

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD
OF THE
One Hundred And Thirteenth Legislature
OF THE
State Of Maine

VOLUME I
FIRST REGULAR SESSION
December 3, 1986 to May 22, 1987

THE PRESIDENT: The Chair recognizes the Senator from York, Senator Dutremble.

Senator DUTREMBLE: Thank you Mr. President and members of the Senate. For your information, this amendment takes off the emergency off the Bill. When we originally worked on this Bill we thought we had unanimous consent in the Committee, where we don't, I don't think we are going to be able to get the emergency clause, so this takes off the emergency.

Senator CAHILL of Sagadahoc requested a Division on the ADOPTION of Senate Amendment "A" (S-50).

THE PRESIDENT: The pending question before the Senate is the motion of Senator DUTREMBLE of York to ADOPT Senate Amendment "A" (S-50).

A Division has been requested.

Will all those Senators in favor of the motion of Senator DUTREMBLE of York to ADOPT Senate Amendment "A" (S-50), please rise in their places and remain standing until counted.

Will all those opposed please rise in their places and remain standing until counted.

14 Senators having voted in the affirmative and 12 Senators having voted in the negative the motion by Senator DUTREMBLE of York to ADOPT Senate Amendment "A" (S-50), PREVAILED.

Which was PASSED TO BE ENGROSSED, as Amended.
Sent down for concurrence.

On motion by Senator PEARSON of Penobscot, ADJOURNED until Monday, May 4, 1987, at 10:00 in the morning.

ONE HUNDRED AND THIRTEENTH MAINE LEGISLATURE
FIRST REGULAR SESSION
60th Legislative Day
Monday, May 4, 1987

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

Prayer by Reverend George E. Curtis, III, Stillwater Federated Church, Old Town.

National Anthem by the Gray-New Gloucester High School Band, Gray.

The Journal of Friday, May 1, 1987, was read and approved.

Quorum call was held.

SENATE PAPERS

The following Communication:
THE SENATE OF MAINE
Augusta

May 1, 1987
The Honorable John L. Martin
Speaker of the House
113th 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 Agriculture, the Governor's nomination of Betty Sawyer of Jonesport for appointment to the Animal Welfare Board.

Betty Sawyer is replacing Harold Higgins.

Sincerely,

S/Joy J. O'Brien

Secretary of the Senate
Was read and ordered placed on file.

The following Communication:
THE SENATE OF MAINE
Augusta

May 1, 1987
The Honorable John L. Martin
Speaker of the House
113th 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 Agriculture, the Governor's nomination of Joseph N. Williams of Waterville for appointment to the Animal Welfare Board.

Joseph N. Williams is replacing Bradford Tait.

Sincerely,

S/Joy J. O'Brien

Secretary of the Senate
Was read and ordered placed on file.

Bill "An Act to Prevent Abuse of Handicapped Parking Spaces" (S.P. 458) (L.D. 1402)

Came from the Senate, referred to the Committee on State and Local Government and Ordered Printed.

Was referred to the Committee on State and Local Government in concurrence.

Unanimous Ought Not To Pass

Report of the Committee on Banking and Insurance reporting "Ought Not to Pass" on Bill "An Act Relating to the Definition of Insurance Agents' Relating to the Termination of Contracts Between Insurance Companies and Agents" (S.P. 264) (L.D. 745)

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

Unanimous Leave to Withdraw

Report of the Committee on Judiciary reporting "Leave to Withdraw" on Bill "An Act Relating to Debtor Relief for Violation of Exemptions" (S.P. 263) (L.D. 744)

Report of the Committee on Energy and Natural Resources reporting "Leave to Withdraw" on RESOLVE, Authorizing the State to Convey its Interest in the Public Lots in the Town of Westmanland to the Inhabitants of Westmanland (S.P. 335) (L.D. 990)

Report of the Committee on Banking and Insurance reporting "Leave to Withdraw" on Bill "An Act to Control Points in First Mortgage Transactions" (S.P. 278) (L.D. 788)

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

Divided Report
LATER TODAY ASSIGNED

Nine Members of the Committee on Labor on Bill "An Act to Ensure Confidential and Reliable Substance Abuse Testing of Employees" (S.P. 54) (L.D. 105) report in Report "A" that the same "Ought to Pass" in New Draft under New Title Bill "An Act to Ensure Confidential and Reliable Substance Abuse Testing of Employees and Applicants and the Rehabilitation of Substance Abusing Employees" (Emergency) (S.P. 457) (L.D. 1400)

Signed:

Senators: ANDREWS of Cumberland
DUTREMBLE of York

Representatives: MCHENRY of Madawaska
WILLEY of Hampden
HALE of Sanford
RAND of Portland
RUHLIN of Brewer
TAMMARO of Baileyville
BEGLEY of Waldoboro

Three Members of the same Committee on the same Bill report in Report "B" that the same "Ought to Pass" in New Draft (S.P. 455) (L.D. 1398)

Signed:

Senator: COLLINS of Aroostook
Representatives: ZIRNKILTON of Mount Desert
HEPBURN of Skowhegan

One Member of the same Committee on the same Bill reports in Report "C" that the same "Ought to Pass" in New Draft under New Title Bill "An Act to Prohibit Substance Abuse Testing in the Workplace" (S.P. 456) (L.D. 1399)

Signed:

Representative JOSEPH of Waterville

Came from the Senate with Report "A" "Ought to Pass" in New Draft under New Title read and accepted and the New Draft (S.P. 457) (L.D. 1400) Passed to be Engrossed as amended by Senate Amendment "A" (S-50)

Reports were read.

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

Representative JOSEPH: Mr. Speaker, Men and Women of the House: I move Report "C," "Ought to Pass" in New Draft.

Mr. Speaker, Men and Women of the House: Today, we are going to be called upon to vote on a very serious issue, an issue that perhaps has never been discussed in the Maine Legislature, an issue that is surrounded with emotional appeal, emotional reaction, and talks about a very serious problem in Maine and the nation's society today.

With great hesitancy, I voted to prohibit drug testing in the workplace but not until after listening to hours and hours of debate and information presented to the Labor Committee. The Labor Committee met -- 13 work sessions. The Labor Committee had a six hour marathon hearing and the Labor Committee actually agonized over this, until we reached the decision that you will hear today.

First of all, I want to say that no member of this body, I can assume, condones the use and abuse of illegal drugs. No member of the 113th Legislature, I can assume, approves of the use of illicit drugs. Because today I present to you Report "C" that prohibits substance abuse testing in the workplace, do not let it be misinterpreted that the Representative from Waterville, Ruth Joseph, is soft on drugs.

Our mission and our job today is to look clearly and objectively with logic at this particular problem. It is not time to listen to grandstanding, emotional, rhetoric and to appeal about solving the social issue of drugs in the workplace. This is a very serious issue with very serious consequences to hundreds and thousands of Maine people, who work in Maine. This is not a time for political posturing or for political expediency or even any type of game playing.

The seriousness of this issue, the complexities of this issue, and the need for background information gave rise in the 112th Legislature for this legislative body to, in fact, name a commission. It was called the Maine Commission to Examine Chemical Testing of Employees. That commission met for six months and that commission heard 46 experts, experts that, in fact, were toxicologists, chemists, representatives from the business community, representatives from the labor community -- they heard from persons, who are employee assistant program representatives. This commission was made up of 9 prominent people in the State of Maine named by the Speaker and these people, in fact, came out on December 29, 1986 with a divided report. Report "C" that we are discussing here now is the finding of that commission. I am asking you, colleagues, friends, why are we ignoring the results of that commission? Why are we, in fact, saying that perhaps their findings, even though the Labor Committee worked very hard and very diligently, are not accurate.

What justifies us, in fact, to ignore their findings? Who, in the future, will want to serve on commissions and study committees named by this legislature if, in fact, their report is going to be ignored? I won't discuss with you all that is in this report but I do want to tell you why we are in this position today. After this marathon hearing for six hours and 40 to 50 witnesses, no questions were asked by the committee of those persons, we found ourselves in the Labor Committee Room for the first work session. We were told that the Governor was going to veto a ban on drug testing.....

The SPEAKER: The Chair would interrupt at this point to make sure that all members of the House, on this debate and on other future debates, do not

discuss what may or may not happen on the second floor. That action is not within the purview of this body.

The Representative may proceed.

Representative JOSEPH: I apologize, and I apologize to the members of this body. And because of the statements made, we worked very hard to find a compromise on this issue, this very serious issue. We worked very hard to put together a very tight piece of legislation dealing with all of the issues and concerns that the Commission on Chemical Substance Abuse Testing discussed. We came to the point where I felt that the principles of drug testing proved so fallacious that, in fact, drug tests are inaccurate, that no drug test tests the level of impairment. The intrusion on the person's privacy, the legal ramifications of passing Report "A" convinced me that I could not compromise on this issue. We were getting mixed messages.

At the hearing, we heard from the Commissioner of Labor and that they stood neither for nor against this issue. We read reports in the newspapers on October 8, 1986 that, in fact, the present Governor said that he would not be able to impose a program that would be an infringement on personal rights without good cause to do so.

As late as March, 1987, again there was a change in his opinion but he said, he would want to first see a causal relationship of employees on the job behavior and the administration of the tests rather than just giving it to everyone because they drive a school bus.

These mixed messages, again, caused us to work harder to find an answer. It is my opinion that we cannot solve the social problem of drugs in the workplace on the backs of the workers of the State of Maine, the 530,000 persons who do work in the State of Maine.

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

Representative MCHENRY: Mr. Speaker, Ladies and Gentlemen of the House: I believe that the good Representative from Waterville may be right on target and, in the future, she may be proven right by protecting the privacy rights of all employees of the state but we, on the committee, have agreed that a fair compromise is at hand, Report "A." Therefore, I would ask you people to vote against Report "C" so that we may go on to accept Report "A."

I also ask for a roll call.

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

Representative HALE: Mr. Speaker, Ladies and Gentlemen of the House: Some of us on the committee agree with Representative Joseph but we also realize that the people who elected us have spoken -- they want some type of drug testing. The majority has come up with the best possible drug testing bill to protect the rights of the employees and the employer. There is a safeguard in there for severability if it should be a proven factor that anybody's civil rights have been violated. Some of us agree with a drug testing. Some of us would rather see a ban but we cannot allow that to happen. The rights of people, right now, are being infringed upon. They are being tested randomly with no controls whatsoever.

I urge you to vote against the pending motion on the floor.

The SPEAKER: The Chair recognizes the Representative from Easton, Representative Mahany.

Representative MAHANY: Mr. Speaker, Men and Women of the House: I would like to pose a question through the Chair.

Who is going to determine probable cause? Who is going to be responsible for that decision and how is that going to be determined?

The SPEAKER: Representative Mahany of Easton has posed a question through the Chair to anyone who may respond if they so desire.

The Chair recognizes the Representative from Madawaska, Representative McHenry.

Representative MCHENRY: Mr. Speaker, that Report is not before the House so I don't believe that we should be answering the question.

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

Representative MELENDY: Mr. Speaker, Ladies and Gentlemen of the House: I would like to pose a question through the Chair.

Has the committee heard from pharmaceutical companies saying that they are working at perfecting these tests? I, too, am concerned with the inaccuracies of them.

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

The Chair recognizes the Representative from Waterville, Representative Joseph.

Representative JOSEPH: Mr. Speaker, Ladies and Gentlemen of the House: In answer to the question, there were experts who said that there was work being done. At this time and perhaps for the next two years, there will not be a perfect solution to show that there is a perfect test. I have called manufacturers with particular machines, I have talked to many people in the medical community and the inaccuracy still exists.

If this report were to pass, I would feel that we should amend it by adding a two year sunset. In two years, I believe that perhaps there will be the technology to have a perfect test, a test that will determine the innocence or guilt and I think that is a very important issue.

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

Representative HALE: Mr. Speaker, Ladies and Gentlemen of the House: There is a test that is accurate. I have spoken to a laboratory in my area -- in fact, he expressed very grave concern about this. The EMET Test is not accurate. There is one test that is, it is a costly test, and it is in the majority bill, it is called a GCMS. This is proof positive of a substance abuse within the system.

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 Gorham, Representative Hillock.

Representative HILLOCK: I would like to pose a question through the Chair to the Committee.

Reading the Statement of Fact regarding this, I have a question dealing with the prohibition of the employer testing for substance abuse. How does that apply to a state employee speeding down the turnpike that shows signs of being impaired?

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

The Chair recognizes the Representative from Brewer, Representative Ruhlin.

Representative RUHLIN: Mr. Speaker, Men and Women of the House: It is my understanding that the Minority Report that is presently before us would absolutely prohibit and ban all types of drug testing.

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

Representative JOSEPH: Mr. Speaker, Men and Women of the House: I am really not sure about the question. If you are talking about a breatholizer, it is still allowed in this prohibition for substance abuse testing. If you are talking about testing for illicit drugs, presently, I believe, that there are no tests that are legal. Drugs are illegal presently. It is not our concern to deputize employers to test workers for drugs. So, I believe that presently they cannot be tested.

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

Representative HILLOCK: Mr. Speaker, I would pose another question through the Chair.

Is alcohol considered a drug?

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

The Chair recognizes the Representative from Waterville, Representative Joseph.

Representative JOSEPH: Mr. Speaker, Ladies and Gentlemen of the House: Alcohol is considered a drug, absolutely. It is part of my argument here today to tell you that 47 percent of all industrial accidents and 41 percent of all industrial fatalities are caused by alcohol abuse. Today, the issue is illicit drugs and today we are going to be voting on whether or not employers are going to be able to test workers in the workplace.

May I also say to you on that point that, as we look at alcohol testing versus substance abuse testing, that if 100,000 Maine workers were tested, 1,000 Maine workers would have false test results. If 900 of those were false negatives, 100 Maine working people may lose their jobs because of false positives. I really cannot understand why we are ignoring the expertise, the information brought to us by a commission, which we determined was essential to deal with this complex problem of chemical testing of the workers.

The SPEAKER: The Chair recognizes the Representative from Greenville, Representative Gould.

Representative GOULD: Mr. Speaker, Ladies and Gentlemen of the House: Drug abuse is one of the most serious problems that the people of this country face. It has the potential to inflict harm upon millions of people. You know this as well as I do. Are there worse dangers to the American people? The answer is, yes. The danger we will destroy the very thing that has made the United States the greatest nation this world has ever seen. Nowhere in the history of mankind has one nation achieved the quality of life for and by its people that our nation has achieved. We still have much to do in America if we are to fulfill the dreams of a quality life for everyone but we will accomplish that goal as long as we maintain and preserve our beliefs in the moral values that enabled us to reach as far as we have so far. If we destroy those values, we destroy the only hope for success in meeting these dreams. We destroy the heritage so many individuals throughout history have fought and died for.

A long time ago someone more eloquent than I said these words, "All men are created equal, they are given by their creator certain inalienable rights and that among these are the rights to life,

liberty and the pursuit of happiness." The belief in these words has enabled this country to achieve what we have so far. If we break the faith with the concept behind those words, we break the faith of our brothers and sisters who have worked so hard to build our nation. Our constitution has as its foundation those words of wisdom. The Fifth Amendment protects those words by not forcing us to testify against ourselves. Certainly forcing one to testify against himself by testing his urine contradicts the Fifth Amendment.

People will say that I can get another job but that is not the issue. The issue is the Fifth Amendment. Do I have to testify against myself? No, I do not. The whole weight of our heritage of freedom answers the question loudly and clearly -- no, no to more destruction of freedom, no to random drug testing.

It is difficult for any of us to get up here and speak against drug testing. The very reason that I am opposed to drug testing, other than the Fifth Amendment, is by standing up here, there are going to be people in the State of Maine that think I support drugs. I have never used drugs, I never will use drugs. My children have never used them to the best of my knowledge and they probably never will. Simply because I stand up here and oppose it, I will be accused of being soft on drugs. You accuse one worker in the work force and if you prove him, not guilty, 100 times, he will still be considered guilty by many people. That is not a risk I am willing to take.

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

Representative ZIRNKILTON: Mr. Speaker, Ladies and Gentlemen of the House: We have all heard a lot of testimony today that the issue seems to be a matter of individual or personal rights. I don't think that is the case at all. Evidence of that is contained in Report "C" which has already been pointed out, does not ban breatholizer tests. So, the issue is not whether or not an employee is going to be tested, the issue is the manner in which the employee is going to be tested. Report "C" under the definition of substance abuse tests means any procedure designed to take and analyze body fluids or materials from the body. So, the concern today is over the urinalysis tests, not a breatholizer test, not a test that would measure brain waves, not any other kind of test, but the urinalysis test.

There are few things in this world that are perfect, that seems to be the justification for passing this bill today, according to the gentlelady from Waterville. She says that, because our drug testing systems in this state and across the nation are imperfect, that we should ban drug testing until we can come up with a test that is considerably more accurate and perhaps less obtrusive than the urinalysis test. I would say to you there are few things in this world that are perfect, rarely is this legislature perfect, rarely is our judicial system perfect, rarely is anything perfect.

What we have now is a tool to combat one of the most pressing problems in our country today, drug abuse. We either use that tool as effectively as we possibly can, as effectively as technology will allow us to do in today's world, with as much respect for individual and employee rights as we can possibly muster. This ban would not be in the best interest of all of us or the people of the State of Maine who have a right to work in a safe working environment.

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

Representative JOSEPH: Mr. Speaker, Ladies and Gentlemen of the House: Before we vote on this issue, I believe that there are a few more facts about the bill we are considering today that you must know. This bill, not only prohibits drug testing in the workplace, but it offers an alternative. Today, under section five of this bill, it encourages the use of employee assistant programs in the workplace as an alternative to substance abuse testing. These programs have consistently demonstrated their ability to deal effectively with employee substance abuse problems and do not intrude into an individual's privacy nor suffer from the problems of inaccuracy inherent in testing drugs.

I think it is important for you to know that in at least two cases in the State of Maine of major employers and that is Fraser Paper Company and Champions that there are excellent employee assisted programs available, not only to deal with substance abuse, but all of the other stresses in areas of our lives that would cause us, each of us, to act in an aberrant manner at our work site. All of these stresses could, in fact, cause us to be absent more than the norm. All of those life stresses could cause us to be tardy more than the norm. And for the small employer who would not be interested in employee assistance programs -- good management, good supervision, knowing his employees, knowing their particular habits, spotting any aberrant behavior on that employee's part -- this employer and employee relationship is the key in a small business.

As we look at this issue, we have to determine if there is a need for this particular legislation. Employers definitely have the right to have a drug free workplace. However, a state study of 96 companies with 22,251 employees showed the overwhelming majority of management felt that there was no problem existing in the State of Maine. There are national studies by the American Management Association indicating that most managers of top companies believe too much emphasis has been placed on drug testing. The managers feel educated supervisors, not drug tests, are the most effective tool for stopping substance abuse.

The question of test accuracy, the question of intrusion, the question of constitutional rights -- we haven't even talked about the question of the process and procedure and the chain of custody of these samples.

I urge you today to think carefully about this issue because on your desk, as you will see on one of the handouts, it says, you are dealing with reputations, careers, livelihoods and futures when you start analyzing body fluids. We want to know that there is a very high degree of accuracy.

The two examples that you find on your desks today show that, when there are state-of-the-art tests like GCMS given, when state-of-the-art laboratories are used in the testing process, that there are definitely inaccuracies, one dealing with the Conrail accident and one dealing in our own State of Maine in Limestone. So, please give this careful consideration as you vote whether or not to put the burden of the social drug use and abuse on the backs of the workers and the working people of the State of Maine and whether or not you are going to test them.

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

Representative HILLOCK: Mr. Speaker, I would like to pose a question to the committee.

Would this bill ban testing of anyone in the workplace that was the cause of a grievous accident?

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

The Chair recognizes the Representative from Waterville, Representative Joseph.

Representative JOSEPH: Mr. Speaker, Ladies and Gentlemen of the House: This particular piece of legislation prohibits drug testing in the workplace. This particular piece of legislation does not prohibit an employer from talking with his or her employee and recommending a rehabilitation program. In the City of Waterville, we have one of the best in the Seton Unit at Mid-Maine Medical Center and a 28 day rehabilitation unit for those who are using drugs, with two year monitoring, and this has proven extremely successful. We are dealing with workplace safety. No test, no test, let me emphasize, not one, not GCMS, not any urinalysis, proves the level of impairment. Not one test actually determines the amount of substance within the body. Every one of the tests show that there is only a residue in the body. In fact, the tests are so inaccurate that, if you and I were tested today or tomorrow, that those tests would register different results. The tests are flawed. This is not Ruth Joseph speaking, these are experts in the drug testing field from laboratories across the country.

The SPEAKER: A roll call has been ordered. The pending question before the House is the motion of Representative Joseph of Waterville that the House accept Report "C." Those in favor of that motion will vote yes; those opposed will vote no.

ROLL CALL NO. 37

YEA - Allen, Baker, Bost, Boutilier, Brown, Carroll, Carter, Chonko, Clark, H.; Clark, M.; Coles, Conley, Cote, Dore, Erwin, P.; Gould, R. A.; Gwadosky, Handy, Holt, Hussey, Joseph, Ketover, Kilkelly, Lacroix, LaPointe, Macomber, Mahany, Martin, H.; Mayo, Melendy, Michaud, Mills, Mitchell, Paradis, J.; Perry, Reeves, Rolde, Rotondi, Rydell, Simpson, Stevens, P.; Swazey, Thistle, Tracy, Warren.

NAY - Aliberti, Anderson, Anthony, Armstrong, Bailey, Begley, Bickford, Bott, Bragg, Callahan, Cashman, Crowley, Curran, Davis, Dellert, Dexter, Diamond, Duffy, Dutremble, L.; Farnum, Farren, Foss, Foster, Garland, Greenlaw, Gurney, Hale, Hanley, Harper, Hepburn, Hichborn, Hickey, Higgins, Hillock, Hogleund, Holloway, Ingraham, Jackson, Jacques, Jalbert, Kimball, Lawrence, Lebowitz, Lisnik, Look, Lord, MacBride, Manning, Marsano, Matthews, K.; McGowan, McHenry, McPherson, McSweeney, Moholland, Murphy, E.; Murphy, T.; Nadeau, G. G.; Nadeau, G. R.; Nicholson, Norton, Nutting, Paradis, E.; Paradis, P.; Parent, Paul, Pines, Pouliot, Priest, Racine, Rand, Reed, Rice, Richard, Ridley, Ruhlin, Salsbury, Scarpino, Seavey, Sheltra, Sherburne, Small, Smith, Soucy, Stanley, Stevens, A.; Stevenson, Strout, B.; Strout, D.; Tamarro, Tardy, Taylor, Telow, Tupper, Vose, Walker, Wentworth, Weymouth, Whitcomb, Willey, Zirkilton, The Speaker.

ABSENT - Connolly, O'Gara, Sproul, Webster, M.
Yes, 45; No, 102; Absent, 4; Paired, 0; Excused, 0.

45 having voted in the affirmative and 102 in the negative with 4 being absent, the motion to accept Report "C" did not prevail.

On motion of Representative Diamond of Bangor, tabled pending further consideration and later today assigned.

COMMUNICATIONS

The following Communication:

MAINE STATE LEGISLATURE
AUGUSTA, MAINE 04333
COMPENSATION COMMISSION

April 30, 1987

Honorable Charles P. Pray
President of the Senate
Honorable John L. Martin
Speaker of the House
State House
Augusta, Maine 04333

Dear Senator Pray and Representative Martin:

The State Compensation Commission is pleased to submit its first Interim Report to the Legislature as required by statute, 3 M.R.S.A. § 2-A.

The Commission has met twice since it was originally convened by Senator Pray as Chairman of the Legislative Council. In these meetings we have reviewed our statutory charge and defined both the preliminary scope of our work and a schedule for completing our work. The enclosed Interim Report lays out the proposed scope and schedule for our work. It contains no recommendations. We expect, however, to complete our work in at least one area and submit recommendations before adjournment of the First Regular Session.

As you know, the membership of the present Commission is the same as the 112th Commission. We appreciate having the opportunity to continue working together and with the Legislature and believe the continuity will be important in what we are able to accomplish. We look forward to reviewing the Interim Report with you and to working with you throughout the biennium.

Respectfully submitted,
S/Stephen R. Crockett
Chairman

Was read and with accompanying papers ordered placed on file.

PETITIONS, BILLS AND RESOLVES
REQUIRING REFERENCE

The following Bills 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 to Authorize a General Fund Bond Issue in the Amount of \$4,000,000 for Removal of Oil Storage Tanks and Related Ground Water Restoration" (H.P. 1048) (L.D. 1411) (Presented by Representative CARTER of Winslow) (Cosponsors: Senators WEBSTER of Franklin, ERWIN of Oxford, and Representative MURPHY of Berwick)

Bill "An Act to Authorize a General Fund Bond Issue in the Amount of \$6,000,000 for Sewerage Treatment Plant Construction" (H.P. 1049) (L.D. 1412) (Presented by Representative DEXTER of Kingfield) (Cosponsors: President PRAY of Penobscot, Representative LORD of Waterboro, and Senator DILLENBACK of Cumberland)

Ordered Printed.

Sent up for Concurrence.

Economic Development

Bill "An Act to Create Job Opportunity Zones" (H.P. 1057) (L.D. 1427) (Presented by

Representative BAILEY of Farmington) (Cosponsors: Representatives MICHAUD of East Millinocket, HEPBURN of Skowhegan, and Senator DUTREMBLE of York)

Ordered Printed.

Sent up for Concurrence.

Human Resources

Bill "An Act to Extend the Period for Filing Birth Records" (H.P. 1045) (L.D. 1408) (Presented by Representative PINES of Limestone) (Cosponsors: Representatives RICE of Stonington and HOGLUND of Portland) (Submitted by the Department of Human Services pursuant to Joint Rule 24)

Bill "An Act to Increase Penalties for Violation of Laws Relating to Vital Statistics" (H.P. 1046) (L.D. 1409) (Presented by Representative TUPPER of Orrington) (Cosponsors: Representatives FARNUM of South Berwick, HICKEY of Augusta, and Senator GOULD of Waldo) (Submitted by the Department of Human Services pursuant to Joint Rule 24)

Ordered Printed.

Sent up for Concurrence.

Judiciary

Bill "An Act Relating to Aggravated Trafficking or Furnishing Scheduled Drugs under the Maine Criminal Code" (H.P. 1051) (L.D. 1414) (Presented by Representative TAYLOR of Camden) (Cosponsors: Representative HIGGINS of Scarborough, Senators TWITCHELL of Oxford and WEBSTER of Franklin)

Bill "An Act to Fight Illegal Drug Use" (H.P. 1052) (L.D. 1415) (Presented by Representative PARADIS of Old Town) (Cosponsors: Senator THERIAULT of Aroostook, Representative SALSBURY of Bar Harbor, and President PRAY of Penobscot)

Bill "An Act Concerning the Requirements of Practicing Law" (H.P. 1056) (L.D. 1426) (Presented by Representative WARREN of Scarborough) (Cosponsors: Senators GAUVREAU of Androscoggin, BUSTIN of Kennebec, and Representative RACINE of Biddeford)

Ordered Printed.

Sent up for Concurrence.

State and Local Government

Bill "An Act to Make the Director of Safety a Major Policy-influencing Position" (H.P. 1044) (L.D. 1407) (Presented by Representative MacBRIDE of Presque Isle) (Cosponsors: Representative PRIEST of Brunswick, Senators BRANNIGAN of Cumberland and GOULD of Waldo) (Submitted by the Department of Public Safety pursuant to Joint Rule 24)

Ordered Printed.

Sent up for Concurrence.

Taxation

Bill "An Act to Return to Maine Income Taxpayers the Additional Tax Payments Associated with Conformity to the United States Internal Revenue Code of 1986 for Tax Year 1987" (H.P. 1050) (L.D. 1413) (Presented by Representative CASHMAN of Old Town) (Cosponsors: Representative JACKSON of Harrison, Senators TWITCHELL of Oxford and MAYBURY of Penobscot)

Ordered Printed.

Sent up for Concurrence.

Transportation

Bill "An Act to Clarify the Taking of Property by the Department of Transportation" (H.P. 1047) (L.D. 1410) (Presented by Representative SALSBURY of Bar Harbor) (Cosponsors: Representatives VOSE of Eastport and STROUT of Corinth) (Submitted by the Department of Transportation pursuant to Joint Rule 24)

Ordered Printed.
Sent up for Concurrence.

Utilities

Bill "An Act to Establish a State Nuclear Safety Program for Commercial Nuclear Power Facilities in the State" (H.P. 1053) (L.D. 1416) (Presented by Representative HOLLOWAY of Edgecomb) (Cosponsors: Representatives GWADOSKY of Fairfield, VOSE of Eastport, and Senator CAHILL of Sagadahoc)

Ordered Printed.
Sent up for Concurrence.

By unanimous consent, all reference matters were ordered sent forthwith to the Senate.

The Chair laid before the House the following matter: Nine Members of the Committee on Labor on Bill "An Act to Ensure Confidential and Reliable Substance Abuse Testing of Employees" (S.P. 54) (L.D. 105) report in Report "A" that the same "Ought to Pass" in New Draft under New Title Bill "An Act to Ensure Confidential and Reliable Substance Abuse Testing of Employees and Applicants and the Rehabilitation of Substance Abusing Employees" (Emergency) (S.P. 457) (L.D. 1400) which was tabled earlier in the day and later today assigned pending further consideration.

Representative McHenry of Madawaska moved that the House accept Report "A."

On motion of Representative Murphy of Kennebunk, tabled pending further consideration and later today assigned.

ORDERS

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

ORDERED, that Representative Gary W. Reed of Falmouth be excused May 11 for personal reasons.

AND BE IT FURTHER ORDERED, that Representative Christopher S. Gurney of Portland be excused May 5, 6, 7 and 8 for legislative business.

AND BE IT FURTHER ORDERED, that Representative Peter J. Manning of Portland be excused April 23 and 24 for legislative business.

AND BE IT FURTHER ORDERED, that Representative David G. Stanley of Cumberland be excused April 29 for legislative business.

AND BE IT FURTHER ORDERED, that Representative Carol M. Allen of Washington be excused May 6, 7 and 8 for legislative business.

AND BE IT FURTHER ORDERED, that Representative Harriet A. Ketover of Portland be excused May 5, 6, 7 and 8 for legislative business.

AND BE IT FURTHER ORDERED, that Representative William F. Lawrence of Parsonsfield be excused May 1 for personal reasons.

AND BE IT FURTHER ORDERED, that Representative Roger M. Pouliot of Lewiston be excused May 6, 7 and 8 for legislative business.

AND BE IT FURTHER ORDERED, that Representative B. Carolyne T. Mahany of Easton be excused April 30

for legislative business and May 1 for health reasons.
AND BE IT FURTHER ORDERED, that Representative Ronald C. Bailey of Farmington be excused April 29 for legislative business.

AND BE IT FURTHER ORDERED, that Representative Jean T. Dellert of Gardiner be excused May 6, 7 and 8 for legislative business.

AND BE IT FURTHER ORDERED, that Representative Paul F. Jacques of Waterville be excused April 30 and May 1 for personal reasons.

AND BE IT FURTHER ORDERED, that Representative Omar P. Norton of Winthrop be excused May 6 for personal reasons.

AND BE IT FURTHER ORDERED, that Representative Donald F. Sproul of Augusta be excused April 28, 29 and 30 for personal reasons.

Was read and passed.

REPORTS OF COMMITTEES

Unanimous Ought Not to Pass

Representative LOOK from the Committee on Marine Resources on Bill "An Act Concerning Nonresident Clam Licenses" (H.P. 680) (L.D. 921) reporting "Ought Not to Pass"

Representative COLES from the Committee on Marine Resources on Bill "An Act Regarding the 2-Inch Clam Law" (H.P. 353) (L.D. 456) reporting "Ought Not to Pass"

Representative COLES from the Committee on Marine Resources on Bill "An Act Concerning Residency Requirements for Clam Licenses" (H.P. 732) (L.D. 984) reporting "Ought Not to Pass"

Representative MCGOWAN from the Committee on Appropriations and Financial Affairs on RESOLVE, to Provide Funds to Mothers Against Drunk Driving (H.P. 442) (L.D. 595) reporting "Ought Not to Pass"

Representative LISNIK from the Committee on Appropriations and Financial Affairs on Bill "An Act to Create the Opportunity for Community Agency Input to the State Budget Process" (H.P. 493) (L.D. 663) reporting "Ought Not to Pass"

Representative CASHMAN from the Committee on Taxation on Bill "An Act to Amend the Farm and Open Space Tax Law" (H.P. 124) (L.D. 150) reporting "Ought Not to Pass"

Representative BEGLEY from the Committee on Labor on Bill "An Act Concerning Occupational Hearing Loss under the Workers' Compensation Act" (H.P. 499) (L.D. 669) reporting "Ought Not to Pass"

Representative RAND from the Committee on Labor on Bill "An Act to Increase the Maximum Benefits under the Workers' Compensation Act" (H.P. 822) (L.D. 1113) reporting "Ought Not to Pass"

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

Unanimous Leave to Withdraw

Representative ALLEN from the Committee on Business Legislation on Bill "An Act Relating to the Uniform Trade Secrets Act" (H.P. 719) (L.D. 970) reporting "Leave to Withdraw"

Representative MANNING from the Committee on Human Resources on Bill "An Act Relating to Selling Cigarettes to Persons under a Certain Age" (H.P. 78) (L.D. 81) reporting "Leave to Withdraw"

Representative BEGLEY from the Committee on Judiciary on Bill "An Act to Establish a Procedure for Trial De Novo in Certain Divorce Actions" (H.P. 881) (L.D. 1182) reporting "Leave to Withdraw"

Representative THISTLE from the Committee on Judiciary on Bill "An Act to Remove Superior Court Jurisdiction in Divorce Actions" (H.P. 535) (L.D. 719) reporting "Leave to Withdraw"

Were 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 CROWLEY from the Committee on Marine Resources on Bill "An Act to Strengthen the Lobster Hatchery Program" (H.P. 82) (L.D. 85) reporting "Ought to Pass" in New Draft (Emergency) (H.P. 1055) (L.D. 1425)

Report was read and accepted, the New Draft given its first reading and assigned for second reading Tuesday, May 5, 1987.

Divided Report

Majority Report of the Committee on Business Legislation reporting "Ought Not to Pass" on Bill "An Act to Compensate Newspaper Delivery People for Advertising Fliers" (H.P. 587) (L.D. 798)

Signed:

Senators: BALDACCI of Penobscot
BRANNIGAN of Cumberland
WHITMORE of Androscoggin

Representatives: GURNEY of Portland
TELOW of Lewiston
STEVENS of Sabattus
LEBOWITZ of Bangor
REED of Falmouth
ALIBERTI of Lewiston
HILLOCK of Gorham
ALLEN of Washington

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

Signed:

Representatives: RACINE of Biddeford
SHELTRA of Biddeford

Reports were read.

Representative Allen of Washington moved that the House accept the Majority "Ought Not to Pass" Report.

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

Representative RACINE: Mr. Speaker, Ladies and Gentlemen of the House: This bill that we have before us this morning is to compensate newspaper carriers for the extra weight that they are required to carry as a result of advertisers using supplements to advertise their products. Currently, the carriers are not being reimbursed for the extra weight that they are required to carry. The newspaper industry trade is getting paid by advertisers; however, they are not sharing some of their advertising monies nor adequately compensating newspaper carriers.

This is a method that is being used and being made acceptable because newspaper carriers have no one to represent them and argue their cause. Newspaper carriers are classified or being treated as independent contractors. Based on their age and based on the area they cover, they are not unionized, no one is there to represent them, so they are working under the whim of, what I will classify as greedy publishers, because they are taking advantage of those poor carriers.

Let me give you an example. If you look at the Bangor paper this morning and count the supplements, you will see that there were six. Unfortunately, I don't have a scale here so I could weigh these papers but you take an individual that has to carry all of those on his paper route and not being compensated

for that additional weight that he has to carry, I feel is unfair and an injustice.

Now, I realize that your Sunday papers weigh much more than your weekday paper. I have a paper from the Portland Telegram that weighed exactly two pounds, 14 ounces, and contained 14 supplements, which the newspaper publishers were adequately compensated; however, do not see fit to compensate those poor little carriers that have to be out there when it is snowing, raining, icy, when your roads are covered with ice. Also during the winter months, they have to be out there when it is dark. Those that pass the morning paper and those that pass the evening paper are also out there in the darkness, exposing themselves to the elements, being exposed to being run over by an automobile and they are not getting any additional compensation for carrying that additional weight. I think that it is a crying shame that publishers are not adequately compensating their carriers.

Now, you will hear some arguments that the bill does not translate into newsboy and girl benefits and strikes a disastrous blow to consumers, advertisers, and newspapers, all of whom are struggling to keep their heads above water in these difficult times. Now, isn't that sad? How about that poor paper carrier? Do you realize that last winter when we had all that snow and those tremendous storms, that the postal department did not even deliver the mail to my house, but guess what, my paper was there. My driveway had not been shoveled because it was snowing hard and there was approximately two to three feet of snow in my driveway and, when the plows came by, the kids had to go over a three to four foot snow bank; yet that paper was delivered.

All we heard at the public hearing was, if they are required to compensate the carriers, that this would be an economic disaster to the advertisers, to the newspaper industry, that they would lose some advertising revenues because your advertisers are working on a strict budget and any increase would have to be passed on to the consumer. They feel (this is from the advertisers) that the publishers will not, under any circumstances, share what they are getting as advertising revenue. The representative from one of the larger supermarkets indicated that they are paying publishers five cents per supplement. Incidentally, those supplements are not being printed in the State of Maine, they are being brought in from out of state. So, your local newspapers are not involved in the publishing of a supplement, the only thing that they are doing is having those carriers distribute them.

Probably another thing too that you will hear, I don't know, that the reason they are using supplements is because it is a cheap form of advertising. The cost is approximately 75 percent cheaper than if they used the regular advertising in the newspaper and make it part of the newspaper. They feel that if they have to pay the additional cost that they would probably have to resort to some other type of advertising and, if they do, then your publishers would probably have to curtail their operation which will have an adverse effect on your newspaper carriers. In other words, they say, if you do this, you are going to throw that carrier out of a job and, if he didn't do this, he would not be doing anything and he is bringing in income.

The thing that is really upsetting is that some of those papers are so heavy that parents have to become involved. Parents have to get up early in the morning, use their automobile to help the children. Parents have feelings but the paper publishers do not and this is why this is so unbelievable that they

would not make any attempt to compensate their carriers.

We, as a body, have an opportunity to show some compassion and show some feeling. Next Sunday is Mother's Day and I think this would be a good opportunity to make all of us proud of what we will be doing today. I would like to see my mother go to church and say, today, last week, I was proud of the members of the House of Representatives because they have a heart, they took it upon themselves to vote to compensate those children that are being taken advantage of. I certainly hope that within your heart you will see that you can support a vote against the pending motion so that we can pass this bill and send it on to the other body.

I want to thank you for your indulgence.

The SPEAKER: The Chair recognizes the Representative from Lewiston, Representative Aliberti.
Representative ALIBERTI: Mr. Speaker, Ladies and Gentlemen of the House: Just a second please, I want to take my handkerchief out.

Before anyone paints the newspaper carrier industry of Maine as an insensitive monster, consider this -- the carrier profit is 26 percent of the price to the subscriber and they earn on an average of \$20 to \$26 for six to nine hours work a week, not counting the tips. L.D. 798 will increase the cost of delivery, as my friend from Biddeford indicated. He gave both sides of the question rather eloquently. Perhaps none of us have to get up and debate the bill because he did give both sides of the question. This type of advertising will be in jeopardy and force other alternatives that will seriously alter the present cost of delivery to the subscriber.

What are these monsters doing for the youngsters in our area? Well, they are offering them, for every dollar a week they save, every April they will match that with a 25 percent additional return, and that will be compounded every April. There is a maximum amount of money that they can put into this plan but it is a saving plan offered by the newspaper.

This same monster that has been painted here offers accident insurance to the youngsters in our area while they are on the route, free of charge. If they want to pick it up as a general accident policy, they may do that under the group plan.

Another area pays all of the accident insurance including that on and off the route.

We heard from a very concerned publisher of a weekly newspaper from Presque Isle. Again, we hear this in our committee over and over again -- pass this legislation and you will put another small business out of operation. This is a weekly paper and he depends greatly on the additional advertising revenue to keep his paper going. You know as well as I do that a weekly publisher has a very, very strict budget to conform to in order to keep his head above water.

In conclusion, as my friend from Biddeford indicated, there will be poor, poor paper carriers and I am saying to you, if you pass this bill, there will be more poor, poor, poor, paper carriers.

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

Representative POULIOT: Mr. Speaker, Ladies and Gentlemen of the House: I am sorry but I didn't bring my handkerchief so I won't be able to do any crying.

I stand here before you today thinking -- this is a bill that its time has come because it was before this House previously. With that, I would like to stand here before you today on behalf of a large percentage of our youth, many of whom cannot be here

today to represent themselves. Many people have stood in this same Chamber and stated, "What an asset our young people are to this state and to our nation." To be a supporter of today's youth is, indeed, to be a supporter of tomorrow's future, for they are the leaders of tomorrow.

With that in mind, I proudly stand here before you in support of L.D. 798, which would compensate newspaper carriers in relation to the inserts they carry. Within the State of Maine, there are approximately 3,000 carriers and the average weight per paper, without inserts, is roughly one-half to a pound. The presence of multiple inserts literally places an additional burden upon the carriers. Let me ask you -- is it not the American belief that each individual be fairly paid for the service he or she performs? Regardless of weather conditions, when businesses and schools sometimes close, we expect our newspaper and our expectations are always met for our newspapers are always delivered.

Reflect for a moment on a newspaper carrier's duties, it is not just delivering the papers and multiple inserts but it includes weekly payments and that includes, perhaps, returning several times to the same residence if the owner is not at home, which cuts into the carrier's profits and personal time.

I was a carrier and I wonder how many of you were. I found the money I earned in that capacity gave me my first sense of financial responsibility. I believe our young people need to know that we, as adults, believe that their services are, indeed, worthy of having increased payments as their responsibilities increase with these inserts for delivery.

Newspaper companies are making profits, especially when the price of newspapers goes up. When the price goes up, the companies make more money, unlike the carrier. When the price of a newspaper goes up, it is safe to say that a carrier's tips remain the same or decrease. With such a scenario and increasing responsibilities from inserts, where is the incentive for the carrier?

L.D. 798 was presented to you in the past without favorable results. I urge you to show our youth that we believe in the values of their services and by positive support of this L.D.

You hear a lot about young people who are getting into trouble and how they are lazy -- that they don't want to work, that they care only about themselves, that they would rather sell drugs or listen to terrible music rather than getting ahead -- I don't think that that is true. But if there are young people like that, it certainly doesn't include the little girl who brings my newspaper or at least not yet. Saturday, when she came to the house to deliver her paper and she was collecting, she happened to say: "Mr. Pouliot, is it true that I am going to get a raise?" I said, "A what?" She said, "Is it true I am going to be getting a raise?" I said, "Where did you hear this Christy?" She said, "My father told me that he heard something on the radio about a one cent raise." I said, "Oh this is a bill, Christy, that we will be debating at the legislature sometime next week." She said, "Do you think it will pass?" I said, "Well, I am not sure but I hope that all the members of the House are sympathetic to your issue." She said, "I hope you give them the message. I was there two weeks ago and I know that they will support it because when I was in the balcony, all the lights went on and they were all green. I looked at your name and there was nothing." So I hope today, your lights will be with us.

Christy happens to be ten, a young girl, she delivers approximately 38 to 42 papers. As I told

you, the weight is anywhere from half a pound to a pound. The Sunday paper can go anywhere from two pounds or more. I asked her what time it took her to pass out her papers. The Sunday route, without the help of her parents, has taken anywhere from two and a half to three hours. Now she has the help of her parents. She also said, "The other days that are heavy are Wednesday and Thursdays when we have the inserts."

I hope and pray to God that she learns that the hard work that she does every day for all of our benefit will get her ahead in life. If that kind of work doesn't get her ahead, then why should she bother working at all? She can take the easy route, she can walk away from responsibility. Yes my friends, I am supporting this bill. I know the arguments from the owners of the newspaper. I know that it doesn't make any political sense to get into arguments with people who buy the ink by the barrel but I will tell you one thing -- I am going to sleep well tonight because I am voting for this bill. Even if it passes, the newspaper boys and girls of this state will get nowhere near the minimum wage. You may say, "Roger, you are letting your emotions get the best of you." Well, maybe you are right and maybe it is about time that we all lead with our hearts once in awhile. Maybe it is about time we forget about ourselves and start thinking about others, people who make real sacrifices. Maybe it is about time that we throw away caution and political self-interest to the wind and do what is right.

Please my friends, let's vote for this bill. Let's give the kids a break.

The SPEAKER: The Chair recognizes the Representative from Canaan, Representative McGowan.

Representative MCGOWAN: Mr. Speaker, Ladies and Gentlemen of the House: Today is a day for justice. Today is a day in which we are going to do our job in this legislature and represent some people who need representing and need some justice. They don't have a lobby, they don't have a union and they don't have high-powered groups of editorial writers who are going to write in their behalf. They are up every morning, they are the people who are smiling at you when your paper is delivered and they are there before you leave for work. Today, I really hope, is a day for justice.

I had a daily paper route when I was a young fellow with 85 customers. Then I got a little smarter as I grew older and I went to a Sunday route with a 125 customers. I want you to know that there were some days when I had all I could do to lug those papers around. I had those cross-chest news sacks, the one's that look like a Mexican bambino and sometimes when I threw more papers out on one side than the other, I would fall off my bike. I did it early in the morning so I would save myself embarrassment. As I grew older, I went to the Sunday route and the Sunday route is a lot heavier, as you well know. I borrowed my babysister's baby carriage and oftentimes now, when I am traveling through the streets of Pittsfield, they say, "I remember you McGowan, you are the one that wheeled the baby carriage around for years on Sunday morning." I say, "Yes, I did, I usually did it all before five o'clock so no one would see me."

I tell you -- there are no lobbyists here for those people but there are for others and those "poor" newspaper publishers, I really feel bad for them today, because they are just getting by. Those little carriers out there, they are waiting for your lights. You know why today is even a more important day for justice? Because today is Monday and if you know what Monday is to a news boy or girl, you just

pick up today's (Monday) paper and you will find every supplement in the world in it. There is no better time for us to be debating this bill than today, on Monday, because today is the day that they carry the weight. We are asking you to help them carry the weight a little easier.

The SPEAKER: The Chair recognizes the Representative from Lewiston, Representative Aliberti. Representative ALIBERTI: Mr. Speaker, I would request a roll call.

Members of the House: The legislature, in all honesty, to take their responsibility here to take an element of concern should not listen to the over-emotional approach but a practical approach as to its responsibilities in enforcing laws and regulations. The legislature should not attempt to set wage rates for one, among the state's many thousand occupations. There is no justification whatsoever for singling out newspaper carriers from among the many part-time minimum wage occupations. Young people work at most of them during the summer; if not, during the school year and most are far more strenuous than carrying newspapers, blueberry raking, potato digging, summer farm work, shoveling snow and garden and lawn work are just a few examples.

The need for carriers and the willingness of more young people to take paper routes has combined to set a reasonable market price for the carrier's services. The legislature should leave well enough alone.

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 Brunswick, Representative Sheltra.

Representative SHELTRA: Mr. Speaker, Ladies and Gentlemen of the House: I am glad that I afforded my cohort from Biddeford the opportunity to express himself. I think he did a commendable job and I would like to make a few remarks myself.

The occupation that I was in I had to be outdoors constantly. As a matter of fact, as opposed to papers, I ended up delivering up a lot of telephone directories, no matter what the weather was. I would quickly like to add that I was well paid for it. I enjoyed doing it. However, the difference here is that these kids, I think, are being discriminated against. They do not have the representation that they might have.

One thing that upsets me really is that we have committee work and so much is said about education and how important it is to go to school and get that degree -- I firmly believe that this is true. However, if you will notice, and I am talking about publishers now, when your child ends up on the honor roll, you are likely to get a half inch informational listing stating that fact. This, to me, does not show quite much compassion for these young people. I think they should be encouraged to further their education whenever possible and certainly the media should be behind them.

When we have had advertising rates go up, have the newspaper boys or girls been compensated? I don't think so, I don't think they were thought of. Like I said, this is a time we could be helpful to these young people and I hope you will support this bill.

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

Representative ALLEN: Mr. Speaker, Ladies and Gentlemen of the House: Like most of you, I have enjoyed this morning's debate and would like to take a minute to try to explain why the majority of the committee, eleven members, voted against this particular bill.

The first thing I would like to point out is that there is no guaranteed increase for those people who carry newspapers to your homes. Though it mandates that a one cent per insert per page would be paid to the newspaper carriers, doesn't establish a minimum wage to newspaper carriers. So in our zeal to create a better situation for the newspaper carriers, we in effect, are doing nothing. There is absolutely nothing in the bill which prevents the newspapers from lowering their minimum compensation to the newspaper carriers in order to make up that one cent difference. If they choose not to absorb any loss in that manner, they either raise the cost of newspapers, raise the cost for inserting those supplement, or whatever means -- the bottom line is, the newspapers are not going to suffer any loss. Either the consuming public or the newspaper carriers themselves are sure to do that.

I would like to point out also that there is another group of employees here that have not been mentioned and those are the people who are employed inserting newspaper supplements into newspapers. For the most part, those are all done by hand so newspapers are in the business of employing unskilled labor, often times, people who can't find another job, to do that particular task. They are compensated at a minimum wage because those employees are, in fact, adults. So we worry if the newspaper have to raise the costs to the advertisers and the advertisers decide to use direct mail instead, that we are, in fact, impacting perhaps. It may be only one person on a particular newspaper but there is going to be an impact and that is going to be an unemployed adult.

I would also like to point out, that the state a long time ago, and the country for that matter, made a policy decision when it came to employing youth and that is, they are exempt from minimum wage laws. Now if we are truly concerned about what our kids are making for salaries, (and I am a mother, by the way) when they do these unskilled jobs, then I think we ought to make sure that they are paid at least minimum wage. I can point out a number of jobs, at least in my area, that pay kids barely nothing, next to nothing. My kids rake blueberries -- anybody who has ever been in the business of raking blueberries knows how many hours they spend in the sunny fields bent over and how little they are compensated for that. As a state legislature, we have said that those kinds of part-time agricultural, unskilled workers are exempt from the minimum wage laws. I don't mind doing something for kids or for all employees for that matter, and I think my record says that I have done that, but if we are really going to do something, I think we had better do something other than just rhetoric. This bill is just rhetoric. There is absolutely no guarantee that these kids are going to make any more money.

I would also like to point out that some of these kids are compensated well for their efforts. In the Lewiston-Auburn area, they are making 63 cents a customer, minimum. They are paid \$20 to \$28 a week for a six to nine hour week. These kids enjoy their part-time jobs and I don't want to do anything to jeopardize the number of jobs that we currently have now and I would urge this House to reject the

emotional arguments that you have heard this morning and accept the Majority "Ought Not to Pass" Report.

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

Representative RACINE: Mr. Speaker, Ladies and Gentlemen of the House: I hate to disagree with my Committee Chair but I feel that I have to rebut some of the comments that she made.

The fact that I put in this bill has nothing to do with minimum wage. This was brought up by someone during the debate. The reason that this was brought up was because publishers are taking advantage of those carriers. You have heard that, if the publishers are required to compensate carriers, that they will reduce their base pay. These are just scare tactics. If they reduce the pay to such an extent, they will have difficulty finding carriers. As a matter of fact, right now, the Portland Press has difficulty because they advertise on a daily basis -- they are looking for carriers. They have 12 vacancies a day that they advertise -- they give you the route and the number of papers that are being distributed. The General Tribute is in the same category -- they have a daily advertisement in the paper requesting those that want to make extra money to buy that bicycle or that pony, for one hour a day, that they can get a job passing out newspapers.

As far as the fact that this will have an economic impact, if you will look at some of your flyers on a daily basis, you will find that there is a reduction in price with coupons -- a 5 or 10 cent reduction -- so I would say this to the advertisers -- instead of putting 15 coupons in that supplement, only put in 10 or 12. Then you will stay within your budgeting.

This is not an economic impact, this is not an emotional thing, it is a "just" thing, it is something that has to be done. Those kids are not represented by any one. They have no one to lobby for them and if they did, there would be no problem because probably they could out-number the lobbyists and the publishers that attended the public hearing and naturally they were fighting for their cause. They certainly were not going to admit that they are not compensating their carriers adequately. The Lewiston Sun is paying their carriers 63 cents per week, I agree with that, but that is 7 days a week as compared to the Portland Press that is paying 40 cents for 6 days and they get 19 cents for carrying the Sunday paper.

I hope that you will vote against the pending motion so we can send this thing on to the next body.

The SPEAKER: A roll call has been ordered. The pending question before the House is the motion of the Representative from Washington, Representative Allen, that the House accept the Majority "Ought Not to Pass" Report. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 38

YEA - Aliberti, Allen, Anderson, Anthony, Armstrong, Bailey, Begley, Bickford, Bragg, Callahan, Carroll, Carter, Cashman, Cote, Crowley, Curran, Davis, Dellert, Diamond, Dore, Dutremble, L.; Farnum, Farren, Foss, Foster, Garland, Gwadosky, Hale, Handy, Hanley, Harper, Hepburn, Hichborn, Hillock, Holloway, Ingraham, Jackson, Kilkelly, Kimball, LaPointe, Lawrence, Lebowitz, Look, MacBride, Macomber, Marsano, Matthews, K.; McPherson, Melendy, Murphy, E.; Murphy, T.; Nadeau, G. R.; Nicholson, Norton, Paradis, P.; Parent, Pines, Priest, Reed, Rice, Rolde, Ruhlin, Rydell, Seavey, Sherburne, Small, Stanley, Stevens, A.; Stevens, P.; Stevenson, Strout, B.; Swazey, Taylor, Telow, Tracy, Tupper, Wentworth, Weymouth, Whitcomb, Willey, Zirkilton.

NAY - Baker, Bost, Bott, Boutilier, Brown, Chonko, Clark, H.; Clark, M.; Coles, Conley, Dexter, Erwin, P.; Gould, R. A.; Greenlaw, Gurney, Hickey, Higgins, Hogle, Holt, Hussey, Jacques, Jalbert, Joseph, Ketover, Lacroix, Lisnik, Lord, Mahany, Manning, Martin, H.; Mayo, McGowan, McHenry, McSweeney, Michaud, Mills, Mitchell, Moholland, Nadeau, G. G.; Nutting, Paradis, E.; Paradis, J.; Paul, Perry, Pouliot, Racine, Reeves, Richard, Ridley, Rotondi, Salsbury, Scarpino, Sheltra, Simpson, Smith, Soucy, Strout, D.; Tammaro, Tardy, Thistle, Vose, Walker, Warren.

ABSENT - Connolly, Duffy, O'Gara, Sproul, Webster, M.; The Speaker.

Yes, 81; No, 64; Absent, 6; Paired, 0; Excused, 0.

81 having voted in the affirmative and 64 in the negative with 6 being absent, the motion did prevail. Sent up for concurrence.

in concurrence and the House Paper was Passed to be Engrossed and sent up for concurrence.

PASSED TO BE ENGROSSED

Bill "An Act to Foster the High School Equivalency Program by Removing Fees Imposed on Persons who Participate in that Program" (Emergency) (H.P. 1040) (L.D. 1401)

Bill "An Act Relating to the Relocation of the Southern Division of the 10th District Court" (H.P. 1042) (L.D. 1404)

RESOLVE, to Establish the Commission to Study Adoption Laws and Practices (Emergency) (H.P. 1043) (L.D. 1405)

Were reported by the Committee on Bills in the Second Reading, read the second time, the Senate Papers were Passed to be Engrossed in concurrence and the House Papers were Passed to be Engrossed 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. 102) (L.D. 275) Bill "An Act to Provide for a Sales Tax Credit on the Trade-in of Construction Equipment" Committee on Taxation reporting "Ought to Pass" as amended by Committee Amendment "A" (S-46)

(H.P. 779) (L.D. 1051) Bill "An Act to Amend the Definition of Seasonal Under the Employment Security Law" Committee on Labor reporting "Ought to Pass"

(H.P. 416) (L.D. 550) Bill "An Act to Amend the Charter of the Waterville Sewerage District" Committee on Utilities reporting "Ought to Pass" as amended by Committee Amendment "A" (H-88)

(H.P. 813) (L.D. 1087) Bill "An Act to Restructure the Method of Appointment of Members of the Maine Land Use Regulation Commission" Committee on Energy and Natural Resources reporting "Ought to Pass" as amended by Committee Amendment "A" (H-87)

There being no objections, the above items were ordered to appear on the Consent Calendar of Tuesday, May 5, 1987, 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. 670) (L.D. 903) Bill "An Act to Clarify Definition Language under the Site Location of Development Laws" (C. "A" H-84)

(S.P. 162) (L.D. 466) Bill "An Act to Extend the Life of the Advisory Committee on Staff Retention"

(S.P. 304) (L.D. 873) Bill "An Act Enabling the State to Join the Regional Truck Permit Agreement"

(S.P. 329) (L.D. 957) Bill "An Act to Clarify Election Procedures and the Effects of Interconnected Water Lines in Water Fluoridation Referenda" (C. "A" S-43)

(S.P. 116) (L.D. 289) Bill "An Act Relating to Questions Put to the Electorate at Referendum" (C. "A" S-39)

(S.P. 265) (L.D. 746) Bill "An Act to Amend the Electric Rate Reform Act as it Applies to Cost Recovery for Utility Financing of Energy Conservation" (C. "A" S-42)

No objections having been noted at the end of the Second Legislative Day, the Senate Papers were Passed to be Engrossed or Passed to be Engrossed as Amended

PASSED TO BE ENACTED

Emergency Measure

An Act to Transfer the Maine Fire Training and Education Program from the Department of Educational and Cultural Services to the Maine Vocational-Technical Institute System (S.P. 251) (L.D. 700) (C. "A" S-40)

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. 128 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.

PASSED TO BE ENACTED

Emergency Measure

An Act to Require Legislative Approval and Public Hearings for any Plan to Decentralize the Pineland Center Facility (H.P. 402) (L.D. 536) (C. "A" H-74)

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

On motion of Representative Carroll of Gray, under suspension of the rules, the House reconsidered its action whereby L.D. 536 was passed to be engrossed.

The same Representative offered House Amendment "A" (H-86) and moved its adoption.

House Amendment "A" (H-86) was read by the Clerk and adopted.

The Bill was passed to be engrossed as amended by Committee Amendment "A" and House Amendment "A" in non-concurrence and sent up for concurrence.

PASSED TO BE ENACTED

Emergency Measure

An Act Relating to Social Worker License Fees (H.P. 1003) (L.D. 1350)

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. 128 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.

PASSED TO BE ENACTED

An Act Providing Funds for Training and Education for Families of Victims of Alzheimer's Disease (S.P. 151) (L.D. 405)

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.

ORDERS OF THE DAY
TABLED AND TODAY ASSIGNED

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

An Act Relating to the Issuance of Bonds or Notes for Union Schools (S.P. 317) (L.D. 919)

TABLED - May 1, 1987 by Representative GWADOSKY of Fairfield.

PENDING - Passage to be Enacted.

On motion of Representative Gwadosky of Fairfield, retabled pending passage to be enacted and specially assigned for Tuesday, May 5, 1987.

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

An Act to Amend the Interpreter Law for Coverage in Medical and Paramedical Areas (H.P. 961) (L.D. 1290)

TABLED - May 1, 1987 by Representative CARROLL of Gray.

PENDING - Passage to be Enacted.

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

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

Bill "An Act Enabling Municipalities to Establish Municipal Land Banks Funded by a Local Option Real Estate Transfer Tax" (H.P. 543) (L.D. 727)

TABLED - May 1, 1987 by Representative DIAMOND of Bangor.

PENDING - Motion of Representative MAYO of Thomaston to Reconsider acceptance of the Majority "Ought Not to Pass" Report of the Committee on Taxation.

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

Representative CASHMAN: Mr. Speaker, Ladies and Gentlemen of the House: First, I would ask for a roll call on the motion to reconsider.

I hope that members of the House will vote against the motion to reconsider. We debated this issue, I think, long and hard last Thursday and we took a vote and I hope members of the House will stick with that vote. I really don't want to re-debate the issue but I think it is important to point out that this bill has been worked quite hard since last Thursday. I think it is important to note that the signers of the "Ought Not to Pass" Report, which we accepted last Thursday, are not against the land bank concept. We are not in favor of higher property taxes but what the majority of the signers feel is that local option taxes are really a separate issue. In this case, we would be authorizing a local option tax that we feel is a very poor choice. We feel that way because we are talking about a tax that the legislature has doubled and then doubled again in the last three years. We are talking about a system that would provide really an unequal opportunity statewide, as I said in the debate last Thursday -- the threshold is \$77,000 and it may provide an opportunity in the southern part of the state but I don't think it does in the northern part of the state. It certainly doesn't in my area.

This bill carries a host of administrative problems. Somebody said in the debate last Thursday, and I can't remember who it was, but somebody said that they could see some administrative problems with this tax and with this bill but they were sure the Taxation Committee could work them out. I would submit to the House that we tried to work them out and couldn't -- that is why it is a 10 to 3 "Ought Not to Pass" Report.

I would urge the House to stick with the vote we took last Thursday and reject the motion for reconsideration.

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

Representative MAYO: Mr. Speaker, Men and Women of the House: We have debated this bill quite extensively but I would ask this House to consider two things. First, I would remind this House that this is a local option. Municipalities have the decision whether or not to impose this tax. It is not something that this legislature is mandating upon the municipalities.

Secondly, there have been some issues raised and some people have said they are not against the concept but have problems with the bill as it is written. I would submit that there may in fact be some problems with the bill and the best way to handle those would be to take this bill to Second Reading and amend it. I would ask this House to give the people that support this concept an opportunity to amend it, to make it more palatable to those who have objections. I certainly would encourage anybody that has an amendment they would like to offer to offer it. So, I would ask this House to give us the ability to take it to Second Reading to amend it. If you are not satisfied with it at that point, you could simply vote against the bill at enactment.

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

Representative BAKER: Mr. Speaker, Men and Women of the House: My initial reaction to this particular piece of legislation was quite negative. However, after listening to some of the debate and thinking about some of the problems brought to my attention by some of the Representatives from coastal and rural areas, I wrestled with my feelings about this particular piece of legislation this weekend. I have some problems primarily with the threshold level and felt that perhaps there is a need to make that slightly more flexible on the grounds that, \$77,000 might be an appropriate place to start in some communities but may not be in other communities. And since it was a local option tax that there might be some grounds to amend the bill to make it a little more palatable. Therefore, I am going to vote for reconsideration. I would urge you to vote for reconsideration and have at least an opportunity to put forth an amendment to perhaps make this more palatable.

The goal of this bill is very worthy. If we feel that the objectives are worthy but we have some problems with getting to those objectives, then perhaps we should take the time to work those problems out. I would urge you to vote for reconsideration.

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

Representative NADEAU: Mr. Speaker, Men and Women of the House: I would urge this body to stick by its previous decision of accepting the Majority "Ought Not to Pass" Report of the Taxation Committee.

Last Thursday the proponents of this legislation suggested that we ought to give municipalities a

choice. I question whether this is the best alternative we can give them. I don't think it is.

L.D. 727 establishes a mechanism to set aside land banks. Although slowing down development is a noble goal, let's not jump at the first alternative that looks like it might address the problem. Shouldn't we be spreading the cost of obtaining these land banks over a broader base? It doesn't seem fair to me to be simply attacking the real estate transfer tax.

By accepting this proposal, the 113th Legislature would be establishing a terrific precedent. We would be allowing over 400 cities and towns to create their own tax policies. Is that the direction we want to go?

Implementation of L.D. 727 would be an administrative chaos. Imagine the 16 Registrars of Deeds trying to figure out which towns and their counties were participating in the local option tax and which ones were not. For these reasons, I would urge you to follow my light when the vote is taken on this issue.

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

Representative ANTHONY: Mr. Speaker, Ladies and Gentlemen of the House: While I do not believe that local option taxes are normally a very good idea, I think there is a hidden benefit to this particular local option tax approach and that is that it would force cities and towns throughout the state to debate and decide whether or not they wish to have a tax to support land trusts. In doing so, they would be face to face with the fundamental, underlying problem that this bill tries to address and that is the need to have more public land set aside throughout the state for the future of our citizens.

What I am suggesting is that the local option approach would, in fact, generate discussion at the local level, where it belongs, about the need to set aside public land.

In fact, even if the town does not adopt the local option, does not create the mechanism to fund land trusts through this, that the debate itself would generate an impetus to doing something at the local level to set aside more land for the citizens of that city or town or plantation.

I believe, as a result, that while in money situations, a local option tax approach is probably not a good idea. In this particular case, by adding another layer of discussion and, that is at the local level, that by doing so, it has a substantial benefit to the State of Maine and thus, I would urge reconsideration.

The SPEAKER: The Chair recognizes the Representative from Harrison, Representative Jackson.

Representative JACKSON: Mr. Speaker, Ladies and Gentlemen of the House: I don't want to continue and have a long discussion this morning because we discussed this previously last Thursday. I just want to let you folks know that local option is still available at the localities currently, nothing has changed since last Thursday and today. They have the opportunity to establish land banks at the local community currently. They have mechanisms available to them to fund them outside of the local property tax, currently.

As Representative Cashman has mentioned and Representative Nadeau has mentioned, there are problems with the bill, administratively. There are a host of problems with this bill. I could go into those but I will not do that this morning. I would just hope that the members of this body, as you voted

last Thursday, would vote again the same way this morning.

The SPEAKER: The Chair recognizes the Representative from St. George, Representative Scarpino.

Representative SCARPINO: Mr. Speaker, Men and Women of the House: In response to my good friend from Harrison, Mr. Jackson, I would like to say that yes, those local options exist today like they did Thursday. And yes, the level of property taxation in the school sharing formulas exist today the same way they did Thursday. And that the communities with taxation loads, that are not representative to the communities income capabilities, still exist. Those inequities still exist and these communities need some way to get and protect some land for the future generations.

Last Friday, I had a bunch of fourth graders up here from the Cushing School and, in attempting to explain to them the legislative process and some of the things that go on here, I used this bill and the parliamentary actions that occurred over this bill to attempt to show them how the legislature worked. I was a little concerned that perhaps our involved parliamentary procedure might confuse them a little bit and, to be quite frank about it at this point, I don't know if it did confuse them or not. What I do know, however, is that they did understand the bill. I had a bunch of fourth graders sit down in these seats right here and tell me that they thought that was the best bill they could have because the piece of property they used to go play in got sold and they are putting houses with one acre lots on it. It is the person who owns the sandy beach down in Maple Juice Cove that used to let them go down there and swim, died — that property has been sold and their swimming spot is gone. Now, this spot for those kids in Cushing is gone but there are other places in that town and there are other places in every town in this state that I think we should preserve for our kids and their kids so they can have a place to go and see some animals, so they can have a place to go swimming or launch their boats or just to walk and enjoy nature as it is in this state now.

Yes, I can understand there are some concerns with this bill now. I don't happen to have the grave concern some other people have but I am perfectly willing to amend it any way I can to resolve those concerns and would appreciate a vote for reconsideration so we can get this bill to a point where we can amend it and attempt to resolve those concerns and make it as equitable as possible for everyone.

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 Old Town, Representative Cashman.

Representative CASHMAN: Mr. Speaker, Men and Women of the House: The argument has been made that we should reconsider this action and get this bill in a posture where it can be amended. As I have stated, the objection of the signers of the Majority Report is with the tax mechanism. If it is the desire of the House that we have a different type of tax mechanism, a different type of local option, I guess I would just point out that there will be several opportunities to deal with that in other bills that

are pending in front of the Taxation Committee. We will be dealing with other local options and I think that backing this up to get it into a posture for amendment, in order to accomplish that purpose, is really fruitless, that will be done anyway.

The SPEAKER: A roll call has been ordered. The pending question before the House is the motion of Representative Mayo of Thomaston that the House reconsider its action whereby the House accepted the Majority "Ought Not to Pass" Report. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 39

YEA - Anthony, Baker, Bost, Bott, Clark, H.; Clark, M.; Coles, Conley, Cote, Curran, Dutremble, L.; Farnum, Foss, Garland, Gould, R. A.; Gurney, Handy, Hanley, Hepburn, Hichborn, Higgins, Hillock, Høglund, Holloway, Holt, Hussey, Joseph, Ketover, Kilkelly, Kimball, LaPointe, Lawrence, Lebowitz, Look, Lord, Macomber, Mahany, Manning, Marsano, Mayo, McPherson, Melendy, Michaud, Mills, Mitchell, Murphy, E.; Murphy, T.; Nicholson, Nutting, Perry, Pines, Priest, Racine, Rand, Reed, Reeves, Rice, Richard, Rolde, Rydell, Salsbury, Scarpino, Seavey, Sheltra, Simpson, Small, Smith, Soucy, Stanley, Stevens, A.; Stevenson, Strout, D.; Taylor, Telow, Thistle, Tupper, Warren, Wentworth, Whitcomb.

NAY - Aliberti, Allen, Anderson, Armstrong, Bailey, Begley, Bickford, Boutilier, Bragg, Brown, Callahan, Carroll, Carter, Cashman, Crowley, Davis, Dellert, Dexter, Diamond, Dore, Erwin, P.; Farren, Foster, Greenlaw, Gwadnosky, Hale, Harper, Hickey, Ingraham, Jackson, Jacques, Jalbert, Lacroix, Lisnik, MacBride, Martin, H.; Matthews, K.; McGowan, McHenry, McSweeney, Moholland, Nadeau, G. R.; Norton, Paradis, E.; Paradis, J.; Paradis, P.; Parent, Paul, Pouliot, Ridley, Rotondi, Ruhlin, Sherburne, Stevens, P.; Strout, B.; Swazey, Tammaro, Tracy, Vose, Walker, Weymouth, Willey, Zirnkilton.

ABSENT - Chonko, Connolly, Duffy, Nadeau, G. G.; O'Gara, Sproul, Tardy, Webster, M.; The Speaker.

Yes, 79; No, 63; Absent, 9; Paired, 0; Excused, 0.

79 having voted in the affirmative and 63 in the negative with 9 being absent, the motion to reconsider did prevail.

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

Representative MAYO: Mr. Speaker, I would ask the House to vote against the motion to accept the "Ought Not to Pass" Report. I ask for a Division.

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

Representative WILLEY: Mr. Speaker, Ladies and Gentlemen of the House: I was very tempted to get up and speak and ask you not to support the motion to reconsider. It seems to be a very unfair thing as far as I am concerned. I am not on the Taxation Committee, I am involved in local government and have been for many years. It seems to me to be very inequitable to ask the people, only the people who buy and sell properties of more than \$77,000 value, to support this. I feel very strongly that it should come out of general taxation for the simple reason that all people in the community will benefit from this type of land purchase. I simply don't think it is fair and I ask you to support the bill as originally presented.

(At Ease)

The House was called to order by the Speaker.

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

The Chair recognizes the Representative from Wiscasset, Representative Kilkelly.

Representative KILKELLY: Mr. Speaker, Ladies and Gentlemen of the House: An argument that I have heard since last Thursday opposing L.D. 727 is that it isn't fair, it doesn't tax everyone the same. If someone lives in a community for 20 years, they never have to pay the tax, they never have to pay for that recreation or open land that they can enjoy, and that is true. But, let's look at the other community investments that a person can make in 20 years, helping with the schools, shopping in town, volunteering or supporting the library, helping to develop or staff the ambulance service, attending town meetings and being involved in town government, paying property taxes, being a member of the church or synagogue and dealing with social issues. If all of these things hadn't happened, then the quality of life in Maine wouldn't be so attractive and folks from out of state wouldn't be so willing to pay hundreds of thousands of dollars for homes and land.

I urge you to look at this bill as a balance between the social equity that citizens have invested in our communities over the years and the financial support necessary to assure that the quality of life that has been built can be continued. Would it be fair, if after 20 years, you couldn't take a walk down to the shore? I urge your defeat of the "Ought Not to Pass" Report.

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

A vote of the House was taken.

Representative Nadeau of Saco requested a roll call vote.

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 less than one-fifth of the members present and voting expressed a desire for a roll call, a roll call was not ordered.

The SPEAKER: The Chair will order a vote. The pending question before the House is the motion of the Representative from Old Town, Representative Cashman, that the House accept the Majority "Ought Not to Pass" Report. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

47 having voted in the affirmative and 72 in the negative, the motion did not prevail.

Subsequently, the Minority "Ought to Pass" Report was accepted, the Bill read once and assigned for Second Reading Tuesday, May 5, 1987.

The Chair laid before the House the following matter: Bill "An Act to Ensure Confidential and Reliable Substance Abuse Testing of Employees" (S.P. 54) (L.D. 105) report in Report "A" that the same "Ought to Pass" in New Draft under New Title Bill "An Act to Ensure Confidential and Reliable Substance Abuse Testing of Employees and Applicants and the Rehabilitation of Substance Abusing

Employees" (Emergency) (S.P. 457) (L.D. 1400) which was tabled earlier in the day and later today assigned pending the motion of Representative McHenry of Madawaska that the House accept Report "A."

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

Representative MCHENRY: Mr. Speaker, Ladies and Gentlemen of the House: I hope you will accept Report "A" which is the Majority Report of the committee. It is a compromise of the two extremes banning drug testing and random drug testing. It is a compromise where we tried our best to protect the rights of the employee as well as the rights of the employer to provide them with an instrument to be able to test their employees.

The employers have told us that it is due to safety that they wanted these tests, not because they want a witch hunt, not because they want to fire employees left and right, it was because of safety. Under those premises, the committee proceeded to negotiate, to hammer out a compromise, which I believe after hundreds and hundreds of hours, have come to a very good compromise where I feel comfortable that we are protecting the rights of the employee, personal as well as constitutional. I am not a constitutional expert but I believe that we do protect our employees a heck of a lot more than have we today because today the employer can go out and test. You have to understand that today they can go out and test anytime they wish, anyway they wish, use any mechanism that they wish, and that they have no set rules or regulations governing it. We, in the committee said, if you wish to do drug testing, it is your premise that you are not on a witch hunt, you are not out there to fire people left and right because you do not like their face, then you ought to have in place a program to help assist your employees that you have invested thousands and thousands of dollars to train and bring back to your employ, which is the objective. We hammered that out. The employer as well as the employee agree this was a good viable bill.

I don't have to worry about it as a person because my employer has the best program in the whole state but as a State Representative, I am here to represent the people and the rights of all the people, and I feel that I must do something. Fraser Paper Limited does provide assistance to their employees for drug, alcohol, mental, physical, financial, any problem that we have. We have a program in place to help our employee and we do not discriminate. We try to help our employees come back to work and that is the objective of my employer and it should be the objective of all employers in the State of Maine. But, I am not in a dream world, I realize that some employers want to abuse their employees. If it were your son or daughter, brother or sister, father or mother, that were tested and came out positive because the test was not completely 100 percent accurate and the EMET tests that are being done today are very, very prone to being wrong, and I believe each and every one of us here would not want to put anyone in that position where your employer may give you a test and because you may have taken Nuprin or Robitussin, you come out as positive but you have no recourse, no appeal panel. That is why we have an appeal panel on the bill so that, if you feel that if you are not justly tested, you can appeal.

We have tried to close all the loopholes and we have tried to come to a compromise which is

acceptable and I assure you the employers and the employees, after the many many hours of work that we have done, all shook hands with us and they told us that we did one heck of a job. They never believed that we could come to this. I didn't believe that I could come to this. I was for a drug ban but being a realist and being chairman of the committee, I must take a position to protect everyone concerned and I honestly feel that we have done one good job. Each and every member on that committee worked very hard. I hope that you can support the Majority "Ought to Pass" Report.

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

Representative ZIRNKILTON: Mr. Speaker, I request a roll call.

Mr. Speaker, Ladies and Gentlemen of the House: The controversy over drug testing is no doubt one of the most pressing issues of our time and certainly the most controversial aspect of the national effort against drug abuse.

During my tenure in the Legislature, I can recall few bills which have generated as much attention, as much discussion, emotion, as have the bills on drug testing.

In addition to the deliberations by the Maine Commission to examine chemical testing of employees, the Labor Committee has worked long and hard to report the bills that are before you today. Every member of this body should be aware there are presently no regulations, no laws which establish guidelines for drug testing in Maine. What does this mean? It means it is currently permissible for any employer to implement and enforce any drug testing policy they may deem necessary. That policy may span a wide variety of philosophies. It could mean probable cause testing only. It could mean testing only positions considered to be safety sensitive or it could mean random testing for all employees regardless of their type of job. Right now, it is all legal in Maine because there is no law governing substance abuse testing in the State of Maine.

As we consider the various reports before us, it is important that we reach deep within ourselves and decide for what purpose should drug testing be allowed in society today. Will we allow testing because we believe workers have a right to work in a drug free environment? And do employers have a right to expect their employees to perform their duties, drug free? Or will we allow testing because we believe it would be in the best interest of the drug abuser to help them face their problem and seek rehabilitation as soon as possible? Will we also allow testing because we believe it to be consistent with our efforts to make the workplace a safer place to be for the Maine worker? With this in mind, will we allow probable cause testing only in an effort to ensure the protection of our individual rights? Would we allow probable cause testing only because we are concerned that random testing might be abused by our Maine employers? This is what the backers of the Majority Report would have you believe.

This report would have you believe that the rights of the drug abuser, not to be tested, is a higher priority than the rights of Maine workers to work in a safer, drug free environment. They will tell you, we are sorry if the driver of a school bus lost control because of drug impairment. We felt the driver's right not to be tested was more important than the rights of those innocent school children to be driven to school by a drug free driver.

So, why do the Majority Report supporters propose to allow even probable cause testing? I can only think of two reasons, first to remove the abuser from the workplace once they begin to display abnormal behavior and, with any luck at all, someone will detect that problem before the abuser causes an accident.

The second reason is to get the abuser into a rehab program so they can be rehabilitated and return to their prior status of being a contributing member of our society as soon as possible. If that were true, ladies and gentlemen, if our sole intention in allowing drug testing was to rehabilitate drug abusers, then wouldn't it be in the user's best interest to get into a rehab program before they become seriously dependent upon drugs, before they begin to display symptoms of abnormal behavior, before they take their drug problem to the workplace and risk the health and well being of their co-workers?

It should be noted, if the police catch someone with drugs, they don't take them to a rehab facility, they take them to jail because we have made laws that say that drugs are illegal. Former Governor Brennan considered the problem of drunk driving and the danger it posed to Maine people so severe that he implemented random road blocks to test drivers for intoxication. Clearly, he believed the magnitude of the problem outweighed the issue of individual rights. Governor Brennan believed our right to drive on drunk-free highways was more important than the rights of drunks.

As I have already pointed out, the controversy surrounding the issue before us is not the right of employees not to be tested, it is the manner in which the test will be conducted. The controversy is over the urinalysis test. If all drugs could be detected through a breathalyzer test, I don't believe this bill would be before us today, for the proof of this assertion as I have pointed out earlier is contained in Report "C" which proposed to ban all forms of testing with the exception of the breathalyzer test. And because of the obvious difference between the two tests, between urinalysis and breathalyzer, the Labor Committee was unanimous in deciding that the use of urinalysis testing for non-safety sensitive personal without probable cause would be a violation of our individual rights. Unfortunately, this is where we parted. Three members of the committee agree with Governor McKernan and with what we perceived to be the overwhelming majority of Mainers. We are concerned with the rights of all Mainers to work in a drug free environment especially when the nature of their work places their very lives in the hands of their co-workers. We believe Mainers have a right to know that when they step into an airplane, the pilot won't be on drugs. We believe Mainers have a right to know that when their child climbs into a school bus, the driver isn't going to be under the influence of drugs. This is why we must defeat the Majority Report because its passage would take away the rights of Maine people to enjoy piece of mind. Passage of the Majority Report would create a statewide mystery, the mystery of whether or not everything that can be done is being done, to make sure the man or woman who takes your children to school isn't on drugs.

The United States Government doesn't believe drug testing violates our individual rights. In fact, they believe the use of random urinalysis testing has been the single most important factor in reducing drug abuse in the armed forces. According to an article in the New York Times which quoted a

report done by the Institute for Social Research at the University of Michigan, in 1980, prior to the implementation of drug testing in the armed forces, 27 percent of those participating in a confidential survey admitted to having used drugs at least once during the previous month. Today, that number has been significantly reduced. The Army, which is the largest of our armed forces, has over 900,000 soldiers, reservists and civilian employees, who are presently subject to drug testing. Last November, they hit an all time low with only 1.5 percent of those tested, testing positive. The Army conducted 1.2 million tests last year. They expect to expand that to 1.7 million this year and 2.3 million tests by next year.

In 1985, the U.S. Army discharged 5,123 soldiers for drug use. In 1986, the Navy discharged 6,947 men and women. The Marine Corp dismissed 1,258 and the Air Force discharged 3,587 people — all of whom were discharged for the illicit use of drugs. We can only assume that these people were dismissed because the U.S. Government felt the use of drugs posed a safety threat to all soldiers in the armed forces. Clearly, with the use of drug testing, the government feels the safety of all outweighs the rights of those who object to drug testing.

These are compelling arguments and you will hear arguments on the other side of the issue which are equally compelling. There is one additional factor which you should consider very carefully. If your concern is to preserve the rights of non-safety sensitive employees, not to be subject to random testing, then you will defeat the Majority Report. Why? Because if we don't, we won't have a drug testing policy in the State of Maine. We will be be right back to square one, an environment where any employer can test any employee at any time and for any reason.

So I say to you, cast partisan politics aside, act in the best interest of your constituents, defeat the Majority Report and move on to accept Report "B." By doing so, you will be ensuring the rights of all Maine citizens, the rights of non-safety sensitive workers not to be subject to random testing. The rights of safety sensitive workers to entrust their lives with co-workers who are drug free, and the rights all Mainers to rest assured when it comes to safety in the workplace, everything that can be done is being done to make sure that drugs won't continue to be a dangerous contender in an already dangerous world.

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

Representative CLARK: Mr. Speaker, Men and Women of the House: I would like to pose a question through the Chair to any member of the Committee.

I am very much in favor of the Majority Report but I have a question I would like to ask. The question is, on a probable cause, the employer can ask for a drug test on an employee, but who is going to give the probable cause to the employer? Who makes them all lily-white themselves?

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

The Chair recognizes the Representative from Madawaska, Representative McHenry.

Representative McHENRY: Mr. Speaker, Ladies and Gentlemen of the House: I, as a member of the committee, had proposed that we set up a committee made up of employers and employees. The committee saw fit not to accept that because presently, where

I am employed, if an employee suspects a foreman, a supervisor, the president of the company, we have a way of dealing with it. We can report it and we are not harassed or fired because we are reporting it. It isn't in the bill. I wanted it in the bill but it is not in the bill. There is nothing to prohibit anyone from setting up such a mechanism.

The SPEAKER: The Chair recognizes the Representative from Brewer, Representative Ruhlin.

Representative RUHLIN: Mr. Speaker, Ladies and Gentlemen of the House: I just wanted to share a few thoughts with you concerning this Majority Report. When all thirteen members of the committee sat down and looked at the task ahead of us, we realized that we had to establish a purpose, and that purpose was to make the State of Maine a safe workplace for the employers, the employees, and the consuming public. But in doing so, we recognized we had to maintain a delicate balance. In that balance was only to provide safety for all the people in the workplace, and also to protect the individual rights of all of those individuals who work in that workplace.

I have heard this morning in earlier debate relating to a Minority Report that people were concerned, as they rightfully should be, that those workers being tested randomly may very well be giving testimony against themselves rather than being considered innocent until proven guilty.

The committee considered that and considered it in depth. We, therefore, tried to make a bill, craft an instrument if you will, that would protect the individual rights of those citizens in the workplace by instituting a probable cause. In probable cause, we have seven items that say this shall constitute probable cause for drug testing to provide that safety in the workplace that is so definitely needed.

I heard a comment a short while ago about drugs on the highway or drinking on the highway. I want to point out that when a state trooper sets up a roadblock, what he is looking for before he tests that person, is probable cause. Is there alcohol on the breath, are the eyes bloodshot, the speech slurred, is there staggering, how does he handle the car? That is probable cause. Then he goes from that probable cause to test further. This is what the Majority Report does. It establishes steps for probable cause, and in so doing, ensures that a person just doesn't say "Well, you're late this morning," that's probable cause. It establishes a review panel that protects that worker from an impromptu or very poorly stated probable cause accusation. So, that worker does have that protection.

If however, through that probable cause he is then tested, and that probable cause is upheld, he goes through screening, testing, to eliminate some of the false results. There are false results, as you heard earlier in earlier debate, as many as 30 percent under some tests. He goes through a screening process and then he goes through a process of confirmation which both the Majority and the pending Minority Report have in it, it is the same process of confirmation. I wrote it down just so I could say GCMS, it means gas chromatography mass spectrography (and that is the last time I am going to say it, I just want to show you that somebody in the committee could say it.) This GCMS is felt, by experts in the field, to be between 95 and 100 percent accurate. So, by the process of screening and then going in and making an accurate test, we can now identify an individual who needs help. The key to this bill is just that, it is not punitive in

nature, it is meant to help the worker to remove the problem not only from the workplace but also from the domestic scene to protect, if you will, the fabrics of our society -- because a person who is aberrant in their behavior, one of the probable causes, they would also be aberrant in their domestic life. They probably have other problems besides that that is exhibited in the work place.

So, by doing this, we feel that we now can take this person and give them a meaningful rehabilitation program. We also recognize that people into drugs, unfortunately, the recidivism rate is very high, they have a tendency to repeat. So, to protect that worker in the workplace, we said, you may go through rehab and if through other reasons, failure of two rehab programs then that person may ultimately, after another confirming test, be removed from the workplace to protect the workers who are there and the consuming public.

The other issue that we had quite a problem with was the safety sensitive. That committee spent many hours trying to deal with what in fact was safety sensitive and what is not safety sensitive. Is it a farmer driving his tractor across the street with a load of potatoes, is that safety sensitive? If he is, I think the word is "wiggled out", he can cause an injury just as much as a person flying a private air plane. You have to define that safety sensitive and this committee, after diligent effort, felt it could not bring up to this floor of this body a definition of safety sensitive that was not all inclusive to the people of Maine when the best definition we could come up with would involve about 80 percent of the people of the State of Maine. We said "No", let's go back, tighten up probable cause, then anybody in a safety sensitive position who fails the probable cause, will handle that in that particular manner through the probable cause clause of this pending legislation.

I fear as a member of the Committee that we do have a problem. I was not shocked but I was somewhat sorry to hear some of my fears confirmed in committee. Drugs are becoming a very pervasive part of our society, not just the workplace. This bill is not aimed at protecting anything else but the workplace itself as beyond the purview of that particular committee. I wish we would all take that into consideration when we vote today.

There is one thing that we can do, we can take a measurable step to protect the rights of the individual and also do our best to protect the rights of the employer and the workplace that they have established for the employees.

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

Representative HILLOCK: Mr. Speaker, Ladies and Gentlemen of the House: Our drug problem today is -- I think everyone can at least agree that we have a drug problem -- the challenge we have here is, how are we going to deal with it?

I have been familiar with drug testing since the late 60's when I competed in intercollegiate sports and the idea of drug testing for drugs was starting. The NCAA and Olympic Committee at that time felt that perhaps we should do that. Evidently they didn't act on it in time enough to prevent people like Len Bias dying last year of a drug overdose at the first of his career as a potential Boston Celtic. He played for Maryland by the way and he was the first draft pick.

I see in this bill safety sensitive and probable cause and discrimination. All these things go through my head -- when I was in the Marine Corps, in the Third Marine Air Wing, just after I tendered my

resignation, orders came down that Jerry Hillock is now the Drug Enforcement Officer for the Third Marine Air Wing. I wasn't too happy with that but I took the job seriously.

At that time in 1981, there was a drug problem, if you waited for probable cause, then the damage was already done. The system we instituted was a computer generated system by social security number only. The General demanded results to get the test going. The luck of the draw was that the three star General was the first man in line on Monday morning to hand in his urine sample. We did catch some people that had problems with drugs, some were rehabilitated, some were not. The results that I saw that was very encouraging was that drug use went down on that base. I think that is the results that we have to look at here today.

This issue is before all of us and some of us represent different constituencies. I, myself, am the only member of this body that is an airline pilot and I guess you would consider that a safety sensitive job. I certainly do, and those who fly on my airliner, should consider that also. Everyone in this profession with all major airlines are required to take drug tests prior to being hired. What is wrong with that? Let's identify that -- not after they are hired. I think it is a very serious consideration to check out and see if a person has a drug problem before he is hired and that is the right of the employer, it is a right of us as a public to demand that some sort of security be given to safety sensitive positions. This bill discriminates against that. We need to have an instrument that is dealing more directly with the problem than what we have here today. I personally disagree with the two bills that we have left with us. If we agree there is a serious problem, we should be able to come up with a better compromise than what we have before us today. At least independent companies in the state are dealing piecemeal with the problem. This would just manicle the hands behind the companies back and not allow them to deal with the problem as effectively as they are dealing with it today. I urge you to vote no for this bill.

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

Representative HALE: Mr. Speaker, Ladies and Gentlemen of the House: I urge you to support the Majority "Ought to Pass." It is the best possible bill to protect the employer and the employee. As far as probable cause, that is addressed, as Representative Ruhlman mentioned. There are seven determining factors. If an employee disputes the probable cause, there is a recourse there. There are two recourses, one for collective bargaining and one for employees that are not part of a collective bargaining unit.

We hear drug abuse today, this is substance abuse within the workplace, this includes legal and illegal drugs. If you, as a perspective employee, apply for a position there is a pre-employment that is addressed in this bill. But the pre-employment testing is only for the people that are offered the job. It is not for me who goes in and would like to work for a company.

There were many drugs that we learned about during the course of the hearing and workshop that could give a positive test -- one is Advil, you test out Codine. The other one is a type of antihistamine, that tests out as a cocaine user. The EMET is definitely not a positive test. You can take that and 35 percent only as "fail positive" and "positive fail." To be accurate, you must have this GCMS test.

I am sure if the legislators here today with hypertension, with colds, with migraine headaches, whatever the case may be, you may be on Percadan for a short period of time because of a pain problem, you may have arthritic medication for arthritis -- if you should take a test today, I think that 35 percent may pass under the testing rules of today.

The committee has tried and worked and compromised to protect all of the people of the State of Maine. We cannot address the federal regulations, we cannot address pilots, we cannot address some of the other occupations that come under the federal regulations. We can address the people of the State of Maine, the workers in the State of Maine, we can protect the employers from civil cases.

There is a severability clause if our bill does prove to be unconstitutional -- if there is a violation of anybody's civil rights, then it is null and void but, if we go with the other report, it is random drug testing, they can, at any time, take anyone for any reason off a production line, off a bus, out of an office and randomly test them because they think or it appears that they are acting with an impairment. You may be tired, maybe you had a sick child, you have been up all night -- there is no proof of the degree of impairment that an employee has from any of these tests. Rather than have no test and give your law enforcement powers to employers, I urge you to vote with the Majority on L.D. 1400.

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

Representative CLARK: Mr. Speaker, Men and Women of the House: I would like to talk to you for a minute as a medical sociologist and point out to you that we used to see drug or alcohol use as a moral failing. We believed that the public drunk or the person who abused opium-laced cough medicine as weak and we scorned them or we ostracized them. We have come a long way in our attitude toward those persons as seeing substance abuse in another light as a debilitating illness. We know, however, that it is a treatable illness, one that can be kept in remission for an indefinite amount of time.

While I, like some speakers on the previous bill have some serious reservations about the drug testing or the reliability of drug testing, I will urge you to support L.D. 1400 because it moves us further along in the treatment, rather than the punishment of the user. Make no mistake, the person who cannot get through the work day without a drug or a drink is not a recreational user. He or she has a serious medical problem, a medical problem that L.D. 1400 will address. It allows workers and employers together to work on a plan, to allow for assistance for those persons who need it. That does not happen when we support L.D. 1398.

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

Representative MCHENRY: Mr. Speaker, Ladies and Gentlemen of the House: As you know, the federal rules and regulations will preempt anything that we do concerning airlines, concerning interstate commerce, concerning nuclear plants, so, let's put that aside.

Have you ever wondered why it is that the state trooper does not give a test to a person that he stops -- he does give them an alcohol test but he does not give them a drug test. Why? Have you ever stopped and wondered? I wondered and I asked the question, why? When I had an expert from New York, a doctor that supposedly is the best in the field of drug testing, I asked him, if I were to have a test taken and the person had 50 nanograms of TCP, does

that mean that person had a marijuana joint yesterday, an hour ago, a month ago, a week ago? Can you answer? He said, "No, I cannot." Does that mean that that person is under the influence? He said, "No, it doesn't mean he is under the influence." Well, what does it mean, what does the test prove? What we want is to prove that that person is under the influence.

Today, we have no such test that proves that a person is under the influence of drugs.

Now, the way my employer does it -- by observation, the only way that you can do it is by observation. Are you suggesting that the school bus driver take a test every day? We had a young man that appeared before the committee and he sells to the public -- ten ways to beat the test. He has ten ways, proven ways, to beat these tests. Now these people that want to abuse, will abuse, and I believe that if you observe these employees, you will be able to get them and if you are sincere, you want to protect the public, you can do it. This is the best vehicle that we have presently.

If you have a random drug testing or even the bill that we have, a person has a trace of drugs in his system -- there was a doctor that told us something and it really came home to me. He said, if you have a trace of drugs, that does not mean that you are guilty. It is like, if you see a fingerprint at the scene of a crime, that does not mean that that person is guilty, we are still in the United States of America here. You are not guilty until you are proven guilty.

I must admit that the majority of the time when you are accused of something, you are perceived as guilty by the public. That is why we have a tight bill and that is why we voted for the Majority Report -- you are not guilty, you are innocent until proven guilty. But some people would like to see you guilty until you prove your innocence and those same people will take away your right to prove that you are innocent by taking away any employee assistant program, by taking away any board that will review the test.

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

Representative ZIRNKILTON: Mr. Speaker, Ladies and Gentlemen of the House: Just briefly to rebut some of the points that have been made during the debate, starting with the good gentleman from Madawaska, Representative McHenry. With regard to the testimony that was offered in our committee about the ten different ways to beat the test and very definitely that was offered, some of those ways were described to us, I guess the only thing that you can say about something like that is, if there is a way to beat the system, does that mean that we should make it legal? If I showed you ten ways to steal a car and get away with it, does that mean that we should make stealing cars legal because we can't stop it -- after all, there are ten ways to get away with it.

We have laws on our books because in the eyes of society they are for the best interests of the overall population of our state. If somebody comes up with a better mousetrap and figures out a way to beat it, then so be it. That is their privilege, their prerogative in a free society, to market a product.

With regard to being under the influence, if somebody has a cut-off level of 40 or 50 in their system, are they under the influence, are they impaired? Under the influence, perhaps. It is in

their system, it is in their blood stream. Impaired, maybe not.

As far as drug use being a disease and being treated by employee assistance programs and rehabilitation centers, there is no question, society now looks at alcoholism, drug abuse, as a disease and not necessarily as a social disorder or failure in the character of an individual. The other report does address that particular situation, it does not require payment of the rehabilitation as the Majority Report does.

As I was driving down here this morning, I heard the good U.S. Senator Mitchell on the radio. He was talking about rehabilitation. Do you know what he said? He said the backup in rehab centers is so severe that some people are waiting months to get in. Now, what does that mean under the majority bill -- if someone that tests positive after probable cause does not dispute that and comes to an agreement with their employer that they should go to a rehab center and be rehabilitated, what do we do? Do we send them home to sit in their living room and watch television for the next three months until their spot becomes available or do we keep them in the workplace with their problem continuing to pose a threat to the people they work with?

The expense that is involved with the EAP programs can be quite costly. 80 percent of the businesses in the State of Maine are small businesses. The overwhelming majority of them probably will not test regardless of what this legislature does today or next week as far as drug testing goes. I can assure you that many of them will not test if the Majority Report were to be enacted because they simply cannot afford to pay for that. Some of those programs, you know, can go up to \$13,000 even though the cut-off is 28 days. We had bills before us in the past, bills before us now that propose to raise the minimum wage. How are we going to expect someone who has trouble paying that to pay \$13,000 for rehabilitation treatment? They simply cannot do it. So, what will they do? They will find another way to fire the employee because you mandated that they go to a rehab center. They will have no choice, they will have to get rid of that employee, no if's, and's or but's. More than likely, they won't test anyway so it will be a relatively moot point.

As far as safety sensitive positions and probable cause -- if somebody has a problem, by the time they start to demonstrate what is defined under the seven points in the Majority Report as probable cause, their problem would be severe. Under these seven points, an employee either has to be observed in four of the points and documented in the remaining three points to have some kind of problem. More than likely that will not be done on one occasion, more than likely it will require several different opportunities on the employers part or on a supervisors part to observe that.

We again come back to the point of what happens to somebody who does not work while being supervised by somebody else, especially in the area of safety sensitive? If somebody, for example, is off in a corner by themselves and operates something that very directly affects the well-being of their coworkers but is not in a position to be observed by others, what do you do? Do you hope to observe them being impaired while they are walking to and from their position of work? I don't know.

Safety sensitive is a problem that needs to be addressed. If you pass this report, you will be telling the people of the State of Maine that, as far as you are concerned, we will take no action until

somebody, regardless of the type of job they are in, has demonstrated probable cause. Now, does that mean that we are going to wait until an accident takes place? Until someone is perhaps killed or severely injured before we say okay, that is probable cause, we will test you. You make the automatic assumption that just because we may allow safety sensitive testing you automatically assume that these people are going to be randomly tested say every Monday, Wednesday and Friday of every week of the year, that simply is not true. Employers are not going to administer these tests once a week and more than likely not once a month because the tests are expensive. They cost a lot of money especially when you require a confirmatory test which we have no problem requiring. Somebody is going to have to invest some money in that and more than likely they are not going to test anyone randomly unless they probably suspect something anyway. But you will be taking a tool away from them if you force them to wait until they have absolute and positive evidence of probable cause because it may be too late then.

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 Gorham, Representative Hillock.

Representative Hillock: Mr. Speaker, a question for the Labor Committee.

I just received a point of clarification and I would like to have it clarified on the Record. In the Statement of Fact it says, "The employer may only test an applicant after he has selected that person for employment." My question is, if that person that he has selected for employment, is his status employed at that time? And if so, is it at that time the responsibility of the employer to fund the rehabilitation?

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

The Chair recognizes the Representative from Brewer, Representative Ruhlin.

Representative RUHLIN: Mr. Speaker, Ladies and Gentlemen of the House: As a member of the committee, I would respond in the negative. The person is not employed nor is the employer liable for costs of rehabilitation until that person actually goes on the payroll. What the committee's intent was, we were trying to prevent people just being screened routinely by drug testing when they went in to apply for a job. When the employer is serious about hiring a person and says, "I want you to come to work for me now" -- he then has a right without probable cause and without committing himself to any rehab program at all to say, "If you are going to come on board in my workplace, I want to drug test you" as a part of his, if you will, pre-entrance physical or even without the pre-entrance physical.

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

Representative HILLOCK: Mr. Speaker, Ladies and Gentlemen of the House: For the Legislative Record and for legislative intent, let it be acknowledged that the employer is not responsible for a prospective employee if he tests positive on the screening process.

The SPEAKER: A roll call has been ordered. The pending question before the House is the motion of Representative McHenry of Madawaska that the House accept Report "A."

The Chair recognizes the Representative from Biddeford, Representative Racine.

Representative RACINE: Mr. Speaker, I wish to pair my vote with the Representative from Bangor, Representative Duffy. If he were present and voting, he would be voting yes; I would be voting no.

The SPEAKER: The pending question is the motion of Representative McHenry of Madawaska that the House accept Report "A". Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 40

YEA - Aliberti, Allen, Anderson, Anthony, Baker, Begley, Bickford, Bost, Boutilier, Brown, Callahan, Carroll, Carter, Cashman, Chonko, Clark, H.; Clark, M.; Coles, Conley, Cote, Crowley, Diamond, Dore, Dutremble, L.; Erwin, P.; Farren, Gould, R. A.; Gurney, Gwadosky, Hale, Handy, Hichborn, Hickey, Higgins, Hoglund, Hussey, Jacques, Joseph, Ketover, Kilkelly, Lacroix, LaPointe, Lebowitz, Lisnik, Look, Macomber, Mahany, Manning, Martin, H.; Matthews, K.; Mayo, McGowan, McHenry, McSweeney, Melendy, Michaud, Mills, Mitchell, Moholland, Murphy, E.; Nadeau, G. G.; Nadeau, G. R.; Nutting, Paradis, J.; Paradis, P.; Paul, Pouliot, Priest, Rand, Reeves, Rice, Richard, Rolde, Rotondi, Ruhlin, Rydell, Scarpino, Sheltra, Simpson, Small, Smith, Stevens, A.; Stevens, P.; Strout, D.; Swazey, Tamaro, Tardy, Taylor, Telow, Thistle, Tracy, Vose, Walker, Willey, The Speaker.

NAY - Armstrong, Bailey, Bott, Bragg, Curran, Davis, Dexter, Farnum, Foss, Foster, Garland, Greenlaw, Hanley, Harper, Hepburn, Hillock, Holloway, Ingraham, Jackson, Kimball, Lawrence, Lord, MacBride, Marsano, McPherson, Murphy, T.; Nicholson, Norton, Paradis, E.; Parent, Pines, Reed, Ridley, Salisbury, Seavey, Sherburne, Soucy, Stanley, Stevenson, Strout, B.; Tupper, Warren, Webster, M.; Wentworth, Weymouth, Whitcomb, Zirkilton.

ABSENT - Connolly, Dellert, Holt, Jalbert, O'Gara, Perry, Sproul.

PAIRED - Duffy, Racine.

Yes, 95; No, 47; Absent, 7; Paired, 2; Excused, 0.

95 having voted in the affirmative and 47 in the negative with 7 being absent and two paired, the motion to accept "Ought to Pass" Report "A" was accepted, the New Draft was read once.

Senate Amendment "A" (S-50) was read by the Clerk and adopted and the New Draft assigned for second reading Tuesday, May 5, 1987.

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

SENATE PAPERS

Bill "An Act to Authorize a General Fund Bond Issue in the Amount of \$5,000,000 for Acquisition of Public Lands" (S.P. 465) (L.D. 1422)

Came from the Senate, referred to the Committee on Appropriations and Financial Affairs and Ordered Printed.

Was referred to the Committee on Appropriations and Financial Affairs in concurrence.

Bill "An Act to Limit the Time Allowed to Complete an Investigative Consumer Report" (S.P. 468) (L.D. 1428)

Came from the Senate, referred to the Committee on Business Legislation and Ordered Printed.

Was referred to the Committee on Business Legislation in concurrence.

Bill "An Act to Require Municipal Approval of New or Expanded Landfill Facilities" (S.P. 470) (L.D. 1430)

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.

Bill "An Act to Establish a Cancer Prevention and Control Advisory Committee" (S.P. 462) (L.D. 1419)

Bill "An Act to Amend the Laws Governing the Licensing of Children's Homes" (S.P. 463) (L.D. 1420)

Bill "An Act to Adjust Time Limits and Clarify Responsibility for Certification and Registration of Deaths" (S.P. 466) (L.D. 1423)

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

Were referred to the Committee on Human Resources in concurrence.

Bill "An Act to Amend the Maine Juvenile Code to Provide Greater Flexibility in Sentencing Juvenile Offenders" (S.P. 469) (L.D. 1429)

Bill "An Act to Simplify Fees for Certified Copies of Divorce Reports" (S.P. 464) (L.D. 1421)

Bill "An Act to Amend the Probate Code to Allow Reasonable Compensation for Public Guardians or Conservators" (S.P. 461) (L.D. 1418)

Bill "An Act Concerning the Affidavit of Paternity" (S.P. 460) (L.D. 1417)

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

Were referred to the Committee on Judiciary in concurrence.

Bill "An Act to Provide for the Electric Power Needs of the State while Phasing Out Nuclear Power Generation" (Emergency) (S.P. 471) (L.D. 1431)

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

Was referred to the Committee on Utilities in concurrence.

Reported Pursuant to the Statutes

Report of the Committee on Audit and Program Review, pursuant to the Maine Revised Statutes, Title 3, Chapter 23 ask leave to submit its findings and report that the accompanying Bill "An Act Relating to Periodic Justification of Departments and Agencies of State Government under the Maine Sunset Laws" (Emergency) (S.P. 459) (L.D. 1406) be referred to the Joint Standing Committee on Audit and Program Review for public hearing and printed pursuant to Joint Rule 18.

Came from the Senate with the report read and accepted and the bill referred to the Committee on Audit and Program Review and ordered printed.

Report was read and accepted and the bill referred to the Committee on Audit and Program Review in concurrence.

Representative Jalbert of Lisbon was granted unanimous consent to address the House.

Representative JALBERT: Mr. Speaker, I would like to be recorded as voting yes on the last roll call vote.

(Off Record Remarks)

Representative Perry of Mexico was granted unanimous consent to address the House.

Representative PERRY: Mr. Speaker, I would request my vote on the previous question to be recorded as yes.

(Off Record Remarks)

On motion of Representative Dexter of Kingfield, Adjourned until Tuesday, May 5, 1987, at nine o'clock in the morning.

(Off Record Remarks)