

# 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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### **SECOND CONFIRMATION SESSION**

May 13, 1988

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November 28, 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**  
**66th Legislative Day**  
**Friday, April 15, 1988**

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

Prayer by Reverend James Blanchette, Capehart Community Church, Bangor.

The Journal of Thursday, April 14, 1988, was read and approved.

Quorum call was held.

SENATE PAPER

The following Communication:

Maine State Senate  
 Augusta, Maine 04333

April 14, 1988

The Honorable John L. Martin  
 Speaker of the House  
 113th Legislature  
 Augusta, Maine 04333  
 Dear Speaker Martin:

In accordance with Joint Rule 38, please be advised that the Senate today confirmed, upon the recommendation of the Joint Standing Committee on Judiciary, the Governor's nomination of Bruce R. Livingston of Hallowell for appointment as a member of the Workers' Compensation Commission.

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

Was read and ordered placed on file.

PASSED TO BE ENGROSSED  
WITHOUT REFERENCE TO COMMITTEE

Bill "An Act to Require Application and Approval for Railroads to Receive Financial Assistance from the State and to Require Notice of Major Modifications in Rail Service" (H.P. 1933) (L.D. 2634) (Presented by Representative CARTER of Winslow) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27)

(The Committee on Reference of Bills had suggested the Committee on Transportation.)

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

By unanimous consent, was ordered sent forthwith to the Senate.

SPECIAL SENTIMENT CALENDAR

In accordance with House Rule 56 and Joint Rule 34, the following items:

Michael Harrington, social critic, activist, and author of The Other America, the book that is credited with sparking the nation's war on poverty, on the occasion of his 60th birthday; (HLS 1170) by Representative BAKER of Portland. (Cosponsors: Representative MAHANY of Easton, Representative OLIVER of Portland, Senator ANDREWS of Cumberland)

On motion of Representative Baker of Portland, was removed from the Special Sentiment Calendar.

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

Representative BAKER: Mr. Speaker, Men and Women of the House: I want to share a few words and a few thoughts with you this morning on this particular sentiment. Michael Harrington is not a resident of the State of Maine but I think he has had a profound impact on the way we look at poverty today in the United States.

In the 1950's, poverty was something which was thought to be nonexistent in this country. At that time, Mike was a young man and he wrote a book called "The Other America." This caught the eye of President John Kennedy and thus began the nation's attempt to grapple with the issue of poverty. The war has not been won, poverty still exists with us today. Mike Harrington has issued another edition of his book pointing to ways that this nation can truly be a nation dedicated to the principles of equality and fair play.

Mike has been in this fight for years, throughout the McCarthy era into the 1960's when he tried to knock some sense into the heads of younger radicals who perhaps didn't understand a few things. He has weathered all those battles and has weathered them with dignity and honor.

I feel it is a great fortune on my part to know this man. He has certainly given me much to think about in my years here and I wish him well.

Subsequently, was passed and sent up for concurrence.

REPORTS OF COMMITTEES  
Divided Report

Majority Report of the Committee on Taxation reporting "Ought to Pass" as amended by Committee Amendment "A" (H-710) on Bill "An Act to Amend the Law Relating to Unitary Taxation of Corporations" (H.P. 928) (L.D. 1244)

Signed:

Senators: SEWALL of Lincoln  
 TWITCHELL of Oxford  
 DOW of Kennebec

Representatives: NADEAU of Saco  
 WHITCOMB of Waldo  
 SEAVEY of Kennebunkport  
 SWAZEY of Bucksport  
 DORE of Auburn  
 ZIRNKILTON of Mount Desert  
 JACKSON of Harrison  
 CASHMAN of Old Town  
 DUFFY of Bangor

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

Signed:

Representative: MAYO of Thomaston

Reports were read.

Subsequently, the House voted to accept the Majority "Ought to Pass" Report, the Bill read once.

Committee Amendment "A" (H-710) was read by the Clerk and adopted.

Under suspension of the rules, the Bill was read the second time, passed to be engrossed as amended by Committee Amendment "A" and sent up for concurrence.

CONSENT CALENDAR  
First Day

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

(H.P. 1833) (L.D. 2510) Bill "An Act to Provide for a Partial Rebate of 1987 Individual Income Tax" Committee on Taxation reporting "Ought to Pass" as amended by Committee Amendment "A" (H-711)

(H.P. 1535) (L.D. 2089) Bill "An Act Providing for Administrative Changes in the Tax Laws" Committee on Taxation reporting "Ought to Pass" as amended by Committee Amendment "A" (H-712)

(H.P. 1719) (L.D. 2358) Bill "An Act to Insure Adequate Rate Filing Information from Health Insurers" Committee on Banking and Insurance

reporting "Ought to Pass" as amended by Committee Amendment "A" (H-716)

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

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

(At Ease)

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

PASSED TO BE ENACTED  
Emergency Measure

An Act to Provide Elderly Mental Health Service Needs (S.P. 742) (L.D. 2001) (C. "A" S-440)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 112 voted in favor of the same and none against and accordingly the Bill was passed to be enacted, signed by the Speaker pro tem and sent to the Senate.

PASSED TO BE ENACTED  
Emergency Measure

An Act to Increase Reimbursement Rates to Boarding Care Facilities (H.P. 1472) (L.D. 1983) (C. "A" H-660)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 108 voted in favor of the same and none against and accordingly the Bill was passed to be enacted, signed by the Speaker pro tem and sent to the Senate.

PASSED TO BE ENACTED  
Emergency Measure

An Act to Provide Prevocational Services for Persons with Long-Term Mental Illness (H.P. 1548) (L.D. 2108) (C. "A" H-663)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 108 voted in favor of the same and none against and accordingly the Bill was passed to be enacted, signed by the Speaker pro tem and sent to the Senate.

PASSED TO BE ENACTED  
Emergency Measure

An Act to Abolish the Office of Complaint Justice and Replace it with the Office of Justice of the Peace (H.P. 1791) (L.D. 2452) (H. "A" H-676; C. "A" H-600)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 109 voted in favor of the same and none against and accordingly the Bill was passed to be enacted, signed by the Speaker pro tem and sent to the Senate.

PASSED TO BE ENACTED  
Emergency Measure

An Act to Fund the Office of Child Welfare Services Ombudsman (H.P. 1861) (L.D. 2559)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 109 voted in favor of the same and none against and accordingly the Bill was passed to be enacted, signed by the Speaker pro tem and sent to the Senate.

PASSED TO BE ENACTED  
Emergency Measure

An Act Making Allocations for the Expenditure of Funds Received by the State as a Result of Federal Court Orders in the Stripper Well Overcharge Case and the Diamond Shamrock Case (H.P. 1872) (L.D. 2564) (C. "A" H-653)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 109 voted in favor of the same and none against and accordingly the Bill was passed to be enacted, signed by the Speaker pro tem and sent to the Senate.

PASSED TO BE ENACTED  
Emergency Measure

An Act Relating to Periodic Justification of Departments, Agencies and Programs of State Government under the Maine Sunset Laws (H.P. 1905) (L.D. 2602) (C. "A" H-656)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 109 voted in favor of the same and none against and accordingly the Bill was passed to be enacted, signed by the Speaker pro tem and sent to the Senate.

PASSED TO BE ENACTED

An Act to Establish an Interim Assistance Revolving Loan Fund for Mentally Impaired Individuals (S.P. 558) (L.D. 1670) (C. "A" S-441)

An Act to Implement Part of the Department of Human Services Long-Term Care Plan for the Elderly, Handicapped and Citizens with Long-Term Care Needs (S.P. 788) (L.D. 2065) (C. "A" S-447)

An Act to Include Drugs for Treatment of Chronic Obstructive Lung Disease in the Elderly Low-Cost Drug Program (S.P. 800) (L.D. 2101) (C. "A" S-449)

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

ENACTOR  
Later Today Assigned

An Act to Provide Greater Protection to Owners of Mobile Homes and Mobile Home Parks (S.P. 825) (L.D. 2147) (S. "A" S-451 to C. "A" S-444)

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

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

PASSED TO BE ENACTED

An Act to Create the Commission to Examine Issues Relating to Legal Expenses Incurred by State Employees in the Execution of their Official Duties and Related Disciplinary Issues (S.P. 914) (L.D. 2383) (H. "A" H-684 to C. "A" S-430)

An Act to Provide Funds for Teenage Suicide Prevention (S.P. 924) (L.D. 2435) (C. "A" S-349)

An Act to Authorize Kennebec County to Raise Up to \$7,900,000 to Renovate and Expand Jail and Law Enforcement Facilities for Kennebec County (S.P. 993) (L.D. 2626) (S. "A" S-446)

An Act Relating to Stockholder Initiatives on State Investments in Northern Ireland (S.P. 994) (L.D. 2628)

An Act to Provide Additional Funding for Crisis Information and Suicide Prevention Services in Somerset County (H.P. 1506) (L.D. 2056) (C. "A" H-659)

An Act to Create a Commission to Examine Rent Increases and Other Issues Concerning Mobile Homes (H.P. 1510) (L.D. 2060) (C. "A" H-668)

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

PASSED TO BE ENACTED

An Act to Increase the Minimum Standards for Eligibility for the Elderly Low-Cost Drug Program and the Household Tax and Rent Refund Act (H.P. 1512) (L.D. 2062) (C. "A" H-651)

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

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

Representative MACOMBER: Mr. Speaker, Men and Women of the House: I would like to pose a question through the Chair to somebody on the Taxation Committee. I have been asked if this particular bill makes it more difficult for people to qualify for the elderly low-cost drug program?

The SPEAKER PRO TEM: Representative Macomber of South Portland has posed a question through the Chair to any member of the Taxation Committee who may respond if they so desire.

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

Representative CASHMAN: Mr. Speaker, Ladies and Gentlemen of the House: In response to the gentleman's question, it certainly doesn't, it makes it easier. Last year, because of actions taken by the legislature, we separated the guidelines by which people qualified for the elderly low-cost drug program and the elderly tax and rent refund program. The purpose of this bill is to reunite those guidelines so that it is the same guidelines for both programs which would increase the low-cost drug program guidelines, thereby taking more people into the program.

The other thing that the bill does is tie the guidelines to the Consumer Price Index so that as that index goes up, the guidelines go up and people don't get bumped out of the program because of inflationary pressures.

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

PASSED TO BE ENACTED

An Act to Establish Child Care Availability for Individuals in the Substance Abuse Treatment System (H.P. 1612) (L.D. 2205) (C. "A" H-662)

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

ENACTOR

Later Today Assigned

An Act to Improve the Potato Marketing Improvement Fund (H.P. 1618) (L.D. 2211) (H. "A" H-671 to C. "A" H-639)

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

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

PASSED TO BE ENACTED

An Act to Protect the Well-Being of Young Children and to Help Prevent Emotional and Behavioral Disorders (H.P. 1639) (L.D. 2238) (C. "A" H-658)

An Act to Require Municipal Approval of Public Land Acquired by the State (H.P. 1640) (L.D. 2239) (C. "A" H-648)

An Act Concerning Shoreline Alteration of Artificially Created Great Ponds (H.P. 1737) (L.D. 2382) (C. "A" H-666)

An Act to Fund a Demonstration Teaching Nursing Home (H.P. 1778) (L.D. 2431) (C. "A" H-661)

An Act to Revise Exemptions Under the Law Relating to the Commercial Transport of Water (H.P. 1786) (L.D. 2447) (C. "A" H-664)

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

ENACTOR

INDEFINITELY POSTPONED

An Act to Clarify the Definition of Earnable Compensation (H.P. 1826) (L.D. 2502) (H. "A" H-686 to C. "A" H-624; S. "B" S-445)

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

The SPEAKER PRO TEM: The Chair recognizes the Representative from Gardiner, Representative Dellert.

Representative DELLERT: Mr. Speaker, Ladies and Gentlemen of the House: This L.D. 2502, earnable compensation, has become misinterpreted. The intent of the original bill was to clarify earnable compensation. The board of trustees had directed the Maine State Retirement Staff to prepare rules on the subject of earnable compensation to reaffirm the position consistently taken over the years on this subject.

As the sponsor of this L.D., I am concerned about the large fiscal note now attached to it. These millions of dollars spent each year could be better spent in another way.

I move that this bill and all its accompanying papers be indefinitely postponed. I ask for a roll call.

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

Representative HICKEY: Mr. Speaker, Ladies and Gentlemen of the House: I also support the indefinite postponement of this bill. In its present posture, it will require an appropriation of over \$900,000. Presently, the matter is in the Superior Court and I would prefer that we wait until the decision is rendered and the people will be reimbursed according to the decision of the court.

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 pending question before the House is the motion of Representative Dellert of Gardiner that this bill and all accompanying papers be indefinitely postponed. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 256

YEA - Aliberti, Allen, Anderson, Anthony, Bailey, Baker, Begley, Bickford, Bost, Bott, Boutilier, Bragg, Brown, Callahan, Carroll, Carter, Cashman, Chonko, Clark, H.; Clark, M.; Conley, Cote, Crowley, Curran, Daggett, Davis, Dellert, Dexter, Diamond, Dore, Dutremble, L.; Erwin, P.; Farnum, Farren, Foss, Foster, Garland, Glidden, Gould, R. A.; Greenlaw, Gurney, Gwadosky, Hale, Handy, Harper, Hichborn, Hickey, Hillock, Hoglund, Holloway, Holt, Hussey, Jackson, Jacques, Jalbert, Ketover, Kilkelly, Kimball, LaPointe, Lawrence, Lebowitz, Lisnik, Look, Lord, MacBride, Macomber, Manning, Marsano, Martin, H.; Matthews, K.; Mayo, McGowan, McHenry, McPherson, McSweeney, Melendy, Mills, Mitchell, Moholland, Murphy, E.; Nicholson, Norton, Nutting, O'Gara, Oliver, Paradis, E.; Paradis, P.; Parent, Paul, Perry, Pines, Pouliot, Priest, Racine, Rand, Reed, Richard, Ridley, Rolde, Rotondi, Ruhlin, Rydell, Salsbury, Scarpino, Seavey, Sheltra, Sherburne, Small, Smith, Soucy, Stanley, Stevens, A.; Stevens, P.; Stevenson, M.; Strout, B.; Strout, D.; Swazey, Tardy, Taylor, Telow, Thistle, Tracy, Tupper, Vose, Walker, Warren, Webster, M.; Wentworth, Whitcomb, Willey, The Speaker.

ABSENT - Armstrong, Coles, Duffy, Hanley, Hepburn, Higgins, Joseph, Lacroix, Mahany, Michaud, Murphy, T.; Nadeau, G. G.; Nadeau, G. R.; Paradis, J.; Reeves, Rice, Simpson, Tamaro, Weymouth, Zirkilton.

Yes, 131; No, 0; Absent, 20; Paired, 0; Excused, 0.

131 having voted in the affirmative and none in the negative with 20 being absent, L.D. 2502 and all accompanying papers were indefinitely postponed and sent up for concurrence.

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

SENATE PAPER

Non-Concurrent Matter

Bill "An Act to Promote the Enhancement of Education in Maine" (Emergency) (H.P. 1610) (L.D. 2201) on which the Minority "Ought to Pass" as amended Report of the Committee on Education was read and accepted and the Bill passed to be engrossed as

amended by Committee Amendment "A" (H-706) in the House on April 14, 1988.

Came from the Senate with the Majority "Ought Not to Pass" Report of the Committee on Education read and accepted in non-concurrence.

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

Representative SMALL: Mr. Speaker, Ladies and Gentlemen of the House: I was about to make the motion that we recede and concur. I would like to thank first the 89 members of this body who supported L.D. 2201 yesterday. Unfortunately, the other body rejected the bill without debate and, at this late date, I feel it is important that we put all our energy into ensuring that 355 is passed because that is the Governor's enhancement bill recommendations and, as you know, it distributes \$23 million to our schools which is very important.

Although our bill is technically dead, the concept behind the allocation of any additional monies has been debated, embraced by this House and, hopefully, understood by the members of this House. I now feel confident that should any money be available over and beyond the \$23 million already budgeted in the Governor's budget for the enhancement bill, Appropriations will look very carefully at all proposals that have been brought before this House. I have complete confidence that however they distribute the money will be in the best interests of our schools.

Subsequently, the House voted to recede and concur.

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

(At Ease)

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

ORDERS OF THE DAY  
UNFINISHED BUSINESS

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

The second matter of Unfinished Business was taken up out of order by unanimous consent:

An Act to Recodify the Laws on Municipalities and Counties (H.P. 1855) (L.D. 2538)

TABLED - April 14, 1988 (Till Later Today) by Representative DIAMOND of Bangor.

PENDING - Passage to be Enacted.

On motion of Representative Carroll of Gray, under suspension of the rules, the House reconsidered its action whereby L.D. 2538 was passed to be engrossed.

The same Representative offered House Amendment "C" (H-715) and moved its adoption.

House Amendment "C" (H-715) was read by the Clerk and adopted.

Representative Diamond of Bangor offered House Amendment "B" (H-714) and moved its adoption.

House Amendment "B" (H-714) was read by the Clerk and adopted.

The Bill was passed to be engrossed as amended by House Amendment "B" (H-714) and House Amendment "C"

(H-715) in non-concurrence and sent up for concurrence.

(At Ease to the Gong)

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

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

COMMUNICATIONS

The following Communication:

STATE OF MAINE  
ONE HUNDRED AND THIRTEENTH LEGISLATURE  
COMMITTEE ON AGING, RETIREMENT AND VETERANS  
April 14, 1988

The Honorable John L. Martin  
Speaker of the House  
113th Legislature

Dear Speaker Martin:

We are pleased to report that all business which was placed before the Committee on Aging, Retirement and Veterans during the Second Regular Session of the 113th Legislature has been completed. The breakdown of bills referred to our committee follows:

Total number of bills received	14
Unanimous reports	12
Leave to Withdraw	2
Ought to Pass	2
Ought Not to Pass	0
Ought to Pass as Amended	2
Ought to Pass in New Draft	6
Divided reports	2

Respectfully submitted,

S/Georgette B. Berube                      S/Daniel B. Hickey  
Senate Chair                                  House Chair  
Was read and ordered placed on file.

REPORTS OF COMMITTEES

Ought to Pass as Amended

Representative CASHMAN from the Committee on Taxation on Bill "An Act to Amend the Maine Income Tax Law" (H.P. 1803) (L.D. 2467) reporting "Ought to Pass" as amended by Committee Amendment "A" (H-717)

Report was read and accepted, the Bill read once. Committee Amendment "A" (H-717) was read by the Clerk and adopted.

Under suspension of the rules, the Bill was read the second time, passed to be engrossed as amended by Committee Amendment "A" and sent up for concurrence.

The following items appearing on Supplement No. 4 were taken out of order by unanimous consent:

SENATE PAPERS

The following Joint Resolution: (S.P. 997)  
JOINT RESOLUTION IN HONOR OF

MARY E. HARDING,

SENIOR LEGAL PROOFREADER FOR THE MAINE LEGISLATURE

WHEREAS, "God wove a web of loveliness, of clouds and stars and birds but made not anything at all as beautiful as words"; and

WHEREAS, words are not only beautiful but a powerful tool indispensable in communicating meaning and intent in the process of lawmaking; and

WHEREAS, the proofreaders' marks provide assurance of the proper word use and meaning essential for the technical accuracy of legislative documents; and

WHEREAS, this important discipline has been faithfully discharged by Mary E. Harding, Senior

Legal Proofreader for the Maine Legislature for the past 16 years; now, therefore, be it

RESOLVED: That, We, the Members of the Senate and House of Representatives of the 113th Legislature of the State of Maine, now assembled in Second Regular Session, pause in our deliberations and on the eve of her retirement to honor Mary E. Harding of Farmingdale, for her many years of dedication and painstaking work and to express to her our thanks and deep appreciation along with best wishes for her future; and be it further

RESOLVED: That suitable copies of this resolution be prepared and presented to Mary in token of our esteem.

Came from the Senate, read and adopted.  
Was read and adopted in concurrence.

CONSENT CALENDAR

First Day

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

(S.P. 920) (L.D. 2411) Bill "An Act to Clarify the Laws Regulating the Insurance Industry to Ensure its Regulation by State Antitrust Laws" Committee on Banking and Insurance reporting "Ought to Pass" as amended by Committee Amendment "A" (S-463)

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

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

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

SENATE PAPERS

Non-Concurrent Matter

An Act to Consolidate State Land Use Statutes into the Natural Resources Protection Act (H.P. 1687) (L.D. 2316) (S. "A" S-437 to C. "A" H-641) which was passed to be enacted in the House on April 14, 1988.

Came from the Senate passed to be engrossed as amended by Committee Amendment "A" (H-641) as amended by Senate Amendment "B" (S-466) thereto in non-concurrence.

The House voted to Recede and Concur.

Non-Concurrent Matter

Bill "An Act to Amend the Regulation of Lobster Parts" (H.P. 1584) (L.D. 2162) which was passed to be engrossed as amended by Committee Amendment "A" (H-595) as amended by Senate Amendment "A" (S-450) thereto in the House on April 13, 1988.

Came from the Senate passed to be engrossed as amended by Committee Amendment "A" (H-595) as amended by Senate Amendment "C" (S-464) thereto in non-concurrence.

The House voted to Recede and Concur.

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

At this point, Speaker Martin resumed the Chair.

(At Ease)

The House was called to order by the Speaker.

The Chair laid before the House the following matter: An Act to Provide Greater Protection to Owners of Mobile Homes and Mobile Home Parks (S.P. 825) (L.D. 2147) (S. "A" S-451 to C. "A" S-444) which was tabled earlier in the day and later today assigned pending passage to be enacted.

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

Representative PRIEST: Mr. Speaker, Men and Women of the House: I have been asked to clarify for the Record two issues regarding L.D. 2147 and I would like to do that before we enact it so those questions are resolved.

First, under the bill, municipalities may continue to restrict pre-1976 manufactured mobile homes which have less than 750 square feet of living space and which are less than 14 feet in width, including those already in the community.

Second, the minimum lot size in parks under the bill is 5,000 feet only on municipal sewer systems. If a park uses a subsurface disposal septic system, the lot size is a minimum of 20,000 square feet as stated in the current regulations of the manufactured housing forward and the subsurface water disposal law.

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

ORDERS OF THE DAY  
UNFINISHED BUSINESS

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

The following matter of Unfinished Business was taken up out of order by unanimous consent:

Bill "An Act to Amend the Motor Vehicle Laws and to Allocate Funds to the Division of Motor Vehicles" (Emergency) (H.P. 1930) (L.D. 2630)

TABLED - April 14, 1988 (Till Later Today) by Representative DIAMOND of Bangor.

PENDING - Passage to be Engrossed.

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

TABLED AND TODAY ASSIGNED

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

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

TABLED - April 14, 1988 by Representative DIAMOND of Bangor.

PENDING - Acceptance of the Committee Report.

On motion of Representative Diamond of Bangor, retabled pending acceptance of the Committee Report and later today assigned.

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

Bill "An Act to Strengthen Penalties for Persons Piloting Boats Under the Influence of Alcohol" (H.P. 1424) (L.D. 1935)

TABLED - April 14, 1988 by Representative GWADOSKY of Fairfield.

PENDING - Adoption of Committee Amendment "A" (H-708)

Subsequently, Committee Amendment "A" (H-708) was adopted.

Under suspension of the rules, the Bill was read a second time.

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

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

Yesterday, I received a copy of Committee Amendment "A" of L.D. 1935 and was able, very quickly, to peruse it and came up with a couple of real serious problems with the bill and asked that it be slowed down so that I might attempt to draft an amendment or two that might satisfy my needs. I began that process, but as I began to tear apart the bill, I realized that there wasn't an amendment that could be drafted that could help this bill.

First of all, the Committee on Legal Affairs has attempted to liken this bill or parallel this bill to the work they have done on the driving under the influence laws. That is an amiable task and I guess if the problem were as great as the one on our highways, it would be an appropriate means of trying to solve a problem. The simple fact is, it is not the same problem and it should not be dealt with in the same manner.

Currently operating under the influence of intoxicating liquors in this state, while you are operating any watercraft, whether it is on the coastal waters or inland waters, is a Class E crime. This bill would make those offenses either a Class E crime or a Class D crime, depending on whether or not you were paddling your canoe or driving your 7 horsepower motor.

As you all know, there are over 800,000 licensed drivers on Maine roads who use our roads practically on a daily basis. The chances of someone operating under the influence and doing serious harm or killing someone while they are operating under the influence of intoxicating liquors on our highways is a serious issue. We have debated that, we have given our wholehearted support to the Legal Affairs Committee, the Governor and our constituents who demand that we take tougher stands on drunk drivers. I applaud that and have wholeheartedly supported that effort.

However, when it comes to operating watercraft in this state, in some cases that is a recreational endeavor. If you are making your living on the coastal waters of this state, it is a means for your livelihood.

There are only 114,000 registered boats in this state. I realize there are other boats operating on our waters because, if you don't have a motor on your boat, you don't have to register it. My canoe is unregistered because it is used without a motor. Nonetheless, I am going to be or people paddling their canoes or row boats or dinghies are going to be subject to penalties of OUI under the proposed bill which you have before you.

You should also note that last year there were only 90 accidents on Maine waters, that includes coastal and inland waters. In those 90 accidents, there were only 11 injuries. I don't mean to say that we shouldn't be concerned about people injured in boats, I think we should. There were no proven incidences of OUI in any of those accidents. In the four fatalities, they were drownings and (there were 12 drownings in all) of the 12, four were fatal drownings that were suspected OUI. We should be



concerned about that and the current law addresses that problem.

Let me also point out, while I was looking up the incidences of accidents in the water, if we are going to be concerned about intoxication and the activities that we pursue while we are intoxicated, I felt it was appropriate that we look at other recreational vehicles.

We don't have any statistics on golf carts or things like that but we do have statistics on snowmobiles. While there were only 90 watercraft accidents, there were 109 snowmobile accidents. There were 118 ATV accidents. So, both of those recreational vehicles, singularly, had more accidents than we are talking about regarding watercraft accidents.

I don't mean to lessen the problem about the use of watercraft on our waters, it certainly is a problem. As a matter of fact, this legislature has already passed and enacted a piece of legislation that allows the Inland Fisheries and Wildlife Committee to study those very issues that were brought to their attention by the sponsor of this bill. They do have and this legislature has a vehicle before it already that we have already given our unanimous support to study all the problems related to watercraft safety, not just OUI.

While I am talking about safety, the Department of Inland Fisheries and Wildlife already has two established programs within their department to talk about safety issues, one as you know for hunters and one for snowmobilers. They do not have such a structured program for watercraft safety. Perhaps that is an area we ought to be looking into before we take these kinds of steps.

If we were to enact this legislation, it would become effective 90 days after we adjourned, which means that the laws and rules that have already been published and distributed to the public, would change at that date. Now, that is in the middle of the boating season here in Maine and I believe that would create havoc, not only in enforcement but also for those of us who try to be law-abiding citizens who would suddenly find ourselves confronted with having to hire a lawyer to fight our OUI charge in court.

Let me get into the details of the bill a little bit for you. I have only had a short time to peruse this, so please bear with me.

If you are operating any kind of a watercraft in this state, whether you are paddling it, rowing it or whatever, or you have less than a five horsepower motor, you could be found guilty of a Class E crime which would mandate -- I repeat, these are mandated, this is on your first offense -- a \$300 fine, suspend your right to operate a motorcraft in this state, and if your blood and alcohol level is .15, it would mandate a 48-hour jail sentence. Okay, these are not to be suspended so they are mandatory.

On your second offense, you would have mandated a \$500 fine, seven days in jail, and again suspend your right to operate.

On your third conviction, you would have a mandatory \$750 fine, a mandatory 30-day jail sentence and again your right to operate suspended. The fines, perhaps, are something we can live with. The fact that we are mandating again to our county jails that they house people for OUI and boat offenses is to me at best questionable. There is no fiscal note attached to this bill with that regard because the fiscal impact will be back to your counties. The state won't bear that cost of those incarcerations.

Let me deal, finally, with the right to operate. The State of Maine, by law, has not given anyone a right to operate in this state, anybody can operate a

watercraft in this state. So, I question how you can take away a right, how the state can take away a right that we haven't even given. There are no licenses, there are no permits, unless you are carrying passengers and then you can get a federal license. There are no licenses to suspend. So, how can you suspend one's right to operate if it hasn't been granted? If you are going to do that -- even if you think that is a good idea, how are you going to enforce it?

If I am caught paddling my canoe down the Allagash and I am convicted of OUI and I come back to the town of Washington (and I happen to live on a pond in the Town of Washington), how is the game warden in my town supposed to know that I am under suspension? There is no way to enforce it. It is ludicrous to think that game wardens are going to chase canoeists around ponds as they paddle in a zig zag fashion to see if maybe they are intoxicated or maybe their right to operate that canoe has been suspended. It just, in my mind, can't be enforced.

I would also like to point out that the bill allows the admission of evidence into court for operating your boat while intoxicated, the fact that you may or may not have been convicted of operating under the influence in a car.

As I went through this bill, I tried to look for some redeeming factors. I, myself, have cosponsored legislation in the past that tries to address the OUI for boating and for other recreational vehicles and the more I got into it, the more I realized that it had no redeeming features. While there may be or may not be some serious problems on our inland and coastal waterways, I think that this is a phenomenal example of overkill. So, I would urge you to indefinitely postpone this bill.

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

Representative JACQUES: Mr. Speaker, Men and Women of the House: I think Representative Allen laid out the legal aspects of the whole bill but I would like to give you my perspective of what this bill would do. As she stated, Representative Simpson brought forth to our committee a study order on studying the boating laws, which made a lot of sense. The boating laws in the Fisheries and Wildlife statutes are fragmented, they were passed in a piecemeal fashion, often passed in haste to deal with a problem, much like this bill here is put together. It doesn't have much strength holding the thing together. There is no continuity to the whole thing and the committee went along and unanimously reported out a bill that will study all of the boating laws. But we are going to do it or we hope the commission will do it using all the facts and figures that are available.

Let me assure you, if this bill passes, nothing is going to change. Right now in the State of Maine, and I am talking to you from someone who has served on the Fisheries and Wildlife Committee for ten years, we do not have the wardens that are trained to enforce this law at this time. At any eight hour shift in the State of Maine, there are a little over 30 wardens on duty in the entire state barring no vacations, no sick days and no days off.

I can see wardens running around their entire district, some of them are 800 square miles, going from place to place because somebody has been seen with a bottle of beer or a drink in their hand in the boat and, once the game warden gets there, what is he going to do? We don't have the breathalizing equipment in the warden service that they do in state police. That means that they will have to take the

person out of the boat, if they are in Caucomgomoc Lake they are going to drive into Millinocket or Greenville, which is an hour and a half away, give them a blood test and, then if they are wrong, they are going to apologize for the inconvenience, and you are going to go back to your boat another hour and a half away and, for three hours plus, the fish and wild resources of the state is not going to be protected at all.

Let me assure you, this will cost money. The fiscal note says it will be absorbed by the two departments. If that is the case, how come Fisheries and Wildlife has a bill request before Appropriations for over half a million dollars that they need and would also like the authority to borrow a million dollars if they need it to get through to the end of 1990.

I want to find out who it was in the department that said that the cost of this could be absorbed by that department. Because, either they are sadly mistaken or the committee has been led down the primrose path.

This will not solve the problem, this will create more problems. It will not change anything and the problem that prompted this bill here in the first place is that there were some game wardens in an area who were not doing their job. Believe me, I spend as much time in a boat for the next five months as I do in a vehicle.

We had 170,000 people visit Moosehead Lake last year. We don't have this problem there because the game wardens, once they find out you have a problem, they take care of it.

As Representative Farren said in the hall, you do that a couple of times, the word gets around and people behave themselves. I certainly want to get the guy that has been drinking and is behind 150 horsepower motor and is really raising cane on the lake. he causes all kinds of problems -- environmental damages, wildlife damages, physical body damages to people. But, what you are doing is putting everybody in the same boat here whether they are in a canoe, whether they have got a little five horse motor trolling streamer flies, and they are in an inlet or cove somewhere and you are going to make the game warden make a judgmental call. Probable cause I think is the word that you use. Our game wardens are game wardens, they are fish and wildlife officials, they are not Maine State Police.

When I asked our chief warden how many of our game wardens had any experience in enforcing OUI, he said about one-third, a little less than one-third, but we are working on it. What the committee hoped to do was set up a program to train our wardens so that they would all be trained to provide them with the equipment that is necessary so that we can do the job, not make it look like we are doing the job, not make it sound like we are doing the job, and not having a bunch of more laws on the books that isn't going to help the problem one bit.

I hope this House will indefinitely postpone this bill with the understanding and the belief and the trust in the committee that the commission will look at these laws and do a comprehensive job on updating, modifying and making the laws so they will indeed have some force, they will indeed be able to be enforced and they will indeed have the power behind it to back them up. We hope that we can start on this commission right away. We would urge the House to let the commission do its job.

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

Representative PRIEST: Mr. Speaker, Men and Women of the House: This bill was brought to us

because of an increasing problem and that problem is the small but steadily larger number of boating accidents, which are involved with alcohol.

Representative Allen said it is a small number now and she is right, it is a fairly small number, thank goodness, but it is getting larger.

The wardens told us that right now on the books, being intoxicated and operating a boat is a Class E offense and they try to prosecute those offenses. What happens, however, when they go to court is that they find that there is no penalty for refusing to take a breath or blood test. So, the convictions are extremely difficult to get. Many boaters know this and, in fact, they thumb their noses at the wardens. So, you don't have a breath test or a blood test to go in here and try to prove OUI.

You have now a statute on the books, a Class E offense, which prohibits being intoxicated while operating a watercraft. That is on the books and has been for some time but that is an unenforceable statute. What the warden said was, we need something to be able to enforce this statute. We have a problem and it is growing and we need to deal with it now before it gets totally out of hand, we need to be able to enforce this statute.

Then the question came, how do you start enforcing the statute? Do you try to have one law governing intoxication while you are operating a vehicle which applies generally throughout all the vehicles or do you have a different law for boats than you have for cars, than you have for snowmobiles, than you have for recreational vehicles, than you have for any other kind of vehicle you can think of? It seemed to the committee in thinking about this that there ought to be one law that the Maine people can understand and work with and that law ought to be the law that is most familiar with most of them now and that is the motor vehicle statute. That is what the committee has done, presented you with a law which works, which faces as close as possible to existing statutes on motor vehicle operation and the existing statutes on OUI involving motor vehicles.

To argue on the one hand that we have a small number of accidents and therefore it is not really as much of a concern and we can study this matter further, and then to argue on the other hand that the law is unenforceable because the numbers are going to be so great that the wardens aren't going to be able to keep track as to who has been convicted and who has not, seems to me to be contradictory.

The wardens told us that they could enforce this statute, that the numbers of people who would be prosecuted and convicted at this point were going to be small enough so that they could keep track of who was and who wasn't convicted. Those who had been convicted could be prosecuted if they persisted in operating a watercraft while intoxicated.

The question of resources is a serious one and I don't deny that. All I can tell you is what we were told by the warden service and that is that they had the resources available through cooperation with sheriffs and the local police to adequately enforce the statute, as they were among the prime people prosecuting OUI's for boating and that they could keep track of how those cases came out and that they could adequately enforce the law. That is what we are trying to do with the statute.

The statute will go into effect in the middle of the boating season. I see that as a help and not a hindrance in that the law enforcement personnel will be able to be there to explain to people what the law is going to be. There is also a provision in here which will require a report from the wardens about

enforcement and how the laws worked out, come back to us so that we in this committee that is being set up to study these laws, can adequately deal with the problem and see how the enforcement is going.

We have a situation which is small but serious and is getting worse. This law provides a method for dealing with it which is familiar to Maine citizens. It is enforceable and I think it is a good idea. I would urge you to reject the motion for indefinite postponement and to pass the bill.

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

Representative ANTHONY: Mr. Speaker, Ladies and Gentlemen of the House: I request permission to pose a question to the chair of the committee.

My question to the Chairman of the Legal Affairs Committee is, would this law, (as I understand it, this applies as well in coastal areas) be enforced in the coastal areas by harbormasters and by the Bureau of Marine Patrol?

The SPEAKER: Representative Anthony of South Portland has posed a question through the Chair to Representative Priest of Brunswick who may respond if he so desires.

The Chair recognizes that Representative.

Representative PRIEST: Mr. Speaker, Men and Women of the House: The answer is yes, I would hope that there is adequate training for them. As you know, we have a bill which will require law enforcement training for all law enforcement personnel. Obviously, proper operation of breathalyzer equipment is one of those ideas of which they will be trained. So the answer is yes. Right now, there is also enforcement, as you are probably aware, by the Coast Guard of federal statutes governing operation of watercraft while intoxicated in federal waters.

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

Representative ANTHONY: Mr. Speaker, Ladies and Gentlemen of the House: I rise to ask you to vote against the motion to indefinitely postpone. We have a serious problem of water safety in the coastal areas and that problem is getting worse all the time.

The harbor of Portland has an increase in boating of tremendous proportions, pleasure boaters who go out, some with sail, some with motor, in the midst of tankers, ferries, and other large vessels who find it very difficult to maneuver. Those problems are serious and they are getting worse all the time.

We do have inadequate enforcement mechanisms but we do have along the coast of the State of Maine, harbormasters that are now required to receive law enforcement training at the Criminal Justice Academy if they are going to have the powers of arrest. That enforcement should and will include training in breathalizing. We have the Marine Patrol as well, all along the coast of Maine. It seems to me that this problem is a problem that we cannot ignore, that we must address.

On my questionnaire that I sent out to my constituents, I asked a question which states, "In Maine, the penalties for operating a motorboat under the influence of alcohol are less strict than those for automobiles. Do you feel motorboat OUI penalties need strengthening?" 85 percent of my constituents answered yes, and only 11 percent answered no. It is very clear that people in a place such as South Portland that is very aware of the conflict between pleasure boaters and commercial boating -- those people are very aware of the problem and ask for a solution. If this bill needs to be improved in a

future session, then let's improve it in a future session. In the meantime, let's get this bill on the books in the State of Maine and get started in dealing with this serious problem that we have in this state.

I ask that you vote against the indefinite postponement of this bill.

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

Representative DUFFY: Mr. Speaker, Ladies and Gentlemen of the House: I have been on the Fisheries and Wildlife Committee for four years. I came on right after the hard times when the department was trying to get all the money it could together just to maintain the services it had and has now. I know over the last two budget sessions since I have been here, we have tried to upgrade equipment, new boats, new trucks -- just to get them back to a decent standard, back to a decent standard.

The problem isn't necessarily that we have tremendous amounts of boating accidents. What we have is a tremendous lack of people out in the field to enforce the laws. I think we have to address the basic problems of where we are going to get the people to enforce them along with the equipment to enforce them. I was in Lamoine last year when they opened a new Marine Patrol Station, they had four people trying to keep order between Eastport and Penobscot Bay.

You can come out with the greatest laws in the world but if you have got four people trying to keep track of about 1,500 miles of coastline, all the tools in the world isn't going to profess to take care of the problem.

What I do believe is that the Boating Commission -- I think that there is a member from Marine Resources to be on that Commission to study boat safety. There will be one or two from Fish and Wildlife and others. I think that you need to work with all of the departments. I think you are going to have to take a look at all of the dollars and cents that is going to be needed to enforce this and what kind of laws and where they should be made and should be enforced.

So, I urge you to go along with the motion to indefinitely postpone so that we can get this put together correctly with all parties working together so we can enforce what laws we make.

Mr. Speaker, I request a roll call.

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

Representative SCARPINO: Mr. Speaker, I request permission to ask a series of questions through the Chair to anyone who can answer.

First, in the bill we passed yesterday, we amended it to enable work-related licenses so people could go to work. Is there any such provision in this bill, seeing that we are not dealing with people that use boats to go to work but people who make their living on the water and, by the loss of a license, you could in effect be taking their livelihood from them? So, one, is there a provision for a conditional license to allow one to make his living on the water?

Number two, would the state be taking an action that would be superseding the federal government if it prohibited someone from operating on the waters of the state if that individual held a United States Coast Guard license for the operation of a vessel either carrying passengers or in the commercial trade and was duly licensed to operate within the waters of this state?

The third question is, if that individual who had the Coast Guard license was apprehended boating recreationally in this state, would that prohibition of operating in the waters of this state carry on to his commercial operation under the federal license?

The SPEAKER: Representative Scarpino of St. George has posed a series of questions to any member who may respond if they so desire.

The Chair recognizes the Representative from Brunswick, Representative Priest.

Representative PRIEST: Mr. Speaker, Men and Women of the House: My understanding is that we would not preempt any federal license or law that is enforceable within the terms of that federal license or law and this law would not affect the ability of someone to operate under that license or to continue to operate under that license.

As to using that boat for purposes which aren't covered by the license, it seems to me at that point, the state law would apply. Insofar as the boat was used for purposes other than that covered by the federal license, I think the state law would apply and this would apply to it.

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

Representative SCARPINO: Mr. Speaker, Men and Women of the House: That was very obviously a lawyers answer; not being a lawyer, I didn't understand it.

In looking at the bill itself, it says that if you are convicted you will be prohibited from operating a vessel on the waters of the state. If you have a commercial license, that license is a U.S. Coast Guard license, and is not restricted to a particular vessel. So, while the good gentleman from Brunswick's comment about the use of the vessel may have some validity in certain cases, if you are an employee of Gulf Oil Company, for example, and you hold an unlimited master mariners license, which is a license which says you can operate any vessel on any waters in the world, okay, and you go out on your skiff and have three beers, go fishing and get busted for OUI on your vessel, the question I have is, does that prohibition (and according to this bill it is a very clear prohibition) prevent you from taking your 200,000 dead weight ton tanker into the City of Portland to deliver oil when you are not operating in such a manner as to violate any of the Coast Guard rules and regulations that the license requires?

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

The Chair recognizes the Representative from Brunswick, Representative Priest.

Representative PRIEST: Mr. Speaker, Men and Women of the House: I will try to be as clear as being a lawyer will allow me to be.

The answer would be that the state law would not affect your right to operate under a federal license. The State of Maine simply does not have the power to do that because the federal government and the federal license preempts anything we do. So, if you were operating in accordance with that license, then obviously that prohibition would overrule anything in this statute.

The SPEAKER: The Chair recognizes the Representative from Augusta, Representative Hickey.

Representative HICKEY: Mr. Speaker, I would pose a question to Representative Priest.

In reading the amendment, I am curious who has the responsibility for the enforcement? It refers to a uniformed officer.

The SPEAKER: Representative Hickey of Augusta has posed a question through the Chair to Representative Priest of Brunswick who may respond if he so desires.

The Chair recognizes that Representative.

Representative PRIEST: Mr. Speaker, Men and Women of the House: Any person authorized to enforce the boating laws of this state would be authorized, obviously, to enforce this statute. That normally is the Warden Service, but obviously if the local police can enforce boating laws currently, they would be able to enforce this statute just as they enforce motor vehicle laws on the roads of their municipality.

In answer to Representative Anthony's question, could a harbormaster enforce this law if it is within his normal powers to enforce laws governing those waters, the answer is yes. So, any law enforcement officer authorized to enforce laws upon the waters is authorized to enforce this statute.

The SPEAKER: The Chair recognizes the Representative from Lisbon, Representative Jalbert.

Representative JALBERT: Mr. Speaker, Ladies and Gentlemen of the House: When this bill came before the committee, there were a lot of questions asked. I, myself, took a very long view at it. But when the game warden told us that four out of five boating fatalities are alcohol-related, I couldn't believe it. You have situations of someone who is out waterskiing, falling off and the gentleman turned around to pick him up and ran over the person. Remember now we just passed an OUI bill yesterday to try to do something. You have a bad situation out there. Four out of five boating fatalities are alcohol-related.

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

Representative ALLEN: Mr. Speaker, Men and Women of the House: I would like to react to a couple of things that have been said.

The first thing I will react to is what was just said. If you found it hard to believe that four out of five boating fatalities were caused by alcohol, that is reasonable because that is not true. The simple fact of the matter is there were four fatalities last year that were drownings. Those four fatalities were suspected alcohol use, suspected. There were 12 drownings in all in the state. So, in 1987 in the State of Maine, four out of twelve drownings were suspected alcohol use and of those four drownings -- and I don't mean to belittle the fact that someone drowned as a result of consuming alcohol, those were self-imposed drownings. In other words, it wasn't someone smashing into my canoe and drowning me because they were drunk, it was because they were drinking and under the influence of some degree of alcohol and that is unknown as to how much alcohol it was and they fell out of their boat and drowned. So, those drownings were people that drowned themselves as a result (?) of whether they were under the influence or not.

The other thing that I would like to react to is the comment that was made by the chair of the committee in that they were trying to be consistent. I think that is an admirable goal and I really respect that. However, in being consistent, I think they have been inconsistent. First of all, one glaring difference between this and the OUI driving under the influence bill is that the driving under the influence bill allows the court to seize your car. There is absolutely no provision in this bill to seize your boat.

I voted reluctantly to allow the courts the leeway to take a persons car away given particular hardships of going to work and whatever it might do

to the rest of the family. I reluctantly supported that. I have some serious questions in my mind and, if that was such a great idea, why didn't the committee also allow the courts to do the same thing for boats?

In some cases, as Representative Scarpino has pointed out, those boats are a means of livelihood. In many cases, they are not a means of livelihood, they are a means of having a good time, whether you are under the influence or not. If we want to be truly consistent, I guess my question would be, is the problem intoxication? If it is, then we should outlaw intoxication because the chances of you getting into an accident as you are walking down the street or paddling your canoe or driving your ATV or driving your golf cart or driving your snowmobile, the problem of operating in any of those manners while you are intoxicated is a problem and we ought to deal with it consistently.

The very nature of this bill, the fact that it only deals with watercraft, is a glaring inconsistency in and of itself. So, consistency is admirable, the problems in my mind are not the same. Yes, there are growing problems, the growing problem of water safety is a problem, the growing problem of snowmobile safety is a problem and it is a problem because of the number of people pursuing these activities is growing. So, it calls for a reasoned approach to the problem and I think the committee that has been set up, that we have approved of, is an appropriate vehicle to study that problem.

The SPEAKER: The Chair recognizes the Representative from Casco, Representative Simpson.

Representative SIMPSON: Mr. Speaker, Men and Women of the House: You have heard that the criticism objections to this particular provision of this bill have been studied since yesterday. I would like to point out to the House that this was one of the first bills printed in this session. People have been aware of it for over five months. The Committee on Legal Affairs worked this bill in numerous work sessions and there was no opposition to this bill. They have made substantial changes from the original bill that I submitted. Those changes primarily dealt with the concept of implied consent because what we had heard -- the major proponents were the Marine Patrol Officers and the Fish and Wildlife Wardens who worked this bill. I think they worked it at least eight work sessions that lasted -- the ones I was able to attend because of my other committee responsibilities -- at least an hour each time.

There are problems with the bill but I submit to you that the problem of operating watercraft under the influence of alcohol is a very serious problem.

Last summer, Representative Jackson and myself sponsored a hearing at Lake Region High School to deal with the numerous complaints that we were getting from citizens when we returned home from the first session. That meeting was held on July 31st at the peak of the summer activity in the Long Lake and Sebago Lake area. Over 500 people came to that meeting and many, many problems and issues with state government and what was happening on and around our lakes, were raised. The three most important ones that people talked about were the problems with our boating laws and the problems with phosphorous pollution or nutrient-loading of the lakes. Those were pieces of legislation that I sponsored and I am very happy, at this point, to see that the boating study and the phosphorous bill are doing well. The problem with operating watercraft under the influence of alcohol was the one theme that people said, over and over again, that this makes everything else that much more complicated, that much more of a problem.

If our boating laws aren't cohesive now, if they are not comprehensive, if they are not uniform, if they are not enforced, it makes it even worse when someone is out there under the influence of alcohol. We came to this session of the legislature and, as I said, this is one of the first bills printed and that work began on. We tried to deal with two things, strengthening the penalties so people would understand just what the penalty was for operating a watercraft under the influence.

Second of all, helping with the enforcement aspect of it. Right now, to operate any type of watercraft on Maine waters under the influence of alcohol, is a Class E crime. A Class E crime can have with it a penalty of \$500 or six months in jail.

Talking to judges and law enforcement officers, in the cases where they have gotten convictions for OUI in watercraft, the standard penalty is \$300. There is nothing harsh, unusual or whatever by putting it into law that that will be the minimum. It is the standard practice right now.

I will repeat again, current law says that, if you operate any watercraft, it is a Class E crime. What the committee looked at in this bill is -- what is the real problem then? The problem that they tried to address in the bill is with watercraft with horsepowers over five horsepower.

The problem there that they are obviously dealing with is that yes, it is a serious problem. That is why it has been a Class E crime in this state for a long time. When you get larger horsepower's, you are endangering other people and yourself and the party on your boat that much greater. So we wanted to make the penalty for that that much greater. What is that penalty now? That penalty is the minimum \$300 fine and for the aggravating circumstances of resisting arrest or a blood alcohol content of over .15, you would also have a two day mandatory jail sentence. There are tougher penalties for multiple offenders and you can read what those are in the bill and they are not that unreasonable.

For boats under five horsepower, the law has not changed except for the second most important part of the bill, the requirement to submit to a breath test. You have heard that there are some problems with the law enforcement officers having the breath kits. Well, that is not the case. The Office of Fiscal and Program Review said the Public Safety Division has the monies to do this. The wardens wouldn't have worked this bill for over three months in eight different work sessions knowing that they didn't have the capacity or the training to do this. In fact, last summer they ran a nine day special program on this very problem and some of the statistics that have been quoted today on the number of accidents, I am not going to dispute those, I think we can find out accurately what they are but the information we were given at the work sessions was that there were nine boating accidents last year that resulted in fatalities. Of those eight people, they were known to be under the influence of alcohol and the primary reason that they died was not because they hurt themselves so badly in their boating accident or even that they were so intoxicated that they couldn't swim, but the problem with operating watercraft under the influence of alcohol that is different than motor vehicles is the problem of hypothermia. Whether you are on inland fresh water lakes or you are on the ocean, once you are in the cold water because of your blood alcohol level, your ability to keep your body heat up is reduced substantially. Those people died primarily from hypothermia.

So, you are protecting people from each other, you are protecting them from themselves. There is a different twist to operating watercraft under the influence of alcohol, different than motor vehicles in that you are probably not going to die in a motor vehicle accident from hypothermia but there is a great risk to yourself and to the people on the boat that you are piloting if you are on fresh water or salt water.

Representative Scarpino asked a question about what the federal responsibility with the Coast Guard is. We were told at the public hearing that the current penalty or the current blood alcohol level for operating watercraft on the ocean waters is .8 for recreational use and .4 for commercial use. This bill, by paralleling what we have done with the (hopefully what we have done now) motor vehicle law by reducing it to .08 from .1 would be consistent, not just with the motor vehicle law, but with the Coast Guard law in dealing with operating watercraft under the influence. I think that is important for you to know.

As far as the summer study goes with boating laws -- there are two ways to look at that. I sponsored that bill because when I looked at all the boating laws trying to say, people wanted changes -- it was so complex, they were in various sections of the law. Some of them were Class E crimes, you can go to jail for ten years for leaving the scene of a boating accident or not going to someone's rescue. Yet, it was a Class E crime for operating under the influence. So, there are a number of problems with the boating laws.

There are two ways you can look at the benefit of this study, you can pass this law and, while that commission is doing its study of the rest of our laws, part of its charge is to look at operating under the influence. They can look at how well this law is working, how well it is not. The other side to it is, as Representative Jacques has said, is that commission will do its study. But, I think this is a problem and this is where I get (in my mind when we talk about we want to send messages out there) what would it mean to the public and to the many people who come to visit our state when they hear that yes, we had a bill to strengthen the penalty for operating under the influence of watercraft and we defeated that? I don't think that is a good message to be sending out.

I ask you to give this bill your support by defeating the motion to indefinitely postpone. It is a bill that has, as I said, has a unanimous committee report but a lot of work and thought was put into it. I think that what you will hear today is a reaction to provisions of the bill that are unclear and that can still be worked out so that this could be a good law, go on the books this summer and deal with the problem that we will face.

I just want to add one last thought as to what is driving this problem. I see it in a number of ways. Obviously, people see Maine as a recreational state but one of the problems is, with the cost of waterfront property, and many of you have camps or whatever, you have seen how much they have appreciated or maybe you would like to buy one and you see how costly they are getting. Think of an average camp. I wouldn't believe a camp or what would be called a camp on Sebago Lake, you couldn't buy today for probably less than \$150,000. That would probably be a steal.

I talked with various representatives from all your different areas and, whether it is Aroostook County or any county, that is not an unreasonable price for a camp on the water. But, look at the

price difference for a boat that you could buy for \$50,000. So, if you were going to spend \$150,000 for a marginal camp on the waterfront, think of the boat you could buy. That is driving the problem. These boats are getting bigger, they are more complex, how you deal with the waste disposal, how you deal with the docking, all these problems are accelerating and becoming worse.

So, I just leave that as the last thought, when you think of all the problems that are happening with recreation and boating and then you add alcohol to it and we can do something to strengthen that alcohol part, maybe we can mitigate those other problems somewhat until this boating commission is done.

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

Representative JACQUES: Mr. Speaker, Men and Women of the House: To get back to the bill -- Representative Simpson has said that his original bill was very simple -- that is right, here it is, two lines and it says, "A crime shall be changed from Class E to a Class C." That was the bill he submitted. This is the bill we have.

Let me assure you, and I tried my best to explain to Representative Simpson, no matter what you make the penalty provision say, we do not have the mechanics to do this now. The first time Representative Anthony's harbor master gets involved and accuses somebody of drunk driving behind the wheel of a boat and he is wrong, he is going to be in big trouble. I do not want my wardens doing the same thing because they are going to be in big trouble. They have to know the laws, they have to be trained to enforce those laws -- you can make this a hanging offense, men and women of the House, we do not have the mechanics in place to do it. We do not have the money to do it at this time.

If this is the way we are going to deal with the problem, we certainly don't need a comprehensive complex study that will be made up of law enforcement people, the Fisheries and Wildlife Department, Marine Resources to look at it and come out with some laws that don't make sense. If you are going to go along with something like this, and there may have been a lot of work put into this, but not much thought was put into it and all you have to do is read it and find out.

I would like to know who the warden was who came and testified. It certainly was not the Chief Warden or the Deputy Chief Warden because the information that was given is not the case. The Commissioner came before our committee and said the problems have been lack of communication, lack of enforcement by all the enforcement officials. He assured us that his warden service and his department would be working with the local officials to deal with the OUI problem on the boats this summer and start it on its way but we do need a good law. This is not a good law. I don't care what you do, it will not change anything because we don't have the trained people to follow this law through. I have tried to explain that to Representative Simpson and I tried and I tried but I guess you want to have a law on the books no matter if it does anything or not. We have statutes now that do that. It is not going to help.

I want to get these guys off because I troll, I go very slow or I anchor and I don't want somebody drunk with a 150 horsepower go shooting by. It disturbs me, it interrupts me, it scares the living daylights out of me. This bill is very, very poorly written, and as Representative Allen laid it on the line, there is nothing that can make this bill good at this time. So why not let the Commission do their

job, why not let us do a comprehensive study and we will get the facts, ladies and gentlemen, the facts, not hyperbole theory accusations.

Mr. Anderson gave Representative Allen the facts and the stats that he has. He is the safety officer who came up with nine. Who came up with a four out of five boating accidents that were alcohol related -- I would like to know his name because he is speaking for the department and warden service and he is wrong. He is providing people with the wrong information and he is causing a lot of concern and panic before the time has come to cause that concern and panic. That is what we are dealing with here and don't kid yourselves, when you say law enforcement, you are talking about two sets of people, Maine game wardens and Marine Resource game wardens, that is who you are talking about. My understanding was their primary objective was to protect the resource, that is the lobsters and clams and that is the fisheries and wildlife.

I don't mind them doing some other things while they are doing their duty but, by golly, they best be trained, they had better know what they are doing because I don't want them wasting their whole day in court and have a judge throw it out because they did a lousy job on the whole investigation and that is what is happening now.

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

Representative SCARPINO: Mr. Speaker, a point of order?

The SPEAKER: The Representative may state his point of order.

Representative SCARPINO: I will give you an explanation if you want after I question you -- is this amendment germane to the title?

If you would care to have an explanation to that because there are admiralty lawyers on the committee, they don't understand it.....

The SPEAKER: The Chair would advise the Representative from St. George, Representative Scarpino, since Committee Amendment "A" has been adopted. Committee Amendment "A" is not pending before the body, the Chair is not in a position to make a germaneness ruling.

Representative SCARPINO: Mr. Speaker, may I continue?

The SPEAKER: The Representative may.

Representative SCARPINO: Mr. Speaker, Men and Women of the House: It seems as if I have blown it on that motion. Let me explain to you a problem that has just come to my attention.

The good Representative from Brunswick, Representative Priest, has stated that this law would not preempt any federal licenses or anyone holding a federal license from operating in the waters in the State of Maine. The title of the bill states: "An Act to Strengthen Penalties for Person Piloting Boats Under the Influence of Alcohol" and the Statement of Fact says, "Increased marine traffic has brought increased problems with pilots, pilots operating while intoxicated. A marine pilot is an individual who is licensed by the U.S. Coast Guard to operate certain vessels of certain sizes in certain restricted waterways." The definition of a pilot is holding a federal license. That pilot, generally speaking, is not operating the vessel, he is in command of the vessel. A helmsman is operating the vessel.

While this bill will attack alcoholism among pilots and it states in the bill "among pilots" -- according to the good gentleman from Brunswick, it cannot supersede federal statute, federal licensing

and, in order to be a federal pilot, you must be a licensed pilot. You need not be an operator, you need not be operating; therefore this bill will in effect be placing a restriction upon an individual that, according to the good gentleman from Brunswick, cannot be restricted and will have no effect on anyone operating a vessel, only an individual piloting a vessel. By definition, two very different actions.

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

Representative PRIEST: Mr. Speaker, Men and Women of the House: I am aware of the distinction between piloting and operation, having served as watch officer on destroyers during my term in the Navy, having had pilots come on board and take our destroyer in and out of Newport and in and out of Norfolk and in and out of Guanatanamo Bay and a number of other ports. Really, if you read the statute, I won't argue with you that the word "piloting" perhaps could be better expressed in the title but the statute itself refers to operation and that is what we are talking about here.

Let me just say a couple of things I think need to be said. We had Mr. Fogg, who is the Chief of the Warden Enforcement (as I understand it) come and talk to us before the committee. There were representatives from the Warden Service at all times during our work sessions and they said they had the resources to enforce this. I understand that Representative Jacques disagrees but that is a question you are going to have to decide on in your own mind.

We were told by the Department and in the fiscal note that they had the resources to be able to enforce this law.

Note that the bill tracks current motor vehicle OUI language, this is not an entirely new system to waive for the Committee Amendment and indicate that this is an entirely new law and never thought up before, that is not the case. In fact, in as much as possible, it tracks existing motor vehicle OUI law with which most people are familiar with and has been tested out for a long period of time.

If the wardens can't enforce the OUI statute, then how can local police enforce a similar OUI statute? How can the sheriffs enforce that statute? How can the State Police enforce that statute? In fact, they can't. It doesn't take a superhuman to be able to prosecute an OUI. That doesn't say that it doesn't take a superhuman to be able to defend it and I wish Representative Conley were here but it doesn't take a superhuman to be able to prosecute, it takes common sense and it takes reading the law and it takes careful attention to detail. The wardens can do that just as our local police do, just as our sheriffs do that, just as our State Police do that.

I might add that this bill can be enforced by any law enforcement officer. Sheriffs can enforce this, local police can enforce this, the wardens can enforce it, it is not impossible. The Maine Criminal Justice Academy has courses all the time on how to enforce this. The Warden Service itself can provide its own training and does provide its own training on how to enforce this. We were told by the wardens, and told again and again, that the law on the books is useless because there is no requirement to submit to breath tests so it is impossible to get a conviction. That is what we have tried to correct and I think we have corrected it. I think we have a good bill here and I would urge you to reject the motion and pass this bill.

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 Island Falls, Representative Smith.

Representative SMITH: Mr. Speaker, Men and Women of the House: I serve on the Fisheries and Wildlife Committee and have for the past eight years. I don't believe the wardens are going to go out and spend a lot of time looking for people who are drinking and paddling their canoes or anything else. I do believe that, when they run into someone who is doing just that, they will have the tools to do something about it. They just won't be able to walk away and say they can't do anything.

I do believe that if a person has an accident and is drowned and the warden has to go out and drag, they are going to spend considerable more time dragging for a body than they would by going for a day in court. My questionnaire, and I come from an area where there are quite a few bodies of water, 80 percent of the people suggested that we have stronger laws.

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

Representative MURPHY: Mr. Speaker, Men and Women of the House: Some of the things that I have heard this morning, I am having a hard time swallowing, let's put it that way.

When this bill came before us, Representative Simpson brought it, I had a lot of reservations because I didn't believe there was a problem out there at all. After listening to wardens telling us of some of the problems and that they did not have the tools to work with, if I hadn't known that Representative Smith was at our hearings, I would have said that he had quoted one of the wardens because that is exactly what he said, we need a tool to work with because, right now, we have to stand back and do nothing.

I would urge you to support Representative Priest's motion and to vote against indefinite postponement.

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

Representative KIMBALL: Mr. Speaker, Men and Women of the House: This isn't an issue that I was really planning to speak on today but I have some first-hand experience with the problem of alcohol on the waterways and I thought maybe I would add a few comments.

One of the features of this bill that impresses me the most is that it gives the ability of people who are at the scene a chance to make an intervention; in other words, arrest somebody for OUI.

I happen to own a cottage on Watchic Lake in Standish and on that lake, if an incident happens with a boat and I will describe three of them that I witnessed these over the last three years sitting on my dock.

The Warden Service is oftentimes on the lake and we have to call the State Police or the sheriff, and we have run into the problem before where people leave the scene. It really gives an opportunity here to be able to direct a service that is in place at that time on the lake to make an arrest for OUI.

Let me tell you what I have seen. I had the opportunity to spend a little more time at my cottage over the last four years in the summertime and, like

anybody else, I spent some time sitting in a lawn chair out in front of the camp looking at the lake. On one occasion, I saw a 16 foot fiberglass boat that I am fairly familiar with with a 50 horsepower outboard motor with a fellow sitting on the edge of the boat with the controls. Remember, some of the controls on these older models don't kick back when you let go of the speed lever; in other words, if it is engaged in forward and you let go, it keeps going forward, it doesn't drop back. This gentleman was traveling along at a fairly low rate of speed, he was apparently intoxicated, he struck my neighbor's dock, fell out of the boat into the water and his boat proceeded on out toward the middle of the lake where there is a great deal of traffic. In southern Maine, Representative Simpson is absolutely correct, we are dealing all the time with an increase in the number of watercraft on our lakes and ponds.

The second example, and this has been in the last four or five years, is of an individual who was in a Boston Whaler. If you are not familiar with that kind of a craft, literally the front is very low and the steering wheel is in back. If you happen to get that up to a speed where it is lifting and beginning to pound the water, which puts people into an excited and exaggerated state which intoxication kind of tends to do, this fellow couldn't see where he was going. What he managed to do was drive his boat over an older gentleman, who I also know having lived on that lake for the majority of my life, and sent him to the hospital. I think that case ended up in court.

The most dramatic one happened in my own family. My uncle, while pulling my cousin's husband and his daughter on a sled at a low rate of speed (they were just sitting on it and traveling around the lake) had an individual who had put their boat into the lake on a ramp -- the model of the boat was called a Donsey, they are a high-powered, inboard boat and were water skiing on the lake -- what happened literally was this boat crossed between my uncle's boat and my cousin's husband and child on the sled at a high rate of speed. It took that sled and slammed it, just as hard as it could, into the side of that boat putting my cousin's daughter, who at that time was 6 years old, in the hospital with a concussion. There was a good chance that we could have lost her.

What is happening on these lakes, ladies and gentlemen, is the people really are doing a lot of drinking. I don't know where people get the statistics in terms of people being injured -- maybe they are not being reported because nobody is being brought up on charges all the time or whatever. I have sat there and watched these things happen and I don't doubt for a moment that when I am there this summer, I am also going to see incidents where people are intoxicated to the point of being unable to operate their boats on Watchic Lake in Standish, Maine.

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

Representative SMITH: Mr. Speaker, could I ask that the Committee Report be read, please?

The SPEAKER: The Chair would advise the gentleman that it is unanimous.

A roll call has been ordered. The pending question before the House is the motion of the Representative from Washington, Representative Allen, that L.D. 1935 and all accompanying papers be indefinitely postponed. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 257

YEA - Aliberti, Allen, Anderson, Baker, Callahan, Carroll, Carter, Cashman, Chonko, Clark, H.; Conley,



Cote, Dellert, Dexter, Dore, Duffy, Dutremble, L.; Erwin, P.; Farren, Foster, Glidden, Gould, R. A.; Hale, Hickey, Hoglund, Holt, Jacques, Joseph, Ketover, LaPointe, Lisnik, Look, Mahany, Marsano, McGowan, McHenry, Melendy, Michaud, Moholland, Paradis, P.; Pouliot, Racine, Rand, Reed, Richard, Ridley, Rotondi, Rydell, Salsbury, Scarpino, Seavey, Sheltra, Swazey, Tammaro, Tardy, Tracy, Vose, Walker, Warren, Willey, Zirkilton, The Speaker.

NAY - Anthony, Bailey, Begley, Bickford, Bost, Bott, Boutilier, Bragg, Clark, M.; Coles, Crowley, Curran, Daggett, Davis, Diamond, Farnum, Foss, Garland, Greenlaw, Gurney, Gwadosky, Handy, Harper, Hepburn, Hichborn, Higgins, Hillock, Holloway, Hussey, Jackson, Jalbert, Kilkelly, Kimball, Lawrence, Lebowitz, Lord, MacBride, Macomber, Manning, Martin, H.; Matthews, K.; Mayo, McPherson, McSweeney, Mills, Mitchell, Murphy, E.; Nicholson, Norton, Nutting, O'Gara, Oliver, Paradis, E.; Parent, Paul, Perry, Pines, Priest, Rolde, Sherburne, Simpson, Small, Smith, Stanley, Stevens, A.; Stevens, P.; Stevenson, M.; Strout, B.; Strout, D.; Taylor, Telow, Thistle, Tupper, Webster, M.; Wentworth, Whitcomb.

ABSENT - Armstrong, Brown, Hanley, Lacroix, Murphy, T.; Nadeau, G. G.; Nadeau, G. R.; Paradis, J.; Reeves, Rice, Ruhlin, Soucy, Weymouth.

Yes, 62; No, 76; Absent, 13; Paired, 0; Excused, 0.

62 having voted in the affirmative and 76 in the negative with 13 being absent, the motion did not prevail.

Subsequently, the Bill was passed to be engrossed as amended by Committee Amendment "A" (H-708) and sent up for concurrence.

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

COMMUNICATIONS

The following Communication:

STATE OF MAINE  
ONE HUNDRED AND THIRTEENTH LEGISLATURE  
COMMITTEE ON BANKING AND INSURANCE  
April 15, 1988

The Honorable John L. Martin  
Speaker of the House  
113th Legislature

Dear Speaker Martin:

We are pleased to report that all business which was placed before the Committee on Banking and Insurance during the Second Regular Session of the 113th Legislature has been completed. The breakdown of bills referred to our committee follows:

Total number of bills received	28
Unanimous reports	28
Leave to Withdraw	13
Ought to Pass	5
Ought Not to Pass	1
Ought to Pass as Amended	5
Ought to Pass in New Draft	3
Rereferred	1
Divided reports	0

Respectfully submitted,

S/Raynold Theriault S/Charlene B. Rydell  
Senate Chair House Chair

Was read and ordered placed on file.

CONSENT CALENDAR

First Day

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

(H.P. 1857) (L.D. 2542) Bill "An Act to Amend the Statutes Pertaining to the Emergency Treatment and Continuing Supervision of Chemically Dependent Persons" Committee on Human Resources reporting "Ought to Pass" as amended by Committee Amendment "A" (H-718)

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 following items appearing on Supplement No. 6 were taken up out of order by unanimous consent:

COMMUNICATIONS

The following Communication:

STATE OF MAINE  
ONE HUNDRED AND THIRTEENTH LEGISLATURE  
COMMITTEE ON UTILITIES

April 15, 1988

The Honorable John L. Martin  
Speaker of the House  
113th Legislature

Dear Speaker Martin:

We are pleased to report that all business which was placed before the Committee on Utilities during the Second Regular Session of the 113th Legislature has been completed. The breakdown of bills referred to our committee follows:

Total number of bills received	27
Unanimous reports	26
Leave to Withdraw	6
Ought to Pass	5
Ought Not to Pass	0
Ought to Pass as Amended	10
Ought to Pass in New Draft	4
Rereferred	1
Divided reports	1

Respectfully submitted,

S/John M. Kerry S/Harry L. Vose  
Senate Chair House Chair

Was read and ordered placed on file.

REPORTS OF COMMITTEES

Unanimous Leave to Withdraw

Representative CARTER from the Committee on Appropriations and Financial Affairs on Bill "An Act to Authorize a Bond Issue in the Amount of \$10,000,000 for a Grants Program for Municipal Capital Investments" (H.P. 1829) (L.D. 2505) reporting "Leave to Withdraw"

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

The following item appearing on Supplement No. 7 was taken up out of order by unanimous consent:

COMMUNICATIONS

The following Communication:

STATE OF MAINE  
ONE HUNDRED AND THIRTEENTH LEGISLATURE  
COMMITTEE ON TRANSPORTATION

April 13, 1988

The Honorable John L. Martin  
Speaker of the House  
113th Legislature

Dear Speaker Martin:

We are pleased to report that all business which was placed before the Committee on Transportation during the Second Regular Session of the 113th

Legislature has been completed. The breakdown of bills referred to our committee follows:

Total number of bills received	36
Unanimous reports	29
Leave to Withdraw	7
Ought to Pass	3
Ought Not to Pass	5
Ought to Pass as Amended	10
Ought to Pass in New Draft	4
Divided reports	7

Respectfully submitted,  
 S/Sen. Charles G. Dow                      S/Rep. Fred Moholland  
 Senate Chair                                      House Chair  
 Was read and ordered placed on file.

The Chair laid before the House the following matter: An Act to Improve the Potato Marketing Improvement Fund (H.P. 1618) (L.D. 2211) (H. "A" H-671 to C. "A" H-639) which was tabled earlier in the day and later today assigned pending passage to be enacted.

On motion of Representative Tardy of Palmyra, under suspension of the rules, the House reconsidered its action whereby L.D. 2211 was passed to be engrossed.

The same Representative offered House Amendment "A" (H-719) and moved its adoption.

House Amendment "A" (H-719) was read by the Clerk and adopted.

The Bill was passed to be engrossed as amended by Committee Amendment "A" (H-639) as amended by House Amendment "A" (H-671) thereto and House Amendment "A" (H-719) in non-concurrence and sent up for concurrence.

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

(At Ease)

The House was called to order by the Speaker.

The following item appearing on Supplement No. 8 was taken up out of order by unanimous consent:

REPORTS OF COMMITTEES  
Divided Report

Majority Report of the Committee on Judiciary reporting "Ought to Pass" as amended by Committee Amendment "A" (H-720) on Bill "An Act to Increase the Penalties for Class A, B and C Crimes" (H.P. 1683) (L.D. 2312)

- Signed:
- Senators:                      BRANNIGAN of Cumberland  
                                   BLACK of Cumberland  
                                   GAUVREAU of Androscoggin
- Representatives:              PARADIS of Augusta  
                                   COTE of Auburn  
                                   THISTLE of Dover-Foxcroft  
                                   MARSANO of Belfast  
                                   VOSE of Eastport  
                                   BEGLEY of Waldoboro  
                                   HANLEY of Paris  
                                   WARREN of Scarborough  
                                   MacBRIDE of Presque Isle

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

- Signed:  
 Representative:              CONLEY of Portland

Reports were read.

On motion of Representative Paradis of Augusta, the House accepted the Majority "Ought to Pass" Report, the Bill read once.

Committee Amendment "A" (H-720) was read by the Clerk and adopted.

Under suspension of the rules, the Bill was read the second time, passed to be engrossed as amended by Committee Amendment "A" and sent up for concurrence.

By unanimous consent, was ordered sent forthwith to the Senate.

Representative Scarpino of St. George moved that the House reconsider its action whereby Bill "An Act to Strengthen Penalties for Persons Piloting Boats Under the Influence of Alcohol" (H.P. 1424) (L.D. 1935) was passed to be engrossed as amended by Committee Amendment "A" (H-708).

The SPEAKER: The Chair will order a Division. The pending question is the motion of Representative Scarpino of St. George that the House reconsider its action whereby L.D. 1935 was passed to be engrossed. Those in favor of that motion will vote yes; those opposed will vote no.

A vote of the House was taken.

45 having voted in the affirmative, 18 in the negative, the motion to reconsider did prevail.

Representative Scarpino of St. George moved that the House reconsider its action whereby Committee Amendment "A" (H-708) was adopted.

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

Representative PRIEST: Mr. Speaker, Ladies and Gentlemen of the House: I would ask that you vote against the motion to reconsider. Obviously, there are many reasons not to do that. This matter was debated carefully and I would also note that there is a significant absence of Representatives in the Hall. I do not think the matter ought to be debated or dealt with at this time. I would also note that the bill, as I understand it, has been held so this motion might be in order at our next session when there is a full House.

The SPEAKER: The Chair will order a Division. The pending question before the House is the motion of Representative Scarpino of St. George that the House reconsider its action whereby Committee Amendment "A" was adopted. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

Representative Priest of Brunswick requested a roll call vote on the reconsider motion.

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.

Representative Allen of Washington moved that the matter be tabled later in today's session pending the motion of Representative Scarpino of St. George that the House reconsider its action whereby Committee Amendment "A" was adopted (a roll call having been ordered).

Representative Priest of Brunswick requested a Division.

The SPEAKER: The Chair will order a Division. The pending question before the House is the motion of Representative Allen of Washington that this matter be tabled later in today's session pending the

motion of Representative Scarpino of St. George that the House reconsider its action whereby Committee Amendment "A" was adopted. Those in favor of that motion will vote yes; those opposed will vote no.

A vote of the House was taken.

41 having voted in the affirmative, 67 in the negative, the motion to table did not prevail.

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

Representative DUFFY: Mr. Speaker, Ladies and Gentlemen of the House: To maybe persuade you to reconsider, I did have a conversation with the department in the last 25 or 30 minutes and they weren't aware when they testified in committee on this bill that this study had been approved and they would also like to see this bill go to a study.

The SPEAKER: A roll call has been ordered. The pending question before the House is the motion of Representative Scarpino of St. George that the House reconsider its action whereby Committee Amendment "A" was adopted. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 258

YEA - Allen, Baker, Carroll, Carter, Chonko, Clark, H.; Clark, M.; Conley, Cote, Crowley, Dore, Duffy, Dutremble, L.; Erwin, P.; Farren, Foss, Foster, Garland, Glidden, Hale, Hanley, Hickey, Hussey, Joseph, Ketover, Kilkelly, LaPointe, Lawrence, Lisnik, Look, Mahany, Manning, Marsano, McGowan, McHenry, McSweeney, Melendy, Mills, Norton, Oliver, Paradis, P.; Pouliot, Rand, Reed, Richard, Ridley, Rotondi, Ruhlin, Rydell, Scarpino, Seavey, Sheltra, Sherburne, Small, Stevenson, M.; Swazey, Tamaro, Tardy, Tracy, Vose, Walker, Warren, Webster, M.; Willey, Zirkilton, The Speaker.

NAY - Aliberti, Anthony, Bailey, Begley, Bost, Bott, Boutilier, Bragg, Curran, Daggett, Davis, Dellert, Diamond, Farnum, Greenlaw, Gurney, Gwadosky, Handy, Harper, Hepburn, Hichborn, Higgins, Hillock, Jackson, Jalbert, Kimball, Lebowitz, MacBride, Martin, H.; Matthews, K.; Mayo, Murphy, E.; Nicholson, Nutting, O'Gara, Paradis, E.; Parent, Paul, Perry, Pines, Priest, Smith, Stanley, Stevens, A.; Stevens, P.; Strout, B.; Taylor, Telow, Tupper, Wentworth, Whitcomb.

ABSENT - Anderson, Armstrong, Bickford, Brown, Callahan, Cashman, Coles, Dexter, Gould, R. A.; Hogle, Holloway, Holt, Jacques, Lacroix, Lord, Macomber, McPherson, Michaud, Mitchell, Moholland, Murphy, T.; Nadeau, G. G.; Nadeau, G. R.; Paradis, J.; Racine, Reeves, Rice, Rolde, Salsbury, Simpson, Soucy, Strout, D.; Thistle, Weymouth.

Yes, 66; No, 51; Absent, 34; Paired, 0; Excused, 0.

66 having voted in the affirmative and 51 in the negative with 34 being absent, the motion to reconsider adoption of Committee Amendment "A" did prevail.

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

Representative SCARPINO: Mr. Speaker, point of order. Is Committee Amendment "A" (H-708) germane to the title of the Bill?

The SPEAKER: The matter will be tabled pending a ruling from the Chair.

The following items appearing on Supplement No. 9 were taken up out of order by unanimous consent:

COMMUNICATIONS

The following Communication:

STATE OF MAINE  
ONE HUNDRED AND THIRTEENTH LEGISLATURE

COMMITTEE ON AUDIT AND PROGRAM REVIEW  
April 15, 1988

The Honorable John L. Martin  
Speaker of the House  
113th Legislature

Dear Speaker Martin:

We are pleased to report that all business which was placed before the Committee on Audit and Program Review during the Second Regular Session of the 113th Legislature has been completed. The breakdown of bills referred to our committee follows:

Total number of bills received	4
Unanimous reports	4
Leave to Withdraw	1
Ought to Pass	1
Ought Not to Pass	0
Ought to Pass as Amended	2
Ought to Pass in New Draft	0
Divided reports	0

Respectfully submitted,  
S/Senator Beverly Miner Bustin      S/Rep. Neil Rolde  
Senate Chair      House Chair  
Was read and ordered placed on file.

CONSENT CALENDAR

First Day

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

(H.P. 1676) (L.D. 2295) Bill "An Act to Establish an Occupational Health Program" Committee on Appropriations and Financial Affairs reporting "Ought to Pass" as amended by Committee Amendment "A" (H-721)

(H.P. 1643) (L.D. 2242) Bill "An Act to Make Health Care More Accessible to Low-Income Elderly and Disabled Individuals, Children and Pregnant Women" (Emergency) Committee on Appropriations and Financial Affairs reporting "Ought to Pass" as amended by Committee Amendment "A" (H-722)

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

(Off Record Remarks)

(At Ease)

The House was called to order by the Speaker.

The following items appearing on Supplement No. 11 were taken up out of order by unanimous consent:

SENATE PAPERS

The following Joint Order: (S.P. 999)  
ORDERED, the House concurring, that Bill, "AN ACT to Strengthen the Drunk Driving Laws", H.P. 1746, L.D. 2395, and all its accompanying papers, be recalled from engrossing to the Senate.  
Came from the Senate, read and passed.  
Was read and passed in concurrence.

COMMUNICATIONS

The following Communication:  
STATE OF MAINE  
ONE HUNDRED AND THIRTEENTH LEGISLATURE  
COMMITTEE ON ECONOMIC DEVELOPMENT  
April 15, 1988

The Honorable John L. Martin

Speaker of the House  
113th Legislature

Dear Speaker Martin:

We are pleased to report that all business which was placed before the Committee on Economic Development during the Second Regular Session of the 113th Legislature has been completed. The breakdown of bills referred to our committee follows:

Total number of bills received	16
Unanimous reports	13
Leave to Withdraw	3
Ought to Pass	0
Ought Not to Pass	2
Ought to Pass as Amended	6
Ought to Pass in New Draft	2
Divided reports	3

Respectfully submitted,  
S/Thomas H. Andrews      S/Nathaniel J. Crowley, Sr.  
Senate Chair              House Chair  
Was read and ordered placed on file.

(At Ease)

The House was called to order by the Speaker.

The following items appearing on Supplement No. 12 were taken up out of order by unanimous consent:

SENATE PAPERS

Ought to Pass as Amended

Report of the Committee on Human Resources reporting "Ought to Pass" as Amended by Committee Amendment "A" (S-461) on RESOLVE, to Create a Day Care Demonstration Project as an Employment Incentive to Help Address the Nursing Shortage (Emergency) (S.P. 791) (L.D. 2079)

Came from the Senate, with the report read and accepted and the Bill Passed to be Engrossed as amended by Committee Amendment "A" (S-461) as amended by Senate Amendment "A" (S-465) thereto.

Report was read and accepted, the Bill read once. Committee Amendment "A" (S-461) was read by the Clerk.

Senate Amendment "A" (S-465) to Committee Amendment "A" (S-461) was read by the Clerk and adopted.

Committee Amendment "A" (S-461) as amended by Senate Amendment "A" (S-465) thereto was adopted.

Under suspension of the rules, the Bill was read the second time, passed to be engrossed as amended by Committee Amendment "A" as amended by Senate Amendment "A" thereto in concurrence.

Non-Concurrent Matter

Bill "An Act to Provide for a Partial Rebate of 1987 Individual Income Tax" (H.P. 1833) (L.D. 2510) which was Passed to be Engrossed as amended by Committee Amendment "A" (H-711) in the House on April 15, 1988.

Came from the Senate Passed to be Engrossed as amended by Committee Amendment "A" (H-711) as amended by Senate Amendment "A" (S-471) thereto in non-concurrence.

The House voted to Recede and Concur.

The following item appearing on Supplement No. 13 was taken up out of order by unanimous consent:

SENATE PAPER

Non-Concurrent Matter

Bill "An Act to Recodify the Laws on Municipalities and Counties" (H.P. 1855) (L.D. 2538) which was passed to be engrossed as amended by House Amendments "B" (H-714) and "C" (H-715) in the House on April 15, 1988.

Came from the Senate passed to be engrossed as amended by House Amendment "C" (H-715) as amended by Senate Amendment "A" (S-474) thereto and House Amendment "B" (H-714) in non-concurrence.

The House voted to recede and concur.

(At Ease)

The House was called to order by the Speaker.

The following item appearing on Supplement No. 10 was taken up out of order by unanimous consent:

SENATE PAPER

Non-Concurrent Matter

Bill "An Act to Require Application and Approval for Railroads to Receive Financial Assistance from the State and to Require Notice of Major Modifications in Rail Service" (H.P. 1933) (L.D. 2634) which was read twice and passed to be engrossed under suspension of the rules and without reference to a committee in the House on April 15, 1988.

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

The House voted to Recede and Concur.

The following item appearing on Supplement No. 15 was taken up out of order by unanimous consent:

SENATE PAPER

Unanimous Leave to Withdraw

Report of the Committee on Appropriations and Financial Affairs reporting "Leave to Withdraw" on Bill "An Act to Authorize a Bond Issue in the Amount of \$4,300,000 for Constructing and Equipping Centers for Advanced Technology that Service the Economic Development Needs of Maine" (S.P. 220) (L.D. 601)

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

The following item appearing on Supplement No. 14 was taken up out of order by unanimous consent:

SENATE PAPER

Non-Concurrent Matter

Bill "An Act to Strengthen the Drunk Driving Laws" (H.P. 1746) (L.D. 2395) which was passed to be engrossed as amended by Committee Amendment "A" (H-669) as amended by House Amendment "E" (H-713) thereto in the House on April 14, 1988.

Came from the Senate passed to be engrossed as amended by Committee Amendment "A" (H-669) as amended by Senate Amendment "A" (S-472) thereto in non-concurrence.

The House voted to Recede and Concur.

By unanimous consent, all matters were ordered sent forthwith to engrossing.

(Off Record Remarks)

On motion of Representative Marsano of Belfast,

Adjourned until Monday, April 18, 1988, at two o'clock in the afternoon.

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

In Senate Chamber  
Friday  
April 15, 1988

Senate called to Order by the President.

Prayer by Reverend H. Everett Wiswell of the United Methodist Church in Waldoboro.

REVEREND WISWELL: Almighty God, who did direct and inspire the hearts of our fathers and mothers to set forth the independence of these United States and the State of Maine, we give all glory and praise to You, the author of our liberty, and the sure defense of our safety. We pray that by Your grace we may be enabled to build wisely on these foundations of freedom and of peace, that we may hold our liberties of the due process of law in high esteem and in all things seek that righteousness which exalts us as a state. Kindle in our hearts the true pure flame of love and care as we seek to meet the needs of the people we serve and grant that the fire of leadership may shine as beacon lights through these respected halls, Oh God, and that we may point the way of all people to love and care for one another. Father be with us this day as we debate, vote and carry out the democratic process. Bless us and use us that Your holy will may be done. In Jesus name we pray. Amen.

Reading of the Journal of Yesterday.

Off Record Remarks

PAPERS FROM THE HOUSE  
Non-concurrent Matter

Bill "An Act to Prohibit the Sale of Polystyrene Foam Products Containing or Made with Certain Chlorofluorocarbons"

H.P. 1797 L.D. 2461  
(S "B" S-422 to C "A"  
H-596)

In Senate, April 12, 1988, PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-596) AS AMENDED BY SENATE AMENDMENT "B" (S-422) thereto, in concurrence.

Comes from the House PASSED TO BE ENGROSSED AS AMENDED BY HOUSE AMENDMENT "A" (H-709) in NON-CONCURRENCE.

The Senate RECEDED and CONCURRED.

COMMUNICATIONS

The Following Communication:  
DIVISION OF COMMUNITY SERVICES  
STATE HOUSE STATION 73  
AUGUSTA, MAINE 04333  
April 1, 1988

The Honorable Charles P. Pray  
President of the Senate  
State House Station 3  
Augusta, Maine 04333  
Dear President Pray:

In accordance with Title 22 M.R.S.A. Section 5204(3), I am submitting to the 113th Legislature a report on Maine's Home Energy Assistance Program for the year 1986-87.

I would be happy to answer any questions you may have concerning this report.