

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD
OF THE
One Hundred and Twelfth
Legislature
OF THE
STATE OF MAINE

VOLUME I
SECOND REGULAR SESSION
January 8 - April 2, 1986

The House was called to order by the Speaker.
Prayer by Reverend Richard Hasty, First Parish Church, Portland.
The Journal of Thursday, February 27, 1986, was read and approved.
Quorum call was held.

PAPERS FROM THE SENATE

The following Communication:

The Senate of Maine
Augusta

February 27, 1986

The Honorable John L. Martin
Speaker of the House
112th Legislature
Augusta, Maine 04333

Dear Speaker Martin:

In accordance with Joint Rule 38, please be advised that the Senate today overrode the recommendation of the Joint Standing Committee on Agriculture and confirmed the Governor's nomination of Barbara Gottschalk of Brunswick for Appointment as the Commissioner of the Department of Agriculture.

Barbara Gottschalk is replacing Stewart Smith.

Sincerely,

S/Joy J. O'Brien
Secretary of the Senate

Was read and ordered placed on file.

RESOLVE, Authorizing the Commissioner of Marine Resources to Lease Lands and Buildings in West Boothbay Harbor (S.P. 821) (L.D. 2076)

Came from the Senate, referred to the Committee on Marine Resources and Ordered Printed.

Was referred to the Committee on Marine Resources in concurrence.

Unanimous Ought Not To Pass

Report of the Committee on Transportation reporting "Ought Not to Pass" on RESOLVE, Authorizing a Study Relating to Bioptics and Drivers' Licenses (S.P. 766) (L.D. 1943)

Report of the Committee on Transportation reporting "Ought Not to Pass" on Bill "An Act to Prohibit the Use of Public Money for the Construction or Maintenance of Private Ways" (Emergency) (S.P.

714) (L.D. 1839)

Were placed in the Legislative Files without further action pursuant to Joint Rule 15 in concurrence.

Unanimous Leave to Withdraw

Report of the Committee on Aging, Retirement and Veterans reporting "Leave to Withdraw" on Bill "An Act to Equalize the Right to Military Leave Credits under the Maine State Retirement System for Vietnam Veterans" (S.P. 692) (L.D. 1778)

Report of the Committee on Utilities reporting "Leave to Withdraw" on Bill "An Act Concerning the Sale Price of Public Utility Property" (S.P. 752) (L.D. 1916)

Were placed in the Legislative Files without further action pursuant to Joint Rule 15 in concurrence.

Non-Concurrent Matter

Bill "An Act to Validate Proceedings Authorizing the Issuance of Bonds to Remodel the Waldo County Court Building" (Emergency) (H.P. 1461) (L.D. 2058) which was referred to the Committee on Local and County Government in the House on February 24, 1986.

Came from the Senate under suspension of the rules and without reference to a Committee, the Bill read twice and passed to be engrossed in non-concurrence.

The House voted to recede and concur.

Non-Concurrent Matter

Bill "An Act to Validate Proceedings Authorizing the Issuance of Bonds for a Cooperative Extension Service Facility in Waldo County" (Emergency) (H.P. 1462) (L.D. 2059) which was referred to the Committee on Local and County Government in the House on February 24, 1986.

Came from the Senate under suspension of the rules and without reference to a Committee, the Bill read twice and passed to be engrossed in non-concurrence.

The House voted to recede and concur.

COMMUNICATIONS

The following Communication: (H.P. 1480)

State of Maine
Department of State
State House Station 101
Augusta, Maine 04333

DIVISION OF PUBLIC ADMINISTRATION

February 28, 1986

To the Honorable 112th Legislature of the State of Maine
Attention: House of Representatives, Clerk Pert

I have the honor to transmit herewith an initiated bill, "AN ACT to Prohibit the Promotion and Wholesale Promotion of Pornographic Material in the State of Maine" and the results of the examination by this office of the initiative petitions relative to it.

The minimum number of valid signatures required to initiate this legislation is 46,030. These petitions were filed by the constitutionally mandated date of February 3, 1986. After extensive review we have determined the number of valid signatures is 48,474.

In view of the foregoing determination, I hereby certify that these petitions have met the constitutional requirement of the minimum of 46,030 valid signatures. Since the petitions have previously satisfied the constitutional requirements in all other respects, under the provisions of Article IV, Part Third, Section 18, of the Constitution of Maine, I do hereby declare this initiative petition to be valid.

In the event the Legislature rejects this initiative proposal, a referendum election will be called for November, 1986.

Respectfully,

S/James S. Henderson
Deputy Secretary of State

Was read and ordered placed on file and sent up for concurrence.

On motion of Representative DIAMOND of Bangor, the accompanying Bill I.B. 2, L.D. 2092 Bill "An Act to Prohibit the Promotion and Wholesale Promotion of Pornographic Material in the State of Maine" was referred to the Committee on Legal Affairs, ordered printed and sent up for concurrence.

The following Communication: (H.P. 1481)

State of Maine
Department of State
State House Station 101
Augusta, Maine 04333

Division of Public Administration

February 28, 1986

To the Honorable 112th Legislature of the State of Maine

Attention: House of Representatives, Clerk Pert

I have the honor to transmit herewith an initiated bill, "AN ACT to Prohibit Mandatory Local Measured Service and to Preserve Affordable Traditional Flat Rate Local Telephone Service at as Low a Cost as Possible" and the results of the examination by this office of the initiative petitions relative to it.

The minimum number of valid signatures required to initiate this legislation is 46,030. These petitions were filed by the constitutionally mandated date of February 3, 1986. After extensive review we have determined the number of valid signatures is 53,090.

In view of the foregoing determination, I hereby certify that these petitions have met the constitutional requirement of the minimum of 46,030 valid signatures. Since the petitions have previously satisfied the constitutional requirements in all other respects, under the provisions of Article IV, Part Third, Section 18, of the Constitution of Maine, I do hereby declare this initiative petition to be valid.

In the event the Legislature rejects this initiative proposal, a referendum election will be called for November, 1986.

Respectfully,

S/James S. Henderson
Deputy Secretary of State

Was read and ordered placed on file and sent up for concurrence.

On motion of Representative DIAMOND of Bangor, the accompanying Bill I.B. 3, L.D. 2093 Bill "An Act to Prohibit Mandatory Local Measured Service and to Preserve Affordable Traditional Flat Rate Local Telephone Service at as Low a Cost as Possible" was referred to the Committee on Utilities, ordered printed and sent up for concurrence.

PETITIONS, BILLS AND RESOLVES
REQUIRING REFERENCE

The following Bills and Resolves were received and, upon the recommendation of the Committee on Reference of Bills, were referred to the following Committees, Ordered Printed and Sent up for Concurrence:

Appropriations and Financial Affairs

Bill "An Act Authorizing the Acceptance of Federal Block Grants and Making Allocations from the Federal Block Grants for the Expenditures of State Government" (Emergency) (H.P. 1482) (L.D. 2094) (Presented by Representative CHONKO of Topsham) (Cosponsors: Representatives NADEAU of Lewiston, FOSTER of Ellsworth and Senator BERUBE of Androscoggin) (Submitted by the Department of Finance and Administration pursuant to Joint Rule 24)

(Ordered Printed)
Sent up for concurrence.

TABLED AND ASSIGNED

Bill "An Act to Establish the Maine State Parks Development Fund" (H.P. 1483) (L.D. 2095) (Presented by Representative MCGOWAN of Canaan) (Cosponsors: Representatives SMITH of Mars Hill, MITCHELL of Freeport and Senator PEARSON of Penobscot) (Submitted by the Department of Conservation pursuant to Joint Rule 24)

(The Committee on Energy and Natural Resources had been suggested.)

On motion of Representative Michaud of Medway, tabled pending reference and specially assigned for Monday, March 3, 1986.

PASSED TO BE ENGROSSED

RESOLVE, to Extend the Reporting Deadlines for the Joint Select Committee on Nursing Care Needs and the Special Commission to Study the Utilization of Vacant Buildings at Pineland Center" (Emergency) (H.P. 1484) (L.D. 2096) (Presented by Representative DIAMOND of Bangor) (Cosponsors: Speaker MARTIN of Eagle Lake and President PRAY of Penobscot) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27)

Under suspension of the rules and without reference to any committee, the Resolve was read twice, passed to be engrossed and sent up for concurrence.

Labor

Bill "An Act to Encourage Prompt Payment of Benefits Due under the Workers' Compensation Act" (H.P. 1485) (L.D. 2097) (Presented by Representative HIGGINS of Portland) (Cosponsor: Representative MICHAUD of Medway) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26)

Bill "An Act Relating to Medicaid and Other Services and Payments Pending Hearing and Decisions under the Workers' Compensation Act" (H.P. 1486) (L.D. 2098) (Presented by Speaker MARTIN of Eagle Lake) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26)

Bill "An Act to Require Prompt Payment of Medical Bills under the Workers' Compensation Act" (H.P. 1487) (L.D. 2099) (Presented by Representative HIGGINS of Portland) (Cosponsor: Representative MICHAUD of Medway) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26)

(Ordered Printed)
Sent up for concurrence.

Legal Affairs

Bill "An Act Relating to the Age of Employees who may Receive Payment or be in the Direct Handling of Liquor on the Licensed Premises" (H.P. 1488) (L.D. 2100) (Presented by Representative PARADIS of Augusta) (Cosponsors: Representatives WALKER of Norway, DILLENBACK of Cumberland and JACQUES of Waterville) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27)

(Ordered Printed)
Sent up for concurrence.

State Government

Bill "An Act Providing for the 1986 Amendments to the Finance Authority of Maine Act" (H.P. 1489) (L.D. 2105) (Presented by Speaker MARTIN of Eagle Lake) (Cosponsors: Senators MCBREAIRTY of Aroostook, ANDREWS of Cumberland and President PRAY of Penobscot) (Submitted by the Finance Authority of Maine pursuant to Joint Rule 24)

(Ordered Printed)
Sent up for concurrence.

Taxation

Bill "An Act Concerning the Insurance Premium Tax" (H.P. 1490) (L.D. 2101) (Presented by Representative HIGGINS of Portland) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26)

(Ordered Printed)
Sent up for concurrence.

Utilities

Bill "An Act Concerning Professional Employees of the Public Advocate" (H.P. 1491) (L.D. 2102) (Presented by Representative VOSE of Eastport) (Cosponsors: Representatives CLARK of Millinocket, RICHARD of Madison and Senator BALDACCI of Penobscot) (Submitted by the Office of Public Advocate pursuant to Joint Rule 24)

Bill "An Act to Permit Industrial Electric Consumers to Purchase Energy from and through Transmission Lines Carrying Energy from Canada through the State" (H.P. 1493) (L.D. 2104) (Presented by Representative MCGOWAN of Canaan) (Cosponsors: Representatives VOSE of Eastport, WILLEY of Hampden and Senator BALDACCI of Penobscot) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26)

(Ordered Printed)
Sent up for concurrence.

Study Report -
Committee on Business and Commerce

Representative BRANNIGAN from the Committee on Business and Commerce to which was referred by the Legislative Council the Study Relative to Handling Fees and Recapture of Unclaimed Refunds under the Returnable Container Law have had the same under consideration and ask leave to submit its findings and to report that the accompanying Bill "An Act Relating to Handling Fees and Unredeemed Deposits in the Returnable Container Law" (Emergency) (H.P. 1492) (L.D. 2103) be referred to the Joint Standing Committee on Business and Commerce for Public Hearing and printed pursuant to Joint Rule 19.

Report was read and accepted, and the bill referred to the Committee on Business and Commerce, ordered printed and sent up for concurrence.

ORDERS

On motion of Representative MCSWEENEY of Old Orchard Beach, the following Order:

ORDERED, that Representative Maynard G. Connors of Franklin be excused February 27 for Legislative Business.

AND BE IT FURTHER ORDERED, that Representative Kerry E. K. Kimball of Buxton be excused February 25 and 26 due to illness.

Was read and passed.

REPORTS OF COMMITTEES

Unanimous Leave to Withdraw

Representative JACQUES from the Committee on Energy and Natural Resources on Bill "An Act to Regulate the Surface Discharge of Ground Water Withdrawn for Use in Heat Pumps" (H.P. 1322) (L.D. 1857) reporting "Leave to Withdraw"

Representative AYER from the Committee on Agriculture on Bill "An Act to Increase the Penalty for Violation of the Provisions of the Pesticide Control Laws" (H.P. 1244) (L.D. 1754) reporting "Leave to Withdraw"

Were placed in the Legislative Files without further action pursuant to Joint Rule 15 and sent up for concurrence.

Refer to the Committee on Judiciary

Representative BRANNIGAN from the Committee on Business and Commerce on Bill "An Act to Guarantee Insurance Coverage for Child Care Centers and Family Day Care Providers Licensed by the State" (H.P. 1394) (L.D. 1966) reporting that it be referred to the Committee on Judiciary.

Report was read and accepted and the bill referred to the Committee on Judiciary and sent up for concurrence.

CONSENT CALENDAR

FIRST DAY

In accordance with House Rule 49, the following items appeared on the Consent Calendar for the First Day:

(S.P. 741) (L.D. 1894) RESOLVE, Amending the Reporting Date of the Joint Select Committee for Learning Disabled Children (Emergency) Committee on Education reporting "Ought to Pass" as amended by Committee Amendment "A" (S-382)

(H. P. 1366) (L.D. 1930) Bill "An Act to Clarify the Education Funding Laws Relating to Reduction of State Aid to School Districts Based on the Receipt of Certain Federal Funds" Committee on Education reporting "Ought to Pass" as amended by Committee Amendment "A" (H-539)

There being no objections, the above items were ordered to appear on the Consent Calendar of Monday, March 3, 1986 under the listing of Second Day.

CONSENT CALENDAR

SECOND DAY

In accordance with House Rule 49, the following items appeared on the Consent Calendar for the Second Day:

(H.P. 1363) (L.D. 1917) Bill "An Act to Remove Barriers to the Appropriate Disclosure of Mental Health Information"

(H.P. 1326) (L.D. 1861) Bill "An Act Concerning the Open Time for Polls on Election Day" (C. "A" H-536)

No objections having been noted at the end of the Second Legislative Day, the House Papers were passed to be engrossed or passed to be engrossed as amended and sent up for concurrence.

(H.P. 1284) (L.D. 1801) Bill "An Act to Clarify and Make Corrections in the Election Laws" (C. "A" H-537)

On objection of Representative Bost of Orono, was removed from the Consent Calendar, Second Day.

Subsequently, the Committee Report was accepted and the bill read once.

Committee Amendment "A" (H-537) was read by the Clerk and adopted and the bill assigned for second reading Monday, March 3, 1986.

(H.P. 1349) (L.D. 1885) Bill "An Act Concerning the Court Appointed Special Advocate Program and the Conduct of Court Appointed Special Advocates" (C. "A" H-538)

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

SECOND READERS

TABLED AND ASSIGNED

Bill "An Act Concerning State Contributions to Pollution Abatement" (H.P. 1469) (L.D. 2071)

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

On motion of Representative Law of Dover-Foxcroft, tabled pending passage to be engrossed and specially assigned for Monday, March 3, 1986.

As Amended

LATER TODAY ASSIGNED

Bill "An Act to Expand and Continue Alcoholism Treatment, Education, Prevention and Research Programs" (H.P. 951) (L.D. 1370) (C. "A" H-532)

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

On motion of Representative Diamond of Bangor, tabled pending passage to be engrossed and later today assigned.

TABLED AND ASSIGNED

Bill "An Act to Create an Ongoing Cooperative Association Between the Department of Marine Resources and the University of Maine." (S.P. 719) (L.D. 1842) (C. "A" S-381)

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

On motion of Representative Diamond of Bangor, tabled pending passage to be engrossed and specially assigned for Monday, March 3, 1986.

PASSED TO BE ENACTED

Emergency Measure

An Act to Provide Immunity from Civil Liability for Court Mediators (S.P. 700) (L.D. 1785) (C. "A" S-380)

Was reported by the Committee on Engrossed Bills

as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 120 voted in favor of the same and none against and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

Emergency Measure

An Act To Create the Job Protection Act (S.P. 718) (L.D. 1841) (C. "A" S-378)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 119 voted in favor of the same and none against and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

Emergency Measure

An Act to Expand the Maine Conservation Corps (H.P. 1251) (L.D. 1761) (C. "A" H-524)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 115 voted in favor of the same and none against and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

Emergency Measure

An Act Concerning Required Request for Organ Donation (H.P. 1444) (L.D. 2036)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 117 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.

An Act to Clarify the Status of Vocational Education in Washington County (S.P. 673) (L.D. 1741)

Was 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 Relating to Public Utility Service Charge Liens (H.P. 1204) (L.D. 1711) (C. "A" H-525)

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

The SPEAKER: The Chair recognizes the

Representative from Eastport, Representative Vose.

Representative VOSE: Mr. Speaker, Ladies and Gentlemen of the House: I simply want to read into the Record that the lien in this bill refers to any utility, even though the Statement of Fact uses water utilities as an example.

Subsequently, the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

An Act to Amend the Date on Which Quarterly Campaign Reports are Due (H.P. 1206) (L.D. 1713) (C. "A" H-515)

An Act Relating to the Surplus Lines Insurance Law (H.P. 1226) (L.D. 1733) (C. "A" H-519)

An Act to Fund Elderly Legal Services in Northern and Eastern Maine Communities (H.P. 1233) (L.D. 1742) (C. "A" H-517)

An Act Regarding Funds Generated by the Sales of Duck Stamps and Prints (H.P. 1301) (L.D. 1817) (C. "A" H-521)

An Act to Amend the Quarterly Reporting Requirements for Municipalities not Receiving General Assistance Reimbursements (H.P. 1333) (L.D. 1870) (C. "A" H-518)

An Act to Clarify the Provisions Relating to the Proration of Property Taxes (H.P. 1371) (L.D. 1935)

An Act to Exempt Nonprofit Hospice Organizations from the Sales Tax (H.P. 1438) (L.D. 2029) (H. "A" H-527)

An Act to Establish a One-day Fishing License (H.P. 1449) (L.D. 2042)

An Act to Clarify Sales of Surplus Vehicles at State Auction (H.P. 1450) (L.D. 2047)

Were reported by the Committee on Engrossed Bills as truly and strictly engrossed, passed to be enacted, signed by the Speaker and sent to the Senate.

RESOLVE, Authorizing the Sale of Certain Public Lands in Lewiston (S.P. 747) (L.D. 1911)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed, finally passed, signed by the Speaker and sent to the Senate.

ORDERS OF THE DAY

LATER TODAY ASSIGNED

The Chair laid before the House the first matter of 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 Rule 24.

RESOLVE, Creating a Maine Commission to Commemorate the Bicentennial of the United States Constitution (Emergency) (S.P. 813) (L.D. 2045)

- In Senate, Referred to Committee on State Government.

TABLED - February 27, 1986 (Till Later Today) by Representative GWADOSKY of Fairfield.

PENDING - Reference in concurrence.

On motion of Representative Gwadosky of Fairfield, retabled pending reference in concurrence and later today assigned.

The Chair laid before the House the first tabled and today assigned matter:

RESOLVE, for Laying of the County Taxes and Authorizing Expenditures of Somerset County for the Year 1986 (Emergency) (H.P. 1454) (L.D. 2051)

TABLED - February 27, 1986 by Representative GWADOSKY of Fairfield.

PENDING - Final Passage.

The SPEAKER: The pending question before the House is final passage. This being an emergency measure, a two-thirds vote of all the elected members of the House being necessary, a total was taken. 103 voted in favor of same and 2 against and accordingly, the Resolve was finally passed, signed by the Speaker and sent to the Senate.

The following items appearing on Supplement No. 1 were taken up out of order by unanimous consent:

PASSED TO BE ENACTED

Emergency Measure

An Act to Amend the School Construction Law (H.P. 1246) (L.D. 1756) (C. "A" H-528)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 105 voted in favor of the same and none against and accordingly, the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

TABLED AND ASSIGNED

An Act to Conserve Striped Bass (H.P. 1448) (L.D. 2041)

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

On motion of Representative Crowley of Stockton Springs, tabled pending passage to be enacted and specially assigned for Tuesday, March 4, 1986.

An Act Regarding Utility Assessments (H.P. 1205) (L.D. 1712) (C. "A" H-529)

Was 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 Pertaining to Local Registration of Watercraft (H.P. 1216) (L.D. 1724) (C. "A" H-522)

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

The SPEAKER: The Chair recognizes the Representative from Wilton, Representative Armstrong.

Representative ARMSTRONG: Mr. Speaker, I would like to pose a question through the Chair.

Is this the bill that also increases the fees that people pay to register boats?

The SPEAKER: The Representative from Wilton, Representative Armstrong, has posed a question through the Chair to anyone who may respond if they so desire.

The Chair recognizes the Representative from Waterville, Representative Jacques.

Representative JACQUES: Mr. Speaker, Members of the House: Yes.

Representative Armstrong of Wilton requested a roll call on enactment.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of more than one-fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken and more than one-fifth of the members present and voting having expressed a desire for a roll call, a roll call was ordered.

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

Representative CLARK: Mr. Speaker, Ladies and Gentlemen of the House: I was on the Minority Report when this bill came out and I think I owe you an explanation as to why I will be voting against this today.

I am very much in favor of the local boat registration -- don't get me wrong -- but what I am against is the increase of the fee for the boat registration. If you will look at the Report when it came into the House earlier this week, the Minority Report was "leave the local boat registration at the same fee of three and three, that is one reason why I will be voting against this bill this afternoon.

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

Representative DUFFY: Mr. Speaker, Ladies and Gentlemen of the House: I, too, signed out the Minority Report. I have considerable problems with the bill. The Department wanted the \$1.00 for increased revenues because they said they were shortfalled \$60,000 in watercraft registration.

One of the big pushes for this bill for local registration was by the towns themselves. They believe that if they could register the watercraft in the town, each year their collection of excise taxes would go up. I believe that to be a fact. They also want us to pay them a dollar to do that. I have a problem with that part of the bill but to compromise,

I went the one dollar and left the dollar out for the Department. The dollar for the Department was because they wanted \$60,000 -- well, if they have got a 120,000 watercraft and they want a dollar a year, they want twice as much as what they need.

The second basis for what they wanted the money for was because they wanted to hook into a computer and have a person monitor and feed in the information for this watercraft registration.

Something else that was not explained was that another thing going into this computer would be the registration of ATV's, registration of snowmobiles, but they didn't break down the cost and divide it evenly amongst the different registrations. It would be in the licensing division so what else would be fed into that computer -- that also was not brought forth.

What I think the real problem here is and what we have seen for registration coming up is, if we increase the excise tax by a third on the boats, if we put sales tax on these boats being sold, if we raise all the fees today, that we will be taking the little guy and putting him right off the lake -- the guy that has the boat on top of his car that you see in your districts, the guy that has a boat with a five horse power motor on a trailer, and the guy that just likes to go out and spend a day whether he catches anything or not.

It's no wonder that we see license sales going down in the State of Maine, for the people here make 20 percent less than the average pay throughout the United States because they can live the good life and I think we are starting to go too far and we are changing the nature of both the fish and wildlife for the people who enjoy it.

The SPEAKER: The pending question before the House is passage to be enacted. Those in favor will vote yes; those opposed will vote no.

50 having voted in the affirmative and 81 in the negative with 20 being absent, the motion did not prevail.

(See Roll Call No. 244)

Representative Jacques of Waterville moved that the House reconsider its action whereby L.D. 1724 failed enactment and further moved that it be tabled one legislative day.

Representative Bott of Orono requested a roll call on the tabling motion.

Representative Jacques of Waterville withdrew his motion to table.

The SPEAKER: The pending question is the motion of Representative Jacques of Waterville that the House reconsider its action whereby L.D. 1724 failed enactment.

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

Representative JACQUES: Mr. Speaker, Ladies and Gentlemen of the House: I apologize for taking up your time today and I would hope that you would vote to reconsider. I didn't believe this was going to happen so I thought we would save some time and I stayed in my seat.

What you have done is kill a bill which would allow your constituents to register their watercraft in your hometown, if your clerk or your municipal officials decide to do so. Probably that is a good idea. Maybe not.

The fee increase of a dollar that Representative Duffy talked about would not all go to Fisheries and Wildlife. We have a two-thirds/one-third split with Marine Resources. That means if you register the total of 120,000 watercraft in the State of Maine, \$80,000 would go to Fisheries and Wildlife and \$40,000 would go to Marine Resources for the purpose of enforcing watercraft laws. Last year we had a \$68,000 shortfall in the funds for enforcing watercraft laws. That means that your hunters and trappers paid to enforce watercraft laws. That is why I went with the dollar and the majority of the committee went with the dollar. The decision you have to make here today is -- in a dedicated revenue account, do you want hunters and trappers money to be transferred from the general operating account of the Department over to watercraft to help adequately fund the enforcement of watercraft laws? Remember, this will allow your people to register their watercraft in their hometown just like you do with automobiles now.

I found no one in my district that was opposed to this. What you effectively did was kill this bill -- kaput. It is up to you but I didn't think it would be necessary to explain the Report. I am very surprised by this. I guess everybody likes to go on Record voting against fee increases but the decision is up to you. I supported the bill so my people could register their boats at home without coming down and waiting in line at Fisheries and Wildlife and I also firmly believe that the hunters and trappers should not be paying to enforce watercraft laws.

Mr. Speaker, I would like a roll call on reconsideration, please.

The SPEAKER: The Chair recognizes the Representative from Mt. Desert, Representative Zirkilton.

Representative ZIRNKILTON: Mr. Speaker, Ladies and Gentlemen of the House: I agree with Representative Jacques, not only will it make it easier for many of our constituents to be able to register their watercraft on the local level, but it will also ease a problem that several municipalities have had in the past with the two year registration cycle. It has been difficult to get a number of people to come in and pay their excise tax. You may remember from the debate last year, when we were considering raising the excise tax, that was one of the reasons because we were having an enormous amount of difficulty getting people to pay.

As I understand it now, if this bill were to pass, on an annual basis, people would have to show proof of excise tax payment in order to get that new registration and that is going to relieve what has been a real burden on my municipality. So I hope you will help us out. This is a very good bill.

The SPEAKER: The Chair recognizes the Representative from Corinth, Representative Strout.

Representative STROUT: Mr. Speaker, Ladies and Gentlemen of the House: I would ask you to reconsider even though you might not be in favor of the fee increase. The one part of this bill that I am in favor of is to allow the local municipalities to register the watercraft. Even if you are against the fee increase, I would urge you to reconsider so we could keep this bill alive and if you feel strongly about allowing the local municipalities to do this, we could back it up and amend it at some future date.

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

Representative LAW: Mr. Speaker, I would like to pose a question through the Chair to Representative Jacques.

The one thing about this bill that I don't like is the fact we are going to give all of this work to the municipal clerks and then, when the Department doesn't have all this work to do, they need one more man to do it and I just have trouble with that.

The SPEAKER: The Representative from Dover-Foxcroft, Representative Law, has posed a question through the Chair to the Representative from Waterville, Representative Jacques, who may respond if he so desires.

The Chair recognizes that Representative.

Representative JACQUES: Mr. Speaker, Men and Women of the House: What you are going to be doing, Representative Law, is changing from registering 60,000 watercraft every two years to 120,000 every year. That means that every year, when those carbon forms come back from your town, it is going to have to be plugged into the computer so your law enforcement people can do the work of tracking of who has a boat and where and what number is going to go to who.

This bill would put one more person in the keypunch system and it would also free up the people that have been at the counter at Fisheries and Wildlife, waiting on people in the past three months doing snowmobile registrations, which will happen again next month when watercraft starts, and instead of waiting in line down there for hours on end, you won't have to do that. You will be able to do that in your own town.

The bill calls for a one dollar fee to be kept by the municipal agent and, in some towns, the agent just keeps the dollar because that is their only pay. I understand that, in some counties, part of the total tax is collected by the county and a percentage goes to those people and, in some areas like the City of Waterville, we have a person who is paid to do that anyway. She is paid to be there and the dollar goes into the general operating fund of the city.

You are going to have twice as much work effectively in Fisheries and Wildlife in the computer division but you are going to be having less work in the window division. Maybe we will be able to get rid of some of those people on the windows but that is another story.

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

Representative ERWIN: Mr. Speaker, Ladies and Gentlemen of the House: Just to add to what Representative Jacques has just said -- as I understand the bill, it also makes it optional for that town clerk.

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

Representative CLARK: Mr. Speaker, Men and Women of the House: I hope that you do vote to reconsider because, like I stated earlier, I am very much in favor of local boat registration. I am not in favor of the increase and, like Representative Strout said earlier, we can back this bill up, maybe I or somebody else can amend it, and we can have local boat registration and keep it at the fee we had earlier in the bill. I don't feel that the

boatowners in the State of Maine should be paying an extra increase. MMA is losing 40 percent.

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

Representative MELENDY: Mr. Speaker, Ladies and Gentlemen of the House: I, too, am asking you to vote for reconsideration. Representative Zirkilton, is usually on the opposite end as I am on, on the boat tax bill, and I see that we have a real need to iron out a few of the little wrinkles that are left in the boat tax law and I would strongly urge you to vote for reconsideration.

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

Representative DUFFY: Mr. Speaker, Ladies and Gentlemen of the House: I have always voted to give the courtesy of reconsideration and I will this time. But I would like to give you, as Paul Harvey says, the rest of the story.

The good Representative from Waterville is quite right that it would be a real good thing for the people to be able to register their boats locally. What you have to see is that the municipalities don't have to, the rural towns don't have to, it says "may" collect at the local towns. I would say this -- what I believe will happen is you are going to have a mixed registration. You are going to have half of the registrations going back to the Department; you are going to have half the registrations in your local town halls. As I said before, the big push for this was by the towns that believe they are not collecting their full 100 percent of their excise tax so those towns that are low in their collections will, in fact, pick up these registrations. The towns that don't have any problem with excise tax don't want the problem of registering the watercraft so we are not going to be any better off, we probably are going to spend more money so there you are. Whatever you do with the reconsideration is fine with me.

The SPEAKER: The Chair recognizes the Representative from Franklin, Representative Connors.

Representative CONNORS: Mr. Speaker, Ladies and Gentlemen of the House: I, too, signed out the Minority Report because of that dollar increase in the Department's registration. I think we can very easily get along without that because I think we have two other items coming in here for local registration and, when we do, we should be able to cut some of the personnel in the Fisheries and Wildlife Department.

I hope you vote for reconsideration and let's keep the dollar for the clerks' and let's eliminate the dollar increase in the fee.

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

Representative MANNING: Mr. Speaker, Ladies and Gentlemen of the House: As a member of the Marine Resources Committee, every time I have one of the lobstermen or one of the dragger's come up, I asked them one question when we started talking about law enforcement, I said, "if we increase the fees to put into law enforcement, would you go along with that?" I have yet, in four years on that committee, heard them say no.

Yesterday, we had a major committee hearing, talking about increasing the size of lobsters and I looked out over the audience and when we mentioned law enforcement, there was a lot of snickering because there is belief that there is still a lot of shenanigan's going on on the water and many of the

lobstermen feel that there is not enough law enforcement out there. I think if Marine Resources could get additional funding, as the Department of Inland Fisheries and Wildlife has, as Representative Jacques has said, and it went to law enforcement, I think that would help. At least it would to the draggers, to the fishermen and, don't forget, there are going to be people out there, your constituents and mine, who, for one reason or another, the boat sails and all of a sudden this marine warden comes by, he is the one who is going to be helping out by bringing them in. I think that one dollar fee, for somebody who owns a \$25,000 boat, isn't going to hurt them at all.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of more than one-fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken and more than one-fifth of the members present and voting having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The pending question before the House is the motion of the Representative from Waterville, Representative Jacques, that the House reconsider its action whereby L.D. 1742 failed enactment. Those in favor will vote yes; those opposed will vote no.

127 having voted in the affirmative and 1 in the negative with 23 being absent, the motion to reconsider did prevail.

(See Roll Call No. 245)

On motion of Representative McCollister of Canton, tabled pending passage to be enacted and specially assigned for Monday, March 3, 1986.

The following item appearing on Supplement No. 2 was taken up out of order by unanimous consent:

REPORTS OF COMMITTEES Divided Report

Majority Report of the Committee on Energy and Natural Resources on Bill "An Act to Clarify the Application of Water Quality Standards to Hydroelectric Projects" (H.P. 1440) (L.D. 2032) reporting "Ought to Pass" in New Draft (H.P. 1495) (L.D. 2107)

Signed: Senators: USHER of Cumberland
EMERSON of Penobscot

Representatives: MICHAUD of Medway
JACQUES of Waterville
RIDLEY of Shapleigh
HOGLUND of Portland
BROWN of Livermore Falls
HOLLOWAY of Edgecomb
LAW of Dover-Foxcroft
DEXTER of Kingfield

Minority Report of the same Committee reporting "Ought to Pass" as amended by Committee Amendment "A" (H-541) on same Bill.

Signed:

Senator: KANY of Kennebec

Representatives: MITCHELL of Freeport
COLES of Harpswell

Reports were read.

Representative Michaud of Medway moved acceptance of the Majority "Ought to Pass" Report.

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

Representative MITCHELL: Mr. Speaker, Ladies and Gentlemen of the House: I would request a Division. This bill that was originally submitted to the legislature would have solved a conflict between two conflicting state laws and another conflict between a state law and the federal Clean Water Act. The Minority Report combined with an Executive Order issued just before Christmas would address that issue and resolve that conflict.

The Minority Report would also reflect the original intent of the Rivers Bill that was passed by the last legislature.

The Majority Report is a retroactive law. I think we should all take a very serious look at any attempt to overturn the actions of a regulatory board. What it does is it really impairs the integrity of the regulatory process. It is a very dangerous precedent.

Our role as legislators is to change the process if there is a problem with the process but not to make special exceptions for applicants for licenses who happen to be disgruntled. This action, if you accept this motion before you, would undermine public confidence in the process and I think in this House. The particular licensing question was issued by the Board of Environmental Protection and that board administers a lot of very complexed, technical laws that are designed to protect the public health and protect Maine's environment. Please don't take any action today that will undermine the public confidence in the laws that the board administers. They are all very reasonable laws. I ask you to please defeat the motion before you so you can accept the Minority "Ought to Pass as Amended" Report, which really addresses the problem the bill was intended to resolve.

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

Representative COLES: Mr. Speaker, Men and Women of the House: I also join with Representative Mitchell urging you to reject the Majority Report and accept the Minority Report.

The Majority Report is a hurried and simplistic approach to resolve a glitch in state law. It does not address those specific defects in the existing law.

The Majority Report is destructive of sound principles in water resource management because it would mandate the issuance of water quality certificates even if no water quality review has occurred. It would mandate the issuance of the water quality certificate without regard to whether or not the Board of Environmental Protection or the Land Use Regulation Commission has conducted the water quality review required by state law. It would do this, not just for the Big A project, but for all future hydro development projects.

The Majority Report is also destructive of sound principles on water quality resource management by making its provisions retroactive. We have a well established tradition of orderly review of the environmental impacts of major developments by boards made up of responsible and conscientious citizens of Maine. If an applicant is unhappy with the board's action, he or she has recourse with the courts. I cannot, at this point, recall an instance when an unhappy applicant refused to go to the courts but instead decided, they would have a better chance with the legislature.

Last year, this body, by almost a two to one vote, made clear that we should not change the rules in the middle of the game. Now you are being asked today, not only to change the rules before the game is over, but to declare the winner of the game, regardless of the rules.

If you look at the Majority Report, Section 2, second paragraph, it says: "the Commissioner or the Director 'shall' issue the certificate and the certificate 'shall' state that there is a reasonable assurance the project will not violate the applicable water quality standards. It does not require those standards to be applied, however. It goes on to say that if the Commissioner or the Director fails to issue the certificate, the federal certification requirements 'shall' be waived. This means that no hydro project in the State of Maine will be subject to state water quality statutes.

I would also like to add one more thing. There has been a lot of confusion about this bill and what it means. That is very understandable because this bill has been pushed through so quickly that its implications are not clear. If you still are confused at the end of today's debate, if you are still not certain as to what this debate means, I urge you to be cautious, act prudently to give more time for this body to consider this bill.

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

Representative MITCHELL: Mr. Speaker, I would like to pose a question through the Chair.

On Page 2 of the bill, section 2, starting at line 26 and going down through line 36, it says: "that the Commissioner or the Director of the Commission, meaning the Land Use Regulation Commission, within five days would issue the permit if it is requested." Starting on line 30, it says: "that certificate 'shall' state that there is reasonable assurance that the project will not violate the applicable water quality standards." That is a statement that tells the Commissioner of the Department of Environmental Protection or the Director of LURC to issue the permit without requiring to make any finding.

Now I would pose this question to one of the supporters of the Majority Report or a member of this House, who happens to be an attorney — would not any citizen of this state be allowed to take any permit issued under this particular provision of law into federal court and challenge it because it was issued without any finding of fact?

The SPEAKER: The Representative from Freeport, Representative Mitchell, has posed a question through the Chair to anyone who may respond if they so desire.

The Chair recognizes the Representative from Waterville, Representative Jacques.

Representative JACQUES: Mr. Speaker, Ladies and Gentlemen of the House: No.

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

Representative MICHAUD: Mr. Speaker, Men and Women of the House: I will address some of the remarks made by Representative Mitchell and Representative Coles in regard to this bill.

First, I will give a brief history, once again, as I did when we addressed Representative Diamond's bill during the last legislative session.

In 1983, the legislature enacted comprehensive legislation which dealt with the rivers in the State of Maine and hydro power. The legislative history is very clear and it has been stated many times that it is a one stop process. On the first anniversary of the bill's enactment, Governor Brennan made a public statement saying that it is a one stop process. The environmental groups, during the passage of the Rivers Bill, knew that it was a one stop process. The majority of the committee that supported the Rivers Bill -- we urge industry and hydro developers also to support the bill because it would speed up the hydro development and it is a one stop process. When we dealt with Representative Diamond's bill as late as last year, Brownie Carson, the Executive Director of the Natural Resources Council, and I will read a quote from his statement, (which was in reference to Representative Diamond's bill), -- "As I trust you are aware, the decision of whether to allow construction of the Big A Dam rests with two regulatory agencies, LURC at the state level and FURC at the federal level. It is before these regulatory bodies that these arguments for or against the project are to be made. Those agencies and those agencies only will judge the merits of the project." So, as far as whether there is any question or not it is a one stop process, I don't think that any one can deny that it is what the intent of this bill is. For those of you who are not aware of the Federal Clean Water Act, basically, before FURC can review any application, they must have a 401 water quality certificate. When we passed the Rivers Bill three years ago, we realized that and through Ken Curtis, who gave the Executive Order, which designated the Board of Environmental Protection as that designated agency, what the committee had done to tie that in was put very clear, concise, specific language into the law.

In essence, where LURC has approved a permit and I will quote that section -- if LURC approves a permit, which they did under the Big A application, "the issuance of a water quality certificate shall be mandatory in every case (In this case, the board refers to LURC) and "approves an application under this Sabbatical." It also goes on and says; "the coordination function of the Department with respect to water quality certification shall not include any new proceedings." In my opinion, the board had violated the law in two separate cases in which they dealt with a certificate and they had new proceedings.

I might also add that they are talking about a program that requires the state to deal with water quality certification -- yes, that is also true but it is also true and very clear, (I don't think the opponents can argue) that the state doesn't have to act on water quality certification. If, after one year, they don't act, then automatically it will proceed through the process.

During the eight weeks of the LURC hearings, the DEP submitted a couple drafts of testimony and they provided, I believe, five witnesses on this water

quality issue. Steve Groves, who is the chief Bureau Director on the water quality, attended those hearings and I will quote on his remarks after reading the transcript -- "have reviewed the application extensively and evaluated the potential environmental impact of the project in detail and that the Big A project can meet requirements for certification under Section 401 of the Clean Water Act."

By passing this bill, it doesn't say that Great Northern or that the Big A Dam is going to be built, that is not the case. The company is very disturbed with two of the conditions and if those two conditions are still there, that LURC had put on, I doubt very much that they will build it. If this truly were the Big A bill, then the committee should have repealed those two conditions but the committee did not and the reason was that the committee felt the basic concern is where the board had blatantly violated the State of Maine's statutes.

I have a couple of memo's that Dana Murch, who is the hydro power coordinator for the Bureau of Land Quality Control, had written back in 1983 to Patrick Welch of Great Northern saying that the Department will work in conjunction with LURC on the water quality certificate. Later in 1985, Dana Murch sent another letter, (this time to Dale Fennesey) saying that the Department's staff would be reviewing the application in conjunction with the LURC staff. They did deal with the water quality certification. Also there has been, more or less, a little feud between the board and the LURC Commission. LURC was a little upset at the accusation that they did not do their job as far as water quality certification goes.

In a memo on November 13, 1985 from Elizabeth Swain and Ray Owens, who is the Chairman of LURC, to Sam Zaitland, Chairman of the Board of Environmental Protection and I will not read the whole memo but I will read a couple of paragraphs. They say: "we feel compelled to write to you concerning the board's interpretation of LURC's treatment of water quality issues involved in the Big A project. It has come to our attention that the board members had decided that LURC's failure to fully address water quality issues has come as a surprise in view of the way our review was conducted. So that there is no misunderstanding on the board's part regarding how the Commission considered this issue, let us review its history briefly. First, we reply to DEP as a state water quality expert to raise water classification of water quality issues. Because we knew certification was likely to become an issue, we asked DEP to take special care and assure that all relevant water quality issues were raised in their comment." In the closing paragraph, they said: "since we incorporated your staff (and that is referring to DEP) findings and recommendations, we are at a loss to understand why the board's criticism of our efforts." That was one memo.

On October 31st, Alec Giffen, Director of LURC had written to Henry Warren, who was Commissioner of Environmental Protection, saying basically the same thing so the water quality certification has been addressed. LURC did it and they did it with full participation of the DEP staff.

I agree that this bill should never have been before this body. The legislature made it very clear on what was intended by the law. To address a couple of issues and one that Representative Mitchell made about changing the process -- I agree, I don't think

this legislative body should change the process in the middle of any game. We dealt with Representative Diamond's bill at that time and I so stated.

In regard to Representative Coles mentioning many issues where the legislature was asked to interfere in the board's process and this would basically be the first issue — that is not correct. We had a bill last year that I am sure Representative Crowley remembers, which was the booming bill. We were asked to overturn, basically, a board's decision. At that time, when we had that bill, I opposed it on the basis that when the bill was presented to the committee, I asked, were the rules and regs contrary to what the law is and the answer was, no. So I voted against the bill because I don't think this legislature should be asked to continually overrule board hearings.

As far as changing the rules in the middle of the game, I will get back to that. That is not what this legislation does. It is to make sure that the rules are followed. I don't think that Representative Mitchell, who was on the committee when we dealt with the Rivers Bill, can deny that it is a one shot process and that is why we specifically put in the statute where LURC approves an application, that it "shall" be mandatory that the board issue it. LURC did deal with the water quality certification and the board should have issued that certificate. That is why this bill is here before you today. I agree that it never should have been here but, unfortunately, it is and it is an attempt to make sure that the laws that we pass in this legislature are followed.

While I am on my feet, I will just give you another brief example which was brought up in our caucus earlier today. Last year, we passed a bill dealing with the salt and sand piles — the Governor is supposed to issue a bond issue, which would help the municipalities pay for coverage. It came out of the committee unanimous, I amended the bill on the floor, and the reason for that was because the bond issue was not forthcoming so I amended it out so it would set deadlines for towns to comply with the salt and sand legislation. It was brought to my attention earlier this week that they were considering proposed rules to put those deadlines back in. I think this body has got to make it clear that once we set legislative policy, that is our intent and that is the way the law should be followed.

So, I hope you will go along with me with a 10 to 3 Majority "Ought to Pass" Report.

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

Representative LAW: Mr. Speaker, Ladies and Gentlemen of the House: Several people today have said that once the legislative process starts we shouldn't do anything to interrupt the Executive Branch, but I am not as pure as that. I believe that when the Executive Branch does not go the way of legislative intent, then I think it is time that you step in and change whatever is necessary.

Those against the Big A have said all along that they are going to fight the Big A right to the Supreme Court and I have no doubt at all that they will. I have seen some things before in the pipeline up in Alaska, for example, and they fought that right to the Supreme Court. As I have said before, sooner or later, we have got to make a stand.

Representative Michaud just read the law the way it was before the amendment but I am going to read it

again because I want to talk about it just a little bit. "The issuance of a water quality certificate shall be mandatory in every case where the board approves an application under this sub-article."

I have heard several people say that we are forcing the Department or LURC to issue a water quality certificate for water that does not meet the water quality. I don't believe that is what this law says. The water quality certificate is not issued until after the application has been approved. There is approval criteria that has to come before the water quality certificate is issued and that is very specific in the items that you have to look at before the application is made. Once it has been made, then that is prima facie evidence that the water quality has been met. That is where I am and I'm going to support the Majority Report.

The SPEAKER: The Chair recognizes the Representative from York, Representative Rolde.

Representative ROLDE: Mr. Speaker, Ladies and Gentlemen of the House: I rise with a good deal of reluctance to oppose the Majority Report. I, myself, have put in bills on occasion to override bureaucratic rule making. I have never done one on a specific decision but that doesn't mean that I wouldn't. Although I have been an opponent of the Big A project, I have great sympathy for the problems of the people in Millinocket. I have listened to the leaders of the Great Northern Paper Co. explain their reasons for wanting this project. I realize that they have a very serious problem up there.

Probably if I had been in the legislature at the time when the bill came up to change the classification of the Prestile Stream so that a sugar beet factory could be built in northern Maine, I probably would have voted for it at the time because I know how important jobs are to northern Maine.

I do have some real questions about the Majority approach in this bill. One of the major thrusts that the proponents of it seems to be that the Board of Environmental Protection did not follow the law. I guess my first question is, if that is the case, why didn't the party (in this case, the Great Northern Paper Co.) take that fact to the courts. I have heard of the legislature called the court of last resort, I have never heard us called the court of first resort. I know from examples in my own town when we have had decisions from the Board of Environmental Protection, either our town has gone to court or the plaintiff, who has agreed, also went to court.

I agree with the gentleman from Medway that the passage of this bill will not automatically ensure that the Big A will be built. Obviously, the way this bill is drafted, the arguments that it is unconstitutional will create a situation where the other side will take it to court and it will be tied up in a court for some time.

I am also wondering in relation to the way this was drafted, two things — the gentleman from Medway has again talked about a one stop process and that that was violated. Even if the decision had gone the other way, that would have been the case. I wonder if the decision had gone the other way, if the Board of Environmental Protection had changed its decision, whether we would have this bill still before us. It seems to me, on the basis of that argument, we should.

Secondly, if it doesn't relate to the Big A project, why is it retroactive? I see looking at the paper today that Governor Brennan has asked the same

question and has stated that it was not his intention to make this bill retroactive.

A final question that I do have is on the LURC decision. LURC has put conditions on its approval. I remember listening to the leaders from Great Northern Paper Co. telling us that even if Big A was built they would have to lay people off. So, if we pass this, are we setting a precedent? Will there be another bill before us to set aside the LURC decision?

The SPEAKER: Representative Rolde of York has posed a series of questions to anyone who may respond if they so desire.

The Chair recognizes the Representative from Waterville, Representative Jacques.

Representative JACQUES: Mr. Speaker, Ladies and Gentlemen of the House: I will try to answer them to the best of my ability in the way I remember them.

Unlike some of the people who have spoken before me, I have overcome the anger at the Board of Environmental Protection for thwarting the legislatures authority and intent. I was elected to come down here to do a job as we all were and I do get a little upset but the boards do that every day now, it is a common occurrence so we shouldn't really let that bother us.

The Representative from York has asked, why not go to the courts? Well, who made the problem? Great Northern Paper spent \$6 million, I guess, pretty near that, jumping through the hoops that we made because we said that we wanted to encourage the development of hydroelectric dams. They did everything according to the law. They crossed every "t" and they dotted every "i" and then somewhere along the line, someone chose to disregard the law but it was not Great Northern Paper. It is easy for us to go after Great Northern Paper because they are a big paper company and they have got all kinds of money. It is an unending source of money, they don't have to worry about it, money is going to come falling right out of the sky for Great Northern so it is easy to go after them. But why should they have to go to court? They didn't do anything wrong.

I don't know about you but where I come from, one stop means one stop. You know a lot of people have asked me how come I am on this side of the bill. I am a member of Trout Unlimited and Trout Unlimited is opposed to dams and I will tell you why. No where in this world can dams and good fishing coexist. Fair fishing, fair-to-middling fishing, but nowhere a dam and real good fishing will coexist.

I get a kick out of these people that talk about the West Branch and what a unique place it is. Let me tell you, if the dam is not built and I can continue to fish the West Branch, I will shed no tears. But I do take the job here very seriously.

I was the only member of the committee that was opposed to the one stop process, so to speak, because I wanted to make as many hoops for them to jump through as I could, because the more hoops you make them jump through, the more you are going to discourage anybody from investing any money in a hydroelectric dam. But my good friend from Canaan, Representative McGowan, was on one side, my good friend from Freeport, Representative Mitchell was on the other and I became victim of what they call in basketball a full court press. It wasn't very long before I had to admit that "yes" we were opposed to nuclear plants in the State of Maine. "Yes" we were opposed to being dependent on those awful Arabs across the way for fossil fuel. "Yes" we were

against using coal because of what it does. Now, it seems, we are also going to be against burning wood because of the possible effects that it might have on lungs and everything else, that Representative Dexter talks about. So that leaves two things, ladies and gentlemen of the House, water and sun. Well, I don't know about you but I am not a plant. I do not survive by photosynthesis and sun is not going to do me a bit of good, so that leaves water.

What we have here is a problem where groups were promoting hydroelectric development way back when I was fighting it because I am a fisherman, I am a greedy fisherman that likes to fish, now say, we are for hydroelectric dams unless it is one that we don't like.

A representative from Maine Audubon was quoted as saying, the system has been poisoned. Well, you are darn right, it was poisoned but it was not by this legislature, it was poisoned somewhere along in the process. It was sabotaged, it was a deliberate attempt to circumvent the law. If we don't like the law, change the law. As I said on Representative Diamond's bill, put in a bill in to change the law and I will sponsor it, not in the middle of the game, but put the bill in. We did that, we changed that law, we gave it more time. If you want to change the law on hydro development -- if you want to make them go to DEP, Agriculture, Fish and Wildlife, LURC, put it in, I will go for it. I am against dams. Very easy to do. Make them spend \$100 million, then it won't be economically feasible to build a dam.

I do still have some integrity in the legislative process. I still do feel some integrity in what I was elected to do. That is to make sure everybody gets treated fairly and equitably, whether it be a big dam or a small dam. Scott Paper is going to be building a dam on the Kennebec River in my area. I have not seen one word of print about that. I haven't seen a coalition helping fight that dam and the Kennebec River has got just as much salmon potential as the West Branch of the Penobscot does but it doesn't have the political clout, it doesn't have the ability to collect money from all over this country to fight it. That is the root of this whole situation here.

The law said, that once the water quality was proven it would not be degraded and Matt Scott from the DEP, who I have a lot of respect for, who probably knows as much about water quality as anybody in the State of Maine, told us that you would not be degrading the water, what you would be doing is changing it from a GPA to a B-1, which is a difference when you judge water from free standing water to moving water. I asked him three times. I also asked the Director of LURC, "do you think that you did your job and did what you were required to do on this project?" He said "yes, they felt they did."

The law says that upon completion of all the criteria, and Representative Law explained what that criteria was, the department "shall" issue a water quality certificate. I am not a lawyer, but does "shall" mean shall or does shall mean maybe? Does one stop mean one stop or does it mean two, three, four, five stops? That is what this whole thing is about. It is not fair to treat somebody differently just because they are a big company. If we don't wake up some day, somewhere along the line, there is going to be no big companies. We are not going to be able to live here, we are not going to be able to work here, we are not going to be able to do anything

here except sit back and lay in the sun because that is all that there is going to be left to do.

I hope the Big A, as it goes through the process, runs through all kinds of problems, I really do. I have a camp about 20 miles away and love being able to go the West Branch and fish for salmon in that river but fair is fair, right is right. You can try to pass the buck all you want, someone disregarded the law, plain and simple.

We talk about retroactivity. Representative Duffy made a good point in caucus today. If we don't have the retroactivity provision on there and we go with the Minority Report, which admits that a mistake was made, (it was admitted in the caucus by Representative Mitchell earlier today), a mistake was made. It is on the Record, a mistake was made. Even if we don't have that retroactivity provision and we go with the Minority Report, what would happen then? If I was the aggrieved party and someone admitted that a mistake was made and they were treated unfairly and unjustly, what would you do? Think about it.

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

Representative KIMBALL: Mr. Speaker, Ladies and Gentlemen of the House: I would just like to be able to answer Representative Jacques' question. I would go to court. The reason that I would go to court is very simple. I was the cosponsor of the bill that Representative Diamond and I had in the last session that involved prolonging the study for LURC so that LURC and FURC could come to a decision so that we could have all the information before a decision would be made on the Big A project. I learned a lesson from that bill and it wasn't a lesson having anything to do with building dams or not building dams because I agree with Representative Jacques, I am also a fisherman, and I don't necessarily like dams either but I do think that hydroelectric power is a good way for Maine to go as opposed to nuclear power and some of the other options that we just don't find satisfactory in this state.

I do think that from the original bill that we sponsored last session, I learned that you don't violate the process. You told me, ladies and gentlemen of the House, that the process was something that needed to continue because we put it in place and we needed to see what was going to happen with that process. I agree. I agree with Representative Jacques' statement that there has been a problem. But I don't believe that the place for that problem to be solved, the place for that problem to be addressed, is in the legislature. I believe it belongs in the courts. I think it could be settled in the courts. In fact, I believe it could be settled in the courts rather quickly from the evidence that I have heard. I don't believe it involves settling it here today in the legislature. I would ask you to go with the Minority Report.

The SPEAKER: The Chair recognizes the Representative from Eliot, Representative McPherson.

Representative MCPHERSON: Mr. Speaker: I request a roll call.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of more than one-fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken and more than one-fifth of the members present and voting having

expressed a desire for a roll call, a roll call was ordered.

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

Representative COLES: Mr. Speaker, Men and Women of the House: I had hoped not to have to go into a lot of detail which I am about to go into. I feel that enough points have been raised that have obfuscated the issue that I, once again, would like to try to clarify them.

In the Energy and Natural Resources Committee, during the work sessions on this bill, the LURC Director, Alec Giffen, gave us a substantial amount of information about what happened when LURC considered water quality issues. I read that information very carefully and it is very clear from reading that that LURC believed it was acting in good faith in making the proper water quality findings. The fact is they didn't make the proper findings but that is not due to LURC's fault. It was because they were given bad advice by departmental staff, Department of Environmental Protection staff, by bureaucrats. The Board of Environmental Protection, when this matter came before them, recognized right away that LURC, through no fault of its own, had not met the criteria of the State Water Quality Law. In fact, that criteria, in the state hydropower development laws might be in conflict. The Board of Environmental Protection -- and I might add that one reason that we have these citizen boards like LURC and the Board of Environmental Protection is because we don't trust bureaucrats to do things right -- the Board of Environmental Protection also read the Fraser Law which has been quoted here today about mandatory issuance of permits. They quite sensibly, quite reasonably and quite logically decided mandatory meant if LURC had applied the proper criteria of the law, it did not mean issue the certificate regardless of whether or not the law had been applied and issue a certificate if it met the requirements of the law. Believe me, the board would have been happy, overwhelmed, overwhelmingly pleased, if LURC had met those requirements and the board could simply have issued the certificate, but that was not the case.

One of the things that was given to us in the committee was a memo from Alec Giffen, Director of LURC, to Robert Givens, Council to the Governor. I would like to quote a bit from that letter. "Why did one stop hydro power licensing process work as people expected it to for Big A? I believe the fundamental reason is that the Board of Environmental Protection was confronted with considerably different information on water quality issues than was presented in the Land Use Regulation Commission hearing. Simply put, unlike the board, the argument that the Big A did not meet the requirements of the water quality law was not advanced before LURC. Neither was the argument that the project should be judged against B-1 water standards. Nor was the argument that the impact on fisheries and rafting were unacceptable degradations under the state water quality law. Please note, it might not have made much difference on the outcome of the case to which agency this information was presented; that is, if there is indeed a problem with the project meeting water quality requirements, it could have caused the commission to reject the project as well." The Director of LURC says in his memo that, "they do not have adequate information to properly consider the

project on the state water quality laws."

How can anyone argue then that the Board of Environmental Protection, which is charged specifically with making sure those laws and their requirements are observed, should ignore them?

A further quote from the Giffen memo: "the record shows that the commission sought to ferret out all water quality issues and did indeed consider those which were identified. As part of this hearing, the commission requested comments on water quality issues from the Department of Environmental Protection. The Commission stressed to the Department that it was particularly important that DEP deal thoroughly with the water quality issues and that LURC was relying upon DEP's expertise in this area."

We heard earlier quotes from a number of memorandums and letters which talked about coordinating water quality processes. What happened, men and women of the House, was, not that LURC had a problem, not that the coordination was not attempted, but that the Department of Environmental staff simply did not do their jobs correctly. Today, you are being asked to punish the Board of Environmental Protection for departmental problems.

Another aspect to this problem, coordination between two laws and two agencies. This problem didn't arise just last November or December, the hydropower development law became effective in 1983. Shortly thereafter, both LURC and the Department of Environmental Protection realized there could be a problem in this area. They attempted to work out a set of regulations which would assure that LURC knew what it had to do in dealing with state water quality laws. These regulations were never promulgated. Yet opposition from the hydropower development industry apparently, and I don't know for sure, felt it would benefit by confusion. Today, it is trying to benefit once again by confusion. The one stop, two stop problem -- the Governor has authorized to designate what state agencies may issue water quality certificates. Until this year, the Board of Environmental Protection was the authorized agency. The Governor has now also authorized LURC to issue those certificates. So, the one stop, two stop problem is solved. No future hydropower developer will have to go to the Board of Environmental Protection if the project is in LURC's jurisdiction and vice versa.

When the Board of Environmental Protection actually considered this application, looked at the details, they found not only did LURC, through no fault of LURC, not consider harm to existing uses, not consider properly under state water quality statutes harm to propagation of fish, they found that state laws do not permit LURC or the Board of Environmental Protection to review the water quality on the basis of a lake, particularly dissolved oxygen levels.

Great Northern argued that it didn't make sense to consider it any other way, that if you are going to have an impalement, you have got to review it as though it was an impalement. I agree. Representative Mitchell agrees, the Governor agrees. The Governor, in fact, submitted a bill to correct that Catch 22 in the law. That bill is embodied in the Minority Report. That bill is not embodied in the Majority Report. You might note that the Majority Report says on top of its new draft. That is because the rules require a new draft, when the bill is substantially different than originally submitted.

I urge you once again, if you believe the State Legislature should act in a prudent, cautious and thoughtful manner in dealing with major environmental laws, then please vote no.

The SPEAKER: The Chair recognizes the Representative from Livermore Falls, Representative Brown.

Representative BROWN: Mr. Speaker, Ladies and Gentlemen of the House: Somebody said this morning that we all emerged from this long week of hearings and work sessions, not necessarily all pearly white, I think, was the term -- I want you to know I was Brown when I went in and I am Brown after coming back out.

What we have here is a situation where the BEP, the Board of Environmental Protection, is finding itself at odds with the Land Use Regulation Commission. We also find that the BEP is also at odds with its own staff. Clearly something went wrong. To assume or even to suggest that the Land Use Regulation Commission did not consider water quality in those many weeks of exhaustive hearings that were held this past summer is ludicrous, absolutely ludicrous. The Land Use Regulation Commission relied heavily on the staff of the Department of Environmental Protection, as has been already pointed out in this debate.

While we are on the issue of water quality, let's again stress that we are not talking about an impoundment necessarily reducing water quality. We are merely talking about two standards which are applied to water. One of those standards, B-1, applies to a riverine situation; the second, DPA applying to the quality of water behind an impoundment. As Matt Scott from the DEP staff very effectively described to us, it is like comparing a chicken with a duck. Moving from B-1 to GPA does not mean a degradation of water quality. Let's make that point very clear. It means that we are describing two individual habitats, one very different from the other.

There were a couple of questions that Representative Rolde asked earlier that I would like to respond to. One of his questions dealt with the question of, would we be considering this legislation if it were not for the Big A application? My answer to that is, I believe that we would, because the Catch 22 situation dealing with water quality going from B-1 riverine to GPA impoundment had to have been addressed because apparently that really is the major basis that the BEP used in its refusal to issue the water quality certificate. So, I believe yes, it would have been introduced. In section one of the bill before you, the Majority Report stresses that.

Representative Jacques responded very adequately to the question of retroactivity. The third question that perhaps was not responded to was dealing with the Land Use Regulation Commission conditions. I did not agree with all of the conditions that the Land Use Regulation Commission imposed in its decision but the Land Use Regulation Commission, in my view, didn't do anything illegal in its review of this process.

In answer to Representative Roldes' question, no this bill would not be back here to deal with those conditions because I, along with everybody else on the committee, believes that the Land Use Regulation Commission did its work and did it well. It doesn't necessarily mean that we agree with all of the conditions but nevertheless they were imposed and we

will live with them.

I keep hearing talk about, let's make Great Northern go to court. Well, let's remove the retroactive clause and let them reapply. Again, Representative Jacques hit the nail right on the head, we can't continue to hammer away at some of our better business citizens of this state by telling them that when a wrong decision is made, we are sorry but you have to go to court or why don't you just spend another \$6 million and reapply, after all it is just money? I think when a wrong decision is made, I think we have to face up to it and I think that is what we are doing today as a result of this legislation that is before us in the form of the Majority Report.

We are not changing the rules in midstream. I could tell you honestly if I thought we were, I wouldn't be voting the way that I will be voting today. That was evident in a previous situation that was discussed last year, brought up this afternoon by Representative Michaud. We are clarifying for future applications -- the difference between those water standards and how impoundments will be treated. We are also undoing what we considered to be a wrong that was dealt to major industry in this state by one of our regulatory boards. I hope that you will support the Majority Report.

The SPEAKER: The Chair recognizes the Representative from Shapleigh, Representative Ridley.

Representative RIDLEY: Mr. Speaker, Ladies and Gentlemen of the House: I normally don't get up and speak on these things but I have been involved in this since the Rivers Bill was first put before us. Sitting here listening to the debate and what we had in caucus, I can't help but wonder if a lot of you people out there aren't getting really confused, if it isn't like the little boy that dropped his chewing gum in the hen yard. I have no axe to grind, really, I come from the southwestern part of the state. The Big "A" would not affect me one way or the other, and I don't think that this is what we should be considering today. I think that it boils down very simply that we should be trying to interpret what the intent of the legislature was when they passed that bill originally. From the testimony given today, I don't think that there is any doubt in anybody's mind as to what the intent was. But apparently there are some people who have had a little bit of a problem understanding what our intentions were. This bill certainly will spell it out and make it quite clear to them. As far as the retroactivity bit, I agree with the other people who spoke before me that -- why should we make Great Northern go back and start this process all over again? If the bill had been interpreted the way our intentions were when we passed the original bill, this problem would not be here. I think that it boils down to -- what did the legislature intend when they passed this bill -- and if you focus your attention to that, I think that will make it much more simplified and clarify a lot of the issues.

The SPEAKER: The Chair recognizes the Representative from Durham, Representative Hayden.

Representative HAYDEN: Mr. Speaker, Men and Women of the House: I speak to you today as a Representative of District 70 and not as the Assistant Majority Leader. As you know, this is an issue that divides the leaders of the House, it divides the parties, it is emotional and I think that all of us have strong feelings because it is such an

important topic.

I think that the debate that we have heard so far on both sides on this issue has been very good. It has been to the point and underlines the things that are of real concern. I think in favor of this legislation or any legislation there is the argument -- and it is an absolutely valid one -- that we have to do something. We have to do something to permit economic development, particularly hydroelectric development in our state. We are faced with some decisions by our regulatory boards that are contrary to what many of us intended them to be, and further more and perhaps this is the most important thing -- whether it is our boards or whether it is the work that we have done, we have a situation that we have set up with this question of water quality. It just doesn't make any sense at all, we have got to change it.

Having said all of that, the words of the Bangor Daily News this morning in an editorial, I think, shouldn't be forgotten by us. They begin short, sweet and to the point. "Bad laws, most often, are drafted and passed in haste." The classic example that they refer to is this piece of legislation. All of our motives are good, the goals that we have in mind are the same.

This bill in its amended form, in my opinion, does us a greater disservice than a service. We are frustrated, we are frustrated with our regulatory boards, as many of the citizens of this state are, but because we are frustrated, it doesn't mean that we have to give up the obligation we have to follow the law. We are frustrated because of the difficulty that our corporate citizens have in this state in putting forward a plan of major development, that whether in the short term or the long run can have a tremendous impact on this state, not just the north but the entire state. The answer to that frustration isn't to flail out at the agency that has caused us our concern. We don't have to say to the Great Northern Paper Company, go back and start the process over again. What happens in this case, like any other case in which parties are frustrated or were frustrated, is a right to appeal.

The issue that will be appealed is the very issue that we are debating here today -- what was it that the legislature intended? What do those words mean? It took me awhile, to tell you the truth, to figure out what this water quality issue really addresses. I want to give you the benefit of my figuring and if someone thinks I am wrong they can tell me.

The essential concept with this water quality idea is that the federal regulatory agency has said to the states, we want to know if the water quality, after a project occurs, is going to be reduced. We want you to certify whether or not the quality of your water is going to be reduced. That is the law. That is the federal law. What this bill does, and it is very understandable for me to see the reasons what this is being attempted to do, but listen carefully to what this bill does. This bill does not go to the citizen agency that has the responsibility for governing this, it goes instead to the Commissioner. It says -- Mr. Commissioner, you shall certify. We don't want you to consider it. If you disagree with the conclusion that the water quality hasn't been altered, you can't say so. We are commanding you to take a stance which may or may not concur with the facts. We hear an awful lot about the complicated legal issues here and constitutional principles being

waved around, but when you get down to the Constitution, it is really pretty simple. The Constitution says that you cannot do that. The reason that you cannot do it is because it is not fair. You cannot ask a public official whether he is a citizen official or not to say one thing, to promise, to verify that he believes this to be the case, but say that we prohibit you from looking into the question and using your own judgment. You cannot do that. I don't think that our Constitution, a State Constitution or a Federal Constitution will allow us to do that. It is not a sure thing, I am sure that issue is going to be debated in the courts, there is an argument on the other side. But that is what the Constitution means to me. That is what this idea you hear about all of the time about due process means.

You have to have some sense of what the process of law is. If you say it is one thing, you have to follow through with it, and if you disagree, you have to go one route. That is why people sometimes say we here are government of law and not a government of men because political muscle, the will of frustrated powerful people -- even if they are legislators -- do not control, the law does. There is an avenue here, it is not starting the process again. It is easy to understand also why that would be an absolutely burdensome thing when you think of the fees and the time that the applicant, the Great Northern Paper Company, has paid on this to date -- but they can continue with the process.

It is interesting, one of the things that there was a great deal of debate about, were these conditions that this LURC agency put on the application. Interestingly, that issue was never appealed by them. Now the Board of Environmental Protection issue is in dispute -- will they appeal? We have yet to know, they are still within their time, we don't have to know that now. The point is, to say that these applicants, whether they are big applicants or little applicants have no redress, simply is not the case.

Now one of the other things that confused me about this legislation is, if the goal is to make the process simpler for the only pending applicant before the board, there is only one right now that will be affected by this and that is the Big "A" application. It may not be a Big "A" bill, but they are the only ones that are going to be affected by the retroactivity portion of this bill. If that is the case, will this do anything to get that permit passed? That my first question.

Will it get that dam built for us? Will it get hydroelectric power for us in this state at a rate that can compete with Tennessee, Kentucky or Oregon? My experience, not in law but in life, tells me no. This issue is already in the courts, it is going to be appealed anyway, regardless of the decision, and we have to face that as a fact of life.

Now there are a lot of problems with the quagmire in the swamp that gets created when we have complicated issues like this, but this just makes the swamp muddier, makes the quicksand more demanding of anybody that tries to walk through it. That is why it doesn't, in my opinion, make sense to me how this is going to improve the chances for the one applicant that it is going to affect, that is the retroactive portions of it.

Now the Governor of our state submitted a bill that dealt with this issue of whether or not you

treat the water quality as a river, which it is at the time the application is made, or as an impoundment -- in other words, the water behind the dam, which is what it will be after the dam is created. That goes a long way, in fact, all the way that we need to satisfy the real problem with this thing. It makes a lot of sense to me to take that step. That was the bill that came into the committee, the bill that has come out of the committee -- for, as I say, understandable reasons, it does much more. It does something that we are not in the habit of doing very often, it is a piece of retroactive legislation regarding an issue, an important issue, that is still pending.

There are countless times in our state when the State Supreme Court permits issues to be retroactively applied, things that we do here. For the most part, they deal with what is called procedural rights. Those can be applied retroactively. Sometimes they can be applied retroactively when we don't want them to be. What the law doesn't permit is for something that is a right, called a subtenant right, to be retroactively applied. As a matter of fact, there is even a statute in this state and it says -- if a proceeding is ongoing, you have to use the law that is in effect when that proceeding was initiated. That is certain to be a subject for debate. There are people who are very ardent opponents of this legislation that say, look you just can't do it, not because of these lofty ideas of the Constitution but because you violate a simple law that we have had around here for a long time.

The bottom line is that we are not going to know the answers to any of that stuff today. We are not going to know whether or not it is constitutional, we are not going to know when this legal battle is going to die, but one of the things that we do know is, whether or not we have taken the time necessary to grapple with this obviously complicated issue and whether there is a way for us to do a better job if we give it more careful study and whether or not we have to attack this problem with such a vengeance.

We are doing some things here. If this bill should become a law, and if the Governor signs it and that doesn't occur very often, the retroactivity is a very unusual thing to do, maybe we can do it, maybe we can't, but it is an unusual assertion of power. The idea of requiring the commissioner, not the citizen board that has had the responsibility to date, but the commissioner to certify something, whether or not he thinks that that has occurred, in my six years in the legislature, I can't think of any instance when we've done that. It is frustrating to deal with any of these boards. I think that the boards and sometimes the citizens of this state think that it is frustrating to deal with us, maybe for the same reasons -- we are all citizens trying to do a good job. That is one reason that there is this other part of government, the courts, to try to unravel the disputes. We are a government.

I want to close with a point that I feel very strongly about. We are a government of laws, maybe there are some ways that we can improve the procedures behind those laws. This bill, I submit to you, doesn't look to the rule of law and ordinary procedure and precedent, it looks more to power and is a command from the legislature to hit back at the administrative agencies, then I think we have, in many cases, a real reason to be frustrated. I don't

think that is the way our government works, I don't think that it works that way for good reason. I think that is the reason the Bangor Daily News began with those words that "bad laws most often are drafted and passed in haste". We don't have to do that today, there isn't anything that requires us to push this through at this speed and it is for that reason that I urge you not to follow the Majority Report and that is something that I urge you with great reluctance because it is a hard issue for the people, particularly on the committee, they have been wrestling with this very hard for days, if not for years. It is the reason that I am reluctantly taking that position, again as I say, as the Representative from District 70.

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

Representative JACQUES: Mr. Speaker, Men and Women of the House: It is with that same reluctance that I disagree with my Assistant Floor Leader. I don't think the legislature was established to give business to the lawyers of this state, intentionally anyway, I think that we do that enough accidentally. Just to show you what can happen when you take something out of context, let's read the entire paragraph that was just paraphrased. It says: "Issuance of a water quality certificate required under the United States Water Pollution Control Act, Section 401," you should all become familiar with that.

This is not a fly-by-night act, this asks for data on the effect that something will have on the fish, on the birds, on the dragonflies, on the mosquitoes, on the land, on the flowers, on the erosion, it is pretty comprehensive. "It shall be coordinated for the applicant under the Sub-article by the Department of Environmental Protection. The issuance of a water quality certificate shall be mandatory by the Commissioner or the Director of the Commission within five working days of the applicant's request. In every case where the board approves an application under this Sub-article that certificate shall state that there is a reasonable assurance that the project will not violate the applicable water quality standards by the board after the board has met all of the criteria -- and they are satisfied that all of the criteria has been met. Then the commissioner shall issue that statement. The coordinating function of the Department with respect to water quality certification shall not include any proceedings or substantive criteria in addition to those otherwise required by this Sub-article", that is Section 401. If the commissioner or director fails to issue the certificate, the federal certification requirements of the United States Water Pollution Control Act, Section 401, shall be waived. That means if they don't go through all of those hoops, answer all of those questions, the commissioner can't do it.

One final thing for the Record, just to get back to where we are, this is a memo from the Acting Commissioner of the Board of Environmental Protection dated February 19, 1986, and it is quite clear. Big A Project, Petition for Reconsideration. "It has been and continues to be the position of the Department that the board should adhere to the expressed language of Section 634.1 of the Maine Waterway Development and Conservation Act and grant certification based on the issuance by the Land Use

Regulation Commission of a permit for the proposed project. In keeping with this position, the Department now recommends that the Board grant reconsideration, reverse its January 8th decision and approve certification." Anyway you want to cut it, any law school that you went to, that is perfectly clear. This is coming from someone that hasn't done anything in haste, ladies and gentlemen of the House. I, like seven or eight other members of that committee, have spent thousands of hours on this little issue and nothing, I can assure you, has been done in haste.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of more than one-fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken and more than one-fifth of the members present and voting having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The pending question before the House is to accept the Majority "Ought to Pass" Report. Those in favor will vote yes; those opposed will vote no.

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

Representative DIAMOND: Mr. Speaker, Men and Women of the House: I think that in the discussion that has been taking place for the last couple of hours or so on this bill a lot has been lost and that is understandable given the complexity of the issue and the emotion with which we all speak to this issue. But I think that we have to look at the real question before us and decide, based on that, how we are going to vote.

There is a report out of committee, the Majority Report, that proposes to do basically the same thing as its Minority Report, address a wrong and to clarify legislative intent, the intent that was established three years ago in the bill that I sponsored, the Rivers Bill. They go about it in a different way though, one would make it retroactive (the Majority Report); the other would like to make it applicable from this point on.

I support the Minority Report, and while everybody knows that I have been an opponent of the project in question, the Big A dam, one thing that I have made clear is that I don't believe the board action of a few weeks ago reflected legislative intent. When we debated this a year ago on an issue related to this, I said at the time that I would go along with the desire of this legislature and that desire was expressed fairly strongly and I heard it very well, and that was, don't change the rules in the middle of the game. I heard it and I kept quiet. It has been invoked again today that somehow we can't change the rules in the middle of the game and that is not the intent of this legislation. I agree, it is not the intent of this legislation to change the rules in the middle of the game. The point of this argument is, the game is over. The BEP made its decision. It is no longer an issue before it. They made a decision that surprised a lot of us, both proponents and opponents. As I said before, I thought that that decision does not reflect our intent. In looking into why the BEP acted the way it did, it became clear there is a conflict with, not only federal law but with state law.

I looked at the bill that I sponsored a few years

ago and I could not find that conflict. Then I found what they were citing in another section of that very same Title, Title 38. It was based on their legal counsel, the Assistant Attorney General, who advised them to do what they felt was clearly stated, as clearly as possible in the law, given the fact there were clear contradictions. They did so knowing there would be a challenge and they took on that responsibility. I think that it is right for a party to deal with a situation when they feel that they have been wronged but I think that there is a process established, a procedure to follow that is in the best interest of the state and it is consistent with the way this state is operated, and that is, when the legislature makes a law, it is up to a department or agency or regulatory body to interpret it and implement it. When an individual or corporation or any other entity feels it has been wronged by one of those boards or one of those commissions, one of those agencies, they could seek redress, could seek to have that decision appealed. The process is not to come to us, it is to go to the courts, the branch of government designed to interpret the laws and to make those decisions. If they feel that their case is so strong, why not go to the courts? If legislative intent needs to be clarified, we can do it, but we shouldn't do it retroactively. Look at the precedent that that would set and look at the situations that it would be applicable to. We are not talking now, not about a question that is currently ongoing, it is one that has been resolved, by what is considered a quasi-judicial act of government, the regulatory process that is established by Maine law.

We have approximately forty-five boards and commissions in this state, some deal with some pretty heavy subjects such as the Big A question -- LURC dealt with that and BEP has dealt with that, though we also have boards and commissions that deal with all kinds of things, citizen boards that deal with accountants, chiropractors, masseurs, you name it, just about everything is covered. Everyday they are asked to pass judgment on an application for a license or a permit. Some of these permits and licenses are pretty significant, such as the Big A question but also some are pretty insignificant, relatively speaking. In fact, it could be a driver's license we are talking about where the state, through a regulatory process, determines whether or not a person passes or fails, whether or not the standards of the law are being met and the person has accomplished that.

Now to use a very simplistic analogy, and I agree it is very simplistic, consider the person that goes for his driver's test and is told that they don't qualify, an arbitrary decision, some may say, but it is a decision that has been made by an agent of the State of Maine. What are they going to do, are they going to come to the legislature and ask us to authorize a driver's license for them? It is a crazy analogy possibly but the point is the same, it is not our role to deal with these individual problems. We created laws that delegate those responsibilities to others in state government. Now some of these agencies, commissions and boards may deal with them without flaw, others may fail, and in this particular instance, there is a feeling among a lot of people, both supporters of the dam and opponents of the dam, that the board did not accurately act in reflecting legislative intent. But, does that mean that we have

to take on that responsibility? It doesn't and it shouldn't. We have an obligation of course, and we can deal with a situation prospectively, we can make sure that it doesn't happen again, and both the Majority Report and the Minority Report attempt to do that. But it is not our role to go back in time and overturn, through a political veto, a decision of a regulatory agent, an agency of the state. It is a terrible precedent. If we do this now, we will have everybody who feels they have been injured by the state or an act of a state board or commission coming before us asking us to override that. It shouldn't be done. Many times that has been attempted here and we have said no.

I ask that you look at the one question before us today. The question is not, are you for or against the Big A. It is not, do you agree or disagree with the BEP decision -- the question is, should we pass a law that retroactively deals with a situation, the denial of a permit to somebody whose best recourse is to go through the proper channels -- that is the court system. If they do that, if we act in that manner, then we will be protecting ourselves, not only now, but in the future. If the case is so strong that BEP did, indeed, harm and foul the application of Great Northern, then they have nothing to worry about.

At this point, Representative Gwadosky of Fairfield assumed the Chair to act as Speaker pro tem.

The House was called to order by the Speaker pro tem.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Eagle Lake, Representative Martin.

Representative MARTIN: Mr. Speaker, Men and Women of the House: The remarks of the Representative from Bangor, Representative Diamond, brings me to my feet. He questions what the role of the Maine legislature ought to be and I would like to tell you what the role of the legislature ought to be. Our role as a legislative body is to enact laws. Once they are signed by the Governor, they are to be enforced by the Executive Branch.

Then the Majority Leader questions what our role ought to be. Should we simply ignore, when a department chooses to do what it wants to -- when a rule making body refuses to do what is legislative intent? Should we ever change what was intended by what these boards have done on their own?

Then there is the suggestion that this legislature would be doing something that it has never done before. I would like, for just a moment, to recall a few incidents for you in case you have forgotten. If you haven't been here very long, then I understand.

I will start with the licensing one since the Representative from Bangor referred to it. Before he was a member of the legislature, we had the Motor Vehicle Department who made rules and regulations, contrary to what the legislative intent was and we passed a law. We had the Department of Human Services who took that nice little bill we had to license nursery programs and you remember the monster they created? Then the worst of worst was what the Department of Labor did to Chemical ID. You all will remember what happened to that. What a monstrosity was created by a department? Then this past week, the Department of Environmental Protection is at it again dealing with another one, salt and sand, which was referred to earlier. We said that we didn't want any timetables because we didn't have the money to force the cities and towns. We just did that last

year. And guess what, they are promulgating the rules to do what they want to.

The Majority Leader and the Assistant Majority Leader say, that the proper way to handle that is to go to court. I say to you, why? Why should the person who runs the nursery or the person who is applying for a permit under the Big A have to go to court to correct the things which we said are one way and the departments want to do it another way? Does that make any sense? It doesn't in my book and I don't believe it does in any of the people of Maine's eyes either.

The question then is retroactivity. Everyone that has stood up on this floor has said, we knew what we intended when we passed the Rivers Bill, the department was going to issue it if water certification and classifications were met and the 401 federal requirements were met. The only thing that you have heard today, however, is that in regard to this project, it shouldn't be the case. From now on, it ought to be. In effect what that means is, if those on the Minority Report are successful, that the applicant, because of a department or in this instance a board, wants to force, and we would if we accepted the Minority Report's position, force an applicant, through no fault of their own, to reapply and spend another half million to a million dollars. Now, does it matter that it is a large corporation or a single individual? When we know it is wrong, shouldn't we correct that wrong as a legislative body? If we say no, then I ask you -- what are we doing here? The point being -- so we don't want to change the rules in the middle of the game. However, some do because they now want the second bite of that apple -- another way to put another road block in front of something else. That's all, why don't we be honest about it?

The opponents of the Big "A" say so. I might point out to you that I have not taken a position on the Big "A". I have not spoken anywhere and you will not find my position on the dam in any written testimony before any board anywhere in this state. Those people in the so-called environmental movement can't use that against me, but the issue is -- do you want to change the rules and do you want to force an applicant, who legitimately thought what they were doing was state law?

The comment was made about the Attorney General's Office, who advised the board and the staff of DEP -- let me tell you what the truth is. The Department took the advice of the Attorney General, reviewed the law, and made their recommendation from the very beginning to certify. The board was told by one Assistant Attorney General, Phil Lawrence, that "you take the position you want, I will defend you either way. I think I can do it either way." Those are the exact quotes, they were verified and the individual repeated them to other legislators a couple of days ago. By the way, that was also confirmed by the Chairman of the DEP board when I was there last Wednesday. I went to the board (and I spoke, by the way) and I was absolutely flabbergasted. Is the problem in this legislature? No, it is on those people who occupy the positions on the Board of Environmental Protection. Those six people who voted the way they did, to violate state law, ought to resign or perhaps we ought to consider impeachment because that is the only process we have to correct the situation. Is that strong language? Yes, it is. The time has come for this legislature to decide

whether or not the bureaucracy is going to run the state and implement the policies of this state -- or is this legislature going to pass the laws? Are we going to say, this is the policy -- you enforce it. I don't know about all of you in this room but, as I told the Democratic caucus, I don't mind taking criticism for the things that I vote for or against but by gosh, I hate like heck to go around this state defending actions for which I had no part, for which departments have implemented policies, rules and regulations on their own and for which we then are criticized. Then we take the heat from our citizens for things which we did not intend. Somehow, we need to figure out how this legislature is going to put an end to that.

This bill is not a Big A bill. Quite frankly, it is a bill to correct the situation that one board, six people to be exact, have told us that they don't care what the law is, they will do what they want. So I certainly encourage your vote on the Majority Report here today.

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

Representative DIAMOND: Mr. Speaker, Men and Women of the House: This is probably the only time you will see the gentleman from Eagle Lake and I disagree -- at least the only time you will "see" us disagree and, hopefully, you all understand that this is an issue that we both feel very strongly about and we both expressed that to you all many times, privately and publicly.

I have to take exception to many of the things that he said because some of the things he said underscore my arguments made just a few moments ago. He talked about the precedent that we were setting. He felt the statement I made about this being unprecedented action was not accurate. He cited several things -- the passage of motor vehicle laws, when we felt that the Department had not acted properly -- talked about actions of the Department of Human Services, when we felt they hadn't acted properly and he even gave the example of the Chemical ID Bill by the Department of Labor, when we felt that they didn't act properly but there were several that he left out, examples of when the legislature has acted when we disagreed with the department, agency, board or commission of the State of Maine. What he didn't say was that we never made it retroactive if a final decision had been made. Now, with the Chemical ID Bill, that law was in effect but nobody had been prosecuted for violating it and no action had been taken whatsoever. Every example that you could cite when we have taken on such concerns of ours, regardless of whether or not we succeeded in addressing them, I can't come up with, nor can anyone I talked to, an example of where we went back after a decision had been made and said, you are free, you have gotten your way, even though it has been denied, or you no longer have to pay that fine, even though it has been levied.

I used this example in our caucus today -- can you imagine if there was a trial (say a civil suit) and one party won and the other one failed and one side was a very powerful influence in this state, much stronger than the person who was on the other side -- let's suppose that that particular interest came to the legislature and said, we were wronged in court, the court was really unfair to us -- let's say it took place at the Superior Court level, the very place where this issue should go, I believe, and the

appropriate place under Maine law -- would it be right for us to overturn the decision of a court, in the adjudicatory body? Would it be fair to others, who haven't had the resources to come to us and ask for that support or that help? That is wrong and it is unfair. Everybody deserves equal treatment. There were people who applied to LURC, to DEP, in the past who have prevailed and sometimes they have been turned down. Some people have worked very hard to comply with the regulations of those departments because they respect them. If we make an exception by saying, even though this issue is no longer before the board, it has been decided, we are going to use a political veto to override it -- what message are we sending to those people in the public? What kind of respect can we expect for the actions of the legislature and the laws that we pass?

We have got to be consistent, ladies and gentlemen. Everything we do here has to be sent in a way that gives the public confidence in what we mean and what we say. In this particular instance, there obviously is an inconsistency, one that needs to be rectified but there is a channel for the aggrieved party to take -- there really is two channels for them to take and if they feel that the inconsistency in the law between the Rivers Act and the other provision in Title 38 has been unfairly applied to them, then go to the courts, the branch of government designed to determine the validity of those particular questions. It makes no sense for us to make retroactive any law that overturns a decision that is already taken care of.

The game is over in that particular respect. They have plenty more games to play in this multi-series, there are plenty of other chances and opportunities to deal with their concerns but I don't want to see it dragged into the political arena and to the legislative arena when it has no place in being here. I would hate to see us set forth an unprecedented action, that in the future, is going to cause us a lot of problems and a lot of headaches and a lot of grief.

At this point, Speaker Martin resumed the Chair.

The House was called to order by the Speaker.

Representative Ridley moved the previous question.

The SPEAKER: The pending question before the House is, "Shall the main question be put now?" This is debatable by any one member for five minutes.

The Chair recognizes the Representative from Freeport, Representative Mitchell.

Representative MITCHELL: Mr. Speaker, Ladies and Gentlemen of the House: I really don't like this motion at all. I may have voted for it once my first year here but I have never voted for it since that time. What we are debating right now is debating putting a gag on this House and stopping debate. We were all elected to this House to serve our constituents and to thoughtfully address the problems and issues that face the people of Maine. I was standing when Representative Ridley arose and made his motion and I would like to make one more comment on this bill before the debate ceases. I would respectfully request that the members of the House vote against the pending motion, to gag the debate.

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

Representative BRANNIGAN: Mr. Speaker, Members of the House: I also would like to speak and would not like to have the debate cut off at this time. I

think it is a very important issue. It is also one of the most confusing and difficult decisions that I have had to make and I would not like to see the debate cut off, even though it is Friday, and it is late.

The SPEAKER: The pending question before the House is "Shall the main question be put now?" Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

32 having voted in the affirmative and 60 in the negative, the main question was not put now.

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

Representative MITCHELL: Mr. Speaker, Men and Women of the House: Thank you for that last vote. I will be very, very brief.

When we passed the Rivers Bill, we did not repeal the water qualities of this state. We created a conflict in the law. No one has sabotaged the process. We passed a law and we made a mistake and when you make a mistake, the best thing to do is to fix it, admit it, and move ahead. I think there is very little to be achieved by criticizing people who serve on citizens' boards, who serve the people of Maine, especially when they are carrying out a process that we established. We are responsible for that process and if we don't like it, we should adjust it and make sure it works right in the future.

I think the responsible course of action, if you are frustrated with the board, is to take a look at the laws governing the board's procedure and make sure that they work right next time.

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

Representative BEAULIEU: Mr. Speaker, Ladies and Gentlemen of the House: I listened intently to the comments that were being made by Representative Diamond. I think it is my job here today to correct a few things and I will stand to be corrected. As Chair of the Labor Committee, there are two instances in which channels were used to correct things that were going on out there and we used the legislative process. On the Chemical ID Law, notice was sent out to every employer in this state and that was when the controversy arose and we came back here to the halls of this House and took corrective action on that.

In another instance, the MTA, because of a court decision, a Supreme Court decision that was handed down, my committee was asked to correct the problem and we took action in the halls of this House on "just cause" and "seniority" so this legislature certainly has been utilized as a channel to correct issues.

I am also convinced that the last law passed by this body at any given time does take precedence; therefore, I feel that acceptance of the Majority Report does not jeopardize anybody's integrity. I urge that we accept the Majority Report.

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

Representative BRANNIGAN: I couldn't let this go without clarifying and making sure that everybody understood that we do not have a Board of Masseuse -- no massage board in this House. There is no room for levity at all on this issue. Maybe there should be, we have to live together.

I came into this debate, not knowing how I was going to vote, I am not quite sure yet but I think I know. It was assumed though that I would vote in

favor of this bill. Somebody said they couldn't understand how (because we have so many boards before our committee) I could allow a board's decision to be overturned. I am still confused by the whole issue but I keep hearing the minority group saying that they made a mistake and I guess the majority agrees that they made a mistake and someone, because of that mistake, got denied something that was supposed to come to them. Now, if that is the case, I feel (and members of my committee might not agree, I don't know) if our committee made a mistake about a plumber or an electrician getting a license, if it was our mistake, I will be darned if we would want them to have to go to court to rectify. You know, if the board went along with the way that we ruled, but we were wrong and we made the mistake, then I think we would try to fix it and that person wouldn't have to go to court or wouldn't have to go through tests or other hurdles, etc. It seems to me that we would do everything to find a cure for that person and that is what I am wrestling with right now.

I respect many people in the DEP, I know them, and unless there is more, I am not going to vote for impeachment.

I just think that it has been confusing and, unless I can be better convinced, with respect that I have for Representative Coles and Representative Mitchell, I just think I have to go along with the Majority Report. Maybe I am wrong but I think we would fix it for that plumber or that electrician and I know that it is a long way from Great Northern but that is the dilemma I am in at this point.

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

Representative COLES: Mr. Speaker, Men and Women of the House: I would like to address a point just raised by Representative Brannigan. There was a mistake made and a permit was denied because of the mistake. The problem with this bill is that it simply does not correct that mistake. It goes on to say that a permit will be issued even though the product was never even considered under other criteria involved. The permit was denied on one of two basic areas of the criteria and there was no discussion nor does the DEP decision mention the other area. It's as if we mandate the issuance of the permit, you are mandating that the product will be exempt from the full scope of the law, the water quality law.

The problem that the board had with LURC was, that through no fault of LURC's, not all the criteria of the law will apply to the project. The board felt that it must keep the project in order to apply all those criteria. The discussion that went on that day in January before the board never got past the first set of criteria because the board founded on that criteria alone, the product wouldn't qualify.

The Minority Report would correct that criteria, the mistake made in the way that criteria was applied to this project and the board, in fact, if the Minority Report was in effect at the time, would have said probably that the project met that first set of criteria, having to do with dissolved oxygen. But the board never got around to discussing whether or not the product would degrade existing waters, whether or not the significant harm to the users provisions would be applied to the project or not.

If the intent of the legislature is to correct the mistake that has been made, it should go with the Minority Report. Make the Minority Report

retroactive in a way that would allow Great Northern, without prejudice, to get reconsideration. But please don't exempt the Big A project for the remaining criteria at the same time. Let it be fairly tested against those other criteria.

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

Representative MICHAUD: Mr. Speaker, Men and Women of the House: I will just address a few short items here and I will sit down because I think this issue has been debated and the committee had debated it quite awhile.

It goes back to the simple aspect of "what did we want." We wanted the one stop process and I am sure that Representative Mitchell would not disagree with that. LURC, when they dealt with the Big A application, had certain criterias that they had to meet. They put certain conditions on the Big A application as part of that criteria.

Representative Diamond keeps talking about changing the rules in the middle of the game, which I disagree totally with because we had a set of rules and that is what we want followed. The board is the one who decided to change the rules in the middle of the game. As far as the mandatory language, the department did speak for the LURC Commission when they dealt with that water quality certification. I have part of the transcript of the board before they decided to violate the State of Maine law and one of the board members, Mr. Wiley, was asking Steve Groves, who is the bureau chief of water quality -- "do you feel that the department did fully its statutory authority in coordinating the water quality information for the issuance of a permit?" Basically, what he is asking is, did LURC take the coordination from the DEP? Mr. Groves answered, "yes." Mr. Wiley asked, "do you feel that LURC reached the proper decision in issuing the hydro power permit for this project; therefore, maintaining the water quality standards in this department that was charged with?" Again, Mr. Groves answered, "yes."

Deputy Commissioner Young -- quickly trying to read through this transcript, I noticed one sentence that if there is a conflict, that is "if" between the federal and state law, I understand that Deputy Commissioner gave the board a chance to avoid any potential conflict. They refused.

Representative Coles talked about dissolved oxygen -- yes, ladies and gentlemen, if that impalement is built, about 15 or 20 percent will be below B-1, B-0, which is five parts per million. What Representative Coles failed to mention, and I can see why, is that 80 to 85 percent of that impalement, the DO will be (and this I received from Matt Scott when I asked him during a work session the other day) 9.3, which is double the DO under the B-1.

Representative Hayden talked about lawyers, I am not a lawyer, I am just a lay person and I do the job to the best of my ability and I knew what the committee wanted and the committee knew what we wanted -- but isn't there a judicial court decision or something that says if there is a conflict between statute that the latter will prevail? That is my question.

Before I sit down, I might mention that, yes the federal Clean Water Act does require a water quality certification but if the state chooses not to issue that, they can give up that right. What the feds wanted is to give the state a chance to deal with it in the manner that they so chose. But after a year,

they will lose that opportunity so I would hope that you would go along with the Majority Report, "Ought to Pass."

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

Representative PRIEST: Mr. Speaker, Ladies and Gentlemen of the House: There was a question asked about whether the last law enacted prevailed. That, unfortunately, is a very difficult question and not one which is easily answered. The answer, in some cases is, that it does prevail; in other cases, it does not.

I would like to say that there are two things that concern me about the Majority Report. It seems, first of all, that there is a separation of powers issued that we are dealing with here. The statutes are more than simply what the legislature says they are. The process starts with us enacting a law but after that, the statute goes to the Governor and the Governor looks at that statute and decides whether to sign it or not to sign it. His interpretation also is the law. When we give a regulatory board the chance to look at the law and to enforce it, they too have a say in what the law is. We talk loosely of legislative interpretation but, in fact, we should be talking about statutory interpretation. That is a very difficult thing to understand but, if you go through all the court decisions, you will see in general, the law is, not only what we say it is but also what the Executive says it is and also what the court says it is. If we don't like a statute as it is being interpreted by a regulatory board, then we should change it and I think everybody here is in agreement that we will make that change.

The question that concerns me, however, is the retroactivity. The retroactivity law clause, it seems to me, is going to cause a problem with this legislation. The issue as to whether the legislature has the power or not to retroactively effect rights is a very difficult one, very unclear. In general, the legislature can't effect a vested right retroactively. That may beg the question -- what is a vested right? Sullivan's treatises on statutory interpretation says that a vested right means simply a right, which under particular circumstances, will be protected from the legislative interference. That really doesn't answer much of the question. He goes on to cite, however, an eminent constitutional authority which says that a vested right is a right which rests upon equities. It has reasonable limits and restrictions, it must have some regard to the general welfare in public policy. It cannot be a right which is to be examined, settled and defended on a distinct and separate consideration of the individual case but rather on broad and general grounds which embrace the welfare of the whole community and which seek the equal and partial protection of the interest of all.

This bill concerns me because it is aimed at one application. It is, in essence, it seems to me, almost a private and special law, rather than a general law even though we have a general law covering the area. If we don't like the interpretation of the statute given by the Board of Environmental Protection, then we should change it and we will but it seems to me that we must abide by the process and not in effect take away an agency's jurisdiction to decide a case which it has already decided.

So, for those reasons, I support the Minority

Report and I would urge you to vote against the Majority Report.

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

Representative COOPER: Mr. Speaker, Ladies and Gentlemen of the House: I rise because of the remarks made by a previous speaker that changed the focus of the debate somewhat. That speaker called for the resignation or impeachment of board members. I feel that is unfortunate that that came up particularly given the feeling that I have from hearing other members of the committee that wrote this original legislation, the Rivers Bill, and seem to be divided on exactly what the interpretation of the law was. Obviously, there are two state bills and they are in conflict. The members of this board had to pick one or the other and apparently, from what their lawyer told them, that he could defend either one, they had the option of going with one or the other and they went with the one they thought would best protect the state.

I think support for the Majority Report, at this point, is indictment of the citizens who serve on that board, is indictment without any trial, without any due process, and I think perhaps the best way to solve that particular issue is to go to the Majority Report and let the applicant go to court and show that the board, in fact, made a mistake when it passed on its decision.

The SPEAKER: The pending question before the House is the motion of the Representative from Medway, Representative Michaud, that the House accept the Majority "Ought to Pass" Report.

The Chair recognizes the Representative from Old Town, Representative Cashman.

Representative CASHMAN: Mr. Speaker, I request permission to pair my vote with the Representative from Pittston, Representative Reeves. If she were present and voting, she would be voting nay; I would be voting yea.

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

Representative MICHAEL: Mr. Speaker, I request permission to pair my vote with the Representative from Lisbon, Representative Jalbert. If he were present and voting, he would be voting yes; I would be voting no.

The SPEAKER: The pending question before the House is the motion of the Representative from Medway, Representative Michaud, that the House accept the Majority "Ought to Pass" Report. Those in favor will vote yes; those opposed will vote no.

85 having voted in the affirmative and 45 in the negative with 17 absent and 4 paired, the Majority "Ought to Pass" Report was accepted and the Bill read once.

(See Roll Call No. 246)

The SPEAKER: Hearing objections for reading the bill a second time, the Chair will order a vote.

The pending question before the House is suspension of the rules for the purpose of giving the bill its second reading. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

81 having voted in the affirmative and 43 in the negative, the rules were not suspended.

Subsequently, the Bill was assigned for Second reading Monday, March 3, 1986.

(Off Record Remarks)

On motion of Representative Smith of Mars Hill,
Adjourned until Monday, March 3, 1986, at nine
o'clock in the morning.
