

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

One Hundred And Fifteenth Legislature

OF THE

State Of Maine

VOLUME III

FIRST REGULAR SESSION

Senate

December 5, 1990 to May 20, 1991

STATE OF MAINE
ONE HUNDRED AND FIFTEENTH LEGISLATURE
FIRST REGULAR SESSION
JOURNAL OF THE SENATE

In Senate Chamber
Wednesday
April 24, 1991

Senate called to Order by the President.

Prayer by the Honorable Bonnie L. Titcomb of
Cumberland.

SENATOR BONNIE L. TITCOMB: Kahlie Gibran, born in Lebanon in 1883, has graced the literary world with breathtaking and spiritual poems, such as found in his great classic, "The Profit". As accustomed as I have become to enjoying his typically serious and intense works, I found it unusual, but refreshing to come upon this piece that I would read today, entitled, "Knowledge and half knowledge". Four frogs sat upon a log that lay floating on the edge of a river. Suddenly, the log was caught by the current, and swept slowly down the stream. The frogs were delighted and absorbed, because never before had they sailed. At length, the first frog spoke and said, "This is, indeed, a most marvelous log, it moves as if alive". No such log was ever known before. Then the second frog spoke and said, "Nay, my friend. The log is like other logs and does not move, it is the river that is walking to the sea, and carries us and the log with it". And the third frog spoke and said, "It is neither the log nor the river that moves, the moving is in our thinking, for without thought, nothing moves". And the three frogs began to wrangle about what was really moving. The frogs grew hotter and louder, but they could not agree. Then they turned to the fourth frog, who up to this time, had been listening attentively, holding his peace, and then they asked his opinion. The fourth frog said, "Each view is right, and none of you is wrong. The moving is in the log, and the water, and our thinking also". And the three frogs became very angry, for none of them were willing to admit that his was not the whole truth, and that the other two were not wholly wrong. Then a strange thing happened, the three frogs got together and pushed the fourth frog off the log into the river. The prayer for today would be, for each of us who would struggle through this session, hanging on diligently to our beliefs and personal perspectives, that we not lose sight of the perspective of others, that we share ideas and cooperation that would make our own decisions much wiser. Amen.

Reading of the Journal of Monday, April 22, 1991.

PAPERS FROM THE HOUSE

House Papers

Bill "An Act Relating to Workers' Compensation Insurance for Leased Employees" H.P. 1104 L.D. 1603

Comes from the House referred to the Committee on **BANKING AND INSURANCE** and **ORDERED PRINTED**.

Which was referred to the Committee on **BANKING AND INSURANCE** and **ORDERED PRINTED**, in concurrence.

Resolve, to Instruct the Department of Education to Eliminate the School System "Report Card" Program (Emergency) H.P. 1100 L.D. 1599

Resolve, to Create a Commission to Study the Need for a Technical College in York County (Emergency) H.P. 1105 L.D. 1604

Come from the House referred to the Committee on **EDUCATION** and **ORDERED PRINTED**.

Which were referred to the Committee on **EDUCATION** and **ORDERED PRINTED**, in concurrence.

Bill "An Act to Authorize the Adoption of Permit-by-rule Procedures for Certain Activities in Class 3 Wetlands" (Emergency) H.P. 1096 L.D. 1595

Comes from the House referred to the Committee on **ENERGY AND NATURAL RESOURCES** and **ORDERED PRINTED**.

Which was referred to the Committee on **ENERGY AND NATURAL RESOURCES** and **ORDERED PRINTED**, in concurrence.

Bill "An Act to Limit the Cost and the Length of Campaigns" (Emergency) H.P. 1103 L.D. 1602

Comes from the House referred to the Committee on **LEGAL AFFAIRS** and **ORDERED PRINTED**.

Which was referred to the Committee on **LEGAL AFFAIRS** and **ORDERED PRINTED**, in concurrence.

Bill "An Act Concerning Proration of Real Estate Taxes"
H.P. 1097 L.D. 1596

Bill "An Act to Authorize a Local Option Excise Tax on Gravel Mining"
H.P. 1099 L.D. 1598

Come from the House referred to the Committee on **TAXATION** and **ORDERED PRINTED**.

Which were referred to the Committee on **TAXATION** and **ORDERED PRINTED**, in concurrence.

Bill "An Act Regarding the Forest Management Plan Requirements"
H.P. 1098 L.D. 1597

Committee on **ENERGY AND NATURAL RESOURCES** suggested and **ORDERED PRINTED**.

Comes from the House referred to the Committee on **TAXATION** and **ORDERED PRINTED**.

Which was referred to the Committee on **TAXATION** and **ORDERED PRINTED**, in concurrence.

Bill "An Act to Increase the Penalty for Failure to Secure a Child with a Seat Belt"
H.P. 1101 L.D. 1600

Bill "An Act Regarding the Issuance of Special Plates for Rescue Unit Workers and Providers of Emergency Medical Services"
H.P. 1102 L.D. 1601

Come from the House referred to the Committee on **TRANSPORTATION** and **ORDERED PRINTED**.

Which were referred to the Committee on **TRANSPORTATION** and **ORDERED PRINTED**, in concurrence.

Joint Resolutions

The Following Joint Resolution: H.P. 1107

JOINT RESOLUTION EMPHASIZING THE NEED FOR ENVIRONMENTAL EDUCATION

WHEREAS, environmental problems are proliferating in this State, across the nation and around the globe; and

WHEREAS, a healthy economy depends on a sustainable base of natural resources and individual health and well-being depend on environmental quality; and

WHEREAS, addressing environmental concerns requires our understanding of economic, political and legal principles and of relevant scientific principles, and as environmental education is compatible with general education goals of our education system; and

WHEREAS, Maine residents' increasing concern with maintaining the health, safety and beauty of this State necessitates that our educational institutions provide students with opportunities, through improvement in natural science curricula, to acquire awareness of these problems and to grasp scientific principles requisite to finding solutions to them; and

WHEREAS, collaboration among formal and informal educators, government agencies and businesses and industries is needed to provide all learners, whether child or adult, with opportunities to learn about basic ecological relationships and to acquire analytical and problem-solving skills related to environmental issues, as well as a personal commitment to environmentally rational choices for themselves and their communities; now, therefore, be it

RESOLVED: That, We, the Members of the One Hundred and Fifteenth Legislature, now assembled in the First Regular Session, take this occasion to recognize that environmental education should be encouraged as a basic element in the education of grade school children, in undergraduate and graduate programs at the university level, and in technical and professional development programs, since the choices of individuals, acting alone or in groups, privately or professionally, generate and can solve many environmental problems; and be it further

RESOLVED: That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to the Honorable John R. McKernan, Jr., Governor, and the Honorable Eve Bither, Commissioner of Education.

Comes from the House **READ** and **ADOPTED**.

Which was **READ** and **ADOPTED**, in concurrence.

Senate at Ease

Senate called to order by the President.

COMMUNICATIONS

The Following Communication: S.P. 644

115TH MAINE LEGISLATURE

April 23, 1991

Senator Stephen C. Estes
Rep. Nathaniel J. Crowley, Sr.
Chairpersons
Joint Standing Committee on Education
115th Legislature
Augusta, Maine 04333

Dear Chairs:

Please be advised that Governor John R. McKernan, Jr. has nominated Lynn K. Goldfarb of Portland for appointment to the State Board of Education.

Pursuant to Title 20A, MRSA Section 401, this nomination will require review by the Joint Standing Committee on Education and confirmation by the Senate.

Sincerely,

S/Charles P. Pray
President of the Senate

S/John L. Martin
Speaker of the House

Which was **READ** and **REFERRED** to the Committee on **EDUCATION**.

Sent down for concurrence.

The Following Communication: S.P. 645

115TH MAINE LEGISLATURE

April 23, 1991

Senator Harry L. Vose
Rep. James Mitchell
Chairpersons
Joint Standing Committee on Marine Resources
115th Legislature
Augusta, Maine 04333

Dear Chairs:

Please be advised that Governor John R. McKernan, Jr. has nominated Herman Backman, III of Beals, Steve Taylor of Kittery and Brad Burns of Falmouth for appointments to the Marine Resources Advisory Council.

Pursuant to Title 12, MRSA Section 6024, these nominations will require review by the Joint Standing Committee on Marine Resources and confirmation by the Senate.

Sincerely,

S/Charles P. Pray
President of the Senate

S/John L. Martin
Speaker of the House

Which was **READ** and **REFERRED** to the Committee on **MARINE RESOURCES**.

Sent down for concurrence.

SENATE PAPERS

Bill "An Act to Amend the Calculation Procedure for Final Average Compensation under the Maine State Retirement Laws in Cases of Furloughs" (Emergency)
S.P. 620 L.D. 1624

Presented by Senator **MCCORMICK** of Kennebec
Cosponsored by Representative JALBERT of Lisbon,
Senator **CLARK** of Cumberland and Representative
HANDY of Lewiston
Approved by a majority of the Legislative Council
pursuant to Joint Rule 27.

Which was referred to the Committee on **AGING, RETIREMENT AND VETERANS** and **ORDERED PRINTED**.

Sent down for concurrence.

Bill "An Act to Provide for the 1991 and 1992 Allocations of the State Ceiling on Private Activity Bonds" (Emergency)

S.P. 632 L.D. 1680

Presented by Senator **CLARK** of Cumberland
Cosponsored by Representative LEBOWITZ of Bangor
and Representative GWADOSKY of Fairfield
Approved for introduction by a majority of the
Legislative Council pursuant to Joint Rule 27.

Which was referred to the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS** and **ORDERED PRINTED**.

Sent down for concurrence.

Bill "An Act to Require Gender Impact Analysis as Part of All Audit and Program Reviews"
S.P. 626 L.D. 1630

Presented by Senator **MCCORMICK** of Kennebec
Cosponsored by Senator **CONLEY** of Cumberland and
Representative **CATHCART** of Orono

Which was referred to the Committee on **AUDIT AND PROGRAM REVIEW** and **ORDERED PRINTED**.

Sent down for concurrence.

Resolve, to Establish the Commission to Study the Feasibility of Using the Metric System (Emergency)
S.P. 627 L.D. 1631

Presented by Senator **BALDACCI** of Penobscot

Which was referred to the Committee on **BUSINESS LEGISLATION** and **ORDERED PRINTED**.

Sent down for concurrence.

Bill "An Act Concerning Amendments to the Laws Affecting Education Programs of the Finance Authority of Maine"
S.P. 642 L.D. 1690

Presented by Senator **ESTES** of York
Cosponsored by Representative **CROWLEY** of Stockton Springs and Representative **NORTON** of Winthrop
Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.

Which was referred to the Committee on **EDUCATION** and **ORDERED PRINTED**.

Sent down for concurrence.

Bill "An Act to Encourage Waste Reduction and Recycling"
S.P. 613 L.D. 1617

Presented by Senator **LUDWIG** of Aroostook
Cosponsored by Senator **TITCOMB** of Cumberland and Representative **MARSH** of West Gardiner
Submitted by the Maine Waste Management Agency pursuant to Joint Rule 24.

Bill "An Act Concerning Enforcement of Land Use Regulations"
S.P. 617 L.D. 1621

Presented by Senator **BUSTIN** of Kennebec
Cosponsored by Representative **DAGGETT** of Augusta

Bill "An Act Prohibiting Chlorofluorocarbons in Automobile Air Conditioners"
S.P. 621 L.D. 1625

Presented by Senator **MILLS** of Oxford
Cosponsored by Representative **SIMPSON** of Casco, Representative **GOULD** of Greenville and Representative **JACQUES** of Waterville
Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.

Bill "An Act Relating to Unavoidable Equipment Malfunctions"
S.P. 625 L.D. 1629

Presented by Senator **VOSE** of Washington
Cosponsored by Senator **LUDWIG** of Aroostook, Representative **FARREN** of Cherryfield and Representative **TAMMARO** of Baileyville

Bill "An Act to Clarify the Solid Waste Landfill Remediation and Closure Program"
S.P. 639 L.D. 1687

Presented by Senator **LUDWIG** of Aroostook
Cosponsored by Senator **CAHILL** of Sagadahoc, Representative **ROTONDI** of Athens and Representative **MICHAUD** of East Millinocket
Submitted by the Department of Environmental Protection pursuant to Joint Rule 24.

Bill "An Act to Establish a Public Solid Waste Facilities Loan and Grant Program"
S.P. 641 L.D. 1689

Presented by Senator **FOSTER** of Hancock
Cosponsored by Senator **LUDWIG** of Aroostook, Representative **JACQUES** of Waterville and Representative **MICHAUD** of East Millinocket
Submitted by the Maine Waste Management Agency pursuant to Joint Rule 24.

Which were referred to the Committee on **ENERGY AND NATURAL RESOURCES** and **ORDERED PRINTED**.

Sent down for concurrence.

Bill "An Act to Provide That An Upper Age Limit May Not Be Imposed By the Maine State Housing Authority"
S.P. 618 L.D. 1622

Presented by Senator **MILLS** of Oxford (By Request)
Cosponsored by Senator **BRANNIGAN** of Cumberland

Which was referred to the Committee on **HOUSING AND ECONOMIC DEVELOPMENT** and **ORDERED PRINTED**.

Sent down for concurrence.

Resolve, to Create a Comprehensive Health Care Plan for the State

S.P. 611 L.D. 1615

Presented by Senator **BRAWN** of Knox
Cosponsored by Representative **CARLETON** of Wells
and Senator **CONLEY** of Cumberland

Bill "An Act to Allow the Receipt of Grants by the Commissioner of Human Services to Create Jobs for Persons with Disabilities in the State"

S.P. 637 L.D. 1685

Presented by Senator **TITCOMB** of Cumberland
Cosponsored by Senator **BUSTIN** of Kennebec,
Representative **RYDELL** of Brunswick and
Representative **LARRIVEE** of Gorham

Which were referred to the Committee on **HUMAN RESOURCES** and **ORDERED PRINTED**.

Sent down for concurrence.

Bill "An Act to Provide Due Process To Participants in the Driver Education Evaluation Program"

S.P. 614 L.D. 1618

Presented by Senator **CONLEY** of Cumberland
Cosponsored by Representative **STEVENS** of Bangor
and Representative **TRACY** of Rome

Bill "An Act to Reduce the Filing Fee for Jury Trials" (Emergency)

S.P. 631 L.D. 1679

Presented by Senator **CONLEY** of Cumberland
Cosponsored by Representative **PARADIS** of Augusta
and Representative **MARSANO** of Belfast
Approved for introduction by a majority of the
Legislative Council pursuant to Joint Rule 27.

Bill "An Act Concerning Children in Need of Social Services"

S.P. 635 L.D. 1683

Presented by Senator **BOST** of Penobscot
Cosponsored by Representative **ANTHONY** of South
Portland, Representative **CHONKO** of Topsham and
Senator **BRANNIGAN** of Cumberland

Bill "An Act to Provide Additional Protection for Victims of Criminal Threatening and Terrorizing"

S.P. 638 L.D. 1686

Presented by Senator **MATTHEWS** of Kennebec
Cosponsored by Representative **PARENT** of Benton,
Representative **POWERS** of Coplin Plantation and
Representative **PARADIS** of Augusta

Which were referred to the Committee on **JUDICIARY** and **ORDERED PRINTED**.

Sent down for concurrence.

Bill "An Act Relating to the Jail Operations Surcharge Fund"

S.P. 612 L.D. 1616

Presented by Senator **GAUVREAU** of Androscoggin
Cosponsored by Representative **PENDLETON** of
Scarborough

Committee on **JUDICIARY** suggested and **ORDERED PRINTED**.

On motion by Senator **CLARK** of Cumberland,
referred to the Joint Select Committee on **CORRECTIONS**.

Sent down for concurrence.

Bill "An Act to Prohibit the Closing of State Liquor Stores"

S.P. 630 L.D. 1678

Presented by Senator **MILLS** of Oxford
Cosponsored by Representative **LAWRENCE** of Kittery
Approved for introduction by a majority of the
Legislative Council pursuant to Joint Rule 27.

Bill "An Act to Amend the Laws Concerning Solicitation by Law Enforcement Officers"

S.P. 634 L.D. 1682

Presented by Senator **MCCORMICK** of Kennebec
Cosponsored by Representative **STEVENS** of Bangor

Which were referred to the Committee on **LEGAL AFFAIRS** and **ORDERED PRINTED**.

Sent down for concurrence.

Bill "An Act Authorizing Issuance of an Official State Nondriver Identification Card to Persons 15 Years of Age or Older"

S.P. 615 L.D. 1619

Presented by Senator **CONLEY** of Cumberland
Cosponsored by Representative **OLIVER** of Portland

Bill "An Act to Require State Employees to Reimburse the State for Frequent-flier Awards" S.P. 628 L.D. 1632

Presented by Senator WEBSTER of Franklin
Cosponsored by Representative HANLEY of Paris and Representative WHITCOMB of Waldo

Which were referred to the Committee on **STATE AND LOCAL GOVERNMENT** and **ORDERED PRINTED**.

Sent down for concurrence.

Bill "An Act to Review the Kennebec County Budget Committee" (Emergency) S.P. 640 L.D. 1688

Presented by Senator BUSTIN of Kennebec
Cosponsored by Representative DAGGETT of Augusta and Representative JACQUES of Waterville

Committee on **STATE AND LOCAL GOVERNMENT** suggested and **ORDERED PRINTED**.

On motion by Senator CLARK of Cumberland, Tabled 1 Legislative Day, pending **REFERENCE**.

Bill "An Act to Provide Property Tax Relief Benefits to an Estate through an Executor, Administrator, Personal Representative or Heir When a Taxpayer Has Died" S.P. 616 L.D. 1620

Presented by Senator TITCOMB of Cumberland
Cosponsored by Representative LORD of Waterboro and Representative GEAN of Alfred

Bill "An Act Concerning Exemption from Property Tax of Wetlands" S.P. 623 L.D. 1627

Presented by Senator ESTES of York

Bill "An Act Concerning Conservation Easements" S.P. 624 L.D. 1628

Presented by Senator ESTES of York

Which were referred to the Committee on **TAXATION** and **ORDERED PRINTED**.

Sent down for concurrence.

Bill "An Act Concerning Responsibility of Motor Vehicle Owners for Registration" S.P. 619 L.D. 1623

Presented by Senator MILLS of Oxford
Cosponsored by Representative BOUTILIER of Lewiston and Representative HALE of Sanford

Bill "An Act to Amend the Motor Vehicle Laws" S.P. 633 L.D. 1681

Presented by Senator MILLS of Oxford
Cosponsored by Representative BOUTILIER of Lewiston
Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.

Which were referred to the Committee on **TRANSPORTATION** and **ORDERED PRINTED**.

Sent down for concurrence.

Bill "An Act to Amend the Laws Governing the Kennebec Water District" S.P. 622 L.D. 1626

Presented by Senator MATTHEWS of Kennebec
Cosponsored by Representative JACQUES of Waterville, Senator BUSTIN of Kennebec and Representative VIGUE of Winslow

Resolve, to Establish a Commission to Study the Effects of Higher Utility Charges on Nonprofit Institutions (Emergency) S.P. 636 L.D. 1684

Presented by Senator MATTHEWS of Kennebec
Cosponsored by Senator BOST of Penobscot and Representative CLARK of Millinocket

Which were referred to the Committee on **UTILITIES** and **ORDERED PRINTED**.

Sent down for concurrence.

ORDERS

Joint Resolution

On motion by President PRAY of Penobscot (Cosponsored by: Speaker MARTIN of Eagle Lake, Senator MILLS of Oxford, Representative PINEAU of Jay) (Approved for Introduction by a majority of the Legislative Council pursuant to Joint Rule 27) the following Joint Resolution:
S.P. 643

**JOINT RESOLUTION MEMORIALIZING THE
CONGRESS OF THE UNITED STATES TO OUTLAW THE USE OF
PERMANENT REPLACEMENT WORKERS**

WE, your Memorialists, the Members of the One Hundred and Fifteenth Legislature of the State of Maine, now assembled in the First Regular Session, most respectfully present and petition the Congress of the United States as follows:

WHEREAS, permanent replacement of striking workers has become an increasingly common practice, particularly in Maine; and

WHEREAS, the practice of permanent replacement of long-time workers is grossly unfair to workers, their families and their communities, is destructive to community harmony and to labor-management trust and fundamentally subverts the right to strike guaranteed to American workers by the National Labor Relations Act; and

WHEREAS, certain Maine employers have, in the 1980's, replaced large numbers of permanent workers who were exercising their rights to strike under the National Labor Relations Act with replacement workers, including 300 replaced workers at Coles Express in 1983-84, 200 replaced workers at F.M.C. in Rockland, 2000 replaced workers at Guilford Transportation in 1985-87, 324 replaced workers at Boise Cascade in 1986 and 1000 replaced workers at International Paper in Jay in 1987-88; and

WHEREAS, the Governor of Maine has vetoed proposed legislation limiting the use of replacement workers on the ground that the legislation is preempted by federal law; and

WHEREAS, the Supreme Judicial Court has ruled that other legislation regulating the ability of employers to hire strikebreakers is also preempted by federal law; now, therefore, be it

RESOLVED: That We, your Memorialists, respectfully recommend and urge the Congress of the United States to immediately hold hearings and to enact broad and comprehensive legislation making the right to strike without retaliation a guaranteed right, so that the United States will join Canada and all of the advanced industrial democracies that do not allow the permanent replacement of peaceful, law-abiding economic strikers; and be it further,

RESOLVED: That suitable copies of this Memorial, duly authenticated by the Secretary of State, be transmitted to the Honorable George H. W. Bush, President of the United States, to the President of the Senate and the Speaker of the House of Representatives of the Congress of the United States and to each Member of the Maine Congressional Delegation.

Which was **READ** and **ADOPTED**.
Sent down for concurrence.

COMMITTEE REPORTS

House

Ought Not to Pass

The following **Ought Not to Pass** Report shall be placed in the Legislative Files without further action pursuant to Rule 15 of the Joint Rules:

From the Committee on **TRANSPORTATION** Bill "An Act to Amend the Gross Vehicle Weight Limits of Commercial Vehicles"

H.P. 551 L.D. 788

Ought to Pass

The Committee on **BUSINESS LEGISLATION** on Bill "An Act to Clarify the Provisions for Temporary and Conditional Psychologists' Licenses"

H.P. 724 L.D. 1028

Reported that the same **Ought to Pass**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED**.

Which Report was **READ** and **ACCEPTED**, in concurrence.

The Bill **READ ONCE**.

The Bill **TOMORROW ASSIGNED FOR SECOND READING**.

Ought to Pass As Amended

The Committee on **BUSINESS LEGISLATION** on Bill "An Act to Expand Consumer Membership on the Board of Osteopathic Examination and Registration"

H.P. 361 L.D. 515

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-145)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-145)**.

Which Report was **READ** and **ACCEPTED**, in concurrence.

The Bill **READ ONCE**.

Committee Amendment "A" (H-145) **READ** and **ADOPTED**, in concurrence.

The Bill as Amended, TOMORROW ASSIGNED FOR SECOND READING.

The Committee on BUSINESS LEGISLATION on Bill "An Act to Improve the Regulatory Operations of the Board of Licensing of Auctioneers" (Emergency)
H.P. 440 L.D. 623

Reported that the same Ought to Pass as Amended by Committee Amendment "A" (H-146).

Comes from the House with the Report READ and ACCEPTED and the Bill PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-146).

Which Report was READ and ACCEPTED, in concurrence.

The Bill READ ONCE.

Committee Amendment "A" (H-146) READ and ADOPTED, in concurrence.

The Bill as Amended, TOMORROW ASSIGNED FOR SECOND READING.

The Committee on EDUCATION on Bill "An Act to Improve Eye Care in the Schools"
H.P. 382 L.D. 556

Reported that the same Ought to Pass as Amended by Committee Amendment "A" (H-147).

Comes from the House with the Report READ and ACCEPTED and the Bill PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-147).

Which Report was READ and ACCEPTED, in concurrence.

The Bill READ ONCE.

Committee Amendment "A" (H-147) READ and ADOPTED, in concurrence.

The Bill as Amended, TOMORROW ASSIGNED FOR SECOND READING.

The Committee on LEGAL AFFAIRS on Bill "An Act to Amend the Public Drinking Laws"
H.P. 405 L.D. 588

Reported that the same Ought to Pass as Amended by Committee Amendment "A" (H-148).

Comes from the House with the Report READ and ACCEPTED and the Bill PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-148).

Which Report was READ.

THE PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Matthews.

Senator MATTHEWS: Thank you Mr. President. I wonder if someone on the Committee might explain this Bill?

THE PRESIDENT: The Senator from Kennebec, Senator Matthews, has posed a question through the Chair to any Senator who may care to respond. The Chair recognizes the Senator from Oxford, Senator Mills.

Senator MILLS: Thank you Mr. President. Ladies and Gentlemen of the Senate. This Bill originally was basically an Old Orchard Bill. It dealt with people drinking on the Old Orchard Beach, and urinating in public. We struck out all the parts of urinating in public and everything else, and just amended the section of the signs that have to be placed on the beaches. Instead of being every one hundred and fifty feet apart, they have to be two hundred feet apart, so that is all the Bill does now. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Matthews.

Senator MATTHEWS: Thank you Mr. President. Ladies and Gentlemen of the Senate. I am almost ashamed that I asked the question. Thank you Mr. President.

Which Report was ACCEPTED, in concurrence.

The Bill READ ONCE.

Committee Amendment "A" (H-148) READ and ADOPTED, in concurrence.

The Bill as Amended, TOMORROW ASSIGNED FOR SECOND READING.

The Committee on LEGAL AFFAIRS on Bill "An Act to Clarify Provisions Relating to the Bureau of Intergovernmental Drug Enforcement"
H.P. 423 L.D. 606

Reported that the same Ought to Pass as Amended by Committee Amendment "A" (H-149).

Comes from the House with the Report READ and ACCEPTED and the Bill PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-149).

Which Report was READ and ACCEPTED, in concurrence.

The Bill **READ ONCE**.

Committee Amendment "A" (H-149) **READ** and **ADOPTED**, in concurrence.

The Bill as **Amended**, **TOMORROW ASSIGNED FOR SECOND READING**.

Divided Report

The Majority of the Committee on **AGRICULTURE** on Bill "An Act Concerning the Restraint of Dogs That Pose a Public Risk"

H.P. 604 L.D. 864

Reported that the same **Ought Not to Pass**.

Signed:

Senator:

TWITCHELL of Oxford

Representatives:

TARDY of Palmyra
BELL of Caribou
STROUT of Corinth
HUSSEY of Milo
SPEAR of Nobleboro
ALIBERTI of Lewiston
PINES of Limestone
PARENT of Benton

The Minority of the same Committee on the same subject reported that the same **Ought to Pass** as **Amended by Committee Amendment "A" (H-112)**

Signed:

Representatives:

MAHANY of Easton
NUTTING of Leeds

Comes from the House with the Minority **UGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-112)**.

Which Reports were **READ**.

Senator **TWITCHELL** of Oxford moved to **ACCEPT** the Majority **UGHT NOT TO PASS** Report in **NON-CONCURRENCE**.

THE PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Titcomb.

Senator **TITCOMB**: Thank you Mr. President. Ladies and Gentlemen of the Senate. I would like to address some concern that I have with the Majority Report, and frankly, because of the time that I had to spend on the Energy and Natural Resources Committee, I was not able to be on the Agriculture Committee that day for this vote, so my name does not appear on either of the two Reports.

But, I would express a very sincere concern that the Majority Report not be enacted by this Body. What this proposed Bill does, is provide that if a dog bites an individual, that although we know that in the Maine Statute it requires a local animal patrol officer to go to court and get a court order to restrain the dog following a bite, if the owner refuses to take the appropriate action, sometimes this delay can be a month, and in the interim, the owner of that dog has the right to keep that dog unrestrained on his or her property. You will find on your desks a notice from a member of the other Body giving us specific reference to a specific incident where a child was bitten, savagely attacked by a dog, and the owner refused to restrain the dog. It was a month before the court took attention on this issue. Now, this is a very serious concern.

All this Bill does, is simply change a small part of the current statute to allow the local law enforcement officer, the animal control officer, to obtain an order so that action can be more expeditiously taken to control the situation if the owner refuses to restrain the animal properly. If the owner does not take responsibility, and refuses to restrain the animal that has already bitten an individual, then this provides that a law enforcement officer can do that. Now, it was a Minority Report, I don't know what the sentiments were, I would direct you to a communication that you have on your desk to action that has been taken on this. I would encourage support of the Minority Report. Thank you Mr. President.

THE PRESIDENT: The Chair recognizes the Senator from Oxford, Senator Twitchell.

Senator **TWITCHELL**: Thank you Mr. President. Ladies and Gentlemen of the Senate. The Animal Welfare Board has taken a stand on this position that we have adequate laws on the books now and that this Bill is not needed. We felt that this was a local issue where the dog ran around for twenty days, and the animal control officer couldn't catch it. He did summons the owner five different times, and the owner paid no attention to the summons. So, we just felt that this Bill wasn't necessary, because we have adequate laws on the books.

Senator **KANY** of Kennebec requested a Division.

THE PRESIDENT: The pending question before the Senate is the motion by Senator **TWITCHELL** of Oxford to **ACCEPT** the Majority **UGHT NOT TO PASS** Report in **NON-CONCURRENCE**.

A Division has been requested.

Will all of those in favor of the motion by Senator **TWITCHELL** of Oxford to **ACCEPT** the Majority **UGHT NOT TO PASS** Report in **NON-CONCURRENCE**, please rise in their places and remain standing until counted.

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

19 Senators having voted in the affirmative and 9 Senators having voted in the negative, the motion by Senator TWITCHELL of Oxford to ACCEPT the Majority OUGHT NOT TO PASS Report in NON-CONCURRENCE, PREVAILED.

Sent down for concurrence.

Divided Report

The Majority of the Committee on FISHERIES AND WILDLIFE on Bill "An Act Concerning Ice Fishing" H.P. 485 L.D. 679

Reported that the same Ought to Pass as Amended by Committee Amendment "A" (H-132)

Signed:

Senators:

MATTHEWS of Kennebec
TWITCHELL of Oxford
SUMMERS of Cumberland

Representatives:

JACQUES of Waterville
DUFFY of Bangor
PAUL of Sanford
CARROLL of Southwest Harbor

The Minority of the same Committee on the same subject reported that the same Ought Not to Pass.

Signed:

Representatives:

CLARK of Millinocket
ROTONDI of Athens
TRACY of Rome
GREENLAW of Standish
FARREN of Cherryfield
SWAZEY of Bucksport

Comes from the House with the Minority OUGHT NOT TO PASS Report READ and ACCEPTED.

Which Reports were READ.

The Majority OUGHT TO PASS AS AMENDED Report was ACCEPTED in NON-CONCURRENCE.

The Bill READ ONCE.

Committee Amendment "A" (H-132) READ and ADOPTED.

The Bill as Amended, TOMORROW ASSIGNED FOR SECOND READING.

Senate

Ought Not to Pass

The following Ought Not to Pass Reports shall be placed in the Legislative Files without further action pursuant to Rule 15 of the Joint Rules:

Reported by Senator CONLEY for the Committee on HUMAN RESOURCES Bill "An Act to Provide Equitable Reimbursement for Capital Costs of Nursing Homes" S.P. 480 L.D. 1282

Reported by Senator ESTY for the Committee on LABOR Bill "An Act to Provide Union Security Rights for Municipal Public Employees" S.P. 467 L.D. 1250

Reported by Senator CONLEY for the Committee on LABOR Bill "An Act Concerning Salary Provisions for Automotive Industry Personnel" S.P. 491 L.D. 1329

Ought to Pass

Senator ESTY for the Committee on LABOR on Bill "An Act to Exempt Certain Students from Eligibility for Unemployment Compensation Benefits" S.P. 222 L.D. 549

Reported that the same Ought to Pass.

Which Report was READ and ACCEPTED.

The Bill READ ONCE.

The Bill TOMORROW ASSIGNED FOR SECOND READING.

Senator ESTY for the Committee on LABOR on Bill "An Act to Create a Duty of Fair Representation under the University of Maine System Labor Relations Act" S.P. 489 L.D. 1327

Reported that the same Ought to Pass.

Which Report was READ and ACCEPTED.

The Bill READ ONCE.

The Bill TOMORROW ASSIGNED FOR SECOND READING.

Ought to Pass As Amended

Senator BUSTIN for the Joint Select Committee on CORRECTIONS on Bill "An Act Pertaining to Community Corrections Programs" (Emergency) S.P. 207 L.D. 534

Reported that the same **Ought to Pass as Amended** by **Committee Amendment "A" (S-83)**.

Which Report was **READ** and **ACCEPTED**.

The Bill **READ ONCE**.

Committee Amendment "A" (S-83) **READ** and **ADOPTED**.

The Bill as **Amended, TOMORROW ASSIGNED FOR SECOND READING**.

Senator **BRAWN** for the Committee on **EDUCATION** on Bill "An Act to Revise Transition Services for Disabled Students"

S.P. 79 L.D. 142

Reported that the same **Ought to Pass as Amended** by **Committee Amendment "A" (S-85)**.

Which Report was **READ** and **ACCEPTED**.

The Bill **READ ONCE**.

Committee Amendment "A" (S-85) **READ** and **ADOPTED**.

The Bill as **Amended, TOMORROW ASSIGNED FOR SECOND READING**.

Senator **BOST** for the Committee on **TAXATION** on Resolve, Authorizing the State Tax Assessor to Convey the Interest of the State in Certain Real Estate in the Unorganized Territory

S.P. 367 L.D. 969

Reported that the same **Ought to Pass as Amended** by **Committee Amendment "A" (S-84)**.

Which Report was **READ** and **ACCEPTED**.

The Resolve **READ ONCE**.

Committee Amendment "A" (S-84) **READ** and **ADOPTED**.

The Resolve as **Amended, TOMORROW ASSIGNED FOR SECOND READING**.

SECOND READERS

The Committee on **Bills in the Second Reading** reported the following:

House

Bill "An Act to Increase Revenues to the General Fund by Streamlining Collection Methods for Use Taxes on Snowmobiles and All-terrain Vehicles Pursuant to the Maine Sunset Act" (Emergency)

H.P. 283 L.D. 404

Bill "An Act to Amend and Add to Certain Provisions of Geographic-based Information Services"

H.P. 743 L.D. 1047

Bill "An Act to Address Staffing Inequities Resulting from the Implementation of the Maine Financial and Administrative Statewide Information System Pursuant to the Maine Sunset Act" (Emergency)

H.P. 772 L.D. 1104

Which were **READ A SECOND TIME** and **PASSED TO BE ENGROSSED**, in concurrence.

House As Amended

Bill "An Act Designed to Make the Use and Storage of Firearms Safer"

H.P. 59 L.D. 87
(C "B" H-123)

Bill "An Act Concerning Nighttime Business Operation"

H.P. 142 L.D. 212
(C "A" H-134)

Bill "An Act Regarding the Operation of the Superior Court"

H.P. 158 L.D. 243
(C "A" H-127)

Bill "An Act Regarding Court Deposits and Revenue Reporting"

H.P. 169 L.D. 254
(C "A" H-144)

Bill "An Act to Prescribe the Duties and Liabilities of Roller-skating Rink Operators and Persons Who Use Roller-skating Rinks"

H.P. 182 L.D. 267
(C "A" H-133)

Bill "An Act to Clarify the Powers and Duties of the Department of Administration, through the Bureau of Purchases"

H.P. 221 L.D. 312
(C "A" H-129)

Bill "An Act Concerning Destruction of Certain Court Records in Real Estate Matters"
H.P. 355 L.D. 485
(C "A" H-143)

Bill "An Act Restricting the Use of the Names of Maine Banks on Credit Cards"
H.P. 408 L.D. 591
(C "A" H-137)

Bill "An Act to Clarify the Lien Rights of Water Utilities"
H.P. 464 L.D. 658
(C "A" H-140)

Bill "An Act to Prohibit Family Exclusion Clauses in Automobile Insurance Policies"
H.P. 465 L.D. 659
(C "A" H-136)

Bill "An Act to Correct Language in the Laws Governing Intensive Supervision"
H.P. 545 L.D. 782
(C "A" H-139)

Bill "An Act to Amend the Power of Sale Foreclosure Laws"
H.P. 555 L.D. 798
(C "A" H-142)

Bill "An Act to Permit Students to Take Tests for Credit for Certain Classes"
H.P. 556 L.D. 799
(C "A" H-115)

Bill "An Act to Amend the Law Relating to Road Dust"
H.P. 564 L.D. 807
(C "A" H-141)

Bill "An Act to Amend Maine's Antitrust Laws"
H.P. 566 L.D. 809
(C "A" H-126)

Bill "An Act to Alter the Mandate of the Maine Low-level Radioactive Waste Authority to Include Reduction of Low-level Radioactive Waste"
H.P. 722 L.D. 1026
(C "A" H-128)

Bill "An Act to Require Casualty Insurers to Provide an Annual Valuation of Loss Reserves"
H.P. 786 L.D. 1118
(C "A" H-138)

Which were **READ A SECOND TIME** and **PASSED TO BE ENGROSSED, As Amended**, in concurrence.

Senator **PEARSON** of Penobscot was granted unanimous consent to address the Senate off the Record.

Senator **GAUVREAU** of Androscoggin was granted unanimous consent to address the Senate off the Record.

Bill "An Act to Amend the Composition of the Board of Trustees of the Maine Technical College System"

H.P. 395 L.D. 569
(S "A" S-75 to C "A" H-100)

Which was **READ A SECOND TIME** and **PASSED TO BE ENGROSSED, As Amended** in **NON-CONCURRENCE**.

Sent down for concurrence.

Senate As Amended

Bill "An Act to Amend the Maine Uniform Transfers to Minors Act to Permit the Holding of Custodial Property Registered under a Street or Nominee Name"
S.P. 112 L.D. 209
(C "A" S-77)

RESOLUTION, Proposing an Amendment to the Constitution of Maine to Protect the Assets of State Retirement Plans

S.P. 122 L.D. 224
(C "A" S-82)

Bill "An Act Relating to Alcohol Licenses for Golf Clubs"

S.P. 195 L.D. 504
(C "A" S-79)

Bill "An Act Relating to Assumption of Medical Expenses by the State in Child Protection Investigations"

S.P. 211 L.D. 538
(C "A" S-81)

Bill "An Act to Amend the University of Maine System Charter"

S.P. 325 L.D. 881
(C "A" S-80)

Bill "An Act to Modify the Maine Residents Property Tax Program"

S.P. 385 L.D. 1062
(C "A" S-76)

Which were **READ A SECOND TIME** and **PASSED TO BE ENGROSSED, As Amended.**

Sent down for concurrence.

Bill "An Act to Change the Process of Selecting the Commissioner of Education"

S.P. 51 L.D. 81
(C "A" S-56)

Which was **READ A SECOND TIME.**

On motion by Senator **CLARK** of Cumberland, Tabled 1 Legislative Day, pending **PASSAGE TO BE ENGROSSED, as Amended.**

Bill "An Act to Create a Special Liquor License for Certain Service Provider Organizations"

S.P. 136 L.D. 276
(C "A" S-78)

Which was **READ A SECOND TIME.**

On motion by Senator **CLARK** of Cumberland, Tabled 1 Legislative Day, pending **PASSAGE TO BE ENGROSSED, as Amended.**

ENACTORS

The Committee on **Engrossed Bills** reported as truly and strictly engrossed the following:

An Act to Require the Earlier Determination of State Aid to Education

S.P. 39 L.D. 61

An Act to Eliminate the Requirement of Mediation in Certain Domestic Cases

H.P. 72 L.D. 100

An Act to Assist in the Cleanup of Contaminated Property

H.P. 113 L.D. 156
(C "A" H-62)

An Act to Provide Equity in the Natural Resources Protection Laws

S.P. 125 L.D. 227
(C "A" S-43)

An Act to Amend the Charitable Solicitations Act

H.P. 274 L.D. 394
(C "A" H-66)

An Act to Change the Specifications for Membership of the Maine Dental Health Council

S.P. 180 L.D. 489
(C "A" S-39)

An Act to Protect Stone Walls, Stone Impoundments and Timber Bridges of Historical Significance

H.P. 379 L.D. 553
(C "A" H-69)

An Act to Amend the Law Governing the Election of Members to Regional Vocational Boards

S.P. 252 L.D. 710

An Act to Protect the Confidentiality of Library Records at Libraries of the University of Maine System

S.P. 260 L.D. 718
(C "A" S-42)

An Act Pertaining to the Licensing of Boarding Care Facilities

S.P. 269 L.D. 728

An Act to Amend the Laws Concerning the Aeronautical Functions Investigation

S.P. 277 L.D. 736

An Act to Reestablish the Board of Visitors of State Institutions, except for the Augusta Mental Health Institute and the Bangor Mental Health Institute

S.P. 279 L.D. 738
(C "A" S-38)

An Act Concerning the Town of Rumford Water District

H.P. 680 L.D. 979

Which were **PASSED TO BE ENACTED** and having been signed by the President, were presented by the Secretary to the Governor for his approval.

An Act to Increase Support for Affordable Housing

H.P. 404 L.D. 587
(C "A" H-70)

On motion by Senator **PEARSON** of Penobscot, placed on the **SPECIAL APPROPRIATIONS TABLE**, pending **ENACTMENT.**

An Act to Amend the Election Laws Relating to Ballot Counting

H.P. 450 L.D. 640
(C "A" H-65)

On motion by Senator PEARSON of Penobscot, placed on the SPECIAL APPROPRIATIONS TABLE, pending ENACTMENT.

An Act to Amend the Laws Governing the Bath Children's Home

S.P. 282 L.D. 741
(C "A" S-37)

On motion by Senator PEARSON of Penobscot, placed on the SPECIAL APPROPRIATIONS TABLE, pending ENACTMENT.

Emergency

An Act Concerning Waste Management

H.P. 318 L.D. 448
(C "A" H-68)

This being an Emergency Measure and having received the affirmative vote of 28 Members of the Senate, with no Senators having voted in the negative, and 28 being more than two-thirds of the entire elected Membership of the Senate, was **PASSED TO BE ENACTED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

Emergency

An Act to Prevent Multiple Assessments of Patients at the Augusta Mental Health Institute

S.P. 323 L.D. 879
(C "A" S-44)

This being an Emergency Measure and having received the affirmative vote of 26 Members of the Senate, with no Senators having voted in the negative, and 26 being more than two-thirds of the entire elected Membership of the Senate, was **PASSED TO BE ENACTED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

Emergency

An Act to Allow the Part-time Chaplain's Position at the Maine State Prison to Be a Job-sharing Position

H.P. 979 L.D. 1422
(H "A" H-116)

This being an Emergency Measure and having received the affirmative vote of 26 Members of the Senate, with no Senators having voted in the negative, and 26 being more than two-thirds of the entire elected Membership of the Senate, was **PASSED TO BE ENACTED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

Emergency Resolve

Resolve, to Direct the Department of Mental Health and Mental Retardation to Develop a Plan to Provide Appropriate Services for Severely Mentally Ill Persons Who Are Living in Homeless Shelters

H.P. 474 L.D. 668
(C "A" H-71)

This being an Emergency Measure and having received the affirmative vote of 25 Members of the Senate, with 1 Senator having voted in the negative, and 25 being more than two-thirds of the entire elected Membership of the Senate, was **FINALLY PASSED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

Out of order and under suspension of the Rules, the Senate considered the following:

ORDERS

Joint Order

On motion by Senator ESTES of York the following Joint Order: S.P. 649

ORDERED, the House concurring, that Bill, "An Act Concerning Federal Impact Aid for Education," S.P. 72. L.D. 128, with all its accompanying papers be recalled from the legislative files to the Senate.

Which was **READ**.

THE PRESIDENT: The pending question before the Senate is **PASSAGE**. Pursuant to Joint Rule 15 this Joint Order requires a two-thirds vote of those present and voting.

Will all of those members in favor of **PASSAGE**, please rise and remain standing in your place until counted.

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

27 Senators having voted in the affirmative and no Senators having voted in the negative, The Joint Order was **PASSED**.

Sent down for concurrence.

ORDERS OF THE DAY

On motion by Senator **CLARK** of Cumberland, the Senate removed from the Unassigned Table the following matter:

Bill "An Act Relating to Violations Involving the Disregard of Red Flashing Lights on School Buses"
H.P. 443 L.D. 633

Tabled - April 17, 1991, by Senator **CLARK** of Cumberland.

Pending - Motion of Senator **GAUVREAU** of Androscoggin to **COMMIT** Bill and Accompanying Papers to the Committee on **LEGAL AFFAIRS** in **NON-CONCURRENCE**

(In Senate, April 17, 1991, **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-106)** Report READ.)

(In House, April 16, 1991, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-106)**.)

Senator **GAUVREAU** of Androscoggin requested and received leave of the Senate to withdraw his motion to **COMMIT** Bill and Accompanying Papers to the Committee on **LEGAL AFFAIRS** in **NON-CONCURRENCE**.

The Majority **OUGHT TO PASS AS AMENDED** Report was **ACCEPTED**, in concurrence.

The Bill **READ ONCE**.

Committee Amendment "A" (H-106) **READ**.

On further motion by same Senator, Senate Amendment "A" (S-90) to Committee Amendment "A" (H-106) **READ**.

THE PRESIDENT: The Chair recognizes that same Senator.

Senator **GAUVREAU:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I would like to explain briefly what I am seeking to accomplish in Senate Amendment "A" (S-90).

As you recall, we had a little discussion and debate a few evenings ago on this Bill which deals with providing penalties for persons who would operate a motor vehicle around a stopped school bus with its red flashing lights activated. The amendment seeks to establish the following procedure with respect to prosecuting civil violations for this action. The state must bear the burden of proof. It must establish all the allegations in a civil complaint by a preponderance of the evidence, and

that is the traditional standard of proof which the state always has to maintain in any civil infraction, or civil prosecution. However, after the state makes its case, and basically pleads, and puts into evidence facts which would allow the court to find all the basic allegations of the complaint are true, then the burden would shift over to a defendant in a civil proceeding. At that point, the defendant would have to prove again by preponderance of the evidence that he or she was not actually operating the motor vehicle at the time that it passed the stopped school bus. Now, if the defendant can establish that, either by establishing to the court's satisfaction that it is a case of mistaken identification, or for whatever reason, than the final burden would shift back to the state, as well as it should, to establish preponderance of the evidence that the defendant was, in fact, operating the vehicle.

Now, you may recall there was considerable concern, both in the Committee on Transportation, and in this Body, that it is very difficult for school bus operators, or for the state, to really identify a person who allegedly passed a stopped school bus. I think that was the reason why the restrictive language was offered in the original version of L.D. 633. But let me point out to the members of the Senate, that the concern that you again had, is the concern that perhaps the owner of the vehicle knew full well who the operator was, but wouldn't divulge the name of that person. Well, if a defendant, the owner of the car is summoned into court, to defend a civil infraction, and is found to be not guilty of the violation, at that point after the case has been completed, the defendant does not have any additional cost privileging on self incrimination. And the state, if it believes that the operator of the vehicle does have material evidence, and knows full well who the operator of the car was, the state can subpoena the owner of the vehicle into court, and if that person should wrongfully and unlawfully refuse to respond to the state's subpoena, that in itself is a criminal violation.

So, I really think the mechanism we have established here in this amendment, does address the concerns of the opponents of this Bill, and that is to provide a more workable system to identify and prosecute those who, in fact, are illegally passing our stopped busses. At the same time, though, it does preserve traditional burdens of proof, that the state should in any civil or criminal proceeding always have the final burden of proof, and I believe that the amendment accomplishes that objective. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Aroostook, Senator Theriault.

Senator **THERIAULT:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I would urge you to accept this amendment. And I want to also commend my seatmate from Androscoggin, Senator Gauvreau. I think this amendment truly fits the concerns expressed here previously, and I want to commend him also for his legal sense, and his sensitivity to the sanctity of due process.

THE PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Conley.

Senator **CONLEY**: Thank you Mr. President. Ladies and Gentlemen of the Senate. I am not under any illusion to what is going to happen here with this Bill, and I too, want to commend Senator Gauvreau, for working on this piece of legislation, and fashioning an amendment which is much more acceptable, I believe, than the original Bill as amended. And I am reminded of the Senator from Cumberland, Senator Titcomb's remarks, in reference to the four frogs on the log, as I stand before you, and I certainly don't want to be the frog that is pushed off into the water, or I wouldn't be here raising some questions about this amendment. But, I do really feel as a matter of principle, and I do not intend to ask for a vote on this measure, but I want to express my concerns regarding it, to make the Senate aware that issues like this, the passing of school busses that raise frustration among members, which is nothing more than a reflection of the frustration which our constituents are feeling, can sometimes lead us to do things that otherwise may not be wise. So, I know we have the Assistant Minority Leader, and the Majority Leader on this Bill, which was a wise move for the people who were concerned with this measure.

But, what this Bill does, and even in its amended fashion, and I do not believe that the Senator from Androscoggin would disagree with me, is that for the first time in two hundred years of the history of our Constitution, you remove, you shift a burden of proof from the government onto an individual person. And although he has been able to tidy that up, and put it in a guise where the state must still ultimately prove that this car, in fact, passed a school bus, what this does, is for the first time, allows the government to show, just because that car passed the school bus, just because this incident occurred, that the person who owns the car, we are going to attribute that incident to that person, that they are, in fact, going to be the person who is going to be convicted, and convicted is really the word, even though it is a civil infraction of this offense. That troubles me deeply, because if we do it for this, even though passing school busses bother people, this would set a precedence for doing the same thing in a speeding case, taking someone's license plate, and saying, "Gee, that car went by me, it was going at least 75 mph, it seemed to me". There was such and such a description of the vehicle, whoever the owner is of the car, we are going to assume that person was driving it, or a stop sign, or a red light, and eventually, possibly, an operating under the influence charge, or some other criminal offense, a serious matter. I really believe we are opening the door with this amendment to giving government more power, and when you give government power, you are taking rights away from individuals, and that is what troubles me about this Bill.

As we sit in this Senate, and I know that many of you are thankful that there are only two attorneys in this Body, but I look to people in this Senate for advice on certain issues. I would look to the Majority Leader, I would listen to her sound advice in relation to issues effecting schools and education. I would look to Senator Gill of Cumberland, in relation to things effecting hospitals. If I were thinking about a certain horse to bet on at an Agricultural Fair, I would call on Senator Twitchell. I look to different people here

for advice for different issues. And as an attorney, I think things, and I believe that the Senator from Androscoggin has things, but we can give our advice and not be looked at as an attorney, but as a citizen and a member of this Body just like you, with perhaps some advice to offer that should be considered.

With that, I would like to pose a question, perhaps to the Senator from Androscoggin, Senator Gauvreau. In reading these measures, the amendment as he has proposed, and as it would then be glued onto the remainder of the amendment that is still with the Bill, but when I look at this, it seems to me that the state now can charge somebody with two offenses if they are the operator, both with the crime of passing a stopped school bus, and also with the civil offense of being the owner of that vehicle. Therefore, being subject to two penalties, a \$250 fine, as well as a criminal conviction if they are the operator, and also a fine as to having committed a civil offense of being the owner of the registered vehicle. I would ask the question if that is, in fact, the intend of his amendment, and would he or anyone else in this Senate agree that, in fact, is that what happens if this amendment is accepted?

THE PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Pearson.

Senator **PEARSON**: Thank you Mr. President. Ladies and Gentlemen of the Senate. Just so that the good Senator from Androscoggin, Senator Gauvreau, could answer several questions at once, I would like to pose a question. What is a flashing light on a school bus? And the reason I ask that is because, about a 11:45 p.m., sometime in February, in the town of Passadumkeag, coming over a hill, after being involved in Budget stuff for a long time, and getting home very, very late, there was so-called a late, late bus coming out of Penobscot Valley High School, returning a basketball player, I assume, from a game. As they were dropping them off, and I was just coming over the hill, there was a light on, and I think flashing is like flash, flash, flash, but this was like a revolving red light swirling on top of a police car or an ambulance. I thought it was a fire truck, the roads were a little slippery, and so I said to myself, "So and so's house is on fire, isn't that a shame". And I slowed down to see the fire in the house to see the extent of the damage, and I came about a foot away from going beyond the school bus.

The reason that I ask this is because it was so late at night, and I didn't expect that there would be a school bus out at that time, and as I said, flashing lights, and I would like to know what a flashing light is?

THE PRESIDENT: The Senator from Penobscot, Senator Pearson, has posed a question through the Chair to any Senator who would care to answer. The Chair recognizes the Senator from Androscoggin, Senator Gauvreau.

Senator **GAUVREAU**: Thank you Mr. President. Ladies and Gentlemen of the Senate. Let me preface my remarks by indicating that I when I offered my amendment, I did not review the substantive language of the civil infraction of passing a school bus with flashing red lights. I do believe the Senator from Penobscot, Senator Pearson, though, has raised a

legitimate issue, and obviously, the state, as in any prosecution, must establish all elements of the offense. The state, must in fact, establish to the courts satisfaction that the lights on the school bus were activated, and were activated in a timely fashion to apprise a motorist of the presence of the flashing lights. For example, if the school bus operator put on the lights, and lights were defective, that would not be adequate notice for the motorist. I think that the situation that Senator Pearson of Penobscot raises, if a motorist comes upon a bus at the precise moment that the lights are activated, that is clearly a question of fact for the court to resolve, rather or not sufficient notice was given to the motorist. That, in fact, is how the courts proceed on a case by case basis. They have to scrutinize each case to see whether or not the state has, in fact, formed its burden of proof.

That is why the comments of Senator Conley of Cumberland, and myself, are somewhat parallel. We do believe strongly that the state should always have to bear its burden of proof and establish each element of the case, in this case, by a civil preponderance of the evidence standard. With respect to the question raised by my colleague from Cumberland, Senator Conley, with respect to whether or not if we enact this Bill, would that allow the possibility of dual prosecution on a civil violation of passing a school bus, as well as the current criminal law, the answer to that question is quite simply, "yes". The District Attorney would have it within his or her discretion to file a civil complaint, or a criminal charge, or both, if the District Attorney believes that was warranted. Bear in mind that there was a much different standard of proof in a criminal case than as opposed to a civil case, and bear in mind that the Committee on Transportation in crafting L.D. 633, was very careful to restrict the language on this Bill only to a civil violation. It is reasonable, that if a prosecutor would believe that he or she would have a difficult time establishing beyond a reasonable doubt that a person was guilty of the criminal violation, it is likely the D.A. would use the civil infraction to charge the offender. As you realize, of course, there are less serious sanctions, only a fine for a civil violation, and not a possible jail sentence. Now, I think that this has give the prosecutor a reasonable tool in his or her discretion to charge as the facts of the particular case are made known to the prosecutor.

THE PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator McCormick.

Senator **MCCORMICK:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I would like to pose a question through the Chair to Senator Gauvreau of Androscoggin. I understand, I think, the switching of the burden of proof. Please repeat the section about the switching of the burden of proof, because I did not understand how it switched back the last time. Thank you.

THE PRESIDENT: The Senator from Kennebec, Senator McCormick, has posed a question through the Chair to any Senator who would care to respond. The Chair recognizes the Senator from Androscoggin, Senator Gauvreau.

Senator **GAUVREAU:** Thank you Mr. President. Ladies and Gentlemen of the Senate. The shifting burden of proof in which I envision in the amendment before you, would occur as follows. The state prosecutor would first have to file out a civil complaint against an individual alleging the violation of the civil infraction of the passing of a school bus. The state would then have to come into court and establish a basic case bringing in witnesses who could establish to the courts satisfaction that, in fact, a vehicle owned by the defendant, did pass a particular school bus when, in fact, that school bus had its red lights flashing at that particular time alleged in the complaint. If the state is able to do that, then the burden shifts over to the defendant, and there is a presumption that the defendant was operating the vehicle that passed the bus at the time of the alleged infraction. But, that is a reputed presumption. In other words, the defendant may come into court and offer the court evidence that he or she wasn't even operating that vehicle at that time, was some place else, or someone else was operating the vehicle, or that he and she were in the car in the back seat and had no control over the car, and if the defendant does bring into the court evidence that would persuade the court that is what happened, then the burden of proof would shift over once again to the state, and the state would have the final burden after all the evidence was done. The judge who heard the case would have to be satisfied that the state really had established by all the evidence, that the defendant was operating the motor vehicle at the time that it passed the school bus.

THE PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Conley.

Senator **CONLEY:** Thank you Mr. President. Ladies and Gentlemen of the Senate. As you can see now, you understand why lawyers are billed by the hour. What I would say in reference to the question posed by the Senator from Kennebec, Senator McCormick, simply put, once the school bus driver comes in and testifies about the license plate number of a car going by his flashing red lights, than the owner of that car has to prove, or establish that he or she was not operating the car. The burden of proof shifts to the owner of the vehicle that they were not driving.

THE PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator McCormick.

Senator **MCCORMICK:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I would like to pose a question to the Senator from Cumberland, Senator Conley. If that is the case, then this amendment does not take care of the original problem, correct?

THE PRESIDENT: The Senator from Kennebec, Senator McCormick, has posed a question through the Chair to any Senator who would care to answer. The Chair recognizes the Senator from Cumberland, Senator Conley.

Senator **CONLEY:** Thank you Mr. President. Ladies and Gentlemen of the Senate. The answer to the question, the amendment removes much of what I would find disagreeable portions of the original amendment, you know, the white lights beating down on mommy, and

come on, you were driving, and that sort of stuff is gone, but no, the good Senator from Androscoggin, Senator Gauvreau, has dressed it up in language that lawyers and judges understand, but it does not really remove the original problem. That would be my answer.

Senator **PEARSON** of Penobscot requested a Division.

THE PRESIDENT: The pending question before the Senate is the motion by Senator **GAUVREAU** of Androscoggin to **ADOPT** Senate Amendment "A" (S-90) to Committee Amendment "A" (H-106).

A Division has been requested.

Will all of those in favor of the motion by Senator **GAUVREAU** of Androscoggin to **ADOPT** Senate Amendment "A" (S-90) to Committee Amendment "A" (H-106), please rise in their places and remain standing until counted.

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

15 Senators having voted in the affirmative and 9 Senators having voted in the negative, the motion by Senator **GAUVREAU** of Androscoggin to **ADOPT** Senate Amendment "A" (S-90) to Committee Amendment "A" (H-106), **PREVAILED**.

Committee Amendment "A" (H-106) as Amended by Senate Amendment "A" (S-90) thereto, **ADOPTED** in **NON-CONCURRENCE**.

The Bill as **Amended**, **TOMORROW ASSIGNED FOR SECOND READING**.

Off Record Remarks

Senator **KANY** of Kennebec was granted unanimous consent to address the Senate off the Record.

Off Record Remarks

On motion by Senator **WEBSTER** of Franklin, **ADJOURNED** until Thursday, April 25, 1991, at 10:30 in the morning.