

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
42nd Legislative Day
Friday, March 27, 1998

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

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

Prayer by Reverend John Ward-Diorio, First Parish Congregational Church, Freeport.

Pledge of Allegiance.

The Journal of yesterday was read and approved.

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

SPECIAL SENTIMENT CALENDAR

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

Recognizing:

the Woodfords Family Services in Portland, The Children's Center in Augusta and the United Cerebral Palsy Center of Northern Maine in Bangor for providing respite care/respitality services to families with disabled children. The support they provide helps to keep families together;

(HLS 1325)

Presented by Representative FARNSWORTH of Portland.
Cosponsored by Senator DAGGETT of Kennebec,
Representative SAXL of Bangor.

On **OBJECTION** of Representative FARNSWORTH of Portland, was **REMOVED** from the Special Sentiment Calendar.

READ.

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

Representative FARNSWORTH: Madam Speaker, Ladies and Gentlemen of the House. Respite care is a term that sometimes gets lost in our vocabulary. I would like to refresh a little bit about what it is all about. Respite care for people who have disabled children is an opportunity to have somebody who has either trained or experienced to come into the home and to provide support while mom and dad have a chance to get a bit of a break. Families who have children without disabilities know how stressful it can be and it is really important to have grandma close by or something like that to give you a break. In this particular case where you are dealing with children with special needs, you really need to have somebody who is available that the family trusts, that they feel comfortable with or who have some specialized training to deal with this particular issue.

Almost 10 years ago, about 1990, the Department of Mental Health and Mental Retardation and the Legislature funded a respitality program that was designed to provide support to families so that they could have this break and possibly stick together a little bit longer. We need to take a look at the great insights that the Legislature at that particular time had in terms of funding this program and what it has meant to families and as we have gone on, we have gotten to the point now where we are now serving almost 1,600 families across the state with almost 2,000 children in those families. It is incredible how this particular service has grown to this particular point and it is also a tribute to the value it has served to families. The three agencies that have been involved in this program, practically

from its very beginning, have worked very hard with the families in their communities so that they can receive this service and I just think it is a really important step in terms of providing support to families. I call it the humpty dumpty model. I would much rather work with a family and keep them together, then wait until they fall off the wall and try to pick up the pieces. The respite care program does just that. Respitality is a little spin off of that. It is a great donation from the hospitality industry in Maine where we are able to get motel accommodations, restaurant certificates and also tickets so that families, mom and dad can go away for a little get away weekend and have some fun. Get themselves sort of back together again. I think this is another very important part of helping hold families together so that they are able to do the job that they really want to do and that is to take care of their children with disabilities. Thank you Madam Speaker.

PASSED and sent up for concurrence.

the following members of the Skowhegan Boys Basketball Team, the Indians, who won the 1998 Class A State Championship and were the Eastern Maine Class A Champions: Braden Clement, Jesse Winship, Tom Nadeau, Jake Burnham, R.J. Saucier, Jason Ashe, Bill McKinnon, Eli Sol, Ben Clark, Jeb Baker, Tim Hayes, Chad Holmes, Coach Mike Nelson, Assistant Coach J.R. Richards, manager and statistician John Domarek and statisticians Sarah Davis, Amanda Storer and Diedre Violet. We acknowledge their hard work on achieving something that has never been done before by a Skowhegan boys basketball team and congratulate them on their victory;

(HLS 1326)

Presented by Representative HATCH of Skowhegan.
Cosponsored by Senator MILLS of Somerset, Representative MERES of Norridgewock, Representative STEDMAN of Hartland, Representative JONES of Pittsfield, Representative RICHARD of Madison, Representative TRUE of Fryeburg.

On **OBJECTION** of Representative HATCH of Skowhegan, was **REMOVED** from the Special Sentiment Calendar.

READ.

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

Representative HATCH: Madam Speaker, Men and Women of the House. It is my pleasure today to rise with a great deal of pride, I might say, to recognize and congratulate the Skowhegan Class A State Champions. For a lot of years as I have served as their Representative I watched teams come and go, but this one had the spark. Everyone began to believe early in the year that this was the year that they might actually win that gold ball. We were quite and in a little bit of disbelief as we followed their games one after another. We could feel it in the heartbeat of the student body, week after week, as they showed up to cheer their team on. I want you to know, folks, I have been around for a few years. I was a jock when I was in high school. Only they didn't call them jocks then. We went out for every sport. This team is absolutely something fantastic as far as I am concerned. Through it all, they kept their eye on one goal. They worked together and believe me, they earned it every step of the way. The old fashioned way, they worked for it.

I attended the banquet last night where it seems that everybody who showed up and it was a very large group by Skowhegan standards, I can tell you. It was probably more than show up in an election year to vote. Every speaker was wonderful. At about 9:30 the most amazing thing happened. The seniors from the class stood one at a time and they spoke. I have heard a lot of speeches in my life, but, believe me, it was not the things they said, but what they said deep from their hearts. I want you to know it was amazing to hear them. I cried.

It was just amazing the support that they received from the community. I know my feet haven't touched the ground for two weeks, but through it all these young gentlemen and their coaches and the support from the high school has not faltered one bit. I was impressed last night by their modesty. I was impressed by their integrity and I was impressed most of all because they brought the community together.

Coach Nelson has a favorite saying and we have all heard it a thousand times, I am sure. His saying and his motto is, ordinary people doing extraordinary things. I want you to know that I think they are all extraordinary. They played as a team. There was no super stars. There was no fuss. They just went out there and they did it the old fashioned way. They worked for it. I hope this always continues. It would be a great tradition to start in Skowhegan. I congratulate them and I welcome them to Augusta, which is also the home town of the Class A Girls Championship Team. It is quite a coincidence I would say. I thank them from the bottom of my heart for all they have done for our community. Thank you.

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

Representative RICHARD: Madam Speaker, Men and Women of the House. When the parents and the grandparents of these young people were in high school there was an intense rivalry between Madison and Skowhegan. Over the years times change and now one of the staff members and at least two of these ball players are from Madison. So, as the Representative from Madison and as a former teacher at Skowhegan High School, I join the Representative from Skowhegan in congratulating the State Class A State Champions.

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

Representative TRUE: Madam Speaker, Ladies and Gentlemen of the House. As you will note, Fryeburg is certainly is not near Skowhegan. The many trips down through the last two or three years that I have made, it seems to get shorter because the trip is more enjoyable to me. My part in this is watching young people play basketball. The coach, I am sure he thought the first time I ever saw him was in college, but it was not. It was when he was in high school. Many of the kids on this team I know. I have heard all sorts of things from my son who teaches at Skowhegan High School. It is extremely important for people to understand what young people have to do to reach the high tentacle that these gentlemen have reached in this past year. Not only did they win the gold ball, which is very important, but the way they did it and certainly the expression, which is here, something which has never been done by the school, which they attend. I, as a lover of basketball and of young people, congratulate them. I want them to know that their dedication and the work and the spirit that they have brought to that community will long be remembered, but it is my hope that you will always remember those people who you have played with and those people who have certainly cajoled you and certainly wished you well and that this will help you in your future years because it is only a small part of the most important game. That is the game of life. Thank you very much.

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

Representative MERES: Madam Speaker, Ladies and Gentlemen of the House. I stand to congratulate the Skowhegan team and their parents and all those that supported them throughout the time that it was necessary to prepare for this great event. As a Representative from Norridgewock and Skowhegan, I can attest to the pride there is in this accomplishment. Before I became a legislator, in my past life, I was the school board chairman of SAD 54. I also had five of my

six children graduate from Skowhegan High School. I have a long history of spending time and hours with the students there. It is important to realize that SAD 54 includes six communities, Skowhegan, Canaan, Cornville, Norridgewock, Mercer and Smithfield. One of the interesting things about this district is the fact that there is such a long distance from one end to the other, from Mercer to Canaan so to speak. The commitment of these students and these players and their parents is immense because it takes a lot of time. It takes a lot of energy to make sure that people are where they are supposed to be. I think the thing that is impressive to me is the fact that this has brought not only the school community, but it has brought all these communities even closer together. It is a time of rejoicing. Everything positive is happening. We should not only thank these students, but congratulate them and congratulate their parents and teachers because this is the best of the best. Thank you.

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

Representative MUSE: Madam Speaker, Men and Women of the House. I would first and foremost like to thank the team for waiting a while before they showed up here. It has given me enough time to get the crow out of my mouth. Secondly, I would like to congratulate them for doing something that no other team in the State of Maine was able to do as convincingly as they did. To use my own words, they came out onto the floor of the Civic Center and crushed Chevrus High School. I certainly never thought that would happen. I don't think many people did, but they did it because they worked together. They did something that no other team was able to do because they had a game plan and they stuck to that plan. All year long, Chevrus was able to knock teams off of their game plan, but not this team. They stuck to their game plan. They worked their plan and they soundly and convincingly crushed my alma mater. I congratulate them and it reminded me after seeing it as playing my youth hockey at Bowdoin College a phrase that I used to look at every day in the locker room. It said, It is not the size of the dog in the fight, but the size of the fight in the dog. This team had an awful lot of fight in them. Guys, I take my hat off to you, but we are not allowed to wear them in the House. In honoring a bet that was made, I would be more than happy to present this Chevrus Stag baseball hat to the captain of your team, not the coach because I find that the guys have a lot more fun with these than coaches. I am proud to present this to you in just a few minutes upstairs. Thank you very much.

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

Representative STEDMAN: Madam Speaker, Ladies and Gentlemen of the House. I represent two of the metropolises that make up the SAD 54 district, Canaan and Cornville. I would like you to know that I have not attended any of the basketball games in Skowhegan, but I would like to let you know that the team is representative of the whole district. Their performance brings honor to the whole district. I would like to wish them well in their future endeavors. May their winning attitude and spirit carry forward throughout their whole lives. Thank you.

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

Representative GAGNON: Madam Speaker, Men and Women of the House. Most of you know me as a man from Waterville, but I am also a Skowhegan boy. I grew up in Skowhegan and attended Skowhegan High School. I just wanted to let these guys know behind us how much pride there is in all of us who went to Skowhegan High School and how they will be able to carry this championship with them for the rest of

their lives, but they have also given it to all of us who went to Skowhegan High School. Thank you very much.

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

Representative O'BRIEN: Madam Speaker, Ladies and Gentlemen of the House. I would also, as the Representative from Augusta and Cony High School, like to congratulate the team. They beat Cony to get where they were. It was a wonderful accomplishment, but in our view, it was also an accomplishment that you have made Representative Muse humble. You don't know how much that is.

The SPEAKER: The Chair recognizes the Representative from Buxton, Representative Vedral.

Representative VEDRAL: Madam Speaker, Men and Women of the House. I couldn't let an event like this go by without standing to speak.

PASSED and sent up for concurrence.

ENACTORS

Emergency Measure

An Act Concerning the Taking of Marine Resources by Members of the Passamaquoddy Tribe

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

(S. "A" S-599 to C. "A" H-983)

Reported by the Committee on **Engrossed Bills** as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 109 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. **ORDERED SENT FORTHWITH.**

SENATE PAPERS

Non-Concurrent Matter

Bill "An Act to Implement the Recommendations of the Majority of the Joint Standing Committee on Agriculture, Conservation and Forestry Regarding Enhancing Forest Resource Assessment"

(H.P. 1657) (L.D. 2286)

PASSED TO BE ENGROSSED in the House on March 25, 1998.

Came from the Senate **PASSED TO BE ENGROSSED AS AMENDED BY SENATE AMENDMENT "A" (S-596) in NON-CONCURRENCE.**

On motion of Representative BUNKER of Kossuth Township, moved that the House **INSIST.**

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

Representative BUNKER: Madam Speaker, Men and Women of the House. I apologize. We have had a long debate on the forestry issues and the debate continues with this amendment. Part of this amendment has to do with education and it was something that we discussed in committee. I would not be standing here opposing that portion of this amendment. If it comes back in another form with that portion of the amendment here, I would stand and ask for your endorsement. Like a carrot on a stick, this good piece of the amendment also has changes and sets the 75 acre clear-cut requirement into statute. Ladies and gentlemen, currently this clear-cut portion is not in statute. It is in rule. As many of you heard during the debate, we have opened the rulemaking authority for this, for the Forest Practices Act, to clarify and correct whatever necessary changes in rule is necessary to adjust the 250 acres down to something with

possible permitting over and above and silviculturally based and all the exceptions that you may see in this amendment. They are starting to talk about natural disasters. After the recent ice storm, it is suddenly appearing in all of our amendments. Ladies and gentlemen, we shouldn't be practicing Forest Practices Act by floor amendments.

The committee worked long and hard in trying to set a road map and a clear picture of how to get there. This amendment does not do that. Ladies and gentlemen, when rulemaking goes out of the FPA to adjust this 75 acre issue, all of the players are going to be part of that public process. It has to be completed by November 1996 with provisional rules in place. What this amendment does is it does not go after, as many of you wished in this body in the last few days, you wanted to go after those big, bad and mean large landowners of 100,000 acres or more. This amendment does not. It sets an arbitrary limit of 500 acres. It is just going to get those small landowners all in a titter and it is really going to be detrimental to continuing the road map of the policy that we have laid out to ensure that we all come to consensus in a fair and open and public process. That is what we have developed in our road map. What is said about this is it sets that arbitrary limit at 500 acres.

Ladies and gentlemen, one of the biggest problems that are facing in this state is liquidation harvesting. That is not necessarily being done. It is definitely not being done wholesale on the large landowners. It is being done on the small mom-and-pop lots that some people are snapping up and then clear-cutting. This amendment, by setting this into statute and now freezing it, will not allow the rulemaking authority that we have given the department to further clarify this. What we are going to see is 400 acre lots being bought up and completely stripped and hauled to whatever mill or whatever end user there is and we will have no control. We are trying to develop sound forest practices policy that covers the whole State of Maine from little to big so that we move forward on all the same step and we are breaking up all this little and big guys and all this stuff that is really detrimental. Don't forget, every time we do something like this, ladies and gentlemen, put something in statute, you have now created the threshold for the loopholes. That is what this is going to do. This 500 acre arbitrary limit that has not been set in any kind of public process with all the players at the table is just going to create the loophole. Unintended consequences of this is going to force some of these bad harvesters to target anybody below 500 acres and you know how many people around the state have under 500 acres and all of those people are going to be the next targets in the forest practices in the liquidation harvesting. That is where you are going to see the bubble expand. That is where you are going to see the bad things in the future. Please vote against this amendment. Stick with this Insist and let's move forest practices on in the State of Maine through a clear and thoughtful process. Thank you.

The SPEAKER: The Chair recognizes the Representative from Farmington, Representative Gooley.

Representative GOOLEY: Madam Speaker, Men and Women of the House. Senate Amendment (S-596) will not alter the course of forestry in Maine. It is micromanagement. It sends the wrong message. The forest industry supports to a great degree the social fabric and economy of this state. Yes, the moose hunters and bear hunters and deer hunters and fishing anglers and campers have free access to the millions of acres of forest land in northern, western and eastern Maine. Yet, the owners pay the taxes. What a deal. The Senate Amendment seeks to reduce the maximum size of clear-cuts from 250 acres to 75 acres on all Maine ownerships over 500 acres. While this may seem a good thing to do, it would be counterproductive. To put this in statute reduces the ability of land managers to

manage their land. LD 2286 is an agreement, a compromise and it has something for everyone. The Senate Amendment is micromanagement. Let the process of LD 2286 work. It is important that we insist on our actions. Thank you.

Subsequently, the House voted to **INSIST**.

Non-Concurrent Matter

Bill "An Act Relating to Electric Industry Restructuring" (EMERGENCY)

(H.P. 1655) (L.D. 2285)

PASSED TO BE ENGROSSED in the House on March 24, 1998.

Came from the Senate **PASSED TO BE ENGROSSED AS AMENDED BY SENATE AMENDMENT "A" (S-617)** in **NON-CONCURRENCE**.

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

Doctor of the day, Paul Dumdey, M.D., Woolwich.

Non-Concurrent Matter

Bill "An Act to Implement the Recommendations of the Majority of the Joint Standing Committee on Utilities and Energy Arising from Its Government Evaluation Act Review of the Office of the Public Advocate" (EMERGENCY)

(H.P. 1647) (L.D. 2277)

PASSED TO BE ENGROSSED AS AMENDED BY HOUSE AMENDMENT "A" (H-963) in the House on March 19, 1998.

Came from the Senate **PASSED TO BE ENGROSSED AS AMENDED BY HOUSE AMENDMENT "A" (H-963) AND SENATE AMENDMENT "B" (S-613)** in **NON-CONCURRENCE**.

On motion of Representative JONES of Bar Harbor, the House voted to **RECEDE**.

The same Representative **PRESENTED House Amendment "B" (H-1052)**, which was **READ** by the Clerk.

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

Representative JONES: Madam Speaker, Ladies and Gentlemen of the House. This amendment strips \$50,000 off the public advocates request for funding and allows them to spend \$16,000 on this fiscal year so he can actually pay his bills and pay his staff. I think we come out \$34,000 ahead.

House Amendment "B" (H-1052) was **ADOPTED**.

The Bill was **PASSED TO BE ENGROSSED as Amended by House Amendment "A" (H-963), House Amendment "B" (H-1052) and Senate Amendment "B" (S-613)** in **NON-CONCURRENCE** and sent up for concurrence.

Non-Concurrent Matter

Bill "An Act to Ensure Long-term Funding of the Maine Agricultural Experiment Station Research Farms Connected with Land Grant Colleges" (EMERGENCY)

(H.P. 1440) (L.D. 2004)

PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-929) AS AMENDED BY HOUSE AMENDMENT "A" (H-1029) thereto in the House on March 24, 1998.

Came from the Senate **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-929) AS AMENDED BY HOUSE AMENDMENT "A" (H-1029) AND**

SENATE AMENDMENT "A" (S-605) thereto in **NON-CONCURRENCE**.

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

COMMUNICATIONS

The Following Communication: (H.C. 471)

STATE OF MAINE

**ONE HUNDRED AND EIGHTEENTH LEGISLATURE
COMMITTEE ON LEGAL AND VETERANS AFFAIRS**

March 26, 1998

Honorable Mark W. Lawrence, President of the Senate

Honorable Elizabeth H. Mitchell, Speaker of the House

118th Maine Legislature

State House

Augusta, Maine 04333

Dear President Lawrence and Speaker Mitchell:

Pursuant to Joint Rule 310, we are writing to notify you that the Joint Standing Committee on Legal and Veterans Affairs has voted unanimously to report the following bill out "Ought Not to Pass":

L.D. 1876

Resolve, to Allow Certain Employees to Continue to Sue the State to Recover Wages Improperly Denied under Federal Wage and Hour Laws

We have also notified the sponsor and cosponsors of the Committee's action.

Sincerely,

S/Sen. Beverly C. Daggett

Senate Chair

S/Rep. John L. Tuttle, Jr.

House Chair

READ and ORDERED PLACED ON FILE.

The Following Communication: (S.C. 678)

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

March 26, 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 to its previous action whereby Bill, "An Act to Encourage Regionalization of Municipal Services" (H.P. 297) (L.D. 361) and accompanying papers were indefinitely postponed in non-concurrence.

Sincerely,

S/Joy J. O'Brien

Secretary of the Senate

READ and ORDERED PLACED ON FILE.

ORDERS

On motion of Representative GAMACHE of Lewiston, the following House Order: (H.O. 44)

ORDERED, that Representative Paul Chartrand of Rockland be excused March 12 and March 13 for personal reasons.

AND BE IT FURTHER ORDERED, that Representative Bruce S. Bryant of Dixfield be excused March 16 for personal reasons.

AND BE IT FURTHER ORDERED, that Representative Lucien A. Dutremble of Biddeford be excused March 17 for health reasons.

AND BE IT FURTHER ORDERED, that Representative Robert F. Fisk, Jr. of Falmouth be excused March 20 for personal reasons.

AND BE IT FURTHER ORDERED, that Representative Kenneth A. Honey of Boothbay be excused March 10, 11, 12, 13, and March 16, 17, 18, 19 for health reasons.

AND BE IT FURTHER ORDERED, that Representative Henry L. Joy of Crystal be excused March 19 for personal reasons.

AND BE IT FURTHER ORDERED, that Representative David R. Madore of Augusta be excused March 24 for health reasons.

AND BE IT FURTHER ORDERED, that Representative Christopher P. O'Neil of Saco be excused March 20 for personal reasons.

READ and PASSED.

SPECIAL SENTIMENT CALENDAR

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

Recognizing:

Philip Roy, of Lisbon Falls, for being Maine's recent recipient of the Purple Heart. While defending his country during World War II, Mr. Roy was captured and subsequently wounded on December, 1944. He was imprisoned at the notorious Stalag IV-B prison camp in Muhlberg, Germany, until June, 1945 when the Allies liberated the camp. In January, 1998, 53 years after his capture, he was presented the prestigious Purple Heart;

(HLS 1297)

Presented by Representative CHIZMAR of Lisbon. Cosponsored by Senator NUTTING of Androscoggin

On **OBJECTION** of Representative CHIZMAR of Lisbon, was **REMOVED** from the Special Sentiment Calendar.

READ.

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

Thomas E. Carboneau, a Rhodes Scholar, who is to deliver the commencement address to the Class of 1998 of Van Buren High School. We extend our congratulations and best wishes to him as he returns to his alma mater to encourage the newest generation of graduates;

(HLS 1324)

Presented by Representative SIROIS of Caribou. Cosponsored by Senator PARADIS of Aroostook.

On **OBJECTION** of Representative SIROIS of Caribou, was **REMOVED** from the Special Sentiment Calendar.

READ.

The SPEAKER: The Chair recognizes the Representative from Caribou, Representative Sirois.

Representative SIROIS: Madam Speaker, Ladies and Gentlemen of the House. In 1972, a member of the senior class of Bowdoin College was selected to Rhodes Scholar. This prestige scholarship enabled him to study politics at Oxford University in England. Like most Rhodes Scholars, this young man distinguished himself as an outstanding student who was recognized with several scholastic awards for academic achievement. He spent his junior year studying in France in a Rutgard University program. He was active in the young democratic club and, in turn, in Washington, DC with Congressman William Hathaway.

In high school, this young man was first in his class, active in student government and was a member of the National Honor Society. Currently he is a professor of French law at Tulane University in New Orleans, Louisiana. In the summer he teaches Megene University in Montreal. On June 5, he will deliver the commencement address at his alma mater at Van Buren District High School. A native of Van Buren, he is the only known Rhode Scholar from Aroostook County. His name is Thomas E. Carboneau and he is my nephew. Thank you Madam Speaker.

PASSED and sent up for concurrence.

REPORTS OF COMMITTEE

Divided Reports

Majority Report of the Committee on **JUDICIARY** reporting **Ought Not to Pass** on Bill "An Act to Revise the Prelitigation Malpractice Screening Panel Procedures, Criteria and Composition"

(H.P. 773) (L.D. 1050)

Signed:

Senator:

BENOIT of Franklin

Representatives:

ETNIER of Harpswell
MAILHOT of Lewiston
PLOWMAN of Hampden
MADORE of Augusta
NASS of Acton
WATERHOUSE of Bridgton

Minority Report of the same Committee reporting **Ought to Pass as Amended by Committee Amendment "A" (H-1077)** on same Bill.

Signed:

Senators:

LONGLEY of Waldo
LaFOUNTAIN of York

Representatives:

THOMPSON of Naples
WATSON of Farmingdale
JABAR of Waterville
POWERS of Rockport

READ.

Representative WATSON of Farmingdale moved that the House **ACCEPT** the Minority **Ought to Pass as Amended** Report.

On further motion of the same Representative, **TABLED** pending her motion to **ACCEPT** the Minority **Ought to Pass as Amended** Report and later today assigned.

Majority Report of the Committee on **STATE AND LOCAL GOVERNMENT** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-1087)** on Bill "An Act to Amend the Amount of Retainage on Public Building Contracts"

(H.P. 1108) (L.D. 1551)

Signed:

Senators:

NUTTING of Androscoggin
GOLDTHWAIT of Hancock

Representatives:

GIERINGER of Portland
BUMPS of China
FISK of Falmouth
KASPRZAK of Newport
GERRY of Auburn

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

Signed:
Senator:

LIBBY of York

Representatives:

AHEARNE of Madawaska
SANBORN of Alton
BAGLEY of Machias

READ.

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

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 REPORT - Ought to Pass as Amended by Committee Amendment "A" (H-974) - Committee on **JUDICIARY** on Bill "An Act to Provide for Commitment of Sexually Violent Predators"

(H.P. 1277) (L.D. 1807)

TABLED - March 25, 1998 by Representative WATSON of Farmingdale.

PENDING - ACCEPTANCE OF COMMITTEE REPORT.

On motion of Representative WATSON of Farmingdale, **TABLED** pending **ACCEPTANCE** of the Committee Report and later today assigned.

HOUSE DIVIDED REPORT - Majority (8) Ought to Pass as Amended by Committee Amendment "A" (H-997) - Minority (5) **Ought Not to Pass** - Committee on **JUDICIARY** on Bill "An Act to Implement the Recommendations of the Maine Indian Tribal-State Commission Relating to Tribal Land Use Regulation"

(H.P. 1403) (L.D. 1961)

TABLED - March 25, 1998 by Representative WATSON of Farmingdale.

PENDING - Motion of Representative THOMPSON of Naples to **ACCEPT** 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-997)** 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**.

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

Representative **NASS**: Madam Speaker, Men and Women of the House. There is a minority on this. The Committee Report, if I recall, is 8 to 5. It concerns, what I would suggest, is a major change in the way we deal with the tribes in the state. In the Judiciary Committee, I have had a major effort to try to resolve the problems between the state and the tribe. It has gone on as long as I have been on the committee. The current proposal in front of you basically was an attempt by MISTC the Maine Indian State Tribal Commission to resolve issues using a process that the committee had suggested. That was to try to resolve issues within MISTC outside of the Land Claims Settlement Act. After a great deal of effort on the part of MISTC, they came back with a suggestion that in one area, particularly land use, we could,

perhaps, make some progress and resolve the problem. However, the issue got caught up in the whole issue of the Albany Township high-stakes bingo parlor. That became the overriding issue that I would suggest overtook this attempt.

Let me talk to the Minority Report at this time. My objection to this is that in spite the efforts on the part of the tribe and MISTC, it is my opinion that land use was the wrong way to go. Land use, at least the way I look at it, is one of the hardest issues to deal with. All of us, I think, are aware of what happens in our local communities on land use issues, zoning and subdivision matters are very contentious. The current proposal in front of you would essentially allow MISTC become the land use regulatory or information body for lands owned by the tribe. We are going to have situations that this passes in the state where there are noncontiguous pieces of land that are owned by the tribe that are within the jurisdiction of another municipality that essentially MISTC is going to be making land use decisions. The bill does hold them to the same rules that LURC is held to. However, it is a different body that is going to be making the decisions. I would suggest to you that that is an impossible situation. As much as I would like this to be an item of agreement between the tribes in the state, this will not work in my opinion. Again, I would ask all of you just to think about your own community situations and planning board decisions. It is very difficult to develop community consensus around zoning issues. Sometimes these things go on for years. What we are setting up in this situation is essentially two planning boards in potentially many communities. There are several communities in the state. If you are going to have either LURC or a local planning board making decisions for the vast majority of the people in the town, then you are going to have MISTC making, perhaps, contrary or different land use decisions for perhaps a small part of the other part of town. That is exactly what was put in front of us relative to the Albany Township issue.

As I said, it became an overriding issue. It is my understanding of that in conversations after the committee dealt with this that at least one of the tribes is dissatisfied with this and, in fact, will ratify this. This is a change to the Indian Land Claims Settlement Act. The change, as I see it, will not be ratified, as I see it, by one of the tribes, and therefore will not go into effect. It is, however, our job today to pass judgment on this bill. I would suggest to you that this is bad public policy. We should not do it. Please, when you think about this, think of how in any one of your communities you could potentially deal with two land use regulatory bodies and how that could possibly work. Thank you.

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

Representative **ETNIER**: Madam Speaker, Men and Women of the House. I am a member of this fine committee of Judiciary. I am also on Marine Resources. We had that bill earlier, LD 2145, which was something I oppose related to the trial largely because of the process. This is something that I wholeheartedly support largely because of the process being followed to the letter, virtually as near as I can tell, in this bill that is before you now, LD 1961, under passage to be engrossed. The tribe and the nation did go through the Maine Indian Tribal State Commission and worked with the state as equal partners to put together this bill and present it to the Judiciary this year. That is the proper way to go. All parties were at the table and they agreed on the bill and that is the large part of the reason that I support it. We need to support the actions of MISTC. It is critical to the future success of the settlement act passed in 1980 that MISTC work, and when they agree on something as substantive as this and the Legislature the majority of the committee agrees, they did their homework and that it is a reasonable proposal. We

did make some amendments to it to type it up from the legislative prospective. I think we need to support the bill.

A couple of things that we did as a committee, the Majority Report, to tighten up the bill that came to us, one of the most important, is that we put a sunset on the bill, which is a five year sunset. The sunset is the means of when we acknowledge this is an amendment to the act. We do say this is an amendment to the settlement act, but to give us some additional insurance that this works, we put a sunset. On January 1, 2004, if the Legislature and the tribe and the nation do not agree that everything is working fine or they do not agree to a change, a change proposed by someone, then it goes back, this folds in, disappears and goes back to the previous law. This has a five year sunset on it as a means of insurance that things do go well for the next five years. If not, this 1961 disappears and reverts to previous law related to land use. Again, in terms of the process, the Maine land claims settlement related to the tribe did view the tribe in the nation as municipalities. That is right in the act. They did contemplate within the act that the tribes in the nation would have control of the land use within their lands. That is why this bill is an extremely appropriate extension of that fact and of that discussion. That is why I urge you to support this. Please support passage to be Engrossed. Thank you.

Representative NASS of Acton moved that the Bill and all accompanying papers be **INDEFINITELY POSTPONED**.

Representative ETNIER of Harpswell **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 Bridgton, Representative Waterhouse.

Representative **WATERHOUSE**: Madam Speaker, Ladies and Gentlemen of the House. I just want to address a few remarks that the Representative from Acton brushed over. When I was listening to this in the committee and looking into all the testimony, it became aware to me that there was a process now for municipalities to withdraw from LURC. I studied further and I got some information from the Law Library on the Legislative Record back in 1992 when a similar bill was before this body. It ended up being vetoed by the Governor. With leave of the House, I would like to take a few excerpts out of that veto message. It really solidified my opposition to this present bill. It goes, "Maine's current law provides the mechanism for the municipalities to remove itself from the commission's jurisdiction and adopt its own land use regulations. The Passamaquoddy Tribe and the Penobscot Nation can make use of the same mechanism to withdraw from the commission's jurisdiction and in the past they have been encouraged to do so. Like municipalities, however, the tribes must demonstrate to the commission that the degree of natural resource protection that they will provide is no less protective than the level provided by the commission. In the 20 years that this mechanism has been in place, 10 communities have sought to withdraw from the jurisdiction. All 10 have worked with the commission in developing an adequate plan and all 10 have been successful." It goes on further to talk about the act and one of the things we learned in the committee, or at least I have learned in reading this veto message and other stuff, is that this topic was brought up during the information of the act between the various parties.

It goes on in the veto message, "A review of the Legislative Record demonstrates that these issues raised by this bill" and it is a similar bill to what is before us now, "were considered and understood at the time of the adoption of the claims settlement act." In fact, the issue of the state's natural resource laws and the relationship between the Maine Land Use Regulation

Commission and the Indian trust lands was discussed at the time and representatives of the tribe and the state acknowledged that the commission's procedures would apply to the trust land. I believe it is appropriate to maintain integrity of those procedures established as part of the claims settlement act. One of the other problems that we had with this was the fact that a lot of these parcels of land are non-contingent which, it seems to me, would be a hard thing to implement and would be impacting lands adjacent to the lands that are trying to get out of this jurisdiction and how would you have good land management as far as that goes. The veto message addresses that. Because these land areas do not represent a contiguous parcel, but scattered land holdings, the impact of land use activities cannot be easily isolated from adjacent land. Therefore, development and review of a land use plan comprehensively considers natural resources and adjacent land use in owners is crucial to avoid future land use conflicts.

Finally, the last part of the veto message ties it all together, I think. "For 20 years, our policy has been to extend sound land use planning and subdivision control to the unorganized areas of Maine despite the success of this policy." LD 1776 narrows the piece of legislation that was similar to this at the time. "It establishes a separate set of rules for land acquired by the Indian trust. Given the fact that separate treatment was considered and rejected at the time of the adoption of the Maine Indian Land Claims Settlement Act, I cannot support such a dramatic departure from our current law." That is how I feel and I hope you will vote for this motion on the floor.

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

Representative **WATSON**: Madam Speaker, Men and Women of the House. I rise today to encourage you to not support the Indefinite Postponement of this piece of legislation. As a member of the Judiciary Committee for a second term, I know how hard both the state and the tribe have worked through MISTC. I don't need to repeat all that Representative Etner had said previously about us honoring a process that we worked very hard to be supportive of and encouraging of. The tribe and the state brought forward to our committee a well crafted and well thought out piece of legislation that will, in some large measure, help to rectify some of the jurisdictional disputes that have been ongoing and occurring as Representative Waterhouse eluded to, quite eloquently in the past history, since 1981 when this issue was brought forward and vetoed at that time. I appreciate all of the thoughtful comments that we have heard in regard to there are other ways and other means of achieving this goal, but for me, as a member of the committee, I want to support the work that MISTC has done. The tribes and the state brought this to us and I honor that. I ask that my colleagues here in the House please join me in defeating the Indefinite Postponement of this bill. Thank you.

The **SPEAKER**: The Chair recognizes the Representative from Waterville, Representative Jabar.

Representative **JABAR**: Madam Speaker, Men and Women of the House. I would just like to take a few minutes to explain to you why this is a controversy and why this bill is important. There is some controversy because of the language in the federal statute as opposed to the state's statute on the Indian Land Claims Settlement Act. The tribes stand behind the language in the federal statute which says they have the right to manage their own lands. There is some conflict with the state statute because it isn't that clear if you read the state statute on the Indian Land Claims case. However, the federal legislation says that any conflict between the federal statute and the Maine statute as it relates to the settlement, the federal statute takes precedent. Because of this conflict, we may be headed to court

on this particular issue as to whether or not they have the right to control their own land without having to worry about LURC or any other land use statutes in the State of Maine. To resolve this controversy, MISTC worked out a proposal with the tribes, which is what you have before you today. What it is, simply, is the right of the tribes to deal with land use as municipalities do. That is, to set up their own zoning ordinances. They have to be in compliance with Maine statutes as far as shoreland zoning is concerned, site location is concerned. They have to comply with state law.

This is a good resolution of the problem. One of the first things I learned on the Judiciary Committee was the MISTC was not able to resolve any of the continuing problems between the tribes in the State of Maine, but finally here we have a situation where there is a real controversy existing between the tribe and the State of Maine. MISTC worked out this compromise rather than go to court where it could be all one way or the other and create more problems. It seemed to be a reasonable approach to let the Indian tribes handle their land use similar to municipalities. That is all they are asking. They have to have zoning ordinances and it has to be in compliance with the state statute. If we want to encourage MISTC to resolve these problems at that level, rather than every time there is a problem come before the Legislature, then we have to back up this settlement that was worked out by MISTC. That goes back to Representative Etnier talking about the process. The process is very important. We have to encourage that process otherwise we are going to have all kinds of bills before the Legislature every year trying to resolve these problems. I urge you to defeat the motion to Indefinitely Postpone and to support the recommendations of the Tribal State Commission. Thank you.

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

Representative LORING: Madam Speaker, Ladies and Gentlemen of the House. The Penobscot Nation is in full support of this land use regulation bill. We have worked very diligently over a number of years with MISTC to accomplish this. It is a compromise. It is a compromise on the Indian's part. I must say that when I first read the bill, my response was that we were giving up too much. We are totally willing to compromise on this, even down to the 500 acre aspect of it. We want to work with the state and we want to be partners and we want to be an asset to the state rather than a liability. I think this is another big step in the spirit of cooperation between the tribes and the state. I hope you would defeat this Indefinite Postponement. Thank you.

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

ROLL CALL NO. 527

YEA - Barth, Berry DP, Bodwell, Bragdon, Bryant, Buck, Bumps, Bunker, Carleton, Cianchette, Clukey, Donnelly, Foster, Honey, Jones SA, Joy, Joyce, Joyner, Kasprzak, Labrecque, Lane, Layton, Lemont, Lindahl, MacDougall, Mack, Madore, McElroy, Murphy, Nass, Plowman, Savage, Stedman, Taylor, Treadwell, Vedral, Waterhouse, Wheeler EM, Winglass, Winsor.

NAY - Ahearn, Bagley, Baker, Belanger DJ, Belanger IG, Berry RL, Bigl, Bolduc, Bouffard, Brennan, Brooks, Bruno, Bull, Cameron, Campbell, Chartrand, Chick, Chizmar, Clark, Colwell, Cowger, Cross, Davidson, Desmond, Dexter, Driscoll, Dunlap, Etnier, Farnsworth, Fisher, Fisk, Frechette, Fuller, Gagne, Gagnon, Gamache, Gerry, Gieringer, Goodwin, Gooley, Green, Hatch, Jabar, Jones KW, Jones SL, Kane, Kneeland, Kontos, LaVerdiere, Lemaire, Lemke, Mailhot, Mayo, McAlevey, McKee, Meres, Morgan, Muse, Nickerson, O'Brien, O'Neal, O'Neil, Paul, Peavey, Pendleton, Perkins, Perry, Pieh, Pinkham RG,

Pinkham WD, Poulin, Povich, Powers, Richard, Rowe, Sanborn, Saxl JW, Saxl MV, Shannon, Shiah, Sirois, Skoglund, Snowe-Mello, Spear, Stanley, Stevens, Tessier, Tobin, Townsend, Tripp, True, Tuttle, Usher, Volenik, Watson, Wheeler GJ, Winn, Wright, Madam Speaker.

ABSENT - Dutremble, Kerr, Lovett, Marvin, Mitchell JE, Ott, Quint, Rines, Samson, Thompson, Underwood, Vigue.

Yes, 40; No, 99; Absent, 12; Excused, 0.

40 having voted in the affirmative and 99 voted in the negative, with 12 being absent, the motion to **INDEFINITELY POSTPONE** the Bill and all accompanying papers **FAILED**.

Under suspension of the rules the Bill was **PASSED TO BE ENGROSSED as Amended by Committee Amendment "A" (H-997)** and sent up for concurrence.

An Act Providing for Additional Meetings in the Event of a Tie Vote at Town Meetings (MANDATE)

(H.P. 1492) (L.D. 2091)

(C. "A" H-988)

TABLED - March 25, 1998 by Representative MAYO of Bath
PENDING - Motion of same Representative to **RECONSIDER FAILING OF PASSAGE TO BE ENACTED**.

Subsequently, the House **RECONSIDERED** its action whereby the Bill **FAILED OF PASSAGE TO BE ENACTED**.

On motion of Representative WRIGHT of Berwick, 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-988)** was **ADOPTED**.

The same Representative presented **House Amendment "A" (H-1072)** to **Committee Amendment "A" (H-988)** which was **READ** by the Clerk.

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

Representative WRIGHT: Madam Speaker, Men and Women of the House. What this does is it strips off the mandate. If you read the letter I sent around from the Maine Municipal Association, they find that this is technically a mandate, but it also is statute that the postal warden hold a meeting is already in statute.

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

Representative LABRECQUE: Madam Speaker, Ladies and Gentlemen of the House. I ask you to continue to vote against this particular piece of legislation. There is a certain work within this that I would like to call your attention to. A municipality may hold a run off election under two circumstances. Number two is, if a meeting was improperly adjourned. That is one of the keys to this piece of legislation. This particular situation would not have occurred if you had a moderator at your meeting that was aware of all of the procedures. I don't think there are any of us in here that don't realize that running government meetings isn't easy. All we have to do is sometimes witness some of the colleagues who have filled in for Madam Speaker when she has been away. We think that looks easy, but you know darn well that that is not. There are certain procedures that have to be followed. If you are not up on those, then it is really important that you have a parliamentarian with you. I don't think that we

need to be putting more laws that are addressed already. No, this isn't a mandate. If you have a tie and you are requesting your municipality to hold special run off elections, there is expense in that. Thank you.

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

Representative TUTTLE: Madam Speaker, Men and Women of the House. I will be supporting this amendment. I think many of us received the communication from the Maine Municipal Association. Just to paraphrase it, it says, the amended bill will enable a municipality to hold a run off election for school board or councilor or other municipal elections. It says, that under current law when a tie is discovered after adjournment or a meeting is adjourned, but not to a day certain, in most cases, municipal officials are required to appoint a person to fill the position because of the failed election. The changes in the bill would provide the electorate another opportunity to vote on candidates. The Maine Municipal Association agrees from a technical perspective with the Office of Fiscal and Program Review. I think that the amendment is acceptable and I would encourage your support of the amendment.

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

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

The SPEAKER: The Representative may pose his question.

Representative CARLETON: Madam Speaker, Men and Women of the House. Does the amendment removing the mandate mean that the state is going to pay 90 percent of the cost or does it mean that someone has determined that somehow there is going to be no cost or it is somehow not a mandate?

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

Representative TUTTLE: Madam Speaker, Men and Women of the House. As the good Representative from Wells did say, maybe, it would be in the hands of the Appropriations Committee.

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

Representative SPEAR: Madam Speaker, Ladies and Gentlemen of the House. The last time I voted against this for the simple reason that I thought that this was a directive for a town and what they had to do, but after studying this situation, I found out that this allows the town in the case, as the good Representative from Gorham stated, we always try to always get good moderators and so forth, but there are those exceptions when some people make mistakes and it can't be helped. If you should end up with a tie and the meeting is adjourned, this would allow the town to have a run off election. It isn't mandating. I think this is a different look on this and I believe it is the right thing to do, to support this.

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

Representative CARLETON: Madam Speaker, Men and Women of the House. I think the question I asked was a serious question. I hope that somebody would be able to answer it.

The SPEAKER: The Chair recognizes the Representative from Windham, Representative Kontos.

Representative KONTOS: Madam Speaker, Men and Women of the House. My understanding is when we remove the mandate preamble, we are then eliminating our obligation to pay the cost, which means the towns, if they incurred a cost would be

requesting 90 percent of that. We would be obligated to reimburse at 90 percent. Removing the mandate does do that.

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

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

The SPEAKER: The Representative may pose his question.

Representative WATERHOUSE: Madam Speaker, Men and Women of the House. I just heard the previous speaker say that this was not telling the towns they had to do something, but was allowing them. I have Committee Amendment "A" and I am looking at the language. "If the meeting is adjourned sine die before a tie vote is resolved or the tie vote is discovered after the meeting adjourned sine die and more than one candidate remains, a new meeting must be called to conduct a run off election by the method described in this subsection." Could somebody tell me the legality of the word must? I served on the Criminal Justice Committee in the last term, those little words like must, may and shall mean quite a bit in legality. Could somebody in the House tell me where the word must allows them not to?

The SPEAKER: The Representative from Bridgton, Representative Waterhouse has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Sanford, Representative Tuttle.

Representative TUTTLE: Madam Speaker, Men and Women of the House. I think that I will try to answer the gentleman's question from the Maine Municipal memo. "There is no official burden being placed on municipalities in LD 2091. Until Title 30-A, MRSA Section 2528, Subsection 10, currently requires that when a tie occurs and a meeting is adjourned to a day certain, a run off election must be called by posting a warrant for a town meeting." This bill only clarifies the circumstances under which municipalities will hold a run off election. A mandate to post the warrant and hold the meeting is already in statute.

The Chair ordered a division on the motion to **ADOPT House Amendment "A" (H-1072) to Committee Amendment "A" (H-988)**.

Representative WRIGHT of Berwick **REQUESTED** a roll call on the motion to **ADOPT House Amendment "A" (H-1072) to Committee Amendment "A" (H-988)**.

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

The SPEAKER: A roll call has been ordered. The pending question before the House is adoption of House Amendment "A" (H-1072) to Committee Amendment "A" (H-988). All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 528

YEA - Ahearne, Bagley, Baker, Berry DP, Berry RL, Bolduc, Bouffard, Brennan, Brooks, Bryant, Bull, Bunker, Chartrand, Chizmar, Clark, Colwell, Cowger, Davidson, Desmond, Driscoll, Dunlap, Etnier, Farnsworth, Fisher, Frechette, Fuller, Gagne, Gagnon, Gamache, Gerry, Green, Hatch, Honey, Jabar, Jones KW, Jones SL, Kane, Kerr, Kneeland, Kontos, LaVerdiere, Lemaire, Lemke, Lindahl, Mailhot, Mayo, McAlevey, McKee, Morgan, Muse, O'Neal, O'Neil, Paul, Peavey, Pendleton, Perry, Pieh, Povich, Powers, Quint, Richard, Rines, Rowe, Sanborn, Saxl JW, Saxl MV, Shannon, Shiah, Sirois, Skoglund, Snowe-Mello, Spear, Stanley, Stevens, Tessier, Townsend, Treadwell, Tripp, Tuttle, Usher, Vigue, Volenik, Watson, Wheeler EM, Winglass, Winn, Wright, Madam Speaker.

NAY - Barth, Belanger DJ, Belanger IG, Bigl, Bodwell, Bragdon, Bruno, Buck, Bumps, Cameron, Campbell, Carleton, Chick, Cianchette, Clukey, Cross, Dexter, Donnelly, Fisk, Foster, Gieringer, Goodwin, Gooley, Jones SA, Joy, Joyce, Joyner,

Kasprzak, Labrecque, Lane, Layton, Lemont, MacDougall, Mack, Madore, McElroy, Meres, Murphy, Nass, Nickerson, O'Brien, Perkins, Pinkham RG, Pinkham WD, Plowman, Savage, Stedman, Taylor, Tobin, True, Underwood, Vedral, Waterhouse, Wheeler GJ, Winsor.

ABSENT - Dutremble, Lovett, Marvin, Mitchell JE, Ott, Poulin, Samson, Thompson.

Yes, 88; No, 55; Absent, 8; Excused, 0.

88 having voted in the affirmative and 55 voted in the negative, with 8 being absent, **House Amendment "A" (H-1072) to Committee Amendment "A" (H-988) was ADOPTED.**

Committee Amendment "A" (H-988) as Amended by House Amendment "A" (H-1072) thereto was ADOPTED.

The Bill was **PASSED TO BE ENGROSSED as Amended by Committee Amendment "A" (H-988) as Amended by House Amendment "A" (H-1072) thereto in NON-CONCURRENCE** and sent up for concurrence.

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

Expression of Legislative Sentiment recognizing Philip Roy, of Lisbon Falls.

(HLS 1297)

Which was tabled by Representative CHIZMAR of Lisbon pending **PASSAGE.**

READ.

The **SPEAKER:** The Chair recognizes the Representative from Lisbon, Representative Chizmar.

Representative CHIZMAR: Madam Speaker, Men and Women of the House. I would like to tell you something about Philip Roy. Philip Roy shipped out to Europe at the age of 19 from his home in Caribou. In December 1944 he was captured and spent seven days locked in a boxcar being interrogated and the next 18 months in a prison camp. Men and women of the House, can you remember where you were when you turned 21 years old? Philip Roy can. He was forced to work in coal mines and endured beatings. Unfortunately his service and physical abuse did not qualify him for a purple heart. The award was given only to soldiers wounded while fighting. It was not until later that the military decided to give the award to soldiers wounded during captivity.

When he applied, he was turned down. He was told he did not qualify, but with the help of our senior Senator in Washington, he did earn his medal. Philip Roy is a devoted husband, father and grandfather. He has integrity beyond reproach. Phil Roy serves as a reminder to all Americans of their heroism and bravery by so many of our service women and men during World War II. Philip Roy is a true American and I thank him so very much, as I do all Veterans, by helping to keep America the land of the free and the home of the brave. Madam Speaker, I request that when we adjourn today, we do so in honor of Philip Roy. Thank you.

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

Representative LAYTON: Madam Speaker, Men and Women of the House. As a former prisoner of war and a purple heart recipient, I know some of the things that Mr. Roy has experienced. I know of them. I just want to take this opportunity to pass on my congratulations to you sir, and to your men.

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

Representative LEMKE: Madam Speaker, Men and Women of the House. Although I represent Westbrook in the Legislature, my family is from Lisbon Falls. We have had the honor of

knowing Phil Roy for many, many years. The gentleman you have before you is a genuine hero. I cannot say more than I am saying now that I am so honored before I leave the Legislature to have a chance to salute you as the Legislature does. God bless you.

PASSED and sent up for concurrence.

UNFINISHED BUSINESS

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

Bill "An Act to Require All Regulated Public Utilities to Report to the Public Utilities Commission the Sale, Lease or Other Transfer of Assets Paid for by Ratepayers"

(H.P. 1477) (L.D. 2076)

- In House, Majority (7) **OUGHT TO PASS AS AMENDED** Report of the Committee on **UTILITIES AND ENERGY READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-906)** on March 23, 1998.

- In Senate, Minority (6) **OUGHT NOT TO PASS** Report of the Committee on **UTILITIES AND ENERGY READ** and **ACCEPTED** in **NON-CONCURRENCE.**

- In House, House **RECEDED** and **CONCURRED.**

TABLED - March 25, 1998 by Representative JONES of Bar Harbor.

PENDING - Motion of same Representative to **RECONSIDER WHEREBY** the **HOUSE RECEDED** and **CONCURRED.**

Subsequently, the House **RECONSIDERED** its action whereby it **RECEDED** and **CONCURRED.**

On motion of Representative JONES of Bar Harbor, **TABLED** pending **FURTHER CONSIDERATION** and later today assigned.

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 26, 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.

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 26, 1998 (Till Later Today) by Representative KONTOS of Windham.

PENDING - Motion of Representative HATCH of Skowhegan 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 26, 1998 (Till Later Today) by Representative KONTOS of Windham.

PENDING - **PASSAGE TO BE ENACTED.**

Representative SAXL of Portland **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.

On motion of Representative DONNELLY of Presque Isle, **TABLED** pending **PASSAGE TO BE ENACTED** and later today assigned. (Roll Call Ordered)

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 26, 1998 (Till Later Today) by Representative SAXL of Portland.

PENDING - **PASSAGE TO BE ENACTED.**

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

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)

TABLED - March 26, 1998 (Till Later Today) by Representative SAXL of Portland.

PENDING - **FINAL PASSAGE.**

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

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 26, 1998 (Till Later Today) by Representative KONTOS of Windham.

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

On motion of Representative SAXL of Portland, **TABLED** pending the motion of Representative ETNIER of Harpswell 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 26, 1998 (Till Later Today) by Representative KONTOS of Windham.

PENDING - **PASSAGE.**

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

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

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)

Which was **TABLED** by Representative SAXL of Portland pending **FINAL PASSAGE.**

On motion of Representative MITCHELL of Portland, the rules were **SUSPENDED** for the purpose of **RECONSIDERATION.**

On further motion of the same Representative, the House **RECONSIDERED** its action whereby the 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" (S-587)** was **ADOPTED.**

The same Representative presented **House Amendment "A" (H-1078)** to **Committee Amendment "A" (S-587)** which was **READ** by the Clerk.

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

Representative Mitchell: Madam Speaker, Men and Women of the House. Very briefly, this is a technical amendment that clarifies per diems in the commission. Thank you.

House Amendment "A" (H-1078) to **Committee Amendment "A" (S-587)** was **ADOPTED.**

Committee Amendment "A" (S-587) as Amended by **House Amendment "A" (H-1078)** thereto was **ADOPTED.**

The Resolve was **PASSED TO BE ENGROSSED** as Amended by **Committee Amendment "A" (S-587)** as Amended by **House Amendment "A" (H-1078)** thereto in **NON-CONCURRENCE** and sent up for concurrence.

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

HOUSE DIVIDED REPORT - Majority (7) **Ought to Pass as Amended by Committee Amendment "A" (H-1087)** - Minority (4) **Ought Not to Pass** - Committee on **STATE AND LOCAL GOVERNMENT** on Bill "An Act to Amend the Amount of Retainage on Public Building Contracts"

(H.P. 1108) (L.D. 1551)

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

Representative AHEARNE of Madawaska moved that the House **ACCEPT** the Minority **Ought Not to Pass** Report.

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

Representative FISK: Madam Speaker, Men and Women of the House. First of all, I rise in opposition of the pending motion and ask that you support the Majority Report. LD 1551 went through considerable scrutiny and I believe we discussed it in three of our State and Local Government work sessions. Then

the proponents and the opponents and deputy commissioner Jacobs also met to find some comfortable language for all of the parties involved. The bill really isn't as complicated as it seems given the time that we put into it. At least in my mind it is not.

When the state or municipality bills a school, they hire a contractor who hires subcontractors. Retainage simply means that the state or the municipality, which is the owner, holds 5 percent of the total payment for each part of the project in order that they have some leverage. The contractor has satisfactorily completed the project. In this same 5 percent withholding goes from the general contractor down to the subcontractors and there is where I think the unfairness and the genesis of this bill lies. The subcontractors who are first on the project. Those people who clear the land, build the foundations and put up the studs. They get their work completed and then they have a check list, which is simply a list of minor things that need to be completed before they can be removed from the site as their work is completed. Upon doing that, they really should be paid in full. Normally you have a 30 day period to make sure that everything is satisfactorily done. These people who begin the project, their 5 percent is held until the entire project is completed. This means that the carpet people, painters and landscapers have to complete their work. There are many instances, which retainage is being held for months and sometimes even years. Even though they have satisfactorily completed their work some time ago. The 5 percent may not seem like a lot, but to many of these companies, that is their profit margin.

This would also help to improve contract management of public projects. Poor contract management is often the reason that retainage is unfairly withheld in the first place. The only real concern from the municipality of the state was that they would lose some leverage, but I submit that they don't. First of all, this bill does not prohibit retainage to be withheld from contracts. It simply says that the retainage may not be withheld for the wrong reasons. Warranty items or items which should be covered under a performance or payment bond. This bond is an insurance to make sure that the project does get completed. You have that protection from the beginning. Second of all, this 5 percent retainage is paid to the subcontractor by subcontractor as they complete their project. The owners are not giving up the entire retainage. It is being done on a gradual basis as each phase of the project is completed, which seems fair. The subcontractors and the contractors, I feel, need to be paid on a timely basis so that they can pay their employees and pay for their cost of materials. I would also like to point out that the federal government uses a zero percent retainage and has for years. It has worked fine. In fact, it has increased the number and quality of contractors bidding on public projects.

As I pointed out originally, the committee, the Association of Contractors, the MMA, Commissioner Jacobs have put together what I think is an acceptable bill that addresses the unfairness in terms of payment. As I said before, I would ask that you not support the pending motion and support the Majority Ought to Pass. Thank you.

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

Representative BROOKS: Madam Speaker, Ladies and Gentlemen of the House. I find that this is one of those pieces of legislation that when I started looking at it and started getting phone calls, I felt very awkward about it. It was one of those I had to spend some time doing a bit of work on because I wasn't real sure where I was going to go on this. In particular, what I was asked to speak by a couple of constituents of mine who do run contracting firms. I have talked to my municipality and I have talked to a number of other people and I guess I have reached a point where I would agree with the Majority Report. As has been

pointed out already, retainage has been used for a number of years for a lot of purposes and I think that it probably, in some instances, has served its purpose very well. It has also been mentioned that the federal government went to zero retainage a number of years ago and from the best that I have been able to find out, there has not been any serious problems. As a matter of fact, someone who was very instrumental in cosigning the federal legislation was a Senator by the name of Cohen from Bangor.

Retainage, as I understand it, under the amended bill that would be the Majority Report, would still allow for municipalities in school districts to retain monies if they found that there were problems during the period of time that the voucher was requested during the month and at the end of the project would still be able to retain 5 percent of the project. What I understand from the contractors and the people who live in my district and run these businesses, this would give them a much better opportunity at cash flow. One of the things that happened to a contractor who is fairly friendly to me is that he found himself in one particular case on a fairly large contract that the retainage amounted to approximately \$800,000 and was many, many, many months and I am not sure if not years before he was able to collect the full amount. At that point, wasn't necessarily found that the problems that existed existed with the work that was done by he or any other subcontractor. There were, in fact, some concerns over the design in the very beginning, which was found that they weren't at all the least bit at fault. I would hope that you would join with us in voting against the Minority Report so that we can bring the Majority Report back.

Zero retainage will certainly put some responsibilities on the school districts and the municipalities. I don't have any doubt about that. We are talking about appropriate management. We are talking about finding someone within the system who can work on and be the clerk of the works and make sure that projects are being handled and being handled appropriately. Zero retainage would make owners and architects and general and subcontractors deal only with contractors that have a reputation of quality work. While I know that it does have some concerns among school districts and municipalities, I feel that the federal government has taken the lead on this and, several years ago did promulgate federal legislation that does take it to zero retainage, then we can follow suit. As a matter of fact, I believe in the very beginning of this legislation, the Bureau of General Services from the Department of Administrative and Financial Affairs was opposed to the bill. Since that time, have worked on the amendment that is attached to the legislation would be part of the Majority Report, and now supports the amendment and the bill as amended. I ask if you will join with me and oppose the current motion, which is the Minority Ought Not to Pass Report so that we get on to the Majority Report and allow us to pass a good piece of legislation. Thank you.

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

Representative BUMPS: Madam Speaker, Men and Women of the House. I appreciate this opportunity this morning to redeem myself after last night's divided report. This is an equally complex subject and I hope I can do a bit of a better job this morning. I am going to make my point very quickly. This bill is about contract management, good contract management. Currently, the way retainage is broadly assessed on all public improvement projects, the state has the ability or the state is required to withhold 5 percent of the total contract cost until the project is finished. What that allows the state to do is to pay out on requisition one after another after another, never being entirely sure that what we are paying for has been done or has been done to our satisfaction. This amendment, by eliminating

retainage will force the owner, the state, to ensure that when we pay our bills for those monthly requisitions that come in on these projects, that what we are paying for has been done and has been done to our satisfaction. I would ask that you go on to defeat the Minority Report so that then we can accept the Majority Report. We can then allow for construction costs to be reduced and for contractors and subcontractors, the subcontractors especially, to get the money they are owed at the very beginning of the project when they do their work and not have to wait months and years to get what is owed to them. Please, defeat the pending motion, which is to accept the Minority Report, so we can go on to accept the Majority Report.

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

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

The SPEAKER: The Representative may pose his question.

Representative WRIGHT: Madam Speaker, Men and Women of the House. Are there any similar laws governing retainage management in the private sector and, if so, why should the private sector and the public sector be different?

The SPEAKER: The Representative from Berwick, Representative Wright has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Portland, Representative Gieringer.

Representative GIERINGER: Madam Speaker, Ladies and Gentlemen of the House. After evaluating more data on retainage, I have elected to change my position on the majority vote. Here is why. Portland had a negative experience in building and repairing schools in the last 12 years. The only leverage they had to get projects done correctly was the retainage called for in their contracts. To the extent that anyone says the Legislature protects subcontractors, please be aware that we use the retainage in some cases to pay subcontractors who were being mistreated by general contractors. If we had no retainage available, these subcontractors would have to put liens on our public buildings to make sure they get paid. If this is such a good idea, why is it now focused only on the most expensive and most important local projects, our schools? Does this make any sense at a time when the state is considering spending over \$100 million of taxpayer money for school repairs and renovations? Greater costs is what this bill is going to accomplish. We are all going to have to spend more money in our school projects to get things done that we could normally have gotten done using the leverage that the retainage gives us. Aren't school construction projects already expensive enough? Thank you.

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

Representative CARLETON: Madam Speaker, Men and Women of the House. I hadn't intended to speak, but to answer the question posed by the Representative from Berwick, in private contracts there are no special rules generally regarding how much retainage is held back. My experience has been that there always has been, by contract, some retainage held back. The grounds for that relate to the difficulty in getting satisfaction if there turns out to be something wrong or the work isn't adequate. I am not quite sure about the percentage. I had contracts with 5 percent and I have seen contracts with 10 percent retainage and I understand that that is common in the construction industry when you are dealing with private contracts.

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

Representative CAMPBELL: Madam Speaker, Men and Women of the House. I, as others, did not intend to speak on

this issue, but having experience in the construction industry, less in bid work and more in private negotiated work, as I negotiate my contracts, the guarantee, the warranty, the club, the issue that creates a better work environment is one of good project management, information flowing from the contractor to the owner and retainage in many cases does not help.

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

Representative BRENNAN: Madam Speaker, Men and Women of the House. I hope that you will support the pending motion. The reason I would ask you to support the pending motion is as a state we are going to move forward in a very significant way on school construction issues. If the budget passes and the Governor's bill on school construction passes, we could have anywhere from \$75 to \$100 million of new money available over the next three years for school construction projects, renovation projects and repair projects. My concern is if this bill passes, that local municipalities and school districts will lose control and will not have the opportunity to manage these projects in a way that would be to their benefit. I urge you to support the pending motion.

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

Representative AHEARNE: Madam Speaker, Ladies and Gentlemen of the House. I would hope my fellow colleagues would join and support the pending motion of the Ought Not to Pass report because those are my concerns exactly is with the school construction because of the use of public funds. Anyone who has been directly involved in construction projects, school construction projects knows that they are the most important projects that a municipality engages in. These projects never go exactly as planned despite the best intentions. There is always something that needs redoing or refixing during the course of the project or at the end. If this bill passes, municipalities and school districts will have no leverage whatsoever to keep the contractors around that they should have done it right the first time. The only way to complete these items will be to pay additional money to get the work done. These are my concerns and I hope you would join me to accept the pending motion. It is my understanding that, currently, MMA, at this point, still opposes this bill.

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

Representative FISK: Madam Speaker, Men and Women of the House. Not to be redundant, but to answer the good Representative's question from Portland, there is protection. First of all, in this bill as well the amendment calls for penalty of non-performance by a contractor or subcontractor by disallowing those non-performing companies from bidding or participating in public projects for a year. A reputable firm, I think, would want to maintain his reputation and do a good job and have quality work done. More importantly, this does not prevent retainage from being withheld. As I mentioned before, it is withholding it for the wrong reasons, which are warranty items or they are items which are covered under a performance bond. That is why you have a payment of performance bond at the end of the project to make sure that the project is protected so that it can get completed. Again, I reiterate that this is a 5 percent retainage as being paid to the subcontractors as ongoing, which means that the retainage is not all of a sudden lost as a project gets completed. The retainage is paid on a timely basis to these companies who have done their work some time ago. It just does not seem fair when these companies have completed their work that they have to wait 6 months to a year while the final subcontractors do their work. We have a punch list in all projects. If something is not completed, the clerk of the works or the contract management

team there makes sure that it does get done. In most cases, a subcontractor wants their money so they go out there and they go through the punch list and make sure it gets done properly. This is just a matter of fairness that these people having completed the job. How would you like to complete some work and then have to wait a year to get paid for it? Thank you.

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

Representative MUSE: Madam Speaker, Men and Women of the House. A month or so ago, I hadn't intended to speak on this either. It wasn't until a few weeks ago that I received a phone call from a long time friend of mine who is a contractor and quite honestly I found a message on my answering machine that he wanted to talk to me about retainage and I thought he had a problem with his wife. I went on to speak to him at great lengths about this. I had talked with many, many people about this. I think that the previous speaker has just made the most applicable comment that I have heard so far. We have heard about contractors and subcontractors and punch lists and a lot of terms that are foreign to the majority of people, unless you are in that business. However, the word that was just used that I think was the most appropriate is the word fair and fairness.

I believe everybody received a handout with the Maine Masonry logo on the top of the page. If you look down through that page, at the bottom of it, it gives a list of jobs that have been completed and then the amount of time that people have had to wait to receive payment for work that they had done. Just to highlight a few of them, the Easport School project, 517 days waiting to be paid. The Maine Youth Center, 334 days waiting to be paid. I am embarrassed to say the State House, 912 days and counting still not having received payment for work that has been completed. That simply is not fair. One of the other aspects of this and I wasn't quite sure I understood it, but people said this will lower costs. I didn't understand that. The way it was explained to me, quite simply, in a letter that I received. "It is very common for our retainage to be held for long periods of up to two years for issues unrelated to our work performance. As a result, we quite often are forced to file liens to protect our monies. This results in additional costs to both our business and potentially the general contractor and owner. It also divides what should be a positive partnership. The federal government has done away with this and I feel that this is a win-win situation for everybody involved."

I think it is very important, men and women of the House, to keep that one word in mind, fairness. You do a job, you should be paid for the job. You shouldn't be forced to wait for periods up to years to be paid for the work that you do. I think it is important also to point out that as the bill was written and as the bill was debated, several people were opposed to the bill. It has been reworked. It has gone through a committee process and now the state's own, Bureau of General Services, having worked with the committee, are supporting this bill. I would urge you all to defeat the pending motion so that we can go on to pass the Majority Report. Thank you.

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

Representative LEMAIRE: Madam Speaker, Men and Women of the House. This is rather a curious bill. Because I really didn't know a lot about retainage, I started calling people. Some of the information I had made me wonder about how contractors fit into all of this. What is unfortunate about this bill is you have contractors out there who do a good job and take care of the subcontractors and it is fine. There are situations where contractors should be obligated to pay their subcontractors. In looking at this list here and the list of subcontractors, the people who are actually complaining, if you have a \$100,000 competitive

bid. For instance, in a school system or in a municipality, they hold back \$5,000. It is unimaginable to me that at the end of a project a contractor can't afford to pay those subcontractors because 5 percent retainage was held. Let me tell you one other little thing in some of my phone calls. First of all, when you have a competitive bid, as many of you who are in this field know, you don't always know the person or the contractor or the company who wins this bid. In most cases you do, I am sure in the smaller towns you do. In the cities, you don't always know. You don't know their reputation and you may not know their references or have references. There is a performance of payment bond. When the subcontractor is not paid, he can invoke non-payment. They call the owner. The owner calls the bonding company. You have to remember that the bonding company is responsible for this too in that payment. They get on the contractor.

I think it is too bad because some companies out there should be paid, but some companies aren't doing what they should be doing. They shouldn't be paid. That is what this is all about, whether it is 1 percent or 5 percent or 10 percent. It only takes one bad apple to spoil it for everyone else. I wish there had been some kind of an amendment to this bill to address that particular group. It is unfortunate that they are going to hurt, but I can't support anything but the Ought Not to Pass. I am really concerned about what happens to the school systems and municipalities who do competitive bids and get into serious problems with a contractor because they are not paying the subcontractor. That is what this is really all about and that is what this list is really all about. Thank you Madam Speaker.

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

Representative BUMPS: Madam Speaker, Men and Women of the House. The Representative from Lewiston is absolutely right. One bad apple can spoil the bunch. That is what happened in this particular case, but this amendment will prevent that from happening. This debate has gone on and it makes it sound as if retainage is being eliminated. If you read the amendment carefully and the problem is the committee has met so many times that it has been hard to keep up with the bill. What we are debating this morning is printed and it is on your desk. If you read the amendment carefully, you will understand that retainage can be withheld. Retainage will be withheld against contractors or subcontractors who aren't performing to standards or who haven't completed their work. I will give you an example. If we were building an entirely new building and we were to lay the concrete and put up the walls and at the monthly requisition we go in and the timbers that we used in the roof aren't the size of the timbers that we had in the contract, at that point, we could insert the 5 percent retainage for the rest of the project for the subcontractor who was responsible for those timbers. The idea that retainage is eliminated altogether is entirely false. The amendment preserves retainage. It only says that retainage will be implemented on line items instead of across the board on the entire project. I would ask you. Read the amendment carefully. Understand what you are voting on and know that we are not eliminating retainage. We are simply trying to make that bad apple that was referred to before, hold that person accountable for their work. When the vote is taken, I request a roll call.

Representative BUMPS of China **REQUESTED** a roll call on the motion to **ACCEPT** the Minority **Ought Not to Pass** Report.

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

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

ROLL CALL NO. 529

YEA - Ahearne, Bagley, Baker, Berry RL, Bolduc, Bouffard, Brennan, Bryant, Bull, Bunker, Carleton, Chartrand, Clark, Colwell, Cowger, Davidson, Driscoll, Etnier, Farnsworth, Fuller, Gagne, Gagnon, Gamache, Gieringer, Goodwin, Green, Hatch, Jabar, Jones KW, Jones SL, Kane, Kontos, LaVerdiere, Lemaire, Lemont, Mailhot, McKee, Meres, Mitchell JE, Nass, O'Neal, O'Neil, Perkins, Pieh, Poulin, Povich, Powers, Quint, Richard, Rines, Rowe, Sanborn, Saxl JW, Saxl MV, Shannon, Sirois, Skoglund, Stanley, Stevens, Taylor, Tessier, Townsend, Tripp, Tuttle, Vedral, Vigue, Volenik, Waterhouse, Watson, Wheeler GJ, Winn, Wright, Madam Speaker.

NAY - Barth, Belanger DJ, Belanger IG, Berry DP, Bigl, Bodwell, Bragdon, Brooks, Buck, Bumps, Cameron, Campbell, Chick, Chizmar, Cianchette, Clukey, Cross, Dexter, Donnelly, Dunlap, Fisher, Fisk, Foster, Frechette, Gerry, Gooley, Honey, Jones SA, Joy, Joyce, Joyner, Kasprzak, Kerr, Kneeland, Labrecque, Lane, Layton, Lemke, Lindahl, MacDougall, Mack, Madore, Marvin, Mayo, McAlevey, Morgan, Murphy, Muse, Nickerson, O'Brien, Peavey, Pendleton, Perry, Pinkham RG, Pinkham WD, Plowman, Savage, Snowe-Mello, Spear, Stedman, Tobin, Treadwell, True, Underwood, Usher, Wheeler EM, Winglass, Winsor.

ABSENT - Bruno, Desmond, Dutremble, Lovett, McElroy, Ott, Paul, Samson, Shiah, Thompson.

Yes, 73; No, 68; Absent, 10; Excused, 0.

73 having voted in the affirmative and 68 voted in the negative, with 10 being absent, the Minority **Ought Not to Pass** Report was **ACCEPTED** 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:

CONSENT CALENDAR

First Day

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

(H.P. 1438) (L.D. 2002) Bill "An Act to Delay the Implementation of Performance Budgeting for State Government" (EMERGENCY) Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-1089)**

(H.P. 1530) (L.D. 2152) Bill "An Act to Strengthen the Collection of Medicaid Liens" Committee on **HEALTH AND HUMAN SERVICES** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-1090)**

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

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

REPORTS OF COMMITTEE

Divided Reports

Majority Report of the Committee on **LABOR** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-623)** on Bill "An Act to Restore the Normal Retirement Age for State Employees and Teachers"

(S.P. 707) (L.D. 1955)

Signed:
Senators:

CATHCART of Penobscot
TREAT of Kennebec
MILLS of Somerset

Representatives:

HATCH of Skowhegan
SAMSON of Jay
BOLDUC of Auburn
CLARK of Millinocket
RINES of Wiscasset
STANLEY of Medway
JOYCE of Biddeford
TREADWELL of Carmel
LAYTON of Cherryfield

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

Signed:
Representative:

PENDLETON of Scarborough

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-623)**.

READ.

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

Representative TAYLOR of Cumberland **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 Standish, Representative Mack.

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

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

Representative MACK: Madam Speaker, Right Honorable Men and Women of the House. Before we vote on this I would like to ask somebody exactly what this bill does.

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

Representative HATCH: Madam Speaker, Men and Women of the House. Just to answer that question for the Representative, the bill restored the normal retirement age back to 25 years, which would have been 55. It is currently 62 or 25 years. It reduced it. We amended that age requirement out on the amendment. It would have cost a lot of money to do that, but we did in the amendment to try to restore some of the damage that was done in 1993 by the one and a quarter percent that was taken from the employee. We felt it was important that we showed some good faith to our state employees and teachers and that was the reason for this bill. It is the reason it was put in. That, more or less, I think, answers your question.

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

ROLL CALL NO. 530

YEA - Ahearne, Bagley, Baker, Barth, Belanger DJ, Belanger IG, Berry DP, Berry RL, Bigl, Bodwell, Bolduc, Bouffard, Bragdon, Brennan, Brooks, Bruno, Bryant, Buck, Bull, Bumps, Bunker, Cameron, Campbell, Carleton, Chartrand,

Chick, Chizmar, Cianchette, Clark, Clukey, Colwell, Cowger, Cross, Davidson, Dexter, Donnelly, Driscoll, Dunlap, Etnier, Farnsworth, Fisk, Foster, Frechette, Gagne, Gagnon, Gamache, Gerry, Gieringer, Goodwin, Gooley, Green, Hatch, Honey, Jabar, Jones KW, Jones SL, Jones SA, Joy, Joyce, Kane, Kasprzak, Kerr, Kneeland, Kontos, Labrecque, Lane, LaVerdiere, Layton, Lemaire, Lemont, Lindahl, MacDougall, Mack, Madore, Mailhot, Marvin, Mayo, McAlevey, McKee, Meres, Mitchell JE, Morgan, Murphy, Muse, Nass, Nickerson, O'Brien, O'Neal, O'Neil, Ott, Peavey, Pendleton, Perkins, Perry, Pieh, Pinkham RG, Pinkham WD, Plowman, Poulin, Povich, Powers, Richard, Rines, Rowe, Sanborn, Savage, Saxl JW, Saxl MV, Shannon, Sirois, Skoglund, Snowe-Mello, Spear, Stanley, Stedman, Stevens, Tessier, Tobin, Townsend, Treadwell, Tripp, True, Tuttle, Underwood, Usher, Vedral, Vigue, Volenik, Waterhouse, Watson, Wheeler EM, Wheeler GJ, Winglass, Winn, Wright, Madam Speaker.

NAY - Joyner, Taylor, Winsor.

ABSENT - Desmond, Dutreble, Fisher, Fuller, Lemke, Lovett, McElroy, Paul, Quint, Samson, Shiah, Thompson.

Yes, 136; No, 3; Absent, 12; Excused, 0.

136 having voted in the affirmative and 3 voted in the negative, with 12 being absent, Majority **Ought to Pass as Amended** Report was **ACCEPTED**.

The Bill was **READ ONCE**. **Committee Amendment "A" (S-623)** 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-623)** in concurrence.

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.

UNFINISHED BUSINESS

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

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 26, 1998 (Till Later Today) by Representative KONTOS of Windham.

PENDING - FURTHER CONSIDERATION.

On motion of Representative DESMOND of Mapleton moved that the House **RECEDE AND CONCUR**.

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

Representative DESMOND: Madam Speaker, Men and Women of the House. I am the sponsor of LD 2123. I am pleased that we now have no need for this bill. The intent of the LD was to reduce the fee of commercial vehicles going into New Brunswick to the same amount as the Canadian commercial vehicles coming into Maine. This has been a problem for many years. It not only was the money that was a problem to loggers and others, but it caused hard feelings because Maine has not charged a fee. Today, this was finally resolved by a letter from the Honorable Jay Raymond Ferrette, Premier of New Brunswick to Governor King. I would like to read a couple of short paragraphs from that letter. "Dear Governor King. My colleague, the Minister of Transportation, the Honorable Sheldon Lee, is prepared to propose an amendment to the Motor Vehicle Act to eliminate our fee requirement. However, our Legislature will not be sitting for several months. In the meantime, Mr. Lee is prepared to propose a change in the regulated fee from \$250 per year to \$1. This process of reducing, but not eliminating the fee can be accomplished in a much shorter time frame. I can assure you that we will propose this legal amendment at our earliest opportunity." We have done things right, I believe. We don't want bills that aren't needed and we want negotiations to be friendly. I am really pleased today that we, as the Maine State Legislature, have done away with a bill and have done things right. Thank you Madam Speaker.

Subsequently, the House voted to **RECEDE AND CONCUR**.

ENACTORS

Emergency Measure

An Act Regarding Nutrient Management

(S.P. 653) (L.D. 1874)
(C. "A" S-604)

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

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

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

Representative **CHICK**: Madam Speaker, Men and Women of the House. This past season I attended some of the hearings in the Agriculture, Conservation and Forestry Committee. I believe once or twice I heard some discussion about nutrients. Maybe someone here could tell me if there was a cut off point where the number of acres do not have to abide by this particular act.

The **SPEAKER**: The Representative from Lebanon, Representative Chick 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. Acreage has no bearing whatsoever on this bill in any way shape or form. It has nothing to do with acreage. It just has to do with usage or by animal units which are based and calculated on 1,000 pound quantities. Acreage, as far as I know, is not part of this bill.

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

Representative **SPEAR**: Madam Speaker, Ladies and Gentlemen of the House. This act has been brought before us because of what the EPA may be presenting for us. We are trying to stay a step ahead of them. This will be taken over by

the Department of Agriculture and we feel this is a better move than being forced to do it by EPA to the DEP. This is a good bill for the agricultural sector. Thank you.

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

Representative CHICK: Madam Speaker, Ladies and Gentlemen of the House. My concern here is from these hearings that I attended this past season, I found out that I might refer to myself now as a practicing agronomist, rather than a farmer. In a few days, due to the promise of the spring, I shall be trying to promote the growth of some field crops with the aid of some of my vintage iron. In other words, I will be out there trying to rearrange some of the deposits of recycled alfalfa. I don't want to be found wanting if I am in violation of some of these rules. That is my concern. Thank you.

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

Representative SPEAR: Madam Speaker, Men and Women of the House. Once again, what this does is any farm that has more than 50 animal units would be required by the year 2003 to have a management plan. Having that management plan, it will be developed through the Department of Agriculture through soil and water conservation districts, probably the ones that would help develop it. The Department of Agriculture would regulate it. On one hand, we don't like regulations, but this whole thing has been developed by farmers because we have seen what is happening in other states and that the EPA is coming in and directing the local department of Environmental Protection to really come down on their rules. I have examples here. In California right now there is a guy going to prison and \$100,000 fine. In New York state, they are hitting hard on the farmers. This is all because of what is happening in the Chesepeague Bay area. They are really checking this non-point source pollution, nutrient management and this has been grass roots here into the farmers in the state here are really scared that if the Department of Agriculture doesn't take the initiative to implement something now within the next year the EPA is going to come in with the rules that are going to be a lot more stringent than the ones we are proposing here. This bill will allow plenty of time to develop these plans and we think we are being proactive rather than reactive.

Reported by the Committee on **Engrossed Bills** as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 110 voted in favor of the same and 17 against, and accordingly the Bill was **PASSED TO BE ENACTED**, signed by the Speaker and sent to the Senate.

Emergency Measure

An Act to Make Supplemental Allocations from the Highway Fund and Other Funds and Changing Certain Provisions of the Law Necessary to the Proper Operation of State Government for the Fiscal Years Ending June 30, 1998 and June 30, 1999

(H.P. 1566) (L.D. 2199)
(C. "A" H-1058)

Reported by the Committee on **Engrossed Bills** as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 104 voted in favor of the same and 3 against, and accordingly the Bill was **PASSED TO BE ENACTED**, signed by the Speaker and sent to the Senate.

Emergency Measure

An Act to Implement the Recommendations of the Maine Commission on Children's Health Care

(H.P. 1595) (L.D. 2225)
(S. "A" S-615 to C. "A" H-1008)

Reported by the Committee on **Engrossed Bills** as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 104 voted in favor of the same and 7 against, and accordingly the Bill was **PASSED TO BE ENACTED**, signed by the Speaker and sent to the Senate.

Emergency Measure

An Act Requiring Notification of Option to Request Judicial Review

(H.P. 1618) (L.D. 2245)
(C. "A" H-1023)

Reported by the Committee on **Engrossed Bills** as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 112 voted in favor of the same and 0 against, and accordingly the Bill was **PASSED TO BE ENACTED**, signed by the Speaker and sent to the Senate.

Emergency Measure

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

(S.P. 867) (L.D. 2280)

Reported by the Committee on **Engrossed Bills** as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 113 voted in favor of the same and 6 against, and accordingly the Bill was **PASSED TO BE ENACTED**, signed by the Speaker and sent to the Senate.

Emergency Mandate

Resolve, Regarding Legislative Review of Chapter 231: Rules Relating to Drinking Water, a Major Substantive Rule of the Department of Human Services

(H.P. 1606) (L.D. 2233)
(C. "A" H-993)

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. 113 voted in favor of the same and 7 against, and accordingly the Mandate was **FINALLY PASSED**, signed by the Speaker and sent to the Senate.

Mandate

An Act to Amend the Charter of the Ogunquit Sewer District

(H.P. 1592) (L.D. 2221)
(H. "A" H-1046 to C. "A" H-947)

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. 120 voted in favor of the same and 5 against, and accordingly the Mandate was **PASSED TO BE ENACTED**, signed by the Speaker and sent to the Senate.

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

Acts

An Act to Implement the Recommendations of the Commission to Determine the Adequacy of Services to Persons with Mental Retardation

(H.P. 1543) (L.D. 2170)
(C. "A" H-1067)

An Act Concerning Sea Urchin Management

(H.P. 1547) (L.D. 2176)
(C. "A" H-1026)

An Act to Limit New Lobster and Crab Fishing Licenses

(H.P. 1597) (L.D. 2226)
(C. "A" H-1004)

An Act to Implement the Recommendations of the Task Force on Registration of In-home Personal Care and Support Workers

(H.P. 1602) (L.D. 2228)
(C. "A" H-1065)

An Act to Establish the Boundary between Harpswell and Brunswick

(H.P. 1652) (L.D. 2282)
(C. "A" H-1062)

An Act to Make Certain Changes in the Educational Law

(H.P. 1665) (L.D. 2289)

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.

Resolves

Resolve, Requiring a Report on the Provision of Medicaid Services

(H.P. 1432) (L.D. 1996)
(C. "A" H-1055)

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)
(S. "A" S-606 to C. "A" H-1020)

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

An Act to Implement the Recommendations Relating to the Review of the Department of Professional and Financial Regulation's Office of the Commissioner, Office of Consumer Credit Regulation and Office of Licensing and Registration under the State Government Evaluation Act

(H.P. 1565) (L.D. 2198)
(C. "A" H-952)

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

On motion of Representative VIGUE of Winslow, was **SET ASIDE**.

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

An Act to Provide for Confidentiality of Health Care Information

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

(H. "A" H-1069 and H. "B" H-1073 to C. "A" H-1066)

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 **PASSAGE TO BE ENACTED** and later today assigned.

Bill "An Act to Require All Regulated Public Utilities to Report to the Public Utilities Commission the Sale, Lease or Other Transfer of Assets Paid for by Ratepayers"

(H.P. 1477) (L.D. 2076)

Which was tabled by Representative JONES of Bar Harbor pending **FURTHER CONSIDERATION**.

On motion of Representative JONES of Bar Harbor, the House voted to **INSIST**.

SENATE PAPERS

Non-Concurrent Matter

Bill "An Act to Establish Ethical Standards for the Office of Governor"

(S.P. 786) (L.D. 2113)

Majority (12) **OUGHT NOT TO PASS** Report of the Committee on **LEGAL AND VETERANS AFFAIRS** was **READ** and **ACCEPTED** in the House on March 25, 1998.

Came from the Senate with that Body having **ADHERED** to its former action whereby the Minority (1) **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-586)** Report was **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-586)** in **NON-CONCURRENCE**.

On motion of Representative SAXL of Portland, **TABLED** pending **FURTHER CONSIDERATION** and later today assigned.

Non-Concurrent Matter

Resolve, Regarding Legislative Review of Chapter 820: Requirements for Non-Core Utility Activities and Transactions Between Affiliates, a Major Substantive Rule of the Public Utilities Commission (EMERGENCY)

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

PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-956) AND HOUSE AMENDMENT "A" (H-960) in the House on March 23, 1998.

Came from the Senate **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-956) AS AMENDED BY SENATE AMENDMENT "A" (S-592)** thereto and **HOUSE AMENDMENT "A" (H-960)** in **NON-CONCURRENCE**.

On motion of Representative LaVERDIERE of Wilton moved that the House **RECEDE AND CONCUR**.

The **SPEAKER PRO TEM**: The Chair recognizes the Representative from Wilton, Representative LaVerdiere.

Representative LAVERDIERE: Mr. Speaker, Men and Women of the House. I just want to let you know that the Utilities Committee has worked real hard over the past two years to make sure that the items that are brought before this body are done so in either a unanimous or near unanimous manner. I think we have had real great success in making sure that the

items that we reviewed, we did carefully and we didn't take up a lot of time here on the floor arguing about them. We tried to take care of them in the committee. The major difference between the Majority and Minority Report in this particular matter involved the time within which the PUC could determine the amount of goodwill to be charged to utilities. The majority position was that that should be limited to six years. They should have only six years to make that determination. The Minority Report, which I was a member, indicated that the door should be left open beyond the six year period for the determination to be made. After discussions with my colleagues on the committee and in an effort to continue the tradition that I think we have had on this committee with regard to having either unanimous or near unanimous reports, I have agreed that I would support the majority position and I think the other members on the minority agree me. Therefore, I would ask that you support the motion to Recede and Concur.

Subsequently, the House voted to **RECEDE AND CONCUR**.

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

ORDERS

On motion of Representative BUNKER of Kossuth Township, the following Joint Order: (H.P. 1666)

ORDERED, the Senate concurring, that the Joint Select Committee to Study Selected Issues in School Funding is established as follows.

1. Committee established. The Joint Select Committee to Study Selected Issues in School Funding, referred to in this order as the "committee," is established.

2. Membership. The committee consists of 13 members appointed as follows.

A. The President of the Senate shall appoint 3 members from the Senate. The first Senate member named is the Senate chair.

B. The Speaker of the House of Representatives shall appoint 10 members from the House of Representatives. The first House member named is the House chair.

3. Appointments. All appointments must be made no later than 30 days following the effective date of this order. The appointing authorities shall notify the Executive Director of the Legislative Council upon making their appointments. When the appointment of all members is complete, the chairs of the committee shall call and convene the first meeting of the committee no later than June 15, 1998.

4. Duties. The committee shall study selected issues in school funding, including:

A. The impact of fluctuating student enrollments on the fixed-cost nature of school budgets;

B. The effects of the percentage-reduction method now used in the school funding formula;

C. Differences in the amount of property wealth behind each pupil and how these differences impact educational tax effort outside of the school funding formula;

D. The benefits of economies of scale; and

E. The impact of reduced school subsidies in areas of limited economic development and high unemployment.

5. Meetings. In conducting its duties, the committee may meet no more than 6 times with any individuals, departments or institutions it considers appropriate.

6. Staff assistance. The committee shall request staffing and clerical assistance from the Legislative Council.

7. Reimbursement. Members of the committee are entitled to receive the legislative per diem, as defined in the Maine Revised Statutes, Title 3, section 2 and reimbursement for travel and other necessary expenses for attendance at meetings of the committee.

READ.

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

Representative BUNKER: Mr. Speaker, Men and Women of the House. As you can see, I have asked for a Joint Select committee to study the issues in school funding. As many of you know, all across the State of Maine we have a great upheaval in how to come to consensus and how to move forward with the current formula and the funding and the disparity in funding between different school districts. This battle is ongoing and never ending it seems. I have a lot of difficulty in the rule areas to explain here in this budget process that we are going forward with. We are boosting more money into the system at 6 percent and when it washes through the system it ends up in rural Washington County to come out to our people and our people and their budgets are seeing a 1 percent increase. I understand a lot of the mechanics that is involved in the funding formula. I am not asking to debate the funding formula in any way, shape or form here today. I am not asking that this Joint Select Committee try to change the funding formula in this session for any reason. Obviously this is an ongoing issue. I think we need to get away from the formula and I agree that the committee and possibly the Commissioner of Education and I have been advocating for the last four years to try to find essential services and to start delivering those services on a statewide basis in a fair and equitable way. I think we are all trying to get there.

It is difficult on a statewide basis to answer some of these tough issues to my constituents and I am asking that this Joint Select Committee be formed to look at the areas of impact of fluctuating student enrollments on the fixed cost nature of school budgets, the effects of the percentage reduction method now used in school funding, differences in the amount of property wealth behind each pupil and how these differences impact educational tax efforts outside the school funding formula, benefits of economy scale, the impact of reduced school subsidies in areas of limited economic development and high unemployment. As you can see, many of these issues here are very germane to the problems, the questions and the answers that I, as a legislator, have to make to the people in my area that just can't take the answer. You lost kids and three people moved into town and bought very valuable property so that means you carry a bigger burden of the tax bite for educating the kids. The other thing is how to lose. I have one school down in Columbia Falls that one class has six kids in it. The next class had 23. The next class had 7 kids and the next class had 20. Those kinds of disparities in class size just has a traumatic affect on the funding in these rural areas. I am trying to address those specific answers so that I can be more educated in answering those questions. I am asking for this select committee to focus on those areas. I want to say that there has been a lot of discussion in the halls the last day or so since this issue came to light. I did this up front. I went to the committee chair. I also went to the democratic leader on the committee and understanding he wouldn't probably be very pleased with this kind of move. I did this all up front in the open to let everybody have a chance for this debate. This is not being done at the last moment. I am trying to make sure that this process is done above board and in a very professional manner.

Also, I would like to state that if anybody has ever had a chance to look at the good Chair of the Education Committee's calendar for the last four months, it is just amazing the work load that she has had to deal with in the budget process and the funding issues and higher education issues. I mean, this budget cycle with the added monies that we had to wrestle over with this surplus budget, it overtaxed the Education Committee to no means. I am not here to say and if anybody stands and rises to say that I am trying to offend the committee of jurisdiction, I hope they don't think that this is the way at all. This is not the case on my part. I am trying to continue the focus and the move forward on trying to come to resolution and end essential services. Also, to answer some of these questions, which are going to have to be answered, in order to fund essential services, they will tell you, more than likely, they have studies out there and we continue funding essential services and there are some other groups out there that have ongoing duties and requirements. I sat down with the Commissioner of Education and refined this list so that this list would compliment what those other committees are doing. It is not in any way, shape or form should be viewed as an opposition or as opposing the direction that we are trying to go to. I think that this does good things. It is going to help move this along. It is going to help make resolution of essential services at a sooner date. I ask for your support on this Joint Order. Thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Windham, Representative Kontos.

Representative KONTOS: Mr. Speaker, Men and Women of the House. I have four reasons why I will not be supporting this Joint Order. Two of them have to do with process and two of them have to do with practicality. With all due respect to the Representative from Kossuth Township, who did, in fact, talk to me and other members of leadership as did other proponents of this joint order, I respectfully disagree with this mechanism. I want to tell you why. First of all, our Joint Standing Committees, as has been suggested by the previous speaker, have the kind of jurisdiction that I believe this Joint Order is designed to accomplish. I am not eager to see that kind of jurisdiction eroded. Secondly, I suggest to you that if we begin along a path of this type, we will then have Joint Orders for Joint Select Committees on forestry, taxation and you name it when there is an issue of particular importance that seems not adequately addressed through particular pieces of legislation when a group of folks think the other direction could take us to work outside, however complimentary that committee process. Those are process issues. That matters a lot to me. It matters a lot to me in order to protect the integrity of this institution. Those are my primary reasons to oppose this particular Joint Order.

My third and fourth reasons to oppose it are much more having to do with practical matters. The third of those is I think it is very difficult, in fact, I think you raise false expectations if you think a Joint Select Committee on any subject or any policy area will have the kind of influence you might hope on the next Legislature that will be seated. The next Legislature meaning the 119th. I think you raise false expectations among the very people that you might be trying to work with. That is one reason. The final one is it is a 13 person committee that is being proposed here, coincidentally, that is the size of our Joint Standing Committees, with a request for per diem and staff support. As a member of the Legislative Council, those issues come before us as a funding issue, as do all study committees that have legislators that would be receiving per diem costs for their work. We have routinely rejected any requests for committees or study committees, task forces, commissions that convene between the adjournment of the 118th and the beginning of the 119th for the very reason that I stated earlier.

The other reason that we are doing that is we have such a limited legislative budget that we would be hard pressed to fund this. I daresay that no one should serve on any extra legislative duties without being compensated. I believe strongly in that. We would be hard pressed to even fund it if the majority chooses to pass it. I want to reiterate that I very much respect those individuals who have advanced this Joint Order. I realize these issues are very challenging and difficult in many of the districts that we represent. I am standing before you today to tell you that this is not a mechanism that I believe is the right one for this institution. It is clearly not one that I will support. I hope you will join me in opposing this Joint Order. Mr. Speaker, I request a roll call.

Representative KONTOS of Windham **REQUESTED** a roll call on **PASSAGE**.

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

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

Representative DESMOND: Mr. Speaker, Men and Women of the House. We have already had committees set up to look at the funding formula and essential services. These committees were made up of experts throughout the state. Anyone was welcome to be there and to attend these meetings. Rather than another committee that will require money, I feel that all those concerned about the funding formula attend a two-day workshop this summer that the Department of Education is willing to conduct. Here is where you can get all of your questions answered. I think it is great that people want to talk about the funding formula and about education in general. This can be done through informational meetings for anyone who is so inclined. I wouldn't mind, myself, hosting a gathering at my house sometime for a discussion. I don't want to see printouts or involving an already overworked Department of Education. I, too, wish legislators would have or could have attended hearings and the many work sessions that the Education Committee had on school funding. We had an awful lot of them. Education issues are not simple matters. The Education Committee met every day. We involved every department that was relevant to issues on which we were working. I don't want to see a loss of credibility by doing something haphazardly. I am not going to go along with this particular Resolve.

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

Representative BARTH: Mr. Speaker, Ladies and Gentlemen of the House. Here we go again. It seems like every two years when we formulate a budget that all of a sudden there are winners and losers in school funding. In order to placate to get that budget passed and placate those legislators whose school units are losing, we end up making political moves such as cushioning in different ways and different ways of reducing what funding is there because it is limited. The real problem here is that most legislators, or a good portion of them, as well as school board members, teachers, principals and even superintendents don't really understand how the formula works. I would urge you to take the good Representative from Mapleton, Representative Desmond, up on her offer to become educated on how the formula works. As long as any formula is based on valuation and pupil count, no matter at what level you fund it, there will be schools that will be hurt or losers. It doesn't matter. Why? Because valuation changes as does pupil count. Even fully funding a formula would still result in schools thinking that they had been wronged because they were receiving less money than they received the year before.

As I think most of you know by now, I am not a fan of study committees, particularly ones that provide summer jobs for

legislators as this one does. I don't see how, and I would predict that if this passes, these legislators would be able to agree on much of anything. All they will do is look at the previous five, six, seven or eight studies and try to come up with something and probably in frustration tear their hair out as I have done over my years on the Education Committee, which you can see. I am not supposed to use props, but my head, I can't do without. I would urge that we would not follow this path and wait for some things that are already in the works. Thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Dexter, Representative Tobin.

Representative TOBIN: Mr. Speaker, Ladies and Gentlemen of the House. In my small district, Dexter, Ripley, Garland, Corinna, our school funding has gone down since 1993 hundreds of thousands of dollars. I respect process, but sometimes the least traveled road is the most productive. I believe that this may be in effort in frustration to our small rural communities in central and northern Maine. I have witnessed school budgets go to eight referendums for one year. I have seen school teachers and property tax payers at each others throats for the last five or six years over the lack of educational funding. When we play cards, everybody gets the same number of cards. If you are playing five card stud poker, everybody gets five cards, whether they got \$5 in their pocket or \$10 in their pocket or no money in their pocket. In education, Central Maine, Northern Maine and rural Maine haven't been getting their fair share of the deal. This is an effort to ask the state to reconsider the way the educational monies are dealt with in the state. Please support the motion.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Glenburn, Representative Winn.

Representative WINN: Mr. Speaker, Ladies and Gentlemen of the House. This is probably the last speech I am going to give on the floor. I really haven't had any time to prepare for it. I have, on the other hand, spent at least two years of my life trying to figure out the school funding formula. I feel that at this point in time I am expert on the formula. What the order is asking for is merely for an opportunity to find out the truth. He is merely asking for you to allow us to raise the issue, research the issue and find out the truth. I won't be here when the results come back, but most of you will. If you support his order allowing this research to go on this summer as to what the truth is, then you will have the printouts and the information. Next year you can make an educated decision as to whether you want to change the formula or not.

What I feel I need to share with all of you is the deliberate suppression of the truth that has gone for at least three years now. Most of you aren't aware of this because term limits kicked in and most of you are freshmen. A term ago I served on the Education Committee and my sole purpose was to try to help develop a fair funding formula. I have a masters in Business Administration. I am very, very good with the numbers. I also have a district that there is a high receiver, low receiver and medium receivers. No matter what formula we went with, part of my district would lose and part would win. My whole effort was devoted toward coming up with a fair formula that would be fair for all the children of the State of Maine. I spent an incredible amount of effort trying to come up with one. First it was a real feat to figure out what the heck the answer was to the question. When I figured it out, I tried to get the Department of Education to give us the printout. I found out that members of the Department of Education were secretly meeting with superintendents from southern Maine Saturday morning to try to figure out how to sabotage the formula for us. The Education Committee had meetings with the Governor. The department gave us false figures. I asked if they could please run the

formula according to what I thought was fairest. It was an honest mathematically sound way to distribute the wealth. I asked and asked and asked could they please run the data. I was given one excuse after another. Then finally I was told that I had to have permission from both chairs to get the printouts. I ended up filing three times under the Freedom of Information Act to get information. The chairs said they would run my request, but only after everybody else's request was run. It was just like Cinderella, you get to go to the ball after everybody else is dressed and gone and have eaten all the hors d'oeuvres. It reminds me of when the other body hits the Senator before we do. They said you can get your printout, but only after everybody else was done. The department finally ran the printout and then the chairs of the committee, in their great wisdom, decided to suppress the report and not to let it out. I ended up having to do a Joint Order in both bodies just to release the bill from committee.

It finally got here and I gave everybody a printout on yellow paper. One that shows exactly what happens by Senate District and one that shows exactly what happens by House District and comparing the two plans. Of course, it ended up in the wee hours of the night and by then everybody was mad at me and how come it took so long to get the information out here? I guess everybody assumed I was a dumb blonde and what did I know. They went with the rest of the gang. I want to try to get this message out that there is a fair way to distribute the wealth. There really is enough money if you would just divide it fairly. For instance, in this printout that discusses the two plans, again, the status is three years old. That is why we are asking for new data. Under this plan, Portland received an increase of about \$4.5 million. The difference between what I was proposing and what happened was \$150,000. You can't tell me that an increase of \$4.5 million that anybody would have noticed \$150,000. What I am trying to tell you is there really is a fair way to do it. People will tell you no, no it is just because the population has shifted south. It is because the property values have changed. No, no it is just because there is not enough money. Those are lies to keep the wealthy wealthy and the poor poorer. The division is getting greater and greater. All I ask you to do is support Representative Bunker's order so that we can research the truth and find the truth because it is not right that people, legislators such as I, have to go through what I went through to try to find the truth.

In closing, the truth of the matter is that it is not just as Representative Tobin was saying, a few rural northern towns. There are 97 House Districts that are unfairly losing money under this current plan, 97 House Districts and 22 Senate Districts. I would love to read them to you, but I have been asked not to. The point is it is two-thirds of state. That is two-thirds of the state that is losing money unfairly, not because of population shifts or anything else. I just thank you for your time and I wish you all more luck than I had in handling this formula. Thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Farmington, Representative Gooley.

Representative GOOLEY: Mr. Speaker, Men and Women of the House. I rise before you this afternoon to say a few words about this particular issue. I plan to support this issue. I wanted to say that I had received a letter last fall from my superintendent who had done some research into the formula. This is on the medium income factor part of the formula. As you know, there is an outfit out in California called Claritis, they do a consulting job for the State of Maine in regard to the median income factors for the different municipalities. This letter that I received from the superintendent said that he had contacted this Ellen Reynolds, an employee at Claritis to discuss the concerns with the adjusted

median income figures from 1996 and 1997 for communities within SAD 9. She pointed out that Franklin County towns are so small that most of the calculations for each town had to be extrapolated and were not as reliable as we would like to see. She also went on to say that Claritis has no way to account for changes in the local economy and that Claritis uses per capita information, much of which comes from the Bureau of Economic Analysis. This data is about three to four years old. Lastly, she said that the figures that Claritis uses, they were never intended to be used the way they are used in our state funding formula. When I get information like this, I have to say that I think that this formula isn't perfect and that I feel we need to take a hard look at it. That is why I am supporting this particular issue. Thank you.

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

Representative BRENNAN: Mr. Speaker, Men and Women of the House. I hope that you will not support the pending motion and I would like to explain why. The very first reason why is that this issue was never brought to the Education Committee. We have spent the last three months looking at a number of issues related to school funding and the school funding formula. We have printouts. In fact, on my desk right now I have at least 12 different printouts related to the school funding formula. Never once in the three months of our deliberation did we have people come forward and ask for a study of this nature. By going this route, it clearly circumvents the existing committee process that the good Representative from Windham pointed out.

Second, what I would like to mention is that if you look at Item "B" on the order, we have had a study of that issue. That study has already been done. If you look at Item "D" on the order, two years ago the Board of Education presented a comprehensive, a detailed study to the Education Committee on school regionalization and school consolidation. Both of those studies have been done and they are being asked to be done again.

Third, last year, this body at the request of a number of legislators, asked that a study commission be put together to look at the school funding formula. In particular, to look at issues related to income and COLA. The Board of Education did put together a committee and it met from July until December and it not only looked at income and COLA, it looked at student equity, taxpayer equity and a number of other issues related to school funding. That report is available to anybody here in the House that would like to look at that. It is also available to the good Representative from Farmington where it discusses a number of issues that he raised regarding the income issue. To go back again, at this point and add another study to go over what we have already done, at least two other studies and in regards to the study that we already done last year, seems to be redundant.

Lastly, we also received, this year, from the Board of Education an interim report on essential services. It was a report that went on for at least 50 pages. The first part of trying to identify essential services, many of the issues again that have been outlined in this order have already been discussed or will be discussed in the context of essential services. We hope that in the budget there will be an additional \$25,000 to continue forward with the essential services study that will allow them to bring back their final report to the Legislature in January of 1999. In some, when I look at this order, I understand the frustrations that people have about school funding. I understand the frustrations they have in terms of understanding it, but this order does not go towards resolving those issues because much of those issues we have already had reports on or they are in the process in the works now that will provide us with that information. Thank you.

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

Representative BROOKS: Mr. Speaker, Ladies and Gentlemen of the House. I am going to use that tired phrase, I was not going to speak on this, but. If anybody in the House has been reminded of the committee process more than once this year, I guess that I probably have been. I want to tell you about a thing that happened to me two or three weeks ago. I got involved with a group of people and we decided that perhaps there was some information that we may need in the process of trying to deliberate whether or not we wanted to put forth either a Joint Order or legislation or something about school funding. There was 17 of us.

I insisted on a couple of things. The first thing that I insisted on was that we go to the committee chair and tell her that we were going to do this. I didn't want this, like last year, to come as any surprise to anybody. I sure didn't want anybody to think that I was a part of any group out there that was going to attempt to blindsides the Education Committee. I did that. I went to the Education Committee and told her. I think she was very appreciative of that. I also told the group that whatever we did, we absolutely had to work within the committee. If the group was going to go anywhere, then I wanted to make absolutely certain that we didn't violate any of those rules or principles that I am so frequently reminded about. I am still learning. We did that. We all signed a letter and sent it to the committee. My name was one, I think my name may have been on it twice, once typed and one handwritten. That was two or three weeks ago. As of today, I haven't received the information we requested. I know that information is out there. It has been shown to me and handed to me. I still don't understand the School Funding Formula and I don't say that I am ever going to understand it unless I spend as much time on it as Representative Richard and Representative Brennan and others who serve on education. They have done a wonderful job in education, but I think that we need to look at it some more.

I am going to vote yes on this Order because I want to be able to send a signal back to my communities that I am concerned. I have several reasons why I am voting for it. They begin with Winterport and Prospect and Stockton and Frankfort and Monroe. I can't stop there. I have received, as you all have received, numerous complaints about the School Funding Formula. I haven't got a clue whether it is appropriate or not. I decided long ago this session to rely upon the Education Committee to determine whether or not the task force we organized last year would make some appropriate recommendations. The only thing I have heard is that they appropriately recommended to get rid of COLA. If you look at the budget that is going to come out this year, it doesn't get rid of COLA. We did make some changes, I believe, in COLA. Maybe those changes will be significant and maybe they will help my community. I don't know. I am still not quite satisfied that the information that we need to better understand the funding formula is available to me. I am going to vote yes on the Order to send a signal that I want more information. When I come back next year, and I hope that I do, that we can begin earlier in the session. As I told a seat mate of mine just a few minutes ago, I don't have a clue whether I want to change this funding formula or not. That is because I am ignorant of the process. I want to look at it. If it is fair, then let it be. If it is outdated and we need to go back to 1985 or I don't know where we need to know, then maybe it is an opportunity for us to really sit down and look at it early in the session next year so we can make some decisions appropriate to the funding formula. Thank you Mr. Speaker.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Wilton, Representative LaVerdiere.

Representative LAVERDIERE: Mr. Speaker, Men and Women of the House. In the two years that I have served in this body, I have stood up on this floor four times, two of them today. The reason I am standing now is that I feel very strongly about this issue. I would hope that you would support the good Representative from Kossuth Township in passing this Joint Order. First, I want to thank very much the Education Committee for the hard work that they put in this year and last year in dealing with the issues before them. They had many issues before them. Issues involving higher education, involving a whole number of issues in primary school and secondary education. They had a lot on their table. The School Funding Formula is something that they found very difficult to deal with. I think anybody that tackles that issue is going to find it very difficult to deal with because as the good Representative from Bethel indicated, there will always be winners and there will always be losers. There reaches a point and I think we are there now where there is a large number of people that are being hurt so badly by this formula that they have to come together and rise up and say, enough.

Yes, maybe, we are not following the appropriate procedures that have been done in past years. I understand the good Representative's comments regarding in between sessions. You know, I guess I would say that it is a good thing that our founding fathers didn't follow procedure when they decided to have the Boston Tea Party. At this point, we feel, those of us who have school districts that have been continuously losing money, we feel we need to do something. We need to move this issue. It is very difficult for me to go back to my district and explain to towns in my district that we should, in this body and in the other body, approve a 6 percent increase in GPA that my district is only getting 2 percent as one of my districts is. I have three school districts in my legislative district. How do I explain that to them? How do I explain that we started with six and now we are down to two and that is all they are going to get? That is a difficult thing to do. I ask you to help us put together a group that will not have other issues on their plate other than the School Funding Formula. This will be the first legislative committee to look at the issue with that being the only issue on its plate. I would ask you to support the motion. Thank you very much.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Eliot, Representative Wheeler.

Representative WHEELER: Mr. Speaker, Men and Women of the House. I rise in opposition of the Joint Order. I didn't want to rise. I don't like to see the tension between groups and communities which is being drawn into this House today. The School Funding Formula has changed over the years. There was a time when a certain part of the state was really hurting over the School Funding Formula. Right now there is a part of the state, the southern part of the state, which is growing. Schools are bursting. They have to add on. There is a lot more pupils in the southern part of the state than there are in other parts of the state. We have to find out where the equity is in the School Funding Formula. I agree. This is not the way to do it. A Joint Order or another study, you are just hurting the students of the state. Let's all work together without a Joint Order and try to work on this to help all students of the State of Maine.

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

Representative TRUE: Mr. Speaker, Ladies and Gentlemen of the House. I have already indicated that I shall not vote for this. However, I do want to say these things. One is, the formula, there is really nothing wrong with the School Funding Formula as long as you have enough money to do all the things

that everybody in every town, every superintendent and everybody over at the Department of Education wants to do. It is as simple as that. Look at all of the phases and the different groups that you have got to really get in line. If we, in this House and in the other body, would think about the times we pressed the green button and it cost \$4 million. That is \$4 million that is coming out of that mass of money which we have and we haven't funded education properly. Those people that want to go back to 1995, please take a good look at that. I was very busy in education at that time and I can tell you there are many facets of that that won't work and that is why it has been taken care of. In effect, probably most of it. I think if you come up with a plan in which, well, I don't know how to do it, I have been here nearly six years now and I don't know how. I would rather see a lump sum up there in the early part of our discussions for education. If we as a state said education is a number one thing and stop pointing fingers unless you are in a mirror because we have all done it and we are still accusing. I don't believe this will work this way, but good luck if it passes.

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

Representative MURPHY: Mr. Speaker, Men and Women of the House. While we are talking about disparity in school financing, it is really symbolic of a tragedy that is going on within the state. Ten years ago, as a teacher, as new students came into my classroom, they would list their previous address and I would always have an opportunity to ask them where they were coming from and why they were coming to Kennebunk. Ten years ago, seven or eight out of every ten were from away, from outside the state. Since I have gone back to education, six or seven out of every 10 of the new students coming into my classroom are coming from Rumford, Presque Isle, Caribou or Farmington. There is a migration going on within the state. I think that, when historically we look back, will rival that Ohio fever, which sapped our strength in the 1820s. There is a migration because of the lack of economic opportunity in all regions of the state. Families are picking up and moving to the south. Young people when they graduate from high school are looking around and the economy won't support them and they are moving south. I am teaching my kids and your kids in a school system that has 24 trailers. It is going to 28 trailers this fall. We are educating everyone's children. I am not sure what is at fault. I don't know if it is the Education Funding Formula or the lack of opportunity in all Maine communities that allow educated people to remain within their community. I know we are going to continue to debate this now and in the future, but unless we take some real solid steps for economic opportunity in all regions of the state, your kids from northern and eastern Maine are going to come and be my students in my trailers.

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

Representative WHEELER: Mr. Speaker, Men and Women of the House. If there is a hot issue on the burner right now, it is school funding. I know I hear it every day when I am at my constituents' place of business, in their homes or anywhere I go in my district, I hear about the school funding issue. We need to have equity in our school funding. We don't have it now. We have big losers and we have small losers. That is not what should be happening. I think we need to support this order. Even though we do have a big migration of our students south, we still have to teach our students that we have left up there. I would ask you to support the order.

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

Representative BAKER: Mr. Speaker, Men and Women of the House. I rise today as a member of the Education

Committee. I want to speak to you about this matter. The reality is that during the 1990s a distressing gap has occurred in per person spending between property rich and property poor school districts. Last year the Education Committee was promised a School Funding Committee to study all aspects of the funding formula, but, in fact, only one issue, income and COLA, cost of living adjustment, was designated to be studied. The rest of the issues regarding the funding formula were left to something called the Essential Programs and Services Committee. That is an ongoing committee. Their job is so large and so intense that they have indicated that they will not be able to address the funding of essential programs and services issue.

The School Funding Committee that began over the summer and worked through the month, in the end, recommended the elimination of the COLA, the cost of living adjustment. The Education Committee, itself, refused that recommendation. Last year despite the efforts of some members of the committee, no legislators were allowed to sit on that committee. I welcome more legislators in this body becoming familiar with the School Funding Formula and wrestling with the issues that have been so eloquently articulated today. We need help, in my view, beyond the Education Committee. I think the idea of a legislative committee, 13 members appointed by the Speaker and by the President of the Senate, is an excellent way to further the awareness to, in fact, enlarge the arena of discussion around this issue. It can no longer stay confined in the Education Committee no matter how long we have tried and how much energy we have poured into this subject. I believe we need all of you to help us. I urge you. I encourage you. I hope that you will vote yes on the matter of this resolve. Thank you.

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

Representative RICHARD: Mr. Speaker, Men and Women of the House. I think the appropriate words are, I didn't intend to stand and speak on this subject, but I guess I will. I really didn't intend, but as one sits here and hears the truth played with lightly, it is very difficult not to speak. I have to start with some comments that were made this morning when we discussed the very first issue, the non-concurrent matter from the Senate (1-1). The chairman of the committee said if we adopted this amendment, it would be forest practices by a floor amendment. The committee has worked long and hard. It is a matter of education trying to develop sound forest practices. This could have unintended consequences. I would just like to rewrite that a little bit and say this would be a School Funding Formula by an order from the floor. The committee has worked long and hard. It is a matter of education trying to develop a sound funding formula. In the 117th Legislature, the committee worked long and hard trying to come up with a funding formula. You heard a little bit about that previously. I am not sure that all of that really happened, but they did work long and hard and they came up with a funding formula that many people thought should be given a chance.

I attended a superintendent's conference last year. I heard a person speak who probably knows more about funding formulas than any other person in the State of Maine. He said there is nothing wrong with this funding formula. Just put enough money into it and it will work. Well, the big item that we don't have is about \$150 million more dollars. That would make a big difference. That would kind of bring back that 1985 funding formula idea, at least part of it. It was only a few weeks ago that the chairman of the Essential Programs and Services Committee told us that we are not going to have enough time to come up with a formula to fund what we came up with for essential programs and services. At that time, I spoke to the commissioner and I said we have to do something. We have to

do something. What is the first course of action that we should take? At all times, we are working on a progressive plan. We are trying to work on a progressive plan to develop something that has meaning to it. At all times, we have a new program that we are going to bring about. We need to develop a funding formula that will go along with that. I don't know who will be on the Education Committee during the 119th Legislature, but I do think that there will be people there who will have the ability to do everything on the order before you.

It was said, I hear every day about people not having enough money to fund their schools. Believe me, I hear it every day, too. Number one, because I live in central Maine. I don't live in an affluent area and in the position I am in, I do hear it every day by letter, by telephone and by many numbers. For that reason, the Education Committee has worked hard and sat hard to get the highest percentage of increase that we could get for all of your schools for this year. No, it isn't at the top of where we started, but it is better than you have ever had before. I think that is good. There was a lot of concern about COLA. We adjusted the cost of living adjustment. It does make a difference to the schools downeast and northern Maine and in central Maine in the positive. How do you explain this back home? The only thing I can say to you is there is a method of figuring for every town and it was mentioned by the Representative from Mapleton that the Department of Education has volunteered to do a one or two day workshop for legislators and that would be a great opportunity for anybody who wanted to learn how it all works.

There was a committee that worked last summer. That committee met a number of times and four of us on the Education Committee that attended almost every meeting. They were open meetings. All meetings of this type are. We attended those meetings and we learned a lot and any other member of the Education Committee who had wanted to could have attended those meetings too. Practically all of the things that have been asked for were given out at those meetings. I do not feel that the Education Committee has at any time refused to discuss the funding formula. I think that is an unfortunate statement to say that we have refused to discuss the funding formula. I don't feel that I personally can vote for the motion that is on the floor.

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

Representative BUNKER: Mr. Speaker, Men and Women of the House. She is a tough person to follow and I respect the good chair of Education. I wouldn't say that this is the first time I heard the forest analogy. I must admit that when I first heard it yesterday, what would you think about a select committee to go out and wrestle with the forest issues? I had to stop and think about that for a while. As many of you know in this body, we wrestled with that issue for four months as well. When I stop to reflect on the various issues that we dealt with in our committee, logger licensing and timber harvesting and all that, I found that the committee was just open and overwhelmed by requesting this information. We wanted groups to take the issues and pick them apart and come back with a consensus and come back to us with recommendations and then the committee of jurisdiction can wrestle with the information they brought back to us. I thought it sounded very valuable. The timber harvesting issue, they had public hearings everywhere. They had 80 people all in an uproar and by the time they finally go to our committee of jurisdiction there was only about eight people there. I think that was a very valuable process.

In response to some of the other issues that were made, I guess what I am saying is if somebody wants to set a select committee up to fix all of the forest issues in the State of Maine and come back with all the magical answers, I would love to see

it and I wouldn't have a problem listening to the answers that they came back with. I heard some debate about north and south. I am trying to discourage that. I hope you realize that this order is very clear. It basically says, I heard some issues about students and where the students are migrating, if you look at the duties, section 8 impact the fluctuating student enrollments on fixed cost nature of school budgets. Ladies and gentlemen, that is not a north/south issue. It is going to take into consideration all those problems of the migration, both from the receiving town and the losing towns, effects for percentage reduction method now being used. That is not a north/south issue. Differences in the amount of property wealth behind these people and how these differences impact education tax efforts outside school funding, ladies and gentlemen, that is not a north, south, east, west, rural or urban. Benefits and economy scale, that is good professional performance. That is not a north/south issue. Impact of reduced subsidies and areas of limited economic development and high employment. By golly, ladies and gentlemen, we might have got to one of these issues that you probably could classify as a north/south issue, but it hasn't been done and I think it is important.

Let me stress and I sat down with the commissioner of Education. We talked. All of these issues would only compliment the move toward essential services. All of these issues have to be wrestled with. As you heard here earlier today, the Essential Services Study Committee is overwhelmed with just doing their part. They are not even going to be able to wrestle with the funding part. I think we can be a valuable service to move this education thing forward. I ask you to support it.

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

Representative STEDMAN: Mr. Speaker, May I pose a question through the Chair?

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

Representative STEDMAN: Mr. Speaker, Men and Women of the House. We received on our desks a yellow piece of paper with a list of the representatives. I wonder what the source of information is for this because on this most all of the schools that are represented here are getting some increase in their state funding this next year according to the latest printouts that we have to work for, for the way the material is presented in the budget this year. I am wondering what the source of the information is?

The SPEAKER PRO TEM: The Representative from Hartland, Representative Stedman has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Caribou, Representative Belanger.

Representative BELANGER: Mr. Speaker, Men and Women of the House. I truly was not going to rise, but I would be remiss as a member of the committee if I didn't. The reason I wasn't going to rise is I don't know this is the best way to address this problem, but I am going to support the motion because I think if 13 people become more knowledgeable and more educated on how the funding formula works, that will be to the benefit of the State of Maine. I think it is needed. The people who are in rural Maine that are losing money are not complaining about the loss of money that they are enduring because of lost students or because their property values are going up. Their problem is that as the state is unable to fund its portion of the School Funding Formula, the method that is used to go from what it costs down to what the state is willing to contribute does not consider ability to pay. As that gap grows, this will become a greater problem. We are only seeing the beginning. I think we

need to do something and if 13 people can meet this summer and have a better understanding, then I think that is worthwhile. Thank you.

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

Representative CHARTRAND: Mr. Speaker, Men and Women of the House. I hear a lot of frustration about the School Funding Formula. I certainly experienced that too. I think my district is getting less money this year. Even with the 6 percent added on, there are a lot of factors that lead into that. It is a complicated issue. I would encourage all of us to study the funding formula and other school issues as much as possible over the next year. I, for one, do not see a need for a legislative staff per diem and formation of a select committee to do that. We all should be educating ourselves about something as complex as the funding formula and attending a workshop as Representative Richard indicated might be available, forming study groups to look at specific regional issues around the funding formula. There are all kinds of ways of learning more about it and staking out positions, so to speak. The end result of a commission or of any of the study issues is submitting legislation for the next Legislature. That will be where the rubber hits the road whether we have a commitment or not. I don't see a need for this order and I think legislators who are concerned about these issues need to work on them throughout the rest of this year and submit legislation that reflects their studied opinion through the Education Committee and to this body and to work for the things they believe in, but I don't think we need a study committee to do this. I would encourage you to vote against the motion. Thank you.

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

Representative STANLEY: Mr. Speaker, Men and Women of the House. I will attend a workshop if they have workshops because I do want to learn. I think everyone in this body should be going to one of them workshops to learn. This is a big issue. The main reason I am in support of this is because I have problems. I have four different schools that I represent. Every one of them is getting hurt here. I am not blaming the Education Committee. I am not blaming anyone. I have a problem. I am looking at an unemployment problem in the area that I represent too. Also, the other day, two weeks ago I attended a school board meeting out in the Town of East Millinocket. It was whether to bus all our kids to Millinocket or do away with a primary school in Medway and do this. It is going to be a big cost, but it will be a savings over time, but we are giving up in my area is we are giving up schools. What is going to happen is when the unemployment levels drives up with BoWater whatever they do there it is going to be a big issue that is going to hit hard with the people in that community. In the Town of Millinocket they are paying \$24 per 1,000. In the Town of East Millinocket they are paying \$15 per 1,000. The Town of Medway they are paying \$28 per 1,000. These are issues that have to be addressed. Medway is a big receiver of state subsidies, but we are still paying \$28 a 1,000. I will come to any workshop you have on this. I recommend that people support this order. Thank you.

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

Representative RICHARD: Mr. Speaker, Men and Women of the House. I just want to respond to the idea of small groups going out and working, not to the good Representative from Kossuth Township, I did not recommend this to him, but I did recommend it to another group that you have five issues here and maybe we could have five small committees with one

member of the Education Committee on each of those five committees. That was not acceptable.

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

Representative DESMOND: Mr. Speaker, Men and Women of the House. I live in an area that does not raise enough money for the school district. I understand the need for a change and I have worked hard to change a lot of the things in the funding formula myself. My whole argument against this select committee is I don't think this is the way to do it. I don't think we need a select committee. I feel that all those people who are really concerned about the funding formula should attend that two-day workshop. I don't think that you should leave it up to a few people, 13 people, to do your work. I think that you should get busy yourself and if you ask a few people to work as a committee, you probably will not be satisfied with the end result any more than you are satisfied now because undoubtedly a committee won't be able to do what you want. I agree you need changes. I want changes, but I don't think this order will do it. I think everybody has to get educated on it. I don't think a select committee that will involve just a few people who will get educated on it is going to do it. I want to change myself, as I said, I have worked hard for changes in the funding formula because it doesn't do what I want it to do for my constituents. I want to do something myself. I would like to work with some committees. I would like to work with some people, but not on a funded committee.

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

Representative SAXL: Mr. Speaker, Men and Women of the House. I rise from a community that has gained this year over a half a million dollars. Money is coming into Bangor, not leaving it. Then you will wonder why I favor having a study. I have had people come to me over the past years who have asked to have me help them facilitate their retrieval of information from the department. They have been unable to get that information. It is always too late in the session or next year or there is always a reason. I think that frustration has led to wanting to have this study committee, if you will. Getting informed and knowledgeable about what is going to happen with the School Funding Formula and the other issues that are listed. Having access to the Department of Education and the information that is there. That is why I favor it so that this body can become more informed and have some other points of view besides the ones that have been presented to us.

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

ROLL CALL NO. 531

YEA - Ahearne, Bagley, Baker, Belanger DJ, Belanger IG, Berry RL, Bigl, Brooks, Bryant, Buck, Bumps, Bunker, Campbell, Chizmar, Clark, Clukey, Colwell, Cowger, Cross, Donnelly, Driscoll, Dunlap, Fisher, Gagne, Gerry, Goodwin, Gooley, Jabar, Jones KW, Joy, LaVerdiere, Layton, Lemaire, Lemke, Mack, McAlevey, McKee, Meres, Nickerson, O'Neal, Perkins, Perry, Pinkham WD, Plowman, Poulin, Rines, Sanborn, Saxl JW, Skoglund, Snowe-Mello, Stanley, Stevens, Tessier, Tobin, Treadwell, Volenik, Waterhouse, Wheeler EM, Winn.

NAY - Barth, Berry DP, Bodwell, Bolduc, Bouffard, Brennan, Bruno, Bull, Cameron, Carleton, Chartrand, Chick, Cianchette, Davidson, Desmond, Etnier, Farnsworth, Fisk, Foster, Frechette, Fuller, Gagnon, Gieringer, Green, Jones SA, Joyce, Joyner, Kane, Kasprzak, Kerr, Kneeland, Kontos, Labrecque, Lane, Lemont, Lindahl, MacDougall, Madore, Mailhot, Marvin, Mayo, Mitchell JE, Morgan, Murphy, Muse, Nass, O'Brien, O'Neil, Ott, Paul, Peavey, Pendleton, Pieh, Pinkham RG, Povich, Powers,

Richard, Rowe, Savage, Saxl MV, Shannon, Shiah, Sirois, Spear, Stedman, Taylor, Townsend, Tripp, True, Tuttle, Underwood, Usher, Vedral, Watson, Wheeler GJ, Winglass, Winsor, Wright.

ABSENT - Bragdon, Dexter, Dutremble, Gamache, Hatch, Honey, Jones SL, Lovett, McElroy, Quint, Samson, Thompson, Vigue, Madam Speaker.

Yes, 59; No, 78; Absent, 14; Excused, 0.

59 having voted in the affirmative and 78 voted in the negative, with 14 being absent, the Joint Order **FAILED PASSAGE**.

The Speaker resumed the Chair.

The House was called to order by the Speaker.

ENACTORS

Emergency Measure

Resolve, Regarding Legislative Review of Section 71.05(F) (11)-(13) of the Bureau of Elder and Adult Services Policy Manual, a Major Substantive Rule of the Department of Human Services, Bureau of Elder and Adult Services

(H.P. 1649) (L.D. 2279)

(C. "A" H-1080)

Reported by the Committee on **Engrossed Bills** as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 112 voted in favor of the same and 1 against, and accordingly the Resolve was **FINALLY PASSED**, signed by the Speaker and sent to the Senate.

Acts

An Act to Amend the Laws Regarding Sex Offenders

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

(C. "A" H-1056)

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 Regarding the Recommendations of the Task Force on Improving Access to Prescription Drugs for the Elderly

(H.P. 1587) (L.D. 2218)

(C. "A" H-1074)

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

On motion of Representative GERRY of Auburn, was **SET ASIDE**.

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

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

The SPEAKER: The Representative may pose her question.

Representative GERRY: Madam Speaker, Men and Women of the House. First, when will this bill take effect for the older generation that really needs this program? What will be, now, the current income guidelines?

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

Representative TOWNSEND: Madam Speaker, Men and Women of the House. Funding for this bill was included in the

Majority Report of the budget last night at a level of \$2 million. Effective fiscal year 1999, which as you know begins July 1. It covers people at 131 percent of poverty level at the moment. There is hope that once the waiver is obtained perhaps other funding will come in. The report which we adopted would allow for a report back from the Department of Human Services to the body next year with the opportunity to expand to another level of income. As it stands, it is at 131 percent of poverty level and it expands the numbers of drugs available at that income level.

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

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

The SPEAKER: The Representative may pose her question.

Representative GERRY: Madam Speaker, Men and Women of the House. Converted over the 150 or whatever percentage of the poverty level, what does it come down to on family or single income in dollars and cents now? How much of a raise in the dollar is the program now?

The SPEAKER: The Representative from Auburn, Representative Gerry has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Saco, Representative Kane.

Representative KANE: Madam Speaker, Men and Women of the House. I believe it is about \$10,000 for an individual. It may be a little bit higher or a little bit lower.

Representative MADORE of Augusta **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.

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

The Chair granted the request.

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. 532

YEA - Ahearn, Bagley, Baker, Barth, Belanger DJ, Belanger IG, Berry DP, Berry RL, Bigl, Bodwell, Bouffard, Brennan, Brooks, Bryant, Buck, Bull, Bumps, Bunker, Cameron, Campbell, Carleton, Chartrand, Chick, Chizmar, Cianchette, Clark, Clukey, Colwell, Cowger, Cross, Davidson, Desmond, Donnelly, Driscoll, Dunlap, Etnier, Farnsworth, Fisher, Fisk, Foster, Frechette, Fuller, Gagne, Gagnon, Gerry, Gieringer, Goodwin, Gooley, Green, Jabar, Jones KW, Jones SA, Joy, Joyce, Joyner, Kane, Kasprzak, Kneeland, Labrecque, Lane, LaVerdiere, Layton, Lemaire, Lemke, Lemont, Lindahl, MacDougall, Madore, Mailhot, Mayo, McAlevey, McKee, Meres, Mitchell JE, Morgan, Murphy, Nass, Nickerson, O'Brien, O'Neil, Paul, Peavey, Pendleton, Perkins, Perry, Pieh, Pinkham RG, Pinkham WD, Plowman, Povich, Powers, Richard, Rines, Rowe, Sanborn, Savage, Saxl JW, Saxl MV, Shannon, Shiah, Sirois, Skoglund, Snowe-Mello, Spear, Stanley, Stedman, Stevens, Taylor, Tessier, Tobin, Townsend, Treadwell, Tripp, True, Tuttle, Underwood, Usher, Vedral, Vigue, Volenik, Waterhouse, Watson, Wheeler EM, Wheeler GJ, Winglass, Winsor, Wright, Madam Speaker.

NAY - Mack.

ABSENT - Bolduc, Bragdon, Dexter, Dutremble, Gamache, Hatch, Honey, Jones SL, Kerr, Kontos, Lovett, Marvin, McElroy, Muse, O'Neal, Ott, Poulin, Quint, Samson, Thompson, Winn.

EXCUSED - Bruno.

Yes, 128; No, 1; Absent, 21; Excused, 1.

128 having voted in the affirmative and 1 voted in the negative, with 21 being absent and 1 excused, the Bill was

PASSED TO BE ENACTED, signed by the Speaker and sent to the Senate.

REPORTS OF COMMITTEE

Divided Report

Majority Report of the Committee on **STATE AND LOCAL GOVERNMENT** reporting **Ought to Pass** pursuant to Joint Order (H.P. 1570) on Resolve, for Laying of the County Taxes and Authorizing Expenditures of Androscoggin County for the Year 1998 (EMERGENCY)

(H.P. 1668) (L.D. 2291)

Signed:

Senators:

NUTTING of Androscoggin
LIBBY of York

Representatives:

AHEARNE of Madawaska
LEMKE of Westbrook
GIERINGER of Portland
SANBORN of Alton

Minority Report of the same Committee reporting **Ought Not to Pass** pursuant to Joint Order (H.P. 1570) on same Resolve.

Signed:

Senator:

GOLDTHWAIT of Hancock

Representatives:

KASPRZAK of Newport
GERRY of Auburn

READ.

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

The Resolve was **READ ONCE**.

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

Under further suspension of the rules the Resolve was **PASSED TO BE ENGROSSED** and sent up for concurrence.

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

REPORTS OF COMMITTEE

Divided Report

Majority Report of the Committee on **STATE AND LOCAL GOVERNMENT** reporting **Ought to Pass** pursuant to Joint Order (H.P. 1570) on Bill "An Act to Revise the Salaries of Certain County Officers" (EMERGENCY)

(H.P. 1669) (L.D. 2292)

Signed:

Senators:

NUTTING of Androscoggin
LIBBY of York

Representatives:

AHEARNE of Madawaska
LEMKE of Westbrook
BAGLEY of Machias
GIERINGER of Portland
SANBORN of Alton

Minority Report of the same Committee reporting **Ought Not to Pass** pursuant to Joint Order (H.P. 1570) on same Bill.

Signed:

Senator:

Representatives:
GOLDTHWAIT of Hancock
GERRY of Auburn
KASPRZAK of Newport

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.

REPORTS OF COMMITTEE
Divided Reports

Majority Report of the Committee on **STATE AND LOCAL GOVERNMENT** reporting **Ought to Pass** pursuant to Joint Order H.P. 1570 on Resolve, for Laying of the County Taxes and Authorizing Expenditures of Kennebec County for the Year 1998 (EMERGENCY)

(H.P. 1667) (L.D. 2290)

Signed:
Senators:

NUTTING of Androscoggin
GOLDTHWAIT of Hancock
LIBBY of York

Representatives:

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

Minority Report of the same Committee reporting **Ought Not to Pass** pursuant to Joint Order H.P. 1570 on same Resolve.

Signed:
Representative:

GERRY of Auburn

READ.

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

The Resolve was **READ ONCE**.

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

Under further suspension of the rules the Resolve was **PASSED TO BE ENGROSSED** and sent up for concurrence.

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

The House recessed until 7:00 p.m.

(After Recess)

The House was called to order by the Speaker.

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

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)

Which was **TABLED** by Representative SAXL of Portland pending the motion of Representative ETNIER of Harpswell to **ACCEPT** the Majority **Ought to Pass as Amended** Report.

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

Representative NASS: Madam Speaker, Men and Women of the House. I am really going to get indigestion doing this. LD 30 is "An Act to Exclude Intentional Tort Claims from the Application of the Maine Workers' Compensation Act of 1992." This is another workers' comp proposal that is going to cost our businesses in the state money. What they would like to do under this proposal is to include what they call intentional torts. To make this more meaningful to everybody. I think we all remember the Big Apple case that happened in Lewiston. In my opinion, this proposal grew out of that. The bottom line for me anyway is this proposal eliminates workers' comp as the exclusive remedy for employees and employers. It undermines the foundation of the entire system. No doubt in my mind that it is going to drive up workers' comp costs or cost periods for employers. It increases the burdens on businesses, especially the small businesses. This is a one sided opt out for employees, not employers. Employers will have to pay both civil litigation and workers' comp costs.

Under current law, a person can sue another person who causes harm or damage, he just can't sue the business. That was the deal made back in the early part of the century. Employees get workers' comp and employers get freedom from being sued for injuries in the workplace. This is going to change that. The issue that is being introduced here is, in many examples that are being offered although not all, were introduced in the possibility that crimes are committed in the workplace and therefore the employer should be responsible civilly for damages for those crimes committed in the workplace. That is the example of the Big Apple or the CN Brown case that happened in Lewiston several years ago. I believe that people who commit crimes should go to jail. We should deal with crimes committed in the workplace the same way we deal with crimes any place else. We prosecute criminals and we put them in jail if they are found to be guilty. It has always been the punishment of our society since its inception. This bill steers us to a monetary punishment for crimes.

In the 117th we tried to deal with part of this. We passed a manslaughter in the workplace bill to tighten up the possibility that an employer does something or is negligent and contributes to the injury or even the death, I guess, of an employee. We passed legislation in the 117th to deal with the possibility. This is a little different. This gives the opening outside of the workers' comp system for monetary damages to be paid by the employer for situations created in the workplace. This is a bizarre, unwieldy and inappropriate meshing of the criminal and civil law. No other state has this in this particular form. Thank you.

The **SPEAKER**: The Chair recognizes the Representative from Waterville, Representative Jabar.

Representative JABAR: Madam Speaker, Men and Women of the House. I would like to quote from one of my favorite politicians, former President Reagan, and respond to my good friend from Acton and say, "There you go again." Every time the

workers' compensation issue comes up, no matter what it is, it is don't touch it, costs are going to go up, it is not friendly to business and it is a bad idea. At some point in time, we have to be able to look at the workers' comp area and not have it forever cast in stone and that is what it seems to be doing. This particular bill is a very narrow area of the law and most other states have exceptions to the workers' comp law in this area of intentional torts. As a matter of fact, many of the other states have a much broader exclusion than this particular law is. In the relationship between the employee and the employer, when workers' compensation started, what was protected was what happened within the scope of employment. If an employee is involved in horseplay in the workplace, he is not entitled to workers' compensation because what he is doing is not within the scope of his employment. When you look at the other side of coin, why should an employer who is engaged in conduct that is not in the normal course of the employment gain the protection of the workers' compensation law?

What we are talking about here is intentional and criminal. It gets away from the Brown case in Lewiston because they are there talking about negligence by leaving somebody there in the workplace. We are not talking about that. We are talking about something that is intentional, such as shooting somebody, an assault, a homicide or a rape. What could possibly be the rationale for giving an employer the protection of the workers' comp law if he shoots somebody in the workplace or rapes somebody in the workplace and simply because he is the employer, he raises the defense that you are limited to workers' compensation? You can't sue me for anything other than workers' compensation benefits. As we all know, workers' compensation benefits have been curtailed significantly since 1992.

The OJ Simpson case is a prime example of a situation where someone may have committed a criminal act, but may be found not guilty and yet the victims are free to pursue a civil remedy. All this is giving any victim, who has been victimized in a workplace by an employer in conduct that is intentional, the opportunity to pursue civil remedies and not be limited to the limits that are placed upon them in the workers' compensation benefits. The number of cases we are talking about are going to be insignificant. It is not going to make a difference. I cannot imagine that it is going to make a difference in the underwriting for insurance companies protecting employers for this type of conduct. They may have to have other insurance, but other insurances don't protect them for intentional conduct and they shouldn't. This is intentional and criminal. It is a very narrow type of conduct, which employers would not be able to take advantage of the workers' compensation protection because it is not contemplated to come within the scope of protection and, therefore, I urge you to support this very narrow area in the law. Thank you.

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

Representative VIGUE: Madam Speaker, Ladies and Gentlemen of the House. I want to thank my good friend from Waterville because he kind of introduced me by saying everybody is going to be fighting changes in the workers' compensation law. I was here when this was a much more serious problem than it is right now. I recall early on in 1990, '91 and '92. Ladies and gentlemen, if you look at the history and you look at the residual market and most people who have been elected in the last few years don't really understand what the residual market is, but from 1988 to 1992, we were in such poor shape that we built up a deficit that was almost impossible. We ended up, while I was sitting as chairman of Banking and Insurance, we set up a pool to pay off the residual market. We

would charge companies \$65 million, companies who had sold even one policy in the Maine market. We then charged manufacturers, companies, your companies, \$110 million. They amortized this over a period of 10 years so that being charged this residual charge and they will probably be charged for another four or five years. You look at what was done and what we are still paying and we are still the 17th worst in the country, not the best. We are the worst. We have everyone of the New England States that are better off or better than we are as far as a lower cost. You wonder why the businesses pack up and leave the State of Maine or they set up elsewhere? We can pick away at this and this is only a little bit to help the lawyers. Ladies and gentlemen, this is a cost that will be passed onto businesses and your businesses and my businesses will have to pay them if they are opened. Unfortunately many of mine have closed. Ladies and gentlemen, this is adding a cost to doing business. When you look at the bottom line, that is exactly what keeps people in the state or removes them from the state, the bottom line. Nothing else, if the bottom line is good, they stay. If the bottom line is poor, they go where they get a better bottom line. This will add to the cost of doing business. I urge you, ladies and gentlemen, not to add this cost to your people and my people that are trying to do business in this state. I thank you.

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

Representative CARLETON: Madam Speaker, Men and Women of the House. I like the opening of my friend from Waterville. Ronald Reagan really was my favorite President and I really do like the phrase, "There you go again." Another attempt to get the foot in the door to bring back the trial litigators into the workers' compensation process. One small step, pick out an area which seems to have some sympathy. There was a recent case, which generated a lot of sympathy. It supposedly only applies to certain situations where somebody has committed a heinous crime, a murder or a felony and tried to get the exception in there so that you can get litigation back into the workers' comp system.

I have read the language in this proposed committee amendment. I will read it to you. "This section does not bar a separate tort action against the employer for injury or death caused by the employer's intentional acts which are punishable under Title 17-A, Chapter 9 or Title 17-A, Section 253." I read that and I am not quite sure what it means. You look at the sections of the criminal law that are referenced in this section and you see a list of things, murder, felony murder, manslaughter and then you also see things like reckless conduct and you start looking back and you say well, is that an intentional act? Just what exactly does this one sentence mean? A tort action under this section would be allowed against that employer's intentional acts that are punishable under Title 17-A, Chapter 9 or Title 17-A, Section 253. I have some problems just with the text of this because we are talking about a civil action, a civil lawsuit. Then we are talking about proving those acts which are punishable under Title 17-A, which is a criminal statute. You have to meet the level of proof for a criminal case. You have to have a jury. There are all kinds of questions that come to mind. The only conclusion that I can draw from it is there is going to be plenty of litigation about just exactly what this one sentence means. I think it is possible that if you interpret it one way, it would allow a civil suit for reckless conduct.

Of course, when we talk about lawsuits and allegations, any good lawyer is going to file any possible allegations that might have some basis in fact. If this passes, you may very well find that there is going to be plenty of lawsuits filed ancillary to the workers' comp claim and that, of course, is going to raise costs. There is always a cost associated with trying a legal case. I am

afraid that it is going to increase costs for employers and just generally chill business here. I think it is intended to create that crack, that opening so that further legislation can follow. Incidentally, it allows a double recovery. If this passes, you will have your remedy under the workers' comp statute, then you will have a separate remedy under a tort action. There is no offset of one against the other in the language here. You are going to have two proceedings out of every one case and actually, probably, three because if somebody has committed a crime, there is going to be the District Attorney charging somebody with a crime. So, one accident in the workplace or one act in the workplace, three separate tort actions or administrative actions. It is a bad idea and we ought not send the wrong message. I urge you to vote against the Majority Ought to Pass Report.

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

Representative PLOWMAN: Madam Speaker, Men and Women of the House. Briefly, in the State of Maine employers are corporations, limited liability companies, partnerships and sometimes they are sole proprietors, but they are called employers. Corporations will be sued as an employer for something that happens at the workplace. If you have one of your employees who rapes another employee at work and he happens to be the manager, but not the owner of the corporation, I am confused. Who are you suing? You are suing the corporation for an intentional tort. Corporations don't commit gross sexual assault against people. Corporations don't commit murder. Individuals do. It may be one of your employees who commits the offense. By the way, you don't have to be convicted of a crime for this action to take place. All you have to do is accuse someone. No conviction has to take place for this tort action to begin.

I think this is so round about, so confusing based on the definition of employer in the State of Maine that I don't think that this bill is even clear enough to pass. It is not clear how you sue a corporation for being an employer because someone was raped or murdered at a place of business. Unless you can show some kind of conspiracy theory, I guess, this is a back way into the workers' comp system. It is double or triple recovery. Frankly, if you commit a crime, we have a criminal justice system to deal with committing the crime. I don't understand how you can sue an employer when you are not even sure how they fit into the crime. You would have to be one person employing another person. That doesn't happen very often in the State of Maine. We are small businesses, but we are people who become limited liability partnerships and you can't hold a company responsible for the actions of an employee. Not the way it is written. This is too vague to be able to work. I ask you, Madam Speaker, I move to Indefinitely Postpone this bill and all its accompanying papers and I would ask for a roll call.

Representative PLOWMAN of Hampden moved that the Bill and all accompanying papers be **INDEFINITELY POSTPONED**.

The same Representative **REQUESTED** a roll call on her 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 Lewiston, Representative Shannon.

Representative SHANNON: Madam Speaker, Men and Women of the House. We have heard a hundred times in this chamber if we have heard once in the last two years what a large percentage of Maine businesses are micro-enterprises and very small businesses with fewer than five employees. I respect the owners in the store a lot. I have two questions I would like to pose through the chair.

The SPEAKER: The Representative may pose his question.

Representative SHANNON: Thank you Madam Speaker. I would like ask if current workers' comp coverage in Maine insures a business owner for commission of criminal acts? Can anyone, business owner or not, buy insurance to indemnify themselves against the penalties of the commission of a criminal act in the State of Maine?

The SPEAKER: The Representative from Lewiston, Representative Shannon has posed a series of questions through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Waterville, Representative Jabar.

Representative JABAR: Madam Speaker, Men and Women of the House. I don't believe they can. To answer the question, I do not believe that you can insure against conduct that would be criminal, intentional and criminal.

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

Representative CARLETON: Madam Speaker, Men and Women of the House. I agree with that and I would add that if this bill passes and you have a situation where a manager of your business commits one of these heinous acts and you as the owner of the business have nothing to do with it, you, the owner of the business, might be liable through no fault of your own because your manager did something. It is true that the owner of a business cannot generally obtain insurance to protect against this. Think about that.

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

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

The SPEAKER: The Representative may pose his question.

Representative SHANNON: Madam Speaker, Men and Women of the House. One question and I promise I won't rise again. As a business owner, you can buy bonds to protect yourself in case an employee commits crimes against you, such as stealing your money on the way to bank, walking out of the warehouse with a truckfull of your merchandise. You can protect yourself by purchasing bonds. I suspect, although it may be an additional cost to a business, that they could indemnify themselves against the loss for the criminal acts of an employee against another employee. I don't know what the cost would be, but I think the business owners who are in the position of having key employees they fear might commit these types of acts could find a way to insure themselves against that particular loss.

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

Representative VIGUE: Madam Speaker, Ladies and Gentlemen of the House. Through my career here, I have always been very, very skeptical of writing legislation that deals with one particular situation. I think in this particular case the responsibility was more the police than it was the business. The business was involved because of being in that location. I think the harm was done by the police trying to do what they did. When we write legislation then we create a problem that is not intended, this bothers me when we deal with one individual and we write legislation that is going to affect all the businesses in the state. I urge you to Indefinitely Postpone the bill and all its papers.

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

Representative MAILHOT: Madam Speaker, Ladies and Gentlemen of the House. I would just like to bring up one small point. I think we are getting away from the issue. The issue here is to give protection to the employee, which is any harm by the employer. We seem to be turning the issue towards employers,

businesses, insurances. The issue here is unfairness to the employee. Thank you very much.

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

Representative NASS: Madam Speaker, Men and Women of the House. Again, just to summarize a couple of points that I heard recently. An employee is injured in the workplace, the compact that workers' comp provides is the employee will get benefits from that with wages covered and medical payments made. I don't think we are getting away from the subject. Finally, good Representative Shannon in the back, suggested that if a business had an employee that the employer thought was going to harm somebody else, there is another remedy for that. How could you employ somebody if you suspected they were going to harm another employee or a customer or somebody else? The remedy for that is you fire them. I think you have that obligation. I don't think there is any doubt, at least there is not any doubt in my mind. Under this proposal, an employee is going to be able to recover both comp and civil damages. Somebody is going to pay for that. The money does not come off the tree. It is going to be paid for in insurance premiums, comp cost or whatever. It is not going to be free. Obviously it is going to be paid for by the businesses in this state. I urge you to support the Indefinite Postponement of this proposal.

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. 533

YEA - Barth, Belanger DJ, Belanger IG, Berry DP, Bigl, Bodwell, Bouffard, Bruno, Buck, Bumps, Cameron, Campbell, Carleton, Chick, Chizmar, Cianchette, Clukey, Cross, Donnelly, Foster, Fuller, Gerry, Gieringer, Gooley, Jones SA, Joy, Joyce, Joyner, Kasprzak, Kerr, Kneeland, Labrecque, Lane, Lemont, Lindahl, MacDougall, Mack, Madore, Marvin, Mayo, McAlevey, Murphy, Nass, Nickerson, O'Brien, Peavey, Pendleton, Perkins, Pinkham RG, Pinkham WD, Plowman, Richard, Savage, Sirois, Snowe-Mello, Spear, Stedman, Taylor, Tessier, Tobin, Treadwell, True, Vedral, Vigue, Waterhouse, Wheeler EM, Wheeler GJ, Winglass.

NAY - Ahearne, Bagley, Baker, Berry RL, Bolduc, Brennan, Brooks, Bryant, Bull, Bunker, Chartrand, Clark, Colwell, Cowger, Desmond, Driscoll, Dunlap, Etnier, Farnsworth, Fisher, Frechette, Gagne, Gagnon, Goodwin, Green, Hatch, Jabar, Jones KW, Jones SL, Kane, Kontos, LaVerdiere, Lemaire, Lemke, Mailhot, McKee, Meres, Mitchell JE, Morgan, O'Neil, Paul, Pieh, Povich, Powers, Quint, Rines, Rowe, Samson, Sanborn, Saxl JW, Saxl MV, Shannon, Shiah, Skoglund, Stanley, Stevens, Townsend, Tripp, Tuttle, Usher, Volenik, Watson, Wright, Madam Speaker.

ABSENT - Bragdon, Davidson, Dexter, Dutremble, Fisk, Gamache, Honey, Layton, Lovett, McElroy, Muse, O'Neal, Ott, Perry, Poulin, Thompson, Underwood, Winn, Winsor.

Yes, 68; No, 64; Absent, 19; Excused, 0.

68 having voted in the affirmative and 64 voted in the negative, with 19 being absent, the Bill and all accompanying papers were **INDEFINITELY POSTPONED** in concurrence.

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

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)

Which was **TABLED** by Representative KONTOS of Windham pending the motion of Representative HATCH of Skowhegan to **ACCEPT** the Majority **Ought to Pass as Amended Report**.

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

Representative CARLETON: Madam Speaker, Men and Women of the House. I hope you vote against the Majority Ought to Pass Report on this bill. This bill would provide cost of living increases to benefits given in workers' compensation cases. You have on your desk, or at least I think you have on your desk, a couple of different actuarial reports, which come to competing conclusions relating to the actual cost of this bill. One of them by AIS Risk Consultants talks about insurance company profits as being large in the State of Maine and I guess implying that they are so large that the cost incurred by this bill would or should or could be absorbed by them. NCCI, which is the author of the other report, estimates that the cost of workers' compensation envisioned by this bill would increase costs by 3.7 percent per year. That is \$10 million per year here in the State of Maine. I realize that the other study estimates that the cost would be increased less and I sure am not going to be talking about competing actuarial reports at 8:00 on a Friday night, so let me just say this.

About 40 percent of the workers' compensation expense in this state is incurred directly by employers in this state. In other words, they are self-insured. In other words, they set up their own program and bear their own expense directly for the workers' compensation costs that they incur. There are no insurance company excess profits there because these employers pay those costs directly. Of the remaining 60 percent of the market, 60 percent of that is incurred by Maine's employers as well through an organization called MEMIC, Maine Employers Mutual Insurance Company. It was set up in 1992 and 1993 by Maine's employers who serve on the board, run the company, collect the premiums from those Maine companies who wish to get their insurance through MEMIC. This is completely a Maine run organization. Excess insurance company profits don't come into play here either, because it is the Maine employers who run the company and they are paying the bills. If you work out the math, that leaves about 25 percent. Twenty-five percent of the workers' compensation in this state is written through true insurance companies, unlike 1987, 1988, 1989 and 1990. We have a competitive market.

There are over 100 insurance companies approved to write workers' compensation here in the State of Maine. That is up from about one or two a few years ago. The argument that somehow there are some excess profits sloshing around after this 25 percent, if true, as to a particular insurance company, that insurance company would sure find itself out of the business pretty quickly because if the rates are lower with MEMIC or any of the other 80 or 90 or 100 insurance companies, the employers of this state would get their insurance through them. Right off the bat, insurance company profits, everybody loves to hate insurance companies and especially insurance company profits. It is a red herring folks. Let's throw that right out the window. It has no basis on that discussion. There is another provision in this bill. The other provision in this bill says that the benefits are to be provided, the cost of increased benefits are going to be provided for workers injured on or after 1993. You might say, well, fine. The problem is to workers who have been injured in any particular year, there is a pot of money that is put in through the premiums collected during that year based on the

assumptions, in effect, about benefits in effect during that year. That pot of money is supposed to pay for all of the costs associated with workers injured during that particular year. If you not with me here, let me give you an example. For the year 1993, there are a bunch of premiums paid into the workers' comp insurance pot. That amount of money is supposed to pay for all the costs of employees injured during that year even if the payments are not paid out in 1993, but are paid out in 1995, 1996, 1997 or so forth. If you put away money based on actuarial assumptions and then you change the assumptions by building in an increase every year, you have created an unfunded liability as to the pot for that year. There won't be enough money at the end of the day to pay all of the expenses for that year. In fact, this is what happened in the late 1980s and the early 1990s. There was a huge unfunded liability because not enough premium money had been collected to pay out the claims, which had to be paid five, six, seven, eight or 10 years into the future. If this bill were to pass, we would be going down the same road. We would be creating unfunded liabilities. NCCI estimates them to be between \$43 and \$60 million for the years 1993 through 1998.

All of this has a familiar ring to me. I was here, as I guess I have told you before, in 1991 when we went through the turmoil and the pain of trying to get our workers' compensation system back on track. We should not incur unfunded liabilities because it just brings problems. Even with no cost of living increase and you have materials on your desk that show that other states have them, but even now when Maine doesn't have them, Maine's cost of benefits under Maine's workers' compensation system is number 17 in the country. I sometimes don't like the fact that we have a national or global economy. I am sure some of you don't either, but it is a fact. If our workers' compensation costs are higher here in the State of Maine than they are in other states, that does put us at a competitive disadvantage relative to other states. I know it has been so often by so many people that sometimes we lean back and say, there they go again. It is true. It really is true. What are we going to do. I, for one, think that there has to be a balance between the cost of workers' compensation to the employer and the benefits. There is a fairness issue here. I think the fairness issue really gets to be fair if our workers' compensation benefits are in line with the rest of the country. That way we are not hurt so much. This bill will increase the costs. It will increase the distance between us and other states as far as the cost of doing business. The benefits under the workers' compensation statute from 1993 through 1998 were what they are. Let's not change them and incur this expense that we are going to have to pay painfully this day. Let's defeat this bill and go on to other matters. Thank you.

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

Representative VIGUE: Madam Speaker, Ladies and Gentlemen of the House. To bring this close to home, let me give you part of this letter that I received from Hannaford Brothers. We all have Shop n' Save in our own districts. That is where we shop. At least most of us do. They are talking about the 1992 reform changes. It says, "Please do not touch the 1992 reform changes. Despite the improvements, our average workers' compensation expense is two times higher in Maine than in identical operations in New England. They are telling us that we are twice the rate that they pay anywhere else in New England, which is a higher cost of their doing business. Ladies and gentlemen, the worst thing in the world is the driving portion of the workers' comp prior to 1992 was COLA. That is what drove the system up. It is exactly what is causing us to have problems with social security. Social Security right now if they could modify the COLA, we would be fine. COLA is like taking

money in the bank and compounding the interest every single year. It grows to a point where in just a matter of six or seven years you can double the money.

I sat on a panel this past summer. People came from all over the country. They were site locators to find the businesses, the places where they could bring a business set up in the State of Maine. They told us, every single one to a tee. I was at the Augusta site. There was one held in Presque Isle, one in Gorham and another one in Bangor where Congressman John Baldacci sat. They told us the most harm we could do in finding businesses for the State of Maine is to touch workers' compensation. That is the worst thing we could do. Tom McBrierty of DECD has told us this numerous times. Ladies and gentlemen, I have a film. I will give you each a film if you want one that tells you exactly what I am telling your right now. That is a cost that is added to business and it is going to be harmful to the creation of jobs and adding jobs to this area.

Ladies and gentlemen, the cost in this particular addition of COLA could be as much as \$10 million. If you divide that and you start adding it on to each one of the areas that we represent, Ladies and gentlemen, we are restricting the ability of creating jobs. You talk about raising taxes. That restricts the ability of creating jobs. This would restrict the ability of creating jobs. Ladies and gentlemen, I ask you to oppose the pending motion and go on to defeat this bill. Thank you.

The SPEAKER: The Chair recognizes the Representative from Jay, Representative Samson.

Representative SAMSON: Madam Speaker, Men and Women of the House. I stand in support of LD 1192, since I sponsored it. I think it is a good bill. Let me tell you a little bit about the bill. We have been talking a little bit about workers' comp in general. This bill has been greatly amended from its original meaning. The original purpose was to give all workers' comp recipients a small increase every year after five years. That is not the case with the amendment. It has been amended so that a narrow group of people would receive a small increase, which today is about a 3 percent COLA increase after the sixth year of their disability. This would go to those that are the most severely disabled among those who collect workers' comp payments. The average increase would be 2 to 3 percent. There has been a lot of high figures floating around, \$40 million or \$10 million. The report, if you still have it from AIS Risk Consultants says \$3.2 million. That is the actuary's report. There are 300 people in the State of Maine that fall in this category. That is 300 people that have been disabled with permanent injuries over the last five years since 1993. The workers' comp rates in the state are going to continue to decrease. As projected the decrease of 10 percent next year. If we pass this bill and help those that have permanent disabilities that need an increase, at least after six years, the decrease will probably be 8 percent in the workers' comp rates. I urge you to please vote in favor of the Majority Ought to Pass Report. Thank you.

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

Representative HATCH: Madam Speaker, Men and Women of the House. I rise tonight and I am a little bit astonished. It seems that we have the same discussion every time workers' comp comes up. Don't touch it. Don't do anything or you are going to mess it up. I got news for you. This particular bill deals with real people with real problems. We saw those people at the hearings. I am sorry that not every one of you got to see these people. One young gentleman, although he had artificial devices, had both legs and an arm gone. Can you imagine it? A young man cut off in the prime of his life using artificial limbs trying to raise a family from one of the poorest counties in the

state, Washington County, with the highest unemployment rate. What do you suppose his chances are of being retrained or relocated to do something? This bill is an honest attempt to do something for those 300 individuals who, through no fault of their own, happened to be working and be in the wrong place at the wrong time. They are maimed for life.

We talk a lot about reports. I want you to know what we received from the NCCI. From the very first, I had questions. It is an insurance industry company who does actuary figures for the insurance industry. I asked for another report. It came to us late. I made sure it got distributed to both sides of the aisle. You read it in disbelief because you are still quoting \$10 million. The second report was based on Maine facts. NCCI, some of it was Maine facts and some was nationwide averages. Nobody ever came to explain it to us in any form that we could understand. Sure, the insurance industry was in the room the whole time. This is a good attempt. A small increase for the very most injured workers. What would it cost? Ten million dollars by NCCI and \$3.2 million by the actuary who did it based on Maine figures. What does that account for? One percent of the total premiums paid. Shame on you. I can't even imagine that we would do something like this. We would stand and debate about the workers' comp reforms of 1992 and we would tell people, don't touch it. Our businesses will pay for it. We will lose jobs. We have over 100 insurance companies in this state now selling workers' comp. Ask yourself, what is the reason they are here? The business climate is great. No. They like insuring injured workers. No. The number one reason they are here is big bucks. Thank you.

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

Representative PENDLETON: Madam Speaker, Ladies and Gentlemen of the House. I serve on the Labor Committee. I sat there and I listened a little bit about what was being said by the NCCI, the National Council on Compensation Insurance. This company does actuary figures for most of the companies writing business in Maine and works with them in setting the rates for the individual industries. It is a firm that had a long and respected standing. Then I picked up this other report, ASI and being a former statistician for the State of Maine, I started reading it and I noticed they seemed to have a lot of misconceptions in their report. As the good Representative Carleton mentioned before, they didn't take into consideration the self-insured. They didn't take into consideration the firm that was set up by the 1992 changes to MEMIC which has gone a long ways to helping firms in the State of Maine lower their costs. In fact, during the last two years they have lowered their rates. Lowering rates has had an interesting impact on the smaller businesses in my area that prior to that time had provided no health insurance, no real vacation time and no real wage increases. Because they had extra money coming back to them for what they had been paying out in workers' comp, they put it into their employees. I have a number of small firms that have 15 to 20 employees that now have health insurance programs for their employees and their employees families. This is a side benefit of trying to lower the rates. Our rates are still far, far too high. As you hear from one business after another, a lot of the businesses have taken what they have been able to save and lower rates in the last few years and they have put it into helping their employees.

I think one of the things that we have to look at in this particular bill is the fiscal report from our own OPLA people. It is on (H-1048). They estimate for the 1998-99 year that in personnel services we would have additional costs of \$13,600 and on the salary side an additional \$8,000 from the Highway fund. We would need an extra \$20,000 just to get to pay our

workers' comp for this coming year. Let's take into consideration that last year in the State of Maine, it was estimated that we were in debt to our employees under workers' comp for some \$60 million that we hadn't resolved yet. I don't know if this year's budget with some surplus, we will work that down or not. That is just for one year. We estimated for the state's employees that after this, based on the life expectancy of the individual and the claims that were being paid out, that there would be an extra \$120,000 a year that the State of Maine would have to pay out. That is a fairly substantial cost. I don't know how many employees it was for the State of Maine. It probably was not very many. If you looked at it from the standpoint of adding a few every years and a few drop off. It probably would balance out over time. It is \$120,000 that we are not paying now.

If you look at the average employee out in the public sector, the NCCI said \$10 million and I believe them because as Representative Carleton said, you have your pot of money that is set aside based on the laws at that time. If they have to adjust that and increase it, then they have additional costs. It is an additional cost that the employers will have to bear and we will be passing it directly off onto them. Thank you very much.

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

Representative MAYO: Madam Speaker, Ladies and Gentlemen of the House. I would just like to repeat a couple of things that have been said earlier and raise one issue or speak to one issue raised by the good Representative from Jay a few minutes ago. He is entirely correct that 300 people currently would fall within the bill that we are currently debating tonight, LD 1192. There will be more individuals in the future. That is the number of people currently. That number will increase each and every year down the road. I, too, am concerned. I talked to one of the individuals that the good Representative from Skowhegan talked about earlier. I must admit, in all candid, however, as I look at the current workers' comp system and I think back to where we were in 1992 with Maine having the highest workers' comp rates in the country and being told in 1992 that one of the major things driving those costs with COLA, I think, that should make us stop and look at what we might do here tonight if we accept the Majority Ought to Pass as Amended Report on LD 1192.

Recently the Workers' Compensation Board hired an actuarial firm called Arm Tech to look at the benefit structure here in the state. This actuarial firm recommended to the board not to increase benefits because Maine had not yet reached the national average. The board accepted and approved the recommendation of Arm Tech. Today, ladies and gentlemen, we are number 17 in the nation. We are not yet at the national average. I would urge that we not accept the Majority Ought to Pass Report and that we leave, once again, workers' compensation alone and that we revisit this entire issue at some time later, but not tonight and not this year. Thank you.

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

Representative VIGUE: Madam Speaker, Ladies and Gentlemen of the House. One thing I failed to mention previously in the letter from Hannaford Brothers, they told us how many employees were involved. We are looking at 7,800 associates in the State of Maine with 46 different store locations. This is quite a dollar amount through our payroll. Speaking of payrolls, my good friend from Skowhegan has got a very fortunate situation in Skowhegan and Madison as she is surrounded by two large paper companies that provide her people with good jobs and good pay. If I were in her situation, I might look at the situation through different eyes. I am not in that situation. I am in a situation where my mill has closed down. If I

add any more costs to it, how can I do any more than close it down and make sure it stays closed? Is that what I want to do? Ladies and gentlemen, this is terrible legislation. I am not saying I am not compassionate and I don't feel sorry for these people, but I have numerous people that are not working and I have to work in a direction of putting these people back to work. The additional cost will restrict my ability, the state's ability, of creating jobs to provide them a means of working. Ladies and gentlemen, I ask you to oppose the pending motion. Thank you.

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

Representative JABAR: Madam Speaker, Ladies and Gentlemen of the House. I will try not to repeat myself. I guess, here I go again talking about workers' compensation and the workers of this state. I cannot believe that we can look at the insurance profits and say it doesn't make a difference. In 1992, we had reform because insurance companies were crying for and they were having difficulty making business or doing business here in the State of Maine. Since that time, we see where even if this is only 25 percent and I am not sure that is correct, assuming this is only 25 percent, 25 percent of the business in the state is making \$50 million a year. Over five years is \$258 million in profits after taxes. If you look at this chart for 1996, the amount paid out in indemnity payments to workers is \$51 and that is the same amount of after tax profits by the insurance companies. The reason for this reform was because insurance companies were hurting and nobody was doing business in 1992. I submit to you that the pendulum has swung the other way and it is time to now look at where we are. The crisis is over. To ask an injured employee to wait five years before getting any type of increase is far from running an expensive system. In this state we do a lot for business. We have a lot of breaks. We give incentives, the BETR Program. We reduced the rates of workers' compensation. What have we done for workers in the State of Maine? What have we done since 1992 to assist any of the workers? When we talk about minimum wage, when we talk about doing anything to assist them with benefits we cannot do it because it is going to hurt business. At some point we have to ask ourselves and I ask you tonight, what are we doing for the Maine workers? Thank you.

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

Representative DUNLAP: Madam Speaker, Men and Women of the House. I have been reading over the Majority Report and this does send a terrible message to business and it sends a terrible message to the working people of this state as well. If you look at it closely and read the summary, it says right in black and white that an employee is entitled to an annual cost of living adjustments in workers' compensation benefits to that employer who was injured on or after January 1, 1993. What does that really mean? Well, it means that if somebody isn't able to work, they get a raise every year. Think about that. What does that really mean to you and I? It means they can do unthinkable things like provide for their family, not only put their children through school, but they will be wearing shoes the whole time. Is that really fair to the people who are working? We talked about the unfunded liability and that is another fairness issue that I would like to bring up. Why should we take the unfunded liability of the working people who are incapacitated and aren't getting any increase in their annual wages and impose that unfunded liability on perfectly profitable insurance companies. That doesn't sound good to me at all. We have been quoting some historical figures here tonight and I would like to quote a fictional antecedent to the former President who said, "Are there no prisons for these people? Are there no work houses?" You may vote however you want on this Majority

Report, but I will follow my own star. Madam Speaker, when the vote is taken, I request that it be taken by the yeas and nays.

Representative DUNLAP of Old Town **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 Yarmouth, Representative Buck.

Representative BUCK: Madam Speaker, Ladies and Gentlemen of the House. I would like to respond to the gentleman from Waterville who asked, what have we done for the workers in the last five years? Very quickly, it brings to my mind the fact that last year through a \$60 million tax break to BIW and the use of the BETR Program we have insured that over 5000 shipyard jobs will continue at that facility for probably 20 years. In addition to that, that same BETR Program down in South Portland provided National Semiconductor the ability to provide hundreds of new jobs with an average pay of around \$55,000 a year. Thank you.

The SPEAKER: The Chair recognizes the Representative from Gardiner, Representative Colwell.

Representative COLWELL: Madam Speaker, Men and Women of the House. I rise to speak on this issue because I am both a small businessman and I am a worker. I think it is important to get my perspective on this since I represent both sides of this story. The fact is I appreciate the decrease in my insurance premiums, but the other side of that is that I have a young man who works for me who is 24 years old and has two young children and a wife. As much as I like those savings that I get to put in my pocket or reinvest in my business, in my heart and what we are talking about here are the most seriously injured workers in the State of Maine. In my heart, if my worker, God forbid, gets hurt on the job and becomes one of these statistics, I don't want to save that money at the expense of him and his family and his ability to provide for them. Actually, I just don't want that money. I don't think that is where we need to be getting the savings. I think we need to be getting the savings from smart management or reducing fraud and we are doing all those things. We don't need to be saving money on the back of the most seriously injured of our Maine workers.

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

Representative VOLENIK: Madam Speaker, Men and Women of the House. Briefly, a worker injured while loyally serving his employer, an employer that both contributes to his community and is benefited by that community, that worker is just as much a hero as the citizen soldier injured or wounded while serving his country that also both contributes to his community and is served by that community. He or she deserves honor, respect and if need be, financial support in a world of constantly inflating expenses. Thank you.

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

Representative MACK: Madam Speaker, Right Honorable Men and Women of the House. The obligatory line, I wasn't prepared to speak on this, but I was sitting up in the House Republican Office and I heard a comment that I had to respond to. I wanted to explain briefly how the free market is working in this situation. I heard that there was a problem because there were high profits made by some of the insurance companies. We don't know if this is true or not. I have heard some other members speak on the floor saying these profits might not be as high as some of the graphs we have seen. Back in 1990, we had the second worst workers' comp rates in the country. We made the reforms in 1992 and things got better. Many more

companies have come in and they have had profit doing business here. If accurate, these profits tended to be high. If these profits are high, more companies came in trying to get a piece of that pie. If the profits are still high, more companies and more companies will come into Maine and compete for the business of these insurance contracts. It will lower the price and have more competition and more choice, not only on prices of contracts, but services. Things are going to get better and better. Remember, we are still the 17th worst in the country. There is a lot of room for things to get better. We all want to be able to attract businesses to this state. Lowering the cost of doing business will bring more businesses in Maine. The free market is working. We are still a bad state in the cost of doing business, but it is getting better. Please don't through a monkey wrench into what is working.

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

Representative VIGUE: Madam Speaker, Ladies and Gentlemen of the House. This is the last time that I will be getting up concerning workers' compensation. Some of you people will be more than happy to see me leave, but let me tell you what I did as far as running a business in the Waterville area. I wavered myself and my wife off from workers' compensation so I wouldn't have to pay it, not because I didn't want to have it. I took probably the two most important people in the business, myself and my wife, off of it. I couldn't afford to pay it. I took a chance and there were times when I did get hurt, but there was no coverage because I couldn't afford to pay it. We are going down the path of returning to this area of destruction. You can build it up and allow it to go in that direction, but, ladies and gentlemen, you are going to have to face up to it in the future. We could not take care of it, as a body, prior to 1992 and it was done by an outside force, an outside group. It wasn't done by the Legislature. We kept adding and adding and adding. It kept getting worse and worse and worse. We start this ladies and gentlemen and it is easy to start something else and in the future you are going to have to relook at workers' compensation and probably have to rework it again. I ask you ladies and gentlemen, as a grand farewell, to please oppose the pending motion. Thank you.

The SPEAKER: The Chair recognizes the Representative from Carmel, Representative Treadwell.

Representative TREADWELL: Madam Speaker, Ladies and Gentlemen of the House. I have been sitting here listening to some of the comments about the extremely high profits that the insurance companies were making on workers' comp. We heard the Representative from Wells go through the explanation of who is writing workers' comp insurance in the State of Maine. The two biggest insurers are the self-insured group and MEMIC. They write approximately 75 percent of the insurance. If you take the AIS Risk Consultants handout that has been referred to by several people here tonight, they tell us that the insurance companies profits have exceeded \$250 million in the last five years. If we take that \$150 million of annual premium and multiply that by the 25 percent market share that the for profit insurers are writing, we are going to come up with somewhere around \$37,500 worth of premium per year. You multiply that times five years and I don't think that you can put a lot of stock in the figures that we see in the first page of the sheet that I am looking at. That is only one of the most glaring errors that I saw in this. The State of Maine uses the National Council of Compensation Insurers and they have for several years. I don't know who AIS Risk Consultants are, but in the committee work I know a lot of disparaging comments were made about NCCI and because they were not from Maine, they were from other state. I notice that this company is also not from Maine. I really don't

know if we can trust these figures anymore than we could NCCI's figures.

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

Representative BODWELL: Madam Speaker, Ladies and Gentlemen of the House. I remember about a month ago when we were told by the good Representative from Portland that it was not the job of the Legislature to micromanage the affairs of businesses in the State of Maine. I keep hearing a lot of talk about the high profit that the insurance companies are gaining in this state. I owned a business back in the early '90s and I remember when I could only buy workers' comp insurance from one company and it wasn't a lot of fun. We were forced to pay to one company. We had no where else to go. If the rates were too high for us to afford, that was the only option we had. Again, I wanted to mention what the chairman of my committee mentioned from DECD. The worst thing that we could do in this Legislature is to change our workers' comp system. It is not so much the profits that are being made by the companies, it is the cost for the small companies in the State of Maine. The single most important thing we can do to employees in the state is to keep the cost of business low so that we can keep good jobs and hopefully bring in more good jobs into the State of Maine. I would like to urge you to defeat the motion. Thank you.

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

Representative STANLEY: Madam Speaker, Men and Women of the House. I hope everybody in this room has read the annual report of the status of the Workers' Compensation System. I think if you don't, you should. It is quite a piece of document right there. It tells you about the history of the system. We were in bad shape back in late '80s and early '90s where we came in and created MEMIC and we did other things to improve the system. By creating MEMIC we improved a lot of the safety in the state. It has done a fairly good job. There is nothing wrong with that. Also in the Workers' Compensation Act of 1992, no major changes were made to this legislation right here in the 118th. Last year we did the Workers' Advocate System that costs \$600,000. It added some monitoring. It added 10 advocates and two auditors to cover the monitoring to make sure that everybody is in compliance, which is good. Also, Cooper and Lambert did a study of \$100,000, which was done by the Bureau of Insurance, Bureau of Labor and the Workers' Compensation Board. We also have it so an occupational disease study has been done to protect the workers and to protect employers to make sure that people are trained and things like that so they don't get hurt. We have also installed TV ads and let the injured worker know that there is something out there to protect them. Also, we have gone ahead and got the Workers' Compensation Board, which is a four and four board, to work together to solve issues that are directly related to them. We have done a lot here. The thing that we haven't done is that 40 percent of the companies with approved workers' compensation rates allowed to do business in the State of Maine are from states that have cost of living adjustments. I hear we are the 17th worst in the country. Fifteen states have cost of living adjustments and seven of them are from New Hampshire that does business in the state. Thirteen are from Massachusetts that do business in the state. California has nine. Illinois has 18 businesses in the state. Maryland has five. Minnesota has three and Washington two. We got 52 insurance companies from out of state or cost of living states that are in the state that are allowed to write workers' compensation policies, which is 40 percent of the companies. That is 52 companies out of 130. That would give you 40 percent. The philosophy of the employers today to make their employees feel like they are part of the company. It is just an

employee that has values to the company. A cost of living adjustment is just one of the changes that should be made to this system because the companies value their employees and if a person gets hurt then they ought to take the responsibility to do what they have to do to make sure their employee is well taken care of. I will tell you if I were running a business and the people that were running the businesses in the state, you should ask their workers' compensation insurer when they purchase their insurance if their employees are going to be treated as a valued employee should they get hurt on the job and not as a liability to the insurance company. With that, I recommend you accept the Majority Ought to Pass Report.

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

Representative POVICH: Madam Speaker, Men and Women of the House. I am a small business owner, as you know. I zealously advocate for small business. You know that. My votes usually reflect what I think bodes well for all of Maine. I think all of Maine is small business. I have enjoyed the decrease in my workers' comp rates, but as a legislator I am troubled and worried that we have gone a little too far and we need a midcourse correction. I don't say undertake these remarks lightly. I get the calls that the workers aren't getting the same fair shake as the employers. I have been touched by these remarks today from my colleagues. I can support this bill. I hadn't planned to support this bill. I hadn't plan to talk. I am going to support this bill. If it goes too far, then we can fix it. Colleagues, please support the motion.

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

Representative MACDOUGALL: Madam Speaker, Ladies and Gentlemen of the House. Just two quick points. The company I work at in southern Maine has about 650 employees. If the workers' comp rates go up, it will impact us in our ability to expand or reflect in our benefits and cost of living raises for 650 working families. Number two, being a member of the Business and Economic Development Committee, one of the things that Tom McBriety and others that came before us in our committee talk about strategy of economic development to attract businesses to Maine. This is not the way to do it. Thank you.

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

ROLL CALL NO. 534

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

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

ABSENT - Bragdon, Davidson, Dexter, Dutremble, Fisk, Gamache, Honey, Layton, Lovett, McElroy, Muse, O'Neal, Perry, Poulin, Shannon, Thompson, Underwood, Winn.

Yes, 67; No, 66; Absent, 18; Excused, 0.

67 having voted in the affirmative and 66 voted in the negative, with 18 being absent, the Majority Ought to Pass as Amended Report was **ACCEPTED**.

The Bill was **READ ONCE**. Committee Amendment "A" (H-1005) was **READ** by the Clerk and **ADOPTED**.

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

Representative DONNELLY of Presque Isle moved that the Bill and all accompanying papers be **INDEFINITELY POSTPONED**.

Representative SAXL of Portland **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: A roll call has been ordered. The pending question before the House is Indefinite Postponement of the Bill and Accompanying Papers. All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 535

YEA - Barth, Belanger DJ, Belanger IG, Berry DP, Bigl, Bodwell, Bouffard, Bruno, Buck, Bumps, Cameron, Campbell, Carleton, Chick, Chizmar, Cianchette, Clukey, Cross, Donnelly, Fisher, Foster, Gieringer, Gooley, Jones SA, Joy, Joyce, Joyner, Kasprzak, Kerr, Kneeland, Labrecque, Lane, Lemont, Lindahl, MacDougall, Mack, Madore, Marvin, Mayo, McAlevey, Murphy, Nass, Nickerson, O'Brien, Ott, Peavey, Pendleton, Perkins, Pinkham RG, Pinkham WD, Plowman, Savage, Snowe-Mello, Spear, Stedman, Taylor, Tessier, Tobin, Treadwell, True, Vedral, Vigue, Waterhouse, Wheeler EM, Winglass, Winsor.

NAY - Ahearn, Bagley, Baker, Berry RL, Bolduc, Brennan, Brooks, Bryant, Bull, Bunker, Chartrand, Clark, Colwell, Cowger, Desmond, Driscoll, Dunlap, Etnier, Farnsworth, Frechette, Fuller, Gagne, Gagnon, Gerry, Goodwin, Green, Hatch, Jabar, Jones KW, Jones SL, Kane, Kontos, LaVerdiere, Lemaire, Lemke, Mailhot, McKee, Meres, Mitchell JE, Morgan, O'Neil, Paul, Pieh, Povich, Powers, Quint, Richard, Rines, Rowe, Samson, Sanborn, Saxl JW, Saxl MV, Shannon, Shiah, Sirois, Skoglund, Stanley, Stevens, Townsend, Tripp, Tuttle, Usher, Volenik, Watson, Wheeler GJ, Wright, Madam Speaker.

ABSENT - Bragdon, Davidson, Dexter, Dutremble, Fisk, Gamache, Honey, Layton, Lovett, McElroy, Muse, O'Neal, Perry, Poulin, Thompson, Underwood, Winn.

Yes, 66; No, 68; Absent, 17; Excused, 0.

66 having voted in the affirmative and 68 voted in the negative, with 17 being absent, the motion to **INDEFINITELY POSTPONE** the Bill and all accompanying papers **FAILED**.

Subsequently, under suspension of the rules the Bill was **PASSED TO BE ENGROSSED** as Amended by Committee Amendment "A" (H-1005) and sent up for concurrence.

ENACTORS

Emergency Measure

An Act Relating to Electric Industry Restructuring

(H.P. 1655) (L.D. 2285)

(S. "A" S-617)

Reported by the Committee on **Engrossed Bills** as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being

necessary, a total was taken. 109 voted in favor of the same and 1 against, and accordingly the Bill was **PASSED TO BE ENACTED**, signed by the Speaker and sent to the Senate.

Emergency Measure

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

(H.P. 1650) (L.D. 2281)
(C. "A" H-1084)

Reported by the Committee on **Engrossed Bills** as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 119 voted in favor of the same and 0 against, and accordingly the Resolve was **FINALLY PASSED**, signed by the Speaker and sent to the Senate.

Acts

An Act to Amend the Health Insurance Benefits of State Employees and Teachers Who Retire or Terminate Service

(S.P. 707) (L.D. 1955)
(C. "A" S-623)

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.

ENACTORS

Acts

An Act to Ensure Long-term Funding of the Maine Agricultural Experiment Station Research Farms Connected with Land Grant Colleges

(H.P. 1440) (L.D. 2004)

(H. "A" H-1029 and S. "A" S-605 to C. "A" H-929)

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.

CONSENT CALENDAR

First Day

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

(S.P. 803) (L.D. 2173) Bill "An Act to Correct Errors and Inconsistencies in the Laws of Maine" (EMERGENCY) Committee on **JUDICIARY** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-622)**

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

There being no objection, the Senate Paper was **PASSED TO BE ENGROSSED AS AMENDED** in concurrence.

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

On motion of Representative CHIZMAR of Lisbon, the House adjourned at 8:55 p.m., until 10:00 a.m., Monday, March 30, 1998 in tribute to Philip Roy, of Lisbon Falls.