

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

One Hundred And Fifteenth Legislature

OF THE

State Of Maine

VOLUME IV

FIRST REGULAR SESSION

Senate
May 22, 1991 to July 10, 1991

Index

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

In Senate Chamber
Friday
June 28, 1991

Senate called to Order by the President.

Prayer by the Honorable Linda Curtis Brawn of Knox.

SENATOR LINDA CURTIS BRAWN: May we be in the spirit of prayer. Lord, bless this day which we have already begun. We ask You now, Lord, to bless the work that we will do in this place. We ask that it will be productive for us and for others. Guide us that we will use this time wisely. Direct our energies that they may be used effectively. Time is so precious. Don't let us waste it on futile, silly things. Yet, don't let us drive ourselves so hard that we don't enjoy it. Whatever we do, whether large and seemingly important, or something small and trivia, let us always remember that in the big scheme of life, we are all members of Your family. Thank You, God, for the marvel and challenge of this new day. And finally, Lord, when our work is complete and we hear the anticipated Sine Die, Lord, watch over my colleagues while we are absent one from another. Amen.

Reading of the Journal of Wednesday, June 26, 1991.

COMMUNICATIONS

The Following Communication:

STATE OF MAINE
HOUSE OF REPRESENTATIVES
AUGUSTA 04333

June 26, 1991

Honorable Joy J. O'Brien
Secretary of the Senate
115th Legislature
Augusta, Maine 04333

Dear Madam Secretary:

House Paper 1332, Legislative Document 1923, AN ACT Concerning Security Deposits, having been returned by the Governor together with his objections to the same pursuant to the provisions of the Constitution of the State of Maine, after reconsideration the House proceeded to vote on the question: 'Shall this Bill become a law notwithstanding the objections of the Governor?'

Sixty-nine voted in favor and seventy-five against, and accordingly it was the vote of the House that the Bill not become a law and the veto was sustained.

Respectfully,

S/Edwin H. Pert
Clerk of the House

Which was **READ** and **ORDERED PLACED ON FILE**.

The Following Communication:

STATE OF MAINE
HOUSE OF REPRESENTATIVES
AUGUSTA 04333

June 26, 1991

Honorable Joy J. O'Brien
Secretary of the Senate
115th Legislature
Augusta, Maine 04333

Dear Madam Secretary:

House Paper 649, Legislative Document 923, AN ACT Concerning Unemployment Benefits During Lockouts, having been returned by the Governor together with his objections to the same pursuant to the provisions of the Constitution of the State of Maine, after reconsideration the House proceeded to vote on the question: 'Shall this Bill become a law notwithstanding the objections of the Governor?'

Ninety-three voted in favor and fifty-one against, and accordingly it was the vote of the House that the Bill not become a law and the veto was sustained.

Respectfully,

S/Edwin H. Pert
Clerk of the House

Which was **READ** and **ORDERED PLACED ON FILE**.

ENACTORS

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

An Act to Reinstitute the Township of Misery-Sapling Gore
H.P. 928 L.D. 1348
(C "A" H-691)

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

An Act to Allow the Risk Management Division to Provide Insurance Services for Elementary and Secondary Schools in the State
H.P. 1354 L.D. 1946
(C "A" H-686)

Senator **CAHILL** of Sagadahoc requested a Division.

On motion by Senator **WEBSTER** of Franklin, supported by a Division of one-fifth of the members present and voting, a Roll Call was ordered.

THE PRESIDENT: The pending question before the Senate is **ENACTMENT**.

A vote of Yes will be in favor of **ENACTMENT**.

A vote of No will be opposed.

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEAS: Senators **BALDACCI, BERUBE, BRANNIGAN, CLEVELAND, CONLEY, DUTREMBLE, ESTY, GAUVREAU, MCCORMICK, PEARSON, THERIAULT, TITCOMB, VOSE, THE PRESIDENT - CHARLES P. PRAY**

NAYS: Senators **BOST, BRAWN, BUSTIN, CAHILL, CARPENTER, CLARK, CLEVELAND, COLLINS, EMERSON, ESTES, FOSTER, GILL, GOULD, HOLLOWAY, KANY, LUDWIG, MILLS, RICH, SUMMERS, TWITCHELL, WEBSTER**

ABSENT: Senator **MATTHEWS**

Senator **DUTREMBLE** of York requested and received leave of the Senate to change his vote from **NAY** to **YEA**.

Senator **BRANNIGAN** of Cumberland requested and received leave of the Senate to change his vote from **NAY** to **YEA**.

Senator **TITCOMB** of Cumberland requested and received leave of the Senate to change her vote from **NAY** to **YEA**.

14 Senators having voted in the affirmative and 20 Senators having voted in the negative, with 1 Senator being absent, this Bill **FAILED OF ENACTMENT**.

Senator **KANY** of Kennebec moved that the Senate **RECONSIDER** its action whereby this Bill **FAILED OF ENACTMENT**.

THE PRESIDENT: The Chair recognizes that same Senator.

Senator **KANY:** Thank you Mr. President. Ladies and Gentlemen of the Senate. This Bill came out of the Banking and Insurance Committee with a ten to three ought to pass Report and I have not had the privilege of being a party to debate, if there was debate at this time. I would ask out of pure courtesy if someone would Table this Bill until later in today's session.

On motion by Senator **CLARK** of Cumberland, Tabled until Later in Today's Session, pending the motion by Senator **KANY** of Kennebec that the Senate **RECONSIDER** its action whereby this Bill **FAILED OF ENACTMENT**.

Emergency

An Act to Annex the Town of Richmond to Lincoln County

S.P. 683 L.D. 1811
(H "B" H-685 to C "A" S-280; S "A" S-346)

This being an Emergency Measure and having received the affirmative vote of 31 Members of the Senate, with No Senators having voted in the negative, and 31 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.

ORDERS OF THE DAY

Unfinished Business

The following matters in the consideration of which the Senate was engaged at the time of Adjournment, have preference in the Orders of the Day and continue with such preference until disposed of as provided by Senate Rule 29.

The Chair laid before the Senate the Tabled and Specially Assigned (6/26/91) matter:

Bond Issue

An Act to Authorize a General Fund Bond Issue in the Amount of \$7,500,000 to Provide for the Maine Street Investment Program
H.P. 1358 L.D. 1950

Tabled - June 19, 1991, by Senator **CLARK** of Cumberland.

Pending - **ENACTMENT**

(In Senate, June 12, 1991, **PASSED TO BE ENGROSSED**, in concurrence.)

(In House, June 19, 1991, **PASSED TO BE ENACTED**.)

On motion by Senator **BRANNIGAN** of Cumberland, the Senate **SUSPENDED THE RULES**.

On further motion by same Senator, the Senate **RECONSIDERED** its action whereby this Bill was **PASSED TO BE ENGROSSED**.

On further motion by same Senator, Senate Amendment "A" (S-382) **READ** and **ADOPTED** in **NON-CONCURRENCE**.

Which was, **PASSED TO BE ENGROSSED**, as **Amended** in **NON-CONCURRENCE**.

Under suspension of the Rules, sent down forthwith for concurrence.

The Chair laid before the Senate the Tabled and Specially Assigned (6/26/91) matter:

Bill "An Act to Fund Collective Bargaining Agreements and Benefits for Certain Employees Excluded from Collective Bargaining" (Emergency)
H.P. 1375 L.D. 1960

Tabled - June 26, 1991, by Senator **CLARK** of Cumberland.

Pending - **ADOPTION** of House Amendment "A" (H-705), in concurrence

(In Senate, June 26, 1991, House Amendment "A" (H-705) **READ**.)

(In House, June 26, 1991, **PASSED TO BE ENGROSSED AS AMENDED BY HOUSE AMENDMENT "A" (H-705)**.)

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

Senator **BUSTIN:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I would urge you to defeat the motion to Adopt House Amendment "A"

(H-705), because it is no longer appropriate, in fact, it would be a Budget buster. I have another amendment that I would like to put on the Bill.

On motion by Senator **BUSTIN** of Kennebec, House Amendment "A" (H-705) **INDEFINITELY POSTPONED** in **NON-CONCURRENCE**.

THE PRESIDENT: The Chair recognizes the Senator from Sagadahoc, Senator Cahill.

Senator **CAHILL:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I also have an amendment to this piece of legislation which is not back from the Revisors Office, and I would ask that we could Table this until the amendment comes back.

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

Senator **BUSTIN:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I would appreciate it if I could place the amendment on it now because I may have a commitment later on in the evening and would not be able to be here.

Which was, under suspension of the Rules, **READ A SECOND TIME**.

On motion by Senator **BUSTIN** of Kennebec, Senate Amendment "A" (S-387) **READ**.

THE PRESIDENT: The Chair recognizes the Senator from Franklin, Senator Webster.

Senator **WEBSTER:** Mr. President. Ladies and Gentlemen of the Senate. Would it be appropriate to ask the Senator from Kennebec, Senator Bustin, to explain briefly the amendment and its purpose?

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

Senator **BUSTIN:** Thank you Mr. President. Ladies and Gentlemen of the Senate. On the statement of fact, and I'll just read that as part of Record, this amendment more accurately identifies the cost associated with the third year of funding for each of the collective bargaining agreements, and eliminates appropriations which exceed the amount necessary to fund the contracts. The amendment provides for deappropriating and deallocating funds saved from attrition, unfilled vacancies, other reductions in the work force, or other savings permitted by the collective bargaining agreements, or as may be negotiated by the State and State Employee Bargaining Agents, so that it would be bargained during the year.

On further motion by same Senator, Senate Amendment "A" (S-387) **ADOPTED**.

On motion by Senator **CLARK** of Cumberland, Tabled until Later in Today's Session, pending **PASSAGE TO BE ENGROSSED**, as **Amended** in **NON-CONCURRENCE**.

The Chair laid before the Senate the Tabled and Specially Assigned matter:

Bond Issue

An Act to Authorize a General Fund Bond Issue in the Amount of \$5,000,000 for the Land for Maine's Future Program to Finance the Acquisition of Land for Conservation, Outdoor Recreation, Habitat Conservation and Public Access

H.P. 435 L.D. 618
(C "A" H-600)

Tabled - June 26, 1991, by Senator CAHILL of Sagadahoc.

Pending - **FURTHER CONSIDERATION**

(In House, June 12, 1991, **PASSED TO BE ENACTED.**)

(In Senate, June 12, 1991, **FAILED OF ENACTMENT** in **NON-CONCURRENCE.**)

(In House, June 19, 1991, that Body **INSISTED.**)

Senator FOSTER of Hancock moved that the Senate **RECEDE** and **CONCUR.**

This being a Bond Authorization Act and having received the affirmative vote of 23 Members of the Senate, with 8 Senators having voted in the negative, and 23 being more than two-thirds of the Membership present and voting, the Senate **RECEDED** and **CONCURRED** and this Bill was **PASSED TO BE ENACTED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

The Chair laid before the Senate the Tabled and Specially Assigned matter:

Bill "An Act to Implement Constitutional Provisions Restricting the Imposition of Unfunded State Mandates"

S.P. 767 L.D. 1963

Tabled - June 26, 1991, by Senator CLARK of Cumberland.

Pending - **FURTHER CONSIDERATION**

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

(In Senate, June 26, 1991, under suspension of the Rules, **READ TWICE** and **PASSED TO BE ENGROSSED**, without reference to a Committee.)

(In House, June 26, 1991, referred to the Committee on **STATE AND LOCAL GOVERNMENT** and **ORDERED PRINTED** in **NON-CONCURRENCE.**)

On motion by Senator CLARK of Cumberland, the Senate **INSISTED.**

Under suspension of the Rules, all matters thus acted upon were ordered sent down forthwith for concurrence.

HELD BILL

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

Senator BRANNIGAN: Mr. President, is the Senate in possession of L.D. 1924?

THE PRESIDENT: The Chair would answer in the affirmative, the Bill being held at the Senators request.

Bill "An Act Concerning the Low-income Home Energy Assistance Program" (Emergency)

H.P. 1333 L.D. 1924
(S "B" S-362 to C
"A" H-652)

(In House, June 19, 1991, **PASSED TO BE ENACTED.**)

(In Senate, June 19, 1991, **FAILED OF ENACTMENT** in **NON-CONCURRENCE.**)

(In House, June 26, 1991, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-652) AS AMENDED BY SENATE AMENDMENT "B" (S-362) thereto, AND HOUSE AMENDMENT "A" (H-707) in NON-CONCURRENCE.**)

(In Senate, June 26, 1991, **ADHERED.**)

Senator BRANNIGAN of Cumberland moved that the Senate **SUSPEND THE RULES.**

Senate at Ease

Senate called to order by the President.

On motion by same Senator, the Senate **SUSPENDED THE RULES.**

The same Senator moved that the Senate **RECONSIDER** its action whereby it **ADHERED.**

Senator CAHILL of Sagadahoc requested a Division.

THE PRESIDENT: The pending question before the Senate is the motion by Senator BRANNIGAN of Cumberland to **RECONSIDER** its action whereby the Senate **ADHERED.**

A Division has been requested.

Will all those in favor of the motion by Senator **BRANNIGAN** of Cumberland to **RECONSIDER** its action whereby the Senate **ADHERED**, please rise in their places and remain standing until counted.

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

18 Senators having voted in the affirmative and 13 Senators having voted in the negative, the motion by Senator **BRANNIGAN** of Cumberland to **RECONSIDER** whereby the Senate **ADHERED**, **PREVAILED**.

On further motion by same Senator, the Senate **RECEDED** and **CONCURRED**.

Under suspension of the Rules, ordered sent forthwith to the Engrossing Department.

Off Record Remarks

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

COMMUNICATIONS

The Following Communication: S.P. 769

115TH MAINE LEGISLATURE

June 28, 1991

Senator Donald E. Esty, Jr.
Rep. Edward A. McHenry
Chairpersons
Joint Standing Committee on Labor
115th Legislature
Augusta, Maine 04333

Dear Chairs:

Please be advised that Governor John R. McKernan, Jr. has withdrawn his nomination of John B. Wlodkowski of Augusta for appointment to the Maine Unemployment Insurance Commission, as the neutral member.

Pursuant to Title 26, MRSA Section 1081, this nomination is currently pending before the Joint Standing Committee on Labor.

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 **LABOR**.

Sent down for concurrence.

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

ORDERS

Joint Order

On motion by Senator **BERUBE** of Androscoggin, the following Joint Order

S.P. 770

ORDERED, the House concurring that Bill "An Act to Amend the Maine Administrative Procedure Act" H.P. 1371, L.D. 1955, and all its accompanying papers, be recalled from the legislative files to the Senate.

Which was **READ**.

Pursuant to Joint Rule 4, this Joint Order requires the affirmative vote of two-thirds of the members present and voting. 25 Senators having voted in the affirmative and 3 Senators having voted in the negative, and 25 being more than two-thirds of the members present and voting, the Joint Order was **PASSED**.

Under suspension of the Rules, ordered sent down forthwith for concurrence.

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

Senator **GAUVREAU**: Thank you Mr. President. Ladies and Gentlemen of the Senate. As many of you are aware Justice Thurgood Marshall of the U.S. Supreme Court yesterday evening announced his decision to retire from that Body. I'm rising this afternoon to pay tribute to his contributions to the American people. Justice Marshall had the distinction and honor of being the first American of Afro-American heritage to serve on the U.S. Supreme Court. I think for many in our society wondered why it took 190 years or so for Black America to have an opportunity to serve on that Court, just as many of us wondered why it took a little longer than that for a female to have an opportunity to serve on that

Court. Justice Marshall obviously will be remembered not simply because he was the first Black American to serve on the U.S. Supreme Court but, in fact, due to his service, his integrity, and his commitment to democratic values during his tenure on the U.S. Supreme Court. As you know when he was appointed in the late 1960's there was great civil unrest in our society. There were race riots in many American cities. There was major debate in our society dealing with the appropriateness of our involvement in the Southeast Asian War. There were many challenges to order and to society when Justice Marshall went on the Supreme Court. My belief is that during more than twenty-five years of service on the Court, Justice Marshall has, in fact, been a most eloquent voice for individual rights in a democratic society. He has truly advocated for an appropriate balance between the rights of the majority and the rights to have law as a stabilizing force while protecting the rights of the minority in a democratic society. If you will bear with me, I have a few quotations which I have found of Justice Marshall. This afternoon during the break, I know many of us were kibbiten around in the Taxation Committee, and perhaps others were wondering whether the Red Sox would change their starting line up in light of the second coming of the Boston Massacre. I instead went to the Law Library and read some of Justice Marshall's decisions over the last twenty-five years. Justice Marshall said, "History teaches the great threats to liberty, often comes in times of urgency when constitutional rights seem too extravagant to endure." That I think is a statement for the ages. Constantly we have to remind ourselves that when there is tremendous pressure to conform to the majority rule to the conventional wisdom in our society, we should nourish and we should value the dissident voice, the individual in the crowd. That is what our society has been structured to accomplish. In the case of *Connell v. Higginbotham* back in the early 70's, Justice Marshall took part in a majority decision overturning a Florida law which would have required loyalty oath as a predicate to serving in state government. He said, "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion or other matters of opinion. The state has no right to interfere with our individual conscience. The state cannot tell us what to believe or what religion to espouse. That is our own property, and the state shall never be allowed to interfere with that property." In the celebrated case of *New York Times v. Sullivan*, a case that dealt with the publication of the Pentagon Papers, Justice Marshall stated in sustaining a Court decision which allowed the paper to publish the Pentagon Papers and not to allow prior restraint he stated, "It may be more convenient for the Executive Branch of Government, if you need only convince a Judge to prohibit conduct rather than ask the Congress to pass a law, and it may be more convenient to enforce it by contempt order than to seek a criminal conviction in a jury trial. Moreover, it may be considered politically wise to get a Court to share the responsibility of arresting those who the Executive Branch has reason to believe are violating the law. But convenience and political considerations of the moment do not justify a basic departure from the principals of our scheme of government." Justice Marshall has been an eloquent

voice for minority rights throughout his tenure on the Supreme Court. Just this past year he wrote eloquently in dissent in the case of *Rust v. Sullivan*, a case I think you are more familiar with because that case dealt with the five to four decision of the Supreme Court which sustained the decision of the Administration to prohibit the utilization of Title 10 monies to Family Planning clinics for the purpose of allowing the clients the option of getting counseling or referral on abortion. Justice Marshall dissented, and I think what he said should be considered by all members of the Chamber. He stated, "It is of no small significance that the speech the Secretary of Health and Human Services would suppress is truthful information regarding constitutionally protected conduct of vital importance to the listener. One can imagine no legitimate government interest that might be secured by suppressing such information. Concededly, the abortion debate is among the most divisive and contentious issues that this nation has faced in recent years. But, freedom to differ is not limited to things that do not matter much, that will be a mere shadow of freedom. The test of it's substance is the right to differ as to things that touch the heart of the existing order." I think that bears repeating, because although many of us today are fixated upon the paradox of passing a Budget, and the press has focused upon that issue acknowledged him for the last month, it is, in fact, the order of the day. Let us not forget that there are transcendent values in our society that go beyond the mere political expediency of the moment and that basically form the cornerstone of our democratic society, our open society. Again, Justice Marshall said that freedom is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order. The contributions of Justice Marshall will be long missed, and I, for one, join in applauding his contribution to the American people. Thank you Mr. President.

Senator **BUSTIN** of Kennebec was granted unanimous consent to address the Senate on the Record.

Senator **BUSTIN**: Thank you Mr. President. Ladies and Gentlemen of the Senate. I couldn't let this moment go by. I am so glad that the good Senator from Androscoggin, Senator Gauvreau, brought up the issue of Thurgood Marshall's retirement from the Supreme Court. I happened to be listening to national public radio, and I think this bears repeating, although I cannot do justice to the commentary. I can convey to you the thoughts that were there. It was relating a story of Justice Marshall when he was a young lawyer and he was called to defend a Black man in Mississippi. He took the case, and on his way from New York to Mississippi the young man was lynched. He was down in Mississippi without a case, and then had to come back by train. In between trains he had an hours wait. He hadn't eaten all that time and he needed something to eat. He looked down the platform and he saw this place to eat snacks. He started heading for it. He thought

what he would do is just go around the back, because he wasn't supposed to buy anything at that snack bar. He would go around the back and beg for a sandwich or something to eat. Before he stepped a couple of feet, a white man came up with his hands on his hips, and I won't repeat what was said on the radio because I don't think we need to repeat those things in this day and age. It was in no uncertain terms that Mr. Marshall should fast track it right back to where he came from because the sun ought not to set on him in Mississippi. The commentary of that was, it really did send chills up my spine because the commentary was that never again, for lots of good reasons, but never again will we have a person sitting on the Supreme Judicial Court of the land that has that kind of perspective on discrimination and what happens to people. The reason for that is because never again, hopefully, will we ever have another person who has been witness to that, one who is of an age to serve on the Supreme Judicial Court. Those are very poignant thoughts that were conveyed. I think they are worth their repeating. And although this is a right of passage that I think Mr. Marshall deserves, I wish it didn't have to happen. Thank you.

On motion by Senator CONLEY of Cumberland, RECESSED until 7:30 in the evening.

After Recess

Senate called to order by the President.

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

PAPERS FROM THE HOUSE

Non-concurrent Matter

Bill "An Act Making Unified Appropriations and Allocations for the Expenditures of State Government, Highway Fund, and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 1992 and June 30, 1993" (Emergency)

H.P. 652 L.D. 926

In House, June 26, 1991, PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-692).

In Senate, June 26, 1991, Bill and Accompanying Papers RECOMMENDED to the Committee on TRANSPORTATION in NON-CONCURRENCE.

Comes from the House, that Body INSISTED.

The Senate ADHERED.

Under suspension of the Rules, ordered sent down forthwith for concurrence.

Non-concurrent Matter

Bill "An Act Correcting Errors and Inconsistencies in the Laws of Maine" (Emergency)
S.P. 760 L.D. 1954
(S "A" S-383; S "B" S-385 to C "A" S-373)

In Senate, June 26, 1991, PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-373) AS AMENDED BY SENATE AMENDMENTS "A" (S-383) AND "B" (S-385) thereto.

Comes from the House PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-373) AS AMENDED BY SENATE AMENDMENTS "A" (S-383) AND "B" (S-385) AND HOUSE AMENDMENTS "A" (H-698), "B" (H-699) AND "C" (H-708) thereto, in NON-CONCURRENCE.

On motion by Senator GAUVREAU of Androscoggin, the Senate RECEDED and CONCURRED.

Under suspension of the Rules, ordered sent forthwith to the Engrossing Department.

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

PAPERS FROM THE HOUSE

Joint Resolution

The Following Joint Resolution: H.P. 1370

JOINT RESOLUTION EXPRESSING THE SENSE OF THE LEGISLATURE THAT THE MAINE SOLID WASTE AUTHORITY STUDY COMMERCIAL APPLICATIONS OF AIR SCRUBBER TECHNOLOGY AND BY-PRODUCTS

WHEREAS, this State and other states are grappling with the problems of air pollution and the disposal of solid waste; and

WHEREAS, the disposal of special solid waste, which includes various types of ash, presents particularly difficult public policy issues; and

WHEREAS, the Passamaquoddy Tribe, through its commercial enterprises, has developed an innovative scrubber technology that significantly reduces air pollution; and

WHEREAS, this technology is in operation at Dragon Cement in Thomaston, and as this operation is producing a particulate by-product that may serve as a raw material for new commercial products or processes; and

WHEREAS, development of markets for the scrubber technology and for the particulate by-product will result in diminished amounts of solid waste and in increased industry in this State, with the resulting economic benefits; now therefore, be it

RESOLVED: that We, the members of the 115th Legislature now assembled in the First Regular Session, encourage the development of markets for the scrubber technology and for the particulate by-products; and be it further

RESOLVED: that it is the sense of the Legislature that the Maine Solid Waste Authority should consult with the Passamaquoddy Tribe and with Dragon Cement to study the potential commercial applications for these products and identify what steps the State might take to assist the development of the emerging industries; and be it further

RESOLVED: that the Maine Solid Waste Authority is requested to report on its findings and recommendations to the Second Regular Session of the 115th Legislature.

Comes from the House **READ** and **ADOPTED AS AMENDED BY HOUSE AMENDMENT "A" (H-704)**.

Which was **READ**.

House Amendment "A" (H-704) **READ**.

On motion by Senator **BALDACCI** of Penobscot, Tabled until Later in Today's Session, pending **ADOPTION** of House Amendment "A" (H-704), in concurrence.

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

PAPERS FROM THE HOUSE

House Papers

Resolve, to Establish the Commission on Recall
H.P. 1377 L.D. 1964

Comes from the House referred to the Committee on **STATE AND LOCAL GOVERNMENT** and **ORDERED PRINTED**.

Which was referred to the Committee on **STATE AND LOCAL GOVERNMENT** and **ORDERED PRINTED**, in concurrence.

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

COMMITTEE REPORTS

House

Divided Report

The Majority of the Committee on **STATE AND LOCAL GOVERNMENT** on Bill "An Act to Reduce the Administrative Cost of State Government by Abolishing the Division of Community Services and the Department of Economic and Community Development and Transferring Their Essential Functions"

H.P. 1210 L.D. 1768

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-690)**

Signed:

Senator:

BERUBE of Androscoggin

Representatives:

JOSEPH of Waterville
LARRIVEE of Gorham
WATERMAN of Buxton
KERR of Old Orchard Beach
KILKELLY of Wiscasset
GRAY of Sedgwick

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

Signed:

Senator:

EMERSON of Penobscot

Representatives:

LOOK of Jonesboro
SAVAGE of Union
NASH of Camden

Comes from the House with the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-690) AS AMENDED BY HOUSE AMENDMENT "A" (H-711)** thereto.

Which Reports were **READ**.

Senator **BERUBE** of Androscoggin moved that the Senate **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence.

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

THE PRESIDENT: The pending question before the Senate is the motion by Senator **BERUBE** of Androscoggin to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence.

A Division has been requested.

Will all those in favor of the motion by Senator **BERUBE** of Androscoggin to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in 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.

17 Senators having voted in the affirmative and 12 Senators having voted in the negative, the motion by Senator **BERUBE** of Androscoggin to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence, **PREVAILED**.

The Bill **READ ONCE**.

Committee Amendment "A" (H-690) **READ**.

House Amendment "A" (H-711) to Committee Amendment "A" (H-690) **READ**.

On motion by Senator **BERUBE** of Androscoggin, Tabled until Later in Today's Session, pending **ADOPTION** of House Amendment "A" (H-711) to Committee Amendment "A" (H-690), in concurrence.

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

PAPERS FROM THE HOUSE

Non-concurrent Matter

Bill "An Act to Allow Nonprofit Organizations to Use Proceeds from Beano or Bingo for Limited Purposes" (Emergency)

S.P. 765 L.D. 1956

Committee on **LEGAL AFFAIRS** suggested and **ORDERED PRINTED**.

In Senate, June 26, 1991, under suspension of the Rules, **READ TWICE** and **PASSED TO BE ENGROSSED**, without reference to a Committee.

Comes from the House, under suspension of the Rules, **READ TWICE** and **PASSED TO BE ENGROSSED AS AMENDED BY HOUSE AMENDMENTS "A" (H-710) AND "B" (H-713)**, without reference to a Committee, in **NON-CONCURRENCE**.

On motion by Senator **MILLS** of Oxford, the Senate **RECEDED** and **CONCURRED**.

Under suspension of the Rules, ordered sent forthwith to the Engrossing Department.

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

ENACTORS

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

An Act Related to the Office of Substance Abuse
S.P. 90 L.D. 175
(H "A" H-688 to C
"A" S-359)

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

Emergency

An Act Concerning Technical Changes to the Tax Laws

H.P. 1197 L.D. 1750
(C "A" H-693)

This being an Emergency Measure and having received the affirmative vote of 27 Members of the Senate, with No Senators having voted in the negative, and 27 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 Fund a Collective Bargaining Agreement
H.P. 1374 L.D. 1959

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

COMMUNICATIONS

The Following Communication:

**STATE OF MAINE
HOUSE OF REPRESENTATIVES
AUGUSTA 04333**

June 28, 1991

Respectfully,

Honorable Joy J. O'Brien
Secretary of the Senate
115th Legislature
Augusta, Maine 04333

S/Edwin H. Pert
Clerk of the House

Which was **READ** and **ORDERED PLACED ON FILE**.

Dear Madam Secretary:

The House voted today to insist on its former action whereby it indefinitely postponed Bill "An Act to Reorganize the Management and Regulatory Functions of State Government Pertaining to Natural Resources" (EMERGENCY) (S.P. 730) (L.D. 1915).

Senate at Ease

Senate called to order by the President.

Sincerely,

Off Record Remarks

S/Edwin H. Pert
Clerk of the House

Which was **READ** and **ORDERED PLACED ON FILE**.

ORDERS OF THE DAY

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

On motion by Senator **BRANNIGAN** of Cumberland, the Senate removed from the **SPECIAL APPROPRIATIONS TABLE** the following matter:

COMMUNICATIONS

An Act Related to the Office of Substance Abuse
S.P. 90 L.D. 175
(H "A" H-688 to C
"A" S-359)

The Following Communication:

Tabled - June 28, 1991, by Senator **BRANNIGAN** of Cumberland.

**STATE OF MAINE
HOUSE OF REPRESENTATIVES
AUGUSTA 04333**

Pending - **ENACTMENT**

June 28, 1991

(In Senate, June 26, 1991, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-359) AS AMENDED BY HOUSE AMENDMENT "A" (H-688)**, thereto.)

(In House, June 28, 1991, **PASSED TO BE ENACTED**.)

Honorable Joy J. O'Brien
Secretary of the Senate
115th Legislature
Augusta, Maine 04333

On motion by Senator **BERUBE** of Androscoggin, the Senate **SUSPENDED THE RULES**.

Dear Madam Secretary:

On further motion by same Senator, the Senate **RECONSIDERED** its action whereby this Bill was **PASSED TO BE ENGROSSED AS AMENDED**.

House Paper 1051, Legislative Document 1524, AN ACT to Extend the Certificate of Need Program to All Major Medical Equipment, having been returned by the Governor together with his objections to the same pursuant to the provisions of the Constitution of the State of Maine, after reconsideration the House proceeded to vote on the question: 'Shall this Bill become a law notwithstanding the objections of the Governor?'

On further motion by same Senator, the Senate **SUSPENDED THE RULES**.

Seventy-eight voted in favor and Sixty-seven against, and accordingly it was the vote of the House that the Bill not become a law and the veto was sustained.

On further motion by same Senator, the Senate **RECONSIDERED** its action whereby it **ADOPTED** Committee Amendment "A" (S-359) as Amended by House Amendment "A" (H-688), thereto.

On further motion by same Senator, Senate Amendment "C" (S-389) to Committee Amendment "A" (S-359) **READ**.

THE PRESIDENT: The Chair recognizes that same Senator.

Senator **BERUBE**: Thank you Mr. President. This retains the other amendment that had been attached to the Bill, L.D. 175. What it does is add a fiscal note which is a deappropriation, because the position of Director had been demoted to one of Health Planner II. Because of that, there is a deappropriation and the salary would be less. That is what the amendment does. Thank you.

On further motion by same Senator, Senate Amendment "C" (S-389) to Committee Amendment "A" (S-359) **ADOPTED**.

Committee Amendment "A" (S-359) as Amended by House Amendment (H-688) and Senate Amendment "C" (S-389) thereto, **ADOPTED** in **NON-CONCURRENCE**.

Which was, **PASSED TO BE ENGROSSED, As Amended** in **NON-CONCURRENCE**.

Under suspension of the Rules, ordered sent down forthwith for concurrence.

The Chair laid before the Senate the Tabled and Later Today Assigned matter:

Bill "An Act to Reduce the Administrative Cost of State Government by Abolishing the Division of Community Services and the Department of Economic and Community Development and Transferring Their Essential Functions"

H.P. 1210 L.D. 1768

Tabled - June 28, 1991, by Senator **BERUBE** of Androscoggin.

Pending - motion by Senator **BERUBE** of Androscoggin to **ADOPT** House Amendment "A" (H-711) to Committee Amendment "A" (H-690), in concurrence

(In Senate, June 28, 1991, Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED**, in concurrence. The Bill **READ ONCE**. Committee Amendment "A" (H-690) **READ**. House Amendment "A" (H-711) to Committee Amendment "A" (H-690) **READ**.)

(In House, June 28, 1991, the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-690) AS AMENDED BY HOUSE AMENDMENT "A" (H-711)** thereto.)

House Amendment "A" (H-711) to Committee Amendment "A" (H-690) **ADOPTED**, in concurrence.

Committee Amendment "A" (H-690) as Amended by House Amendment "A" (H-711) thereto, **ADOPTED**, in concurrence.

Which was, under suspension of the Rules, **READ A SECOND TIME**, and **PASSED TO BE ENGROSSED, as Amended**, in concurrence.

Under suspension of the Rules, ordered sent forthwith to the Engrossing Department.

The Chair laid before the Senate the Tabled and Later Today Assigned matter:

JOINT RESOLUTION - Expressing the Sense of the Legislature that the Maine Solid Waste Authority Study Commercial Applications of Air Scrubber Technology and By-Products

H.P. 1370

Tabled - June 28, 1991, by Senator **BALDACCI** of Penobscot.

Pending - **ADOPTION** of House Amendment "A" (H-704), in concurrence

(In Senate, June 28, 1991, Joint Resolution **READ**. House Amendment "A" (H-704) **READ**.)

(In House, June 28, 1991, **READ** and **ADOPTED AS AMENDED BY HOUSE AMENDMENT "A" (H-704)**.)

House Amendment "A" (H-704) **ADOPTED**, in concurrence.

Which was **ADOPTED, as Amended**, in concurrence.

Off Record Remarks

The Chair laid before the Senate the Tabled and Later Today Assigned matter:

An Act to Allow the Risk Management Division to Provide Insurance Services for Elementary and Secondary Schools in the State

H.P. 1354 L.D. 1946
(C "A" H-686)

Tabled - June 28, 1991, by Senator **CLARK** of Cumberland.

Pending - motion by Senator **KANY** of Kennebec that the Senate **RECONSIDER** its action whereby this Bill **FAILED OF ENACTMENT**

(In Senate, June 28, 1991, **FAILED OF ENACTMENT**. Senator **KANY** of Kennebec moved that the Senate **RECONSIDER** its action whereby this Bill **FAILED OF ENACTMENT**.)

(In House, June 26, 1991, **PASSED TO BE ENACTED**.)

On motion by Senator **CLARK** of Cumberland, Tabled until Later in Today's Session, pending the motion by Senator **KANY** of Kennebec that the Senate **RECONSIDER** its action whereby this Bill **FAILED OF ENACTMENT**.

On motion by Senator **MILLS** of Oxford, **RECESSED** until the sound of the bell.

After Recess

Senate called to order by the President.

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

PAPERS FROM THE HOUSE

Non-concurrent Matter

Bill "An Act to Implement Constitutional Provisions Restricting the Imposition of Unfunded State Mandates"

S.P. 767 L.D. 1963

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

In Senate, June 26, 1991, under suspension of the Rules, **READ TWICE** and **PASSED TO BE ENGROSSED**, without reference to a Committee.

In House, June 26, 1991, referred to the Committee on **STATE AND LOCAL GOVERNMENT** and **ORDERED PRINTED** in **NON-CONCURRENCE**.

In Senate, June 28, 1991, **INSISTED**.

Comes from the House, that Body **ADHERED**.

On motion by Senator **CLARK** of Cumberland, the Senate **RECEDED** and **CONCURRED**.

ORDERS OF THE DAY

The Chair laid before the Senate the Tabled and Later Today Assigned matter:

An Act to Allow the Risk Management Division to Provide Insurance Services for Elementary and Secondary Schools in the State

H.P. 1354 L.D. 1946
(C "A" H-686)

Tabled - June 28, 1991, by Senator **CLARK** of Cumberland.

Pending - motion by Senator **KANY** of Kennebec that the Senate **RECONSIDER** its action whereby this Bill **FAILED OF ENACTMENT**

(In Senate, June 28, 1991, **FAILED OF ENACTMENT**. Senator **KANY** of Kennebec moved that the Senate **RECONSIDER** its action whereby this Bill **FAILED OF ENACTMENT**.)

(In House, June 26, 1991, **PASSED TO BE ENACTED**.)

Senator **WEBSTER** of Franklin requested a Division.

THE PRESIDENT: The pending question before the Senate is the motion by Senator **KANY** of Kennebec that the Senate **RECONSIDER** its action whereby this Bill **FAILED OF ENACTMENT**.

A Division has been requested.

Will all those in favor of the motion by Senator **KANY** of Kennebec that the Senate **RECONSIDER** its action whereby this Bill **FAILED OF ENACTMENT**, please rise in their places and remain standing until counted.

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

16 Senators having voted in the affirmative and 14 Senators having voted in the negative, the motion by Senator **KANY** of Kennebec that the Senate **RECONSIDER** its action whereby this Bill **FAILED OF ENACTMENT**, **PREVAILED**.

On motion by Senator **WEBSTER** of Franklin, supported by a Division of one-fifth of the members present and voting, a Roll Call was ordered.

THE PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Cleveland.

Senator **CLEVELAND:** Thank you Mr. President. Ladies and Gentlemen of the Senate. Before we vote on this I would like to take just a moment of your time to review some of the aspects of this particular piece of legislation. I think as we begin to enact a Budget, hopefully before the July 1st deadline, in the implication of the local property tax owner we ought to consider this Bill in a small way as relief to those individuals. Really, this is quite a common sense Bill. What it does is allow on an optional basis. Optional doesn't require any school district to participate to be able to insure their buildings with the State through the Risk Management Pool rather than through some other source or private agency. Last year the school districts in this state spent over \$3.5 million on insurance premiums to insure their buildings. It was estimated by the Maine Risk Management Organization that they could insure the school buildings, the same school buildings for the same coverage, for the same service, for a \$1 million saving over \$2.5 million dollars in premiums to the local property taxpayer. The money that could be used to hire teachers, provide programs and provide educational opportunities. This is not a new and novel idea. The building that we are in right now is insured by the same system. All state buildings are, the entire University of Maine School System, the entire

Technical College System, all existing elementary and secondary schools in unorganized territories. This isn't new. It isn't risky. It isn't untried. It has been in place since the 1940's. It is cost effective. It is optional, and it will help in a small way to reduce the burden on the local property taxpayer. In a time when we have to ask teachers to be laid off, we can't purchase books, and reduce programs for individuals at the school level, it seems to be reasonable to allow local school districts to make a choice, analyze the risk if they choose to participate, let them save a few dollars and maybe let a teacher that might help a kid in the future rather than pay an insurance premium. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Aroostook Senator Collins.

Senator **COLLINS:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I am aware that State Government does currently insure some of its own property. Nevertheless, I am terribly concerned when we shift some of this risk portion of this to communities. I really feel very uncomfortable about it. Frankly, I am not sure that the state does a particularly good job in this area. They may have been lucky from time to time. I recall in the 1950's, in the unorganized territory of Connor, when the school building burned down twice in five years. Fortunately, it had the State of Maine to fall back on, and the local property owners were not unduly affected. It seems to me the state ought not to be engaged in the insurance business. It seems to me that those who are self-insured in the private sector have to go through the regulation of the Bureau of Insurance. They have to have certain resources before they can qualify. In this proposal we are saying that you pay a premium, but there is no "pot of gold" in there to ensure payment. You are in effect putting a greater risk on the taxpayers in the individual communities. I think that is a risk that they ought not to take. It seems to me even though this is optional it does encourage municipalities and school districts to take advantage of it in the hopes of spending less money. I think we are encouraging them in effect to take a greater risk. I really don't see that as a very happy thing for communities. It also seems to me that the effect of this will be to cause State Government to provide insurance people on the payroll, claims people, and to get into reinsurance contracts. In fact, I think that is a provision of the Bill, and that part I encourage because that does diminish the risk. As I recall, the first \$300,000 is the risk that has to be assumed by the entity entering into the arrangement. I think we ought not to do that. I think it is something that we can avoid. I think the private sector is able to handle that. I would note that the market for property and casualty at the present time is a soft market, and that there are good prices going around. Somebody told me the dollars that they insured their school district with the other day, and I was amazed that the numbers were so kind. I would suggest that we not pass this Bill and that we leave it as it is. Thank you Mr. President.

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

Senator **THERIAULT:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I'd like to begin by commending the Insurance Lobby for doing such a good job at turning the vote around. In the process of them doing this it tells me something. It gives me a message that it must be rather lucrative. It must be worth a lot. It tells me that the stakes are high on this particular Bill. That should raise the red flag for us to begin with. Usually, those of you that have been around here for a long time know that I am very much antigovernment involved in this kind of endeavor. When it came to surface that the difference between what it would cost for the state to do this and what it would cost if the insurance companies did this, I had to change my position on this. For example, last year the total number of claims for all of the schools in Maine was for \$207,000. The premium paid was \$3.6 million. You might say this is just one year taken out without consideration for the other years. There was some research made all the way back to 1972, and essentially, the numbers are the same proportionally. That is a big difference between \$207,000 and \$3.6 million. By the way, there are ten states that do mandate this kind of program for their schools. You have to remember that we are not mandating it here. We are making it optional. This Risk Management Division has been made to look like some fly by night operation. It isn't. It is a sound operation that has been in existence for a long long time. They have never been in any kind of trouble financially. I have a letter here from the Director, Tim Smith, which I would like to read some parts of it. It says, "I would like to assure you that the insurance in Risk Management is the best there is in the marketplace. For example, our property insurance is all risk replacement cost to both building and contents. It includes a \$5 million coverage for flood insurance and \$20 million for earthquake. Most schools do not have this broad coverage. Also, all liability insurances trap the Maine Court Claims Act." About the solvency of the organization. Currently, the self-insurance fund balance is \$9.7 million. If you remember, we just borrowed \$2 million from them to balance our Budget last year. Supposedly it is going to be repaid. I hope they repay that one better than they are repaying the Highway Fund. In addition to this, this letter goes on to say several people have referred back to the School Study of 1983. It says, "Since 1983, Risk Management has gone from a property self-insurance to covering every aspect of insurance, especially the very complicated liability areas, police, professionals, auto, and all liability under the Tort and Civil Rights Act. We now can protect all activities of the state and this does include many schools." I need to say that there is a big difference between the premium and what is being paid out in claims. I think we need to understand, the difference in money is not necessarily money that the local agents put in their pockets or that the insurance company keeps and sends back as dividends. I understand, and I might be wrong, but it is my understanding that the State of Maine is pooled with all of the other jurisdictions in the United States. We know that in some places that public property is very much at risk to vandalism and other acts. We in Maine are very fortunate. This does not really happen that frequently here. It does happen occasionally, but not frequently. It is a very rare occurrence, and I tell you and ask you should we pay

for the risk of other jurisdictions or should we concern ourselves about Maine only? I think the answer is quite evident. There are some things that we need to remember when we vote on this Bill. First of all, we need to remember that it is optional. We can't assume that the people who are at the helm of our school districts in our school system of this state are dummies. They are capable of looking things over and determining what is best for them. I have that confidence in them, and I know that they will do it. According to the best estimates that we have, if we go this route, we would save roughly for next year about \$4 million. That is substantial in these hard times. I am sure that if the taxpayers were standing in this room this evening, and it was up to them to vote on this issue that had the potential of saving the local property tax an amount of \$4 million in this state, I'm sure that they would vote for this Bill to pass. I know that under certain circumstances, if there was a provision in front of us that would raise \$4 million as painlessly as this provision will, you couldn't fit one person. Everybody would be up and make sure they would be seen voting for this. I hope that you really consider voting in support of this Bill, because remember, a vote for this Bill is a vote for the local property taxpayers. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Knox, Senator Brawn.

Senator BRAUN: Thank you Mr. President. Ladies and Gentlemen of the Senate. I didn't plan to rise, but when my good colleague from Aroostook, Senator Theriault, who has changed his vote as he has already said, when we started on this Bill he was on the same side that I am, the Ought Not To Pass, and I guess I am concerned when he says that the Insurance Lobby has turned this around. I have not changed my position from the beginning, and for the Record I want to give you the same logical reasons why I voted against it in the beginning, and continue to do so now. You've heard about this Study that was done. I finally have this Study right here rather than out in another room so I can read for the Record what the Study concluded. A study was conducted by the Joint Standing Committee on Business Legislation and Education on the subject of a State Program of Funded Self-Insurance for public schools. A Majority Report was submitted to the Legislative Council on February 15, 1980. The majority concluded that a State Program was undesirable for three main reasons. Number one, the state would be unable to manage two hundred and eighty different school systems. Number two, local officials should retain local control of the school district's insurance. And three, any State Program would halt the Maine School Management Program which was just getting under way. As you have already seen this evening, the Chairman of Education, the good Senator from York, Senator Estes, is not in favor of that Bill, which should tell a lot. Finally, as I mentioned the other night, the logic and the reasoning is because I don't believe this is actuarially sound, and again would just like to read for the Record the reasoning. The rates likely to be charged do not have to be actuarially sound. Section 3 of the Bill simply requires Maine Risk Management to use a nationally recognized firm to assist them in the rate making process. There is no provision in the Bill that the Director has to use actuarially sound rates. The Director simply has to

tell a legislative Committee why he chose not to use actuarially sound rates. This Bill, here is the key, there is no requirement that the rates have to be actuarially sound. Again, this Bill would like to create the illusion, and it does, and you are hearing some eloquent testimony from my well respected colleague. Mine may not be eloquent, but it is sincere and I believe it is factual. L.D. 1946 does not set any uniform standards requirements for coverage, lost control, or safety engineering. Maine Risk Management can offer anything they want to. Do we really believe our school officials and directors want to become insurance experts in order to make prudent decisions and weigh them against alleged cost savings? And finally, Maine Risk Management Division has full authority to make deals with reinsurers. They have full reign. There are no requirements in this Bill. There isn't even a requirement that the reinsurer comply with solvency or financial measures. I don't think that we as legislators really believe the employees of Maine Risk Management have this expertise. So I would ask you to vote against the pending motion. Thank you.

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

Senator KANY: Thank you Mr. President. Ladies and Gentlemen of the Senate. Four things: 1. Rulemaking - the Commissioner with the advice of the Director shall adopt rules to ensure that the fund is adequately funded and that the assets of the fund are protected. That is a requirement along with having a nationally renowned actuary. 2. The 1982 Study which followed the 1980 Study, which was referred to by the good Senator from Knox, Senator Brawn, our respected colleague, indicated that it was a very desirable possibility to go for state funding and state insurance, and mentioned one particular state that thought there might be as much as 20% savings by having state insurance for schools, and found that they have 40% saving. I would remind you that it is a voluntary thing, so school districts or whomever could choose to stay with their private insurance agent or private insurer, if they wish. We aren't mandating anything. This is just one way that we can help our schools and our property taxpayers. It looks as if we probably will have some flat funding for schools, and this would really help our property taxpayers. I do hope that you go along with the motion and vote for enactment. Thank you.

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

Senator COLLINS: Thank you Mr. President. Ladies and Gentlemen of the Senate. The area that I am most concerned about is that the Risk Management Division is essentially able to construct its own rules and regulations. Sure, they say we'll hire an actuary, and an actuary help them to develop rates. The actuary isn't going to do anything in terms of deciding what resources ought to be able to be present and available in the cases of loss. In the private world, for example, a major paper company that self-insures must go to the Bureau of Insurance and prove that they have the assets, the net worth and the ability to handle losses within its own framework. The other self-insurers join together with a group like the Municipal Association, for example. Only they don't insure property, they

insure the Workmans' Compensation Plan. That has had enough problems, believe me. Those folks have to provide evidence to the Bureau that they have satisfactory resources in order to take this risk. We are saying in this Bill that the Department of Administration and Risk Management Division can make its own rules, and those rules do not have to measure up to the quality of the insurance industry or what we require for insurers to come into Maine in order to do business. It is interesting to note that Maine has a fairly firm and good position with respect to the requirements that it causes the insurers who do business in Maine to have. I noted recently in the newspaper the other day, that the Executive Insurance Company, which is a major life insurer throughout the country was rejected in Maine. That company went belly up recently. I had occasion the other day for someone who called and said, "Why can't such and such a company do business in Maine? I'd like to buy insurance from them." It developed that that company had applied to the Maine Bureau of Insurance and was found wanted. Those are protections for our citizens that buy insurance in the marketplace. The people that are engaged here are the public, the towns, and the school districts. The burden is going to be on somebody to pick up the Bill in the case of losses that are beyond the premium base. This has no base. We don't have stockholders that have invested in millions of dollars to provide that base. It seems to me that this is worth something. I think it is a risk that we ought not to be taking. I would urge you to vote against the Bill. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Cleveland.

Senator **CLEVELAND:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I find it curious, men and women of the Senate, that we are talking about the risks of this program and how we need to protect the unknowing, naive, and unable local officials from being involved in the state program that we have had for decades. A program that apparently is not too risky for every state building. A program that is not too risky for the entire University System. A program that is not too risky for the entire Technical College Program. A program that is not too risky for the current elementary schools and secondary schools in all organized territories. It is a system that has had no problems. There has not been one example said to you today that the current system in this state has never been unable to meet its obligations. It has never left anybody high and dry. It has never cost local taxpayers because they weren't able to perform, or one example of their inability, incompetence, or unprofessionalism. Not one. It's innuendo, it's suggestion, it's tearing it down by implication. I suggest to you that the history shows that it is a good program. This attitude that local officials somehow are less capable, less intelligent, have less access to information, are less informed, less able to make capable decisions, and we must protect them because, my God, we may encourage them to do this. We wouldn't want to do that because they might make a bad decision, so we need to protect them against themselves so they won't do this. Yet, there is no history that there is any more risk in this program or that they are any less capable of making an informed decision on an optional basis. It seems clear to me, if we want to provide some property tax

relief, if we want to provide an opportunity to spend some money on direct services rather than policy premiums, we vote for the Bill. If we want to support the insurance industry, we don't vote for it. Thank you.

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

Senator **CLARK:** Thank you Mr. President. Ladies and Gentlemen of the Senate. Many of us preface our remarks by saying they didn't intend to rise and debate this issue. I guess I would echo that statement this evening. The good Senator from Knox, Senator Brawn has drawn my attention to a report that I signed, and on which I participated. It harkens back to 1980. During that legislative session I not only served as the Minority Senator on the Committee on Business Legislation where I had served a number of years, but also served on the Committee on Education. As a signatory of the Majority Report in 1980, I can share with you the reason why it became a Majority Report against adoption of the proposal. That simply was because it was mandated. Mandated on every school system across the state. While I was not initially apprised of the contents of L.D. 1946 that is before us this evening, I am indebted to my colleagues for making me much more aware of the issue, and saying that I to have changed my position. Frankly, much to my own surprise. Indeed, it would expand the market and we wouldn't let the marketplace prevail. We would not, as the good Senator from Aroostook has alluded to, have to deal with the need to provide puppets for stockholders, who make significant contributions to the capital base of our fine insurance industry, not only in this state but across the country. I continue more, and more, and more, with every successive term I am privileged to serve in this Legislature, to recognize the talent and the ability of our local elected officials to take care of their own, and to make their own decisions without mother state standing over them, carefully admonishing them and limiting their options. Back in the 105th Legislature, a concept was passed, that I haven't heard alluded to for probably a decade now. It used to be embraced in significantly in all the debate in both Chambers. It is a short two-term phrase. It is called "Home Rule". L.D. 1946 is optional. If our fully competent local officials wish to access this opportunity in order to save hard earned taxpayers dollars, they can move in that direction, nothing guarantees that this will be what they do, but certainly it provides them an alternative, and indeed, an option. I invite you to join me in supporting the motion to Enact this Bill. Thank you Mr. President.

THE PRESIDENT: The pending question before the Senate is **ENACTMENT**.

A vote of Yes will be in favor of **ENACTMENT**.

A vote of No will be opposed.

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEAS: Senators BALDACCI, BERUBE, BRANNIGAN, CLARK, CLEVELAND, CONLEY, DUTREMBLE, ESTY, GAUVREAU, KANY, MATTHEWS, MCCORMICK, MILLS, PEARSON, THERIAULT, TITCOMB, VOSE, THE PRESIDENT - CHARLES P. PRAY

NAYS: Senators BOST, BRAWN, BUSTIN, CAHILL, CARPENTER, COLLINS, EMERSON, FOSTER, GILL, GOULD, HOLLOWAY, LUDWIG, RICH, SUMMERS, TWITCHELL, WEBSTER

ABSENT: Senator ESTES

18 Senators having voted in the affirmative, and 16 Senators having voted in the negative, with 1 Senator being absent, this Bill was **PASSED TO BE ENACTED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

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

Emergency

An Act Assuring Clean Waters in Maine
H.P. 161 L.D. 246
(C "A" H-331)

Tabled - June 6, 1991, by Senator **CLARK** of Cumberland.

Pending - **ENACTMENT**

(In Senate, May 23, 1991, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-331)**, in concurrence.)

(In House, June 4, 1991, **PASSED TO BE ENACTED.**)

On motion by Senator **TITCOMB** of Cumberland, the Senate **SUSPENDED THE RULES.**

On further motion by same Senator, the Senate **RECONSIDERED** its action whereby this Bill was **PASSED TO BE ENGROSSED AS AMENDED.**

On further motion by same Senator, the Senate **SUSPENDED THE RULES.**

On further motion by same Senator, the Senate **RECONSIDERED** its action whereby it **ADOPTED** Committee Amendment "A" (H-331), in concurrence.

On further motion by same Senator, Senate Amendment "A" (S-390) to Committee Amendment "A" (H-331) **READ** and **ADOPTED.**

Committee Amendment "A" (H-331) as Amended by Senate Amendment "A" (S-390) thereto, **ADOPTED** in **NON-CONCURRENCE.**

Which was, **PASSED TO BE ENGROSSED**, as Amended in **NON-CONCURRENCE.**

Under suspension of the Rules, ordered sent down forthwith for concurrence.

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

SENATE REPORT - from the Committee on **AGING, RETIREMENT AND VETERANS** on Bill "An Act to Provide Fully Paid Health Insurance Benefits to Retired Teachers"

S.P. 571 L.D. 1525

Report - **Ought to Pass as Amended by Committee Amendment "A" (S-226).**

Tabled - June 4, 1991, by Senator **CLARK** of Cumberland.

Pending - **ACCEPTANCE** of Committee Report

(In Senate, May 30, 1991, Report **READ.**)

Which Report was **ACCEPTED.**

The Bill **READ ONCE.**

Committee Amendment "A" (S-226) **READ** and **ADOPTED.**

Which was, under suspension of the Rules, **READ A SECOND TIME**, and **PASSED TO BE ENGROSSED, As Amended.**

Under suspension of the Rules, ordered sent down forthwith for concurrence.

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

RESOLUTION, Proposing an Amendment to the Constitution of Maine to Provide State Funding of any Mandate Imposed on Municipalities

S.P. 42 L.D. 66
(C "A" S-292)

Tabled - June 12, 1991 by Senator **CLARK** of Cumberland.

Pending - **PASSAGE TO BE ENGROSSED AS AMENDED**

(In Senate, June 6, 1991, **READ A SECOND TIME.**)

On further motion by same Senator, Senate Amendment "A" (S-379) **READ** and **ADOPTED**.

Which was, **PASSED TO BE ENGROSSED, As Amended**.

Under suspension of the Rules, ordered sent down forthwith for concurrence.

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

RECALLED FROM LEGISLATIVE FILES

Bill "An Act to Amend the Maine Administrative Procedure Act" (Emergency) H.P. 1371 L.D. 1955

In House, June 26, 1991, under suspension of the Rules, **READ TWICE** and **PASSED TO BE ENGROSSED**, without reference to a Committee.

In Senate, June 26, 1991, referred to the Committee on **STATE AND LOCAL GOVERNMENT** and **ORDERED PRINTED** in **NON-CONCURRENCE**.

In House, June 26, 1991, that Body **ADHERED**.

In Senate, June 26, 1991, **ADHERED**.

RECALLED from the Legislative Files, pursuant to Joint Order (S.P. 770), in concurrence.

On motion by Senator **BERUBE** of Androscoggin, the Senate **SUSPENDED THE RULES**.

On further motion by same Senator, the Senate **RECONSIDERED** its action whereby it **ADHERED**.

On further motion by same Senator, the Senate **RECEDED** and **CONCURRED**.

Under suspension of the Rules, ordered sent forthwith to the Engrossing Department.

Off Record Remarks

ORDERS OF THE DAY

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

Emergency Resolve

Resolve, to Establish the Commission to Study the Feasibility of a Capital Cultural Center
H.P. 1164 L.D. 1705
(H "A" H-624 to C
"A" H-453)

Tabled - June 26, 1991, by Senator **CLARK** of Cumberland.

Pending - **FINAL PASSAGE**

(In Senate, June 19, 1991, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-453) AS AMENDED BY HOUSE AMENDMENT "A" (H-624)** thereto, in concurrence.)

(In House, June 26, 1991, Bill and Accompanying Papers **INDEFINITELY POSTPONED**.)

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

Off Record Remarks

Senator **WEBSTER** of Franklin was granted unanimous consent to address the Senate off the Record.

Senator **CLARK** of Cumberland was granted unanimous consent to address the Senate off the Record.

Senator **BRANNIGAN** of Cumberland was granted unanimous consent to address the Senate off the Record.

On motion by Senator **SUMMERS** of Cumberland, **ADJOURNED** until Saturday, June 29, 1991, at 3:00 in the afternoon.