

# 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

Thursday

February 20, 1992

Senate called to Order by the President.

Prayer by Reverend Richard Honaker of the Augusta Church of Christ.

**REVEREND RICHARD HONAKER:** Let us pray. Eternal God we thank you for the free land in which we live. We thank you today for the works of great women and men whom you have placed upon this earth who have blessed this Country and State in so many ways. We come to you today thanking you for the privilege of serving our fellow man. May the spirit of charity and service prevail in this room as the work of this body is carried out. Today we would ask that you bless this assembly with the wisdom to know what is right and the courage to do that which is right. We pray for grace and knowledge so that decisions made will truly benefit the people of Maine. May your name be glorified, your kingdom be increased throughout this State and the entire earth. We pray that you would continue to bless the United States of America, the State of Maine, and this Body of Representatives. In Jesus name, Amen.

Reading of the Journal of Tuesday, February 18, 1992.

Out of order and under suspension of the Rules, on motion by Senator **CLARK** of Cumberland, the following Joint Order:

S.P. 925

ORDERED, the House concurring that when the House and Senate adjourn, they do so until Tuesday, February 25, 1992, at four o'clock in the afternoon.

Which was **READ** and **PASSED**.

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

Off Record Remarks

**PAPERS FROM THE HOUSE**

**House Papers**

Bill "An Act to Establish a Technical and Environmental Compliance Assistance Program for Businesses and Municipalities" (Emergency)

H.P. 1678 L.D. 2355

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

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

Bill "An Act to Enact a New Article on Negotiable Instruments in the Uniform Commercial Code"

H.P. 1680 L.D. 2357

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

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

Bill "An Act to Restore Control and Stability to the Bureau of Alcoholic Beverages"

H.P. 1670 L.D. 2346

Bill "An Act to Strengthen the Campaign Finance Reporting Laws"

H.P. 1679 L.D. 2356

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

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

Bill "An Act to Make Supplemental Allocations of Funds from the Highway Fund for the Fiscal Years Ending June 30, 1992 and June 30, 1993" (Emergency)

H.P. 1677 L.D. 2354

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

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

**Pursuant to Public Law  
COMMISSION TO STUDY**

**STATE PERMITTING AND REPORTING REQUIREMENTS**

The **COMMISSION TO STUDY STATE PERMITTING AND REPORTING REQUIREMENTS**, pursuant to Public Law 1991, chapter 606, ask leave to submit its findings and to report that the accompanying Bill "An Act to Revise the Purpose of the Board and Department of Environmental Protection and to Temporarily Exempt Certain Activities from Certain Permit Requirements" (Emergency)

H.P. 1672 L.D. 2348

Be referred to the Committee on **ENERGY & NATURAL RESOURCES** for Public Hearing and printed pursuant to Joint Rule 18.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill referred to the Committee on **ENERGY & NATURAL RESOURCES** and **ORDERED PRINTED**, pursuant to Joint Rule 18.

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

The Bill referred to the Committee on **ENERGY & NATURAL RESOURCES** and **ORDERED PRINTED**, pursuant to Joint Rule 18, in concurrence.

**Pursuant to Public Law  
COMMISSION TO STUDY**

**STATE PERMITTING AND REPORTING REQUIREMENTS**

The **COMMISSION TO STUDY STATE PERMITTING AND REPORTING REQUIREMENTS**, pursuant to Public Law 1991, chapter 606, ask leave to submit its findings and to report that the accompanying Bill "An Act to Improve the Environmental Permitting Process"

H.P. 1675 L.D. 2351

Be referred to the Committee on **ENERGY & NATURAL RESOURCES** for Public Hearing and printed pursuant to Joint Rule 18.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill referred to the Committee on **ENERGY & NATURAL RESOURCES** and **ORDERED PRINTED**, pursuant to Joint Rule 18.

Which Report was **READ** and **ACCEPTED**, in concurrence.  
The Bill referred to the Committee on **ENERGY & NATURAL RESOURCES** and **ORDERED PRINTED**, pursuant to Joint Rule 18, in concurrence.

**Pursuant to Public Law  
COMMISSION TO STUDY**

**STATE PERMITTING AND REPORTING REQUIREMENTS**  
The **COMMISSION TO STUDY STATE PERMITTING AND REPORTING REQUIREMENTS**, pursuant to Public Law 1991, chapter 606, ask leave to submit its findings and to report that the accompanying Bill "An Act Concerning Economic Impact Analysis in Agency Rulemaking"  
H.P. 1674 L.D. 2350

Be referred to the Committee on **STATE & LOCAL GOVERNMENT** for Public Hearing and printed pursuant to Joint Rule 18.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill referred to the Committee on **STATE & LOCAL GOVERNMENT** and **ORDERED PRINTED**, pursuant to Joint Rule 18.

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

The Bill referred to the Committee on **STATE & LOCAL GOVERNMENT** and **ORDERED PRINTED**, pursuant to Joint Rule 18, in concurrence.

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

**COMMUNICATIONS**

The Following Communication: S  
.P. 923

**115TH MAINE LEGISLATURE**  
February 14, 1992

Senator N. Paul Gauvreau  
Rep. Patrick E. Paradis  
Chairpersons  
Joint Standing Committee on Judiciary  
115th Legislature  
Augusta, Maine 04333  
Dear Chairs:

Please be advised that Governor John R. McKernan, Jr. has nominated Paul L. Rudman of Bangor for appointment as Justice of the Maine Supreme Judicial Court.

Pursuant to the Constitution, Article V, Part I, Section 8, this nomination will require review by the Joint Standing Committee on Judiciary and confirmation by the Senate.

Sincerely,  
S/Charles P. Pray  
President of the Senate  
S/John L. Martin  
Speaker of the House

Which was **READ** and **REFERRED** to the Committee on **JUDICIARY**.  
Sent down for concurrence.

The Following Communication: S.P. 924  
**115TH MAINE LEGISLATURE**  
February 15, 1992

Senator N. Paul Gauvreau  
Rep. Patrick E. Paradis  
Chairpersons  
Joint Standing Committee on Judiciary  
115th Legislature  
Augusta, Maine 04333  
Dear Chairs:

Please be advised that Governor John R. McKernan, Jr. has nominated the Honorable Daniel Wathen of Augusta for appointment as Chief Justice of the Maine Supreme Judicial Court.

Pursuant to the Constitution, Article V, Part I, Section 8, this nomination will require review by the Joint Standing Committee on Judiciary and confirmation by the Senate.

Sincerely,  
S/Charles P. Pray  
President of the Senate  
S/John L. Martin  
Speaker of the House

Which was **READ** and **REFERRED** to the Committee on **JUDICIARY**.  
Sent down for concurrence.

The Following Communication:  
**ONE HUNDRED AND FIFTEENTH LEGISLATURE**  
**COMMITTEE ON HOUSING AND ECONOMIC DEVELOPMENT**  
February 18, 1992

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

In accordance with 3 M.R.S.A., Chapter 6, Section 151, and with Joint Rule 38 of the 115th Maine Legislature, the Joint Standing Committee on Housing and Economic Development has had under consideration the nomination of Ford S. Reiche of Cumberland Center, for appointment to the Maine State Housing Authority.

After public hearing and discussion on this nomination, the Committee proceeded to vote on the motion to recommend to the Senate that this nomination be confirmed. The Committee Clerk called the roll with the following result:

YEAS: Senators 2  
Representatives 7  
NAYS: 0  
ABSENT: 4

4 Sen. Cahill of Sagadahoc, Rep. Graham of Houlton, Rep. Plourde of Biddeford, Rep. Kilkelly of Wiscasset

Nine members of the Committee having voted in the affirmative and none in the negative, it was the vote of the Committee that the nomination of Ford S. Reiche of Cumberland Center, for appointment to the Maine State Housing Authority be confirmed.

Sincerely,  
S/Senator Zachary E. Matthews S/Rep. Rita B. Melendy  
Senate Chair House Chair

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

**THE PRESIDENT:** The Joint Standing Committee on Housing and Economic Development has recommended the nomination of Ford S. Reiche of Cumberland Center be confirmed.

The pending question before the Senate is: "Shall the recommendation of the Committee on Housing and Economic Development be overridden?"

In accordance with 3 M.R.S.A., Chapter 6, Section 151 and with Joint Rule 38 of the 115th Legislature, the vote will be taken by the Yeas and Nays.

A vote of Yes will be in favor of overriding the recommendation of the Committee.

A vote of No will be in favor of sustaining the recommendation of the Committee.

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

**ROLL CALL**

YEAS: Senators None

NAYS: Senators BERUBE, BOST, BRANNIGAN, BRAWN, BUSTIN, CAHILL, CARPENTER, CLARK, CLEVELAND, COLLINS, CONLEY, DUTREMBLE, EMERSON, ESTES, ESTY, FOSTER, GAUVREAU, GILL, GOULD, HOLLOWAY, KANY, LUDWIG, MATTHEWS, MCCORMICK, PEARSON, RICH, SUMMERS, THERIAULT, TITCOMB, TWITCHELL, VOSE, WEBSTER, THE PRESIDENT - CHARLES P. PRAY

ABSENT: Senators BALDACCI, MILLS

No Senators having voted in the affirmative and 33 Senators having voted in the negative, with 2 Senators being absent, and none being less than two-thirds of the Membership present, it was the vote of the Senate that the Committee's recommendation be **ACCEPTED** and the nomination of Ford S. Reiche, was **CONFIRMED**.

The Secretary has so informed the Speaker of the House.

**Off Record Remarks**

**SENATE PAPERS**

Bill "An Act Regarding Maine's Comprehensive Early Intervention System for Infants and Children under 6 Years of Age"

S.P. 921 L.D. 2360

Presented by Senator ESTES of York  
Cosponsored by Representative CROWLEY of Stockton Springs, Representative CONSTANTINE of Bar Harbor and Representative RYDELL of Brunswick  
Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26.

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

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

Bill "An Act to Amend the Underground Oil Storage Facilities and Ground Water Protection Laws and the Uncontrolled Hazardous Substance Sites Laws"

S.P. 919 L.D. 2358

Presented by Senator BALDACCI of Penobscot  
Cosponsored by Representative GWADOSKY of Fairfield and Senator KANY of Kennebec  
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**.

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

Bill "An Act Regarding the Charter for Kennebunk, Kennebunkport and Wells Water District"

S.P. 920 L.D. 2359

Presented by Senator DUTREMBLE of York  
Cosponsored by Representative WENTWORTH of Arundel and Representative LIBBY of Kennebunk  
Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.  
Which was referred to the Committee on **UTILITIES** and **ORDERED PRINTED**.

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

**Pursuant to Resolves  
COMMISSION ON MAINE LAKES**

Senator KANY for the **COMMISSION ON MAINE LAKES**, pursuant to Resolve 1989, chapter 100, ask leave to submit its findings and to report that the accompanying Bill "An Act to Further Enhance and Protect Maine's Great Ponds"

S.P. 922 L.D. 2369

Be referred to the Committee on **ENERGY & NATURAL RESOURCES** for Public Hearing and printed pursuant to Joint Rule 18.

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

The Bill referred to the Committee on **ENERGY & NATURAL RESOURCES** and **ORDERED PRINTED**, pursuant to Joint Rule 18.

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

**Off Record Remarks**

**COMMITTEE REPORTS**

**House**

**Ought Not to Pass**

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

From the Committee on **FISHERIES & WILDLIFE** Bill "An Act to Alter the Fishing Season in a Certain Area in Northern Maine"

H.P. 1429 L.D. 2041

**Ought to Pass As Amended**

The Committee on **BANKING & INSURANCE** on Bill "An Act to Amend the Laws Governing Placement of Insurance in the Surplus Lines Market" (Emergency)

H.P. 1473 L.D. 2085

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-922)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-922)**.

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

The Bill **READ ONCE**.

Committee Amendment "A" (H-922) **READ** and **ADOPTED**, in concurrence.

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

The Committee on **BANKING & INSURANCE** on Bill "An Act to Amend the Group Health Insurance Conversion Laws"

H.P. 1484 L.D. 2096

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-926)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-926)**.

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

The Bill **READ ONCE**.

Committee Amendment "A" (H-926) **READ** and **ADOPTED**, in concurrence.

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

The Committee on **BANKING & INSURANCE** on Bill "An Act Concerning the Operation of the Maine Automobile Insurance Plan"

H.P. 1534 L.D. 2167

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-923)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-923)**.

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

The Bill **READ ONCE**.

Committee Amendment "A" (H-923) **READ** and **ADOPTED**, in concurrence.

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

The Committee on **BANKING & INSURANCE** on Bill "An Act to Revise the Basis for Semiannual Assessment on Financial Institutions"

H.P. 1557 L.D. 2195

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-927)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-927)**.

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

The Bill **READ ONCE**.

Committee Amendment "A" (H-927) **READ** and **ADOPTED**, in concurrence.

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

The Committee on **JUDICIARY** on Bill "An Act Relating to Distribution of Retirement Benefits in Divorce"

H.P. 711 L.D. 1016

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-924)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-924)**.

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

The Bill **READ ONCE**.

Committee Amendment "A" (H-924) **READ** and **ADOPTED**, in concurrence.

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

The Committee on **JUDICIARY** on Bill "An Act to Promote Gun Safety"

H.P. 1025 L.D. 1498

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-925)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-925)**.

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

The Bill **READ ONCE**.

Committee Amendment "A" (H-925) **READ** and **ADOPTED**, in concurrence.

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

The Committee on **LEGAL AFFAIRS** on Bill "An Act to Protect the Copyright and Ownership Rights of Maine Artists"

H.P. 1011 L.D. 1479

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-921)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-921)**.

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

The Bill **READ ONCE**.

Committee Amendment "A" (H-921) **READ** and **ADOPTED**, in concurrence.

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

The Committee on **LEGAL AFFAIRS** on Bill "An Act to Expand the Definition of "Tenant" in the Laws Pertaining to Mobile Home Parks"

H.P. 1415 L.D. 2027

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-920)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-920)**.

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

The Bill **READ ONCE**.

Committee Amendment "A" (H-920) **READ** and **ADOPTED**, in concurrence.

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

The Committee on **UTILITIES** on Bill "An Act to Increase the Debt Limit of the South Berwick Sewer District" (Emergency)

H.P. 1480 L.D. 2092

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-914).**

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-914).**

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

The Bill **READ ONCE.**

Committee Amendment "A" (H-914) **READ** and **ADOPTED**, in concurrence.

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

**Divided Report**

The Majority of the Committee on **BANKING & INSURANCE** on Bill "An Act to Authorize the Establishment of Non-depository Trust Companies"

H.P. 1489 L.D. 2101

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-905).**

Signed:

Senators:

MCCORMICK of Kennebec

BRAWN of Knox

Representatives:

- GARLAND of Bangor
- HASTINGS of Fryeburg
- CARLETON of Wells
- MITCHELL of Vassalboro
- RAND of Portland
- KETOVER of Portland
- PINEAU of Jay
- JOSEPH of Waterville
- ERWIN of Rumford
- TRACY of Rome

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

Signed:

Senator:

KANY of Kennebec

Comes from the House with the Majority **UGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-905).**

Which Reports were **READ.**

On motion by Senator **KANY** of Kennebec, the Senate **ACCEPTED** the Majority **UGHT TO PASS AS AMENDED** Report, in concurrence.

The Bill **READ ONCE.**

Committee Amendment "A" ((H-905) **READ** and **ADOPTED**, in concurrence.

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

**Divided Report**

The Majority of the Committee on **BANKING & INSURANCE** on Bill "An Act Relating to Returned Check Charges"

H.P. 1505 L.D. 2119

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

Signed:

Senators:

KANY of Kennebec

BRAWN of Knox

Representatives:

GARLAND of Bangor

CARLETON of Wells

TRACY of Rome

ERWIN of Rumford

KETOVER of Portland

JOSEPH of Waterville

HASTINGS of Fryeburg

PINEAU of Jay

The Minority of the same Committee on the same subject reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-904).**

Signed:

Senator:

MCCORMICK of Kennebec

Representatives:

RAND of Portland

MITCHELL of Vassalboro

Comes from the House with the Minority **UGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-904).**

Which Reports were **READ.**

Senator **KANY** of Kennebec moved that the Senate **ACCEPT** the Majority **UGHT NOT TO PASS** Report in **NON-CONCURRENCE.**

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

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

Senator **BUSTIN:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I really have a deep resentment for this Bill because it is something we ought not to be wasting our time on. We ought not to be wasting our time on it because we actually passed this Bill two years ago. The people it was passed for missed the sunset and really I consider that partly my fault. We have had to put in another Bill. You might suspect, now, that I put in that original Bill. What that Bill did was to say to the Banks that they could not charge more than \$2.00 to a merchant for checks that bounced at their establishments. There was a very good reason for that and there is a very good reason for this Bill. This Bill essentially does the same thing the first Bill did. What this Bill actually does is to keep the level of charges to \$2.00 for those returned checks. I refer to this as a scam. It is a legal scam but it is a scam. The scam is that you as the Banker put out a product, another person who wants to use that products buys it in the form of an account with you, gets your product which is a check and use that to give to the merchant to buy any goods or services they might be offering for sale. If you don't have money in that account, you contracted with the Bank to have in there and that check you send to the Bank bounces than they not only charge you, and I think it is up to \$15.00 now for bounced checks, but they charge the merchant more than \$2.00. It was up between \$5.00 and \$8.00 before the original Bill was passed and it has now stayed at the \$2.00 to \$3.00 level.

The argument on the other side is that, it's working so why do you need it. If it ain't broke you don't have to fix it, do you? We've got the Law on the Books or we had it on the Books, we need to put it back there because it was working. If you take it off it might just get broken again. That is a good scam for the Banks. They are able to get you to buy the product and then the merchants have to

pay for it because the merchants not only have to pay that charge but they also have to try to collect that money from you. If you have ever been in business you will know how very difficult it is to collect that bounced check. Now you not only have lost your goods, you can't collect the money, you have to pay the Bank for their product for a contract they had with somebody else. That is not fair and is totally unfair. I think this Law should remain on the Books and would hope you would vote against the pending motion.

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

Senator **BRAWN:** Thank you Mr. President. Ladies and Gentlemen of the Senate. If you aren't already confused by the sunset and this Law, maybe I can shed some light on that. I would like to ask for a Roll Call on this and I would like to speak briefly to say I hope you will accept the Ought Not To Pass. I hope you will vote yes on the Roll Call.

When this Bill came to our Committee it was unanimous Ought Not To Pass from what I knew and when I came in two days later we had it back before us and we were going at it again. You're right if isn't broke don't fix it. It was wrong then and it is wrong now and I don't think we need it. There are several reasons but rather than take up all of your time I'd like to address a couple. If passing this Bill would do away with the frustration of bad checks I would gladly vote for it. I belong to a French and Brawn grocery store that deals with these bad checks and I know we all know the problem exists. This Bill, worded the way it is, will not take those frustrations away. I am one that believes it should go back to the person who wrote the bad check. During the hearing I asked several questions to the merchant who was there. Do you post a sign as to what will happen if you write a bad check? You should be able to do those types of things. I don't think hitting the Bank is going to address this issue. I hope you will vote with the Ought Not To Pass Majority Report. Thank you.

On motion by Senator **BRAWN** of Knox, 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 Aroostook, Senator Collins.

Senator **COLLINS:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I also recall the genesis of this Bill and served on that Committee in 1989 along with Senator Bustin from Kennebec and Senator Theriault from Aroostook. I think at that time we reached Committee agreement whereby, in effect we would stop the double dipping that appeared to occur in the case of bad checks. Essentially, as the good Senator from Kennebec, Senator Bustin has explained this arises in those instances when a merchant takes the check which is a bad check deposits it in his account and then has the check returned and receives a charge. In addition to the charge he receives, there is also a charge made against the person that writes the bad check. The Bank is collecting from both parties. One is the innocent party and the other is the guilty party. In our attempt to solve this dilemma we suggested if the Bank was the depository for both the merchant and the person writing the check there ought to be a charge only to the person who wrote the bad check. We said if another Bank is also involved and the check has to be returned to that Bank they may charge a service

charge of \$2.00. That was the basis of our agreement feeling that the Bank that performed that service that was not the depository for both banks ought to receive something for their administrative work. We thought this was a reasonable solution to the problem. That remained in place until it sunsetted and that is the reason this Bill was resubmitted. Apparently, the Committee thinks that was not a good idea. It seems to me it was fair, it prohibited double dipping, and yet provided something for the Bank that was not the depository for both concerned parties. I would join in asking you to vote against the pending motion and go on and accept the Minority Report. Thank you Mr. President.

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

Senator **KANY:** Thank you Mr. President. Ladies and Gentlemen of the Senate. The pending motion is acceptance of the Majority Ought Not To Pass Report. I believe, please correct me if I'm wrong, the good Senator from Aroostook, Senator Collins, would rather have you vote with the Majority Ought Not To Pass Report. I would like to explain my vote.

None of us on the Committee questioned the wisdom of the previous Legislature which enacted the Law you heard about in detail just now. Most of us were part of that Legislature also. I am sure it was a good thing at that time. We were presented with a Bill now. We listened to testimony and looked at the evidence. It appeared to the majority of us on the Committee members of both parties, that such micro-managing cluttering up the Statutes was not necessary at this time. We heard no abuses of high charges to merchants who had accepted a bad check. There are some small charges and many banks charge the merchant nothing at all to process that bad check, primarily because there is a lot of competition among the Banks. Many of them for good public relations to the merchants choose not to make any charge, although the Bank may believe the merchant should exercise some caution in accepting a check. I urge you to, not to clutter up the Statutes with a new Law if it is not necessary and if there is no abuse out there. It seems unnecessary and clearly at this time there is no call for that. 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. So that I won't further confuse you I think I should tell you I am under the impression that in order to return to the law passed in 1989 you would have to defeat this motion, then pass the Minority Report which would put in place again the 1989 act which provided for the methodology that I prescribed earlier. I continue to ask that you not support the pending motion. Thank you.

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

Senator **BUSTIN:** Thank you Mr. President. Ladies and Gentlemen of the Senate. The Maine Shop & Save which has its own check cashing procedure, annually write off \$400,000 in bad checks. Even with a \$2.00 charge, if you assume that all of that were not with their bank but with some other bank, is still a slap in the face for somebody who is accepting somebody else's product, i.e. the check. They are depending on that money being in there and they get slapped again because it didn't pan out even though it wasn't their account. The average supermarket or the superette



type store will have to cash between 500 and 3500 checks a week. On an average between 18 and 30 of those checks will bounce. If you take the higher number 58 times 30 you've got \$1,740.00 that the market is already losing. An additional \$2.00, making an assumption those checks didn't come off their bank, is another \$60.00. You would say hey that is only \$1800.00 who is going to miss \$60.00 with \$1740.00 already gone out the door? That is not the point. The point is that is a slap in the face. They are willing to take that slap in the face, the \$2.00 charge, they are just not willing to leave it open so it can be more of a charge. What will happen, and we went through this two years ago, if it gets to be to bad the markets will have to begin saying no I can't accept your check. How many of you have gone to some place of business with a big sign that says no checks cashed. This is not a piece of Legislation that is going to mess up the Statutes. This is a piece of Legislation that is going to keep you from having to mess up the Statutes and mess up our way of doing business and help the people who are willing to accept another persons product in order to keep commerce going. If it gets bad enough I suspect business will start not accepting checks. Do we really have to wait for the horse to be out of the barn before we close the door? This is one of those door closing Bills and I think we ought to accept it. Please 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. Once again the law that had the \$2.00 lid on what the bank could charge the merchant or whoever accepted the bad check sunsetted in July. Since then we have had no complaints about over charges from banks. That law is gone and there are no complaints. Whether it was that old law that corrected what probably was a real problem at one time or whether it is the economic times and the search for customers, we heard no evidence that there was a problem with high charges. Personally, I think it is a mistake to put something in Statute just to prevent a problem that might occur. We have enough problems we should deal with that are occurring without trying to put something in Statute for something that may be a problem in the future. I urge you to go with the Majority Ought Not To Pass. Thank you.

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

Senator **BUSTIN:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I only want to quote you from the Legislator who is the prime sponsor of this Bill and what was said in her testimony. "This Bill was brought to my attention by a business person with the request that we reinstate the Law. I thought it to be a fair request." It seems to me there was a complaint, at least one. Thank you.

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

Senator **BRAWN:** Thank you Mr. President. Ladies and Gentlemen of the Senate. Not to belabor the issue but hearing these arguments I feel compelled for the record to state my reasons. It is true in 1989 the Legislature did pass exploratory legislation similar to that which is presented in L.D. 2119 today and it had a sunset on it. Even though the sunset was known to both groups, neither of those groups

brought this issue to the attention of our Banking & Insurance Committee in 1991 nor did they offer this Bill. Here is the important fact I have underlined twice. Merchants are free to charge whatever they feel is necessary to deter the passing of bad checks or assist them in recovering their costs. Again I reiterate passing this Bill won't make that problem go away. Thank you.

**THE PRESIDENT:** The pending question before the Senate is the motion by Senator **KANY** of Kennebec that the Senate **ACCEPT** the Majority **OUGHT NOT TO PASS** Report in **NON-CONCURRENCE**.

A vote of Yes will be in favor of the motion by Senator **KANY** of Kennebec that the Senate **ACCEPT** the Majority **OUGHT NOT TO PASS** Report in **NON-CONCURRENCE**.

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 **BERUBE, BOST, BRANNIGAN, BRAWN, CAHILL, CARPENTER, CLARK, CLEVELAND, EMERSON, ESTY, FOSTER, GILL, GOULD, HOLLOWAY, KANY, SUMMERS, TWITCHELL, WEBSTER, THE PRESIDENT - CHARLES P. PRAY**

**NAYS:** Senators **BUSTIN, COLLINS, CONLEY, DUTREMBLE, ESTES, GAUVREAU, LUDWIG, MATTHEWS, MCCORMICK, PEARSON, RICH, THERIAULT, TITCOMB, VOSE**

**ABSENT:** Senators **BALDACCII, MILLS**

19 Senators having voted in the affirmative and 14 Senators having voted in the negative, with 2 Senators being absent, the motion by Senator **KANY** of Kennebec, that the Senate **ACCEPT** the Majority **OUGHT NOT TO PASS** Report in **NON-CONCURRENCE** **PREVAILED**.

Sent down for concurrence.

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

**COMMITTEE REPORTS**

**House**

**Ought to Pass**

The Committee on **HOUSING & ECONOMIC DEVELOPMENT** on Bill "An Act to Correct an Omission from the Recodification of Title 30" (Emergency)

H.P. 1568 L.D. 2210

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.

Under suspension of the Rules, **READ TWICE** and **PASSED TO BE ENGROSSED**, in concurrence.

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

**Divided Report**

The Majority of the Committee on **BANKING & INSURANCE** on Bill "An Act to Ensure Complete Recovery for Injuries to Children"

H.P. 1551 L.D. 2189

Reported that the same **Ought to Pass** as **Amended** by **Committee Amendment "A" (H-906)**.

Signed:

Senator:

**MCCORMICK** of Kennebec

Representatives:

RAND of Portland  
CARLETON of Wells  
MITCHELL of Vassalboro  
KETOVER of Portland  
HASTINGS of Fryeburg  
PINEAU of Jay

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

Signed:

Senators:

KANY of Kennebec  
BRAUN of Knox

Representatives:

GARLAND of Bangor  
TRACY of Rome  
ERWIN of Rumford  
JOSEPH of Waterville

Comes from the House with the Majority **UGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-906)**.

Which Reports were **READ**.

On motion by Senator **KANY** of Kennebec, the Senate **ACCEPTED** the Minority **UGHT NOT TO PASS** Report in **NON-CONCURRENCE**.

Senator **CONLEY** of Cumberland moved that the Senate **RECONSIDER** its action whereby it **ACCEPTED** the Minority **UGHT NOT TO PASS** Report in **NON-CONCURRENCE**.

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

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

On motion by Senator **PEARSON** of Penobscot, Tabled until Later in Today's Session, pending the motion by Senator **CONLEY** of Cumberland that the Senate **RECONSIDER** its action whereby it **ACCEPTED** the Minority **UGHT NOT TO PASS** Report in **NON-CONCURRENCE** (Roll Call Ordered).

**Divided Report**

The Majority of the Committee on **ENERGY & NATURAL RESOURCES** on Bill "An Act to Supplement State Environmental Enforcement"

H.P. 1062 L.D. 1551

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

Signed:

Senators:

TITCOMB of Cumberland  
BALDACCI of Penobscot  
LUDWIG of Aroostook

Representatives:

ANDERSON of Woodland  
LORD of Waterboro  
HOGLUND of Portland  
JACQUES of Waterville  
GOULD of Greenville  
POWERS of Coplin Plantation

The Minority of the same Committee on the same subject reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-911)**.

Signed:

Representatives:

MARSH of West Gardiner  
MITCHELL of Freeport  
COLES of Harpswell  
SIMPSON of Casco

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

Which Reports were **READ**.

The Majority **UGHT NOT TO PASS** Report **ACCEPTED**, in concurrence.

**Divided Report**

The Majority of the Committee on **LEGAL AFFAIRS** on Bill "An Act to Encourage Lawful Rental Practices"

H.P. 1423 L.D. 2035

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-903)**.

Signed:

Senators:

MILLS of Oxford  
KANY of Kennebec

Representatives:

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

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

Signed:

Senator:

SUMMERS of Cumberland

Comes from the House with the Majority **UGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-903)**.

Which Reports were **READ**.

Senator **SUMMERS** of Cumberland moved that the Senate **ACCEPT** the Minority **UGHT NOT TO PASS** Report in **NON-CONCURRENCE**.

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

Senator **CONLEY:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I know nothing about this Bill but I would certainly appreciate some help from the good Senator from Cumberland, Senator Summers if he might explain to us what the Minority Report, so widely supported by other members of this body, what it might do.

**THE PRESIDENT:** The Senator from Cumberland, Senator Conley posed a question through the Chair. The Chair recognizes the Senator from Cumberland, Senator Summers.

Senator **SUMMERS:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I was going to go out and buy a megabucks ticket after that happened, I figured it was my day. I do feel it is fair that somewhat of an explanation is offered. This Bill, "An Act to Encourage Lawful Rental Practices" when it came before the Legal Affairs Committee seemed like a housekeeping Bill. What it would do is raise the fine for illegal evictions from apartment dwellings from \$100.00 to \$500.00. It sounded like a reasonable thing at first. I started thinking about it as the testimony went on in the Committee. There wasn't a lot of evidence shown that there was a problem. Like the good Senator from Kennebec, Senator Kany mentioned just a few moments ago on a previous Bill, it really doesn't appear to

be broken. I started thinking about people who have apartments and experiences in my life. Most of the people who have apartments either have them as investments, maybe bought a duplex to help supplement their income if they are retired or help supplement their mortgage payments. I kept waiting as the testimony went on and I didn't hear about these big bad landlords that were kicking people out in twenty degree weather. The reason a lot of people testified in favor of the Bill was that the cost associated with evicting someone exceeded the cost of the fine. They felt the fine wasn't a deterrent, the people would rather pay the fine than pay the cost for eviction. When you get into the matter a little bit more you find it takes anywhere from five to eight weeks to evict somebody. It is quite a lengthy process but to make a long story short I feel it is not broken right now. I feel those people who do have apartments are mostly good people. I used to live in the good Senator from Penobscot, Senator Bost's district in Orono. The elderly couple I rented from there used the money to supplement their income and they were good people. I really don't see a need to raise the fine and that is why I signed it out and I would welcome any questions on this. Thank you.

Senator DUTREMBLE of York requested a Division.

**THE PRESIDENT:** The pending question before the Senate is the motion of Senator SUMMERS of York that the Senate **ACCEPT** the Minority **UGHT NOT TO PASS** Report in **NON-CONCURRENCE**.

A Division has been requested.

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

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

5 Senators having voted in the affirmative and 28 Senators having voted in the negative, the motion of Senator SUMMERS of Cumberland that the Senate **ACCEPT** the Minority **UGHT NOT TO PASS** Report in **NON-CONCURRENCE**, **FAILED**.

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

The Bill **READ ONCE**.

Committee Amendment "A" (H-903) **READ** and **ADOPTED**, in concurrence.

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

**Divided Report**

The Majority of the Committee on **LEGAL AFFAIRS** on Bill "An Act Amending the Laws Governing Concealed Weapons Permits to Allow County Sheriffs to be Designated Issuing Authorities"

H.P. 1495 L.D. 2107

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

Signed:

Senators:

MILLS of Oxford  
KANY of Kennebec  
SUMMERS of Cumberland

Representatives:

LAWRENCE of Kittery  
PLOURDE of Biddeford  
DAGGETT of Augusta  
POULIN of Oakland  
RICHARDSON of Portland

STEVENS of Sabattus  
TUPPER of Orrington  
HICHENS of Eliot  
BOWERS of Sherman

The Minority of the same Committee on the same subject reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-910)**.

Signed:

Representative:

JALBERT of Lisbon

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

Which Reports were **READ**.

The Majority **UGHT NOT TO PASS** Report **ACCEPTED**, in concurrence.

**Divided Report**

The Majority of the Committee on **TAXATION** on Bill "An Act to Promote Motor Vehicle Fuel Efficiency"

H.P. 1168 L.D. 1709

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

Signed:

Senators:

BOST of Penobscot  
ESTY of Cumberland  
COLLINS of Aroostook

Representatives:

CASHMAN of Old Town  
NADEAU of Saco  
MURPHY of Berwick  
DORE of Auburn  
TARDY of Palmyra  
DUFFY of Bangor  
DIPIETRO of South Portland  
BUTLAND of Cumberland

The Minority of the same Committee on the same subject reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-885)**.

Signed:

Representatives:

MAHANY of Easton  
HEPBURN of Skowhegan

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

Which Reports were **READ**.

On motion by Senator BOST of Penobscot, the Senate **ACCEPTED** the Majority **UGHT NOT TO PASS** Report, in concurrence.

Senator TITCOMB of Cumberland moved that the Senate **RECONSIDER** its action whereby it **ACCEPTED** the Majority **UGHT NOT TO PASS** Report, in concurrence.

On motion by Senator BOST of Penobscot, Tabled 1 Legislative Day, pending the motion by Senator TITCOMB of Cumberland that the Senate **RECONSIDER** its action whereby it **ACCEPTED** the Majority **UGHT NOT TO PASS** Report, in concurrence.

**Senate**

**Ought to Pass As Amended**

**MCCORMICK** for the Committee on **AGING, RETIREMENT & VETERANS** on Resolve, to Provide a Special Exemption to the Maine State Prison Advocate for Service Retirement Benefits

S.P. 871 L.D. 2226

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-553)**.

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

The Resolve **READ ONCE**.

Committee Amendment "A" (S-553) **READ** and **ADOPTED**.  
The Resolve as **Amended**, **TOMORROW ASSIGNED FOR SECOND READING**.

Senator **KANY** for the Committee on **BANKING & INSURANCE** on Bill "An Act to Prohibit Undocumented Insurance Trade Practices"

S.P. 843 L.D. 2147

Reported that the same **Ought to Pass as Amended** by **Committee Amendment "A" (S-550)**.

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

The Bill **READ ONCE**.

Committee Amendment "A" (S-550) **READ** and **ADOPTED**.

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

Senator **VOSE** for the Committee on **MARINE RESOURCES** on Bill "An Act to Clarify the Definition of Resident as it Pertains to Marine Resource Licenses"

S.P. 800 L.D. 1999

Reported that the same **Ought to Pass as Amended** by **Committee Amendment "A" (S-551)**.

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

The Bill **READ ONCE**.

Committee Amendment "A" (S-551) **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 Promote Comprehensive and Consistent Statewide Environmental Policy and Regulation"

H.P. 892 L.D. 1289

(C "A" H-900)

Bill "An Act Relating to Best Practicable Treatment Determinations in Air Emission Licensing"

H.P. 1040 L.D. 1513

(C "A" H-907)

Bill "An Act Allowing Zoning Boards of Appeal to Grant Dimensional Variances Based On Practical Difficulty"

H.P. 1263 L.D. 1832

(H "A" H-909 to C "A" H-901)

Bill "An Act to Amend the Charter of the Casco Bay Island Transit District"

H.P. 1414 L.D. 2026

(C "A" H-908)

Bill "An Act to Clarify the Subdivision Definition under Maine Land Use Regulation Commission Laws"

H.P. 1588 L.D. 2242

(H "A" H-913)

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

Bill "An Act to Provide More Effective Recovery of Child Support"

H.P. 1222 L.D. 1780

(C "A" H-899)

Which was **READ A SECOND TIME**.

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

**Senate**

Bill "An Act to Provide for the 1992 and 1993 Allocations of the State Ceiling on Private Activity Bonds" (Emergency)

S.P. 874 L.D. 2235

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

Sent down for concurrence.

**Senate As Amended**

Bill "An Act to Establish the Maine Correctional Institution - Warren"

S.P. 518 L.D. 1396

(C "A" S-549)

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

Sent down for concurrence.

**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

(S "A" S-535 to C "B" S-527)

Which was **READ A SECOND TIME**.

On motion by Senator **BUSTIN** of Kennebec, Senate Amendment "B" (S-555) **READ** and **ADOPTED**.

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

Senator **BUSTIN**: Thank you Mr. President. Ladies and Gentlemen of the Senate. Now that I have done my duty as the Chair, I would like to rise to ask for a Division on this Bill. This is the infamous L.D. 66. It is the one that requires the mandates. If we have any mandates they go back to the municipalities that we pay for them. This has a very, very, very intrusive mechanism for State Government and I think for the State as a whole. It looks good, it's an election year, love to do it, something that would be very easy for me not to stand up here and say this is a bad Bill. This is a bad Bill. I was not on the Majority Report when it came out of Committee. I have not been with this Bill at all nor will I be with this Bill because it is bad, bad, government. You should take a good look at it and look at what it is going to do to your municipalities, your counties, and your State. It may look like what you are doing is helping your municipalities. That's ok. I am one that advocates for at least 95% of school funding from the State. I advocate the State should take care of the solid waste. I advocate the State should pay for the jails. I advocate for all that. That is something you can budget for. That is something I think we should pay for and it is something we can tax for.

If you take a good look at the Bill, you will know we are currently sending on average at least 53% back to the towns just for education. If, in a Bill, we want to change something as a mandate to education and I pick that because that is the biggest piece of change, it has an effect of creating a dollar amount in the municipality. You will have to send more

money back with that even though you might, in fact, not created any additional monies there. It may have been absorbed, it may do all those things. I know the State & Local Government also put on another mandate Bill that said the Fiscal Program Review had to comment what it would cost on different things we did. Fiscal & Program Review said we don't have time to do this. That is exactly what it is going to be, you are going to literally stop government. That is what this Bill is really designed to do. I want to face my responsibilities to the municipalities and counties. I don't have any problem with that. I don't think this is the right way to do it. We are going to be in a very, very, big pickle if we do this. I would urge you to vote against it. Thank you.

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

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

Senator **BRANNIGAN:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I also am opposed, reluctantly, to this Bill. As I said before I don't think it is soup yet. I don't think it is correct for us to take a Law that has been on the Books only a year and apply the principle of that Law to our Constitution. Because of the vagueness of mandates and we are finding this vagueness out almost daily as we deal with laws this Session, we need the time to work out what a mandate is and what does it mean when we say we are going to pay for it? People can't answer the questions as we bring them up in our Committee. We brought questions up yesterday and several times since we began deliberating this budget. Is this a mandate or isn't it, people can't answer that. How can we put something such as that in the Constitution. It will pass because we won't be able to answer the peoples questions and it sounds good and is very attractive to say that never again will there be a mandate provided. I don't know who is going to answer the questions but I have a series of questions, long and somewhat difficult, technical questions that need to be asked. If they have been asked already then the answers will come readily. If not they will take some time for the people to answer them. I can begin and people who want to answer can. I would request they do so. They may need to have more time to look at this because these are questions prepared by our staff.

Are mandates only those actions that actually require a local government to establish, what is says is we will pay for anything that is established, expanded, or modified it's activities? Is this only when we require it? Could actions that do not necessarily require a special local change, but may result in addition local expenditures, are those also State mandates? Does necessary addition expenditures mean that any portion of a Bill that necessitates additional expenditures represents a State mandate even if other portions of a proposal have offsetting savings? If a Bill cost money to a municipality but saves money elsewhere is that a mandate we must fund? I can be stopped anytime if anyone would like to take these on a different approach. I apologize I did not know we were debating this tonight.

L.D. 66 requires appropriate sufficient funds to pay for at least 90% of the cost of fully implementing state mandates. We have to pay 90% of that. Does this require the State to fund 90% of the total expected expenditure over the life of the mandate? If so do future expenditures get discounted

the present value? I know this is sticky but I think this is why we need to work on the law first and not put it in the Constitution because we can tinker with the law. In this case it is so ambivalent, we need to tinker with it. Do we pay for it with present day dollars or ten years from now do we pay for 90% in the dollars it would cost ten years from now? How are the payments to be made? Are they to be made on an annual basis or must the total estimated cost be paid up front? The other question deals with the 00.001%. The routine obligations, as long as the combined costs of all such mandates in any calendar year is less than .001% of the total amount of property taxes collected during the previous year, that is how it is going to be figured. How do we handle that practically here in this body as we face the table? Are calendar year property taxes easy to determine, since most of municipalities use a June 30th Fiscal Year in this State? This exemption would appear to require that we table all mandates until the end of the Legislative Session to determine the total value or cost of all mandates to be enacted. Even Bills with the smallest local costs would have to be considered as part of the total cost of all mandates. It seemed that some small ones would not be a problem but we have to do an aggregate. If we do an aggregate how do we hold those and how do we decide what ones we pay for? Should all potential mandate Bills be held until the end of the Session? Is the combined cost of mandates in any calendar year the cumulative effect of all prior mandates enacted in which the Constitutional Amendment might apply? How is the Legislature to determine which additional or incremental mandate breaks the property tax exemption limit? Those first introduced or some other method? What ones do we have to pay for in those small ones? We do have small ones, we are wrestling with this right now, those of us who are working on a possible Bond Package.

If we require an election of any kind, do we have to pay for that election for every municipality in the State? We ran into this the other day. There are certain retirement issues that are being questioned about whether a city should be taking care of some of their own retirement issues dealing with teachers, for example. Can we require the towns to take any part of their retirement responsibility in the future? Not at this passing, we would have to pay for them. Is this exemption to apply to the annual cost of the mandate or the total cost of all municipal expenditures over the life of the mandate either the sum of the future value of all expenditures or the discounted present value of the estimated expenditures? What constitutes a municipal request? If a municipal requests something then that is exempted. Could a Bill submitted by a Minority of a municipal governing body or by a single municipal office be considered a municipal request? Again, I don't want to beat this to death but I think we have the opportunity to stay with the Law we have in the books now which is more difficult than this Constitutional Amendment. Let's work it out. Let us hammer away at it. Indict us if we abuse it but let's answer these questions through the mechanism of the law. I have a couple of others but I think I have sufficiently made my point. Thank you.

**THE PRESIDENT:** The Senator from Cumberland, Senator Brannigan has posed a serial of questions through the Chair to any Senator who may care to respond. The Chair recognizes the Senator from York, Senator Dutremble.

Senator **DUTREMBLE**: Thank you Mr. President. Ladies and Gentlemen of the Senate. I can't answer the whole series of questions that the good Senator from Cumberland, Senator Brannigan has posed to us but it is because of those questions I voted for this Bill. It seemed that in the past whenever we passed Legislation that dealt with money we never asked those questions about how much it was going to cost the municipalities. I think by those questions and statements you see exactly how much of an effect it had on the cost to the municipalities. What this Bill is going to do is going to make us look real deep at what we really do when we pass a Bill because now we are going to have to pay for it. All of us who have always talked about property tax relief for municipalities, this is the best property tax relief Bill that ever came down the pike as far as I am concerned. This is going to prevent us from ever shifting over the burden of anything in a municipality unless we pay for it or passing any Legislation mandating anything unless we pay for it. We may not like that loss of power but let me tell you one power I believe in and that is the power of the vote. This is not a decision we are going to making, it is a decision the people of the State of Maine are going to making. I give the people of this State a little more knowledge that when they vote on a Bill they know exactly what they are doing and not just because it is cute. I have all the faith in the world that when this comes up for the voters they will do what they feel is right. Thank you.

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

Senator **BERUBE**: Thank you Mr. President. Ladies and Gentlemen of the Senate. First of all I am going to ask for a Roll Call and then I am going to take umbrage with what the Senator from Kennebec, Senator Bustin said. It is not an infamous Bill. It is a Bill that was worked on as best as we could. I realize the Senator is so tied up with her many other duties, committees, and jobs that she misses, unfortunately, and we really miss her knowledge and contribution to the Committee. If she had been there and heard all the good points we heard in favor of this Bill, she would not have said this is indeed an infamous Bill. It is not an intrusive Bill. What is intrusive about saying that if we are going to mandate any piece of Legislation or Law upon the municipalities back home, what is intrusive about saying we will pay for it up front? Who are we to say we know better than the people back home or in the municipalities of our State what is good for them or best for them? If we think we know better than they do what they need, then heavens let's put the money up front. Like the old saying "Don't pass the Bill unless you put money in the till." It seems to me that would be fair. The Senator from York, Senator Dutremble is quite right, this is indeed a property tax relief Bill. I'll give you just one minor example and I am sure in all of your towns and cities back home you have a million other examples. A mandate that was given to my own community of Lewiston was supposedly going to cost a million dollars, it is over twenty one million now. Yet, our property taxes are picking up that tab but we knew better here than the people back in Lewiston. We pass these mandates and we don't have the courage to say we will put the money with it.

Unfortunately, I feel that this has been debated, the definition of mandate was given item for item

last year, sometimes the feelings of certain people and I exclude members of this Body, will look for any crutch or excuse to take away this great power we have of mandating our own beliefs on others back home. At any rate, I respect the questions of the Senator from Cumberland, Senator Brannigan. I would ask for a Roll Call and I hope you will all have the courage to vote for what you think is right deep down now what others say. Just remember if we think strongly enough, if we are that convinced it is good, than let's fund it. One more thing, if I may before I sit down, it is true we do have a Law but as you well know Laws can be changed from one Session to another and this would say in our Constitution that this can no longer be accepted. You have heard that the people of the State will, overwhelmingly, approve of this. Maybe that is what we are afraid of. I ask you to please vote with the motion of Passage to Be Engrossed as Amended. Thank you.

On motion by Senator **BERUBE** of Androscoggin 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 Penobscot, Senator Pearson.

Senator **PEARSON**: Thank you Mr. President. Ladies and Gentlemen of the Senate. What is a mandate is an important question. The good Senator from Androscoggin, Senator Berube said it was defined last year. I don't think that it was defined last year. The question is what is a mandate? If that question is not answered I don't think you can vote for the Bill until we have answered that question. The good Senator from Androscoggin, Senator Berube said what is wrong with paying for it up front? I don't know how you pay for mandates up front unless you know how long that mandate is going to last. If it is going to last for five years, ten years, twenty five years, or fifty years, you would not know how to pay for it up front. Let me give you an example, one that has come to my mind dramatically in the last few weeks. Everybody in State Government was asked to cut some money. Some of those cuts would affect municipalities in a very direct and sometimes in an indirect way which leads to the question of what is a mandate. The town of Lincoln where I represent is being called upon to close its Court. If that is successful and I hope it is not, people in Lincoln will have to go to Millinocket or Bangor. We assume it would be Millinocket. I then write my Town Manager in Lincoln and say to him, "If we have to go to Millinocket, what is the expense to the Town of Lincoln?" He writes back and says "We have added police time, we have gas, and we think that the expense is going to be an addition \$7,000-\$9,000 a year." I didn't have to write to the Manager in Hartland, she screeched at me over the phone and said it is going to cost her more money because it is even further. If we close the court we are mandating that those traffic and civil offenses must go to another Court and that is in Millinocket. Who pays for that? I would define that as a mandate on the town. You have to pick up this additional expense. If this Constitutional Amendment was passed, the State would pay for that. How much would it be? I don't know, how long is the Court going to be closed? What is the cost of gasoline going to be next year or the year after that. If you think that is stretching it it is not stretching it. Those are the kind of questions and we do ask those questions in Appropriations, about how it does affect

municipalities whether you believe it or not, about what it is going to cost on the municipalities. You just can't put a handle on it under the situation that we are being asked.

We are not talking about just another Bill, we are talking about a Constitutional Amendment, my friends. A Constitutional Amendment that is so foggy and hazy that you can't anticipate what is going to happen. Especially this year with the economy falling off and State Government having to retrench. In an attempt to look at savings we are going to affect municipalities. In my Court House in Lincoln, we service probation and pro which isn't going to be there. We service Driver's Examiners, Unemployment and all the rest of those things. They have to have a place to go. They will now probably have to go to Millinocket. The question is not that clear. I wish it were and it was a matter of saying you have to do "A" and the State will pick up 90% of it and that is the end of it. It is not that simple. 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. As the prime sponsor of this infamous Bill L.D. 66, I listened with interest at a series of carefully crafted queries that were shared with us this late afternoon. I wonder why, at this time as we face Engrossment of a Bill that was debated at length in the previous Session and had an extensive and expansive public hearing and that had the dedicated work of enumerable Legislatures from all sides of the aisle and learned members of the Bar to analyze its contents, would we be faced with these complex queries at this stage? I do not question the sincerity of the people who have expressed and articulated the questions and shared with us their concerns. I also compliment them for their consistency. They have been consistently reserved and opposed to the progress of L.D. 66 through this Legislative process. I continue to respect their positions and submit, most respectfully and sincerely, that these questions can be addressed in enabling Legislation that would become effective upon approval of this proposed Constitutional Amendment.

Constitutional Amendments generally do have subsequent explanatory Legislation. In fact, it might be even more appropriately addressed in that manner because I submit that the responses to these queries need to be written and compiled in Statutory Law so there will be a source to which reference might be directed when answers to similarly constructed questions arrive in years when we aren't here. I hope, in those years ahead, that this Legislation L.D. 66 will be part of Maine's Constitution. While I do not question the sincerity of the queries, I also share with you the sincerity of the supporters of this Legislation also remain consistent and stable and supportive. I would urge that Members of this Body support the pending motion. Thank you Mr. President.

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

Senator **BRANNIGAN:** Thank you Mr. President. Ladies and Gentlemen of the Senate. Those of you who have dealt with the staff in the Office of Finance know they laboriously work at not being partisan or involved in any way in discussion here. I guess the reason they haven't ever come is because no one ever asked them. I never asked them, what they thought about this, until this afternoon. I hope you believe

me that I didn't know this was up today. This has been here for a long time. As I was sitting here with this I said I must share this with the Senator from Cumberland, Senator Clark and the two Senators from Androscoggin, Senator Cleveland and Senator Berube. I just did not know it was coming up today. They have never been asked by me before and I want to defend them. It was not something that was laid a trap. I have had questions about it and they didn't even voluntarily give them to me. I just asked this afternoon that they be given to me and they were. I hope that people will understand that the people from the Office of Finance are very guarded in their thinking when it comes to controversial issues. I am glad to know about enabling Legislation. I did not know you could have Legislation that would clarify and not contradict a Constitutional Amendment. I am glad to know about that. I still think it would be much more responsible to do it the way I suggested with the Law we have. However, I do appreciate knowing about that kind of opportunity. 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. As so many of us have said so movingly during the course of our careers, I had not expected to speak tonight on this Bill. I truly had not expected to speak to you tonight about this Bill. I did support this Bill on First Reader and I am going to vote for this Bill tonight as Second Reader. I must confess that I am somewhat disquieted by the tenor of the discussion and the debate this evening. It is hard to put into words but there is something odd about the way this Bill has gone through the Legislature. I don't mean the political configuration of those supporting the Bill. From what I am told by the staff of the Office of Policy and Legal Analysis and the Office of the Revisor of Statutes, the language which is used in the whole method of presenting this Bill is questioned. It is extraordinary, unusual, unique, and one might even say odd. That is important because the problem as I see it, is not the underlying policy issue. I believe the State ought not to thrust onto a lower level of government. I believe that we should, in fact, put our money where our mouth is. I rise tonight not on a policy issue. I rise tonight on the process issue and the colloquy which occurred between the Senators from Cumberland, Senator Clark and Brannigan which was instructive. The Senator from Cumberland, Senator Brannigan raised a host of questions on what would actually happen if the voters do accede to the opposed Constitutional question. The Senator from Cumberland, Senator Clark promptly responded that a lot of the policy issues would be resolved in enabling Legislation. I still have concerns with the vagueness of some of the terms. I think we should provide some clear direction, some clear policy statement on what is meant by a mandate. For example, would the reimbursement modality be required in terms of present value or in terms of the actual protracted expenditure throughout the life of the mandate if that can be determined. I expect it can't be determined because how do we know what the succeeding Legislature will do. I think it is important, perhaps on the record, to evince a clear Legislative intent. Let me tell you why I think that.

I recall vividly when I first arrived in Augusta in the Legislature back in 1982. I was the fresh

green Legislator, December 1982 and we were being asked to actually disturb, modify, even overturn an act of the people dealing with income tax indexes. It had been quite an interesting issue, kind of a political issue I think. The preceding Gubernatorial election, I believe one Charles Kragen had authored the question on whether our income tax structure should be indexed. It was an intriguing question. As I recall Mr. Kragen was unsuccessful in his effort to garner the requisite number of signatures to put that question on the ballot in 1981. It came to pass that the issue was joined for the next election. That put the State in a bind because the question was if we actually read the literal words of the amendment, we would have been required to go back to the preceding year. It would have cost thirty, forty, or fifty million dollars, whatever the figure was to the State Treasury. It struck me, at that time, that it was not what Mr. Kragen had intended. It wasn't very clear and we had a very difficult time in actually overturning a vote of the people. That is direct Democracy and we should proceed with extreme caution if we are to disturb the vote of the people. It seems to me we have a responsibility to frame the question appropriately and to provide as much guidance as we can to address and hopefully resolve future questions. It may well be there will be questions on amended Legislation. There may be litigation and that is appropriate. That is why we have a court system. We can't possibly answer every question to be raised. It is impractical. We do have a responsibility to provide as much guidance and be as specific as we can be so we can appropriately frame the question. We can, therefore, provide guidance to the voters of our State when they vote on this issue and to our courts if they are later on called upon to resolve ambiguities or questions which arrive at a later date. I believe the questions raised by the Senator from Cumberland, Senator Brannigan were, in fact, addressed in that vein. I respect the spirit in which the questions were asked. I intend to vote for this measure at the Second Reader tonight but I must state that I have a certain degree of disquiet, as I mentioned earlier. I would be willing to join with others in an effort to properly frame and resolve all the issues to provide the appropriate guidance to our voters come fall and then to our courts if questions arise later on. Thank you.

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

Senator **BUSTIN:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I rise to respond to the good Senator from Androscoggin, Senator Berube and thank her for appreciating my expertise and although she didn't say it my years in Government. Only I can say how many years I have been here and it not be taken badly. I have been here and worked in Government for a fair number of years. I appreciate the fact that I am missed on the Committee. I will do my level best to be there as much as I can. I do note, however, that most of the Committees are complaining about the same thing. The second Senator on my Audit Committee who has a great deal of expertise in Government, I rarely see. I still value his participation when he is up there. I am not sure that is an issue for this issue. I just had a sticker you could put on your lapel last year and it was given to me by one of the lobbyist this year again and it says L.D. 66 on it and last week I took

it out of my purse and threw it in one of the bottom drawers of my desk. I am not unaware of the issue, I am not uninformed of the issue, and I have discussed the issue. I do know the issue, I do know what I am talking about, and I am very concerned that this goes out for a Constitutional Amendment.

When I first came to this Senate, I was distressed because so many things went out to the voters. I thought, in my own naive, unpolitical mind at that time, that perhaps people we elect ought to take care of the problems themselves and not keep sending them out to us. Thoughts and feelings change but I still feel in those places where we can manage our own problems we ought to manage them because that is what we are paid for, that is what we are elected for, and that is what we should be doing. I appreciate the good Senator from Androscoggin, Senator Gauvreau offering to help in crafting a Bill that would address those very issues. I am one of the people, as Senate Chair of the Corrections Committee, who constantly is haranguing the Judiciary Committee to look at the impact that Bills that they passed passing criminal laws will have on the Corrections System itself. It has a very grave fiscal impact. We did get a Corrections impact Bill tacked on so they do have to get a response from the Commissioner of Corrections for that. I am not against looking at mandates and how you pay for them. I think that is a very legitimate, and yes even a duty, that we must address. We aren't addressing it in this Bill. We aren't addressing it in a Bill that looks very, very attractive but in fact has many things that would cause so many problems. You would find yourself here managing so much that if you did the management at the beginning rather than after all the problems then you will have advanced very far. You would have helped your municipalities and you would have helped your State. Quite frankly I would like to be able to vote for this because it would move us faster toward a State Income Tax to fund Government rather than a property tax. In that sense it is very attractive to me just not this way. We need to defeat this Bill and get on with the business of how we manage the problem. 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 have supported L.D. 66 in the past and I don't believe I am going to be able to vote for it if it comes to a vote tonight. In discussions with the Appropriations Committee and in Aging & Retirement Committee the questions that the good Senator from Cumberland, Senator Brannigan brought up are to huge for us to let this kind of Bill be enacted into Law without knowing exactly what it is going to do. It pains me to vote not against this Bill because I feel, just on the Taxation issues alone, I believe strongly that this State needs to take on its responsibilities. Just to echo one of the questions the good Senator from Cumberland, Senator brought up. The public policy question that has been before the Education Committee, has been before the Retirement Committee, and is now before the Appropriations Committee which is how much of teacher retirement should be paid by local communities? How much should be paid by the State? That public policy question and the discussion we are inevitably going to get into a discussion on that Public Policy since it is such a



huge part of educational funding. Seven solutions to that discussion will be closed off by this Bill. I say that being a person who believes in the State taking the complete share of educational funding. I believe that we have to decide, in this case we have dueling public policy measures. We have on the one hand, the problem of local municipalities being able to raise salaries and benefits that another entity that does not get to control them has to pay for. That is another public policy question that we need to make a good decision on. I am afraid if L.D. 66, at this point, were passed, making a quality decision would be hampered. It pains me that I am going to have to vote against this Bill until we know the answers to the questions that the Senator from Cumberland, Senator Brannigan posed. 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 rise to urge you to vote for L.D. 66 tonight. I do so because I have worked long with the Bill and I have wrestled with many questions the good Senator from Cumberland, Senator Brannigan has raised. There are reasonable answers to those questions and I will speak to those in a moment. I would ask you to vote for it because this in the stage of the Second Reader. We have been presented with these questions only this evening due to the rush of business here. Therefore, we don't have complete time to respond to them which we will do before the final vote on engrossment. What I would ask the Senate to do, since we have in large numbers supported this Bill in the past, is support it again this evening on the Second Reader and to reserve for yourselves the right to change your mind for final enactment if the questions are not answered to your satisfaction. I feel that is not unreasonable given the late time we have been asked to respond to these questions and I would ask your indulgence in continuing the process to do that. Though it is fair to ask the questions, it is also fair to provide appropriate opportunity to respond.

I also would be glad that Senator Gauvreau from Androscoggin and others who we have worked long and hard with, is once again sit and work with this. We want the best Constitutional Amendment we can have. We are on the verge, I think we are there and we can make some clarifications if it is helpful. I will stand and work with all of those who would like to review it before engrossment comes along. Let me speak briefly again to the comments that have been made. The comments that have been made that I have understood have not been that the concept of policies outlined here are ones that we support. The concern is not with the policy, the concern is with some of the questions of implementation. I would again remind you the Bill has been crafted in such a way to address some of the concerns raised in the past to minimize the language in the Constitution and to allow accompanying and enabling Legislation separate in Statute that can be changed by these Bodies should future circumstances suggest that there needs to be modification in any of the definitions or applications. It is not so rigid that there isn't a process that we have already seen that allows this Institution with larger than majority votes to adapt and grow in the future but give some protection in the Constitution. All of us have worked here long enough to know those famous words, "not withstanding." We can make a long list of examples

that have occurred in the past. Regardless of our best efforts the "not withstanding" language is inserted to circumvent previous statutory language including the Statutory language on mandates that currently exist and already have been circumvented.

Let me speak, just a moment if I might, to some of the questions that have been raised. I speak to them not as the definitive source since I am neither a Constitutional Attorney or an expert in Constitutional Law but an individual who has had some experience in municipal government. One of the questions that was raised is concerning the calendar years. On the first page is the questions posed: Are calendar year property tax collects easily determined, since most municipality use a June 1st fiscal year as well as the State?. The answer to the question, I believe, is yes. If you take a look at the Legislation it says previous calendar year. Each municipality records what its tax assessments are the previous year. That is a figure that can be calculated, as a matter of fact it is recorded regularly in the Maine Municipal Associations Townsman Report. That is a mathematical exercise that can be done, there is no major problem in accounting or determining what those are. Does this exemption which would appear to require the tabling of all mandates until the end of the Legislative Session determine the total value of cost of the mandates to be enacted? Even a Bill with the smallest local costs would have to be considered as part of the total cost of all mandates. Should all potential mandates be held till the end of the Session? That is a procedural question. Since it will not be a major problem to know what the total tax assessed value was the previous year, our Session start in earnest in January each year, that number can be kept calculated. It is a fairly large insignificant number and that number can be available to the Appropriations Committee or any other Committee as they begin to look at Bills to know what the ceiling limit is. The Committee can make a decision. If they have a Bill before it which is below that limit and they believe is appropriate and wish to proceed with it they could choose to do that. There is nothing that limits them from doing that. If this Legislature or the Appropriations Committee should choose to wait until they accumulate them, they may choose to do that or a portion of them. All they need to do is be mindful there is a cumulative limit and if they make the decision to pass some out there are going to lower the amount of leeway they have.

Most Bills we work with here are not Emergency Bills within this language and therefore can wait some time in the Session before their implementation. I don't see where that is a major problem. How are the payments to be made? Can the payments be made on an annual basis or must the total estimated cost be paid up front? Again I think it is a procedural question. My interpretation would be that since the cost needs to be determined on an annual basis and if there are long term mandates that this Legislature should wish to impose, clearly we don't know the exact cost for the years. If this Legislature wanted to axe any piece of Legislation that it pays, it doesn't know what is obliging the future Legislature to do but it understands it will raise the money at that time to pay for those services. It would seem to me to be clear if we choose to have a mandate and it is an obligation to

this Legislature since you can't bind a future Legislature, we will require that money be set aside in those years the obligation is required to pay for it. It doesn't seem to me if it's a ten year obligation you have to pay for year ten in year one until you get there. It is an interesting question but in normal procedure in financing I think that is a actual response.

Let me try one or two more. I haven't researched this but let me try them right on my feet here and see how I do. Is the combined cost of mandates in any calendar year the cumulative effect of all prior mandates enacted to which the Constitutional Amendment might apply? It seems to me, as I recall reading the Bill it sets a date. It says a date beyond such and such. The cost of the mandate is beginning after that date. We have not intended to be retroactive, therefore, the cumulative effect would not apply. If there are out year expenditures, as I have just responded in the earlier question and we have chosen to mandate it, yes we will have to budget for it in future years just as we budget for our own expenditures in future years of State obligations. I think this is another procedural question. It's not cumulative at the date in which it begins and it doesn't look retrospectively behind. It looks at the future. Let me try another one. How does the Legislature determine which additional or incremental mandate directs the property tax exemption limit? We wish not to bind the Legislature. It is the Legislatures responsibility as I responded to that question earlier. If it chooses and it is within that limit and they think it is a worthwhile Bill and they wish to fund it, the Legislature is free to proceed to do that within those limits. The Legislature can choose, at any point on which within those limits, to take the first one or the last one. It makes no determination. It is up to the Legislature to decide as it appropriately should be. We should not be dictating whether it should come by first in first out or last in first fired. That is not the concept here. The concept is to provide a rational, thoughtful approach that the Legislative Body of this Sovereign State to make determinations on services that are important and decisions on which ones they wish to fund. The method they wish to choose is free and open to us to decide. Let me try another one. Is the exemption to apply to annual cost of the mandate or to the total cost of all expenditures over the life of the mandate either the sum of the value of future expenditures or the discounted present value of the estimated expenditure? That sounds like it has been written in Fiscal Management language. Let me respond the way I would understand it. Since we are talking about the exemption, I assume we are talking about the .001 calculation. If it is a multiple year expenditure we are talking about whether we should accumulate that over several years. It may come under the annual limit but it may be a kind of incidental mandate and may go on for more than one fiscal year in a municipality. So should we count more than one fiscal year or should we count it on present value? All very interesting questions. I think there is a simple answer to these questions. The concept was to take a look at the value of the taxes for the previous year and do the multiplication. If it comes down within that then it is exempted. If it is a multiple year, I would expect it would be assumed, that it passed exemption

the first year and there may be minor implications. The concept was again not to bind the Legislature for routine and ordinary kinds of policies that would pose major impositions on municipalities. The concept wasn't to do some long cost analysis for multi years with present value deductions to go on. The concept was simply to say add it up to this year, if it meets that then it goes on. If it happens to be incidental because it goes for more than one fiscal year I would interpret that to mean in common language that it is exempted. Give us an opportunity to come back to see whether others with more expertise have a similar answer or perhaps a different one.

Let me try one more because this is getting kind of fun. Municipal request exemption; What constitutes a municipal request? Could a Bill submitted by a Minority of a municipal governing body or by a single municipal office be considered a municipal request? In my response we act as a unit and a Body here not as an individual. We as individual Senators don't submit one piece of Legislation and that is considered to be the voice of this Legislature. If you are a municipal governing body one person doesn't constitute the governing authority. It is always the majority that constitutes the governing authority. If a request would be required from the constituting body not the individual members we would not have to consider those that are random or minority requests. They would have to have the force of authority from a local entity. To do so they would have to comply with the majority rules for passage. That doesn't seem that complicated to me. Let's wait to see if there is a similar response from the legal experts. The terms of other exemptions promote equal justice and ensure due process may be interpreted quite bodily by the courts. What types of situations are these terms intending to include? Are they broad? Yes. Are they the kinds of terms that are in the Constitution already? Yes they are. They are intended to apply to situations that apply in the Court so individuals can access equal judgement so the Legislature is not bound by saying that all individuals must be treated in some equal manner. If there is a due process involved, some litigation in the Courts might have some expense. Anti discrimination in hiring, might there be a due process cost so money might challenge in the court? Certainly. The general intent is that those kinds of things would be exempted enabling Legislation and if needs to be clarified it can be done in that. To make it more narrow would be to exclude legitimate areas in which we want to protect individuals in this State from access to equal justice and fairness in this society. We wish to support that. Again, I think it is not a major problem. I may not have answered every one of these perfectly. I am not a scholar, I have just given you my understanding of common law and municipal functions. Though there would be those who would like to defeat a measure by raising all kinds of red flags that is good, and the questions raised have some merit, but I think what we need to do is to understand there are answers to these. These answers are not beyond the capability and intellectual grasp of this Body. If you will vote for this tonight we will come back with more scholarly answers for you. If you are not satisfied we have protected the rights of this State, then you should vote against it. I think you will find you will be satisfied. 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, for one, am not trying to defeat this measure by raising a series of red flags just because I want to defeat the measure. I am the co-sponsor of the Statute that is on the books right now that requires a mandate be paid for. I believed in the concept enough so that I was the only member of my party who was on that particular Bill at that time. I understand it and I support it. These are not simply red flags. These are legitimate questions and I am not a Constitutional Attorney either. I am not a person who is a scholar in constitutional laws. I really believe before something like this is passed that somebody who is a Constitutional Lawyer or somebody who is a scholar dealing with constitutional laws should look at. I would submit to you that requests of the gentlemen of Androscoggin is not unreasonable. We need a chance for these questions to be answered by somebody who is familiar with that. I would suggest to you that it would be, in my opinion, more proper to table it and get those answers than it would be to call for a Roll Call on a situation that is ambiguous to say the least. I am going to add another question and this isn't recreation on my part. I have another question I am interested in posing to somebody who might be able to answer it who is a Constitutional Lawyer. If we say one Legislature can't bind another and we accept that, and then we pass a Constitutional Amendment that does bind a Legislature in the future, don't you have a situation where the two articles in the Constitution are able to position with one another? I don't know the answer to that. I would like to have that added to the list. I also have another local question. For the last several years the tribe I represent, have been in the process of buying land around the State. Some of that land has been put into trust land which becomes part of a reservation. Half of the town of Argyle, which is a town I represent, is trust land. Taxes are not appropriated to that town anymore. This is a continuing operation. They are continuing to buy more land. Let's say they buy land in Lakeville, put it in trust land, do we pay Lakeville for what they lost in property tax revenue forever with this proposal? The questions go on and on. I really think it would be much nicer if these questions were answered before we proceeded instead of taking a Roll Call. Thank you.

**THE PRESIDENT:** The Senator from Penobscot, Senator Pearson has posed questions through the Chair to any Senator who may wish to respond. The Chair recognizes the Senator from Androscoggin, Senator Cleveland.

Senator **CLEVELAND:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I believe the questions that have been asked have been asked sincerely and I don't mean to imply that those that have been asked this evening are meant in any other way than sincerely. I hope my remarks weren't interpreted that way. The question that was posed regarding the purchase of land and then provided it in some trust to a community which in some way would affect the property tax in that community. Again, it would seem my interpretation that what you have done here is not provide a mandate, what you have done is provide a piece of land to a community. Does it affect their property values in some way? It

certainly does but it is not a mandate. The assessment within the community changes because other buildings come in, industries come in and value goes up. If an Institution of the State was to be located within any municipal boundary and since the State is exempt from paying property tax, is that a mandate? It doesn't seem so to me. We are providing a service that already exists that the State of Maine can not be taxed by local municipalities. That exists in the Constitution as it is. The concept here is the requirement of local units to provide services that are at the request and demand of the State. It seems to me not to affect local property taxes in the purchase of land or an Institution of a Government being located there. 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 think that neither I nor my colleague from Cumberland Senator Conley would consider ourselves as Constitutional Attorneys nor would I think you view us as experts in Constitutional Law. I will attempt to respond to one of the questions posed by the Senator from Penobscot, Senator Pearson when he asked whether since we all know that a Legislature can not bind a successor Legislature, I believe his question was could we by Constitutional act bind a subsequent Legislature? My understanding is that what is unique in the American scheme of Constitutional Governments is the theorem that power in authority arises from the people and that heretofore power and authority was reposed in the Sovereign. The authority went down in the American polity and to the converse actually authority comes from the people. According to that that theory the Constitution, in fact, does invest in the three branches of Government certain Judicial power, Executive, and Legislative power. The people also have a right to take back power which they have reposed to those branches of Government. It seems to me, at first blush, the people by enacting a Constitutional Amendment, could take back power which they have reposed in a Legislative Branch of Government. They could, in fact, prohibit us and any Legislative Body in the future, from passing unfunded mandates to local Governments. 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 enjoyed that answer. I always enjoy a person who has a fine mind and certainly the Senator from Androscoggin, Senator Gauvreau possess one. It makes absolute total sense to me. I do want to ask one last thing and I won't rise anymore. In the Republic of Ireland within the last decade they did away with property taxes altogether for anyone who owned property under the value of \$1000,000 and the State assumed all the burden of the cost of property taxes. Obviously the Government that instituted that was very popular. They made up the tax by imposing road taxes, gas taxes, income taxes, and they are relatively high. If we were to elect to do the same thing and assume all the property taxes of the State and at some time a future Legislature decided that we couldn't do that anymore, would we then find ourselves in a Catch 22 situation where we will have to pay for the property taxes no matter what? Thank you.

**THE PRESIDENT:** The pending question before the Senate is **PASSAGE TO BE ENGROSSED AS AMENDED.**

A vote of Yes will be in favor of **PASSAGE TO BE**

**ENGIROSSED AS AMENDED.**

A vote of No will be opposed.  
Is the Senate ready for the question?

Senator **ESTES** of York who would have voted **NAY** requested and received Leave of the Senate to pair his vote with Senator **BOST** of Penobscot who would have voted **YEA**.

The Doorkeepers will secure the Chamber.  
The Secretary will call the Roll.

**ROLL CALL**

**YEAS:** Senators **BERUBE**, **BRAWN**, **CAHILL**, **CARPENTER**, **CLARK**, **CLEVELAND**, **COLLINS**, **DUTREMBLE**, **EMERSON**, **ESTY**, **FOSTER**, **GAUVREAU**, **GILL**, **GOULD**, **HOLLOWAY**, **KANY**, **LUDWIG**, **RICH**, **SUMMERS**, **THERIAULT**, **TITCOMB**, **TWITCHELL**, **VOSE**, **WEBSTER**, **THE PRESIDENT** - **CHARLES P. PRAY**

**NAYS:** Senators **BRANNIGAN**, **BUSTIN**, **CONLEY**, **MCCORMICK**, **PEARSON**

**PAIRED:** Senators **ESTES**, **BOST**

**ABSENT:** Senators **BALDACCI**, **MATTHEWS**, **MILLS**  
25 Senators having voted in the affirmative and 5 Senators having voted in the negative, with 2 Senators having paired their votes and 3 Senators being absent, the Bill was **PASSED TO BE ENGIROSSED AS AMENDED**.

Sent down for concurrence.

**ENACTORS**

The Committee on **Engiressed Bills** reported as truly and strictly engiressed the following:

**Emergency**

An Act Providing Nursing and Boarding Home Residents with a Right of Action for Violations of Their Resident Rights

S.P. 590 L.D. 1562  
(C "A" S-532)

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.

**Emergency**

An Act to Extend the Reporting Date of the Commission to Study the Retirement Benefits Provided by the State

S.P. 807 L.D. 2006  
(C "A" S-531)

This being an Emergency Measure and having received the affirmative vote of 30 Members of the Senate, with No Senators having voted in the negative, and 30 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 Clarify the Scope of the Laws Governing Administrative Correction of Statutory Errors

H.P. 1492 L.D. 2104  
(H "A" H-880)

This being an Emergency Measure and having

received the affirmative vote of 30 Members of the Senate, with No Senators having voted in the negative, and 30 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**

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

Bill "An Act to Amend and Improve the Laws Relating to Education"

S.P. 469 L.D. 1252

Tabled - February 18, 1992 by Senator **CLARK** of Cumberland.

**Pending - FURTHER CONSIDERATION**

(In House, July 10, 1991, Bill and Accompanying Papers **INDEFINITELY POSTPONED**, in concurrence.)

(**RECALLED** from the Legislative Files pursuant to Joint Order H.P. 1647, in concurrence.)

(In House, February 13, 1992, **PASSED TO BE ENGIROSSED AS AMENDED BY HOUSE AMENDMENT "B" (H-918)** in **NON-CONCURRENCE**.)

On motion by Senator **ESTES** of York, the Senate **RECEDED** from **INDEFINITE POSTPONEMENT**.

On further motion by same Senator, the Senate **RECEDED** from **PASSAGE TO BE ENGIROSSED, AS AMENDED**.

On further motion by same Senator, the Senate **RECEDED** from **ADOPTION** of Committee Amendment "A" (S-153).

On further motion by same Senator, Committee Amendment "A" (S-153) **INDEFINITELY POSTPONED**, in concurrence.

House Amendment "B" (H-918) **READ** and **ADOPTED**, in concurrence.

On motion by Senator **ESTES** of York, Senate Amendment "A" (S-552) **READ**.

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

Senator **ESTES:** Thank you Mr. President. Ladies and Gentlemen of the Senate. To put away any fears that there may be something funny about this Bill. This was a Bill that we lost at the very end of the Session last year that we hadn't recalled from the Legislative files. There was one section of the Committee Amendment that caused a problem because it would have allowed the Department of Education to carry forward any unexpended balances in the unorganized territory of educational accounts. This was actually taken to help balance the budget and we have deleted that provision. This is the Departments Errors and Omissions Bill which makes several technical changes to correct some cross references and other obsolete terms in the Revised Statutes Title 20 A. It also authorizes electing Directors of School Boards in School Administrative Districts to take the required oath of office for a Notary Public rather than Dedimus Justice. There is also some cross reference here with the Superintendent's responsibilities in issuing student work permits under Title 26 that have been agreed to by the Labor Committee. It also has a removal of the requirement that Maine studies be taught as a separate course in High School. Maine studies must now be taught once in Grades 6-8 and the concepts have to be integrated into high school classes. This also puts an emergency clause on it. The Senate Amendment I added simply allows the Maine Maritime Academy to increase

the number of its Board of Visitors to a maximum of fifty members which is very important in terms of their independent fundraising for the Academy. Thank you.

On further motion by same Senator, Senate Amendment "A" (S-552) **ADOPTED**.

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

Sent down for concurrence.

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

Bill "An Act to Regulate Incineration Plants"  
H.P. 1059 L.D. 1548

Tabled - February 18, 1992 by Senator CLARK of Cumberland.

Pending - **ADOPTION** of Committee Amendment "A" (H-879)

(In Senate, February 11, 1992, Committee Amendment "A" (H-879) **READ**.)

(In House, February 6, 1992, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-879)**.)

Committee Amendment "A" (H-879) **ADOPTED**, in concurrence.

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

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

**ORDERS**

**Joint Order**

On motion by Senator MCCORMICK of Kennebec the following Joint Order:

S.P. 926

**ORDERED**, the House concurring, that Bill, "An Act to Restore Maine State Retirement Service Credit to Certain Part-time, Seasonal, Intermittent or Legislative Employees," S.P. 809, L.D. 2008, and all its accompanying papers, be recalled from the legislative files to the Senate.

Which was **READ**.

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

Senator MCCORMICK: Thank you Mr. President. Ladies and Gentlemen of the Senate. Our Committee had to kill this Bill in order to meet our deadline. We were in the midst of a hot debate on it and basically we need to recall this Bill from the files to save money because it is the easiest way to do it and we need a vehicle to meet our Statutory requirement to review part time, seasonal, and temporary retirement rules that this Body passed in December pursuant to IRS regulations requiring us to make sure all PST are in some viable retirement system. We need to review that. The NCSL has been working and lobbying to change the IRS interpretation of these regulations. I have just gotten a fax that was sent to a member of the other Body so we need this Bill for three reasons. One to deal with our Statutory requirement to review the IRS regulations. Two there is a Maine State Retirement System Rule regarding Seasonal, Part Time, and Temporary Employees that is causing a raucous and our Committee needs to review that and I have asked our staff to give us a briefing paper on that. Thirdly, it seems that Ed Text a certainly category of workers has been caught in this little chasm between these two Federal

and State regulations and we need to clarify that. That is why we need this Bill.

Pursuant to Joint Rule 15, this Joint Order requires the affirmative vote of two-thirds of the members present and voting. 29 Senators having voted in the affirmative and No Senators having voted in the negative, and 29 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.

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

**COMMITTEE REPORTS**

**Senate**

**Divided Report**

The Majority of the Committee on **LEGAL AFFAIRS** on Bill "An Act to Protect Children from Illegal Tobacco Sales"

S.P. 506 L.D. 1344

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

Signed:

Senators:

MILLS of Oxford  
KANY of Kennebec  
SUMMERS of Cumberland

Representatives:

BOWERS of Sherman  
STEVENS of Sabattus  
TUPPER of Orrington  
POULIN of Oakland  
JALBERT of Lisbon  
DAGGETT of Augusta  
HICHENS of Eliot  
PLOURDE of Biddeford

The Minority of the same Committee on the same subject reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-554)**.

Signed:

Representatives:

LAWRENCE of Kittery  
RICHARDSON of Portland

Which Reports were **READ**.

The Majority **UGHT NOT TO PASS** Report **ACCEPTED**. Sent down for concurrence.

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

**PAPERS FROM THE HOUSE**

**House Papers**

**RESOLUTION**, Proposing an Amendment to the Constitution of Maine to Protect Revenues Raised By the Department of Inland Fisheries and Wildlife

H.P. 1686 L.D. 2366

Comes from the House referred to the Committee on **APPROPRIATIONS & FINANCIAL AFFAIRS** and **ORDERED PRINTED**.

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

Bill "An Act to Repeal a State Mandate Requiring a National Plumbing Code" (Emergency)

H.P. 1681 L.D. 2361

Bill "An Act Concerning the Authority of Podiatrists"

H.P. 1682 L.D. 2362

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

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

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

**PAPERS FROM THE HOUSE**

**House Papers**

Bill "An Act Relating to the Arthur R. Gould School"

H.P. 1695 L.D. 2375

The Joint Select Committee on **CORRECTIONS** suggested and **ORDERED PRINTED**.

Comes from the House referred to the Committee on **EDUCATION**.

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

Bill "An Act to Amend the Radioactive Waste Laws"

H.P. 1671 L.D. 2347

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

Which was referred to the Committee on **ENERGY & NATURAL RESOURCES** and **ORDERED PRINTED**, 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 a Blue Ribbon Commission to Examine Alternatives to the Workers' Compensation System and to Make Recommendations Concerning Replacement of the Present System

H.P. 1696 L.D. 2376

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

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

Bill "An Act Relating to Gambling" (Emergency)

H.P. 1685 L.D. 2365

Bill "An Act to Broaden Reporting of Persons Operating Vehicles under the Influence of Intoxicating Liquor or Drugs"

H.P. 1691 L.D. 2371

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

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

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

**PAPERS FROM THE HOUSE**

**House Papers**

Bill "An Act Concerning Water Utilities" (Emergency)

H.P. 1683 L.D. 2363

Bill "An Act to Clarify the Funding of State Mandates" (Emergency)

H.P. 1684 L.D. 2364

Bill "An Act Regarding a Piscataqua River Basin Council"

H.P. 1693 L.D. 2373

Come from the House referred to the Committee on **STATE & LOCAL GOVERNMENT** and **ORDERED PRINTED**.

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

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

**PAPERS FROM THE HOUSE**

**House Papers**

Bill "An Act to Allow Municipalities to Appeal the New State Valuation" (Emergency)

H.P. 1692 L.D. 2372

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

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

Bill "An Act to Enforce Registration of Motor Vehicles"

H.P. 1690 L.D. 2370

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

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

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

**PAPERS FROM THE HOUSE**

**House Papers**

Bill "An Act to Create the Searsmont Village Water District"

H.P. 1687 L.D. 2367

Bill "An Act to Create the Dresden Mills Water District" (Emergency)

H.P. 1688 L.D. 2368

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

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

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:

**Emergency**

An Act to Correct an Omission from the Recodification of Title 30

H.P. 1568 L.D. 2210

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

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

**PAPERS FROM THE HOUSE  
Pursuant to Public Law  
COMMISSION TO STUDY**

**STATE PERMITTING AND REPORTING REQUIREMENTS**

The **COMMISSION TO STUDY STATE PERMITTING AND REPORTING REQUIREMENTS**, pursuant to Public Law 1991, chapter 606, ask leave to submit its findings and to report that the accompanying Bill "An Act to Provide Regulatory and Permitting Assistance to Businesses" (Emergency)

H.P. 1673 L.D. 2349

Be referred to the Committee on **ENERGY & NATURAL RESOURCES** for Public Hearing and printed pursuant to Joint Rule 18.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill referred to the Committee on **HOUSING & ECONOMIC DEVELOPMENT** and **ORDERED PRINTED**, pursuant to Joint Rule 18.

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

The Bill referred to the Committee on **HOUSING & ECONOMIC DEVELOPMENT** and **ORDERED PRINTED**, pursuant to Joint Rule 18, in concurrence.

**ORDERS OF THE DAY**

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

Bill "An Act to Ensure Complete Recovery for Injuries to Children"

H.P. 1551 L.D. 2189

Tabled - February 20, 1992 by Senator **PEARSON** of Penobscot.

Pending - The motion by Senator **CONLEY** of Cumberland to **RECONSIDER** its action whereby it **ACCEPTED** the Minority **OUGHT NOT TO PASS** Report in **NON-CONCURRENCE** (Roll Call Ordered).

(In Senate, February 20, 1992, the Minority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED** in **NON-CONCURRENCE**.)

(In House, February 18, 1992, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-906)**.)

Senator **KANY** of Kennebec requested and received leave of the Senate to withdraw her motion for a Roll Call.

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

Senator **KANY:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I just wanted an opportunity to debate the motion before us which was the motion of the Senator from Cumberland, Senator Conley to reconsider whereby we adopted the Minority Ought Not To Pass Report. I am sorry to take your time but I guess I will have to give you a little Legislative history on this. Last year the Committee on Banking & Insurance was presented with a Bill, which had merit. It was a complicated topic, and we spent a lot of time deciding what we would recommend in place of the original offering. What the situation was was that; Insurance companies that offered automobile liability policies were putting in place a family exclusion in which the family members were not allowed to sue or try and gain insurance proceeds if the driver was a family member. If the father was driving and there was an accident and the mother or children were injured, because of the policy of exclusion they were not able to even get

their medical costs. We thought there was a wrong that we needed to right so we very carefully crafted Legislation which would disallow any insurance company from having these family exclusions for economic damages. We thought that it was appropriate that the child or wife would be able to get some proceeds for economic damages only. That is what the Law is that was reported out, I believe unanimously and approved by this Legislature last year. We were very satisfied with that. Then comes a Bill now to the Banking & Insurance Committee seeking a prohibition against suing for noneconomic damages. In other words, let's say the mother were driving and there was an accident and the children and husband, if the Bill were enacted, would be able to sue not only for economic damages but could sue for pain and suffering and other things. To tell you the truth there is only one insurance company that offers such automobile liability policies that does not allow this type of suit. The Minority of us in our Committee that said Ought Not To Pass thought we should not require insurance companies to allow suit for noneconomic damages because in the view of the Minority we see the potential threat of such suits which can be unending, that they bring premium prices up and there is no really public good served. It is not in the best public policy to encourage these suits regarding family members for noneconomic damages. It is just trying to put a lid on costs and keep premiums down a little bit and making certain people who have real needs get them met. We did that last year so I am very pleased and comfortable to be on the side of the Ought Not To Pass. I believe the only ones who would really benefit from the other, allowing suits for noneconomic damages, would be lawyers and those that like to see high premiums on insurance policies. That is why I voted the way I did and I ask those of you who do not just care about seeing lawyers making a lot of money to vote with me against Reconsideration. Thank you.

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

Senator **CONLEY:** Thank you Mr. President. Ladies and Gentlemen of the Senate. Rather than debate the merits of the Bill, I was hoping we might dispose of the motion for Reconsideration first. If somebody has something to offer as to why we shouldn't Reconsider this Bill rather than the merits of this Bill, I would be pleased to debate that. I am asking for a courtesy which we often extend to each other and would hope the Body would extend it to me. 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. Mr. President I ask for a Division and I would further say that the good Senator from Cumberland, Senator Conley who I love to hear talk, I would suggest he debate this issue now. If we do Reconsider than we have before us a Bill that many of us, specifically those of us who believe the motion should be continued, would then prevail. I urge the good Senator from Cumberland, Senator Conley to speak and debate at this time because Reconsideration is a debatable motion. I am sure those present would love to hear how you view this Legislation that you wish to pass over the objections of some others of us who believe it is just a courtesy just to vote for Reconsideration under those circumstances. Thank you.

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

**THE PRESIDENT:** The Chair would apologize to the Senator from Cumberland, Senator Conley for the quickness of his gavel. The Chair recognizes that Senator.

Senator **CONLEY:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I, of course, do not sit in the Chair where the good President sits, therefore, I did not have the opportunity to make a ruling on the comments made by the good Senator from Kennebec, Senator Kany on whether or not they went to the issue of Reconsideration as opposed to the merits of the Bill. I will debate the merits of the Bill when the Bill is before us. At the moment I believe the motion is Reconsideration. I have made remarks to what I consider to be a courtesy often extended to people in the Body in reference to having a Bill reconsidered. Thank you.

**THE PRESIDENT:** The pending question before the Senate is the motion by Senator **CONLEY** of Cumberland that the Senate **RECONSIDER** its action whereby it **ACCEPTED** the Minority **OUGHT NOT TO PASS** Report in **NON-CONCURRENCE**.

A Division has been requested.

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

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

22 Senators having voted in the affirmative and 5 Senators having voted in the negative, the motion by Senator **CONLEY** of Cumberland, that the Senate **RECONSIDER** its action whereby it **ACCEPTED** the Minority **OUGHT NOT TO PASS** Report in **NON-CONCURRENCE**, **PREVAILED**.

**THE PRESIDENT:** The pending question before the Senate is the motion by Senator **KANY** of Kennebec, that the Senate **ACCEPT** the Minority **OUGHT NOT TO PASS** Report in **NON-CONCURRENCE**.

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

Senator **CONLEY:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I would like to have an opportunity to speak on this Bill and in reference to the good Senator from Kennebec, Senator Kany's remarks on why this Body ought to accept the Minority Report of the Committee. To take a phrase from a Senator which was at my caucus this morning, "This Bill, in fact, is not a lawyers Bill." It seems that anytime somebody wants to kill a Bill they hang the phrase that it is a lawyers Bill. Another phrase that is a favorite one that puts me in a corner is that it is a "Portland Bill". It is neither of those. This is a children's Bill. It goes for people such as those kind souls we have had carrying our foolish messages all over this Chamber tonight. People who can't really stand up for themselves and need people like us in this Chamber to stand up for them. I am ashamed to say that if you read a draft of this Bill it is confusing. If I can explain it to you in as simple of terms as I understand it to be, yes the good Banking & Insurance Committee dealt with the issue of exclusions of family members in policies last year. It is a terrible thing that has been going on for years in this State. If a husband, wife, and their family had been coming down the road and got into an accident and people were injured because of the driver, the family members would not be covered because of the insurance policies we had here in Maine. The Committee did rectify that wrong last year, but what has happened is that children

under the law that was put in, are limited only to those damages they can actually prove which are their medical bills. They are not allowed to recover for noneconomic damages which is all a child can really prove. You can't say gee I'm in first grade and I think I will become a member of the State Senate, you'll make a lot of money there, or I might become an incredible engineer and my future wages are going to be x. You can't tell a judge or jury anything about what you are going to do during first grade. They have no idea what your economic worth is. The only thing you have to recover is your damages for pain and suffering. That is why this Bill is necessary even though there is only one company that offers that type of policy now, children would be hurt unless this law is changed. The only people who can stick up for them are the people in this Body and in the other Body. The majority of the people in that Committee felt that adults should not be allowed to exclude their children from noneconomic damage coverage. It would be an adult making that decision to take the kids out of that coverage. We should make that mandatory, that is why this Bill is needed. Thank you.

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

**THE PRESIDENT:** The pending question before the Senate is the motion by Senator **KANY** of Kennebec, that the Senate **ACCEPT** the Minority **OUGHT NOT TO PASS** Report in **NON-CONCURRENCE**.

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

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

14 Senators having voted in the affirmative and 10 Senators having voted in the negative, the motion by Senator **KANY** of Kennebec, that the Senate **ACCEPT** the Minority **OUGHT NOT TO PASS** Report in **NON-CONCURRENCE**, **PREVAILED**.

Sent down for concurrence.

Senator **HOLLOWAY** of Lincoln was granted unanimous consent to address the Senate off the Record.

Senator **BRANN** of Knox was granted unanimous consent to address the Senate off the Record.

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

**RECALLED FROM LEGISLATIVE FILES**

Bill "An Act to Restore Maine State Retirement Service Credit to Certain Part-time, Seasonal, Intermittent or Legislative Employees"

S.P. 809 L.D. 2008

(In House, February 18, 1992, **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED**, in concurrence.)

(**RECALLED** from the Legislative Files, pursuant to Joint Order S.P. 926, in concurrence.)

On motion by Senator **MCCORMICK** of Kennebec, the Senate **SUSPENDED THE RULES**.

On further motion by same Senator, the Senate **RECONSIDERED** its action whereby it **ACCEPTED** the **OUGHT NOT TO PASS** Report, in concurrence.

On further motion by same Senator, Bill and Accompanying Papers **RECOMMITTED** to the Committee on **AGING, RETIREMENT, & VETERANS**, in **NON-CONCURRENCE**.



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

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Senator **CAHILL** of Sagadahoc was granted unanimous consent to address the Senate on the Record.

Senator **CAHILL**: Thank you Mr. President. Ladies and Gentlemen of the Senate. I just want to take a quick moment to thank the Judiciary Committee, Senator Holloway from Lincoln, Senator Berube from Androscoggin, and particularly the Chairman of the Committee, Senator Gauvreau from Androscoggin for what I thought was above and beyond the call of duty in a courtesy that was extended to me yesterday as I presented a Bill regarding Assisted Death of the Terminally Ill. This is a terribly controversial issue and an emotional issue. It was an issue that at times could have gotten out of control. Thanks to Senator Gauvreau from Androscoggin running of the Committee, I felt I was given every courtesy possible as was every member of the audience that wished to speak about this Bill. Sometimes I don't think we say thank you enough in this Legislature. I really appreciate that courtesy. Thank you.

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

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

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The **ADJOURNMENT ORDER** having been returned from the House **READ** and **PASSED**, in concurrence, on motion by Senator **ESTY** of Cumberland, **ADJOURNED** until Tuesday, February 25, 1992, at 4:00 in the afternoon.