

# MAINE STATE LEGISLATURE

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# LEGISLATIVE RECORD

OF THE

**One Hundred And Thirteenth Legislature**

OF THE

**State Of Maine**

## VOLUME IV

### **SECOND REGULAR SESSION**

March 25, 1988 to May 5, 1988

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### **HOUSE & SENATE LEGISLATIVE SENTIMENTS**

December 3, 1986 to December 6, 1988

**ONE HUNDRED AND THIRTEENTH MAINE LEGISLATURE**  
**SECOND REGULAR SESSION**  
**60th Legislative Day**  
**Thursday, April 7, 1988**

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

Prayer by Reverend David Sparks, First Church of the Nazarene, Augusta.

The Journal of Wednesday, April 6, 1988, was read and approved.

Quorum call was held.

The following Communication:

STATE OF MAINE  
OFFICE OF THE SECRETARY OF STATE

April 7, 1988

To Edwin H. Pert, Clerk of the House of Representatives of the One Hundred and Thirteenth Legislature:

In compliance with the Constitution and laws of the State of Maine, I hereby certify that a Special Election was held on April 5, 1988, in Representative District 109, for the purpose of electing a Representative to the One Hundred and Thirteenth Legislature: Madeline D. Stevenson of Unity received a plurality of all votes cast in District 109, as contained in a report to the Governor on April 7, 1988, appears to have been elected Representative to the One Hundred and Thirteenth Legislature.

IN WITNESS WHEREOF, I have caused the Great Seal of the State of Maine to be hereunto affixed this seventh day April in the Year of our Lord, One Thousand Nine Hundred and Eighty-eight.  
 s/Rodney S. Quinn  
 Secretary of State

Was read and ordered placed on file.

The following Communication:

STATE OF MAINE  
Office of the Secretary of State

April 7, 1988

To the Honorable John L. Martin, Speaker of the House of Representatives of the One Hundred and Thirteenth Legislature:

In compliance with the Constitution and laws of the State of Maine, I have the honor to herewith report the return of votes cast in Representative District 109 at the Special Election held on April 5, 1988, according to a review of the returns made by the Governor, to fill the vacancy that existed in the district as follows:

District 109

Alice C. Cheesman, Unity	155
Madeline D. Stevenson, Unity	577
Others	2

s/Rodney S. Quinn  
 Secretary of the State

Was read and ordered placed on file.

SENATE PAPERS

The following Communication:

Maine State Senate  
 Augusta, Maine 04333

April 6, 1988

Honorable Edwin H. Pert  
 Clerk of the House  
 State House Station 2

Augusta, Maine 04333

Dear Clerk Pert:

Please be advised that the Senate today appointed the following conferees to the second Committee of Conference on the disagreeing action of the two branches of the Legislature on Bill "An Act to Establish the Strategic Training for Accelerated Reemployment Program" (Emergency) (S.P. 946) (L.D. 2494):

Senator CLARK of Cumberland  
 Senator ANDREWS of Cumberland  
 Senator WEBSTER of Franklin

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

Was read and ordered placed on file.

Bill "An Act to Implement Emergency Recommendations from the Task Force on Incapacitated and Dependent Adults" (S.P. 990) (L.D. 2623)

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.

Ought to Pass as Amended

Report of the Committee on Judiciary reporting "Ought to Pass" as Amended by Committee Amendment "A" (S-404) on Bill "An Act to Correct Errors and Inconsistencies in the Laws of Maine" (Emergency) (S.P. 950) (L.D. 2521)

Came from the Senate, with the report read and accepted and the Bill passed to be engrossed as amended by Committee Amendment "A" (S-404).

Report was read and accepted, the Bill read once. Committee Amendment "A" (S-404) was read by the Clerk and adopted and the Bill assigned for second reading Friday, April 8, 1988.

Divided Report

Majority Report of the Committee on Agriculture reporting "Ought Not to Pass" on Bill "An Act to Require Farms to Post Notice of Pesticides Used" (S.P. 930) (L.D. 2441)

Signed:

Senators:	TWITCHELL of Oxford
	BLACK of Cumberland
Representatives:	MAHANY of Easton
	TARDY of Palmyra
	ALIBERTI of Lewiston
	GLIDDEN of Houlton
	PINES of Limestone
	SHERBURNE of Dexter
	HUSSEY of Milo
	PARENT of Benton
	NUTTING of Leeds
	BRAGG of Sidney

Minority Report of the same Committee reporting "Ought to Pass" as amended by Committee Amendment "A" (S-413) on same Bill.

Signed:

Senator: MATTHEWS of Kennebec  
 Came from the Senate with the Majority "Ought Not to Pass" Report read and accepted.

Reports were read.

On motion of Representative Tardy of Palmyra, the House accepted the Majority "Ought Not to Pass" Report in concurrence.

Non-Concurrent Matter

Bill "An Act to Clarify the Definition of Earnable Compensation" (H.P. 1826) (L.D. 2502) which was passed to be engrossed as amended by Committee Amendment "A" (H-624) in the House on April 5, 1988.

Came from the Senate passed to be engrossed as amended by Committee Amendment "A" (H-624) and Senate Amendment "A" (S-420) in non-concurrence.

On motion of Representative Carter of Winslow, tabled pending further consideration and later today assigned.

Non-Concurrent Matter

Bill "An Act to Amend the Rehabilitation System under the Workers' Compensation Act" (Emergency) (H.P. 1915) (L.D. 2614) which was passed to be engrossed as amended by House Amendment "A" (H-614) in the House on April 6, 1988.

Came from the Senate passed to be engrossed as amended by House Amendment "A" (H-614) and Senate Amendment "A" (S-416) in non-concurrence.

The House voted to recede and concur.

Non-Concurrent Matter

An Act to Extend the Uses of the Potato Marketing Improvement Fund (H.P. 1745) (L.D. 2391) (C. "A" H-569) which was passed to be enacted in the House on April 5, 1988.

Came from the Senate passed to be engrossed as amended by Committee Amendment "A" (H-569) as amended by Senate Amendment "A" (S-419) thereto in non-concurrence.

The House voted to recede and concur.

ORDERS

On motion of Representative BOTT of Orono, the following Joint Resolution: (H.P. 1923) (Cosponsors: Representatives DIAMOND of Bangor, BOST of Orono and Senator MAYBURY of Penobscot

JOINT RESOLUTION RECOGNIZING THE UNIVERSITY OF MAINE BLACK BEARS HOCKEY TEAM AND COACH WALSH FOR AN OUTSTANDING SEASON

WHEREAS, the Maine Black Bears of the University of Maine led the nation with the best record in Division I Collegiate ice hockey for the 1987-88 season; and

WHEREAS, under Coach Shawn Walsh, this outstanding team finished first in the Hockey East regular season; and

WHEREAS, the team went on to the NCAA semifinals at Lake Placid, New York and finished 3rd in the nation climaxing one of the most exciting seasons in Maine sports history; and

WHEREAS, the efforts of this tremendous multi-dimensional ice hockey team has brought great pride to the people of Maine; now, therefore, be it

RESOLVED: That We, the Members of the 113th Legislature of the State of Maine, now assembled in Second Regular Session, join in recognizing the University of Maine Black Bears ice hockey team and Coach Walsh for their outstanding record of accomplishments in ice hockey during the 1987-88 season and extend to each our thanks and appreciation for the honor they have brought to the university and State; and be it further

RESOLVED: That suitable copies of this resolution be presented to the team forthwith in token of our pride.

Was read.

The SPEAKER: The Chair recognizes the Representative from Orono, Representative Bott.

Representative BOTT: Mr. Speaker, Men and Women of the House: It is with great pride that I introduce this Resolution along with the Representative from Bangor, Representative Diamond. My only regret is that we couldn't include every member of the House and Senate on this Resolution.

It is clearly stated of the great pride that we have for this hockey team and the great service that it did for the State of Maine in getting us national exposure. Don't worry about it, we will be back next year and next year, we will be going for the whole ball of wax. Thank you.

Subsequently, was adopted and sent up for concurrence.

PASSED TO BE ENACTED

An Act to Enable the Creation of Watershed Districts (S.P. 982) (L.D. 2610)

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.

(At Ease)

The House was called to order by the Speaker.

At this point, the Speaker announced the presence in the Hall of the House of Representative-elect STEVENSON from Unity. The Speaker appointed the following Representatives to escort the Representative-elect to the Office of the Governor to take and subscribe the oath necessary to qualify her for the discharge of her duties:

Representative WHITCOMB of Waldo  
Representative WILLEY of Hampden  
Representative CROWLEY of Stockton Springs  
Representative MCGOWAN of Canaan  
Representative TARDY of Palmyra  
Representative PARENT of Benton  
Representative Allen of Washington  
Representative MARSANO of Belfast  
Representative MURPHY of Kennebunk

Subsequently, Representative WHITCOMB reported that the necessary oath had been taken by the Representative to qualify her to enter upon her official duties.

At this point, the Speaker announced that Representative STEVENSON would be assigned seat 14.

ORDERS OF THE DAY  
UNFINISHED BUSINESS

The following matters, in the consideration of which the House was engaged at the time of adjournment yesterday, have preference in the Orders of the Day and continue with such preference until disposed of as provided by Rule 24.

The Chair laid before the House the first matter of Unfinished Business:

An Act to Ensure Local Participation on the Radiological Emergency Preparedness Committee (Emergency) (H.P. 1706) (L.D. 2343) (H. "A" H-566) TABLED - April 5, 1988 by Representative GWADOSKY of Fairfield.

PENDING - Passage to be Enacted.

On motion of Representative Kilkelly of Wiscasset, under suspension of the rules, the House reconsidered its action whereby L.D. 2343 was passed to be engrossed.

On motion of the same Representative, under suspension of the rules, the House reconsidered its action whereby House Amendment "A" (H-566) was adopted.

On motion of the same Representative, the House indefinitely postponed House Amendment "A" (H-566).

The same Representative offered House Amendment "B" (H-635) and moved its adoption.

House Amendment "B" (H-635) was read by the Clerk and adopted.

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

The Chair laid before the House the second matter of Unfinished Business:

Expression of Legislative Sentiment Recognizing Paul Soucy (SLS 501)

- In Senate, Read and Passed.

TABLED - April 6, 1988 (Till Later Today) by Representative DIAMOND of Bangor.

PENDING - Passage.

Subsequently, was passed in concurrence.

TABLED AND TODAY ASSIGNED

The Chair laid before the House the first Tabled and Today assigned matter:

Bill "An Act to Fund a Supplemental Highway Program and to Establish a Program to Fund the Construction of Extraordinary Bridges" (Emergency) (H.P. 1799) (L.D. 2463)

- In House, Minority "Ought Not to Pass" Report of the Committee on Taxation read and accepted on April 5, 1988.

- In Senate, Majority "Ought to Pass" as amended Report of the Committee on Taxation read and accepted and the Bill passed to be engrossed as amended by Committee Amendment "A" (H-588) as amended by Senate Amendment "B" (S-417) thereto in non-concurrence.

TABLED - April 6, 1988 by Representative DIAMOND of Bangor.

PENDING - Further Consideration.

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

The Chair laid before the House the second Tabled and Today assigned matter:

Bill "An Act to Clarify and Correct Errors and Omissions and to Improve the Laws Relating to Education" (S.P. 947) (L.D. 2501) (H. "A" H-622 to C. "A" S-402)

TABLED - April 6, 1988 by Representative MURPHY of Kennebunk.

PENDING - Passage to be Engrossed.

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

Representative SMALL: Mr. Speaker, Men and Women of the House: I move that this bill and all its accompanying papers be indefinitely postponed.

The SPEAKER: The Chair will order a vote. The pending question before the House is the motion of the Representative from Bath, Representative Small, that L.D. 2501 and all accompanying papers be indefinitely postponed. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

Representative Higgins of Scarborough requested a roll call.

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

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

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

Representative SMALL: Mr. Speaker, Men and Women of the House: This bill that we are debating now is, of course, the Education Errors and Inconsistencies Bill which yesterday was amended to take out most of the 1984 certification law.

Arguments were made yesterday that the teachers did not understand the new certification rules being promulgated so we should reject the rules and repeal the new certification law. I am not surprised that teachers are confused by the new rules since they have only been in print in final form for a few days.

The rules have been changing, almost monthly, but these changes were in response to criticism and concerns raised by teachers and administrators across the state at hearings held by the State Board. I think the very fact that the rules have been changed so often tell us that teachers were listened to. Yet, the amendment to gut the certification law was proposed and passed even before the Education Committee had its final briefing over the new rules yesterday.

If this bill passes with this amendment to gut the teacher certification, new teachers joining the profession will be required to be proficient in the subject that they teach but veteran teachers will not. We believe that it is important enough to require our new teachers but not those currently teaching?

Most veteran teachers do meet the endorsement requirements of their subject areas. Those who do not have five years to take courses or in-service training to meet the minimum requirements. Do you want your child taking high school physics or chemistry from a teacher trained to teach history?

On the other side of the coin, should a teacher trained to teach history be forced to teach physics because he is free that period and the administrator says he must teach it?

Under the new law, a teacher could only teach outside his endorsement area if he chose to seek the transitional certificate and worked out a five year plan to meet the minimum requirements of that subject area.

I want my child taught math by a teacher trained in mathematics and I don't think it is asking too much of our schools, of our administrators and our own teachers to require this.

This bill with the amendment wipes out support teams for veteran teachers. Some progressive schools may keep the support systems for their veteran teachers but most will concentrate only on the new teachers. Once again, teachers will be left to improve their teaching on their own. The support teams are one of the most exciting and dynamic parts of the certification law we passed in 1984 but they will be diminished by this bill's passage.

For those reasons, I hope you will vote to indefinitely postpone this bill.

The SPEAKER: The Chair recognizes the Representative from Winthrop, Representative Norton.

Representative NORTON: Mr. Speaker, Men and Women of the House: I am going to begin by taking a look at the information that was placed on your desks yesterday. It came from an editorial in the Kennebec Journal that requested that we leave teachers' standards alone. "I just need to do this -- to pick it apart and show you that the facts can be separated from either fiction or ignorance.

The lawmakers should leave alone the teacher certification standards just approved by the State Board of Education. The standards, part of the landmark Education Reform Act of 1984, had nothing to do with the Education Reform Act as it is listed here. I could read you what is in that reform act. I'm going to assume that you know it and assume that you will take my word that it can be separated out from that act. It won't do a thing for the Education Reform Act.

Not so fast Representative Omar Norton, four years late." I wasn't here any earlier and I made mention of some of these things a year ago and placed those remarks on your desks.

"Whether he will actually" (referring to me) "get the bill on the floor is uncertain." Very poor predictors. "What is certain is that it should be rejected again." They got an answer yesterday from this House and I hope you repeat it today.

"Only a month ago, the Education Committee considered a bill to delay certification standards another year and scrapped it." We did not do that. "Norton's proposal would be much more far-reaching so it is puzzling that the committee even voted to allow Norton to proceed. Might they not be given some credit for judgment on their own?" They didn't even take a vote but I could see the sentiment was there. Down a little further. "The state recognizes the certificate's full-term, the renewal clause is a valuable and very important part of that full-term. I would say that it is the most important part. The standards are fair and should be effective in improving teaching." Since they just hit my desk yesterday in the Education Committee, I would like to know the basis for that judgment. It is a baseless assumption.

I don't like to rebut, so I will stop there.

I would now like to tell you that the law itself that I went through last night in my scant time at home (which I would rather have spent eating but probably that is good for part of me) and here is the scant law, the size of it that was passed. This is called "An Act to Revise the Laws Governing Certification of Educational Personnel." Here are the regulations that were put on our desks yesterday.

It is any wonder to me that there is confusion, it is little wonder to me that there is inconsistency. For a law that requires support teams to be in effect May 30th, I would like to read to you a support system news letter published by the Department and it is called the March-April edition. "Currently, 54 school units have not started their plan. 53 units are in the process with their plans, 9 school units have completed theirs (I trust they are the pilot sites) and 8 school units have completed plans that require review." Not too encouraging for a system to go in May 30th.

I want to remind you of one simple thing. Certification has applied seriously to the teachers of this state since 1963 when they were required to have a degree. We led the country at that time with this step because we applied it to elementary school teachers. I have always thought that that was a poor name for our lower grades, they are anything but elementary.

Our teachers are not one step ahead or one day ahead of the students, we have had subject matter certification since 1963 and even before. In my own major, I have 33 hours, three times the minimum. When I got an advanced degree, I was required to have a Masters to earn my Superintendent's certificate and then, before it was over, I added 30 hours beyond that. I am not alone.

I got a call from a teacher this morning in Winthrop and she said, "I am calling you for two reasons. I am calling you to congratulate you on behalf of our staff for standing up. I am also calling to tell you how we feel out there in the classrooms today. We feel like second-class teachers, second-class citizens, people have been demeaned as though our education in meeting requirements meant nothing."

So, I stand here today representing every teacher in my system. I asked them to find me one teacher or one administrator who was against this and step forward. I got the call on that and they said, "We can't find anybody." I said, "Good, then I have the assurance I am representing you."

I want you to know that it is a baseless charge that only education courses were used for matters pertaining to certification. If you hadn't a subject major that was strong, you were required (since 1963) to take work on that. With the new standards, Steve Hamlin, former State Director of Certification, is occupying a position in a library in a high school. Steve Hamlin was one of the most gifted certification officers in this country. I hope he gets a sentiment soon from this body before I put it in. I hope you will stick with your position on this issue and I would like to thank you for taking the time to listen to an extended speech from me.

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

Representative ALIBERTI: Mr. Speaker, Men and Women of the House: I can take you back to 1940, not 1963, where you were certified to teach in any area that you wanted with one exception and that was math. In math, you had to have special expertise.

I would like to address one or two concerns and that is the teaching of English. Every teacher that was certified in 1940 on, automatically was authorized and certified to teach English. There were a certain amount of hours that you had to take but not the 18 required hours. So there was an opportunity to teach in an area that you were not certified according to today's standards.

What about the elementary school teacher? Does elementary certification mean a speciality area? You can teach any subject on the elementary level and what does that elementary level include? It could include through Grade 8, which is part (in some areas) of a Junior High School system.

You are trying to degrade the professional profession. I don't think we have the right to degrade a teacher by saying that you are going to go ahead and teach these youngsters in an area which you are unqualified to teach. In effect you are saying, go ahead and teach and the next day, be available for a termination notice because that is ineffectiveness.

Let me give you a little personal background also. With three years of elementary training at Farmington Normal School, one year of work at Boston University that gave me my BS in Education Degree, after serving my country, which I considered in a faithful way, they allowed me under a special bill, to continue my education. In 1947, I received a Master's Degree, which at that time, was quite an accomplishment for anyone in education. However, I chose to take that Master's Degree as a M.A. instead

of a M.Ed. and I went through exactly the same courses but I chose a designation of M.A. instead of M.Ed., Master in Education. That was at Columbia. I did that for a purpose, I had this inflated idea that going to a further degree, a doctorate degree, the M.A. would be more valuable than an M.Ed. -- what a foolish mistake.

I came back to the State of Maine with a Master's Degree and I was not qualified to teach until I took six additional hours after taking the additional hours at Columbia. I had to take six additional hours because a new certification law was passed. With the past experience of teaching, I was not qualified to teach so I had to take six additional hours.

Certification is not to be administered lightly. Ladies and gentlemen of this House, you are dealing with a subjective product, an unpredictable product. Any given hour, those students that you have before you can change. They can be chameleon in type because we are dealing with a human element and that person that you hire in that classroom knows that human element inside and out. He doesn't have to be certified in this restricted way to know the needs of those students before you.

You stand in this body to make rules and regulations over an area which you have no expertise in. You have no feel for it unless you are a part of it. Any given day you can take that product, inspire it, change it, and the very next day, you can use the same method and be unsuccessful and that person you call a teacher has to be sensitive to everything that is going on in that classroom. You want to do something for the teachers? Eliminate the menial chores that you are forcing the teachers to do. You are paying the teacher \$35 or \$40 an hour to see them load and unload a bus, that is ridiculous. Address the professionalism of the profession and not saying to them, you are restricted to this, that and the other thing.

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

Representative SMALL: Mr. Speaker, Men and Women of the House: Just so this House doesn't get the mistaken idea that these rules that came up were just a kind of a creation of the State Board in the last year or so and something that hasn't had a lot of forethought and a lot of input on, I would like to read the Statement of Fact from the Certification Bill that was passed in 1984 by this House, which was sponsored by Representative Mitchell of Vassalboro. I was one of the members on the Education Committee at the time.

It says: "In 1981, the legislature gave the State Board of Education sole authority to establish the policies, rules and regulations for teacher certification in Maine." This bill is the result of a three year effort by the State Board of Education to respond to that mandate. It proposes a clear-cut policy which upgrades and strengthens the requirements for teaching in Maine.

The State Board has met frequently with professions from all segments of education, teachers, principals, superintendents, university faculty, college faculty and students. Public hearings were held throughout the state for a report to be prepared for the State Board by a special consultant on teacher certification. That was just three years of work in hearings just to get the bill before us in 1984.

At that time, it says, "The State Board of Education affirms the teaching profession as the highest value in our society, highlights the importance of the classroom as the setting for

professional development and emphasizes the importance of continuous professional development. The State Board has developed the following concepts which stress a balance between statewide policy and direction for certifying teachers and local control and flexibility in carrying out these policies in supporting teachers. "The very first item under that explanation is:" (1) all teachers, not new teachers, all teachers will have a strong liberal arts and science background with a major field of study in the subject area to be taught."

If this debate were going on in 1984, I would understand this a little more but we passed this, we had hearings on it and, when this bill was in our committee, we had a number of hearings and work sessions in which all the groups were there. It wasn't just the State Board, it wasn't just the Education Committee, it was the MTA and the Superintendents Association, the School Boards Association and we had a lot of input. We called in a specialist to come and talk to our committee on ways to enhance and improve the certification bill but there were a number of hearings on this at that time. So we passed this. We had what we wanted to put into law in legislative form and we passed it. Then we said to the State Board, "You come up with the rules to implement this." From what I can see, the rules do not stray from the intention of the law. They may be hefty but they don't stray from the original intention.

As far as the grandfathering goes with the certificates, you must understand that anybody who holds a five or ten year certificate now, will hold that certificate until it comes due. At that time, they will then be recertified with a new five year certificate and come under the 502 provisions. This is not an unusual precedent -- in the '40's, you could actually teach school in some areas without a college education. Then in the 1950's, that law was changed to require a degree and they did not grandfather in the teachers who were currently teaching without a degree. Many teachers had to go back to school in order to obtain that degree to continue teaching so the grandfather clause, I guess, varies from time to time but there is a precedent for not grandfathering in teachers and for requiring them to get further education in order to continue teaching.

I hope that you will vote to indefinitely postpone this bill.

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

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

Who will have to pay for the courses that these teachers are going to have to take?

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

The Chair recognizes the Representative from Bath, Representative Small.

Representative SMALL: Mr. Speaker, Men and Women of the House: I believe, as before, for the six credits the teacher will pay for the courses.

The SPEAKER: The Chair recognizes the Representative from Winthrop, Representative Norton.

Representative NORTON: Mr. Speaker, Men and Women of the House: I think we have established that there have been certification requirements around for quite some time. I think we have established that the terms of those certificates have been honored over time. I think they need to be honored again, I think we need to make present-day teachers feel like they completed courses of study that were worthwhile.

I believe we have also reached a time when we need more time on task, I do not want to endorse any plan that removes a teacher from a classroom.

Let me read a page that I got last night from a support team description that they are going to follow in a local school organization. "Prior to the first day of school, each provisional teacher will be assigned a three member support team, whose main task will be to observe and coach new teachers in effective teaching methods based on a teacher action plan which has been developed by the teacher and his or her support team. At the end of the two year provisional term, the support system will make a recommendation to the Department of Education for professional certification. Each support team will select a chair person whose main responsibility will be to collect all data and forward appropriate forms to the support system within a specified time-line as indicated by this handbook. The Chairman is also required to keep minutes in the time log of all activities which directly relate to provisional teachers.

The composition of the three member team will be as follows: two classroom teachers, one administrator, an optional fourth person chosen by the teacher from a pool. All materials gathered during the course of the recertification process are to be considered legally confidential (if you believe that one, I will tell you another) including but not limited to self-assessment inventories, observations, teaching action plans and evaluations. (Evaluations?) No outside material, written or verbal, may be divulged to any outside sources including building principals, other administrators, and other teachers unless permission is given in writing by the candidate teacher. It is the responsibility of each member of the teacher's support team and of the support team's chairperson to respect the candidate's legal rights of confidentiality" as expressed in this paragraph.

I want you to know that this is evaluation of a teacher's work which is in the province of management. I want you to know that there won't be a teacher group including any administrator that serves on it who would ever want to pass on a teacher in their certification status. I told my own spouse who is on one of those teams -- I neither want to lose the house or even the garage.

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

Representative RICHARD: Mr. Speaker, Men and Women of the House: Over the years, there have been changes in the certification laws. Just yesterday, Representative Norton spoke about the lifetime certificate, it is impossible to receive one of those today, thankfully for the people in the State of Maine.

If we wish to revert back to 1984, prior to our coming up with the present law, then you would vote against the pending motion; if you wish to revert back to what we had status quo in 1984, then you definitely would not want to vote accordingly so I would encourage you to vote for the pending motion of indefinite postponement.

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

Representative ALIBERTI: Mr. Speaker, Men and Women of the House: I just want to briefly correct a statement made by the gentlelady from Bath, Representative Small. They did grandfather (I thought that was what Representative Richard was going to allude to and it would have prevented me from getting up) the life certificates. They were automatically grandfathered after the new changes

took place. Some teachers taught an additional 15 to 20 years under the lifetime certificates.

The SPEAKER: The Chair recognizes the Representative from Parsonsfield, Representative Lawrence.

Representative LAWRENCE: Mr. Speaker, Men and Women of the House: I am not going to take your time to recite my credentials but I came in the legislature with the advantage of having an opportunity to review the report of the reform committee. It is my impression that the message that was going all through that report was that there was need for improvement, there was need for advancement in teaching and administration. In order to meet the challenges that were anticipated ahead, the improvement is recommended and yet it comes knowing full-well that the teachers, the administration, now in existence have not met the challenge and need to be stimulated to meet that challenge. It placed upon the State Board of Education the responsibility to come up with the kind of recommendations that would stimulate and cause teachers to move in the right direction and to advance and meet the challenges of education ahead.

If that is what it takes to stimulate them, then it was my position to support the certification requirements and I submit to you that, as human beings, we have the unique capability of deceiving ourselves and procrastination.

Amendment "A" is another temptation to postpone, to delay certification requirements which give pilots for improvement in education to upgrade the quality of education and to meet that challenge ahead. The proposed certification assures us that, in reasonable time, for adjustments and transitions and to my judgment, too long -- I think it should be done in a shorter period of time if we have any grasp on what is happening out there in the business world and the economy. Both teachers and administrators will then possess adequate preparation in the disciplines that they are asked and called upon to teach and called upon to administer. There is sufficient and compelling evidence that learning, teaching, and administration must improve.

My question to you is, "Do we have the time that it takes to bring about change in public education today?" We need regulations to move that ahead and I suggest to you that that is the effort in this whole matter of requiring the certification that is ahead of you and before you. So I ask you to favor the motion to indefinitely postpone.

The SPEAKER: The Chair recognizes the Representative from Wiscasset, Representative Kilkelly.

Representative KILKELLY: Mr. Speaker, Men and Women of the House: If I could follow up on Representative Melendy's question, it is my understanding that in almost all instances the schools do reimburse teachers for the cost of courses. Schools have received a \$100 per teacher for the cost of certification and I am wondering for any of you that have taken courses recently, how far \$100 per teacher goes?

I would like to share with you briefly from the support system news letter questions commonly asked. Question one, what are transitional endorsements and how will a teacher qualify for one? The answer is, upon recertification, a professional teacher may apply for a transitional endorsement in a subject area for which the teacher does not hold a major or minor if the teacher has been assigned to teach in that subject area. The Department of Education will issue the transitional endorsement and teachers will be required to develop a proposal.



The proposal may require the teacher applicant to earn or document 18 credit hours in the area of endorsement. The proposal must include 12 hours of academic course work in the subject field of the endorsement. The balance of the proposal may consist of a minimum of 90 class hours of relevant and in-service training, individual study or professional education. The proposal shall also contain a time table for completion which shall not extend beyond five years.

One of the things that I mentioned yesterday is a concern that I have is with teachers in rural school systems, teachers who are teaching two, three or more courses that are not part of their major or minor. These teachers, according to this response, would be required to take two courses in each of those subject areas over the course of five years. Your schools and my schools will be paying for that as well as the time those teachers will be out of the classroom or away from other activities such as coaching sports or working with clubs or whatever. I really wonder if that is in the best interest of teaching in this state and the best interest of children.

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

Representative SMALL: Mr. Speaker, Men and Women of the House: Just understand, men and women of the House, that every teacher will be issued one certificate upon the expiration of their old one in an area that they are teaching. So, if you are teaching Math, English and History, you will be issued a certificate in the area that you are the most proficient in. Hopefully, in one of those, you have got a minimal of 18 credits. I don't know how you can get through college and not take any Math, English or History but, hopefully, one of those you will have a proficiency in. Then you would have two other courses, if you wish to continue teaching in those, that you have to make up your minor in. Depending on how many courses you already have had, it depends on how many courses you will have to take. They will use such things as in-service training and other measures that can prove you have an efficiency in that course.

There are two other items that I just wanted to correct. If there are any life certificates out there and I don't know that there are, we are grandfathering those. We are grandfathering tenure certificates -- what we are saying is, upon the completion of that certificate and when it is time for renewal, you will then be subject to the new laws.

The other thing that we heard earlier was Representative Norton talking about support teams and he read all that. Unless I mis-heard him, he was talking about support teams for the provisional teacher and I don't believe his amendment did anything with the provisional teachers so I think what we were hearing was that it is in the law and it will stay in the law, regardless of this amendment. I personally believe in the support teams but he was speaking of the support teams for the provisional teachers and they will stay in the law, regardless of what happens today.

The SPEAKER: The Chair recognizes the Representative from Frenchville, Representative Paradis.

Representative PARADIS: Mr. Speaker, Men and Women of the House: I take serious offense at the idea that our teachers were not stimulated in 1984 and we have to do something. If you had a school system where teachers were not stimulated at that point, the management should have been taking care of it.

When we were out there in the field, we were very excited when this Reform Act came on board because we thought, finally the education problems in Maine are going to be put on the front burner and there will be more money that will accompany this concern and we will be having supplies and things we have been doing without that teachers have funded out of their own pockets.

What happened? Some good things have come out of it but the veteran teachers have not seen any dollars yet because we were trying to bring up the bottom level so they are still waiting. I don't blame them one bit for feeling betrayed because they have been given this long list of things they need to do and we have not come up with the other side of the story.

I urge you to support Representative Norton's motion.

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

Representative NICHOLSON: Mr. Speaker, Men and Women of the House: I feel that I have to speak on this subject because I am going to change my vote from yesterday to indefinitely postpone.

I think today we have found and have been learning that we do have words of wisdom for clarification, a better understanding of the other subject by all. The most important people here are our students and they need to know very much what is going to happen in the future. I don't know of a parent that doesn't expect and they do receive dedication and committed people in our teaching profession and those that administer. We want to achieve excellence.

I think we have been holding the line for a good many years in our teaching profession and it has come to the point now for us to compete and reach out to the year 2000 and we have to advance our thinking and be ready for change. It is very difficult for us or anybody to change, whether it is in business or in the teaching profession.

What we are talking about here is upgrading and making it better. A program was presented to us in 1984 that was accepted and I believe it is still acceptable. Professionalism? You bet your life. There is no greater profession in the world than being a teacher that is dedicated and committed to teach and bring the young people around.

With that said, I urge you to consider strongly to indefinitely postpone.

The SPEAKER: A roll call has been ordered. The pending question before the House is the motion of the Representative from Bath, Representative Small, that L.D. 2501 and all its accompanying papers be indefinitely postponed. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 243

YEA - Armstrong, Bickford, Bott, Brown, Davis, Dellert, Foss, Foster, Garland, Greenlaw, Hanley, Harper, Hichborn, Higgins, Hillock, Holloway, Lawrence, Lebowitz, Lord, MacBride, Marsano, McGowan, Mitchell, Murphy, T.; Nicholson, Paradis, E.; Parent, Pines, Reed, Richard, Salsbury, Sherburne, Small, Soucy, Stanley, Stevens, A.; Stevenson, M.; Strout, B.; Taylor, Tupper, Webster, M.; Wentworth, Whitcomb, Willey, Zirkilton.

NAY - Aliberti, Allen, Anderson, Anthony, Baker, Begley, Bost, Boutilier, Bragg, Callahan, Carroll, Carter, Cashman, Chonko, Clark, H.; Clark, M.; Coles, Conley, Cote, Crowley, Curran, Daggett, Dexter, Diamond, Dore, Duffy, Dutremble, L.; Erwin, P.; Farnum, Farren, Glidden, Gould, R. A.; Gurney, Gwadosky, Hale, Handy, Hepburn, Hickey, Hogleund, Holt, Hussey, Jackson, Jacques, Jalbert, Joseph,

Ketover, Kilkelly, Lacroix, LaPointe, Lisnik, Look, Macomber, Mahany, Manning, Martin, H.; Matthews, K.; Mayo, McHenry, McPherson, McSweeney, Melendy, Michaud, Mills, Moholland, Murphy, E.; Nadeau, G. G.; Nadeau, G. R.; Norton, Nutting, O'Gara, Oliver, Paradis, J.; Paradis, P.; Paul, Perry, Pouliot, Priest, Racine, Rand, Rice, Ridley, Rolde, Rotondi, Ruhlin, Rydell, Scarpino, Sheltra, Simpson, Smith, Stevens, P.; Strout, D.; Swazey, Tammaro, Tardy, Telow, Thistle, Tracy, Vose, Walker, Warren, The Speaker.

ABSENT - Bailey, Kimball, Reeves, Seavey, Weymouth.

Yes, 45; No, 101; Absent, 5; Paired, 0; Excused, 0.

45 having voted in the affirmative and 101 in the negative with 5 absent, the motion did not prevail.

Subsequently, the Bill was passed to be engrossed as amended by Committee Amendment "A" (S-402) as amended by House Amendment "A" (H-622) thereto in non-concurrence and sent up for concurrence.

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

SENATE PAPERS

The following Communication:

Maine State Senate  
Augusta, Maine 04333

April 7, 1988

Honorable Edwin H. Pert  
Clerk of the House  
State House Station 2  
Augusta, Maine 04333

Dear Clerk Pert:

Please be advised that the Senate today adhered to its former action whereby it accepted the Majority Ought Not to Pass Report on the Bill "An Act Enabling Municipalities to Establish Municipal Investment and Land Banks Funded by a Local Option Real Estate Transfer Tax" (H.P. 1762) (L.D. 2415).

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

Was read and ordered placed on file.

Non-Concurrent Matter

RESOLVE, Creating the Commission to Study Private Ways and Private Roads (Emergency) (H.P. 1922) (L.D. 2622) which was passed to be engrossed under suspension of the rules and without reference to a Committee in the House on April 6, 1988.

Came from the Senate referred to the Committee on Transportation in non-concurrence.

Subsequently, the House voted to Insist.

Non-Concurrent Matter

RESOLVE, to Reconstitute the Commission to Review the Laws Relating to Registered Maine Guides (Emergency) (H.P. 1673) (L.D. 2292) which was passed to be engrossed as amended by Committee Amendment "A" (H-610) in the House on April 6, 1988.

Came from the Senate passed to be engrossed as amended by Committee Amendment "A" (H-610) as amended by Senate Amendment "A" (S-421) thereto in non-concurrence.

Subsequently, the House voted to Adhere.

CONSENT CALENDAR

First Day

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

(S.P. 939) (L.D. 2477) Bill "An Act Concerning the Storage, Use and Transportation of Hazardous Chemicals" (Emergency) Committee on Energy and Natural Resources reporting "Ought to Pass" as amended by Committee Amendment "A" (S-418)

Under suspension of the rules, Second Day Consent Calendar notification was given, the Senate Paper was passed to be engrossed as amended in concurrence.

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

CONSENT CALENDAR

First Day

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

(H.P. 1574) (L.D. 2149) Bill "An Act to Reallocate Funds from the Maine Turnpike Authority for Construction and Maintenance of Secondary Roads" Committee on Transportation reporting "Ought to Pass" as amended by Committee Amendment "A" (H-638)

On motion of Representative Diamond of Bangor, was removed from the Consent Calendar, First Day.

On further motion of the same Representative, tabled pending acceptance of the Committee Report and specially assigned for Friday, April 8, 1988.

At this point, the Speaker appointed Representative Michaud of East Millinocket to act as Speaker pro tem.

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

The third Tabled and Today Assigned matter was taken up out of order by unanimous consent:

Bill "An Act to Enhance Outdoor Recreation Opportunities" (S.P. 889) (L.D. 2301) TABLED - April 6, 1988 by Representative MURPHY of Kennebunk.

PENDING - Adoption of House Amendment "A" (H-621) to Committee Amendment "A" (S-363)

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

Representative HILLOCK: Mr. Speaker, Men and Women of the House: Thank you yesterday for your patience in going through the long explanation of what this bill is.

A yes vote today will strip off any opportunity for protection against frivolous lawsuits for the paper companies who are engaged in the camping business and for the small campgrounds in the State of Maine.

A no vote would allow some Tort Reform to stay alive and, through parliamentary procedure, the bill could go back to the form where we voted (by Division) and the majority felt at that time that there was a crisis in the camping industry and we were willing to deal with it. Also, this body unanimously approved Tort Reform to the paper companies engaged in the camping business. This was done by Senate Amendment "B" which went under the hammer in both Houses. So today, a positive vote to attach this Committee Amendment will kill any reform for these small businessmen.

I will leave it at that, a no vote will give some relief to the small business owners in the state; a

yes vote, won't. I will sit down now and if anyone has any questions, I will be glad to answer them.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Waterboro, Representative Lord.

Representative LORD: Mr. Speaker, Men and Women of the House: The Outdoor Recreation Committee worked hard on this report that led to this bill and I think you are taking a lot of the nuts and bolts out of the Committee Report if you go and indefinitely postpone or take this section out of the bill.

The bill itself says "An Act to Enhance Outdoor Recreation Opportunities" and this is what it does, this is the purpose of it. If you taken that section out, I don't think you are improving, you are really going the other way.

I would urge you very strongly to vote down this motion to take that section out of the bill.

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

Representative MITCHELL: Mr. Speaker, Men and Women of the House: The bill on outdoor recreation was heard in the Energy and Natural Resources Committee and it is a pretty good bill. We did have a pretty fiery debate, I think, down in committee over Section 7 and that is the controversial part of the bill. The Senate Amendment, we rejected now I guess, tightened it up and that improved the bill but I think Representative Allen's amendment even improves the bill more by striking Section 7 from the bill entirely.

Yesterday, a lot of the arguments for these campgrounds were involved around the issue of Tort Reform, an issue which we discussed at great length in another bill. The issue of growth management -- there is still a bill on the table in the Energy and Natural Resources Committee that deals with all those issues of growth management that were brought up here yesterday. I hope you will support Representative Allen's motion. I think by striking Section 7 from this bill improves it very much.

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

Representative JACQUES: Mr. Speaker, Men and Women of the House: I had hoped that I wouldn't have to be speaking on this issue again but it seems it just keeps coming back.

With the exception of Section 7, we have a real good, very important, bill so whatever happens today, I hope we will not jeopardize the rest of the bill.

My opinion still is, the best way to have gone would have been to have gone with Senate Amendment "B" which this House ultimately allowed to be amended, which made a heck of a mess out of it, so now I am going to go with getting to the whole thing. I am going to tell all the large landowners that I did the best I could but somebody started monkeying with it for whatever reasons they did and this is what you have ended up with.

The question we asked to the people who own the 10 million acres of land that are undeveloped in the State of Maine was, what could we possibly do that would help and encourage you to keep those lands open and to keep the fee reasonable? They told us if we could pass that limited liability provision on to them, even though they charge reasonable fees, we would be helping them out a great deal. That is why the Commission made that Majority recommendation and that is why the Energy and Natural Resources Committee ultimately made the unanimous report. There was some heated discussion, some of the members of the committee felt that if they charged a fee, they should bear the brunt of all liability. The

concern is, if we do that, we will soon be bearing the brunt of all the liability, those of us who use those lands.

This should not be confused with the access bill, that is a whole different issue. We are talking about a provision that would have encouraged them (or at least they said it would have encouraged them) to keep those undeveloped, primitive campground areas open to the public. Senate Amendment "B" clearly defined those as primitive campground areas which is what we finally agreed on in committee. That is no longer before us, we no longer have that option.

Right now, the bill is back as it originally was and Section 7 says that "anybody who charges a reasonable fee for any form of recreation would be given an exemption" and that is not a good idea either because that would cover, if you charged \$50 or \$100 a day, you would still be given that exemption. That is not what it had designed it to do. Unfortunately, the thing has been muddled so badly, I am now going to vote to adopt Representative Allen's amendment and I hope the rest of you do too. We will just have to face the consequences on what these large landowners are going to do to us in the very near future.

Representative Hillock of Gorham requested a roll call.

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

Representative ALLEN: Mr. Speaker, Men and Women of the House: I would urge you to adopt House Amendment "A" and briefly tell you why.

By adopting House Amendment "A" you would be maintaining the law as it exists now. If all the allegations that have been made on this floor are true regarding the issue of liability and impact on insurance rates are valid, then I believe it would be most appropriate, including the arguments by the Representative from Waterville, regarding the access fees the large landowners are currently charging. I think it is more prudent that this legislature allow two forums to deal with that, (1) that the Commission that is established by this bill, minus Section 7, and (2) subsequent to any recommendations that that Commission might make, I believe that it would be appropriate that the Judiciary Committee study the subject of immunity as they have and see how it fits into the overall public policy that has been established by this state with regards to immunity.

They have dealt with the immunity question this session, the unanimous committee report said that immunity would be granted to officers and directors, for instance, of non-profit corporations. We were able to give limited liability in those cases where there was negligence or errors of omission. Even when they were discussing non-profits, even when we enacted that legislation, we never went so far as to say that the actions of those non-profit directors had to be malicious or willful, which is a standard much higher than just negligence or errors of omission.

I would urge the House to accept House Amendment "A" which will maintain current law as it is now. It simply strips Section 7 from the bill.

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

Representative HILLOCK: Mr. Speaker, Men and Women of the House: Just to be brief, the term immunity is being misused here. This bill, if you vote no and a miracle happens that the original amendment survives, the bill simply states that if someone maliciously brings suit against a defendant landowner, the judge can award the defendant's cost of defending himself from the plaintiff. That is not immunity. We are not talking at all about taking away anybody's right to sue here. All we are saying is that harassment suits, if they prove they are harassment suits, the court will award the defendant the cost of defending himself. So, the term immunity is really a misnomer here.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Augusta, Representative Paradis.

Representative PARADIS: Mr. Speaker, Men and Women of the House: I am very glad that the gentleman from Gorham has clarified what the real issue is in this Section 7. I hope that you will not go along with his remarks and support this House Amendment this morning.

Section 7 on this so-called frivolous lawsuit issue is really nothing more than a smokescreen and is totally unnecessary.

I am not an attorney and I have said that before but, having been on the Judiciary Committee for four years and having gone through this liability Tort crisis that we had and which we studied, we (us lay people on the committee) came into possession of certain terms.

The good gentleman from Gorham sponsored a bill. This morning I went to my files to pick up the bill, it was L.D. 268. The Statement of Fact of the bill says, "The purpose of this bill is to provide that any attorney and party which brings a suit which is adjudged by the court as being frivolous, should have to pay the cost of litigation." The gentleman accepted a "Leave to Withdraw" a few weeks ago on this bill when all the other bills were reported out. When the bill was heard a year ago, only one person testified in favor of the bill, it was the lobbyist who wrote the bill, he was the only one who came before the committee to testify. He was asked by the gentleman from Belfast, "Is this bill necessary in light of the rules of court that govern the judicial system?" It is Rule 11 of the Bar Rules and it says, "that the court can assess any cost to the person bringing suit if the court finds the suit is frivolous."

The courts administer their own branch of government, we don't need that type of legislation, because any bill and any section of a bill that is unnecessary in this emergency session, it is that bill because it is part of the laws that govern the court system of this state.

For the life of me, I don't understand why these battles are fought over and over and over again. When people charge money to be on their land, they ought to accept a certain responsibility for that. If they want to be good citizens and give recreation activities to the people of Maine on their land, then I support that and I complement them on that but if they are in there making a business, they ought not to be free from all kinds of liability. I think this amendment strikes a happy compromise in what we are trying to accomplish and what we are trying to do. But to add more verbiage in the statutes that is already plainly the law is absolutely beyond me.

This bill was given a unanimous "Leave to Withdraw" Report a few weeks ago because it was deemed unnecessary then and I ask you, is it

necessary now that we do this? Is this some sort of a red herring for something else?

The courts run their show, we run our show with our Joint Rules and our House Rules that we administer this body with — I would urge you to support this amendment this morning.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Island Falls, Representative Smith.

Representative SMITH: Mr. Speaker, I would like to pose a question through the Chair to anyone on the Judiciary Committee.

How many times does the court give the defendant the awarding of the costs that were incurred by him bringing a frivolous suit to court?

The SPEAKER PRO TEM: The Representative from Island Falls, Representative Smith, has posed a question through the Chair to anyone on the Judiciary Committee who may respond if they so desire.

The Chair recognizes the Representative from Belfast, Representative Marsano.

Representative MARSANO: Mr. Speaker, Ladies and Gentlemen of the House: It is impossible to quantify the number in the various courts of the state so there is no specific answer.

The opinions from the Law Court on numerous occasions make findings on frivolous appeals and make findings of that sort.

It is important to remember that the fact that a person loses a lawsuit does not mean that the case was frivolous. Many cases are lost. For instance, one of the things that was suggested by the gentleman from Gorham a few days ago was that a lawsuit which amounted to only \$2,000 or \$200 was frivolous — that is absolutely not the case. To that person who recovered that damage in the judicial system, that case can be just as important as a major case can. Under those circumstances, in contrary to what was suggested to you by the gentleman from Gorham, that would unalterably, unquestionably not be a frivolous lawsuit under this bill or under the court rule. The person would not be entitled to get attorney's fees or any of the other things that are provided by Section 7.

The simple fact of the matter is that, whatever kind of relief would be given for a frivolous lawsuit, which is not easy to define, it is like beauty, it is in the eyes of the beholder — occasionally there are and more often on appeals there are frivolous actions taken which the Supreme Court acting as the Law Court deals with rather harshly. There are sanctions provided by the court which they do on a case-by-case basis and they do address them there. There probably has been four or five within the last year in which those kinds of costs have been ordered against one of the parties, the party who brought the frivolous appeal. You should not close the courthouse door by chilling these kinds of things and I would urge the House to support Representative Allen's position. In my view, she is completely correct with respect to this legislation and what should be done with it.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Island Falls, Representative Smith.

Representative SMITH: Mr. Speaker, Men and Women of the House: I was on this Outdoor Recreation Commission and, as Representative Lord has said, we used this method trying to keep the fees low that the landowners were charging at gates. You could not tell them that you cannot charge over \$5.00 or whatever but we felt that by doing this, then we would strike a balance and try to keep the fees low. This was a compromise. Talk about compromises, this

issue went round and round every day and this is the issue we compromised with.

I don't know what is going to happen if this thing is stripped out. I know of a frivolous suit in my area (and it was) regarding a housing area of which I am a director. They have a gentleman that plows the snow, he plows the main road in and out. He has nothing to do with the sidewalks. We have a maintenance man who plows the sidewalks. A gentleman slipped on the sidewalk, brought a suit against the person who plows the roads in and out, we, the directors, all signed a letter stating that the man had nothing to do with the sidewalks but our maintenance man did. Nevertheless, the person who plowed the road was taken to court. It was thrown out, he was not given any help, but his court costs and lawyer's fees ran him close to \$500.

This is the type of thing that I get upset about. That is why I feel we have to do away with this frivolous suit business. How we do it, I don't know, but I believe we have got to take some action somewhere.

The SPEAKER PRO TEM: The pending question before the House is adoption of House Amendment "A" (H-621) to Committee Amendment "A" (S-363). Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 244

YEA - Aliberti, Allen, Anthony, Baker, Bost, Boutillier, Bragg, Brown, Callahan, Carroll, Carter, Cashman, Chonko, Clark, H.; Clark, M.; Coles, Conley, Cote, Daggett, Diamond, Dore, Duffy, Dutremble, L.; Erwin, P.; Foster, Gould, R. A.; Greenlaw, Gurney, Gwadosky, Hale, Handy, Hanley, Harper, Hichborn, Hickey, Hogle, Holloway, Holt, Hussey, Jacques, Joseph, Ketover, Kilkelly, Lacroix, LaPointe, Lawrence, Lebowitz, Lisnik, MacBride, Mahany, Manning, Marsano, Martin, H.; Mayo, McGowan, McHenry, McSweeney, Melendy, Michaud, Mills, Mitchell, Nadeau, G. G.; Nadeau, G. R.; Nutting, O'Gara, Oliver, Paradis, J.; Paradis, P.; Parent, Paul, Perry, Pines, Pouliot, Priest, Racine, Rand, Richard, Ridley, Rotondi, Ruhlin, Scarpino, Sheltra, Sherburne, Stevens, P.; Stevenson, M.; Strout, D.; Swazey, Tamaro, Tardy, Taylor, Telow, Thistle, Tracy, Vose, Walker, Warren, Whitcomb.

NAY - Anderson, Armstrong, Begley, Bickford, Bott, Davis, Dellert, Dexter, Farnum, Farren, Foss, Garland, Glidden, Hepburn, Higgins, Hillock, Jackson, Look, Lord, Matthews, K.; McPherson, Murphy, E.; Murphy, T.; Nicholson, Norton, Paradis, E.; Reed, Rice, Rolde, Salsbury, Simpson, Small, Smith, Soucy, Stanley, Stevens, A.; Tupper, Webster, M.; Wentworth, Willey, Zirkilton.

ABSENT - Bailey, Crowley, Curran, Jalbert, Kimball, Macomber, Moholland, Reeves, Rydell, Seavey, Strout, B.; Weymouth, The Speaker.

Yes, 97; No. 41; Absent, 13; Paired, 0; Excused, 0.

97 having voted in the affirmative and 41 in the negative with 13 being absent, House Amendment "A" (H-621) to Committee Amendment "A" (S-363) was adopted.

Committee Amendment "A" as amended by House Amendment "A" thereto was adopted.

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

The fourth Tabled and Today Assigned matter was taken up out of order by unanimous consent:

Bill "An Act to Revise the Energy Building Standards Act" (S.P. 93) (L.D. 247)

- In Senate, Majority "Ought to Pass" in New Draft Report of the Committee on Energy and Natural Resources read and accepted and the New Draft (S.P. 958) (L.D. 2539) passed to be engrossed as amended by Senate Amendment "B" (S-352) in non-concurrence.

- In House, House Adhered to its former action whereby the Bill and accompanying papers were Indefinitely Postponed on March 30, 1988.

TABLED - April 6, 1988 by Representative DIAMOND of Bangor.

PENDING - Motion of Representative DEXTER of Kingfield to Reconsider.

On motion of Representative Diamond of Bangor, retabled pending the motion of Representative Dexter of Kingfield that the House reconsider its action whereby the House voted to adhere to its former action whereby the Bill and accompanying papers were Indefinitely Postponed on March 30, 1988 and specially assigned for Friday, April 8, 1988.

(At Ease)

At this point, Speaker Martin resumed the Chair.

The House was called to order by the Speaker.

On motion of Representative Jacques of Waterville, the House reconsidered its action whereby it voted to adhere on RESOLVE, to Reconstitute the Commission to Review the Laws Relating to Registered Maine Guides (Emergency) (H.P. 1673) (L.D. 2292), (which was passed to be engrossed as amended by Committee Amendment "A" (H-610) in the House on April 6, 1988 and came from the Senate passed to be engrossed as amended by Committee Amendment "A" (H-610) as amended by Senate Amendment "A" (S-421) thereto in non-concurrence.)

On further motion of the same Representative, the House voted to recede and concur.

The following items appearing on Supplement No. 3 were taken up out of order by unanimous consent:

REPORTS OF COMMITTEES

Unanimous Leave to Withdraw

Representative CARTER from the Committee on Appropriations and Financial Affairs on Bill "An Act Concerning Implementation of Weatherization Assistance to Maine's Elderly" (H.P. 1404) (L.D. 1904) reporting "Leave to Withdraw"

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

CONSENT CALENDAR

First Day

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

(H.P. 1618) (L.D. 2211) Bill "An Act to Improve the Potato Marketing Improvement Fund" Committee on Agriculture reporting "Ought to Pass" as amended by Committee Amendment "A" (H-639)

Under suspension of the rules, Second Day Consent Calendar notification was given, the House Paper was passed to be engrossed as amended and sent up for concurrence.

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

(Off Record Remarks)

(At Ease to Gong)

The House was called to order by the Speaker.

The following items appearing on Supplement No. 5 were taken up out of order by unanimous consent:

SENATE PAPER

Non-Concurrent Matter

Bill "An Act to Prohibit the Sale of Polystyrene Foam Products Containing Chlorofluorocarbons" (H.P. 1797) (L.D. 2461) which was passed to be engrossed as amended by Committee Amendment "A" (H-596) in the House on April 5, 1988.

Came from the Senate passed to be engrossed as amended by Committee Amendment "A" (H-596) as amended by Senate Amendments "A" (S-414) and "B" (S-422) thereto in non-concurrence.

On motion of Representative Mitchell of Freeport, tabled pending further consideration and later today assigned.

CONSENT CALENDAR

First Day

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

(H.P. 1687) (L.D. 2316) Bill "An Act to Consolidate State Land Use Statutes into the Natural Resources Protection Act" Committee on Energy and Natural Resources reporting "Ought to Pass" as amended by Committee Amendment "A" (H-641)

Under suspension of the rules, Second Day Consent Calendar notification was given, the House Paper was passed to be engrossed as amended and sent up for concurrence.

The fifth Tabled and Today Assigned matter was taken up out of order by unanimous consent:

SENATE DIVIDED REPORT - Majority (10) "Ought Not to Pass" - Minority (3) "Ought to Pass" - Committee on Taxation on Bill "An Act Concerning Access Fees" (S.P. 297) (L.D. 847)

- In Senate, Minority "Ought to Pass" Report of the Committee on Taxation read and accepted and the Bill passed to be engrossed.

TABLED - April 6, 1988 by Representative BOTT of Orono.

PENDING - Motion of Representative CASHMAN of Old Town to accept the Majority "Ought Not to Pass" Report. (Roll Call Requested.)

On motion of Representative Cashman of Old Town, the Bill and all accompanying papers were recommitted to the Committee on Taxation in non-concurrence and sent up for concurrence.

The Chair laid before the House the following matter: Bill "An Act to Prohibit the Sale of Polystyrene Foam Products Containing Chlorofluorocarbons" (H.P. 1797) (L.D. 2461) which was tabled earlier in the day and later today assigned pending further consideration.

(Was passed to be engrossed as amended by Committee Amendment "A" (H-596) in the House on April 5, 1988 and came from the Senate passed to be engrossed as amended by Committee Amendment "A" (H-596) as amended by Senate Amendments "A" (S-414) and "B" (S-422) thereto in non-concurrence.)

Subsequently, the House voted to recede and concur.

(Off Record Remarks)

(Recessed to Gong)

(After Recess)

The House was called to order by the Speaker.

The Chair laid before the following matter: Bill "An Act to Fund a Supplemental Highway Program and to Establish a Program to Fund the Construction of Extraordinary Bridges" (Emergency) (H.P. 1799) (L.D. 2463) which was tabled earlier in the day and later today assigned pending further consideration.

(In House, Minority "Ought Not to Pass" Report of the Committee on Taxation read and accepted on April 5, 1988.

- In Senate, Majority "Ought to Pass" as amended Report of the Committee on Taxation read and accepted and the Bill passed to be engrossed as amended by Committee Amendment "A" (H-588) as amended by Senate Amendment "B" (S-417) thereto in non-concurrence.)

On motion of Representative Lisnik of Presque Isle, the House voted to recede.

The same Representative offered House Amendment "D" (H-643) to Committee Amendment "A" (H-588) and moved its adoption.

House Amendment "D" (H-643) to Committee Amendment "A" (H-588) was read by the Clerk.

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

Representative LISNIK: Mr. Speaker, Ladies and Gentlemen of the House: This amendment eliminates the proposed 5 cent increase on the gas tax and provides for a one-time funding of \$15 million dollars from the "Rainy Day Fund." Additionally, this amendment will use \$8 million dollars in existing Highway Funds, \$4 million dollars in unallocated surplus and \$4 million dollars from the Maine Turnpike Authority. This total of \$23 million dollars will make up the decrease in federal dollars for highway and bridge improvements as well as \$3.5 million dollars for local road assistance.

As one legislator, I do not feel that it is time to increase the gas tax especially in the light of a surplus that now exists in state revenues. We currently have \$15 million dollars that we can safely remove from the "Rainy Day Fund," a fund that was established for just such purposes. To my knowledge, there was never any suggestion that the "Rainy Day Fund" could only be used for General Fund purposes. The "Rainy Day Fund" was specifically established for major construction projects of over \$500,000 and to reduce our bonded indebtedness.

At this point, we are in a position to allow this "Rainy Day Fund" to accumulate to \$25 million dollars. Although this is not a long-term solution to this issue, I believe that this gives us time to do a couple of things. It will give us time to do an

appropriate, proper cost allocation study, which many people here suggested in the debate two days ago and, in the interim, we are going to elect a new President and a new Congress and, hopefully, their attitude about the \$10 billion dollars that they are keeping from the states, \$20 million in this state, will change.

Most importantly, I believe we ought to utilize existing revenues before we pass an additional tax on to the people of the State of Maine. This should be done only as a last resort and I do not believe that we have sought out every possible avenue. This is an alternative to passing on that gas tax to the people of this state. I urge you to support it.

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

Representative MURPHY: Mr. Speaker, Men and Women of the House: We are here addressing an issue in terms of needs that have been identified in terms of economic growth and jobs. We see here today, I think, a proposal that can't really pass the straight-faced test. We saw some floundering around the other night trying to find some way of saying, no, because the Governor said this or didn't say that, that was clarified. I think we see another proposal here because, for some reason, those that are opposed to the road and bridge program don't want to be caught saying no to that road and bridge program.

We have provisions in the law on the "Rainy Day Fund" that have to be met and that was a bipartisan effort in this chamber establishing that fund and laying out procedures. This amendment flies right in the face of those requirements or procedures so it is a raid on the fund, it is a raid on the turnpike and I think you ought to be aware, if you vote yes on this amendment, what the consequences are.

The consequences are that the bridges will not be built. The dollars will not be there. In the packet that you received today in terms of the proposed supplement program, that probably will not be done.

I think the Governor and the Commissioner of Transportation has brought to the floor for the consideration of these two bodies a long-term program, not a bandaid, and some of it frankly is making up for things that were not done in the past before the watch of this new administration began. It is a long-term program.

We traveled on those economic development tours and we heard in region after region after region that a barrier to prosperity that you have in southern Maine, they told us, was that we cannot move workers, we cannot move raw materials, we cannot move finished products. So, we see before us an amendment that really is a cop-out, there is no other way of looking at it. Let's talk about it in very plain language, it is a cop-out. It is an effort to say that we did something to get us through the next 12 months and it just doesn't pass that straight-faced test.

If you are concerned about jobs, if you feel that new bridges need to be built in this state, if you feel that the jobs that are in the southern part of the state that are looking to expand, cannot expand in northern, central and eastern Maine because the infrastructure is not there, then you should be voting no on this amendment.

We are here, and I think we have used the word "courage" -- this is an election year, I feel that the Governor and his Commissioner and many members of this House already from both parties (not enough from the other party) have exercised that courage so far. I would hope that, when we go home, whatever that date is, that we will be able to look the citizens of this state in the eye and say we had a program of

needs, roads and bridges, that we enacted, not for next year or to bide some time, that we didn't take a cop-out, but that we looked toward the next 10 to 15 years.

So, I guess looking at this amendment, if you want to vote yes (it isn't even a bandaid, not even half a bandaid) you can vote for half the bandaid or the cop-out amendment or if you have the courage, this program of roads and bridges that is before us will begin to move Maine forward and bring jobs to all parts of the state.

I would urge members of this House to vote no on this amendment.

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

Representative DIAMOND: Mr. Speaker, Men and Women of the House: If I didn't know better, I would believe that the gentleman from Kennebunk has been delving into my speech file because those are many of the same words I used just a few years ago when we were trying to raise funds for the University of Maine for some social programs and a variety of other needs for the state.

At that time, I remember arguing that it took courage to support a tax increase and that the needs existed to such a great extent that we couldn't afford to address those needs. Most importantly, I remember emphasizing that there was no other alternative available to the members of this legislature and thus, a tax increase or fee increase was necessary and imperative. We succeeded in large part because the majority party in this body understood and recognized that need and understood and recognized that no alternatives existed. We had people on the other side who went and took credit for a lot of what we passed in this body but who did not support those proposals. Nonetheless, there are a large number of members here who had the courage, as the gentleman just referred to, to pass legislation and to pass a tax increase when no other alternative existed.

Today we have a different story though. We have a request coming from the Governor of this state for a tax increase, a tax increase that many people said was necessary, was imperative, and many people believed to which there was no alternative available.

The Lisnik amendment though proves that there is, indeed, an alternative available to us. The Lisnik amendment shows that there is an option that we should have looked at a long time ago and an option that we should take today. It is a responsible amendment and I think appropriately deals with the crisis that was discussed two days ago on the floor of this House.

I went through the Legislative Record from two nights ago and saw how member after member, proponent after proponent for the tax increase, claimed that an emergency existed, an emergency existed to the point that we had to pass a tax increase, no matter how painful it was. An emergency existed to the point where we had to pass a tax increase, even though we weren't sure that the nickel being requested was the amount necessary to cover that need. It may be too little, it may be too much, nonetheless, people wanted to pursue that tax increase, adopt it first, and deal with the problems later.

We didn't think that was a responsible way to approach the issue. Many people in here wanted to take care of the roads, wanted to take care of the bridges, want to see that Red Book that Representative Jackson waved, funded, but we had a reluctance to vote for a tax increase where no accountability existed. We got that accountability, supposedly, in a plain, brown wrapper this morning.

Mine came addressed to Representative Joseph Diamond. Many people saw that as a way to elicit greater support for the package by showing what is going on in our home districts. Some were impressed, some were not impressed but it goes to show you, there is a lot of flexibility that exists in this plan, a lot of flexibility that may be exercised politically if those in power don't like the way the vote goes today.

I was very disappointed to hear the gentleman in the other corner say that some of those programs that we passed last year in that Red Book may not be funded. For example, the Bangor-Brewer Bridge is in that Red Book. The plan that Representative Lisnik has before us would fund that, to my understanding, but now we are hearing that maybe those plans we adopted won't be funded, maybe that commitment that we made and was made to us, won't be honored. The more I hear of the politics of this, the more I dislike it.

I think all of us understand that there is a serious problem facing the people of Maine, a serious concern about the quality of transportation in Maine. We feel that the plan adopted by this legislature last year and submitted by the Department of Transportation is one that deserves funding. We question whether or not we know enough information about what we are going to do with this new and improved plan, the supplemental plan, that has been promoted and discussed.

The big concern we have and should have here is to deal with the crisis that was created by the federal government, the crisis where they embargoed our money, our citizens' tax dollars, to balance the federal budget or at least to come close to balancing the federal budget. That is \$20 million dollars.

The Lisnik proposal deals with that \$20 million dollar question and it also addresses other concerns about our local municipalities. We can accomplish that Red Book if that commitment to us is going to be honored and can accomplish the funding necessary to complete those projects. We can deal with the concerns of local municipalities through this amendment. We have the opportunity to do so and this will do so in a very responsible way, a way that is going to deal with the problem, deal with the emergency, using an emergency fund, without necessitating a tax increase.

I don't like what Representative Murphy called this -- a cop-out or a smokescreen -- a lot of the information that he related to you, I believe, is just wrong. He said it can't pass the straight-faced test -- I don't think a proposed tax increase can pass the straight-faced test, especially when we have this money available to us. I don't think we should pass a tax increase on to the people of Maine when it is unnecessary, I don't think we should ask the businesses of the State of Maine to pay higher transportation costs, I don't think we should ask the consumers of Maine to adopt a tax increase that would make us the third highest in the nation. I don't think we should adopt a tax increase when we have money in the bank. That is irresponsible. The most responsible thing we can do is to use that money that has been set aside for this very situation, an emergency brought on by unforeseen events, and deal with the question of long-term funding when we have a better handle on the situation.

The SPEAKER: The Chair recognizes the Representative from Gray, Representative Carroll.

Representative CARROLL: Mr. Speaker, Men and Women of the House: I would like to address this issue if I could from a different perspective. I don't mind talking about courage at all. I was sent

up here, I think, at least three times, to represent the people of Gray-New Gloucester, Maine, District 44. I received my little brown package this morning, I was very pleased, I was happy we had tabled it so I could take a look at this.

I looked at the proposed commitments that we have for future projects and I looked at Route 26, the infamous economic corridor it's now called, before it was just Route 26 -- the interesting thing is that, since I have been here, in the green books, yellow books, red books, whatever color books I see, Route 26 has been there and every single year, it inches up, one more notch. Now I see that it is going to inch up again. It is down to number 23 on the list of priorities. That doesn't seem to fare too well for my district at all.

Talking about straight-faced tests -- let's look at it from the local perspective. Let's look at it as giving the money back for local road assistance, the bonus, the bonus to Gray-New Gloucester, Maine. I represent about 7500 people as everybody else in this House does and I look at the numbers -- the town of Gray will get \$12,458, the town of New Gloucester will get \$8,803, that is our bonus. My rough calculations and they are really rough because I didn't have time to call everybody who has a car in my district but I am guessing about 1,000 of my constituents own an automobile and they are going to drive. The administration tells me that it is going to cost them \$37.50 a year more with this gas increase, the tax increase. Now if I add up 1,000 people by \$37.50, I come out with \$37,500. Now that is a wonderful amount of money. I have to go back and say to my constituents "but don't feel bad, you are going to get about \$40,000 in new taxes to fix your roads locally because we are going to give you back (one time) \$21,000. Straight-faced test? Ladies and gentlemen of the House, that is the cop-out here, that doesn't pass any straight-faced test at all.

Let's be serious, we have an alternative, a logical step to look at the individual problems we have in this state, the emergency exists, we have the money to deal with that emergency to get the Red Book funded or whatever color it is this year, and I think that is what we should do.

I think this amendment is a reasonable approach and an intelligent approach. It does meet the straight-faced test and I don't now have to go back and tell my constituents that, not only do I have to increase their taxes but they have to pay twice as much to get more road assistance.

I would urge the House to support the amendment.

The SPEAKER: The Chair recognizes the Representative from Waldo, Representative Whitcomb.

Representative WHITCOMB: Mr. Speaker, Men and Women of the House: If we could get the discussion out of the corners of the chamber a little bit, I would like to call your attention to the packet that members received on their desks because it seems to me that the discussion, up to this point, is neglecting two points that are in the packet. One of those items that we all received is entitled "Sand/Salt Building Assistance." I bring it up at this time because the Representative from Gray-New Gloucester who just spoke neglected to mention a \$100,000 that would go back to those two communities for a commitment to a mandate that we passed for his communities to build, or if they have already built, to assist in funding those communities for their costs for Sand/Salt storage. I have yet to hear the amendment before us discussed of what the alternative is for funding that proposition before our communities.



The other missing element in this discussion, and I am interested to know if it is a policy decision or what has happened, is an additional \$24 million dollars that we discussed the other night as we were discussing the Governor's proposal because, fine, we have a one-time solution to the \$20 million dollars that the federal government (and that George Mitchell, Bill Cohen and Ronald Reagan) has taken away from our budget and will continue to take away from our budget -- we say in this amendment before us today that we have a one-time solution to that. We have not addressed next year and the year after.

We have the bridges, we have the extraordinary bridges, we have bridges which are funded at the federal level if we match them at the state level. The state match for that is \$24 million dollars. Either there is a commitment not to build bridges, which some members apparently feel by the responses to their questionnaires the way they wish to go, or we take an additional \$24 million dollars out of one of the items in our packet and that is the projects 1988-89 program projects.

This several page sheet -- if you will look on the last page it lists \$53 million dollars worth of state highway projects already committed, the ones that the towns are already planning to receive in their communities (these are state projects) so if we have made \$20 million so that is whole, we are still faced with subtracting \$24 million from that or not building those bridges. Maybe we don't need that bridge in Topsham, maybe we don't need that bridge between Portland and South Portland. I am sure the people in my district would feel that way but this project was approached as a statewide program. This project that is before us is a long-term solution. Highways have to be funded and approved long-term.

We have before us a very short-term. We have before us a continuation of the kind of spending we heard about the other night at the Institute on Maine Economy, the kind of consumptive spending mentality versus a long-term approach.

We heard a suggestion that this body does have courage. I think it does, but the courage seems to be fleeting if we talk of solutions to highways that are long-term investments with long-term solutions.

I urge this body to vote against the motion before us and Mr. Speaker, I would request a roll call.

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

Representative MCGOWAN: Mr. Speaker, Men and Women of the House: In addition to thanking you Mr. Speaker, I would like to thank Representative Lisnik and I would like to thank him for delivering us from the evils of taxation. I would like to thank him for doing that because I think his proposal is a very reasonable proposal that would help this body to help this state out of this crisis.

Let's look at the "Rainy Day Fund." We took some money out of the "Rainy Day Fund" last year. If you remember, a year ago today, much of my legislative district was under water, many of the roads and bridges in this state were being ruined by high water, the 500 year flood, and we chose in the Appropriations Committee to use the "Rainy Day Fund" money for some of these fix-up repair projects. After hearing the debate the other night, I am in full agreement with many members of the proponents of this tax that we are in an emergency situation at this time. I propose to accept this amendment as a member of the Appropriations Committee, not as a member of the Taxation Committee or not as a member of the Transportation Committee.

Let's take a look at the revenues. Let's take a look at the revenues that are floating around this House at this time. A Supplemental Budget, ladies and gentlemen, of \$92 million dollars, not a keep-the-store-open budget as our Part I or new and expanded programs as our Part II but \$92 million dollars in a Supplemental Budget.

Then I want to bring your attention to a sheet that you saw from the Office of Finance last week, the new revenue sheet, and it showed that we may have \$57 million additional dollars coming into our state coffers because of the state's good economic conditions at this time. We have an \$18.3 million dollar "Rainy Day Fund" account at this time. In addition to that, and I think you are a little surprised that I keep adding up, there is \$17 million dollars in over-collected taxes from the people of the State of Maine because of non-conformity to the federal tax laws. In simple addition, it comes out to about \$153 million dollars, plus or minus.

I listened to Representative Whitcomb the other night as the proponent and sponsor of this tax and Representative Whitcomb whom I have served with for a few years in this body and who hasn't been a proponent of many taxes in this legislature and hasn't supported many impositions onto the people of Maine through taxes -- I think he is welcomed out of the cellar of the minor leagues and into the major leagues to play first base with a 36 percent tax increase to the people of the State of Maine on a commodity. I would say that with \$153 million dollars floating around this State House, how can I as a legislator and a member of the Appropriations Committee, walk out this door and say with a straight face, that I am going to propose an additional 36 percent tax increase on the people of my legislative district on a commodity that they need. I would say that that would bring us to the second highest in the nation in a status that we don't need. We are a poor state where we know that the gas tax in the state where people are poor and have a large highway network is going to affect them most.

Yesterday, I passed out an article to you that came out of Forbes Magazine this month and I would call your attention to that article. Paul Volcker and Alan Greenspan agree that the U.S. should raise the gasoline taxes by about 15 cents a gallon. Come November, the President-elect may have to take a stand on the prickly proposal. Now Paul Volcker and Alan Greenspan, we all know who they are, one was former head of the feds, the other is the present head of the feds -- these people are listened to in Congress. If these things come to pass, in addition to Senator Boren from Oklahoma who wants to impose an oil import tax fee, we may have put in a 100 percent tax increase on a commodity to the people of the State of Maine by January of next year.

I would say that this proposal that Representative Lisnik has given us is a choice that you can make, you can walk out this door and say, I voted a 36 percent increase to the people of the State of Maine on a commodity that they need to get back and forth to work, not luxury tax, but to get back and forth to work or I chose to wait and see what a new administration and a new President will do with the monies that we, in good faith, paid in the form of a gasoline tax. Will they give it back to us? This is a member of the Appropriations Committee coming to this legislature and saying, I think that we should take some of these monies that we have benefited from in the General Fund and help out an emergency situation. Unlike the people in Congress and in the Reagan administration, who are saying, I think you people in Maine who paid a federal gas tax

every time you drove up to a pump should have your money held hostage by a budget balancing act that isn't going to happen. This is a fair choice, this is a good courageous choice, it is not a 36 percent tax increase on a commodity that our people in this state need.

I would hope that you would support Representative Lisnik and I would, again, like to thank him for his proposal.

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

Representative MAYO: Mr. Speaker, I would like to pose a question through the Chair to the Representative from Kennebunk, Representative Murphy.

Did you consider, Mr. Murphy, the original report from the Committee on Transportation, the Majority Report as well the Majority Report of the Committee on Taxation, a raid on the turnpike?

The SPEAKER: The Representative from Thomaston, Representative Mayo, has posed a question through the Chair to the Representative from Kennebunk, Representative Murphy, who may respond if he so desires.

The Chair recognizes that Representative.

Representative MURPHY: Mr. Speaker, Men and Women of the House: I would be pleased to respond. I think the report that had come up from the Transportation Committee had language included that money taken from the turnpike was to be used in that region. It appears that there has been a problem in terms of the document that came up that that language was not included and that is another problem that we are going to have to face.

I think if we accept this amendment, and I think we heard the gentleman from Augusta the other day, talk about he wanted clarification on the federal dollars and we just heard a speech on the clarification of the federal dollars. He said he went and spoke to Senator Mitchell and that he made it very clear (I think he read from Senator Mitchell's speeches before committees dealing with that issue) and I am not sure if we are supposed to be checking the mailboxes here in Augusta if the check is in the mail but I doubt it very much and I don't think that check will be here very soon.

I think if you are a proponent of this amendment, then maybe during the remaining days that we have, those of you who are up here for the week and when you head back on Friday's or those members who commute, we could probably just take a little detour, swing down by the DOT building, pop open our trunk, pick up a little sand and gravel, pick up the little cold patch and that is what you are offering in terms of the long-term needs of the State of Maine.

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

Representative MAYO: Mr. Speaker, Men and Women of the House: I would like to restate some of the problems that I have with the proposed bill and why I will support the amendment.

The amendment to the bill does away with the tax increase. I want to remind this House and restate for the Record the combination of federal and state taxes on a gallon of gasoline today is 23 cents. The combination on a gallon of diesel fuel is 29 cents. The proposal would take it to 29 cents and 34 cents respectively.

I used the term, two nights ago when we were debating this issue, tightening our belts. The good gentleman from Waldo, Representative Whitcomb, suggested that we had tightened our belts. What that original bill did before this amendment was offered was we tightened by \$10 million and we let it right

back out by \$35 million. That is an increase of \$25 million.

The good gentleman from Waldo, Representative Whitcomb, has talked about sand and salt sheds -- I don't see those anywhere in the original bill. I understand that the Commissioner of Transportation has offered to try to look for that money but I don't see it anywhere there. I don't see any of those bridges we have talked about. I rather resent the pressure that is being put on many of us by threatening us all with a bridge here or a road there. I don't see those anywhere in the bill.

My objections to this bill have been and will remain that it is a regressive form of taxation on the people of the State of Maine. It is taxation when, in fact, there is a surplus, as I stated two days ago and has been restated by my good friend, Representative McGowan. We are being asked to raise taxes when there is a surplus.

To call Representative Lisnik's amendment a cop-out, to call it irresponsible, I think, is inappropriate. Representative Lisnik's amendment is very appropriate, it buys us some time, it allows us to carry on those projects that would have been eliminated if we had not taken any action. It allows us to look at the cost allocation of why we need those tax dollars, it allows us to look for other alternatives before heaping a huge tax increase, a \$35 million dollar tax increase, upon the people of this state.

I would urge this House to go along with the pending motion and adopt this amendment.

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

Representative FOSTER: Mr. Speaker, Men and Women of the House: I want you to think about something -- we have a dedicated alcohol premium tax and it is about to be presented to you to undedicate because the argument is going to be that we take General Fund dollars. All the money should go into the General Fund and let the Appropriations Committee spend the money.

We have another one -- Fish and Game -- they are not taking enough fees in, undedicate it, take it out of the General Fund.

We have another dedicated revenue -- the highway -- take General Fund money and put it to highways and you are going to say here, undedicate the Highway Fund.

You have one committee in Augusta handling everything that goes through this place and I happen to sit on it this year, I might not next year, or I might not be here ten years from now, but there are 151 of you here and I think it is important that you all have input into what goes on in Augusta. I think, once you start taking General Fund monies and putting them to highway, you are going to sit here -- undedicate, undedicate.

The other thing I want to bring to your attention is something that is very interesting to me and I have spoken to people on my committee about this. You know those little Blue Cross increases that you get -- ladies and gentlemen of the House, right now there's about \$40 million dollars worth of programs in this legislative branch floating around that they are asking to pass through, pass through hospitals with a little assessment to hospitals. If they use pass-through legislation and those \$40 million dollar programs -- for every million you pass-through under assessment to hospitals, your rate goes up one and one-half percent. I have fought on that committee to take it out of the General Fund -- if they can find extra money, why not do that?

Some of the pass-throughs are \$5 million to AIDS. The Speaker has a wonderful bill, Representative Foss is on it and two other people -- I would like to be able to vote for that. \$3.5 million. \$6.5 million federal funds -- pass it through with the hospital assessment -- what is that? \$3.5 million times 1.5 percent a million, it shows up in your Blue Cross or your insurance rates.

This is a much bigger problem when you get right down to it. If you look a year or two ahead, transportation, the roads are dedicated revenue, I believe that it should remain that way. I think the money raised from the gas tax should go to the highways.

The other thing is -- what about the elderly? Their money is going into the General Fund. If we have extra General Fund monies, wouldn't it be much better to take care of them? Wouldn't it be much better to take care of our children? That is what it's all about. The General Fund is for one thing; highway's another. I don't care how you raise the money on the tax but let's raise gas tax money for highways.

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

Representative DIAMOND: Mr. Speaker, Men and Women of the House: There are few members of this House that I respect more than Representative Foster. I really believe she is a person who looks at the issues ahead of looking at the partisan nature of an issue and I commend her for that. I appreciate her concern about dedicated revenues too. In fact, just earlier today, she and I were talking about concerns over the possible undedication of the alcohol premium fund. She and I are on the same side of that issue.

On this particular issue, I think we need to clarify something in case people might be under a misunderstanding. This is not the first time that the Highway Fund or the Department of Transportation has been loaned money from another source. About 12 years ago, if I am correct, the Department of Transportation received money on a loan basis from the General Fund in order to deal with an unanticipated shortfall. Over a period of years, that money was paid back. That was money from the General Fund that was loaned and, in that particular case, we took a risk because we risked taking money from programs for the elderly, from programs for children, from programs for education and from a variety of sources in order to deal with an immediate need in the Department of Transportation. It was a risk that we took and, fortunately, it was a risk that we were able to weather without any harm.

In this particular instance, we are not taking money from the General Fund. The "Rainy Day Fund" is segregated, it is money that cannot be used for education. It cannot be used for Human Services, it cannot be used for child care, it cannot be used for the elderly, it can only be used for two purposes, to deal with expensive capital construction and to help to reduce our state's bonded indebtedness. This is one of those instances that fits that criteria. We have the ability to take that money for major capital construction, for road and bridge construction and repair. We have the ability to do so without, in any way, impacting those social service programs, programs for the elderly and education funding without negatively impacting that. I think that is an important consideration and an important distinction because that money would not, in any way, be available for any of the L.D.'s that are on the Appropriations Table, or any of the other proposals

that are before the legislature including those of the Governor.

I was concerned about the reference that this is a bandaaid approach and if I understood the gentleman correctly, we aren't getting anything through the Lisnik proposal that would amount to any more than a patch. I just can't imagine that \$20 million dollars or actually \$23 million dollars can be termed a bandaaid or a whole patch because that is a lot of money. It doesn't say much for that infamous Red Book that we have discussed so much today -- is that a whole patch? There is a lot in there, I like a lot of what is in that book. I think that it deserves to be funded. The Lisnik proposal will do that and I don't see how anybody with a straight face can term it otherwise.

I think what has happened today is there are people here who want that tax increase. They don't care whether or not it is responsible, they don't care whether or not there is any accountability here, they want that tax increase. By wanting that tax increase, they are willing to cloud the issue. It is a dangerous thing to do. I believe that we have an alternative available to us and that it should be exercised. I believe we should spare Maine families an additional tax increase if we have the money in the bank to take care of our needs.

This issue was addressed by the Governor himself, a little more than a year ago in his budget address to the legislature and I have a copy of that address. I think it is very interesting. He was talking about, in this biennium, that a tremendous increase in our fixed and unexpected obligations exist and he goes on to talk about some of those concerns. In his proposed budget, he called for the expenditure of money from the "Rainy Day Fund." He said, "I do not ask this lightly but I believe that we must make prudent use of all of this state's resources. I will not ask the mill worker in Biddeford or the carpenter in Calais for additional taxes when there is money sitting in reserve in the General Fund." He was a little bit wrong there by saying that money was in the General Fund because it is not in the General Fund, it is in the "Rainy Day Fund." Those roads are in bad shape in part because of rainy days and because of stormy days. An emergency exists and many members of this body said so just the other night and I can't think of any better reason to use that money than to deal with the crisis before us.

I ask you to heed the words of the Governor expressed in this chamber in February of 1987 and use that "Rainy Day Fund" in an appropriate way. We have the opportunity to do so today and I think every one of us should exercise it.

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

Representative HIGGINS: Mr. Speaker, Men and Women of the House: Surprisingly as it might seem, I too would like to thank the Representative from Presque Isle, Representative Lisnik, for his amendment.

My concern though, and I am not being facetious, is that it is not enough. I rise really for two points. One is that we have been told that we need \$35 million dollars a year to run a program effectively. This addresses \$23 million of that, that doesn't seem enough to get us through the next year to find out whether or not the feds are going to come through with their \$20 million dollars. That is my concern, that it doesn't go far enough.

Strange as it might seem, I had spoken earlier this session, six or eight weeks ago with the

administration, about the possibility of using some money from the General Fund to augment the gas tax increase or maybe reduce it by a certain amount. I was of the opinion that members of the opposition party would have some real concerns with that because I can remember many a debate that went on in this chamber where members of the different parties talked about the DOT and that particular organization as the sand and gravel crowd. There didn't seem to be an awful lot of support for taking General Fund money and putting it into the DOT. I can accept that position. If there is a genuine concern and interest in doing that, I am willing to accept it because I, too, feel that if we have money in one pocket that we ought to consider not having to raise taxes. I hasten to add that if it is not enough to meet the needs of the \$35 million dollars, then it is to some extent, a bandaid approach and that concerns me.

I run a trucking company albeit a small one and I suppose I am in some sort of conflict of interest here in a way because if we passed that nickel a gallon gas tax, I figured it out this morning, it is going to cost me about \$2,000 a year out of my pocket to pay the extra fuel tax. Now that is something that doesn't excite me an awful lot as you can imagine. At the same time, if there is a compelling need out there, the state needs and I need, as a Representative from my district to address it. I am willing to forego that \$2,000 a year if it is done on an equitable basis and the needs of the state are met.

If someone can tell me how this \$20 million dollar proposal can be put together with some other proposal to come up and meet the total needs of the state, I would accept it.

The other point that I want to address is the one that the Representative from Canaan, Representative McGowan, made -- the impression that he is leaving with this chamber and the people of the state is that this state is awash in money, that we don't know what to do with it, it is just literally falling out of our pockets because we have so much. I missed all the numbers that he read to you but the ones that I caught were, first of all, a \$58 million dollar surplus in the General Fund. He knows as well as I do. I think anyway, that \$26 million of that has already been earmarked to fund the Supplemental Budget so you can knock that down to basically around \$30 or \$32 million dollars of surplus over and above what is estimated.

We still have four months left in the current biennium and anything can happen to those figures, they may well be up and probably within a week we will know the answer to that. So that is money that's possible to be used if you want to take from the General Fund and give it to the DOT.

The \$92 million dollar Supplemental Budget that he spoke of, which is the Governor's proposal, has obviously a number of issues in there which this body wants to address. There are many programs here that you all are involved with, that the Governor has chosen as initiatives in one manner or the other, whether it be day care or ASPIRE or any numerous programs. If you want to talk about cutting some of those programs back, then you have to have the votes to do that to give you some more money. He mentioned \$17 million that we have in reserve that Maine people have paid in in excess taxes because of tax conformity or the fact that we collected more than we were supposed to. I don't think, maybe I am wrong, that he is indicating that he wants to take that money and give it to the DOT because if he is anything like most of us, we had at least 15 calls from people who were some ugly about the fact that they are paying more income tax this year than they

were last year and the year before that because we didn't see fit to change our tax law. I think that really throws that \$17 million out, maybe I am wrong.

The other issue that he mentioned was \$18 million in the "Rainy Day Fund." That clearly is money that is available to be used for whatever the legislature deemed necessary but, under current law, the Governor has to recommend that that \$18 million dollars be used for this particular purpose. I am not sure but I would doubt that he is willing to do that at this time. I really don't know, I haven't spoken with him, and I don't know anybody who has but that is money that is available so out of the \$153 million dollars that he says is available, my best guess is that there might, at this point, be \$54 million. That is the most that there is available and I think if you talk to the people in Finance and Administration, they would say that the \$26 million of that \$54 million is very chancy. Most of that surplus is, in fact, in personal income tax money that people have paid into the state for the current tax year. I think most of the people over there who are supposed to be experts are saying that they feel that that revenue that is coming, over and above estimate, is because people are over-withholding. I can't challenge that, I don't know, and I don't think they know. I think they are simply making a best guess.

I don't want anybody to leave here today and the papers reporting that there is \$153 million kicking around here that nobody knows what to do with or we could take that and put it into the Highway Fund. That is just not possible without making some real serious cuts somewhere along the way, which I think would offend everybody in this body.

I do applaud the gentleman from Presque Isle, I think it is an approach that needs to be at least considered but my concern is that it does not go far enough. Unless someone can prove to me that there is another \$15 million that can go with this to get us through the next year or that there is some maintenance that can be delayed or some bridges that can't be built or some towns that don't need some additional money for road improvement, I am going to vote against it. I do think it is worth considering but not in its present form.

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

Representative BICKFORD: Mr. Speaker, Ladies and Gentlemen of the House: I would suggest to you that we vote against this amendment. I had not planned on getting up and speaking on this issue but it is disturbing to me and I have several issues that I would like to address.

The first issue is, does it buy us time? I would suggest it does not buy us time because we need the roads. We need avenues, avenues that will create economic development.

We talk a lot about jobs. I happen to live in an area where there are 1,200 people, 1,200 people who do not have a job. Maybe, just maybe, that had we had good paying jobs in the area, jobs that people were happy with prior to the mad rush to International Paper, then maybe we would not be in a position that we are in today. So, maybe, and just maybe, had we had good economic conditions, a good economic environment policy that would create jobs, we might not have had that mad rush to International Paper in Jay, Maine.

We heard a day or so ago about people and their questionnaires, that the people back home were against the gas tax. I also put that question on my questionnaire and yes, it did come back that we do not want the gas tax. But as the good gentleman from

Kennebunk has suggested, we need courage. I am fortunate (I feel that I am fortunate) and I feel more comfortable because 47 percent of my people said that we need the gas tax.

Commissioner Connors had a talk show a week or so ago. After that talk show, I had residents call me at home and suggested that they were not in favor of the gas tax. In fact, some of those people that called me that night also responded to my questionnaire. I talked with those people, I talked to the people not in terms of a tax but in terms of a need, a need for jobs, a need for good roads and other issues that were pertinent to the gas tax. Do you know that before I got off the phone with those people who called and said no to the gas tax adopted a different attitude? Their attitude changed because it was explained to them about the needs and they were beginning to understand that maybe, just maybe, we do need that five cents a gallon.

I do not want to demean the intelligence of the general public because I think they are very intelligent but I think it is the role of us as legislators to inform them.

I guess I will sit down now but I think it is important that we talk of the need for good roads and not talk in terms of a gas tax. I hope I did not cloud the issue because I think it is important that we turn this amendment down and we adopt the present bill in its original posture.

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

Representative ERWIN: Mr. Speaker, Ladies and Gentlemen of the House: Very, very briefly, I would like to respond to a remark made by the Representative from Jay. I attended a rally attended by about 1200 residents in the Jay area and I was asked a question about the gas tax. I can tell you that 1200 voices were loud and clear, they do not want a gas tax.

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

Representative NADEAU: Mr. Speaker, Ladies and Gentlemen of the House: I felt compelled to get up today to share with you a few points of view that I have on this issue. I think slightly different than some of my colleagues.

Two nights ago, I voted for a five cent gas tax increase. I was quoted in the Lewiston Sun this morning as saying that I thought it was important for a lot of reasons, I think, we have talked about here on the floor today.

Three years ago, I chaired the Joint Select Committee on Economic Development, spent a year or so studying how we do things in this state relative to that issue. I went from there to serve on the Governor's Task Force on Economic Development. I served on that for a year, which the Governor has referred to on several occasions as the committee that came up with this proposal to begin with. To go further than that, I served on the Transportation sub-committee of that task force that came up with what (at that time, I think) was actually a six cents gas tax increase proposal. I did so for a lot of reasons. Those reasons are, I think, reasons we all understand, the roads of this state are clearly the lifeblood of our economy. I think Representative Lisnik understands that, I think we all understand that, and I think there is very little dispute. What we have here is a difference of opinion on how to fund necessary repairs and improvements to our roads and bridges in this state.

Two nights ago, I was willing to vote for a five cent gas tax increase to do that. If it were necessary, I would vote that way again. Yesterday, I

suppose or today I guess, an alternative was presented. I think what I said in the paper was, if somebody came up with some kind of magic solution, that I certainly don't enjoy raising the gas tax five cents -- well, Mr. Lisnik came up with an alternative. Quite frankly, a simple alternative that I wish I would have thought of some time ago. It may have saved the Transportation Committee some agony and the Taxation Committee. I think its simplicity is something that is quite amazing. It provides us with necessary funds to get by the hump. It is clearly a short-term solution. It may very well be a bandaid. I think what the five cent gas tax is are stitches. The question is, do you want to put the stitches in, if a bandaid will do?

I think it has been mentioned here on several occasions today that a new Congress, new President, there may be a new outlook as far as the federal government is concerned, something I am going to hope for dearly and I hope as a state we do everything we can to encourage that money to come back to us because it belongs to us.

A cost allocation study will be completed. I think that is also a very positive step in the right direction. But, make no bones about it, I think the roads and bridges in this state are so critical to the economy that I, for one, will be willing to raise that gas tax five cents, go home to my people and explain to them why.

The people I represent, for those of you who know my district or are from my area, know that they are not people with a lot of money to spend. So, that vote a couple of nights ago was not an easy one but I recognize in terms of the overall good, the greater good if you would, the overall economic impact of this state in terms of jobs, in terms of growth, in terms of spreading that recovery and boom from southern Maine to the rest of the state, people in my district don't mind that. The Lewiston/Auburn area has been growing rather well in the last few years but the people in my district, I think, are certainly anxious to help those people in other parts of the state that have not been so fortunate.

Lastly, I would like to say that it is very difficult for me to get up on the floor and say this today based on the history I told you about. I worked on that task force with some very, very impressive people. The Chairman of that group, Roger Mallar, is a person I respect a great deal. The Commissioner of Transportation, Dana Connors, as far as I am concerned, is probably one of the finest highway commissioners in the country and certainly one of the finest commissioners we have had in this state and I was quite excited when the Governor decided to keep him on. He has been, I think, a great asset to this government and has done a great job with that department. All that having been said, I think the prudent thing to do at this stage of the game, with the option that has been presented to us is, let's sit back and let's buy a little time. Let's use available resources.

The difficulty I am going to have in going back to Lewiston with this option before me is saying that I chose to raise additional taxes before applying existing resources and not resources that could be used for Human Services or resources that could be used for education. They are funds that are available for emergency use and, quite frankly, I think the hesitation of the federal government to address our needs has created a crisis and an emergency. So having said all that, I would encourage you to adopt this amendment and let's work as hard as we can together over the next year to resolve the long-term solution.

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

Representative STROUT: Mr. Speaker, Men and Women of the House: I commend the gentleman from Presque Isle for presenting this amendment. I, like the gentleman from Scarborough, agree that I don't think it goes far enough.

One of the issues that I saw in the amendment is the local road program that is near and dear to my heart. The Transportation Committee worked over a period of weeks to put in a bonus plan but also in that bonus plan included a \$3.5 million additional money to go in effect July 1, 1989. What we did was increase that from \$15.8 million to \$19.3 after the bonus period was over. The problem that I have with this section of the amendment is, that once we have put an amendment on here that gives the bonus for one time to the local road programs, the municipalities out there are going to expect it in the future. I think when you add on an additional \$12,000 or \$18,000 or \$20,000, the next year down the road, that municipality is going to be looking for that same amount of money and it is not going to be there.

One other point I would like to bring out today is that if we have so much surplus in the General Fund, why are we thinking about floating a \$31 million bond issue for the University of Maine? Why don't we use that surplus and take care of those buildings without a bond issue?

You know, I represent small towns in this state and I am a road commissioner of a small town and I look at this package that the commissioner presented in that light. On a municipal basis, we have revenues of excise tax, we have revenues of property tax and we have revenues of local road assistance. Most of my towns, up our way, use the excise tax to go on the roads.

The Commissioner of Transportation basically has two revenues. He has revenues from registration fees and he has the gas tax. Since 1983, the Maine Department of Transportation, which is now in the process of losing federal funds, does not have the same amount of revenue coming in that they used to have. I would ask you people that are sitting in this House today, as we leave here tomorrow and go home for the weekend, to call your municipal people and ask them, as I know, how your excise tax figures are today compared to 1983. I would ask you to look at that and, when you come back next week, take that into consideration.

The gentleman from Gray-New Gloucester mentioned that it is going to cost his people money and they weren't getting much in return. I looked at the proposal of sand/salt storage and that is not in this amendment. There is no money in here for sand/salt storage facilities. There are 108 municipalities out there that, when we passed the bond issue, weren't included in the sand/salt program. Those municipalities are looking for some assistance. In this package, there is going to be assistance that is going to help them on their property tax. I have looked over my six towns, my people didn't send me a survey but I went and saw them personally. I have been to every town meeting in the last month and my people were saying seven and eight to one opposed to the gas tax. But, you know after I got done explaining to them that I wouldn't support anything unless it had money for the local road programs or money in there for the salt and sand storage facilities, when you explain it on an individual basis, you will find that these people will tell you that this is the right way to go.

The other analysis that I did a couple of weeks ago, and I know it doesn't affect the larger

communities on the same basis that it does mine, but I took an average home in my area and I took the property tax based on our present mill rate. I took what the municipalities would get back under this program and I built it in for 1989 estimates and you know, surprising as it was, that with the money coming back, I can show my people next year that there will be a reduction in the property tax to offset the cost to the average homeowner in the fuel tax. Granted not everybody is going to be treated the same way, but I took an average home in my area of \$50,000 to \$60,000 evaluation, that probably sounds small to the southern part of the state but I also took the basis of \$37.50 on the gas tax.

I feel bad today because I think that the program that the Commissioner of Transportation has presented to this legislature is probably, in the coming days or weeks that we are left here, is going to fail. Some of you have looked at this program over the last four or five weeks, I have been on this program since January. I have worked with the committee, I have worked with the commissioner, I have worked with Maine Municipal, I serve on their legislative policy committee, and I really feel, knowing what I have seen happen over the years that I have served here, that this program is going to fail.

The proposal that we have with the amendment is a short-term solution that I don't believe goes far enough. I would hope that the members would turn this amendment down today. But, if it is accepted between now and Monday, I just ask all you members here to talk with your municipal officials, talk with your people and, as you talk to them, explain to them exactly what it does. If you have done what I have done since January, I think when you come back here Monday, you may have a different opinion.

Representative Murphy of Kennebunk was granted permission to address the House a third time.

Representative MURPHY: Mr. Speaker, Men and Women of the House: There was a key word that was used in the debate by the Representative from Bangor, he used the word loan. I think when you look at the amendment, it is a loan. We have heard very clearly from the debate here that we are coming up short this year. When you read the language in there, if at some future date the tax is increased or the federal dollars come in, we have impacted severely whatever that new tax is and we have come close to wiping out the federal dollars that would be accepted. So, not only are we coming up short right now in terms of needs, if we buy into this amendment, we have impacted any future decisions or money that is rightfully ours that is returned from Washington.

I think, looking at that provision, what we are being asked to buy into is very much like a very strained family budget that finds, when you add up the needs that are needed, not the wants, but the needs, the income is no longer there.

I heard someone say earlier the word irresponsible had been used, I haven't used that word yet, but I think it fits. In terms of that family budget, it would be as irresponsible as the head of that household turning and taking all the debt and all the basic costs and slapping it onto plastic. Any financial advisor would tell you that that is irresponsible. That is what we are being asked to do here, to slap it on plastic, except it is called the "Rainy Day Fund." There is nothing more basic in a large rural state that has varying degrees in terms of weather extremes, nothing more basic in terms of the responsibility of government, than to provide modern safe roads and bridges. We are not talking about wants, we are talking about needs. This comes up short and it creates a handicap or a limitation in

terms of any future tax increases with the next legislature or the rightful return of our money.

Now, I can sense in terms of seeing people in the hall or the chamber that a lot of people in this chamber that has said, "Whew, they got us out of that." If you bought into that, "they got us out of it" you have bought into a political decision and we have been told here that everything here is political. But what was moving through here was a decision that would have involved roads and bridges. What we have in this amendment is a political decision and, when you vote, you have a choice, a responsible proposal, long-termed, based on needs, present and future, plus funding mandates in terms of sand and salt sheds, funding mandates in terms of roads that were turned onto the local communities. That was one choice.

The other choice, I guess, is maybe if we are looking for labels and there have been labels flying all over this place today, that this amendment or alternative proposal, could be called in terms of an amendment, the "rattle your teeth and hold onto the dashboard amendment" because that is the repercussions in terms of the alternative that is before us.

I would ask the members of this House to reject the political decision and "whew, they got us out of it" and take the responsible approach by voting no on this amendment and working our way back to the original bill.

Representative Diamond of Bangor was granted permission to address the House a third time.

Representative DIAMOND: Mr. Speaker, Ladies and Gentlemen of the House: Ronald Reagan has a famous line that he used against President Carter in 1980 when he implied that President Carter was not being straightforward with the American people and he got up and said, "There he goes again." Listening to Representative Murphy speak for the third time today, I want to say the same thing, once again we are being directed away from the real issue before us and that is an alternative to the proposed tax increase in a way that is going to accomplish the goals set out in the infamous Red Book.

The proposal of Representative Lisnik has been degraded and denigrated by opponents to this amendment. They have made claims that it is a raid on the Maine Turnpike Authority, they say that we are deleting the salt and sand money that was in here for the salt/sand sheds. I am looking at the Governor's Bill and as it came, I wanted to say, "What's going on?" I am reading Page 4 of the Governor's Bill and it talks about that very same \$4 million dollars that we are asking to be loaned for this program from the Maine Turnpike Authority, a one-time loan. I look at what the Governor has proposed and I assume it comes from the Department. It is talking about an ongoing program transferring \$4 million from the Maine Turnpike Authority to the DOT. I think if we are talking responsibility here, that we have got to ask, which is more responsible, a one-time loan of \$4 million that is going to be paid back at some point in the future or an ongoing transfer of money that is going to cost us much more in the future? I think that is something we have got to look at.

To use the gentleman's own words, there is a much more significant \$4 million dollar raid being proposed here and it is the proposal of the Governor to do so. Fortunately for us, Representative Lisnik has attempted to deal with that.

Secondly, I don't find anywhere in the Governor's Bill where the money for the salt/sand sheds is included. I may have to stand corrected but I haven't found it yet. It is my understanding that

that is an agreement with the Department that that money will be available if it can be found and if this program is funded in its full context.

We have to deal with the reality of getting through this crisis that we understand exists because of the lack of federal money. We have to deal with adopting a policy that is going to deal with our immediate need that won't jeopardize the funding of the Red Book and yet will allow us to plan for the long-term projects through the proper cost analysis. We have that in the Lisnik amendment. I think we have been debating this long enough today (I see heads nodding up and down) and I think everyone agrees that we all know where we are going on this issue and it is time to vote and get the issue behind us and move on to something else.

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 Jay, Representative Bickford.

Representative BICKFORD: Mr. Speaker, Ladies and Gentlemen of the House: I will make a sincere effort to be brief but I would like to respond to the Representative from Rumford. I would like to suggest to her that there are only 489 workers who live in the town of Jay who are on strike and some of those have gone back, by the way, but I would like to suggest that, of those 1200 people that were at that rally which account for about 42 percent, are not all of my constituency.

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

Representative MCPHERSON: Mr. Speaker, Ladies and Gentlemen of the House: I just can't get it clear in my head how, with a \$35 million dollar problem, we are going to solve it with a \$23 million dollar solution. Some of the information provided to the Transportation Committee pointed out to us that 50 percent of Maine's primary roads are rated fair to poor and that, in just 10 years, which is a short span, 17 percent of those will be down to the poor condition.

The Cost Allocation Study has been mentioned -- you are saying that the trucking industry is going to absorb this additional money that we need? It is just not the solution. I would hope that you would defeat the amendment.

The SPEAKER: The Chair recognizes the Representative from Island Falls, Representative Smith.

Representative SMITH: Mr. Speaker, Men and Women of the House: I will make it short. I had a questionnaire like many of you did and on my questionnaire, 22 percent said yes, 65 percent no, 13 percent undecided on the gas tax so I have no problem taking a position against the gas tax.

Some of the comments made on the questionnaire was, why don't you spend the money that you have down there now? I thought, I don't know what they are talking about but apparently they knew. Representative Lisnik has drawn their attention to the fact that it is here. I think that is great. So, when I go home, I won't have to go home with a straight face, I can go home and smile.

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

Representative JACKSON: Mr. Speaker, Men and Women of the House: I, too, will not take much of your time.

It appears to me listening to the debate, looking at the amendment this afternoon, that we have a short-term solution for a long-term problem. The good gentleman from Eliot, Representative McPherson, spoke of the \$23 million dollars that is to be appropriated from various agencies of state government in this year of the biennium to fund \$35 million dollars worth of proposed projects. That leaves us about \$12 million dollars short.

Looking at this amendment, this is a one-time deal, folks. It is a one-time shot. The Representative from Kennebec was correct, it is a loan. Whatever the next session of the legislature does or whatever Congress does, if Congress opts to release those embargoed funds back to the state, that will go back to repay those proposed loans. That still leaves us \$35 million dollars short in 1989-90 and 1990-91. What do we propose to do then? History has told me, since I have been in business, that when you have a project proposed, drafted and on the planning board, you ought to do it. You know why? Because it costs additional dollars the longer you wait. It also costs additional time.

With this proposal, there is no money in there for planning and research and future projects. What happens, folks? We will still fall behind, continue to lag so, instead of 5 cents, the next time you might need 7 cents to meet the immediate needs of the state.

It is not a good business decision to do what the amendment does. I posed that question on my questionnaire, I represent five communities and most of those communities are bedroom communities, they travel to greater Portland area for their employment or the Lewiston-Auburn area or New Hampshire for their jobs. My questionnaire came back with 53 percent in favor, 47 percent against, and I am going to assume that the reason that it came back that way was that I included in my questionnaire -- would you support a gas tax with monies coming back for local road improvement? I am going to assume that is the reason I got the response that I got.

You have heard talk of the Highway Allocation Study in 1982-83, which was completed in 1983, and the Highway Allocation Study is all about the question of equity, if the users pay equitably for the highways. I would submit to you that, when this Highway Allocation Study is completed, that the results will be the same. The results will ask for a gas tax increase, not only for the truckers, but for all users. Why do I say this? In 1983, an average car for average mileage was getting approximately 16 to 17 miles per gallon. Today, it is in excess of 20. I don't know how many of you people have traded automobiles in the last five years but I have, I traded my automobile that was getting 18 miles to a gallon to an automobile that averages better than 30 miles per gallon. Simple arithmetic tells me that the mileage I travel every year, I am saving about 40 percent.

So, I think when the Highway Allocation Study is completed, those figures will bear true that there is going to be a demand and a need for the gas tax increase. I would think it would be wise and prudent to submit today to defeat the House Amendment that is before us and continue on with the current bill that was presented to us by the Transportation Committee. I think that Maine people are willing to make an investment in Maine's future and that investment in Maine's future is going to be in a good transportation network that makes good transportation

a network that is available to everybody in the state. Everybody will share in equal opportunities. I think to deny eastern, northern and western Maine those opportunities is a travesty. We need the good paying jobs just as badly as southern Maine needs them or central Maine needs them. Maybe even more so. It was brought to our attention by the good gentleman from Corinth, Representative Strout, about the property tax. This legislature has failed and failed miserably in addressing the property tax .....

The SPEAKER: The Chair would ask the Representative to please continue to talk about this issue.

Representative JACKSON: Thank you, Mr. Speaker. I feel that not to do this, not to pass the gas tax at this time, will create a hardship that will be even greater on the people of Maine in the ensuing years. I think and feel that if the gas tax, as somebody has stated or alluded to that it is a 36 or 38 percent increase in a commodity price, that not to do that, not to allow the Department of Transportation of the State of Maine to address the needs of this state, that the burden that we will be putting on those very same people through repairs, maintenance and replacement is going to be even far greater than what the 5 cents per gallon tax is going to do.

The SPEAKER: The Chair recognizes the Representative from Mechanic Falls, Representative Callahan.

Representative CALLAHAN: Mr. Speaker, Men and Women of the House: There is just one more point that I believe is very important and this so-called \$15 million dollar "Rainy Day Fund" definitely is derived from the General Fund. The fuel tax is a use tax. If we use this General Fund, we are going to be asking elderly people that don't even own an automobile to help pay for the highways. I think it is very unfair.

The SPEAKER: The pending question before the House is adoption of House Amendment "D" (H-643) to Committee Amendment "A" (H-588).

The Chair recognizes the Representative from Lewiston, Representative Pouliot.

Representative POULIOT: Mr. Speaker, I wish to pair my vote with Representative Conley of Portland. If he were present and voting, he would be voting yes; I would be voting no.

The SPEAKER: The pending question before the House is adoption of House Amendment "D" (H-643) to Committee Amendment "A" (H-588). Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 245

YEA - Aliberti, Allen, Anthony, Bost, Boutilier, Brown, Carroll, Carter, Cashman, Chonko, Clark, H.; Clark, M.; Coles, Cote, Crowley, Daggett, Diamond, Dore, Duffy, Dutremble, L.; Erwin, P.; Gould, R. A.; Gurney, Gwadosky, Hale, Handy, Hickey, Hoglund, Holt, Hussey, Jacques, Jalbert, Joseph, Ketover, Kilkelly, Lacroix, LaPointe, Lisnik, Mahany, Manning, Martin, H.; Mayo, McGowan, McSweeney, Melendy, Michaud, Mitchell, Moholland, Nadeau, G. G.; Nadeau, G. R.; Nutting, O'Gara, Oliver, Paradis, J.; Paradis, P.; Paul, Perry, Priest, Racine, Rand, Reeves, Ridley, Rolde, Rotondi, Ruhlin, Rydell, Sheltra, Simpson, Smith, Stevens, P.; Swazey, Tardy, Thistle, Tracy, Vose, Walker, The Speaker.

NAY - Anderson, Begley, Bickford, Bott, Bragg, Callahan, Curran, Dellert, Farren, Foss, Foster, Garland, Glidden, Greenlaw, Hanley, Harper, Hepburn, Hichborn, Higgins, Holloway, Jackson, Lawrence, Lebowitz, Look, Lord, Macomber, Marsano, Matthews, K.; McHenry, McPherson, Mills, Murphy, E.; Murphy,



T.: Nicholson, Norton, Paradis, E.; Parent, Pines, Reed, Rice, Salsbury, Scarpino, Sherburne, Small, Soucy, Stanley, Stevens, A.; Stevenson, M.; Strout, B.; Strout, D.; Tamaro, Taylor, Telow, Tupper, Webster, M.; Wentworth, Weymouth, Whitcomb, Willey, Zirkilton.

ABSENT - Armstrong, Bailey, Baker, Davis, Dexter, Farnum, Hillock, Kimball, MacBride, Richard, Seavey, Warren.

PAIRED - Conley, Pouliot.

Yes, 77; No, 60; Absent, 12; Paired, 2; Excused, 0.

77 having voted in the affirmative and 60 in the negative with 12 being absent and 2 paired, House Amendment "D" to Committee Amendment "A" was adopted.

Committee Amendment "A" as amended by House Amendment "D" thereto was adopted.

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

By unanimous consent, ordered sent forthwith to the Senate.

(Off Record Remarks)

At this point, the Speaker appointed Representative Michaud of East Millinocket to act as Speaker pro tem for Friday, April 8, 1988.

On motion of Representative Gurney of Portland, Adjourned until Friday, April 8, 1988, at twelve o'clock noon.

STATE OF MAINE  
ONE HUNDRED AND THIRTEENTH LEGISLATURE  
SECOND REGULAR SESSION  
JOURNAL OF THE SENATE

In Senate Chamber  
Thursday  
April 7, 1988

Senate called to Order by the President.

Prayer by Reverend Alan Mather of the First Baptist Church in East Machias.

REVEREND MATHER: Our Father in heaven, we ask Your blessing upon the business that must be taken care of today. We pray that as we get wrapped up in the hustle and bustle of many bills, that You would grant wisdom that those things that should be passed would be and those things that might be brought in that in the long run would appear not to be wise, You would grant that these would be weeded out.

Father, I would like to ask Your blessing upon Senator Randall's son and his healing and recovery and others that also might have personal family problems. Bring our own personal lives before You. We thank You that You are a sovereign God that works even in the hearts of kings and rulers. In Jesus name. Amen.

Reading of the Journal of Yesterday.

PAPERS FROM THE HOUSE  
Non-concurrent Matter

Bill "An Act to Establish Municipal Cost Components for Services to be Rendered in Fiscal Year 1988-89" (Emergency)

H.P. 1800 L.D. 2464  
(C "A" H-563)

In Senate, March 31, 1988, PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-563), in concurrence.

Comes from the House PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-563) AS AMENDED BY HOUSE AMENDMENT "A" (H-634), thereto in NON-CONCURRENCE.

The Senate RECEDED and CONCURRED.

House Papers

Resolve, Creating the Commission to Study Private Ways and Private Roads (Emergency)

H.P. 1922 L.D. 2622

Committee on TRANSPORTATION suggested and ORDERED PRINTED.

Comes from the House, under suspension of the Rules, READ TWICE and PASSED TO BE ENGROSSED, without reference to a Committee.

Which was referred to the Committee on TRANSPORTATION and ORDERED PRINTED in NON-CONCURRENCE. Sent down for concurrence.

COMMITTEE REPORTS

House  
Ought to Pass

The Committee on STATE AND LOCAL GOVERNMENT on Resolve, for Laying of the County Taxes and Authorizing Expenditures of Knox County for the Year 1988 (Emergency)

H.P. 1921 L.D. 2621

Reported that the same Ought to Pass, pursuant to Joint Order H.P. 1489.