

# 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 Susan H. Muesse, Woodfords  
Congregational Church, Portland.  
The Journal of March 24, 1986, was read and  
approved.

PAPERS FROM THE SENATE

The following Communication:

SENATE OF MAINE  
OFFICE OF THE SECRETARY  
AUGUSTA, MAINE 04333

March 24, 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 confirmed, upon the  
recommendation of the Joint Standing Committee on  
Energy and Natural Resources, the Governor's  
nomination of Kenneth C. Young, Jr. of Hallowell for  
appointment as Commissioner of the Department of  
Environmental Protection.

Kenneth C. Young, Jr. is replacing Henry Warren.

Sincerely,

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

Was read and ordered placed on file.

Bill "An Act Concerning Nuclear Waste Activity  
and Requiring Disapproval of a High-level Radioactive  
Waste Site" (S.P. 898) (L.D. 2260)

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

Was referred to the Committee on Energy and  
Natural Resources in concurrence.

ORDERS

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

ORDERED, that Representative Betty J. Harper of  
Lincoln be excused March 31 for personal reasons.

Was read and passed.

REPORTS OF COMMITTEES

Unanimous Ought Not to Pass

Representative CASHMAN from the Committee on  
Taxation on Bill "An Act to Revise the Franchise Tax  
on Financial Institutions" (H.P. 428) (L.D. 608)  
reporting "Ought Not to Pass"

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

Unanimous Leave to Withdraw

Representative COOPER from the Committee on  
Judiciary on Bill "An Act to Aid in Enforcement of  
Child Support Payments" (H.P. 1414) (L.D. 1998)  
reporting "Leave to Withdraw"

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

Ought to Pass in New Draft

Representative PERRY from the Committee on Aging,  
Retirement and Veterans on Bill "An Act to Authorize  
the Establishment of Veterans' Homes in Northern and  
Southern Maine" (H.P. 1198) (L.D. 1703) reporting  
"Ought to Pass" in New Draft (H.P. 1604) (L.D. 2258)

Report was read and accepted, the New Draft given  
its first reading and assigned for second reading  
later in today's session.

Divided Report

Majority Report of the Committee on Energy and  
Natural Resources reporting "Ought Not to Pass" on  
Bill "An Act to Revise the Energy Building Standards  
Act" (H.P. 1385) (L.D. 1954)

Signed:

Senator:

EMERSON of Penobscot

Representatives:

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

Minority Report of the same Committee reporting  
"Ought to Pass" as amended by Committee Amendment "A"  
(H-598) on same Bill.

Signed:

Senators:

USHER of Cumberland  
KANY of Kennebec

Representatives: MITCHELL of Freeport  
COLES of Harpswell

Representative Michaud of Medway moved acceptance of the Majority "Ought Not to Pass" Report.

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

Representative MICHAUD: Mr. Speaker, Men and Women of the House: The bill that we have before us today -- I have done a lot of thinking on and I am still not sure whether I signed the right jacket or not. When I build my house, it is going to be built to the energy efficiency standards and I think the majority of the people who do build a house, that is what they will do -- what this bill does is that it mandates that you have to meet those standards.

The Minority Report will exempt a single family house if you build it yourself, but if you contract it out, then you would have to meet the energy efficiency standards.

Briefly, the way the bill works is that you would have to file a notice to build to the local building inspector for a \$5 filing fee. The form will be presented to the Office of Energy Resources and they will randomly inspect houses to make sure they do meet the standard. There is no added cost to this. John Kerry said they could handle it with the people they currently have.

I guess the basic objection on the Majority Report is the fact that we are mandating building standards. I am not really strong one way or another. I just happened to sign the Majority "Ought Not to Pass" Report on the basic philosophy of mandating.

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

Representative MITCHELL: Mr. Speaker, Men and Women of the House: The bill before us would require minimum energy standards on all new construction in Maine built after January 1, 1987. Passage of this bill will save your constituents \$124 million over the next twenty years and it will be at no cost to state government.

We made a great deal of progress since the oil shortage of 1982 and we saved a lot of energy and a lot of money. But the fact remains that there are still a lot of buildings being built in Maine that are not energy efficient. They are primarily commercial buildings and approximately 50 percent of commercial buildings built in Maine are not energy efficient. About 35 percent of the rental units in Maine are not energy efficient.

I agree with the gentleman from Medway, Representative Michaud, when he says that he would certainly build a house that is energy efficient and I don't think the owner-built house is really a concern in this issue because most people, when they go out and invest money in a house, make sure that they build an energy efficient home. It is the homes that are built for someone else that are the problem.

The burden of paying for these energy efficient homes is going to fall on your constituents, especially if we have to put a new electrical power generating facility on line to heat them.

The bill would add a small cost to the price of a new home. The additional cost would be about \$1400. The monthly energy savings for an electrically heated home would be about \$47.50 and that declines for a wood heated home, which would be about \$21 a month.

The bill makes a lot of sense, it is a common sense approach to a long term energy problem. If we are serious about solving these problems, I think we should act now.

Without a doubt conservation is the most inexpensive solution to our energy problems and, by conserving energy, we avoid the need of building expensive new generating facilities.

Two or three weeks ago, Central Maine Power Company distributed on our desks a book or little pamphlet called Maine Energy Outlook and it has a little sticker on the front talking about the closing of Maine Yankee. Inside that pamphlet, if you didn't happen to read it, there is a section on conservation opportunities and it says, and I will read it to you, "CMP clearly recognizes the value of conservation and holding down future energy costs for its consumers and reducing the financial risk of its share holders." Then they go on and discuss their programs and they continue, "If these and other CMP conservation programs are successful, they will avoid the need for approximately 700,000 kilowatts of capacity and 2 billion kilowatt hours of energy in the year 2000."

Last night on my way home from the legislature, I was listening to a program on the car radio called "Maine Things Considered" and there was a feature on that program about the declining costs of oil. The point the program made was that the declining costs of oil is going to result in a national reduction of electric rates but the people of Maine will not benefit from that reduction. The reason they will not benefit from it is because it will be offset by the high capital costs associated with constructing the Seabrook Nuclear Power Plant, which we still have to pay for because we haven't found an alternative to it. I think it makes sense to hold down energy costs and not end up heating drafty, leaky buildings.

Passing this bill is going to help your constituents. It will help avoid future high energy costs, it will help your constituents by helping them avoid future dependence on foreign oil. It will help your constituents by helping them to avoid the burden of paying for large electrical generating facilities in the future and it will help your constituents avoid another energy shortage like the one in 1973 and the one in 1979, when all of our energy prices skyrocketed.

I think that failing to pass the bill would be foolhardy and it will end up costing our constituents, the people of the State of Maine, a lot of money.

Mr. Speaker, I request a roll call.

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

Representative SOUCY: Mr. Speaker, Ladies and Gentlemen of the House: I did a survey or a questionnaire and I put this question on it. I had a 30 percent return, which equals to 467 people having replied and the percentages came out somewhere in the vicinity of 59 percent in favor of having some kind of standards and 34 percent who were not in favor.

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

Representative LAW: Mr. Speaker, Ladies and Gentlemen of the House: I agree with almost everything that Representative Mitchell said. There is an old saying, "one of the biggest lies in the country is when a government man comes into your yard

and says, I am here to help you." I am sure that this will help but I maintain, if we furnish the information to our constituents, then let's let them decide whether they want to be helped or not.

Last year, we passed a bill that made these standards voluntary. The number of houses that use these voluntary standards are increasing every year. I think that we should give the people an opportunity to go with the voluntary standards and see where it takes us.

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 Edgecomb, Representative Holloway.

Representative HOLLOWAY: Mr. Speaker, Members of the House: If you recall last year, we had a bill for energy standards that required, if federal money or state money was involved in the purchasing of housing, multi-housing, nursing homes, hospitals, then you must meet a standard. I went along with that bill, I felt if taxpayers monies were involved, then, indeed, you must meet the standards. I said, please you must never get into private housing and that is exactly what has happened this year. We are in private housing and it has been amended to the point where you are exempted if you are building your own home. But if you have a couple of lots out back where you want to have a contractor build two or three houses, they then must meet the standards. The state must come and inspect these houses and make certain that you do have an adequate amount of insulation and that you do have adequate foundation insulation.

We've considered the fact that this will be holding up the contractors, they will be unable to proceed with their work until they have this inspection. The office is telling us that they have five men that are able to go throughout the state to inspect and to give certification for these houses and we just can't imagine why that program has not yet been implemented and now want to take on another one.

To be sure, we have 65 percent voluntary compliance now in building standards. I believe that this is not the time to go into private housing, that we should delay this for another year or two and find out exactly how the energy bureau is handling that which we passed last year.

I urge you to support the Majority "Ought Not to Pass" Report.

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

Representative KANE: Mr. Speaker, Ladies and Gentlemen of the House: I think there is something unfortunate going on here and I think most of us have read about it in one newspaper or another, namely, since the demise of the Big A, which in my opinion, was untimely and unfortunate. There has been a certain reaction, I think, in both bodies of this legislature that anything that comes along that has a sort of conservation or environmentalist tilt to it is going to suffer a fate largely determined by what

happened to Big A, and not on its own merits. To a degree, I think that is what is happening here. I like everybody from Millinocket, especially Herb Clark, and I agreed with him on this issue.....

The SPEAKER: The Chair would ask the Representative from South Portland to refer to him as the Representative from Millinocket.

Representative KANE: Okay, the Honorable Herbert Clark.

I think there is some element of truth to that and I think everybody knows it. I think that that is, in some part, what has happened to this bill.

It is my feeling, although one can never predict what is going to happen in the other body, that this is going to pass hands down in the other body, if you look at the split report. Even the Chairman of the Committee, Representative Michaud said, that he really wasn't sure today whether or not he had signed the right report. So, I would just ask people today to give this bill a little bit of a chance and let it get through at least first reading and then see whether or not if emotions can calm down. I think there really is more to it than meets the eye.

I think that anybody in here, who was against the Big A dam, or anybody in here who is or intends to be against Maine Yankee, one way or another, has got a responsibility to look pretty carefully at this bill because this bill might actually give us, in sheer energy generation terms or energy conservation terms, the ability to avoid building another plant sometime.

All this talk about mandating -- you know, should we mandate this, should we require that -- I think in this instance we have, not only a right, but we have a responsibility to make these requirements. It is not as if your constituents can just go out and generate electricity on their own. Somebody is going to have to build a nuclear power plant or a dam or an oil fired plant or something in order to make the electricity that goes through these windows and doors. I think, just as a consumer, a person would like to know that anything built after 1986, can rest assured has these various energy conserving attributes.

I am going to just say one thing about the random inspection idea that the Office of Energy Resources won't be able to inspect -- virtually everything is random inspection. People don't say that the IRS that no one is going to pay his taxes because the IRS only randomly inspects or randomly audits tax forms. The idea that you have to have a force of employees that can inspect every single person, who is subject to a given law, is just sort of a spurious argument, I think, and ought not to be used to attack this bill.

I really do hope that people will just let it go today. As I said, the chairman said himself, he wasn't sure which way to go. I don't think it is really a bad bill and I think that if we look at it, given the problems we are going to have with Maine Yankee, apparently, given the pretty strong feelings against hydropower, I think we have a responsibility to look at this bill and save our constituents some money and some other problems over the long run.

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

Representative JACQUES: Mr. Speaker, Men and Women of the House: Representative Kane talked about red herrings last week and he just pulled in a whopper.

I want to show you that my vote on this bill has

absolutely nothing to do with the Big A and I hate to see that brought into this debate but I guess it is going to be every time we have a ten to three or a nine to four report out of this committee right up to the end of the session.

I have a few basic problems with this. Number one, these were voluntary standards that the committee established last year. This year, they are going to be mandatory. One of the questions the committee asked was, how long it would be before they were back with a bill to make it mandatory and they said, "Oh, no, we wouldn't do that." I knew better, because I have been around here a while. Well they did, they came back and tried to mandate.

The first bill was a real piece of junk, it really was. At least the Minority Report amended it so it is somewhere near decent. The concern I have is that, when you have contractors who build a house, they come in and insulate, put the sheetrock on and they are ready to go by supper that night. It is going to be kind of hard to go in there and inspect and see what they did or they didn't do.

Another problem I have is, when somebody is buying a home, irregardless of what anybody tells you, the first question they ask today, especially young couples is, how much insulation is in the walls, how much in the ceiling, and if it just doesn't satisfy them, they are not going to buy the home because there are plenty of homes for sale, all you have got to do is look around. They want to make sure, especially new homes, that they are built just right.

The bottom line to me, I can't speak for everybody else, the bottom line to me was -- here we have another law on the books that we really can't enforce, it doesn't do a whole heck of a lot but make a few people look good and maybe justify their jobs over in the office.

We asked Mr. Kerry if he could really enforce this thing and he said, no.

I submit to you, once we pass this bill, the Office of Energy Resources will be back going to Appropriations for another 12 or 13 positions to be funded so we can go and really inspect these and really do the job that we should do because the law is now on the books. We have got to make sure we enforce the laws we put on the books. That is why I went the way I did. It has absolutely nothing to do with the stupid Big A.

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

Representative COLES: Mr. Speaker, Men and Women of the House: I would just like to read some excerpts from the testimony that was given at the public hearing on this bill from the Public Advocate, Paul Fritzche. "Even with any temporary reduction in the price of oil, it is still a case that all future sources of electricity will be far more expensive than the cost of (unintelligible) facilities".

From the Public Utilities Commission, David Moskovitz. "The space heating requirements of new construction, particularly new buildings that are poorly insulated adds a significant burden to electrical utilities and all ratepayers in the state. This is because the cost of meeting every additional increment of electricity demand, especially space heating demand, which occurs during the peak winter season, costs substantially more than existing electricity supplies. Thus, inefficient building designed construction unnecessarily burdens

all the ratepayers in the state".

From a man named William Locke, who is an energy consultant. "In December 1985, I was called by a client to consult on the Ocean Meadows Condos in Ogunquit. These luxury units were built recently by a Massachusetts developer with no foundation insulation, a four foot crawl space and electric heat in the crawl space to keep the pipes from freezing. It was costing the condo owners \$150 to \$200 a month just to heat the crawl space to keep the pipes warm".

In another example, Mr. Locke cited, "A shopping center expansion that was proposed in Bath and failed to go ahead, was proposed to be built with no insulation in the walls, pure cinder block walls, and one inch in the ceiling. Despite the recommendations of Mr. Locke, the developer's attitude was, "I am not paying the operating costs, the tenants are, so I don't have to worry about it".

The Bureau of Public Improvement recently sent us all a letter about a state energy saving program. Part of that letter was this paragraph. "Since the inception of the program, statewide heating fuel use has decreased by approximately 30 percent and two and one quarter million kilowatt hours are being avoided annually and dollar savings are \$1.7 million to the state annually for an investment of \$7 million." I wish I could invest my own money at that rate.

The burden of poorly insulated buildings is felt, not by those that build them, but by those that have to pay the heating costs. 35 percent of the residential buildings in this state are built by people who do not pay the heating costs or 50 percent of the commercial buildings in this state are built by people who do not pay the heating costs. There is no incentive for those people to build energy efficient buildings.

I hope you will reject the motion today and support the Minority Report.

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

Representative KANE: Mr. Speaker, Ladies and Gentlemen of the House: I just want to point out a couple of items. I don't think that this should be considered an anti-business bill or an anti-industry bill. It is my understanding that the Maine Association of Home Builders endorsed the bill, recognizing their responsibility to make sure the people down the road know what they are buying. I don't think if it was really an anti-industry bill they would have found themselves in that position.

Another thing, it exempts anybody building his own home. If a person is building his or her own home, I think the assumption is that person is going to be paying for the heating costs and they are going to make sure that it is done.

The last thing I would like to mention is that we spend millions and millions of dollars a year here, we just shovel money out of here by the wheelbarrow full for fuel assistance and other things like that without any restrictions, nothing tied to it at all as far as whether or not that money is well spent.

This is a way for us to, in the long run, begin to reduce that. We just shovel the money out of here in order to buy fuel or wood or coal for people who could have the leakiest windows in the State of Maine. Our money is going right through the ceilings and right out the windows and right out the drafty doors. I think, just as fiscal common sense, it ought to tell us that, in the long run, cut back on

that by making sure things built after 1986 will be a little tighter.

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

Representative HILLOCK: Mr. Speaker, Ladies and Gentlemen of the House: I have a problem with the idea that we are just shoveling money out of here to heat houses where nothing is being done to make them more energy efficient, that is certainly not true. We pay for fuel for these homes but there is a lot of money going to winterization of these homes. That to me, is a very crass statement. A lot of this money is going out to put new windows in homes to make these homes less drafty and retrofit a lot of construction that was done well over 50 years ago.

I think economic motivation in the marketplace is certainly the best way to motivate people and we can just see, over the last decade, what has been done with construction. There are some cases in developments where they have been energy inefficient but there have been many more that have been energy efficient and those have demanded a higher value in the marketplace. Anyone in their right mind buying a dwelling today should investigate this. We supplied a lot of information to reinforce this concern that the consumer has for energy efficiency.

I am also concerned about the government getting involved in being a hindrance to construction of energy efficient homes. Representative Jacques made a very good point about the construction of a home, and any time you delay that construction, for any reason, the costs almost increase expedientially.

I am concerned about hiring a contractor to make a summer camp for myself or summer dwelling or guest cottage and the design of energy efficiency is really not that high a priority because the dwelling will never be used in the winter time. I think the consumer should have that right to make a dwelling like that. As far as large tax supported community developments, we already have a mandation for that, so I think we ought to wait and let the marketplace continue to do what it has been doing over the last two years and defeat this bill.

I urge you to support the Majority "Ought Not to Pass."

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

Representative CASHMAN: Mr. Speaker, Men and Women of the House: I think the debate here has brought up a couple of points that aren't quite factual. I think it was mentioned by somebody earlier in this debate that we adopted voluntary standards last year. I don't think that is true, and I would stand corrected if somebody on Energy and Natural Resources wants to mention the L.D., but I think we adopted voluntary standards about six or seven years ago.

Another point that was brought up by the previous speaker was that we spend money for winterization or weatherization programs, we don't just spend it on fuel assistance programs. I don't think there is any argument that spending money to build fuel efficient residences in the first place is much less expensive than trying to refit older homes.

I guess I have a hard time understanding the aversion of this body to adopt energy standards, either for appliances or for homes. I look at the notes on L.D. 1954 that was distributed to everybody this morning and I notice that all but six other states in the country have enacted broader energy

builder standards than Maine, and on the back, that Maine residents pay a higher percentage of their income on home energy than residents in any other state in the country. I don't know if that is a statistic we ought to be proud of.

I looked on the list of states that have minimum building energy standards better than Maine's or broader than Maine's, and I notice that every state in New England is listed except Vermont. I don't know if that is something we ought to be proud of either.

I think this is a good piece of legislation and I think that this body should pass it.

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

Representative BROWN: Mr. Speaker, Men and Women of the House: I really was going to stay in my seat, until the last speaker. I think this is a terrible bill. Incidentally, it has absolutely nothing to do with Big "A", I just can't understand where that implication is coming from.

The Office of Energy Resources is chomping at the bit to get regulatory powers. If you don't believe it, just look at some of the legislation that has come before our committee.

If you look at the L.D. and compare it to the amended version, of course you will see quite a difference because they agreed to make these a little less stringent than what the original L.D. said. But it does point out what is happening, not only in the Office of Energy Resources but also in many of the other regulatory agencies in the state, and that is, once that old foot in the door is in place, the foot seems to grow and the door just opens up a little bit more every year.

I think we ought not overlook the fact that Maine is one of the leaders in conservation in the nation; one of the leaders on a voluntary basis. I think that is well documented. Maine is one of the leaders because Maine people, I believe, are quite intelligent when it comes to spending their dollars. They are looking at what they are buying and they are looking at the savings that are going to be theirs if they invest in efficient homes. I think that this bill assumes that Maine people are stupid, that they don't know how to shop for homes, they don't know how to shop for apartments and that they don't know how to shop for energy efficiency.

Those who have spoken in favor of the bill say, it is really nothing, these folks are just going out from the energy office on a random basis and look at a few homes to see how it is going. I wonder what the penalty is doing in the bill, if that is the case?

I think if we pass this bill today, we will have taken a major step towards granting OER additional regulatory abilities and powers. I don't want to do that. I think that the main thrust of the Office of Energy Resources should be in the area of education. This is where we will get most of our bang for the buck, not by sending out a team of investigators checking construction at the construction site.

Let's defeat this ridiculous piece of legislation. I urge you to vote for the pending motion, the "Ought Not to Pass" Report.

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

Representative ZIRNKILTON: Mr. Speaker, Ladies and Gentlemen of the House: I would like to pose a

question through the Chair, if I may.

If we fail to adopt these minimum standards, my curiosity wonders whether or not it would be possible for someone to build, for example, an apartment building, not have it properly insulated and then later on come back to the state and have it insulated at state expense? Could someone answer that for me, please.

The SPEAKER: Representative Zirnkilton of Mount Desert has posed a question through the Chair to any member who may respond if they so desire.

The Chair recognizes the Representative from Freeport, Representative Mitchell.

Representative MITCHELL: Mr. Speaker, Ladies and Gentlemen of the House: I would say that it is quite possible that someone could build an apartment building that was not insulated and then rent that out to people and come back and apply for weatherization assistance and have the state government insulate that building. That is a very likely scenario, I think. I hope the bill does not pass.

The SPEAKER: The pending question before the House is the motion of Representative Michaud of Medway that the House accept the Majority "Ought Not to Pass" Report. Those in favor will vote yes; those opposed will vote no.

96 having voted in the affirmative and 46 in the negative with 9 being absent, the motion did prevail.

Sent up for concurrence.

(See Roll Call No. 264)

(Off Record Remarks)

On motion of Representative Cote of Auburn,  
Recessed until four-thirty o'clock in the afternoon.

(After Recess)

The House was called to order by the Speaker.

By unanimous consent all matters having been acted upon requiring Senate concurrence were ordered sent forthwith to the Senate.

#### CONSENT CALENDAR

##### FIRST DAY

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

(S.P. 787) (L.D. 1980) Bill "An Act to Make Supplemental Allocations from the Ground Water Oil Clean-up Fund to Support Activities and Staff of the

Board of Underground Oil Storage Tank Installers" (Emergency) Committee on Energy and Natural Resources reporting "Ought to Pass" as amended by Committee Amendment "A" (S-429)

There being no objections, the above item was ordered to appear on the Consent Calendar of March 26, 1986, under the listing of Second Day.

#### CONSENT CALENDAR

##### SECOND DAY

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

(S.P. 833) (L.D. 2115) Bill "An Act to Deorganize Plantation 14" (Emergency) (C. "A" S-428)

No objections having been noted at the end of the Second Legislative Day, the Senate Paper was Passed to be Engrossed as Amended in concurrence.

#### PASSED TO BE ENGROSSED

Bill "An Act to Facilitate the Collection of Child Support" (S.P. 887) (L.D. 2246)

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

The SPEAKER: The Chair recognizes the Representative from Washington, Representative Allen.

Representative ALLEN: Mr. Speaker, Men and Women of the House: A point of clarification please, on behalf of the Judiciary Committee -- number 7 in the Statement of Fact appears to create some confusion. So there is no confusion -- this bill does not make any changes in our current mediation process. Both child support and child custody are still mandatory subjects of mediation.

Subsequently, the Bill was Passed to be Engrossed in concurrence.

#### ORDERS OF THE DAY

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

HOUSE DIVIDED REPORT - Majority (7) "Ought Not to Pass" - Minority (6) "Ought to Pass" - Committee on Legal Affairs on RESOLVE, to Permit Edgar Warren to Sue the State for Compensation for Injuries Incurred While He was a Ward of the State (H.P. 1377) (L.D. 1940)

TABLED - March 24, 1986 by Representative REEVES of Pittston.

PENDING - Motion of same Representative to accept the Minority "Ought to Pass" Report.

On motion of Representative Reeves of Pittston, retabled pending the motion of the same Representative to accept the Minority "Ought to Pass"



Report and tomorrow assigned.

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

HOUSE DIVIDED REPORT - Majority (11) "Ought to Pass" in New Draft under New Title Bill "An Act to Improve Lobster Research and Management" (H.P. 1597) (L.D. 2248) - Minority (2) "Ought Not to Pass" - Committee on Marine Resources on Bill "An Act to Raise the Minimum Legal Size of Lobsters" (H.P. 513) (L.D. 718)

TABLED - March 24, 1986 by Representative CROWLEY of Stockton Springs.

PENDING - Motion of same Representative to accept the Majority "Ought to Pass" in New Draft under New Title Report.

On motion of Representative Diamond of Bangor, retabled pending acceptance of the motion of Representative Crowley of Stockton Springs that the House accept the Majority "Ought to Pass" Report in New Draft under New Title and tomorrow assigned.

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

HOUSE DIVIDED REPORT - Majority (10) "Ought Not to Pass" - Minority (3) "Ought to Pass" - Committee on Utilities on 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" (I.B. 3) (L.D. 2093)

TABLED - March 24, 1986 by Representative VOSE of Eastport.

PENDING - Motion of same Representative to accept the Majority "Ought Not to Pass" Report.

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

Representative BAKER: Mr. Speaker and Members of the House: I hope you will not accept the Majority "Ought Not to Pass" Report. I think the bill has merit and I would like to point out a couple of things before we take the vote.

This particular bill would basically do away with mandatory Local Measured Service. If the people who had chosen Local Measured Service reached a certain percentage, the phone company would have to provide clear and convincing evidence that an affordable flat rate was not possible. I think what we are trying to say here is that we want to prohibit the raising of a flat rate to an unofficially high level, forcing people on to a local measured plan. That would not make it an optional plan, that is the purpose of the bill.

The SPEAKER: The Chair recognizes the Representative from Eastport, Representative Vose.

Representative VOSE: Mr. Speaker, Ladies and Gentlemen of the House: This bill before us was an initiated bill asking that this legislature pass this bill or else go out to referendum. It seems to me that we had a very long debate on this issue; therefore, I am not going to debate the merits of Local Measured Service.

During the debate of a delay bill that we had, I

think that each and every person that got up favored the referendum process. For example, I would like to read just a few things that were said by (for example) Representative Baker, who just spoke. His last words on H-101 of the Legislative Record says, "let the voters decide." Representative Connolly, Page H-102 of the Legislative Record, "we should protect the integrity of the referendum process." Representative McHenry on H-105, Legislative Record, "why not wait six more months and let the people make a read good, clean, honest choice?" Representative Michael, H-106, "As I said, I would like to see us follow the tradition of petition -- that is keeping intact what we have in place now and let the voters decide what they want to do."

I am in full support of all those legislators that want the voters to decide and in particular Representative Baker.

I hope you will support my motion.

The SPEAKER: The Chair recognizes the Representative from Pittston, Representative Reeves.

Representative REEVES: Mr. Speaker, Men and Women of the House: I would like to point out to members of the House exactly what this bill does propose to do because I think that is something that has not been discussed in the record.

This referendum, if passed, will, in fact, make mandatory Local Measured Service illegal but it will never make optional Local Measured Service illegal. It will simply assure that those who benefit from an LMS plan will pay for what they used.

Since LMS is relatively new to Maine, we have to look at what happened in other states. The Bell System has been trying to push through Local Measured Service for 15 years now in order to raise its revenues. They have tried mandatory LMS programs but, as in Maine, these programs have been rejected by the people so they have tried optional programs. New England Telephone has offered an optional Local Measured Service program in Portland for ten years. As in Portland, they have found that, under 10 percent of the people, actually choose LMS if they have a free choice. Phone companies have been forced to try a third way to get us to buy LMS. They underpriced Local Measured Service and they overpriced flat rate service and, thereby, forced people to choose the Local Measured Service.

This is exactly what has happened in the plan that is in place now in Maine and in other states like Missouri and Iowa where bills with language similar to Maine's referendum are being considered by state legislatures.

What this Local Measured Service Bill actually does -- it says that if more than 25 percent of the people choose Local Measured Service, it may be because Local Measured Service is underpriced and the flat rate service is overpriced. Therefore, the phone company has to come back to the Public Utilities Commission and provide clear and convincing evidence that their rates structure is a fair one.

Seeing what has happened in other states, we are simply saying that the burden of proof should be on the phone company. If they can prove that there is a reasonable alternative rate, then fine, those people that choose LMS can have it.

In the meantime, the average phone user shouldn't be forced to subsidize cut rate phone bills for some. Most of the cost of the phone systems are a fixed cost, they don't depend on how many times you call, so all phone users should pay their fair share

of these costs.

Many of you have read and heard of the lawsuit recently filed by New England Telephone Company against the Secretary of State to challenge the wording of the ballot question. If this proposed citizens initiative is voted on next November, the Secretary of State's question reads, "Do you want to ban Mandatory Local Measured phone service and direct the state to keep the flat rate local phone service at as low a cost as possible"? This question was prepared in accordance with the law that the legislature passed in 1983 to insure that a fair and open procedure was used by the Secretary of State in writing ballot questions and that the wording of ballot questions would be decided before referendums were circulated for signatures.

Last August, the Secretary of State, when this referendum bill was proposed, invited comments from all interested parties, including the telephone company and the PUC, before he wrote the question. The question was prepared and certified prior to the circulation of the petition and was prepared in accordance with something called the flesh test for readability, which is intended to assure that all voters can understand the words and the meaning of the question. Then this approved question was printed on each petition in large type for all to read, including the 53,000 voters who signed the petition.

The telephone company filed a suit against this question and a suit to throw out the whole referendum two weeks ago, after the 53,000 signatures had been filed and because they were unable to find anything wrong with the signatures to disqualify them. The signatures have been finally certified by the Secretary of State. The judge in the suit has ruled that the appeal period for the referendum question has well passed and he has dismissed the suit on procedural grounds. But the telephone company is now appealing this decision to the Supreme Court. The phone company is desperate to head off this referendum because their polls show that a large majority of people do not want Local Measured Service and will vote to direct the PUC to keep flat rate service at as low a cost as possible. The phone company will bring suit against the question again because the door has been left open if we send this bill out to referendum.

We amended the law in 1983 to require ballot questions to appear on petitions. The Secretary of State wrote this question and approved the petition. Under the statutes, the Secretary of State now can't change the question.

This is a good bill, the people of Maine want it, and I urge you to vote against the "Ought Not to Pass" Report and enact this bill and save the expense of a referendum.

Mr. Speaker, when the vote is taken, I ask for 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 Lewiston, Representative Handy.

Representative HANDY: Mr. Speaker, Men and Women of the House: Over the past couple of years, I have been actively involved in this issue of Local Measured Service, having testified before numerous hearings of the Public Utilities Commission offering numerous suggestions. Since that time, the Public Utilities Commission has come out with a number of different mandatory Local Measured Service plans, none of which are optional. During those many hearings, myself and a number of other people testified to the fact that this was just another opportunity for NET to stick their foot in the door to raise rates without going through the normal rate making process. Indeed, men and women of the House, this is exactly what has happened, the prophecy has come true.

In my home city of Lewiston, we pay upwards of \$16 for the so-called optional flat rate. Now, if that isn't mandatory Local Measured Service, I don't know what is.

If the Public Utilities Commission can't take the bull by the horns and represent the people of the State of Maine, the phone customers of the State of Maine, in an open process and take into consideration their comments, then it is incumbent upon us as a representative body of this state to take that bull by the horn and prohibit mandatory Local Measured Service and allow those people who want to opt for some form of measured service to do so.

I urge you today to take a hold of this unique opportunity we have and pass this bill that has been initiated by the people of the State of Maine.

The SPEAKER: The pending question before the House is the motion of Representative Vose of Eastport that the House accept the Majority "Ought Not to Pass" Report.

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

Representative NELSON: Mr. Speaker, I request permission to pair my vote with Representative Bost of Orono. If he were here, he would be voting no and if I were voting, I would be voting yes.

The SPEAKER: The pending question before the House is the motion of Representative Vose of Eastport that the House accept the Majority "Ought Not to Pass" Report. Those in favor will vote yes; those opposed will vote no.

76 having voted in the affirmative and 54 in the negative with 19 being absent and 2 paired, the motion did prevail.

(See Roll Call No. 265)

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

RESOLUTION, Proposing Amendments to the Constitution of Maine to Change the Reapportionment Procedures to Reflect Changes in Legislative Procedures and to Specify how the Reapportionment Commission should Operate (H.P. 1599) (L.D. 2252)

TABLED - March 24, 1986 by Representative HAYDEN of Brunswick.

PENDING - Passage to be Engrossed.

Representative Brown of Gorham offered House Amendment "B" and moved its adoption.

House Amendment "B" (H-602) was read by the Clerk

and adopted.

Subsequently, the Bill was passed to be engrossed as amended by House Amendment "B" and sent up for concurrence.

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

An Act to Require Employers to Notify Employees of the Termination of Group Insurance (H.P. 1564) (L.D. 2209)

TABLED - March 24, 1986 by Representative HAYDEN of Brunswick.

PENDING - Passage to be Enacted.

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

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

PAPER FROM THE SENATE

Non-Concurrent Matter

Bill "An Act to Bring into Conformity Municipal and State Subdivision Laws" (H.P. 872) (L.D. 1229) which was Passed to be Engrossed as amended by Committee Amendment "A" (H-572) in the House on March 17, 1986.

Came from the Senate Failing of Passage to be Engrossed in non-concurrence.

On motion of Representative Michaud of Medway, the House voted to insist.

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

PAPERS FROM THE SENATE

Unanimous Leave to Withdraw

Report of the Committee on Appropriations and Financial Affairs reporting "Leave to Withdraw" on Bill "An Act to Improve Access to Child Care Services" (S.P. 743) (L.D. 1907)

Was placed in the Legislative Files without further action pursuant to Joint Rule 15 in 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. 668) (L.D. 1722) Bill "An Act to Improve

Enforcement of the Potato Branding Law" Committee on Agriculture reporting "Ought to Pass" as amended by Committee Amendment "A" (S-431)

(S.P. 795) (L.D. 2002) Bill "An Act Creating the Cornish Water District" (Emergency) Committee on Utilities reporting "Ought to Pass" as amended by Committee Amendment "A" (S-430)

(H.P. 1542) (L.D. 2179) Bill "An Act to Adjust the Nonresident Commercial Fishing License Fee" Committee on Marine Resources reporting "Ought to Pass" as amended by Committee Amendment "A" (H-601)

(H.P. 1428) (L.D. 2018) Bill "An Act to Revise the Certificate of Need Process" Committee on Human Resources reporting "Ought to Pass" as amended by Committee Amendment "A" (H-603)

There being no objections, the above items were ordered to appear on the Consent Calendar of Wednesday, March 26, 1986, under the listing of Second Day.

PASSED TO BE ENGROSSED

Bill "An Act to Authorize the Establishment of Veterans' Homes in Northern and Southern Maine" (H.P. 1604) (L.D. 2258)

Was reported by the Committee on Bills in the Second Reading, read the second time, passed to be engrossed and sent up for concurrence.

PASSED TO BE ENACTED

An Act to Strip Crime of its Profit (S.P. 847) (L.D. 2139) (H. "B" H-591)

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 to Clarify the Sand Dunes Law (H.P. 1221) (L.D. 1729) (C. "A" H-587)

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

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

Representative COLES: Mr. Speaker, Men and Women of the House: You may recall the other day, this was a bill which had unanimous support from the committee. At the last minute, an amendment was prepared, which forced some of us to vote against it. The reason we voted against it, I want to reiterate, is that, when you build a sea wall, you may protect your own property but you damage your neighbors property. The minority are very reluctant to allow someone to protect their own property, while damaging someone elses.

The bill which we were prepared to support called for the people building the sea wall to take full

liability for any damage done to the neighboring property as a result of the sea wall. The bill we are voting on right now does not do that. It provides that, if a devastating storm comes in and destroys half the property, the sea wall owner is responsible only to repair the front part and the poor neighbor, who had nothing to say about the construction of the sea wall, is going to be stuck with a major loss.

I hope that you will not support this bill.

Mr. Speaker, I ask for a roll call.

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

Representative BROWN: Mr. Speaker, Ladies and Gentlemen of the House: I hope that we go ahead and enact this piece of legislation. We had quite an amount of debate on this bill the other day. It was pointed out that this affects just a very few homes in the Scarborough area that are having a good deal of difficulty with the potential of erosion in front of their houses. I think the thing that was left out of the debate the other day and is also being left out today is that this particular stretch of property in front of these few homes is not on the open ocean side. In other words, it is not exposed to open ocean wave action but rather occurs, if you can picture around the corner of a river that is going out into the open ocean, so the concerns that were expressed by Representative Coles, I think, are really pretty much unfounded in this particular case.

Let's let these people protect their properties. I think that we reached some pretty good compromises in the committee process. I think that what we have here is a bill that is going to allow these people to protect their properties and I don't think that we should take that right away from them. There really is nothing, absolutely nothing, wrong with this bill.

I would hope that we go ahead and enact it this afternoon.

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

Representative HIGGINS: Mr. Speaker, Ladies and Gentlemen of the House: I, too, would hope that you would support this legislation today. This bill was brought about because the Board of Environmental Protection and the staff of the DEP really refused to deal with a problem that created itself in my district several years ago. The gentleman from Livermore Falls, Representative Brown, spoke very well about the fact that this is not on the ocean, so it is not subject to wave action that you would normally feel on a beach.

I would also point out that these homes were built on land that was made by the Army Corps of Engineers almost 20 years ago when they dredged the river and then they themselves built a jetty out from this point of land. So, in fact, the wave action that many people are concerned about has been affected by human hands already (by the Army Corps of Engineers) several years ago before the sand dune law was even passed.

This legislation was originally brought in two or three years ago by former Senator Danton and myself. The board said that they would try to implement some rules and regulations so these people might be able to protect their homes. I wish you could see pictures of these people's homes because you would realize that they have a real problem. The water at

one time came up and it eroded some of their land. They have not been allowed to fill that land back in again nor to protect what they have there now. Eventually these homes may fall into the river. I think that is unfortunate. I think we, as a legislature, ought to be able to give assistance to members of our community, our residents and constituents to protect their homes. We are not talking about a development, we are not talking about expanding sand dunes or building onto them, we are talking about allowing people to protect their own homes.

I think that each and every one of us, if we happened to own a house in this particular area, and through some hundred year flood or whatever, we lost some of our land in back of our house and it was precariously close to our own home, we would feel as though the state ought to be able to allow us or ought to work with us to protect our home. That is what these people are asking to do, that is what they asked to do two or three years ago. The regulations that were adopted were stringent, wouldn't in fact allow any help to these people, so we were forced to bring this legislation in again this time in an attempt to mitigate that problem.

I would hope that you would support this legislation today and send it on its way.

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

Representative MITCHELL: Mr. Speaker, Men and Women of the House: Representative Higgins is right when he describes this problem. There are six houses and the reason the sand is eroding in front of the first four houses is that the U.S. Army Corps of Engineers built a jetty out into the ocean and that caused an erosion at the end of the jetty and it has eroded four houses out. The reason the board didn't give the permit for those people to build the wall is that, as the wall is extended back, it will extend the problem back and it will cause problems for the neighbors. Basically, this is a bad neighbor bill.

The compromise that the committee reached two or three weeks ago was, I think, acceptable to everyone and I think it would be acceptable to everyone again if it was brought back. But the bill as it stands now allows four people to put in a sea wall, which all the experts tell us will erode the property of their neighbors, but it does not require the people who build the sea wall to be responsible for any damage other than just the damage to the frontal dune, which to me, means that if that front sand dune erodes away, they will put some more sand in, but if the house is destroyed, the people who built the wall that caused that destruction, will not be responsible. That is why I am going to vote against this bill today. I hope you will join me, this is our last chance to kill the bill.

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

Representative HOGGLUND: Mr. Speaker, Ladies and Gentlemen of the House: I would like to correct something and correct me if I am wrong -- from what I understand, there are six people who wanted to take care of their homes, two of them elected not to do so. Four of them would like to protect their homes with sea walls; the other two, there is negotiation possibly of building condos and they have the option of possibly to sell those houses and neglected to tell this body. I am appalled at the fact that they say these people are trying to protect their land.

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 passage to be enacted. Those in favor will vote yes; those opposed will vote no.

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

Representative CONNOLLY: Mr. Speaker, I request permission to pair my vote with Representative Bost of Orono. If he were present and voting, he would be voting yes and I would be voting no.

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

109 having voted in the affirmative and 19 in the negative with 21 being absent and 2 paired, the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

(See Roll Call No. 266)

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PASSED TO BE ENACTED

An Act to Amend the Waterville Sewerage District Charter (H.P. 1300) (L.D. 1816) (C. "A" H-586)

An Act to Provide for the Motor Vehicle Division to Purchase and Maintain Software Equipment Independent of any Other Provider and Related Hardware (H.P. 1331) (L.D. 1866) (H. "A" H-594 to C. "A" H-576)

An Act to Create a Noncommercial Scallop License and to Adjust Fees for the Scallop Boat License (H.P. 1537) (L.D. 2173)

An Act to Clarify the Confidentiality Provisions of the Maine Banking Code (H.P. 1532) (L.D. 2159) (H. "A" H-590)

An Act to Insure Fair Practices in the Sale of Health Insurance Policies to Elderly Consumers (H.P. 1582) (L.D. 2226) (S. "A" S-427)

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.

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(Off Record Remarks)

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On motion of Representative Racine of Biddeford,  
Adjourned until Wednesday, March 26, 1986, at  
nine o'clock in the morning.

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