028) (L.D. 1445)  
(C. "A" H-1028)

An Act to Allow Maine Technical College System Employees Represented by the Maine Education Association Faculty and Administrative Units to Participate in a Defined Contribution Retirement Plan

(H.P. 1395) (L.D. 1949)  
(C. "A" H-1027)

An Act to Establish and Maintain an Immunization Information System

(H.P. 1511) (L.D. 2133)  
(C. "A" H-1021)

An Act to Create a Nonlegislative System to Adjust Municipal Valuations in the Circumstance of Sudden and Severe Valuation Disruption

(H.P. 1561) (L.D. 2192)  
(C. "A" H-1019)

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

(S.P. 834) (L.D. 2232)  
(C. "A" S-603)

An Act to Promote and Encourage the Cultivation of Cranberries in the State

(H.P. 1634) (L.D. 2264)  
(C. "A" H-1006)

An Act Regarding Telecommunications Regulation

(H.P. 1661) (L.D. 2288)

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

An Act to Reorganize and Clarify the Laws Relating to the Establishment, Powers and Duties of the Bureau of Parks and Lands

(S.P. 635) (L.D. 1852)  
(C. "A" S-501; S. "A" S-551)

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

On motion of Representative PEAVEY of Woolwich, was **SET ASIDE**.

The SPEAKER: The Chair recognizes the Representative from Woolwich, Representative Peavey.

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

The SPEAKER: The Representative may pose her question.

Representative PEAVEY: My question, when I read Senate Amendment 551, when I read the summary, it says that Bureau of Parks and Land people may go on any lands, waters or premise in the State to do surveys and other necessary

examinations and I wondered if someone could address that and explain that to me. Are we allowing people who work for the Bureau of Parks and Lands to just to go anywhere without a particular reason?

The SPEAKER: The Representative from Woolwich, Representative Peavey has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Kossuth Township, Representative Bunker.

Representative BUNKER: Madam Speaker, Men and Women of the House. The answer to that question is similar to the debate we had with Representative Snowe-Mello's bill a few days ago. The change that you see here in this amendment is consistent with what the judiciary did on the other bill that had to do with search warrant requirements for people within the Parks and Lands. What this particular section of this bill only addresses their right to do a survey. Let's say they are in the process of doing a right-of-way for access to a great pond and they have to use eminent domain to take a piece of property. They'll come in and do a survey similar to DOT does when its doing a right-of-way to a road. This particular section that you see changed in this amendment is the section which allows them to come on there to do the surveys and do the necessary work in order to do some of these things. It's never been used, it's old language. What we did in this bill is recodify the statute without making substantive changes, but this issue came up, it was quite heated. The compromise with this amendment was to change that word premise, to get it out of there, consistent to what Judiciary did a few days ago with the other bill. I believe the other body put that amendment on and that's the one you're seeing before you and it makes it just clearer that someone can't come into your home or into your curtilage. Thank you.

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

Representative LANE: Madam Speaker, Men and Women of the House. There's been a lot of confusing questions and I need to clarify, there was language in this bill that upset some people and the language said, and I don't have it in front of me, something about the agents of the Bureau can have permission to go on lands, originally it was lands, waters and premises for the purposes of conducting a survey in one segment of the bill and it shall not be as is necessary or convenient and that upset a lot of people. It does come under in one section of the bill eminent domain and whether it's not enforcement and that seemed to be a trigger. I asked the Attorney General's Office to rule on it. In the meantime it was amended to take out the word premises which seemed to refer to buildings which was absolutely offensive to people and that was the compromise and in the meantime I had a letter into the Attorney General's Office and they did 72 pages worth of research and sent me a three and a half page letter condensed form and I think this is an issue that probably we will see more of, but the time is not right to deal with it, in my opinion. I was going to ask for solemn occasion, which would have been a simple majority in the House to ask the Supreme Court to deal with that issue, to tell us whether or not that was actually violating the Constitution. It just isn't the right time for it and as a committee we did say we weren't going to make any major substantive changes of that nature, which should be taken out as a separate bill and have a public hearing and so forth. It's an issue that is ripening, but isn't ripe yet.

The SPEAKER: The pending question before the House is enactment.

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

An Act to Enter into the Emergency Management Assistance Compact

(S.P. 836) (L.D. 2242)  
(C. "A" S-591)

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

On motion of Representative JOY of Crystal, was **SET ASIDE**.

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

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

The SPEAKER: The Representative may pose his question.

Representative JOY: I wonder if there is someone who could perhaps give us a quick thumbnail sketch of this bill. I get a little nervous when I see the word compact come in a bill.

The SPEAKER: The Chair recognizes the Representative from Auburn, Representative Winglass.

Representative WINGLASS: Madam Speaker, Men and Women of the House. I would like to say to my good friend from Crystal, Representative Joy, I would like to say that this is the Governor's Bill that was advanced by one of the Senators in the other body and I was a cosponsor of the bill and what it does is nothing to be really concerned about, because it basically obliges our state to participate with all of the other states in mutually reinforcing one another in the case of natural disasters and emergency situations, such as the ice storm. There are a number of states who are already active participants in this so called compact and the State of Maine would like to enlist in that compact as well. I think it's going to be a piece of legislation that will protect the citizens of Maine and enable us to respond to catastrophes in other states and the other states in turn to respond to a catastrophe that might occur here, so I'd urge your support in this bill.

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

Representative JOY: Thank you, Madam Speaker, no further question on this bill.

The SPEAKER: The Chair recognizes the Representative from Brooklin, Representative Volenik.

Representative VOLENIK: Madam Speaker, Men and Women of the House. I just wanted to let everyone know that this is not one of the recommendations of the Governor's Council on Sustainable Forest Management. Thank you.

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

An Act to Encourage Intergovernmental Cooperation

(H.P. 1617) (L.D. 2244)  
(C. "A" H-1016)

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

On motion of Representative JOY of Crystal, was **SET ASIDE**.

Representative JOY of Crystal **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. 523**

YEA - Ahearne, Bagley, Baker, Berry RL, Bigl, Bodwell, Bolduc, Bouffard, Bragdon, Brennan, Brooks, Bryant, Bull,

Bumps, Bunker, Campbell, Chartrand, Chizmar, Clark, Colwell, Cowger, Davidson, Desmond, Driscoll, Dunlap, Etnier, Farnsworth, Fisher, Fisk, Frechette, Fuller, Gagne, Gamache, Gerry, Gieringer, Gooley, Green, Jones SL, Kane, Kneeland, Kontos, LaVerdiere, Lemaire, Lemke, Lemont, Madore, Mailhot, Mayo, McAlevey, McElroy, McKee, Morgan, Muse, Nass, O'Neil, Pendleton, Perry, Pieh, Plowman, Poulin, Povich, Powers, Quint, Richard, Rowe, Samson, Sanborn, Savage, Saxl JW, Saxl MV, Shannon, Shiah, Sirois, Skoglund, Spear, Stanley, Stevens, Taylor, Tessier, Tobin, Tripp, Tuttle, Usher, Vigue, Volenik, Watson, Wheeler EM, Wheeler GJ, Wright, Madam Speaker.

NAY - Barth, Belanger DJ, Belanger IG, Berry DP, Bruno, Buck, Cameron, Carleton, Chick, Cianchette, Clukey, Cross, Dexter, Donnelly, Foster, Gagnon, Goodwin, Jones SA, Joy, Joyce, Joyner, Kasprzak, Labrecque, Lane, Layton, Lindahl, Lovett, MacDougall, Mack, Meres, Murphy, Nickerson, O'Brien, Peavey, Perkins, Pinkham RG, Pinkham WD, Rines, Snowe-Mello, Stedman, Townsend, Treadwell, True, Vedral, Waterhouse, Winglass, Winsor.

ABSENT - Dutremble, Hatch, Honey, Jabar, Jones KW, Kerr, Marvin, Mitchell JE, O'Neal, Ott, Paul, Thompson, Underwood, Winn.

Yes, 90; No, 47; Absent, 14; Excused, 0.

90 having voted in the affirmative and 47 voted in the negative, with 14 being absent, the Bill was **PASSED TO BE ENACTED**, signed by the Speaker and sent to the Senate.

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

**UNFINISHED BUSINESS**

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

HOUSE DIVIDED REPORT - Majority (8) **Ought to Pass as Amended by Committee Amendment "A" (H-1005)** - Minority (4) **Ought Not to Pass** - Committee on **LABOR** on Bill "An Act to Provide Adjustments to Accommodate Increases in the Cost of Living for Injured Workers"

(H.P. 875) (L.D. 1192)

TABLED - March 25, 1998 (Till Later Today) by Representative HATCH of Skowhegan.

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

On motion of Representative KONTOS of Windham, **TABLED** pending the motion of Representative HATCH of Skowhegan to **ACCEPT** the Majority **Ought to Pass as Amended** Report and later today assigned.

An Act to Authorize a General Fund Bond Issue in the Amount of \$20 Million to Stimulate the Maine Economy through Research and Development (BOND ISSUE)

(S.P. 819) (L.D. 2205)

(C. "A" S-523)

TABLED - March 25, 1998 (Till Later Today) by Representative KONTOS of Windham.

PENDING - **PASSAGE TO BE ENACTED**.

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

An Act to Authorize Department of Transportation Bond Issues in the Amount of \$36,985,000 to Match Available Federal Funds for Improvements to Municipal and State Roads, Airports, State Ferry Vessels and Terminals, Transit Facilities and Equipment and Rail and Marine Facilities (BOND ISSUE)

(S.P. 611) (L.D. 1812)

(C. "A" S-510)

TABLED - March 25, 1998 (Till Later Today) by Representative KONTOS of Windham.

PENDING - **PASSAGE TO BE ENACTED**.

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

HOUSE DIVIDED REPORT - Majority (7) **Ought Not to Pass** - Minority (6) **Ought to Pass as Amended by Committee Amendment "A" (H-1031)** - Committee on **STATE AND LOCAL GOVERNMENT** on Bill "An Act to Require Abutting Landowners to Pay a Fair Share of the Costs of Maintaining a Private Road"

(H.P. 1410) (L.D. 1974)

TABLED - March 25, 1998 (Till Later Today) by Representative AHEARNE of Madawaska.

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

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

Representative AHEARNE: Madam Speaker, Ladies and Gentlemen of the House. This issue, by no means, was an easy issue as my fellows and colleagues from the State and Local Government very well know. What I considered to be a simple problem and trying to find a simple solution turned into anything but simple. For what I thought was an isolated incident in my own district turned out to be a problem in other areas of the state and the problem revolves around is that people use a private road to gain access to their property will not contribute to the upkeep and maintenance of that private road. Those people do not pay, receive a benefit at the expense of the others who do pay. What I hope to do with this piece of legislation is to enact the first step that will ensure that those who own property on a private road will pay their fair share to upkeep and maintain the road. Now this is not the great answer to all the questions, but like I said, I believe this is the first step and just to talk about, very quickly. This arose out of a situation within my district last fall when this constituent did approach me and stating that was a series of lot owners sharing a private road and would not be willing to pay a fair share to upkeep and maintain that road. It came to a point that it's only fair that those who benefit from the use of the road at the expense of those who do pay for the maintenance is that those who do not pay, pay the fair share. It's only fair in my opinion. Some will argue that there is a process in law for private road owners to join together to acquire all to pay for road maintenance. However, that law was enacted in the 1800s and when the issue came and constituents trying to apply this law they were told by their attorney that the law had unambiguous language and it turned out to be not very useful and they tried the approach through the County Commissioners, they tried to go through the local municipality, but to no avail. So that is why you see the bill before us.

The goal was to provide a mechanism for maintaining a road that's not publicly maintained, where there is no ability to require others to maintain a road. Now in the past few days, there have been some suggestions to some changes to the bill and of course, the bill itself is not going to be the bill enacted but there on Committee Amendment "A" there have been suggestions and

some changes, changes I think were more than reasonable. If we were to accept this report, I believe we can put those changes on, which will address concerns not only of industry, but also those that feel this is an intentional violation of somebody's private rights on private property. Those changes I consider minor, but very useful.

In one of the sections it talks about how we have a new definition of what an eligible road is, well we felt that as a committee, initially, that that may have been the one avenue we should approach, but that became too wordy and too costly in terms of trying to provide a definition, so one of the other ideas, one of the changes, was possibly leave the same language as it is and, in fact, leave it the way it is, leave what would be considered to be a private way was to allow if somebody were to come together and they were to try to collect dues on trying to maintain the road that the courts will make the decision on what a private way is since that area of the existing law is very ambiguous and through the court process the people will know what a private way is and therefore if there's a situation that arises even the future legislature can address those concerns.

Another area was, a course what the original amendment wanted to do, and what other changes to existing law was that there are archaic language. Under the current law you would have to hire a surveyor. Well we thought that that was way back in the 1800s, so we changed that idea to a road commissioner in order to carry out the duties.

Another concern was from the paper industry regarding their stretches of road, well we came down to some language that seemed to cover them and to my understanding and best knowledge, they are not completely satisfied, but it does address their concern and certainly if there is an issue, of course we are allowed to go through the court procedures and at that point if there is a problem that we allow the courts to decide, someone in the future can bring legislation to future legislatures and try to address those concerns. Another area of change would be to have a phase-in program that this will only apply for one year to only those road associations that are incorporated as of March 1, 1998 and after such. The idea behind that if there are problems we can address or the future legislature can address that and certainly after that year if there's no problems then it's open for everyone to use, but we've tried to make this as friendly as possible. I believe it's a good piece of legislation. It's a means by which we can assure that people can seek to have their fair share of the roads being maintained and I ask you for your support on the Minority Ought to Pass Report.

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

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

The SPEAKER: The Representative may pose his question.

Representative LINDAHL: Thank you, Madam Speaker. I have a woodlot at the end of a dead end road that I bought with the intention of always keeping it a woodlot. I take a four wheel drive to get to it. Now, if someone decides to develop house lots along that road, does that mean I'm going to have to pay to improve this road?

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

Representative BUMPS: Madam Speaker, May I pose a further question to the Representative from Northport through the Chair?

The SPEAKER: The Representative may proceed.

Representative BUMPS: Do you own the road?

The SPEAKER: The Representative from China, Representative Bumps has posed a question through the Chair to the Representative from Northport, Representative Lindahl. The Chair recognizes that Representative.

Representative LINDAHL: I have a legal right-of-way across that road to access my property.

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

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

The SPEAKER: The Representative may pose her question.

Representative MCKEE: Many of us in this State have constituents who live on roads that towns have discontinued but maintain their right-of-way and when one of our constituents moves in onto that road, would this road qualify as one of those roads on which other people who moved in might be able to form an association and pay for that road together?

The SPEAKER: The Representative from Wayne, Representative McKee has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from China, Representative Bumps.

Representative BUMPS: Madam Speaker, Men and Women of the House. You're starting to understand the complexity of this issue. Let me try to explain what is available to you in current law so that you will understand what this bill is going to make available if you go on to accept the Minority Report and then go on to adopt the amendment which Representative Ahearn is poised to offer.

Currently, if you own property that abuts a private way, whatever a private way is, the courts need to decide if you own property that abuts a private way the current law allows you to form an association. You can collect maintenance costs from association members for the maintenance of that private way. In the event that someone doesn't pay their share of the maintenance costs, you can file a civil action in court against them to collect those maintenance costs, and you might say isn't that adequate, and the answer is probably. Except that, to file the civil action costs money and you can imagine that it costs more in court costs than you will ever get in maintenance costs which caused the road associations to come here and present this bill. Upon presenting the bill which they thought was a simple matter, all of these other issues, like Representative Lindahl's private road and Representative McKee's question came about, so what we have done is attempted to limit the scope of what we will, hopefully, ultimately pass here this afternoon. Procedurally, we need for you to accept the committee Minority Report, Ought to Pass as amended so that we can then go on and more completely amend the bill with Representative Ahearn's amendment, which I can't talk about yet. So the answer to your question is it won't probably ultimately affect the process greatly except that we hope eventually that folks will be able to collect those court costs, which they can't get now.

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

Representative PERKINS: Madam Speaker, Men and Women of the House. I was following the good Representative from China that was so concise and clear and I lost just one point. May I pose a question through the Chair?

The SPEAKER: The Representative may pose his question.

Representative PERKINS: Current law says abutters of a private way can form an association. I understood that. The people that join this association, apparently the current law would allow people to ask for help in the road, but I didn't quite get if somebody doesn't pay their share, was that people who have

agreed in the association, or people that might not want to join the association?

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

Representative BUMPS: Madam Speaker, Men and Women of the House. I will attempt to answer. It all depends on whether or not, this is what I attempted to ask Representative Lindahl, it all depends on how much of the road you own. If you own to the center of the road, presumably you've been granted an easement to get to your property, in which case we could file a civil action against you to collect the money, I think. But if the association owns the road, the association can then, and again some deeds may actually require that you join the association, of course, which throws this whole thing out of the works altogether. So it all depends on the road, it all depends whether you own to the center, whether or not your deed requires you to be a member of the association or whether or not you just refused to join the association or not, so I can't answer your question definitively.

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

Representative PIEH: Madam Speaker, may I pose a question through the Chair?

The SPEAKER: The Representative may pose her question.

Representative PIEH: If the private road is owned by the private abutting land owners and it's used privately by the abutting land owners, why does the State care who takes care of it?

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

Representative CARLETON: Madam Speaker, Men and Women of the House. In my real life, I am mostly a real estate attorney. I've spent a great deal of time trying to figure out the answers to some of these questions myself, having run into the same problems, incidentally, as the Representative from Madawaska has pointed out and which caused this bill to be submitted. Without standing here and talking for 20 or 30 minutes, I think the best thing for me to say is that there are so many variables caused by the past history of Maine laws and unique factorial situations regarding roads in this state, that it's almost impossible to craft some legislation without some very extensive work to consider all of these things. It's hard for me to remember what all the variables are. I know that there's a need to solve this problem because you do have these situations which can not be solved. If someone doesn't want to pay their fair share to maintain a road then the burden falls on someone else, it's kind of a downward spiral. About the only thing I can say in answer to the question is that when you talk about real estate, you talk about bundles of rights and someone can own property and someone else can have an easement across that property, that easement right carries with it certain rights depending upon the situation, including perhaps, the right to improve the roadway across that other persons land, but it's very difficult to make generalizations about all of this because the factorial situations are so varied that it's no wonder we're having problems here.

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

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

The SPEAKER: The Representative may pose his question.

Representative MCELROY: To anyone who wants to answer, does maintenance include plowing in the wintertime?

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

Representative CARLETON: Thank you, Madam Speaker. Maybe.

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

Representative MCELROY: Madam Speaker, Men and Women of the House. In reference to this bill, does maintenance include plowing in the winter time. You have a 15 mile stretch of road, you've got 10 camps on it, four people live in there in the winter time, do the other 11 people have to plow that road for those who made the decision to live in there in the winter time?

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

Representative CARLETON: Madam Speaker, Men and Women of the House. I don't know about the bill, but again the question is, it depends.

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

Representative McElroy: Madam Speaker, Men and Women of the House. Wouldn't it be much easier to kill this thing?

Representative MCELROY of Unity moved that the Bill and all accompanying papers be **INDEFINITELY POSTPONED**.

Representative AHEARNE of Madawaska **REQUESTED** a roll call on the motion to **INDEFINITELY POSTPONE** the Bill and all accompanying papers.

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

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

Representative AHEARNE: Madam Speaker, Men and Women of the House. In an attempt to answer the question from the good Representative from Unity, I would say that if there's a decision upon those who are on that private road, part of the maintenance cost, if it were plowing, yes, it would be assessed to all those that are on that road and use that road and it would be an equally paid amount, not just burgeoned on their four people. How else would you do so? As the Representative from Wells pointed out, it's so complicated, this area of the law, that it's almost unimaginable, we haven't even talked about retainers yet, but that's another issue itself. This is just one means, one step. It's not a solution, but what we have currently in law does not work and this, by what it says is just, like I said, a first step.

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

Representative CARLETON: Madam Speaker, Men and Women of the House. I've been looking over the bill and the amendment, not having done so until about five minutes ago. I appreciate the comments of the Representative from Madawaska, but I'm beginning to think that this first step may have some very unanticipated consequences, which you can see from the questions that have been asked. I'm wondering whether or not we'd better maybe try again in the next legislature when we perhaps have more time to deal with all these permutations rather than to pass something now, which could get a lot of people into a lot of trouble.

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

Representative MCKEE: Madam Speaker, Men and Women of the House. One of my constituents who has this problem, just

to bring it home to you, has lived in this place for 26 years and maintained the road, which was a town way but which was discontinued many years ago to which the town retains its right-of-way. This man works very, very hard and has a family, it's a dirt road and he moves in and out of this road all year long maintaining it, but there are many people who have woodlots, who bring in skidders, who bring in large trucks, who come in to see what is at the end of the road, who come in to take their canoes to a pond that is at the end of the road and no matter how many times my constituent has gone to the town and to the courts and to anyone who would listen, my children have gotten to the point where if they see this constituent's car in the driveway, they turn around and go somewhere else and come back three or four hours later, because there is no recourse anywhere for these people. We may not go anywhere this afternoon, but there are those of you that are sitting here who have that same problem in your district, please get in touch with me. This is an enormous problem across the state. I've talked with Representative Driscoll, I've talked with Representative Ahearn, I've talked with practically everybody and everybody tells me there is no answer to this except that the man move. I don't think that's the answer. Thank you.

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

Representative MCELROY: Madam Speaker, Ladies and Gentlemen of the House. I happen to be one of those unfortunate individuals that owns a piece of property on a road such as we are talking about. It is not a year round residence. We have worked on this problem for five or six years. It's a decision that the people on that road made to go in there and buy that property, to develop it in the manner that they saw fit. Now we have to work through the problems. In the beginning we filled potholes, we put in culverts. Now we're dealing with the snow plowing in the winter time. The situation can exist where it costs you twice as much to plow the snow in the winter time in northern Maine than it does to pay your taxes and pay repairs on your vehicles, because of the potholes. This bill and what might follow out from this bill is not a good idea. You're forcing a situation on various and sundry people in locations in this state. I think the individuals need to work it out themselves. They have made decisions to go in there and live there, I don't think we should assume the responsibility for one piece of legislation to try to solve all the problems on all of the back roads in the State of Maine. Thank you very much.

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

Representative LINDAHL: Madam Speaker, Men and Women of the House. I urge you to vote yes on this indefinite postponement. If we pass this bill, we're just going to be tossing it to the courts to solve all these questions that we are asking right here now. Until we can come up with a clear concise piece of legislation that answers all these problems, let's not move on it. Thank you.

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

Representative BUMPS: Madam Speaker, Men and Women of the House. I find myself in a most curious position this afternoon, because as you will see from the Report, I am on the Ought Not to Pass, I believe it is, and here I am promoting Representative Ahearn's motion, so that we can get on to talk about an amendment which I presume most of you haven't looked at yet, given the comments that I'm hearing. My seatmate here is moving indefinite postponement of a motion which I would otherwise be opposing myself, so what I'm about to ask you to do is to support Representative Ahearn, because the amendment which he is going to offer, once we pass this motion

is very carefully crafted. I think that the impression is that the committee spent no time talking about these issues and dealing with these problems, when, in fact, the contrary is true. We spent a tremendous amount of time looking at this issue, we have spent countless hours wandering the halls, talking with people downstairs in OPLA into the other body, upstairs to the committee room. The amendment itself is so limited in scope that it doesn't change the process at all. When you're done this afternoon, if you go on to pass this bill as it will be amended from the floor, it won't change anything that exist today in law except that if someone challenges a land owner. The only thing we could possibly do this afternoon is allow for court costs to be collected in the event that an association member were to take a nonpaying member to court so I would ask that you go on to defeat the pending motion so that we can take whatever action might come after that. Thank you.

The SPEAKER: The Chair recognizes the Representative from Auburn, Representative Gerry.

Representative GERRY: Madam Speaker, Ladies and Gentlemen of the House. I'm on the Majority Ought Not to Pass, but I encourage you to defeat the Indefinite Postponement of the bill and its papers. We just really need to pass something in order to help people that have roads, they try to upkeep them and others don't pay their fair share. The only part I had trouble with, when we're doing a committee report was at one time discussing giving them lien authority, and I have this thing about allowing people to put liens on other peoples property, but that's not in there. So I have no problems with this bill and the amendment that is going to come forward if we can at least defeat this measure so I ask you to vote against Indefinite Postponement so we can at least pass something to help the hundreds of associations out there that may choose this avenue to go.

The SPEAKER: A roll call has been ordered. The pending question before the House is Indefinite Postponement of the Bill and all accompanying papers. All those in favor will vote yes, those opposed will vote no.

#### ROLL CALL NO. 524

YEA - Belanger IG, Berry DP, Bigl, Bodwell, Bouffard, Bragdon, Buck, Cameron, Carleton, Cianchette, Clukey, Donnelly, Foster, Gamache, Goodwin, Gooley, Green, Jones SA, Joyce, Joyner, Kasprzak, Kneeland, Labrecque, Lane, Layton, Lindahl, Lovett, Mailhot, Marvin, Mayo, McAlevey, McElroy, Meres, Murphy, Nickerson, Ott, Peavey, Pendleton, Perkins, Pieh, Pinkham RG, Pinkham WD, Savage, Stanley, Taylor, Tobin, Townsend, Treadwell, True, Vedral, Volenik, Waterhouse, Wheeler EM, Winsor.

NAY - Ahearn, Bagley, Baker, Barth, Belanger DJ, Berry RL, Bolduc, Brennan, Brooks, Bruno, Bryant, Bull, Bumps, Bunker, Campbell, Chartrand, Chick, Chizmar, Clark, Colwell, Cowger, Cross, Davidson, Desmond, Driscoll, Dunlap, Etnier, Farnsworth, Fisher, Fisk, Frechette, Fuller, Gagne, Gagnon, Gerry, Gieringer, Jones KW, Jones SL, Joy, Kane, Kerr, Kontos, LaVerdiere, Lemaire, Lemke, Lemont, MacDougall, Mack, Madore, McKee, Mitchell JE, Morgan, Muse, Nass, O'Brien, O'Neil, Paul, Perry, Plowman, Poulin, Povich, Powers, Quint, Richard, Rines, Rowe, Samson, Sanborn, Saxl JW, Saxl MV, Shannon, Shiah, Sirois, Skoglund, Snowe-Mello, Spear, Stedman, Stevens, Tessier, Tripp, Tuttle, Underwood, Usher, Vigue, Watson, Wheeler GJ, Winglass, Winn, Wright, Madam Speaker.

ABSENT - Dexter, Dutremble, Hatch, Honey, Jabar, O'Neal, Thompson.

Yes, 54; No, 90; Absent, 7; Excused, 0.

54 having voted in the affirmative and 90 voted in the negative, with 7 being absent, the motion to **INDEFINITELY POSTPONE** the Bill and all accompanying papers **FAILED**.

Subsequently, the **Minority Ought to Pass as Amended Report** was **ACCEPTED**.

The Bill was **READ ONCE**. **Committee Amendment "A" (H-1031)** was **READ** by the Clerk.

Representative **AHEARNE** of Madawaska **PRESENTED House Amendment "C" (H-1085) to Committee Amendment "A" (H-1031)**, which was **READ**.

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

Representative **AHEARNE**: Madam Speaker, Ladies and Gentlemen of the House. House Amendment "C" is a complete change from what Committee Amendment "A" inspired. In terms of the roads issue and what we're trying to effect here and what the big confusion is, what is a private way, or what in terms of easements, and what is a private road. As I stated earlier before, the courts under current law there is no real definition and that is why I constantly hear that we could try to apply this current law, but it seems to me every time one of these associations, and we heard it at the committee hearing, when they try to apply the current law, they are normally told that because of its ambiguity of what a private way is, under current law, the lawyer or their attorneys say it can't be done. What the current law says is that when four or more persons or owners and occupants of a private way, what we're seeing under this committee amendment we're changing that and it has to be four or more parcels of land are benefited by a private way. Now that doesn't mean that if we had five people who are on a private road and somebody else owns that property, those five people can not get together and decide to have maintenance of that road. It is up to that one owner of that property who abuts that road. That's what we're trying to limit this down to, not a number of people who live on that road, or on the property, but the number of abutters. I believe we tried to accomplish that in the first section of House Amendment "C." Once three or more owners of the parcels get together, they could form a meeting. The purpose of that meeting is to set and pick a commissioner and this road commissioner would therefore set up to try to survey the road and what the costs would be. Under the old law it was seven days, they would have to be notified of those owners of the other property, we extended that to 30 days to try to provide more notice so that those people can be notified so if they have objections, they can send objections. It's more clarity in existing law, than what is currently on the books, and at the bottom of the paragraph, which we added this section does not apply to ways constructed, or primary use, for commercial or forest management practices. For instance, if you had at the end of a long road some property owned by a paper company, and that road is owned by the paper company and they have abutters to that property on that road, those people can not form an association and can not bring that paper company to pay any share of that road, because of that one section, which was a concern that we addressed. As others have mentioned, under current law, not only is it the issue of ambiguity, but also in terms of attorney's fees, because some of these road maintenance costs are a mere \$100 from each of those who are on this road, but the attorneys fees are \$500 so there's no sense of paying \$500 to try to get this one person to pay their fair share, so in Section 2 of the amendment, on page two, we added a line together with the costs of suit and reasonable attorney's fees to try to clarify that issue, but the rest of the amendment basically coincides with the changes we made. It does clear up some old language, to make sure it's all neat and tight, but it also, the final section on line 41, it mentions it would only apply to those existing road associations that are incorporated in the Secretary of State's Office which we had hoped would limit it at just the first

year to those that exist so that owners could not form these associations and all of sudden have this flood of court hearings. We believe that this is a compromise, in my opinion, and is something I believe is workable and I will try to attempt to answer any questions. I urge your support.

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

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

The **SPEAKER**: The Representative may pose his question.

Representative **PERKINS**: On the first page, line 33, that first sentence that's trying to clear up the language, starting at 33, except as provided by four or more, it used to be persons or owners and occupants. You scratched that to clear it up, but then four or more parcels of land are benefited and I'm trying to find the definition of which land down the road might be benefited and which might not be by this private way. Is that the definition in the third line, that says unlined as in pertinent easement or fee ownership or waiver? That's more or less the definition of the parcels that are benefited. What is the definition of benefited parcels? I guess that's what I'm trying to say.

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

Representative **CARLETON**: Madam Speaker, Men and Women of the House. The parcels that are benefited by a right-of-way are usually the parcels which you go over that roadway to get to. In other words, if you own a back piece of land and there's a private way that goes from the public road to your parcel, you have the right to access your parcel that way, then your parcel is the parcel that's benefited by the right-of-way.

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

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

The **SPEAKER**: The Representative may pose his question.

Representative **PERKINS**: Madam Speaker, Men and Women of the House. So, if you owned a piece back in and you planned to go in there maybe ten years from now to harvest timber or something, would that fall into that category?

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

Representative **CARLETON**: Madam Speaker, Men and Women of the House. The answer is yes. Of course you have to have a legal right to cross that someone's property to get to your parcel of land and of course there are issues of the scope of the easement that you have to cross someone else's land. You can't put in a super highway across someone else's land, just to get to your land and there are a bunch of other issues.

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

Representative **MCELROY**: Madam Speaker, May I pose a question, please?

The **SPEAKER**: The Representative may pose his question.

Representative **MCELROY**: Thank you Madam Speaker. On the second page of this amendment, section three, application before July 1, 1999, only owners who are members of road associations incorporated as of March 1, 1998 may utilize the process set forth in this Act. Does this mean if I am not, was not, don't intend to be, although I am a member of the road association as of that date, I don't have to participate in anything that is covered under this law?

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

Representative CARLETON: Madam Speaker, Men and Women of the House. That appears to be what it says.

The SPEAKER: The pending question before the House is adoption of House Amendment "C" (H-1085) to Committee Amendment "A" (H-1031).

**House Amendment "C" (H-1085) to Committee Amendment "A" (H-1031) was ADOPTED.**

**Committee Amendment "A" (H-1031) as Amended by House Amendment "C" (H-1085) thereto was ADOPTED.**

Under suspension of the rules the Bill was given its **SECOND READING** without **REFERENCE** to the Committee on **Bills in the Second Reading**.

Representative LABRECQUE of Gorham **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: A roll call has been ordered. The pending question before the House is Passage to be Engrossed. All those in favor will vote yes, those opposed will vote no.

**ROLL CALL NO. 525**

YEA - Ahearn, Bagley, Baker, Barth, Belanger DJ, Bolduc, Bragdon, Brennan, Bruno, Bryant, Bull, Bumps, Bunker, Cameron, Chartrand, Chick, Chizmar, Clark, Colwell, Cowger, Davidson, Desmond, Driscoll, Dunlap, Etnier, Fisher, Fisk, Frechette, Fuller, Gagne, Gagnon, Gamache, Gerry, Green, Jones KW, Jones SL, Joyce, Kane, Kerr, Kontos, LaVerdiere, Lemaire, Lemke, Lemont, MacDougall, Mack, McKee, Mitchell JE, Morgan, Murphy, Muse, Nass, O'Brien, O'Neil, Paul, Perry, Poulin, Povich, Powers, Quint, Richard, Rines, Rowe, Samson, Sanborn, Saxl JW, Saxl MV, Shannon, Shiah, Sirois, Skoglund, Spear, Stevens, Tessier, Townsend, Tripp, Tuttle, Usher, Vigue, Waterhouse, Watson, Winglass, Winn, Madam Speaker.

NAY - Belanger IG, Berry DP, Berry RL, Bigl, Bodwell, Bouffard, Buck, Campbell, Carleton, Cianchette, Clukey, Cross, Farnsworth, Foster, Gieringer, Goodwin, Gooley, Jones SA, Joy, Joyner, Kasprzak, Kneeland, Labrecque, Lane, Layton, Lindahl, Lovett, Madore, Mailhot, Marvin, Mayo, McAlevey, McElroy, Meres, Nickerson, Peavey, Pendleton, Perkins, Pieh, Pinkham RG, Pinkham WD, Savage, Snowe-Mello, Stanley, Stedman, Taylor, Tobin, Treadwell, True, Underwood, Vedral, Volenik, Wheeler EM, Wheeler GJ, Winsor.

ABSENT - Brooks, Dexter, Donnelly, Dutremble, Hatch, Honey, Jabar, O'Neal, Ott, Plowman, Thompson, Wright.

Yes, 84; No, 55; Absent, 12; Excused, 0.

84 having voted in the affirmative and 55 voted in the negative, with 12 being absent, the Bill was **PASSED TO BE ENGROSSED as Amended by Committee Amendment "A" (H-1031) as Amended by House Amendment "C" (H-1085) thereto and sent up for concurrence.**

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

**REPORTS OF COMMITTEE  
Divided Report**

Majority Report of the Committees on **APPROPRIATIONS AND FINANCIAL AFFAIRS** and **EDUCATION AND CULTURAL AFFAIRS** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-1082)** on Bill "An Act to Encourage High

School Students to Pursue Higher Education at Postsecondary Educational Institutions in this State"

(H.P. 1583) (L.D. 2213)

Signed:  
Senators:

MICHAUD of Penobscot  
PENDLETON of Cumberland  
CATHCART of Penobscot

Representatives:

KERR of Old Orchard Beach  
POULIN of Oakland  
TOWNSEND of Portland  
STEVENS of Orono  
BERRY of Livermore  
LEMAIRE of Lewiston  
RICHARD of Madison  
DESMOND of Mapleton  
McELROY of Unity  
BRENNAN of Portland  
SKOGLUND of St. George  
WATSON of Farmingdale

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

Signed:  
Senators:

BENNETT of Oxford  
SMALL of Sagadahoc

Representatives:

KNEELAND of Easton  
MARVIN of Cape Elizabeth  
WINSOR of Norway  
BARTH of Bethel  
STEDMAN of Hartland  
BELANGER of Caribou  
BAKER of Bangor

**READ.**

On motion of Representative MITCHELL of Vassalboro, the Bill and all accompanying papers were **INDEFINITELY POSTPONED** and sent up for concurrence.

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

The House recessed until 7:30 p.m.

(After Recess)

The House was called to order by the Speaker.

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

**ENACTORS  
Acts**

An Act Regarding Electric Utilities

(H.P. 1380) (L.D. 1935)  
(C. "A" H-984)

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



An Act to Strengthen Laws Regarding Timber Theft and Timber Harvesting

(H.P. 1013) (L.D. 1405)  
(S. "A" S-571 to C. "A" H-951)

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

On motion of Representative BUNKER of Kossuth Township, was **SET ASIDE**.

On further motion of the same Representative, the rules were **SUSPENDED** for the purpose of **RECONSIDERATION**.

On further motion of the same Representative, the House **RECONSIDERED** its action whereby the Bill was **PASSED TO BE ENGROSSED**.

On further motion of the same Representative, the rules were **SUSPENDED** for the purpose of **FURTHER RECONSIDERATION**.

On further motion of the same Representative, the House **RECONSIDERED** its action whereby **Committee Amendment "A" (H-951)** was **ADOPTED**.

The same Representative presented **House Amendment "A" (H-1076)** to **Committee Amendment "A" (H-951)** which was **READ** by the Clerk.

The SPEAKER: The Chair recognizes the Representative from Kossuth Township, Representative Bunker.

Representative BUNKER: Madam Speaker, Men and Women of the House. This is a technical change. All it has to do is with timing when a certain committee within this bill reports back to the 119th and it's just for convenience of the presiding officers to have them all being reported back in the same timely manner.

House Amendment "A" was **ADOPTED**.

**Committee Amendment "A" (H-951) as Amended by House Amendment "A" (H-1076)** thereto was **ADOPTED**.

The Bill was **PASSED TO BE ENGROSSED as Amended by Committee Amendment "A" (H-951) as Amended by House Amendment "A" (H-1076)** thereto in **NON-CONCURRENCE** and sent up for concurrence.

Resolve, to Implement the Recommendations of the Blue Ribbon Commission on Hunger and Food Security

(S.P. 542) (L.D. 1661)  
(C. "A" S-587)

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

On motion of Representative SAXL of Portland, was **SET ASIDE**.

On further motion of the same Representative, **TABLED** pending **FINAL PASSAGE** and later today assigned.

Resolve, To Establish the Commission to Study Providing Educators with More Authority to Remove Violent Students from Educational Settings

(H.P. 1520) (L.D. 2142)  
(C. "A" H-1001)

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

On motion of Representative RICHARD of Madison, was **SET ASIDE**.

On further motion of the same Representative, the rules were **SUSPENDED** for the purpose of **RECONSIDERATION**.

On further motion of the same Representative, the House **RECONSIDERED** its action whereby the Resolve was **PASSED TO BE ENGROSSED**.

On further motion of the same Representative, the rules were **SUSPENDED** for the purpose of **FURTHER RECONSIDERATION**.

On further motion of the same Representative, the House **RECONSIDERED** its action whereby **Committee Amendment "A" (H-1001)** was **ADOPTED**.

The same Representative presented **House Amendment "A" (H-1075)** to **Committee Amendment "A" (H-1001)** which was **READ** by the Clerk.

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

Representative RICHARD: Madam Speaker, Men and Women of the House. In explanation, this is merely a technical correction. This was not worded correctly in reference to appointments to the study committee.

**House Amendment "A" was ADOPTED.**

**Committee Amendment "A" (H-1001) as Amended by House Amendment "A" (H-1075)** thereto was **ADOPTED**.

The Resolve was **PASSED TO BE ENGROSSED as Amended by Committee Amendment "A" (H-1001) as Amended by House Amendment "A" (H-1075)** thereto in **NON-CONCURRENCE** and sent up for concurrence.

#### CONSENT CALENDAR

##### First Day

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

(H.P. 1587) (L.D. 2218) Bill "An Act to Implement the Recommendations of the Task Force On Improving Access to Prescription Drugs for the Elderly" Committees on **APPROPRIATIONS AND FINANCIAL AFFAIRS** and **HEALTH AND HUMAN SERVICES** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-1074)**

Representative BRUNO of Raymond asked leave of the House to be excused from voting on L.D. 2218 pursuant to House Rule 401.12.

The Chair granted the request.

Under suspension of the rules, Second Day Consent Calendar notification was given.

There being no objection, the House Paper was **PASSED TO BE ENGROSSED AS AMENDED** and sent up for concurrence.

#### CONSENT CALENDAR

##### First Day

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

(H.P. 1649) (L.D. 2279) Resolve, Regarding Legislative Review of Section 71.05: Application Process; Certificate of Need for Nursing Facility Level of Care (Policy Manual), a Major Substantive Rule of the Department of Human Services, Bureau of Elder and Adult Services (EMERGENCY) Committee on **HEALTH AND HUMAN SERVICES** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-1080)**

Under suspension of the rules, Second Day Consent Calendar notification was given.

There being no objection, the House Paper was **PASSED TO BE ENGROSSED AS AMENDED** and sent up for concurrence.

**ENACTORS**

**Acts**

An Act to Provide Computers for Use in the Legislature  
(H.P. 416) (L.D. 566)  
(C. "A" H-1033)

An Act to License Massage Therapists  
(S.P. 494) (L.D. 1525)  
(H. "A" H-1049 to C. "A" S-561)

An Act to Clarify the Confidentiality of Public Employee Information  
(H.P. 1362) (L.D. 1913)  
(C. "A" H-998)

An Act to Amend the Laws Governing Secession  
(H.P. 1420) (L.D. 1984)  
(C. "A" H-1024)

An Act to Improve the Integrity of Notaries Public  
(S.P. 771) (L.D. 2098)  
(C. "A" S-590)

An Act to Reduce Motor Vehicle Fatalities and Injuries among Young Drivers  
(S.P. 782) (L.D. 2109)  
(H. "B" H-1017 to C. "A" S-563)

An Act to Ensure Access to Confidential Records  
(H.P. 1514) (L.D. 2136)  
(C. "A" H-1032)

An Act to Amend the Laws Concerning Participating Local Districts in the Maine State Retirement System  
(H.P. 1524) (L.D. 2146)  
(C. "A" H-1009)

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

**Resolve**

Resolve, Regarding Legislative Review of Rules Governing the Implementation of Hypodermic Apparatus Exchange Programs, a Major Substantive Rule of the Department of Human Services  
(H.P. 1607) (L.D. 2234)  
(C. "A" H-940; H. "B" H-1059)

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

**CONSENT CALENDAR**

**First Day**

In accordance with House Rule 519, the following item appeared on the Consent Calendar for the First Day:  
(H.P. 1650) (L.D. 2281) Resolve, Regarding Legislative Review of Chapter 32: Rules for the Licensing of Children's Day Care Facilities and Chapter 33: Rules for Home Day Care Providers, Major Substantive Rules of the Department of Human Services, Auditing, Contracting and Licensing Service Center (EMERGENCY) Committee on **HEALTH AND HUMAN SERVICES** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-1084)**

Under suspension of the rules, Second Day Consent Calendar notification was given.

There being no objection, the House Paper was **PASSED TO BE ENGROSSED AS AMENDED** and sent up for concurrence.

**REPORTS OF COMMITTEE**

**Ought to Pass As Amended**

Report of the Committee on **STATE AND LOCAL GOVERNMENT** on Bill "An Act Authorizing Certain Debt of Hancock County for Construction of a New Jail and Courthouse Renovations and Ratifying Certain Action Taken by Hancock County in Connection with the Authorization of this Debt" (EMERGENCY)  
(S.P. 867) (L.D. 2280)

Reporting **Ought to Pass As Amended by Committee Amendment "A" (S-616)**.

Came from the Senate with the Report of the Committee on **STATE AND LOCAL GOVERNMENT READ** and the **BILL SUBSTITUTED** for the Report and **PASSED TO BE ENGROSSED**

**READ.**

On motion of Representative AHEARNE of Madawaska, the House voted to **SUBSTITUTE** the Bill for the Report.

The Bill was **READ ONCE**.

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** in concurrence.

**CONSENT CALENDAR**

**First Day**

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

(H.P. 1622) (L.D. 2252) Bill "An Act to Implement the Recommendations of the Governor's Commission on School Facilities" Committee on **EDUCATION AND CULTURAL AFFAIRS** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-1088)**

Under suspension of the rules, Second Day Consent Calendar notification was given.

There being no objection, the House Paper was **PASSED TO BE ENGROSSED AS AMENDED** and sent up for concurrence.

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

**UNFINISHED BUSINESS**

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

**SENATE DIVIDED REPORT - Majority (8) Ought to Pass as Amended by Committee Amendment "A" (S-574) - Minority (5) Ought Not to Pass - Committee on JUDICIARY** on Bill "An Act to Exclude Intentional Tort Claims from the Application of the Maine Workers' Compensation Act of 1992"

(S.P. 32) (L.D. 30)

- In Senate, Minority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED**.

**TABLED - March 25, 1998 (Till Later Today)** by Representative SAXL of Portland.

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

On motion of Representative KONTOS of Windham, **TABLED** pending the motion of Representative ETNIER of

Harpwell to **ACCEPT** the Majority **Ought to Pass as Amended** Report and later today assigned.

HOUSE ORDER - PROPOUNDING A QUESTION TO THE JUSTICES OF THE SUPREME JUDICIAL COURT

(H.O. 43)

TABLED - March 25, 1998 (Till Later Today) by Representative SAXL of Portland.

PENDING - **PASSAGE**.

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

HOUSE DIVIDED REPORT - Majority (8) **Ought to Pass as Amended by Committee Amendment "A" (H-1056)** - Minority (5) **Ought to Pass as Amended by Committee Amendment "B" (H-1057)** - Committee on **CRIMINAL JUSTICE** on Bill "An Act to Amend the Laws Regarding Sex Offenders"

(H.P. 1473) (L.D. 2072)

TABLED - March 25, 1998 (Till Later Today) by Representative POVICH of Ellsworth.

PENDING - Motion of same Representative to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED COMMITTEE AMENDMENT "A" (H-1056)** Report.

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

Representative POVICH: Madam Speaker, Men and Women of the House. I urge your support for LD 2072 as amended by Committee Amendment "A" ( H.P. 1056). Lately, we've seen, read or heard about community outrage when a sexual offender has been released from one of our prisons and lands in one of our towns or cities. There's a lot of concern, worry and handwringing, what's these people up to. We don't feel safe, they might roofed. What should be done?

The Criminal Justice Committee worked long and hard with this and other notification bills and we think that we've come forward with legislation that's practical, realistic and that will do the job. The Majority and the Minority Report are in agreement on about every issue except one and the disagreement was alphabetical. I'll get there in a moment. The Criminal Justice Committee agreed also on an amendment to create a safe children zone, that is defined as, or within a 1000 feet of the property comprising a public, private elementary or secondary school or within a 1000 feet of a licensed day care center. The amendment requires the court when determining an appropriate sentencing factor the fact that the gross sexual assault was committed in a safe children's zone. Children should be safe and should feel safe.

Part two of the bill requires the Department of Corrections to forward to the Department of Public Safety and the State Bureau of Investigation the following additional information regarding a sexual offender who is required to register under the sex offender registration notification act. The defender's risk assessment score, a copy of this risk assessment instrument and applicable contact standards for the offender. What this means simply is that the Department of Corrections sends to the Department of Public Safety, who then sends it to the local chiefs of police or the sheriff all the information they need to know to make an informed decision to whom they think should be notified in the community regarding the release of a sex offender. The entire Committee, the Criminal Justice Committee, had full faith and confidence in our chief law enforcement officers to disseminate the information. We respect the concept of local control. We do not want to impose on that matter. Where we

disagreed was with which population should be included. I mentioned that the matter was alphabetical. The majority amendment wanted to include all sex offenders that have been convicted of an A, B, or C crime plus the crime of sexual exploitation of a minor. This amendment adds a fiscal note. The Minority Report also requires the Department of Corrections to forward to the Department of Public Safety and the State Bureau of Investigation and to the chief law enforcement officers, only to those currently required to register under the act. These crimes were the class A crime of gross sexual assault of a minor who is under 16. The Minority Report does not add a fiscal note. Passage of this bill, either the A Report, or the B Report will properly allow our citizens to feel a whole lot more comfortable when they turn in tonight. I urge you to please support the Majority Report and I thank you very much.

The SPEAKER: The pending question before the House is acceptance of the Majority Ought to Pass as amended Report.

Subsequently, the Majority **Ought to Pass as Amended** Report was **ACCEPTED**.

The Bill was **READ ONCE**. **Committee Amendment "A" (H-1056)** 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" (H-1056)** and sent up for concurrence.

Under suspension of the rules, members were allowed to remove their jackets.

Bill "An Act to Limit New Lobster and Crab Fishing Licenses" (H.P. 1597) (L.D. 2226)

- In House, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1004)** and **HOUSE AMENDMENT "A" (H-1025)** on March 23, 1998.

- In Senate, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1004)** in **NON-CONCURRENCE**.

TABLED - March 25, 1998 (Till Later Today) by Representative ETNIER of Harpswell.

PENDING - Motion of same Representative to **RECEDE** and **CONCUR**. (Roll Call Requested)

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 Lamoine, Representative Pinkham.

Representative PINKHAM: Madam Speaker, Men and Women of the House. I'm sure most of you heard the testimony several days ago on this bill and really nothing's changed since then except maybe a few minds. I hope not. I'm just going to be brief and just bring you up to date on why this amendment was put on the original bill. When this bill was heard in committee to put a moratorium on all new licenses, the Commissioner of Marine Resources was there and I had a concern that there was several people that were falling through the holes in this bill. People that had licenses in previous years but didn't get one in '98, didn't get one in '97 for some reason, and I talked with the Commissioner about this and he said, well there was only a dozen or so, ten to a dozen was his exact words of people that didn't get a license in '97 that probably should have them. He said that those few people could be taken care of under previous law so we heard the bill in committee and at the work session we

found out that the laws that he was referring to had been changed a couple years ago so these people still fell through the cracks. This amendment would pick these few people up, let's say ten or a dozen that should have licenses, that's had licenses in the past and didn't get one in '97, for could be a medical reason, or several other reasons.

The original bill that was passed only had actually one exception if you didn't have a license in '97, the only way you could get one in '98 was if you had been under suspension for a violation of the marine resources laws. To me it doesn't make much sense to allow somebody that had broken the laws and lost their license and was under suspension to allow those people back in when people that had thousands of dollars tied up in boat and gear and didn't get one in '97. I've had several calls from people that had legitimate reasons why, like I told you before, I'm not trying to pull on anybody's heart strings, but one guy in my district had cancer for all of '97, he was on chemotherapy, he couldn't work, he was too weak to work. He didn't get his license and people will say, well he should have sent for his license anyway. Well, I've lost three members of my family to cancer, one of them was a fisherman, and I'm sure the last year of his life we didn't think of renewing his lobster license. When you're in the hospital and going through chemotherapy every couple weeks, so this guy to me should have a license. The doctor gave him permission to go back to work this year in '98, not full time, but he can go on a limited basis. He should have a license, but under the bill without my amendment, this man can't get a license. He would have to wait at least two years until the moratorium goes off, if it goes off. There's no guarantee that it will go off. Most of you got a letter the other day, I think it was yesterday, from the Department of Marine Resources stating what they were going to do when the moratorium goes off. They wanted time to study.

Last year LD 1488 was a bill that we had in front of our committee that charged the Department of Marine Resources with doing a study on limited entry in the lobster fishery and was charged to bringing a report back to us in January of this year so we could put bills in to address the limited entry situation. Well, when January came this year, they didn't have the report ready and they requested a year's extension to get the report in until January of '99. Well before we could talk that over at committee, we got another letter from DMR asking for a two year extension and then this time they had the two year moratorium on. So this should have been done and we should have had these problems addressed now. These people that didn't get a license, the ten or a dozen that didn't get a license in '97 that should have, should have their license. Like I say, they've got a lot of money tied up. Two years is a long time to wait and not be able to make boat payments and other things that they have as everybody else does. They need to go to work. If the fishery was really in trouble, there might be a chance to say well we don't want anybody else into it, but this fishery is a healthy fishery. Over the past 15 years the lobster catch has gone up by 40 percent. The number of licenses issued has gone down by 23 percent and in the last year alone, from '96 to '97, there was over a 20 percent increase in the lobster catch in one year. In 1996, the lobster catch was approximately 36 million pounds, in 1997 the lobster catch 46.3 million pounds, so you can see that this fishery isn't in trouble, so another ten or a dozen licenses with people that should have had them in the first place won't hurt this fishery any.

If other businesses in the state could say they had a 20 percent growth in production in the last year, there would be no unemployment, everybody would be working. These people, it's better that they go to work and make a living than be on welfare and lose boats and other things that they need to pay for, so I

ask you to vote against this motion so we can Insist and ask for a committee of Conference.

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

Representative LEMONT: Madam Speaker, Ladies and Gentlemen of the House. I rise today as the legislator that was appointed to zone G by the presiding officer of this chamber. I've served on that zone through the summer and this past fall and I can tell you of the overwhelming support for this piece of legislation. This bill does create a moratorium in lobster fishery. It does direct the lobster council to come up with some form to have limited entry into this fishery and it would receive input from the zones. Trust me, they are very capable, knowledgeable individuals in this industry to craft legislation to address this issue. In 1995, we created these zones through legislation to deal with these issues of this nature. I think one of the biggest reasons was to get these issues out of here so we wouldn't have to debate them late into the evenings. Once again we are doing that. The 1995 legislation created an environment that allowed just about anybody in the State of Maine that wanted a lobster license to have a lobster license. I beg to differ with the good Representative from Lamoine, in 1995 the Class 2 and Class 3, which are the big gangs' traps and the big boats increased by nearly a thousand. It seemed like the harbor men bent over backwards to make sure anybody who wanted a license was eligible for a license. In my area it seemed like you could walk by a lobster trap, some way, somehow, you were eligible for a lobster license. This bill isn't about exclusion. It's about conservation. It's about the health of the fishery. It no longer can be an open fishery. It's the only open fishery in the State of Maine currently. I can't get a ground fish license. I can't get a clamming license. I can't get a sea urchin license. They all have strict conservation. They all have moratoriums. They all are a closed fishery. The days of the recreational fishermen in the lobster industry are gone. This bill would not allow us to open this up once again and let people free flow into the fishery. Please support this motion. It is very important that we step back, take a look at this fishery, give the people who understand this fishery and know this fishery a chance to go in there and come up with a plan so we can have licenses in this fishery and know who we want to have in this fishery and how they're going to get into this fishery. Please support the motion so we can have a sustainable healthy lobster fishery.

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

Representative LAYTON: Madam Speaker, Men and Women of the House. There is no free flow, as you heard. We're talking about, with this amendment, a handful of people who have fallen through the cracks. What I'm going to do tonight is I'm going to attempt to bring this down to a level, seeing as how the majority of you don't live on the coast, to where you can really understand what the problem is and you can see what the implications are in passage of this bill without Representative Pinkham's amendment. I'm going to draw an analogy for you to help you better understand the program, but first I want to ask you all a rhetorical question and that is how many of you, for whatever reason, have ever let their automobile registration expire? Through no fault of your own, this has happened. I know, it has happened to me, then you embarrassingly go down to the town office and get your vehicle registered, maybe a week, maybe three weeks, or maybe a month late. You fell through the cracks.

Suppose this did happen to you and when you went to the town office, the clerk said I'm sorry but you didn't renew on time, therefore the only way you can get a new registration is to go through an apprenticeship program. What's that, you ask. Well,

what you're going to have to do, is you're going to have to ride with someone for a minimum of two hundred days spread out over a period of two years. Even when you complete the program, you still may not be able to get your registration because there's a moratorium on new registrations. You say, I can't do that. I have to be able to get back and forth to my job. I'm sorry, says the clerk. Well what do I have to do? I've had this registration for the past 15 years, what am I going to do? Well, because you didn't renew on time and the Bureau of Motor Vehicles says there are too many cars on the road and there's a shortage of gasoline, but I didn't register on time, I explained, because I was called up to active duty and I spent a year in Bosnia, or perhaps it was I blew the motor in my car and it was temporarily out of service, or maybe it was I temporarily relocated out of state and then came back to Maine. It doesn't make any difference, says the clerk. But the Bureau never notified me that my registration was about to expire. I'm sorry, says the clerk, it's the law and there's nothing I can do about it. Well, what am I suppose to do? Try calling your legislator. Ladies and gentlemen of the House, they've called and that's why this amendment is on this piece of legislation. Contrary to what you've been hearing, from the opposition the past couple of days about fishermen being irresponsible, there are legitimate cases where through no fault of their own, some fishermen have fallen through the cracks. I want you to know that it's not my intention to see this legislation die between the bodies. That's not the reason for the amendment, but it is my strongest intention to see that these few, experienced fishermen get a fair shake. I'll allow it again to be able to be licensed without being encumbered by frivolous regulations. Ladies and Gentlemen, I appeal to your sense of good judgment, logic and fairness and I respectfully request that you defeat the pending motion so that we can go on to insist on our former action and ask for a Committee of Conference.

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

Representative PINKHAM: Madam Speaker, Men and Women of the House. Just a couple of points. Representative Lemont mentioned about the zones being set up in 1995, he's absolutely correct. The zone councils were set up in 1995 to take care of these problems like this. It's been three years, they haven't done it and now the Department wants two more years, that will be five years that they have had to do this. I think that's too long for anyone to be out of work, especially if you're an experienced fisherman and have had a license all along.

The other thing he mentioned about the sea urchin moratorium, that he can't get a license in the sea urchin industry. He could have if he'd had a previous license. The sea urchin moratorium, if you had a license in certain years and didn't have one last year because of a medical problem, or some other reason you can get into the sea urchin industry, so there is a mechanism to get in under the moratorium. The catch, if you look at the records from DMR, there was a 40 percent increase in the catch in the last 15 years and a 23 percent decrease in licenses in the last 15 years. Thank you.

The SPEAKER: The Chair recognizes the Representative from Harpswell, Representative Etnier.

Representative ETNIER: Madam Speaker, Men and Women of the House. I urge you to support the Recede and Concur motion that is before you tonight. I do firmly believe that the Representative from Lamoine, Representative Pinkham, is extremely well intentioned with his amendment. Don't get me wrong, we on the committee discussed this, basically an idea of an appeals process and some of the concerns that we'd heard and some of the problems that we'd heard with individual constituents. I've got one of my own, regarding entry into the

fishery. It is something that we are well aware of and tossed about a lot within the committee, but we could not find a way to address the concerns of the few without opening the barn door to the vast hordes, which is exactly what the amendment that I am asking you to dispense with does. It is an extremely broad door that is opened, with this amendment reaching back as far as 1993 and for the slimmest of reasons, in a couple of incidences, certainly not the military service one, but the other ones with very little basis you can go appeal to the lobster advisory council. Now yesterday, I tabled this bill when it showed up on a supplement, and the reason I did that was because the lobster advisory council opportunely was meeting last night at 5:00 and they reviewed Representative Pinkham's amendment and sent over a letter based on their review of the amendment. I'm sure you have all set this letter aside carefully, it was on a 8 1/2 x 11 piece of paper, it looks like that, but since you may not have I just want to read to you a part of it. This again, was dated yesterday. The Lobster Advisory Council has representation from all seven lobster policy management councils and the general public. We the Lobster Advisory Council unanimously support LD 2226 as reported out by the Joint Standing Committee on Marine Resources, and then they go on to stress, as is in the bill already as part of the required report due on January 1st, 1999, the Lobster Advisory Council will develop a method for an appeals process and eligibility for military service exceptions. We strongly urge the members of the 118th Legislature to pass this bill without any further amendments. Ladies and Gentlemen, this is the industry from one end of the coast to the other pleading with you not to open the barn door for yet another flood of new entrants into a fishery that is stressed, extremely stressed. There are too many fishermen, there are too many traps, a lot of the fishermen at this point in time are going to have to be taking traps out of the water due to upcoming federal regulations and if we continue to leave the barn door open, right along next to them after they have had to take out hundreds, in some cases in my area thousands, literally, of traps. They'll have new entrants into the fishery coming along next to them based on Representative Pinkham's amendment and there's serious concern that there'll be certainly no conservation if that happens and a great deal of friction on the water. This fishery is healthy according to the catch, but ladies and gentlemen you ought to spend some time in the water. I spent two months there last fall, prior to tangling with a tractor. I went as a sternman with a friend of mine in Casco Bay and they're maxed out, they've been maxed out in Casco Bay for quite awhile. They have had it. They've had it with us up here failing to enact strong entry restrictions. We attempted to do so in 1995, and as Representative Lemont mentioned, the Department bent over backwards to assist people to get into the industry and meet the qualifications for meeting licenses and it was viewed largely as a phase by the industry because so many people did flood in in '95 and '96. We did all we could to take care of all the problems out there and they have had it with our inability to deal with what is an incredibly grave concern on the part of the lobster fishing industry. Enough is enough we need to shut the door. We need things to cool down for awhile and we need to deal with entry on a rational basis and they need some more time to do it and that's what they're asking you for tonight.

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

Representative PENDLETON: Madam Speaker, Ladies and Gentlemen of the House. I was pleased to receive this letter from the Lobster Advisory Council stating that we'd be more than happy to develop an appeals process by January 1, 1999. That is almost a year away. That would mean anybody that has been doing lobstering and would like to get into the lobster entry this

summer and in my particular case, I have young man who's trying to get his license. He does have a way in, it's not the way he wants to be, it will cost him twice as much. It means he'll have to buy two licenses for this coming year. One for an apprenticeship so that he can go along with his father and one as a student so he can have his own traps that he's been fishing for the last four years. I don't think that we should be denying him the right to fish his own traps. If he has to fish with his father and not have his own traps, his father is already maxed out at the number of traps for our zone. The reason I am supporting Representative Pinkham's amendment is so that we can get this hopefully to a Committee of Conference. I would like to see some sort of appeals process now. These individuals can get into the market after going through the appeals process. They go through the appeals process and lose, fine, they've had their opportunity, but unless you allow somebody that's had a license in the past to challenge and have an appeal and a hearing then you're denying people and we should not be denying people without a fair hearing. This state has always tried in every facet of the law to provide a fair hearing and a timely hearing to the individuals of this state. Without doing that you're slapping him in the face and you're creating a situation where you might as well be telling the people that you don't care for them. The lobster industry when the gentleman was here the other day was a member of the Advisory Council did not realize that I was in back of Representative Pinkham's bill and he said to me, quote, unquote, I had 1200 traps, I'm putting 400 of them on the beach and I don't want any new people coming in and I'm going to work to see that, and he's a member of the Council and I think, folks, that's not giving a person a fair hearing and a fair appeal to be able to get into the market this year. Thank you very much.

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

Representative LAYTON: Madam Speaker, Men and Women of the House. Just to clarify a few points. This is not a coastwide problem as was just told to you by the good Representative from Harpswell. True the chairperson from the Maine Lobster Advisory Council comes from Gouldsboro, but the problem downeast is not like the problem of Casco Bay. Casco Bay there is a problem and the primary backers of this bill come from that area and that's the Maine Lobstermen's Association. That's the people that you've been talking to in the hallways, that have paid for the lobbyist in the hallways. They want to control what's going to go on in the lobster industry and the Maine Lobster Association isn't really represented up and down the coast as some would have you to believe. There are some members downeast, but not to the degree that people would have you to believe. For four years on Marine Resources Committee, almost from the first day I went to committee meetings I have asked for an appeals process. Why was there not an appeals process, not only in things like this but in everything? There should be an appeals process. The Department has always balked at any appeals process, because of the so-called workload that would come to the office in Hallowell. They didn't have the manpower. All your committees, you all have bureaucracy to deal with, you know how this works. That was their excuse. Now all of a sudden in two years they're going to take this under advisement and do something about it, which will make it a total of six years and maybe we'll get an appeals process and maybe we won't. As you've just heard the good Representative Pendleton say to you, when you talk to an individual that's on the Council and he expresses the view that he did, you see there's a problem there. I also want to tell you there are fewer fishermen today, licensed fishermen by a third or better than there was 20 years ago. There is more gear in the water, I will concede that, because of that foolish law we passed

in 1995. We said then that if you put trap limits on and make bottom available, people who are fishing below the trap limit will come up and that is exactly what happened. The people who pushed that bill are now standing in their own quicksand, if you will, struggling to get out of it and they are blaming it on for whatever, but it's their problem. They had a problem back then and they still have that problem today magnified many many times. While I say there are fewer fishermen by a third, the catch has gone up, 46 million pounds this past year. I ask you again to use logic and common sense when you hear about the problems of letting these few fisherman that are going to come under this, this doesn't pertain to a lot of fishermen, I guarantee you that. This isn't a tidal wave of people waiting out there that's going to storm the Bastille in Hallowell trying to get a license. We're talking about a few, a dozen maybe, people who will qualify under this amendment. Once again ladies and gentlemen, I ask you to vote against the pending motion so that we can insist and call for a Committee of Conference. Thank you.

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

Representative PIEH: Madam Speaker, Ladies and Gentlemen of the House. I rise in support of the Recede and Concur motion. I'm the official ex-officio legislative representative on Zone D, Council Zone D and that represents about 1,200 lobstermen. That zone, although the law may have been passed in 1995, was organized in the spring of 1997. When they were dealing with trap limits, they said to me, you're going to give us trap limit, you've got to give us limited entry. We can't do it without those things going together and the law that you all passed in the 117th Legislature, you gave them trap limits, time of fishing and one other thing and it was not about limited entry. The Lobster Advisory Council, which is not the Maine Lobstermen's Association, was rebuilt in the fall of 1997, that's just last fall, to have representation from all of these councils. They came to us and said, please, and you can read it on this letter, that the Representative from Harpswell just shared with you. Please give us some breathing space. Please give us some time, so that we can figure out the best way to do limited entry. Yes, there are probably about a dozen people along the coast and all of us along the coast will have perhaps one or two in our district who have fallen through the cracks. I talked with the Acting Commissioner of the Marine Resources today, he has over a hundred requests with a variety of reasons for why people should have an exception to get their fishing license. The Department backs this request one hundred percent. I fought so hard to get this bill before us and it's going to be very hard for me if I have to go back to that Council and say to those 1,400 fishermen, well, I got it to the floor for you, and guess what, we opened it up, we just let a whole bunch more people in. I'm not particularly eager to do that and I ask for your support on the recede and concur so that we can help this industry grow and manage itself and remain the thriving, one thriving fishing industry that we have, because it has practiced conservation. Thank you.

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

Representative PINKHAM: Madam Speaker, Men and Women of the House. I don't want to keep this thing going too much longer here, but just a couple of points Representative Etnier pointed out that the bill doesn't want any more new licenses into the fishery. We're not talking new license people. These are people that have had licenses in the past. They're not new licenses once you get a license that number stays with you unless you give it up for five years and then it's turned into the pot. These are old licenses, these aren't new licenses.

The letter you got from the committee that met last night, that was the same committee that said last year, and we passed legislation right here in the House, that said they would be back in January with a plan and they said that was time enough to do it, they could do it by January of '98. That's the same committee that we got the letter from yesterday that wants two more years. As far as the fishermen are really upset about this, I haven't been home, but I call home every night, and I haven't had any calls since this thing has been on the books. I've interviewed for two newspapers this week in my district on this and I haven't gotten any calls from fishermen that's upset about this. One more point, Representative Pieh mentioned the hundreds of applications that the Commissioner has gotten on this and she did say there's only one or two people that would be affected in each district, so that would be about a dozen statewide.

The SPEAKER: The Chair recognizes the Representative from Harpswell, Representative Etnier.

Representative ETNIER: Madam Speaker, Ladies and Gentlemen of the House. Aren't you folks sad we didn't have lobster debate earlier in this session? You've all been waiting for this, right. It'll be over soon I promise. I just want to correct a couple things. I'm sure the good Representative from Scarborough didn't mean to say this, or was just unaware of this, but the person he spoke with yesterday in the hall, Mr. David Cousins, is not a member of the Lobster Advisory Council. He is either the executive director, or the president of the Maine Lobstermen's Association. He is not a member of the Lobster Advisory Council, which is something that's appointed by the Department. He has been in the past, but he's not presently.

In reference to Representative Layton's comments that this is not something that's needed or wanted statewide, coastwide, the Lobster Advisory Council consists of members from, as I said before, one end of the state to the other, they unanimously came to us with this request for this bill. Unanimously, that means no exceptions from one end east to one end west. They also unanimously don't want us to mess with this bill, as reflected in the letter we received yesterday. There's been some confusion about the timing of things. We did pass a resolve last session, directing the Legislature, directed the Lobster Advisory Council to submit by February of this year, legislation on limited entry into lobster management zones based on the bill we had last year. We also at that same time last year restructured completely the Lobster Advisory Council. They didn't reform into their new form, which includes members from all seven zones, until September of last year, just a few months ago. They didn't even begin to deal with this question until September of last year. They are not asking for two years to look into this. The bill is very clear. They're asking until January 1, 1999, according to my math that's less than one year. I just wanted to straighten those out while we're in the clarification business. Thank you.

The SPEAKER: The Chair recognizes the Representative from Brooklin, Representative Volenik.

Representative VOLENIK: Madam Speaker, Men and Women of the House. When I supported the major changes we made in the lobster laws back in 1995, I felt we were moving in the right direction. Trap limits, limited entry through the apprenticeship program those were good steps to reduce the fishing effort and to prevent new people from getting into the fishery. It's one of the few good fisheries left since we lost a lot of the ground fishing. I feel like I was asleep at the wheel last year when we amended the laws that would prevent traditional Maine fishermen, Maine lobstermen, from regaining their licenses when circumstances kept them out of the fishery for a year. Now the Lobster Advisory Council wants us to put an absolute moratorium on new entrants. I agree with this in principle. I'm not disagreeing with what they want to do. A

moratorium on new applicants, on new fishermen is fine. If it keeps people from Massachusetts out, if it keeps people from Maine who have never fished, it won't bother me. Even if it limits new apprentices going in after February 15th, like in this bill, from getting a license eventually if the moratorium stays in effect after the year 2000. That's okay, I can live with that. I can understand the frustration that a lot of the lobstermen feel because there are too many traps in the water, but I can't support this system if it's so tight that a man or a woman, for one reason or another, whose fished all his life, or her life, and didn't renew their license in the year 1997 will not be permitted now to put their boat or their gear into the water. In most cases, that person isn't a fledgling fisherman, it could be the person who struggled with chemotherapy and I'm not sure how long that went on, but when they were probably miraculously able to fish again, they should be able to put that boat back in the water. Or the stern man whose been working on his neighbor's boat, who apparently the neighbor is planning to retire and wanted to sell the boat and the gear to the stern man and now the stern man isn't going to be able to fish, so that's going to halt the lives of two people. The person planning on retiring and the stern man. Or someone who moved out of state, perhaps in order to keep his marriage from going on the rocks and found out he had to come to the state, because his marriage went on the rocks anyway, or for whatever reason and he comes back and tries to put his life back together and the part of his life that's still sitting there is his boat and his traps and he can't do anything with them. These are all local Maine people. They are people that have been fishing. They know how to fish. They're not adding anything to the fishing effort, even if they weren't fishing one year out of their lives. I don't want to see any of these people fall through the cracks. I don't think the system should be that heartless. I don't think we should be able to say, okay you failed to renew your license in the year 1997, you're going to have to stay on the shore from now on or else you're going to have to go through an apprenticeship program when you already know how to fish. I urge you to reject this motion and like the other Representative, move on to a motion of Insist with a Committee of Conference. I think between us and the other body, we can come up with a moratorium that the majority of the fishermen want that has some protections for those people who have been fishing all along. All it takes is a little bit of effort. I think we can do it. Thank you.

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

#### ROLL CALL NO. 526

YEA - Ahearn, Bagley, Baker, Berry RL, Bigl, Bodwell, Bolduc, Bouffard, Bragdon, Brennan, Brooks, Bruno, Bryant, Bull, Bumps, Bunker, Cameron, Chick, Chizmar, Cianchette, Clark, Colwell, Cowger, Davidson, Desmond, Donnelly, Dunlap, Etnier, Farnsworth, Fisher, Fisk, Foster, Frechette, Fuller, Gagne, Gagnon, Gamache, Gieringer, Gooley, Green, Jones SL, Joyce, Joyner, Kane, Kneeland, Kontos, LaVerdiere, Lemaire, Lemont, Lindahl, MacDougall, Madore, Mailhot, Marvin, McKee, Mitchell JE, Morgan, Murphy, Muse, Nass, O'Neil, Ott, Pieh, Plowman, Powers, Quint, Richard, Rowe, Samson, Sanborn, Savage, Saxl JW, Saxl MV, Shannon, Shiah, Sirois, Skoglund, Snowe-Mello, Spear, Stanley, Stevens, Taylor, Tessier, Townsend, Tripp, Tuttle, Usher, Vigue, Waterhouse, Watson, Wheeler GJ, Winglass, Wright, Madam Speaker.

NAY - Barth, Belanger DJ, Belanger IG, Berry DP, Campbell, Chartrand, Clukey, Cross, Driscoll, Gerry, Goodwin, Jones KW, Jones SA, Joy, Kasprzak, Kerr, Labrecque, Lane, Layton, Lovett, Mack, Mayo, McAlevey, McElroy, Nickerson, O'Brien, Peavey, Pendleton, Perkins, Pinkham RG, Pinkham WD, Rines,

Stedman, Tobin, Treadwell, True, Underwood, Vedral, Volenik, Wheeler EM, Winsor.

ABSENT - Buck, Carleton, Dexter, Dutremble, Hatch, Honey, Jabar, Lemke, Meres, O'Neal, Paul, Perry, Poulin, Povich, Thompson, Winn.

Yes, 94; No, 41; Absent, 16; Excused, 0.

94 having voted in the affirmative and 41 voted in the negative, with 16 being absent, the House voted to **RECEDE AND CONCUR**.

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Resolve, Relating to Commercial Vehicle Fee Reciprocity with New Brunswick

(H.P. 1501) (L.D. 2123)

- In House, Majority (9) **OUGHT TO PASS AS AMENDED** Report of the Committee on **TRANSPORTATION READ** and **ACCEPTED** and the Resolve **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-920)** on March 19, 1998.

- In Senate, Minority (3) **OUGHT NOT TO PASS** Report of the Committee on **TRANSPORTATION READ** and **ACCEPTED** in **NON-CONCURRENCE**.

TABLED - March 25, 1998 (Till Later Today) by Representative SAXL of Portland.

PENDING - **FURTHER CONSIDERATION**.

On motion of Representative KONTOS of Windham, **TABLED** pending **FURTHER CONSIDERATION** and later today assigned.

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An Act to Amend and Clarify Laws Concerning Nuclear Safety (EMERGENCY)

(S.P. 714) (L.D. 1960)

(C. "A" S-578)

TABLED - March 25, 1998 (Till Later Today) by Representative SAXL of Portland.

PENDING - **PASSAGE TO BE ENACTED**.

Reported by the Committee on **Engrossing Bills** as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary a total was taken. 112 voted in favor of the same and 5 against, and accordingly the Bill was **PASSED TO BE ENACTED**, signed by the Speaker and sent to the Senate.

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An Act Regarding the Employment of Harness Race Track Officials

(H.P. 1542) (L.D. 2169)

(C. "A" H-981; S. "A" S-583)

TABLED - March 25, 1998 (Till Later Today) by Representative SAXL of Portland.

PENDING - **PASSAGE TO BE ENACTED**.

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

Representative KERR: Madam Speaker, Men and Women of the House. LD 2169 was passed with an amendment from the other body. What I would like to do is just take an opportunity to explain what the amendment that was added on in the other body does. Last year we granted the Harness Racing Commission the authority to grant conditional licenses. There is pending before the Commission an application to license an off track betting parlor in Portland, which the Portland City Council has conditionally approved. Although the applicant has asked the Commission to include in the license the conditions requested by the City, the Attorney General has raised a concern

that the statute passed last year may not be broad enough to allow for conditions requested by a City. He suggested to me that it would helpful if we clarified the law. In accordance with the Attorney General's suggestion the other body, the Senate Amendment, clarifies last year's statute to make clear that the Commission should go ahead and hear the pending application.

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

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An Act to Amend the Authority of the Adjutant General to Sell Armories, to Increase the Authorized Size of the Veterans' Memorial Cemetery and to Authorize the Department of Administrative and Financial Services to Purchase Land in Houlton for a New Public Safety Facility

(S.P. 823) (L.D. 2212)

(S. "A" S-581 to C. "A" S-556; S. "B" S-582)

TABLED - March 25, 1998 (Till Later Today) by Representative MADORE of Augusta.

PENDING - Motion of Representative LABRECQUE of Gorham to **INDEFINITELY POSTPONE SENATE AMENDMENT "B" (S-582)**.

Representative LABRECQUE of Gorham withdrew her motion to **INDEFINITELY POSTPONE Senate Amendment "B" (S-582)**.

Subsequently, **Senate Amendment "B" (S-582)** was **ADOPTED**.

The Bill was **PASSED TO BE ENGROSSED as Amended by Senate Amendment "B" (S-582)**.

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

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

Expression of Legislative Sentiment recognizing Sheila Lyman, of Livermore Falls.

(HLS 1303)

Which was tabled by Representative BERRY of Livermore pending **PASSAGE**.

Subsequently, **READ** and **PASSED** and sent up for concurrence.

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

Expression of Legislative Sentiment recognizing Sharon Hathaway, of Turner.

(HLS 1304)

Which was tabled by Representative NICKERSON of Turner pending **PASSAGE**.

Subsequently, **READ** and **PASSED** and sent up for concurrence.

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

**TABLED AND TODAY ASSIGNED**

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

Bill "An Act to Establish Limitations on Swine-feeding Operations"

(S.P. 653) (L.D. 1874)

TABLED - March 25, 1998 by Representative SAVAGE of Union.



PENDING - **ADOPTION OF COMMITTEE AMENDMENT "A" (S-604).**

Subsequently, **Committee Amendment "A" (S-604)** was **ADOPTED.**

On motion of Representative BUNKER of Kossuth Township, the House **RECONSIDERED** its action whereby **Committee Amendment "A" (S-604)** was **ADOPTED.**

Subsequently, **Committee Amendment "A" (S-604)** was **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-604)** in concurrence.

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

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On motion of Representative MITCHELL of Portland, the House adjourned at 9:21 p.m., until 9:00 a.m., Friday, March 27, 1998 in honor and lasting tribute to Ronald H. Thompson of Cambridge, Massachusetts.