

# MAINE STATE LEGISLATURE

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# LEGISLATIVE RECORD

OF THE

**One Hundred And Fifteenth Legislature**

OF THE

**State Of Maine**

**VOLUME VI**

**SECOND REGULAR SESSION**

House of Representatives  
March 10, 1992 to March 31, 1992

Senate  
January 8, 1992 to March 9, 1992

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

In Senate Chamber

Tuesday

February 11, 1992

Senate called to Order by the President.

Prayer by Bishop Joseph Gerry of the Roman Catholic Diocese in Portland.

**BISHOP JOSEPH GERRY:** Let us pray. Blessed are you O Lord our God. All your creation bespeaks your goodness and kindness, and all earthly powers are to serve you. Help the Senators here in Augusta to fulfill their responsibilities worthily and well. For in honoring and striving to please you at all times, they will reverence every human person, respect and protect your creation, and labor for the establishment of a society of peace and justice and freedom for the people entrusted to them.

In a society that grows ever more complex, the questions that will seek their resolution are themselves more and more complicated and constantly more varied, daily trying the wisdom of Solomon to achieve just responses. Mindful, as our founding fathers declared over two centuries ago, that you have endowed every person with certain inalienable rights, among them the right to life, liberty and the pursuit of happiness, we ask, Almighty God and Father, that in the process of discharging their duties to protect these rights, you bestow upon them a full measure of prudent reflection, an abundance of wisdom, courage, compassion and ever constant vigilance.

We ask this Eternal Father, in the confidence that you, the God of Justice and Mercy, will hear and answer our prayer.

Reading of the Journal of Thursday, February 6, 1992.

**PAPERS FROM THE HOUSE**  
**Non-concurrent Matter**

**JOINT ORDER** - relative to creating a 19 member Joint Select Committee on Governmental Restructuring.  
S.P. 841

In Senate, January 9, 1992, **READ** and **PASSED**.

Comes from the House **READ** and **INDEFINITELY POSTPONED** in **NON-CONCURRENCE**.

The Senate **ADHERED**.

Sent down for concurrence.

**Joint Orders**

The following Joint Order: H  
.P. 1636

**ORDERED**, the Senate concurring, that the Joint Standing Committee on Appropriations and Financial Affairs report out a bill, "An Act Making Supplemental Appropriations for Fiscal Year 1991-92" to the House; and be it further

**ORDERED**, that when the Joint Standing Committee on Appropriations and Financial Affairs reported out "An Act to Make Supplemental Appropriations and

Allocations for the Expenditures of State Government for the Fiscal Years ending June 30, 1992 and June 30, 1993 and to Change Certain Provisions of the Laws," H.P. 1547, L.D. 2185, and all its accompanying papers, that this Act contain no further supplemental appropriations for fiscal year 1991-92.

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

Which was **READ**.

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

Senator **CAHILL:** Thank you Mr. President. Ladies and Gentlemen of the Senate. Before we pass this Joint Order I would like to ask a couple of questions and have them answered on the record, if you will indulge me. First of all this is a different way of doing business than I think most of the Senators in this Chamber are used to. I would like to ask a question of someone from the Appropriations Committee. Why is it important that we report out the Supplemental now? What is the reason for doing it instead of putting it together with the regular big budget, the way we usually do? What is the intent of the Appropriations Committee to put in the Supplemental Budget? Is it going to be the Supplemental Budget that was presented or will there be added on items or items taken away for that? How long do they expect it to take? One member of the Appropriations Committee told me today they were working on the schedule and the plan was to make the Appropriations Committee work evenings and weekends until they are through. I would like to have these questions answered before we support this Joint Order.

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

Senator **PEARSON:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I am not sure I can remember all of the questions that were posed. I do remember the first one which seemed to be the most fundamental of them all. Why are we making a major departure by picking up the budgets in two different parts? I would respectively submit to you that it is normal that we put them together. Ever since I have been in the Maine Legislature we have always had a Part 1 and a Part 2 Budget. Part 1 Budget was the fundamental budget to keep government operating on a regular basis until the end of the fiscal year. Part 2 or Supplemental Budget which was add ons was always a different budget considered at a later time and it was called a Part 2 Budget. Being proposed here is to continue that tradition that went on for decades of having us address the continuing operating budget and then the add ons later on. That is my recollection and I know it is accurate because I went through it many times. I think that is the normal operating procedure and it seems to me it makes sense that you ought to talk about what it is that keeps government operating right now and the other issues separated off in another Bill.

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

Senator **CAHILL:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I appreciate the Senator from Penobscot, Senator Pearson's answer to that question. It seems to me that there was a suggestion last year that we look at breaking the two budgets out and the response to that was we really need to look at the whole picture. We don't need to take these as two separate items, we need to look at the whole picture. We have a very difficult next 6 weeks before us, Ladies and Gentlemen of the Senate,

and I don't think anyone denies that. I think Appropriations has their work more than cut out for them and I certainly don't envy them their task. I would like to know if anything has changed, why shouldn't we continue to look at the big picture as far as the Budget is concerned? I would like to repeat again a couple of other questions that are on my mind. One is the contents, what is the intention of the Appropriations Committee to include that? Is there a time frame? I know we had talked that February 28, 1992 would be the day we would report out the big budget. Are we still sticking to that time frame and, I don't mean wasting time because I know you are all working very hard, but is it a good use of our time to break out supplemental and the other part of the budget? Can't we do it together? Wouldn't we be able to do it more readily in a better or quicker time frame? Thank you.

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

Senator **PEARSON:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I would not normally have gotten up when I did. I did not notice the Chair was approaching his seat from behind. I do want to step out of line a little bit and address one of the questions that the Senator from Sagadahoc, Senator Cahill has posed. What is the time frame? I would like to know the answer to that particular question myself. It seems to me there are certain things that you know are givens that government has to have which we normally call the Part 1 Budget. In regard to the rest of it, it has been my experience over the years, that the Chief Executive's Office of the State will rush in at the very last minute and give us all kinds of different changes. I don't know how many changes are coming and I don't know how many departments are now in the process of changing their priorities and their figures. I would suggest to you that maybe the Assistant Minority Leader, Senator Cahill might know that information better than I would. If she does I would like to know because it would give me a better idea of what the time frame would be.

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

Senator **BRANNIGAN:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I want to thank the Senator from Penobscot, Senator Pearson for taking those questions earlier. They were his questions really. He has the better historical perspective and was in charge during the last go around as well as many before it. As far as inclusions, if the question is what do we intend to include in the 1992 spending section which we is being asked to split out here. There are three parts to this proposal the Governor has given us. One is a proposal for Supplemental spending for 1992, one is a proposal for Supplemental spending for 1993, and the other is cuts to the 1993 section of the budget. What is being asked in this order is that we handle the 1992 proposed spending separately. We are willing to do that and intend to do that. We have no intention, that I know of, of including anything in there but what has been proposed by the Governor or proposed by departments that were given to him. We would say the time frame to do that piece would be right away and then we would get on with the cutting piece and other supplemental proposals for next year. Our time frame is still the first of March or the end of February, however, that is going to be a

stretch. We intend to do that as rapidly as possible. We would like to get this out of the way first. Thank you.

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

Senator **WEBSTER:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I would like to thank the good Senator from Cumberland, Senator Brannigan for better explaining what this proposal would do. I was concerned, as were others in this Body, as to whether we were going to pass some type of emergency spending proposal which would be supported unanimously by the Committee or whether this was an attempt to try to run a separate Bill. It is my understanding, having listened to Senator Brannigan and others, that this would be essentially for emergency needs agreed on unanimously by the Committee. Is that right? Thank you.

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

Senator **BRANNIGAN:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I am not sure about anything that is unanimous anymore. I have no idea whether it will be unanimous or not. I certainly hope so. As far as emergency needs, if you are using the word emergency as you use it with the Legislative Council probably yes, if you use emergency as you would with the Fire Department probably no. If you have looked at the budget there is a section for 1992 recommended spendings, we will take a look at that and choose or not choose to do those. Some of those are emergency FEMA money and those kinds of things, not only emergency in nature but also needed soon. That is what we would be presenting to this body and the other body right away. That will leave us with the cuts and the 1993 recommended spending. Hopefully that will be unanimous but I couldn't guarantee anything. Thank you.

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

Senator **CAHILL:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I appreciate your indulgence on this issue. I am not trying to be difficult to get along with. I did have some very serious questions to ask about this process. I am somewhat relieved by the answers from the good Senator from Cumberland, Senator Brannigan and answers from the good Senator from Penobscot, Senator Pearson. I don't know the time frames either, believe me I don't know and that is one of the reasons I am trying to get some of this down to help people plan their schedules over the next six weeks. I think these questions need to be asked. I hope, more importantly, that the members of Appropriations and the members of the Senate are working in the mind set that we need to have an consensus on the budget. I think that is so important especially during these very, very tough fiscal economic times in the State of Maine. We have very, very tough decisions to make over the next six weeks as I said earlier and I think it is more important than ever before in the history of the State of Maine that we work together on issues like that. I am not trying to badger anyone. I feel this is a very serious deviation from what has been the status quo as far as the budget is concerned in recent years. Thank you.

Which was **PASSED**, in concurrence.

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Off Record Remarks

The following Joint Order: H  
.P. 1647

ORDERED, the Senate concurring, that Bill, "An Act to Amend and Improve the Laws Relating to Education," S.P. 469, L.D. 1252, and all its accompanying papers, be recalled from the legislative files to the House.

Comes from the House **READ** and **PASSED**.  
Which was **READ**.

Pursuant to Joint Rule 15, this Joint Order requires the affirmative vote of two-thirds of the members present and voting. 31 Senators having voted in the affirmative and No Senators having voted in the negative, and 31 being more than two-thirds of the members present and voting, the Joint Order was **PASSED**, in concurrence.

**COMMUNICATIONS**

The Following Communication:

**DEPARTMENT OF PUBLIC SAFETY  
STATE HOUSE STATION 42  
AUGUSTA, MAINE 04333**

February 1, 1992

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

I am submitting the enclosed report on behalf of the Department of Public Safety and the Department of Human Services, pursuant to Resolve 1991, C. 17, Resolve, to Develop Evidence Protocols and Standardized Kits for Cases of Alleged Gross Sexual Assault.

The report proposes a method to standardize the collection of physical evidence from victims of alleged gross sexual assault. The standardization should lead to improved collection of evidence and should also reduce trauma to victims.

Sincerely,  
S/John R. Atwood  
Commissioner

Which was **READ** and with Accompanying Papers **ORDERED PLACED ON FILE**.

The Following Communication:

**EXECUTIVE DEPARTMENT  
OFFICE OF SUBSTANCE ABUSE  
STATE HOUSE STATION 159  
AUGUSTA, MAINE 04333**

February 4, 1992

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

We are pleased to send you a copy of the report "Department of Education and Office of Substance Abuse Plan for Coordination" for your information. This report was requested in Public Law, Chapter 601 of 1991. Specifically, it is in response to Section 17 of that Chapter, which directs the Commissioner of the Department of Education to submit a plan "to ensure the coordination and consolidation of alcohol and other drug abuse education programs" to the Director of the Office of Substance Abuse.

The document is a product of a collaborative effort between the Department of Education, the Office of Substance Abuse, and local school and community agency representatives. It has been reviewed by OSA and is now available for additional comment.

Should you have any questions concerning this report, please contact me at your convenience.

Sincerely,  
S/Ronald G. Speckmann  
Director

Which was **READ** and with Accompanying Papers **ORDERED PLACED ON FILE**.

The Following Communication:

**115th MAINE LEGISLATURE**

February 6, 1992

Honorable Joy J. O'Brien  
Secretary of the Senate  
State House Station 3  
Augusta, Maine 04333  
Dear Secretary O'Brien:

This is to notify you that pursuant to our authority under Chapter 53 of the Resolves of 1991, we have today appointed Rep. Edward L. Pineau, of Jay, to serve as the Chair of the Commission to Study the Use of Professional Strikebreakers.

Sincerely,  
S/Charles P. Pray S/John L. Martin  
President of the Senate Speaker of the House  
Which was **READ** and **ORDERED PLACED ON FILE**.

**SENATE PAPERS**

Bill "An Act to Govern Residential Propane Gas Suppliers"

S.P. 898 L.D. 2317

Presented by Senator **TITCOMB** of Cumberland  
Cosponsored by Senator **BOST** of Penobscot,  
Representative **JACQUES** of Waterville and  
Representative **SIMPSON** of Casco

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26.

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

Sent down for concurrence.

Bill "An Act to Amend Various Provisions of the Laws Governing Solid Waste Disposal Facilities" (Emergency)

S.P. 897 L.D. 2311

Presented by Senator **DUTREMBLE** of York  
Cosponsored by Representative **RICHARDS** of Hampden, Senator **ESTY** of Cumberland and Senator **TITCOMB** of Cumberland

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26.

Which was referred to the Committee on **ENERGY & NATURAL RESOURCES** and **ORDERED PRINTED**.

Sent down for concurrence.

Bill "An Act to Amend the Maine Civil Rights Law Regarding Violations of Constitutional Rights"

S.P. 899 L.D. 2318

Presented by Senator **GAUVREAU** of Androscoggin  
Cosponsored by Representative **OTT** of York and  
Representative **JACQUES** of Waterville

Submitted by the Department of the Attorney General pursuant to Joint Rule 24. Which was referred to the Committee on **JUDICIARY** and **ORDERED PRINTED**. Sent down for concurrence.

Bill "An Act to Establish the Fraud Investigation Division within the Department of Audit"

S.P. 901 L.D. 2320

Presented by Senator **MATTHEWS** of Kennebec  
Cosponsored by President **PRAY** of Penobscot,  
Representative **HANLEY** of Paris and Representative  
**NORTON** of Winthrop

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26.

Which was referred to the Committee on **STATE & LOCAL GOVERNMENT** and **ORDERED PRINTED**.

Sent down for concurrence.

Bill "An Act Concerning Anatomical Gifts Under the Motor Vehicle Laws"

S.P. 900 L.D. 2319

Presented by Senator **FOSTER** of Hancock  
Cosponsored by Senator **CONLEY** of Cumberland,  
Representative **PARADIS** of Augusta and  
Representative **MARSANO** of Belfast

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.

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

(See Action Later Today)

**COMMITTEE REPORTS**

**House**

**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:

From the Committee on **AGRICULTURE** Bill "An Act Concerning the Management of the Potato Marketing Improvement Fund"

H.P. 1454 L.D. 2066

From the Committee on **ENERGY & NATURAL RESOURCES** Bill "An Act Regarding Fees Collected by the Allagash Wilderness Waterway"

H.P. 1538 L.D. 2171

From the Committee on **ENERGY & NATURAL RESOURCES** Bill "An Act to Establish Current Drinking Water Standards for Environmental Protection"

H.P. 1572 L.D. 2219

From the Committee on **TRANSPORTATION** Bill "An Act Concerning Highway Traffic Laws"

H.P. 1430 L.D. 2042

From the Committee on **UTILITIES** Bill "An Act Concerning the Norridgewock Water District" (Emergency)

H.P. 1481 L.D. 2093

**Change of Reference**

The Committee on **APPROPRIATIONS & FINANCIAL AFFAIRS** on Bill "An Act to Abolish the Second Injury Fund and the Employment Rehabilitation Fund" (Emergency)

H.P. 1648 L.D. 2310

Reported that the same be **REFERRED** to the Committee on **LABOR**, pursuant to Joint Order H.P. 1508.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **REFERRED** to the Committee on **LABOR**.

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

The Bill **REFERRED** to the Committee on **LABOR**, in concurrence.

**Ought to Pass**

The Committee on **BUSINESS LEGISLATION** on Bill "An Act to Repeal the Provisions of the Uniform Commercial Code Relating to Bulk Transfers"

H.P. 1420 L.D. 2032

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**.

The Committee on **HUMAN RESOURCES** on Bill "An Act to Institute Conformity to the Low-cost Drug Program"

H.P. 1521 L.D. 2146

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 **ENERGY & NATURAL RESOURCES** on Bill "An Act to Clarify the Status of Wood Yard Debris"

H.P. 1427 L.D. 2039

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-891)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-891)**.

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

The Bill **READ ONCE**.

Committee Amendment "A" (H-891) **READ** and **ADOPTED**, in concurrence.

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

The Committee on **ENERGY & NATURAL RESOURCES** on Bill "An Act to Extend the Deadline for Closure of Municipal Landfills by 18 Months" (Emergency)

H.P. 1435 L.D. 2047

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-890)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-890)**.

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

The Bill **READ ONCE**.

Committee Amendment "A" (H-890) **READ** and **ADOPTED**, in concurrence.

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

The Committee on **ENERGY & NATURAL RESOURCES** on Bill "An Act to Establish Ambient Air Quality Standards for Toluene and Perchloroethylene"

H.P. 1448 L.D. 2060

Reported that the same **Ought to Pass as Amended** by **Committee Amendment "A" (H-882)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-882)**.

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

The Bill **READ ONCE**.

Committee Amendment "A" (H-882) **READ** and **ADOPTED**, in concurrence.

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

The Committee on **HUMAN RESOURCES** on Bill "An Act to Require the Department of Human Services to Have a Regular Presence in Every County of the State"

H.P. 620 L.D. 890

Reported that the same **Ought to Pass as Amended** by **Committee Amendment "A" (H-884)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-884)**.

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

The Bill **READ ONCE**.

Committee Amendment "A" (H-884) **READ** and **ADOPTED**, in concurrence.

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

The Committee on **JUDICIARY** on Bill "An Act to Safeguard Money Held for Minors"

H.P. 1172 L.D. 1713

Reported that the same **Ought to Pass as Amended** by **Committee Amendment "A" (H-876)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-876) AND HOUSE AMENDMENT "A" (H-894)**.

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

The Bill **READ ONCE**.

Committee Amendment "A" (H-876) **READ** and **ADOPTED**, in concurrence.

House Amendment "A" (H-894) **READ** and **ADOPTED**, in concurrence.

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

The Committee on **UTILITIES** on Bill "An Act to Regulate Incineration Plants"

H.P. 1059 L.D. 1548

Reported that the same **Ought to Pass as Amended** by **Committee Amendment "A" (H-879)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-879)**.

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

The Bill **READ ONCE**.

Committee Amendment "A" (H-879) **READ**.

On motion by Senator **CLARK** of Cumberland, Tabled 1 Legislative Day, pending **ADOPTION** of Committee Amendment "A" (H-879).

The Committee on **UTILITIES** on Bill "An Act to Establish the Electric Facilities Siting Council"

H.P. 1135 L.D. 1660

Reported that the same **Ought to Pass as Amended** by **Committee Amendment "A" (H-889)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-889)**.

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

The Bill **READ ONCE**.

Committee Amendment "A" (H-889) **READ** and **ADOPTED**, in concurrence.

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

On motion by Senator **CLARK** of Cumberland, the Senate **RECONSIDERED** whereby it was **REFERRED** to the Committee on **TRANSPORTATION**:

Bill "An Act Concerning Anatomical Gifts Under the Motor Vehicle Laws"

S.P. 900 L.D. 2319

On further motion by same Senator, Tabled 1 Legislative Day, pending **REFERENCE**.

#### Divided Report

The Majority of the Committee on **JUDICIARY** on Bill "An Act to Establish a Limit on Noneconomic Damages in Medical Liability Actions"

H.P. 253 L.D. 344

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

Signed:

Senator:

**GAUVREAU** of Androscoggin

Representatives:

**CATHCART** of Orono

**PARADIS** of Augusta

**COTE** of Auburn

**STEVENS** of Bangor

**FARNSWORTH** of Hallowell

**KETTERER** of Madison

**ANTHONY** of South Portland

The Minority of the same Committee on the same subject reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-875)**.

Signed:

Senators:

**BERUBE** of Androscoggin

**HOLLOWAY** of Lincoln

Representatives:

**RICHARDS** of Hampden

**OTT** of York

**HANLEY** of Paris

Comes from the House with the Majority **UGHT NOT TO PASS** Report **READ** and **ACCEPTED**.

Which Reports were **READ**.

Senator **GAUVREAU** of Androscoggin moved to **ACCEPT** the Majority **UGHT NOT TO PASS** Report, in concurrence.

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

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

Senator GAUVREAU: Thank you Mr. President. Ladies and Gentlemen of the Senate. Because a Division has been requested I feel compelled to present to the Senate this evening the rationale for those signers of the Majority Ought Not To Pass Report. Let me apologize, in advance, because I am going to speak perhaps longer than I might ordinarily on an issue like this. I would beg the indulgence of the body to bear with me for the first half hour or so of my remarks.

I find the issue of medical malpractice can be used in fact, as a metaphor for what I believe troubles the state of American politics. Therefore, I am going to direct my remarks to the Medical Malpractice issue but also relate it to larger issues. For that reason, I have decided to append to my remarks a title if you will. My title would be How Health Care Politics Resembles Red Sox Baseball, with a subtitle of "The Rise of Entropic Homogeneity and the Relative Decline of Originality in American Political Thought." My premise is fairly simple. When there arises a complicated matter or a structural problem which arises great controversy, political institutions have a tendency to adopt a relatively quick fix. A simplistic response to those complicated problems which initially attracts a broad base of political support. When those quick fixes have proven to fail in time, it ultimately erodes public faith in those institutions which in the long term eviscerate the capacity of the institution to develop the political will to forge difficult, yet, necessary changes to address the problem at hand. I would submit, for example, last summer we had a good example of that in Workers' Compensation. I would submit to you that the same response is being proposed this evening.

Now to the lighter side, after all the first part of my title was about "How Health Care Politics emulates Red Sox Baseball." When I was growing up outside Boston, I went to a lot of ball games. In fact, one of my neighbors was a pitcher for the Boston Red Sox. The Red Sox in the late 50's and early 60's were a very bad baseball club. We're talking mediocre. They would lose by rather large scores. They decided that to solve their problem they would bring in aging sluggers, Vic Wertz, Rip Ripulski, Bob Thompson who had flashes of brilliance but had clearly eclipsed their bright parts in their athletic careers. The Red Sox would trade for over the hill pitchers and would ask them to come in and pitch. These folks would misunderstand the message and think the message was to play cards and they brought in a lot of jokers. The Sox ultimately lost and they lost until the latter part of the 1960's when they decided that rather than a quick fix, bringing in new ball players or firing the manager, they decided to do what was hard and develop a farm system and develop good players. It took about six or seven years to do this. Lo and behold there emerged from the Red Sox Farm System players like Carlton Fisk, Dwight Evans, Jim Rice, Fred Lynn and the Red Sox began to win. They made a commitment to do the structural work which was necessary to develop a long term quality product. It wasn't very popular the first couple of years, they had losing records and only marginal fan support. Once the fans began to realize the Red Sox were committed to a long range program improving the structure of their organization, the fans supported the franchise. Since that time the Red Sox have averaged over two million people in tiny Fenway Park.

How does all that relate to the issue of medical malpractice you are probably asking yourself. I'll try to address that. The issue is whether or not by legislation we should impose a cap of \$250,000 on what is referred to as the non economic aspect of a medical malpractice verdict or award. As you know, this issue has been debated every year in this institution. To refresh your recollection, economic damages relate to items which one can quantify: lost wages, payment for medical bills, medical rehabilitation, etc. This Bill would not apply to those damages at all. It would apply to disfigurement, pain and suffering, and that sort of thing because you can not quantify pain and suffering. The argument is we have to put a cap on malpractice awards because this, in fact, will immediately reduce the rapidly escalating medical malpractice premiums in our society. I don't think anyone in this room would dispute the fact medical malpractice rates are too high and are an impediment to the orderly diffusion of health care practitioners throughout our state.

I have listened to the debate and arguments for caps for ten years now. After ten years I remain unpersuaded that there is any reliable empirical data to suggest that caps would, in fact, achieve their objective. Their objective being, I suppose, to moderate the rate of increase of malpractice rates or even hopefully bring the rates down. We are told there is ample legislative precedent for caps and we should therefore follow these precedents. This is a great argument because whenever we err in judgement or make a bad decision people automatically point to our alleged wisdom and ask us to follow that wisdom in future years. We tend to exacerbate legislative wrongs. In this case the precedents we are being asked to follow are inapposite. We are being asked, for example, to impose caps because, after all, we have caps in the Maine Tort Claims Act. We have caps in wrongful death actions. We even have caps in wrongful server of alcohol liability areas. The problem with that reasoning is that until this Legislature took action people had no right to collect damages at all. The Maine Tort Claims act in 1976 allowed individuals to sue up to \$300,000 for relief under the Maine Tort Claims Act or even for a higher amount if the political jurisdiction had insurance above \$300,000. Similarly, in the alcohol liability area, there was at common law, no right at all for a party to sue a server of alcoholic beverages under the Dramshop Act. It wasn't until the recommendations of the Commission headed by former Senator Trafton that we did impose a \$250,000 cap on damages. Mind you, we created a right for the first time and we actually conferred a right to victims of Tort to get compensation. The same thing is true on wrongful death. At common law, the law held basically, that no claim could survive a persons death. Therefore, there could be no wrongful death action filed by the estate of a decedent. Legislatures throughout the entire country enacted remedial wrongful death actions. Now in Maine, you can for the first time actually get some compensation in a wrongful death action. My point in going through this history is to show that people who point to caps in those three areas have missed the point. The caps were not intended to reduce liability. The caps were intended to provide compensation where previously no compensation was available at all.



I submit that you may want other evidence on the non-efficacy of caps. There have been some studies in those states and there are about twenty two states in our country which have medical malpractice caps now on non economic damages. Patricia Danzon did a study, a closed claims study, from 1979-1986 and she found that in the six states she studied, there was in fact a twenty three percent decrease in payouts in those states which had adopted caps. From 1986-1991 the Rand Institute study found the same reduction in pay offs, twenty three percent. A logical person would infer from that, therefore, that these caps are working. We are paying out twenty three percent less, therefore, there must be a correlative saving in premiums. But no, there was no relationship whatsoever between pay outs and between actual premiums charged doctors. This is where I get frustrated and this is where I talk about the notion of Entropic Homogeneity in American Politics.

It seems to me we have a tendency to get away from original thought and seek shelter and comfort in bland, mediocre solutions. Some people have argued that there are wrongdoers in this field. It must be the abhorrent trial lawyers or the greedy plaintiffs or it must be the selfish insurance companies. I suggest to you that none of the foregoing are true. The area of structuring premiums for medical malpractice is far more complicated than some simplistic sloganeering. We know that malpractice insurance carriers consider a variety of factors when they actually price their products, when they set rates in medical malpractice cases. They took a look, for example, at interest rates. There is an inverse relationship between the strength of the market and between what insurance companies can generate in their investments and what they actually charge their clients in premium dollars. I know that because in the last two years or three years, medical malpractice rates have decreased in our state. Trial lawyers and opponents of caps would say that was proof positive that caps are not necessary. What is going to happen two years from now? Rates are probably going to go up because the market is down right now. Also, insurance companies adopt very conservative accounting principles. They tend to not recognize profits when they set rates for future years. Although companies might make a good profit in a certain market for two or three years, there is no translation into reduced rates the following years. Beyond that we have a thesis which I will develop later on that what is driving malpractice rates anyway is not severity, is not the amount of money paid out in claims, but is rather the uncertainty in terms of what conduct actually is negligent. What conduct by doctors actually constitutes professional negligence? Maine has addressed that issue and I will get to that in a moment. My point, in going through this exercise, is that I am exceedingly frustrated at what appears to be a very simplistic, soporific approach to a very difficult problem. We are a poor state. People need quality health care. Doctors pay high rates of malpractice insurance. The doctors tend to concentrate in urban areas, that is where there is high volume and they can make money. It is hard for them to practice in rural areas because they go in rural areas and don't have the volume or they have a lot of poor people on Medicaid or Medicare. Their incomes decline and they cannot afford malpractice rates. We have a severe problem. How do we solve

it? I suggest to you if we adopt caps it will, in fact, be a short term popular solution. The physicians will, in fact, say finally at last we have some relief. This is real Tort reform. I submit to you it's like a pure illusion. It's a pure illusion. The problem will remain. The problem is too serious for us to simply say there we have given them a bone, we'll wait a couple of years and see what happens.

There are some encouraging developments in health care. There are some interesting experiments which may, in fact, improve access to health care. For example, the study at Harvard University which has now been adopted by the Congress in designing Medicare reimbursement rates is truly a novel approach. If you're looking at a novel approach on how to actually encourage doctors to serve underserved areas, consider the Harvard University findings and what the Congress has done in the new Medicare reimbursement is substantially under reimburse practitioners in certain Disciplines. The Congress found that as a general principle tertiary care is largely over compensated in our health care system and primary care is largely under reimbursed. Who amongst us would dispute that? What does your pediatrician make? What does your Heart Care Specialist make? You have to ask yourself, in terms of the overall scheme of things, how important is your pediatrician? I would suggest, being a father of two young girls, very important. So is my Heart Care Specialist, but why should a Heart Care Specialist make ten times what the pediatrician makes? It doesn't make any sense. This will take time. This won't take six months, a year, two years, or one election cycle, but over time if we can begin to provide financial incentives for medical students to go into areas that were previously not financially remunerative, perhaps over time we might populate these disciplines.

Maine also has adopted unique legislation, the only legislation of its kind in the country dealing with the Maine Medical Demonstration Project. As you recall the premise behind our demonstration project is that what is driving malpractice rates is not the severity of awards, in fact in Maine we have only had five awards that even approached a quarter of a million dollars in the last five years, that is not a factor. What is a factor is the fact insurance companies legitimately don't know what conduct is or is not actionable. It's a moving target. A doctor performs a procedure in 1991 and is sued in 1993. When the jury looks at the case, what case law are they going to apply? How are they going to decide whether the doctor did or did not commit professional negligence? The Maine Medical Demonstration Project would set up practice parameters. Doctors and others would actually craft applicable guidelines, standards of conduct when relevant in four discreet colleges in our state: Cardiology, Emergency Medicine, and so on. Doctors who can conform their practices to the guidelines will not be liable for medical malpractice. This project may not work. It's a five year project and it may not work. It is definitely worth trying. It is actually somewhat unique, distinctive, original, it is a refreshing departure from the bland approaches we have been asked to adopt in the past. I make these extensive remarks because I truly am concerned. As I end my career in the Legislature, I am truly concerned that because of the nature of electoral politics, we run every two years

and have to address the needs of various interest groups, we will try to say here is a solution. The notion of non economic caps in medical malpractice awards is truly an illusion. It will serve no ones interest and it will simply defer us from going about the hard work of trying to craft a meaningful and principled response to this problem.

We can look at a number of issues being debated today and we can see the same kind of quick fixes being advanced. You don't like the fact you've got difficult debates in Legislature, we'll just have term limitations; that will solve the problem. We all know it's a farce; we all know it is not true. Some people say we'll just have to start bashing Japan because that is obviously the cause of our economic ills. Most of us know that is not true. We have to look within and begin serious economic restructuring in this country. I could go on and on. The point I am making here is we have to find the political will to look at people and say listen we understand what you are suggesting but it is not going to work. There was a manager of the 1978 Philadelphia Phillies, Danny Ozark, a nice fellow. In 1978 the Phillies were eliminated four days from the end National League season. The press went in to interview him on what he felt about being eliminated. He actually miscounted, he thought the Phillies were still in the race and he went on about his strategy to keep the Phillies in the race. It was a very sad moment because he was a very nice fellow. He was simply wrong. I suggest the same thing is true about your local physician. They are very nice people, they care passionately about helping people and practicing in the State of Maine. With all due respect on this issue they are wrong. I would urge this Legislature and this Body to do the difficult thing which is not to accept the quick fix, not to pass out a Bill on caps and say we have solved your problem. You will be deferring the problem and making it worse. The hard but right thing is to say no this is not the appropriate solution and go on to adopt meaningful, responsive strategies to address the problem of malpractice in general and the orderly diffusion of health care practitioners in our state in general. Thank you very much Mr. President.

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

Senator **BERUBE:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I don't like to get up and oppose my distinguished colleague from Androscoggin, Senator Gauvreau. I respect him very much and generally, more often than not, I am always on the same side with him. Before I go into my reasons why I supported the Ought To Pass Report and I will be brief, I would like to remind you I am not an expert on baseball. I used to adore Ted Williams, Hank Greenburg but then he mentioned aging pitchers and over the hill sluggers or I think it's reversed, Satchell Page came to mind. Satchell Page once said "Don't look back he might be catching up on you." Having said this, I know it has fallen flat, but there was a purpose to my saying it. I'd like to now go into the reasons I voted for the passage of the Bill.

First of all it is indeed a non economic package of \$250,000. That is over and above the payment past, present, future of all medical expenses, all economic losses past, present and future, over and above that they would be allowed to recover or sue for \$250,000. I think that is not such a bad Bill.

Also one of the reasons it would help to cut the costs of the premiums by at least five percent. Five percent may not be much but if you are paying \$50,000 a year for liability policy, five percent is a start. I would remind all of us that in the final analysis it is the patient of the consumer or the client who eventually has to pay those costs. I don't think it would deprive people of the right to sue or recover. We already cap, as Senator Gauvreau of Androscoggin said, at \$250,000 or \$300,000 those liquor cases and that includes all economic exclusive of medical. The state as you well know can not sue for more than \$300,000 and I think it is \$75,000 for wrongful death. Having said this I would urge you to vote against the Majority Report and again I don't like to oppose Senator Gauvreau but I feel very convinced on this Bill and that is why I voted the Minority Report. Thank you.

**THE PRESIDENT:** The Chair recognizes the Senator Lincoln, Senator Holloway.

Senator **HOLLOWAY:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I also am on the same report as the Senator from Androscoggin, Senator Berube. I do want this Legislation to pass. This Bill has been before us at least twice in the tenure I have been here in the twelve years. It is not an easy one for me to get up and speak on because I am certainly not a trial lawyer, I am not a physician, and I am not in the insurance field. This Body has voted in the affirmative before so I hope you will reject this motion of the Ought Not To Pass. With the cost of health care soaring and as members of a litigious society, we are now in the midst of a medical liability crisis brought on by increasing law suits and the practice of defensive medicine. Today many people assume if the outcome of medical intervention is less than perfect that someone must be at fault. Recent surveys show that the physicians in Maine continue to leave Obstetrical Practice in significant numbers. An Obstetrician in Maine is now paying nearly \$40,000 per year for insurance and that is up from \$12,000 in 1979. That increase has come in spite of the fact that Maine is one of the safest places in this Country to deliver babies. We in Maine have a significant shortage of physicians, particularly in primary care. There is no longer a single doctor delivering babies in Lincoln County and several other rural areas of this State are having difficulties recruiting and maintaining physicians. We have just reduced the Medicare reimbursement rate by ten percent and doctors in Maine are at the bottom of the Medicare fee schedule nationally. Practicing medicine in rural Maine is no picnic today. Passage of this Legislation will have an immediate positive impact on higher liability premiums without taking away a victims right to his or her economic loss. I ask for a division.

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

Senator **MCCORMICK:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I think if it ain't broke we shouldn't fix it and it ain't broke. In Maine, the premiums have gone down forty percent for the damages. Let me get this straight and not confuse you. The rates on this kind of insurance have gone down forty percent. Why should we do this? States that have put this kind of cap on have seen premiums rise. They don't work. There are ten states that have put premium caps on non economic damages and have seen their premiums go up. Alabama

put a cap at \$400,000 in 1987 and the rates rose thirty percent. California put a \$250,000 cap on the same one we are conceiving of and the rates rose twenty five percent and it goes on and on. California, Colorado, Idaho, Louisiana, this simply is a method that doesn't work. I ask again why should we do this? Who will it benefit? Will it benefit the insurance company? Should we do this for them? Are they in need of this kind of help? I think the answer to that is no because the insurance companies have a twenty five percent loss ratio. That is very good. That means they pay out twenty five cents of every dollar in premiums they collect in losses. That is a very good loss ratio. Should we do this to get doctors into rural Maine? Studies have shown, GAO studies, show it won't work. It is not on any ones list of any method to attract good doctors and specialists into rural Maine. There are lots of things we can do to get doctors into rural Maine but this isn't one of them. Then we have to ask, and this is a most important point, who will it hurt? The answer to that is it will hurt women, children, and the elderly. The only kind of damages a woman who works in the home or a child who has not been in the work force yet or a elderly person out of the work force can collect is non economic damages. You can not measure their economic worth. That is what economics are based on, loss of income for a life that would be worth \$200,000 or \$1,000,000 if you are a high wage earner. If you are a person who works in the home and has no experience in the work place or record of what kind of income you would pull in, judges have ruled you are not entitled to economic damages. Therefore, I think, it would be a great disservice and injustice to women, elderly people, and to children if we pass this Bill. I urge you to vote with the Majority Ought Not To Pass Report. 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. We have, indeed, debated this Bill before and I am not sure I can offer any new light. I didn't bring my three volumes of legal data with me as my good colleague from Androscoggin, Senator Gouvreau has. I don't have his talent at remembering baseball figures or analogies so I am in a rather difficult spot. Furthermore, I am not an attorney and so I can't argue from the legal perspective in such a talented fashion as my good friend. He represents that profession very well.

I can tell you a few things I do know about this Bill and some actual happenings that would encourage you to pass a cap type piece of legislation. In my community, three years ago, we had two Obstetricians practicing in the Terry Medical Center. One of them had been there about twenty years and during that twenty years the premiums on his malpractice insurance continued to escalate to the point where he finally decided he would no longer practice Obstetrics in our city. We have endeavored to find a replacement for him for the last three years and have not succeeded. We have one Obstetrician who continues to do the best he can and our other people have to go to another Community Hospital to provide the rest of the coverage. When you suggest that it doesn't make a difference I think it does make a difference. I think it hurts smaller Community Hospitals. I think there are physicians who would

practice there but who do not practice there because they can not create the volume to sustain the type of premium payments that are necessary. I think there is a cause there that we sometimes forget.

All of the previous speakers have reminded all of us that passage of this Bill does not preclude the payment of economic damages. Economic damages are the potential earnings of the victim over their period of life or the period in which he is incapacitated. It does not preclude all types of medical care, rehabilitation, and all of the things to make that person well. It is properly defined as a pain and suffering issue, it seems to me. A cap that is as high as \$250,000 is a rather substantial one. It seems to me that we really ought to consider passage of this Bill. We have noted that some twenty five other states do have economic caps. There is disagreement as to whether those are effective or not. I can quote studies that show they are effective. I, incidentally, just looked at the Medical Mutual Insurance Company rate filings and they ensure that the vast majority of physicians in this state during the last seven years all but two of them have had substantial increases. I am happy to report that in 1990 there was a decline and I am pleased with that. In 1991 there was no change and I am pleased with that. I think that was partly as a result of the condition of the insurance market overall but anyway I am appreciative of the fact. The time has come for a passage of a cap of this nature. We seem to avoid all the core issues in the Legislature. It is very seldom they get out of the Judiciary Committee to the floor and we have a chance to talk about it. This is only one of many. It seems to me to be the most important one because it deals with physicians, medical liability, and health care something that is extremely important for all of us. I think this could make a difference and I would urge you to reject the present pending motion. Mr. President I request a Roll Call.

On motion by Senator COLLINS of Aroostook, 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 Cumberland, Senator Titcomb.

**Senator TITCOMB:** Thank you Mr. President. Ladies and Gentlemen of the Senate. This whole conversation brings to mind a very real issue to me. That is trying to put myself in the position of someone who might fall under this proposed change in the law. I look back at the last several years in my life and recognize that I could have potentially fallen under this. Frankly, it is a little bit frightening to me. In 1971 I began my teaching career and I taught for eight years. At the end of the eight year period I decided to give up teaching. I intended to give it up permanently and I even went so far as to buy back my retirement time because I didn't expect to ever be working within the Retirement system again. I had made a very clear decision that my career as a teacher had ended by my own choice. It was just a change in my life. I married and I decided to become what I call a Domestic Engineer and I went home and had a family. I had two children and during that time period I was a volunteer, I committed endless hours of free labor to the issues I felt were very important to my community. I had no paycheck and at no time did I have any economic worth. Three and a half years ago I came to this Chamber and I guess there may be some

who say my economic worth in the future would be questionable. I happen to feel it is considerably more than a potential \$250,000. I have a lifetime, a career ahead of me that would be severely limited economically if I had been damaged at the time I was a Domestic Engineer. This would be a violation against me, an economic scar in my future, and frankly it would be downright discriminatory. I can not imagine that this sort of provision could pass. I encourage your support of the Majority Ought Not To Pass. 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. Everyone has made valid points and I rise to give another view. I intend to vote against the pending motion and in favor of the cap. I believe it is in the best interest of the consumer. Although malpractice insurance rates have been lowered and the Judiciary Committee has done some very positive things toward that end including the development of some protocols which are very helpful. Still, the idea that you can have an unlimited amount of non economic damages brings up the cost of health insurance premiums. Although malpractice insurance for the provider is going down in cost, health insurance premiums are still rising and that is one element, clearly not an overriding reason why health care costs are soaring and the premiums rise way above the inflationary rate. They are going up and part of the reason that at least thirteen percent of the population under age 65 do not have any insurance in this state and many others are under insured and have large out of pocket costs is because of things like the fact we can sue for an unlimited amount of non economic damages, among many other reasons. We need more managed care. In my opinion, we need lids on suits and it is in everybody's best interest. We need universal access to affordable health care and right now health care is not affordable to many. It is putting many other families in bankruptcy and there are other elements but I assure you the malpractice portion is one consideration. It is something we can do in this Body to help try to finally lower some of the soaring costs of health care in this state. Thank you.

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

Senator **GAUVREAU:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I will try to be much briefer this time and less abstract and more concrete. I truly admire the debating prowess of my seatmate the Senator from Aroostook, Senator Collins who both praised me and damned me when he indicated I am an attorney and represented my profession well. Let me say that I do not, have not, never will engage or represent a party to or against a medical malpractice suit. I am not competent to practice medical malpractice and I, in fact, do not pursue those cases. I have been critical of the trial attorneys as well as those who are abdicating caps. In fact my father, grandfather and brother are all physicians. My father taught me well as a young boy my responsibility to reach out and help those in my community. My father was the last OB-GYN in the city of Lewiston, Maine taking Medicaid and he represented, God Bless Him, people regardless of their financial circumstance. I have a deep and abiding love and respect for my father. He gave values to me which I now explicate in my politics. There is a reason for that.

Let me speak briefly to the remarks that one of the earlier presenters, I believe it was the Senator from Aroostook, Senator Collins, indicated that we need to do more to promote health care practitioners, doctors coming into our rural areas. I am afraid I don't see anything in the short term horizon which will do that. In fact, the President's health care message proposes among other things to reduce the Federal Outlays in Fiscal Year 93-94 for Medicare and Medicaid accounts to subsidize tax credits to low income people obtaining private insurance. My expectation is that as a consequence of that we will have more cost shifting going on to the payers of health care, primarily private employers which will drive health care insurance rates up even higher. More to the point if we raid the Medicare and Medicaid accounts to subsidize in part the President's new health care proposals what we will be doing is reducing the policy compensation currently available under the Medicaid program for health care providers. This is not going to be a solution which will work. One final note while I am on my feet, in 1990 the physician community brought their actuary into the Committee on Judiciary to testify as to the likely impact if we did, in fact, adopt a cap such as this. The actuary in three hours of presenting indicated to the Committee there were no discernible savings he could identify if we adopted a cap of this nature. Thank you.

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

Senator **DUTREMBLE:** Thank you Mr. President. Ladies and Gentlemen of the Senate. This issue is probably more than anybody else in this body, one that I can give you personal experience on. If you remember the last time this issue was before this Body I had to excuse myself because I was in the process. Right now I feel I can talk because I am no longer in the process so maybe I can give you a little more insight as to what exactly goes on when you are in the process.

First of all, I want to right out front say, I have no hard feelings or problems with doctors. After all there were a few doctors who saved my life and put me back together. I do want to talk to you about the process and some of the things I felt when I went through the process. Here is a person who had been in the Legislature for a number of years, a big guy who had been to college and was educated and from the moment I got into the process I felt nothing but intimidation. I felt intimidation from the fact I had to go through derogatory intimidation and face other attorneys, my own attorneys, my own attorney fees, the hospital, the press, and I had to face everything. There was a certain degree of intimidation throughout this whole process. I don't want you for one minute to think that anybody who does get into the process doesn't go through his own degree of intimidation. When I went through the process I was concerned with my health, future, and what was going to happen. I can't remember once saying to myself what is going to happen to the doctor in Lincoln County or Caribou or the health care costs. At that time the only thing I was concerned about was my own future. I think there are problems in the system. When I think back to what I went through, I could just scream. It is not what is addressed in this Bill at all. I don't think by passing this Bill you are going to address any of the problems that I went through. If you want to really

address the problems towards reform, I may have some suggestions for you but it is not this. Thank you.

**THE PRESIDENT:** The Chair recognizes the Senator from Lincoln, Senator Holloway.

Senator **HOLLOWAY:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I was like to address the debate on the gender discrimination I heard from two other Senators. I would like to say that perceived logic is that women as a class work less and make less than men. Their economic damages would typically be less, therefore, it is thought that women need to be awarded more non economic damages to make up for that difference in compensation. The fallacy underlying that argument is the assumption that any two individuals are entitled to the same award for the same injury. This has never been the law in Maine or in any jurisdiction following the Anglo American legal tradition and it is not the law today. Thank you.

**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 just like to respond to that by saying that although we would love to have everyone equal everyone is not equal. In my remarks I was particularly referring to women who work in the home who have absolutely no record at all of any economic life outside the home and therefore, having been judged in court there can not be an economic value put on you as to the amount of money you would earn in life so we can not give you economic damages. That says to a whole class of people if we put a cap on non economic damages, their broken back, brain damage, loss to their family, is only worth \$200,000. Whereas another persons complete damages, life loss to family may be judged much more. I do not think that people who work in the home, children, or elderly people should be considered the loss of any part of themselves or being any less sacred than those of us who work outside the home. This Bill would do that believe me. 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. In the debate that has ensued here this late afternoon, there has been reference and repetition to a cap that currently exists under another section of the law totally unrelated dealing with the servers of alcoholic beverages. That cap is the same magical amount of a \$250,000. In the correspondence that I have received from a number of medical professional personnel in support of this Bill, their argument focused on that analogy that there currently exists this cap and certainly physicians merit as much consideration as the servers of alcoholic beverages. As a cosponsor I might have been co sponsor or maybe it was prime, of that particular measure that provided the cap, I would share with you the that the issues are not even vaguely related. There is no basis of comparison. The cap was placed on, after extended debate and multiple amendments, and concerted Committee scrutiny before the Committee on Legal Affairs under the Senate Chair of former State Senator Richard Trafton, a recognition that there needed to be a cap because the legal term of joint and several liability applied in those cases. In lay language, which is more my speed and style, I would say for the purpose of clarification it is necessary that you understand

that when damages occurred as the result of an injury from an OUI that what was then exercised was what we call the DEEP pocket theory. If the driver or the owner of the vehicle which might have caused the damage had no insurance then they would go to the next person in line, maybe the parent, who might not have adequate assets to pay or to compensate for any injuries or damages suffered and they would move back along the line finally to the Tavern, Restaurant, Cafe, Bar, and or the owner or even the server of the person whose responsibility it was deemed or alleged to be to have contributed in some measure to what ultimately occurred out on the road so to speak. It was because it was so non directly, in other words indirectly related, that the cap was accepted as well as an educational program which occurs today for the servers of alcoholic beverages to protect non involved citizens who may have been placed out of business because ultimately the DEEP pocket theory and the suit would land in their laps even though they had a minimal if any direct connection with what ultimately had caused the damage. That is a far cry from what is addressed in the Bill before us. To compare that cap with this proposed cap is an extraordinary stretch of the imagination. I would submit is not relevant and should not occur. Thank you Mr. President.

**THE PRESIDENT:** The pending question before the Senate is the motion of Senator **GAUVREAU** of Androscoggin to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report.

A vote of Yes will be in favor of the motion to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report.

A vote of No will be opposed.

Is the Senate ready for the question?

Senator **CLARK** of Cumberland who would have voted **YEA** requested and received Leave of the Senate to pair her vote with Senator **MATTHEWS** of Kennebec who would have voted **NAY**.

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

#### ROLL CALL

**YEAS:** Senators **BOST**, **BRANNIGAN**, **BUSTIN**, **CLEVELAND**, **CONLEY**, **DUTREMBLE**, **ESTES**, **ESTY**, **GAUVREAU**, **MCCORMICK**, **MILLS**, **PEARSON**, **TITCOMB**, **VOSE**, **THE PRESIDENT** - **CHARLES P. PRAY**

**NAYS:** Senators **BALDACCI**, **BERUBE**, **BRAWN**, **CAHILL**, **CARPENTER**, **COLLINS**, **EMERSON**, **FOSTER**, **GILL**, **GOULD**, **HOLLOWAY**, **KANY**, **LUDWIG**, **RICH**, **SUMMERS**, **THERIAULT**, **TWITCHELL**, **WEBSTER**

**PAIRED:** Senators **CLARK**, **MATTHEWS**

**ABSENT:** Senators None

15 Senators having voted in the affirmative and 18 Senators having voted in the negative, with 2 Senators having paired their votes and No Senators being absent, the motion of Senator **GAUVREAU** of Androscoggin, to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report, **FAILED**.

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

The Bill **READ ONCE**.

Committee Amendment "A" (H-875) **READ** and **ADOPTED**.

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

**Divided Report**

The Majority of the Committee on **LABOR** on Bill "An Act to Encourage Family Unity"

H.P. 127 L.D. 172

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

Signed:

Senators:

ESTY of Cumberland  
CARPENTER of York

Representatives:

AIKMAN of Poland  
HASTINGS of Fryeburg  
ST. ONGE of Greene  
MCKEEN of Windham  
RAND of Portland  
BENNETT of Norway  
RUHLIN of Brewer

The Minority of the same Committee on the same subject reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-886)**.

Signed:

Representatives:

MCHENRY of Madawaska  
PINEAU of Jay

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

Which Reports were **READ**.

On motion by Senator ESTY of Cumberland, the Majority **OUGHT NOT TO PASS Report ACCEPTED**, in concurrence.

**Divided Report**

The Majority of the Committee on **LEGAL AFFAIRS** on Bill "An Act Authorizing Presidential Primary Elections in the State"

H.P. 744 L.D. 1048

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

Signed:

Senators:

MILLS of Oxford  
SUMMERS of Cumberland

Representatives:

LAWRENCE of Kittery  
PLOURDE of Biddeford  
STEVENS of Sabattus  
HICHENS of Eliot  
BOWERS of Sherman  
JALBERT of Lisbon  
TUPPER of Orrington  
POULIN of Oakland

The Minority of the same Committee on the same subject reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-881)**.

Signed:

Senator:

KANY of Kennebec

Representatives:

RICHARDSON of Portland  
DAGGETT of Augusta

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

Which Reports were **READ**.

On motion by Senator MILLS of Oxford the Majority **OUGHT NOT TO PASS Report ACCEPTED**, in concurrence.

**Divided Report**

The Majority of the Committee on **STATE & LOCAL GOVERNMENT** on Resolve, to Establish the Commission on Recall

H.P. 1377 L.D. 1964

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-868)**.

Signed:

Senators:

BERUBE of Androscoggin  
BUSTIN of Kennebec

Representatives:

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

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

Signed:

Senator:

EMERSON of Penobscot

Representatives:

NASH of Camden  
LOOK of Jonesboro  
SAVAGE of Union

Comes from the House with the Majority **OUGHT TO PASS AS AMENDED Report READ and ACCEPTED** and the Resolve **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-868)**.

Which Reports were **READ**.

Senator BERUBE of Androscoggin moved to **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 13 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-868) **READ and ADOPTED** in concurrence.

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 MCCORMICK for the Committee on **EDUCATION** Bill "An Act to Protect Students Appointed to Special Select Committees"

S.P. 862 L.D. 2206

Reported by Senator **BOST** for the Committee on **TAXATION** Bill "An Act Concerning Transfer of Real Estate between Family Members"

S.P. 861 L.D. 2205

**Leave to Withdraw**

The following **Leave to Withdraw** Report shall be placed in the Legislative Files without further action pursuant to Rule 15 of the Joint Rules:

Reported by Senator **WEBSTER** for the Committee on **AGING, RETIREMENT & VETERANS** Bill "An Act to Clarify Earnable Compensation for Retirement Purposes"

S.P. 872 L.D. 2227

**Ought to Pass**

Senator **VOSE** for the Committee on **UTILITIES** on Bill "An Act to Amend the Law Governing the Rumford-Mexico Sewerage District"

S.P. 803 L.D. 2002

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 **ESTES** for the Committee on **EDUCATION** on Bill "An Act to Provide for the Orderly Transfer of Contracts from Union Schools to Separate School Systems upon Dissolution"

S.P. 682 L.D. 1810

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-540)**.

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

The Bill **READ ONCE**.

Committee Amendment "A" (S-540) **READ** and **ADOPTED**.

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

Senator **ESTES** for the Committee on **EDUCATION** on Bill "An Act Regarding the Repayment of Blaine House Scholarships"

S.P. 795 L.D. 1994

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-541)**.

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

The Bill **READ ONCE**.

Committee Amendment "A" (S-541) **READ** and **ADOPTED**.

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

Senator **ESTES** for the Committee on **EDUCATION** on Bill "An Act to Amend the Laws Concerning High School Equivalency Certificates"

S.P. 828 L.D. 2132

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-539)**.

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

The Bill **READ ONCE**.

Committee Amendment "A" (S-539) **READ** and **ADOPTED**.

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

Senator **LUDWIG** for the Committee on **ENERGY & NATURAL RESOURCES** on Bill "An Act to Amend the State Ground Water Classification System and Implement the Maine Wellhead Protection Program for the Protection of Public Water System Wellheads" (Emergency)

S.P. 447 L.D. 1191

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-543)**.

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

The Bill **READ ONCE**.

Committee Amendment "A" (S-543) **READ** and **ADOPTED**.

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

Senator **LUDWIG** for the Committee on **ENERGY & NATURAL RESOURCES** on Bill "An Act to Repeal a Provision Concerning Low Sulfur Fuel"

S.P. 845 L.D. 2149

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-544)**.

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

The Bill **READ ONCE**.

Committee Amendment "A" (S-544) **READ** and **ADOPTED**.

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

Senator **CLEVELAND** for the Committee on **UTILITIES** on Bill "An Act to Amend the Laws Governing Telecommunications Interexchange Carrier Selection" (Emergency)

S.P. 797 L.D. 1996

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-542)**.

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

The Bill **READ ONCE**.

Committee Amendment "A" (S-542) **READ** and **ADOPTED**.

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

**SECOND READERS**

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

**House As Amended**

Bill "An Act to Clarify the Scope of the Laws Governing Administrative Correction of Statutory Errors" (Emergency)

H.P. 1492 L.D. 2104

(H "A" H-880)

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

**Senate**

Bill "An Act to Continue Modified Rate Regulation for Small Consumer-owned Electric Utilities"

S.P. 851 L.D. 2164

Bill "An Act to Amend the Mars Hill Utility District"

S.P. 870 L.D. 2217

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

Sent down for concurrence.

**Senate As Amended**

Bill "An Act to Authorize Forest Rangers to Enforce the Rules and Laws Pertaining to the Bureau of Public Lands"

S.P. 852 L.D. 2165  
(C "A" S-538)

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

Sent down for concurrence.

Bill "An Act to Amend the Municipal Public Employees Labor Relations Laws"

S.P. 465 L.D. 1248  
(C "A" S-537)

Which was **READ A SECOND TIME.**

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

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

**COMMITTEE REPORTS**

**House**

**Change of Reference**

The Committee on **EDUCATION** on Bill "An Act to Protect School Students from Potential Harm"

H.P. 1541 L.D. 2174

Reported that the same be **REFERRED** to the Committee on **TRANSPORTATION.**

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **REFERRED** to the Committee on **TRANSPORTATION.**

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

The Bill **REFERRED** to the Committee on **TRANSPORTATION**, in 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. 913

**ORDERED**, the House concurring, that for any bill concerning governmental restructuring, the President of the Senate and the Speaker of the House of Representatives shall appoint 6 temporary adjunct members to the Joint Standing Committee on State and Local Government; and be it further

**ORDERED**, that the 6 temporary adjunct members are appointed as follows. The President of the Senate shall appoint 2 Senators, one representing the party with the largest number of members in the Legislature and one representing the party with the next largest number of members in the Legislature. The Speaker of the House of Representatives shall appoint 4 members of the House of Representatives, 2 representing the party with the largest number of members in the Legislature and 2 representing the party with the next largest number of members in the Legislature; and be it further

**ORDERED**, that any temporary adjunct member appointed pursuant to this order has the right to participate in any committee proceedings regarding that bill, including the right to report out the bill, as if that member were a permanent member of

the Joint Standing Committee on State and Local Government.

Which was **READ.**

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

**Off Record Remarks**

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

On motion by Senator **ESTY** of Cumberland, **ADJOURNED** until Thursday, February 13, 1992, at 4:00 in the afternoon.