

# MAINE STATE LEGISLATURE

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# LEGISLATIVE RECORD

OF THE

## **One Hundred And Fifteenth Legislature**

OF THE

## **State Of Maine**

### **VOLUME VII**

#### **SECOND REGULAR SESSION**

Senate

March 10, 1992 to March 31, 1992

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#### **SECOND CONFIRMATION SESSION**

May 20, 1992

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#### **THIRD CONFIRMATION SESSION**

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November 19, 1992

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#### **HOUSE AND SENATE LEGISLATIVE SENTIMENTS**

December 5, 1990 to December 1, 1992

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

In Senate Chamber

Wednesday

March 18, 1992

Senate called to Order by the President Pro Tem,  
Zachary E. Matthews of Kennebec.

Prayer by the Honorable Raynold Theriault of  
Aroostook.

**SENATOR RAYNOLD THERIAULT:** Let us pray. Lord,  
illuminate our minds with idealism. Increase our  
understanding of the issues before us and let us  
place the agenda of the people above and foremost.  
Lord, set our hearts aflame in complete surrender to  
thy will. Make us more obedient, meek, humble, and  
take away our pride and worldly ways. Lord, let  
charity dominate this day. Take away our selfish  
thoughts and desires and let us show kindness and  
understanding towards each other. Lord, let idealism  
surrender in charity. Make us worthy instruments of  
the people in Maine. Amen.

Reading of the Journal of Tuesday, March 17, 1992.

Off Record Remarks

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

Bill "An Act Regarding County Contingent Account  
Limits"

S.P. 884 L.D. 2256

In Senate, March 16, 1992, **PASSED TO BE ENGROSSED.**  
Comes from the House **PASSED TO BE ENGROSSED AS**  
**AMENDED BY HOUSE AMENDMENT "A" (H-1133)** in  
**NON-CONCURRENCE.**

On motion by Senator **CAHILL** of Sagadahoc, the  
Senate **RECEDED and CONCURRED.**

**Non-concurrent Matter**

Bill "An Act to Allow the Separation of Certain  
Islands in Casco Bay from the City of Portland"

H.P. 1634 L.D. 2298

(C "A" H-1095)

In Senate, March 12, 1992, **PASSED TO BE ENGROSSED**  
**AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1095),** in  
concurrence.

Comes from the House **PASSED TO BE ENGROSSED AS**  
**AMENDED BY COMMITTEE AMENDMENT "A" (H-1095) AS**  
**AMENDED BY HOUSE AMENDMENT "A" (H-1135)** thereto, in  
**NON-CONCURRENCE.**

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

**Non-concurrent Matter**

Bill "An Act to Clarify the Definition of Certain  
Vehicles for Insurance Purposes"

H.P. 1644 L.D. 2307

(H "A" H-1088; S "A"  
S-623 to C "A" H-1070)

In House, March 11, 1992, **PASSED TO BE ENGROSSED**  
**AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1070) AS**  
**AMENDED BY HOUSE AMENDMENT "A" (H-1088)** thereto.

In Senate, March 12, 1992, **PASSED TO BE ENGROSSED**  
**AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1070) AS**  
**AMENDED BY HOUSE AMENDMENT "A" (H-1088) AND SENATE**  
**AMENDMENT "A" (S-623)** thereto, in **NON-CONCURRENCE.**

Comes from the House **PASSED TO BE ENGROSSED AS**  
**AMENDED BY COMMITTEE AMENDMENT "A" (H-1070) AS**  
**AMENDED BY HOUSE AMENDMENTS "A" (H-1088) AND "B"**  
**(H-1139) AND SENATE AMENDMENT "A" (S-623)** thereto, in  
**NON-CONCURRENCE.**

The Senate **RECEDED and CONCURRED.**

**House Papers**

Bill "An Act to Reform the Workers' Compensation  
System"

H.P. 1735 L.D. 2423

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

On motion by Senator **DUTREMBLE** of York, Tabled  
until Later in Today's Session, pending **REFERENCE.**

**Joint Orders**

The following Joint Order: H  
.P. 1738

**ORDERED,** the Senate concurring, that the Joint  
Standing Committee on Appropriations and Financial  
Affairs report out a bill concerning the distribution  
of General Purpose Aid for Local Schools for fiscal  
year 1992-93.

Comes from the House **READ and PASSED.**  
Which was **READ and PASSED,** in concurrence.

**SENATE PAPERS**

Bill "An Act to Ensure Financial Solvency of  
Insurers through Accreditation"

S.P. 957 L.D. 2425

Presented by Senator **BROWN** of Knox (**GOVERNOR'S**  
**BILL**)

Cosponsored by Representative **GARLAND** of Bangor,  
Representative **MITCHELL** of Vassalboro and Senator  
**KANY** of Kennebec

Which was referred to the Committee on **BANKING &**  
**INSURANCE** and **ORDERED PRINTED.**  
Sent down 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 **STATE & LOCAL GOVERNMENT**  
**RESOLUTION,** Proposing an Amendment to the  
Constitution of Maine to Change the Term of and  
Method of Choosing the Treasurer of the State of Maine  
H.P. 1659 L.D. 2336

**Leave to Withdraw**

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

From the Committee on **STATE & LOCAL GOVERNMENT** Bill "An Act to Create a Somerset County Budget Committee"

H.P. 1702 L.D. 2382

**Ought to Pass As Amended**

The Joint Select Committee on **CORRECTIONS** on Bill "An Act to Make Electronic Monitoring and Substance Testing Programs Economically Feasible" (Emergency)

H.P. 1451 L.D. 2063

Reported that the same **Ought to Pass as Amended** by **Committee Amendment "A"** (H-1126).

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A"** (H-1126).

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

The Bill **READ ONCE**.

Committee Amendment "A" (H-1126) **READ** and **ADOPTED**, in concurrence.

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

The Committee on **HUMAN RESOURCES** on Bill "An Act to Clarify and Make Technical Changes in the Hospital Care Financing System"

H.P. 1535 L.D. 2168

Reported that the same **Ought to Pass as Amended** by **Committee Amendment "A"** (H-1122).

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A"** (H-1122).

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

The Bill **READ ONCE**.

Committee Amendment "A" (H-1122) **READ** and **ADOPTED**, in concurrence.

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

The Committee on **LEGAL AFFAIRS** on Bill "An Act Concerning the Renewal of Agency Liquor Store Licenses"

H.P. 1443 L.D. 2055

Reported that the same **Ought to Pass as Amended** by **Committee Amendment "A"** (H-1121).

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A"** (H-1121).

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

The Bill **READ ONCE**.

Committee Amendment "A" (H-1121) **READ**.

On motion by Senator **CLARK** of Cumberland, Tabled until Later in Today's Session, pending **ADOPTION** of Committee Amendment "A" (H-1121), in concurrence.

The Committee on **LEGAL AFFAIRS** on Bill "An Act to Broaden and Specify Conduct for Which the Certificate of a Law Enforcement Officer May Be Suspended or Revoked"

H.P. 1616 L.D. 2277

Reported that the same **Ought to Pass as Amended** by **Committee Amendment "A"** (H-1118).

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A"** (H-1118).

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

The Bill **READ ONCE**.

Committee Amendment "A" (H-1118) **READ** and **ADOPTED**, in concurrence.

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

The Committee on **STATE & LOCAL GOVERNMENT** on Bill "An Act to Strengthen the Public Disclosure of Lobbying Activities"

H.P. 1591 L.D. 2245

Reported that the same **Ought to Pass as Amended** by **Committee Amendment "A"** (H-1130).

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A"** (H-1130).

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

The Bill **READ ONCE**.

Committee Amendment "A" (H-1130) **READ**.

On motion by Senator **CLARK** of Cumberland, Tabled until Later in Today's Session, pending **ADOPTION** of Committee Amendment "A" (H-1130), in concurrence.

The Committee on **TAXATION** on Bill "An Act to Impose a Sales Tax on All Items Sold at Flea Markets Except Those Sold by Nonprofit Organizations"

H.P. 1651 L.D. 2314

Reported that the same **Ought to Pass as Amended** by **Committee Amendment "A"** (H-1137).

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A"** (H-1137).

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

The Bill **READ ONCE**.

Committee Amendment "A" (H-1137) **READ** and **ADOPTED**, in concurrence.

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

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

Senator **PEARSON:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I'd like to make an inquiry through the Chair to anyone who would care to answer it. Does this include yard sales? We have all kinds of yard sales all over the place where I live and I don't know how you would ever collect the sales tax on yard sales. Sometimes they call them flea markets and other times they don't. Thank you.

**THE PRESIDENT PRO TEM:** The Senator from Penobscot, Senator Pearson has posed a question through the Chair to anyone who would care to answer. The Chair recognizes the Senator from Aroostook, Senator Collins.

Senator **COLLINS:** Thank you Mr. President. Ladies and Gentlemen of the Senate. In response to the question from the good Senator from Penobscot, Senator Pearson, this is not aimed at casual sales or yard sales. It is aimed at that portion of the flea market business that are essentially full time or

operate several months out of the year. Those folks are technically liable under the present law but it has been very difficult to pinpoint them. This Law does do that. Thank you.

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

(See action later today)

The Committee on **TAXATION** on Bill "An Act to Reestablish the Mining Excise Tax Trust Fund Board of Trustees"

H.P. 1714 L.D. 2399

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-1128)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1128)**.

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

The Bill **READ ONCE**.

Committee Amendment "A" (H-1128) **READ** and **ADOPTED**, in concurrence.

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

**Divided Report**

The Majority of the Committee on **JUDICIARY** on Bill "An Act Concerning Indian Territory under the Maine Indian Claims Settlement Laws"

H.P. 1218 L.D. 1776

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-1125)**.

Signed:

Senators:

GAUVREAU of Androscoggin

BERUBE of Androscoggin

Representatives:

PARADIS of Augusta

KETTERER of Madison

CATHCART of Orono

RICHARDS of Hampden

COTE of Auburn

FARNSWORTH of Hallowell

OTT of York

ANTHONY of South Portland

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

Signed:

Senator:

HOLLOWAY of Lincoln

Representative:

HANLEY of Paris

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-1125)**.

Which Reports were **READ**.

On motion by Senator **CLARK** of Cumberland, Tabled until Later in Today's Session, pending **ACCEPTANCE OF EITHER REPORT**.

**Divided Report**

The Majority of the Committee on **LEGAL AFFAIRS** on Bill "An Act to Restore Control and Stability to the Bureau of Alcoholic Beverages"

H.P. 1670 L.D. 2346

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-1120)**.

Signed:

Senators:

MILLS of Oxford

KANY of Kennebec

Representatives:

LAWRENCE of Kittery

JALBERT of Lisbon

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 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-1120)**.

Which Reports were **READ**.

On motion by Senator **SUMMERS** of Cumberland, Tabled until Later in Today's Session, pending **ACCEPTANCE OF EITHER REPORT**.

**SECOND READERS**

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

**House**

Bill "An Act to Create the Fort Kent Utilities District" (Emergency)

H.P. 1736 L.D. 2424

Which was **READ A SECOND TIME**, without reference to a Committee.

On motion by Senator **CLEVELAND** of Androscoggin, Tabled 1 Legislative Day, pending **PASSAGE TO BE ENGROSSED**, without reference to a Committee, in concurrence.

**Senate As Amended**

Bill "An Act Regarding the Purchase of Spirits at Agency Liquor Stores"

S.P. 890 L.D. 2283

(C "A" S-636)

Which was **READ A SECOND TIME**.

On motion by Senator **PRAY** of Penobscot, Tabled until Later in Today's Session, pending **PASSAGE TO BE ENGROSSED AS AMENDED**.

**ENACTORS**

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

An Act Regarding Budget Advisory Committees in Hancock County and Lincoln County

S.P. 814 L.D. 2013

(C "B" S-619)

An Act to Clarify the Laws Related to Credit Cards

H.P. 1410 L.D. 2022

(S "C" S-618 to C "A" H-895)

An Act to Allow Counties to Blanket Bond Part-time Deputy Sheriffs

H.P. 1436 L.D. 2048

An Act to Clarify and Improve the Regulation of Home Food Service Plans

H.P. 1501 L.D. 2113  
(H "A" H-1006; H "B" H-1048 to C "A" H-987)

An Act to Amend the Subdivision Laws within the Jurisdiction of the Maine Land Use Regulation Commission

H.P. 1514 L.D. 2126  
(H "A" H-1077 to C "A" H-957)

An Act to Amend the Definition of Ambulatory Surgical Facilities

S.P. 833 L.D. 2137  
(C "A" S-615)

An Act to Protect School Students from Potential Harm

H.P. 1541 L.D. 2174  
(H "A" H-1087 to C "A" H-968)

An Act to Amend the State's Unclaimed Property Act

H.P. 1569 L.D. 2211  
(C "A" H-1073)

An Act to Address Periodic Crises in the Preparation and Mailing of Checks to Clients of the Department of Human Services and to Ensure Priority Payment of Foster Care Expenses

H.P. 1605 L.D. 2267  
(C "A" H-1080)

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

H.P. 1691 L.D. 2371

An Act Relating to the Arthur R. Gould School

H.P. 1695 L.D. 2375  
(C "A" H-1067)

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

An Act to Ensure Adequate Resources for Energy Assistance Programs for Low-income Households

S.P. 319 L.D. 857  
(C "B" S-616)

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

An Act to Increase the Penalties for Committing Repeated Crimes against the Person and Repeated Acts of Domestic Violence

H.P. 1428 L.D. 2040  
(C "A" H-1068)

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

An Act to Provide a Private Remedy for Violation of the Lead Poisoning Control Act

H.P. 1515 L.D. 2127  
(C "A" H-1066)

On motion by Senator **CLARK** of Cumberland, Tabled until Later in Today's Session, pending **ENACTMENT**.

An Act to Amend the Laws Concerning the Maine State Housing Authority and the Finance Authority of Maine

H.P. 1540 L.D. 2173  
(C "A" H-1071)

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

An Act to Repeal the Limitation on State Reimbursement for County Jails

S.P. 934 L.D. 2392  
(S "B" S-600)

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

**Resolve**

Resolve, to Authorize the Director of the Bureau of General Services to Condemn in the Name of the State Certain State-owned Land in the Town of Warren and the Town of Cushing and Exchange Boundary Line Agreements with Abutting Landowners

H.P. 1611 L.D. 2272  
(C "A" H-1064)

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

**Emergency**

An Act Relating to the Division of a Member's Rights and Benefits under the Maine State Retirement System Pursuant to a Qualified Domestic Relations Order

H.P. 711 L.D. 1016  
(H "A" H-1091 to C "A" H-924)

This being an Emergency Measure and having received the affirmative vote of 27 Members of the Senate, with No Senators having voted in the negative, and 27 being more than two-thirds of the entire elected Membership of the Senate, was **PASSED TO BE ENACTED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

**Emergency**

An Act to Conform the Maine Income Tax Law for 1991 with the United States Internal Revenue Code

H.P. 1461 L.D. 2073

This being an Emergency Measure and having received the affirmative vote of 24 Members of the Senate, with No Senators having voted in the negative, and 24 being 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 Amend Maine's Underground Oil Storage Tank Laws

S.P. 837 L.D. 2141  
(C "A" S-613)

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

**Emergency**

An Act to Extend the Reporting Date of the Commission to Study State Permitting and Reporting Requirements

H.P. 1550 L.D. 2188

This being an Emergency Measure and having received the affirmative vote of 29 Members of the Senate, with No Senators having voted in the negative, and 29 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 Responsibility for Workers' Compensation Coverage for Town Forest Fire Wardens and Laborers Hired for Forest Fire-fighting Activities

H.P. 1561 L.D. 2199

(C "A" H-1060)

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 Strengthen Maine's Governmental Ethics Laws

H.P. 1618 L.D. 2279

(C "A" H-1061)

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

**Emergency**

An Act to Authorize a Bond Issue of \$300,000 to Expand the Sagadahoc County Courthouse to Include Detention Facilities

H.P. 1619 L.D. 2280

(C "A" H-1063)

This being an Emergency Measure and having received the affirmative vote of 27 Members of the Senate, with No Senators having voted in the negative, and 27 being more than two-thirds of the entire elected Membership of the Senate, was **PASSED TO BE ENACTED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

**Emergency Resolve**

Resolve, for Laying of the County Taxes and Authorizing Expenditures of Hancock County for the Year 1992

H.P. 1724 L.D. 2413

This being an Emergency Measure and having received the affirmative vote of 29 Members of the Senate, with No Senators having voted in the negative, and 29 being more than two-thirds of the entire elected Membership of the Senate, was **FINALLY PASSED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

**RECALLED FROM THE GOVERNOR'S DESK**

**THE PRESIDENT PRO TEM:** The chair recognizes the Senator from Penobscot, Senator Pray.

Senator **PRAY:** Mr. President, is the Senate in possession of L.D. 513?

**THE PRESIDENT PRO TEM:** The Chair would answer in the affirmative, the Bill having been recalled from the Governor's Desk.

On motion by Senator **PRAY** of Penobscot, the Senate **SUSPENDED THE RULES**.

On further motion by same Senator, the Senate **RECONSIDERED** its action whereby it **PASSED TO BE ENACTED**.

An Act Requiring the Provision of Information to Victims of Gross Sexual Assault

H.P. 359 L.D. 513

(C "A" H-963)

(In Senate, March 16, 1992, **PASSED TO BE ENACTED**, in concurrence.)

(**RECALLED** from the Governor's Desk, pursuant to Joint Order S.P. 955, in concurrence.)

On further motion by same Senator, Tabled until Later in Today's Session, pending **ENACTMENT**.

**ORDERS OF THE DAY**

The President Pro Tem laid before the Senate the Tabled and Specially Assigned matter:

Bill "An Act to Authorize the Town of Medway to Sell Certain Land"

H.P. 1725 L.D. 2416

Tabled - March 17, 1992, by Senator **CLARK** of Cumberland.

Pending - **PASSAGE TO BE ENGROSSED**, without reference to a Committee, in concurrence

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

(In Senate, March 17, 1992, **READ A SECOND TIME**.)

(In House, March 12, 1992, under suspension of the Rules, **READ TWICE** and **PASSED TO BE ENGROSSED**, without reference to a Committee.)

On motion by Senator **CLARK** of Cumberland, Tabled Unassigned, pending **PASSAGE TO BE ENGROSSED**, without reference to a Committee, in concurrence.

The President Pro Tem laid before the Senate the Tabled and Specially Assigned matter:

Bill "An Act to Amend the Laws Governing Construction of Utility Lines" (Emergency)

H.P. 1726 L.D. 2417

Tabled - March 17, 1992, by Senator **CLEVELAND** of Androscoggin.

Pending - **PASSAGE TO BE ENGROSSED**, without reference to a Committee, in concurrence

(Committee on **UTILITIES** suggested and **ORDERED PRINTED**.)

(In Senate, March 17, 1992, **PASSED TO BE ENGROSSED**, without reference to a Committee, in concurrence. Subsequently, **RECONSIDERED**.)

(In House, March 12, 1992, under suspension of the Rules, **READ TWICE** and **PASSED TO BE ENGROSSED**, without reference to a Committee.)

On motion by Senator **CLARK** of Cumberland, Tabled 1 Legislative Day, pending **PASSAGE TO BE ENGROSSED**, without reference to a Committee, in concurrence.

The President Pro Tem laid before the Senate the Tabled and Specially Assigned matter:

Bill "An Act to Extend the Appraisal License Effective Date" (Emergency)

H.P. 1734 L.D. 2422

Tabled - March 17, 1992, by Senator **BALDACCI** of Penobscot.

Pending - **REFERENCE**

(Committee on **BUSINESS LEGISLATION** suggested and **ORDERED PRINTED**.)

(In House, March 17, 1992, under suspension of the Rules, **READ TWICE** and **PASSED TO BE ENGROSSED**, without reference to a Committee.)

On motion by Senator **CLARK** of Cumberland, Tabled until Later in Today's Session, pending **REFERENCE**.

Off Record Remarks

Senator **PRAY** of Penobscot was granted unanimous consent to address the Senate on the Record.

Senator **PRAY**: Thank you Mr. President. Ladies and Gentlemen of the Senate. As you well know I come from Millinocket which is long renowned for its basketball fame. In the early and late 1960's Sterns High School was synonymous with basketball in the State of Maine. I have had the privilege of having a child that played for Sterns High School and graduated last year. Obviously I have been a follower of basketball in the State of Maine for a number of years. I have had the opportunity for the last couple of years to watch the Lawrence Lady Bulldogs come to Millinocket and play in Christmas tournaments and follow them through their basketball adventures around the State, always looking to see who Sterns is going to have to go up against. I would like to congratulate and compliment both Coach Cooper and the Lawrence Lady Bulldogs, not only for their victorious season but also the degree of sportsmanship they displayed throughout. This is a reflection of a positive school system, environment, and coaching influence on them. We were all thrilled last Saturday, not only with the quality of the basketball game the ladies played but also the significant ballgame that was played in the Boys Class A Championship with a record five overtimes. The sportsmanship that was shown by all four teams that participated and the quality these young people showed the people of this State is a true reflection that Maine has a bright future. Thank you.

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

Senator **PEARSON**: Thank you Mr. President. Ladies and Gentlemen of the Senate. I represent the

City of Old Town. I, too would like to congratulate the Lawrence Lady Bulldogs for the fine year they provided. I would like to extend to them, on behalf of my City and my High School, congratulations. Thank you.

On motion by Senator **BOST** of Penobscot, the Senate **RECONSIDERED** its action whereby it **PASSED TO BE ENGROSSED AS AMENDED**, in concurrence:

Bill "An Act to Impose a Sales Tax on All Items Sold at Flea Markets Except Those Sold by Nonprofit Organizations"

H.P. 1651 L.D. 2314

(In House, March 17, 1992, **PASSED TO BE ENGROSSED AS AMENDED**.)

(In Senate, March 18, 1992, **PASSED TO BE ENGROSSED AS AMENDED**, in concurrence.)

The same Senator moved that the Bill and Accompanying Papers be **INDEFINITELY POSTPONED** in **NON-CONCURRENCE**.

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

Senator **CAHILL**: Thank you Mr. President. Ladies and Gentlemen of the Senate. Can we have an explanation on why this is necessary? Thank you.

**THE PRESIDENT PRO TEM**: The Chair recognizes the Senator from Penobscot, Senator Bost.

Senator **BOST**: Thank you Mr. President. Ladies and Gentlemen of the Senate. This Bill, I regret, should not have come out of the Committee without a Divided Report. It escaped my attention and a number of other peoples attention. It essentially does what the current law enables the Bureau of Taxation to do and that is to monitor flea markets and sales that occur within that entity making certain that sales taxes which are supposed to be collected are. My concern, and the concern of a number of people on the Committee, is that the Bureau currently has more than enough to do in terms of enforcing its other duties and I felt the existing law was sufficient, therefore, I making the motion to indefinitely postpone. Thank you.

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

Senator **PEARSON**: Thank you Mr. President. Ladies and Gentlemen of the Senate. I knew absolutely nothing about this Bill and I was just reading along as we were going through the Calendar. I had a question about whether or not it affected yard sales. I posed that question and at that time the good Senator from Aroostook, Senator Collins answered my question. I do note that the good Senator from Aroostook, Senator Collins is not in Chamber now so I think it might be proper to allow him to have the time to be here in the Chamber since this was considered a while ago so he might be able to comment on it just as we gave the courtesy of reconsideration to Senator Bost of Penobscot. I hope we could allow Senator Collins to respond to this motion. Thank you.

On motion by Senator **BOST** of Penobscot, Tabled until Later in Today's Session, pending the motion by same Senator to **INDEFINITELY POSTPONE** Bill and Accompanying Papers in **NON-CONCURRENCE**.

Off Record Remarks



Senator **VOSE** of Washington was granted unanimous consent to address the Senate on the Record.

Senator **VOSE**: Thank you Mr. President. Ladies and Gentlemen of the Senate. Yesterday in my remarks on the Bill concerning the moratorium on the coal fired plant in Bucksport, I inadvertently said that I felt the good Senator from Androscoggin, Senator Cleveland was winging it on his own. I failed to remember that my good seatmate and my friend Senator Carpenter did, in fact, stand up and state his position on the Committee. I wish to apologize and that will not happen again. Thank you.

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

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

On motion by Senator **CLARK** of Cumberland, **RECESSED** until 11:00 in the morning.  
After Recess  
Senate called to order by the President Pro Tem.

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

**SECOND READERS**

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

**House As Amended**

Bill "An Act to Reestablish the Mining Excise Tax Trust Fund Board of Trustees"

H.P. 1714 L.D. 2399

(C "A" H-1128)

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

**ORDERS OF THE DAY**

The President Pro Tem laid before the Senate the Tabled and Later Today Assigned matter:

Bill "An Act Concerning the Renewal of Agency Liquor Store Licenses"

H.P. 1443 L.D. 2055

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

Pending - **ADOPTION** of Committee Amendment "A" (H-1121), in concurrence

(In House, March 17, 1992, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1121).**)

(In Senate, March 18, 1992, Committee Amendment "A" (H-1121) **READ.**)

On motion by Senator **MILLS** of Oxford, Tabled until Later in Today's Session, pending **ADOPTION** of Committee Amendment "A" (H-1121), in concurrence.

The President Pro Tem laid before the Senate the Tabled and Later Today Assigned matter:

Bill "An Act to Strengthen the Public Disclosure of Lobbying Activities"

H.P. 1591 L.D. 2245

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

Pending - **ADOPTION** of Committee Amendment "A" (H-1130), in concurrence

(In House, March 17, 1992, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1130).**)

(In Senate, March 18, 1992, Committee Amendment "A" (H-1130) **READ.**)

On motion by Senator **CLARK** of Cumberland, Tabled Unassigned, pending **ADOPTION** of Committee Amendment "A" (H-1130), in concurrence.

The President Pro Tem laid before the Senate the Tabled and Later Today Assigned matter:

HOUSE REPORTS - from the Committee on **JUDICIARY** on Bill "An Act Concerning Indian Territory under the Maine Indian Claims Settlement Laws"

H.P. 1218 L.D. 1776

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-1125).**

Minority - **Ought Not to Pass.**

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

Pending - **ACCEPTANCE OF EITHER REPORT**

(In House, March 17, 1992, the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1125).**)

(In Senate, March 18, 1992, Reports **READ.**)

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

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

Senator **HOLLOWAY:** Thank you, Mr. President. Ladies and Gentlemen of the Senate. Representative Hanley and I believe that this legislation should not be a Unanimous Ought to Pass Report out of the Judiciary Committee and that we should bring this issue for both bodies to debate. To have remarks on the record in case of any future litigation.

The Settlement Act, according to Assistant Attorney General, Bill Stokes, was in limbo for months when the compromises were being agreed upon in 1980. The biggest issue was, who should have jurisdiction over state lands when the tribes acquire the trust plans. This issue held up negotiations for weeks on this one point. Their final agreement was that the land should be treated as a municipality; and as such, subject to Maine's Land Use Regulatory Commission in the unorganized territory. This agreement, such as in (a) or (b) was written into the Act; and this is where we are today. The tribes want (a) back and break the compromise that was agreed upon twelve years ago. Now, as you all know, I work on the Judiciary Committee with eight lawyers, our Legislative Analyst is a lawyer, and along with Assistant Attorney General Stokes, also a lawyer. Mr. Jonathan Hull, who is a legal counsel to the presiding officer of the other body, also became involved in this current legislation as well. So you can understand, hopefully, that this decision for me was who is correct in their opinion as to what was intended twelve years ago. Indeed, it was confusing, but I did find Mr. Stokes, the most convincing of all, enhance my opposition to this legislation.

When the Judiciary Committee first heard the bill, which is a hold over from last year, it was decided to take out the language that referred to the Settlement Act; and, that it therefore became an issue of natural resource control. Subsequently, we sent the bill down to the Energy and Natural Resources Committee after Section 2 relating to the

Settlement Act was taken out. The Energy and Natural Resources Committee clarified the process by which the Tribes may exercise the general powers and duties of a municipality under Title 30, consistent with the Act to implement the Indian Land Claims Settlement Act as those powers and duties pertain to the Land Use Regulatory System and the Natural Resource Protection Act within the Trust Lands that will be acquired with the Act. Each Nation may submit, they said, not shall—they may submit a comprehensive plan and implement ordinances to a Committee on Energy and Natural Resources. The bill further says, that after receiving the plan, that Committee is required to hold at least one public hearing on whether or not the plan should be approved. Upon approval of the plan by the Legislature, the Trust Lands, governed by the plans and ordinances, would no longer be within the jurisdiction of LURC.

Now, there can be some concern that this procedure creates a very unique program by allowing the Committee to hold hearings under the Administrative Procedures Act. However, when the bill was returned from the Energy and Natural Resources Committee to the Judiciary Committee, that bill was immediately amended because it was claimed by some that the bill was poorly written.

This new bill before us today is adamantly opposed by the Attorney General's Office. It is considered to be a very poor public policy and a significant amendment and departure from the Settlement Act of 1980. According to Mr. Stokes, and obviously we, the Legislature, should, and we will, make up our own minds on this issue. Mr. Stokes further states that the amendment to L.D. 1776 clearly purports to an end of, or at least interprets, the Settlement Act that the bill itself says its purpose is to clarify. I suggest that you look closely at that amendment. The AG's office believes that it is very clear, under the Settlement Act, that the Trust Lands in the unorganized territory were to be subject to LURC jurisdiction. Thus, this bill alters the Settlement Act—although it attempts to do so in Title 12.

The Legislature cannot later change this law ever again without the consent of the Tribes with this ratification language. We can never, ever change it. This will be permanent. Thus, the Legislature is purporting to bind future legislators outside the context of the Settlement Act. We should realize the Settlement Act was designed to treat the Tribes as having the powers and duties of a municipality. I fully realize that this treatment is offensive to them. This bill, of course, flies in the face of that principal and it creates a special and novel procedure just for the Tribes. That ends part of Attorney Stokes remarks that I heard in our Committee; and I submit that if LURC should not have jurisdiction in the Trust Lands of the organized, then should we not allow all other municipalities in the unorganized, the same relief from that jurisdiction? Should LURC itself be dissolved, and shouldn't all municipalities be treated equally?

In reading the Records of Senate action in 1980, the question was then, "Why the big rush?" and that question is prevalent here today. This bill is running long—like a freight train. The stand is not popular by many, and the record of 1980 suggests that those present in this Legislature today were here at that time and they are Senators Clark, Emerson, Gill and Pray. And I hope they will be able to assist us

as we go along with this discussion. And I do hope that you've not committed your vote to support this legislation and that you will give my remarks your utmost consideration and vote against the pending motion. Thank you for your time.

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

Senator **PEARSON:** Thank you Mr. President. Ladies and Gentlemen of the Senate. The Senator from Lincoln, Senator Holloway, has read off a list of people who were here in the Senate at that time and she left off my name. I was here; and indeed, I served on the Indian Land Claims Committee in the Maine Legislature at the time of the signing of the Indian Land Claims. Those were exciting and momentous times. I even had the privilege of being present at the White House when President Carter signed the final document which for me was something that I will never forget.

One has to be extremely careful about what one says on the record with regard to the intentions of people, the intentions of the Legislature at that time. And, I, like other people, have memories that, as time goes on, may become more and more difficult to remember. But I can tell you that those events were some that I shall never forget and that I must say, for the record, in case this is ever looked at in the future by any court, that Mr. Stokes' remarks and those of Senator Holloway, are not necessarily my recollections.

The interpretation of what a municipality is under the Indian Land Claims Act is one that is subject to much more scrutiny than what has been afforded here today. I intentionally do not want to go beyond those remarks because, to do so, would be to put a slant on a record that I don't think should be done at this point. It suffices to say, that my recollections are not the same as the Senator from Lincoln, Senator Holloway, and the person she quoted, Attorney General Stokes.

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

Senator **GAUVREAU:** Thank you, Mr. President. Ladies and Gentlemen of the Senate. I would like to take a few moments to explain to you the consideration the Committee on Judiciary gave to this bill, L.D. 1776, over the past two years. This bill was put in the First Regular Session and has been amended significantly since it was introduced into this Legislature.

Let me state up front that the issue you have to consider today is not a legal issue. One need not have a doctorate in law to make an appropriate policy decision on whether or not to extend to the Indian Nations this enhanced ability to provide appropriate stewardship over the lands committed to their trust.

When L.D. 1776 was first introduced to the Judiciary Committee, Section 1 of the bill expressly amended the Maine Indian Land Claim Settlement Act of 1980. The Judiciary Committee, after much consideration, chose to eliminate Section 1 from the bill, and we provided a mechanism whereby the Indian Nations, the Penobscots, the Passamaquoddy, could, in fact, exercising authorities and rights which municipal governments have in our State, could in fact, clearly remove Trust Lands they hold from any jurisdiction of LURC. We then referred the bill to the Joint Standing Committee on Energy and Natural Resources for their consultation. We received a report back from the Joint Standing Committee on

Energy and Natural Resources which sets forth a procedure which you can find in Amendment H-1125 by which the Indian Nations, should they chose to do so, can return to this Legislature next year with submission of written land use plans. If the Legislature agrees with those plans, in that event, then clearly they will be no LURC jurisdiction whatsoever over the Trust Lands once those plans have been put into effect.

It should be stressed that in our discussions with the Attorney General, the Attorney General has made it very clear from the outset, that what we are faced with here is a policy issue. The Attorney General has readily conceded that this Legislature has the authority, if it so chooses, to allow the Indian Nations this particular procedure so that they can, in fact, place the Trust Lands which they have acquired since the Settlement Act, under the tutelage of a comprehensive land use plan. The Nations, then, can, in fact, exercise their rights of self-determination. Now, it's important to bear in mind, that twelve years ago, when the Land Claims Settlement Act was approved, there were no Trust Lands. The Indian Nations held reservation lands; but of course, they didn't hold trust lands, each Nation was allowed to acquire up to 150,000 acres in the State of Maine, which could be placed in Special Trust designation under the auspices of the U. S. Secretary of the Interior. The Nations, in fact, have been gradually acquiring plans to place into that Special Trust status.

The question for us today is whether we, as a legislative body, believe it is appropriate policy to allow the Nations mechanism whereby they can develop a comprehensive language plan, have it approved by this body, and then can have sole responsibility for land use planning within the confines of the trust territories. Now, the Attorney General has repeatedly told us that is a policy question, a policy question which we should address. There is nothing in the Land Claim Settlement Act which inhibits us from making that action. Having said all that, I believe, as does a strong majority on the Judiciary Committee, that it is an entirely appropriate policy to allow the Passamaquoddy Nation, and the Penobscot Nation, the ability, should they so choose, to use this procedure.

A point of fact. Our Committee was quite impressed with the competency, the ability, and the capacity of the Nations, to provide appropriate stewardship for lands within the trust territories. It is my judgment, as an individual legislator, that the Nations could provide at least as good stewardship over those lands as LURC could over other unorganized territories. It seems to me that if one were to consider this legislation, if you don't believe the Nations can provide that type of land use management, that may well be a legitimate reason for you to cast a vote against the bill. But I submit to you that there was no evidence at all before our Committee which would support that proposition. All the evidence was that the Nations could, in fact, provide appropriate land use management for lands in the trust territories.

The second question I asked, and asked repeatedly, was whether in 1980, "was there an agreement made whereby the Indian Nations expressly stated, and agreed, that these Trust Lands which would be acquired. Would they remain within the jurisdictional area of LURC? Was that an agreement

made? Was there a quid pro quo in the give and take negotiation, where the Nations agreed that the Trust Lands, as yet not in existence but when they were acquired—would come under LURC? There is nothing in the Indian Land Claim Settlement Act. And more to the point, there was no documentation which was brought to the attention of our Committee, and that was the major point. Because I asked the Attorney General, and I asked those who had misgivings about this bill, to please produce to our Committee, documentation or other evidence, which would show such an agreement was made. A point of fact, there was no such agreement. I think the Senator from Lincoln, Senator Holloway, was correct when she stated that it was fragile delicate agreement.

The Nations were given rights, at least akin, and I would underscore, at least akin, to those of municipal governments. Mind you, the Indian Nations do not perceive themselves as municipalities. The Penobscots are not akin to the City of Lewiston or the City of South Portland. The Penobscot Nation is the Penobscot Nation! And, under law, has rights at least akin to those of municipal governments. It can, in fact, have more rights. In fact, they do! Because there are Tribal Courts and there are several matters whereby criminal offenses occurring on indian reservation land and between indian members, that the indian courts have sole jurisdiction over. So, we should not at all, I think it is prejudicative, I think it is an insult to the Indian Nations, however intended, for us to analogize the Penobscot Nation or the Passamaquoddy Nation the people, as simply another municipality.

In fact, I think we should all recognize, to our less-than-happy history of our country and our nation, that the members of these nations have been subject to want and discrimination in clearly inappropriate behavior by other populations who settled our country. That's a very important point. It's a point of high emotion, which we all can understand.

I would say, just in passing, that I have been most impressed by the professionalism, the dignity, the courtesy, the civility in which the Representatives of the Indian Nations have presented this issue. Mind you, this is a very, very sensitive matter. It really tugs at the heartstrings of the Nation's existence. Yet, at all times, the Representatives have been very, very professional in the way in which they have worked with our Committee and with the Committee on Energy and Natural Resources, as well as other legislators, on this very sensitive issue. Ultimately, the issue which we have to resolve, simply put, is do we believe that the Nations have demonstrated sufficient competency, sufficient ability, sufficient commitment, to provide appropriate stewardship over the Trust Lands which they have acquired since the inception of the Land Claim Settlement Act.

I submit to you that they have! And I submit that the evidence was overwhelming in our Committee and persuasive to the members of the Committee on Energy and Natural Resources that the Nations, in fact, do have the technical competency to craft these comprehensive plans. I suggest to you that perhaps it's just a tad paternalistic to suggest that the Nations would not provide the same care and commitment to the lands which are held in trust, which we, through LURC, established land use policies for other land use areas of the State. There is no

evidence that the Nations would not provide that degree of care and commitment as far as the quality land use regulations on the Trust Lands. Basically, that is the issue. I do not quarrel with those who are concerned about the legal significance of this legislation if it becomes law. Mind you, in the procedure set forth in L.D. 1776, there is a ratification clause. If we approve this legislation, both the Penobscots and the Passamaquoddy, will refer this matter to their Nations for ratification, and that is a predicate to this becoming a law.

Even if that should happen, nothing else will happen until next session when the Nations return to the next Legislature to the Committee on Energy and Natural Resources, if they so choose, submit a comprehensive land use plan, and then if the Energy Committee signs off on that, then the full Legislature must sign off on that. The Nations can then implement the plan. At that point, in my judgment, the land would clearly be, for all legal purposes, outside our jurisdiction; and I do agree, there would have to be bilateral consent by the State and the Nations to bring that land back under State jurisdiction. But the real issue, which I have referred to several times, is not a legal issue. One need not be a lawyer to resolve this issue.

Do you believe that the Indian Nations have the capacity to properly manage their own lands on their trust territories? And, do you believe that it is wise public policy to allow the Nations to exercise those rights? The majority of our Committee believes they should have that right, if they so choose. For that reason, I would recommend to the body we accept the Majority Ought to Pass Report. Thank you Mr. President.

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

Senator **HOLLOWAY:** Thank you, Mr. President. Ladies and Gentlemen of the Senate. I do believe there is very fair evidence on what the intention was back in 1980 because I have a document of the public hearing that was held at the Civic Center with the Commission and Representative Post asked Mr. Cohen, who was then the Attorney General, Richard Cohen, "Could you tell me, please, if the Indian Territories would be considered an existing municipality or a new municipality, as far as state statutes are concerned, and I am particularly interested in the zoning issue?" To which then Attorney General Cohen replied, "This would be considered a new municipality." And Post said, "A new municipality so it would come under the statutes for a new municipality."

And, on the next page, Representative Darrell Brown said, "My question deals with the development of land use ordinances. Presently, the unorganized territory, or development in the unorganized territory, is controlled by LURC. What would be the procedure whereby the Tribes would develop their own land use ordinances, and how would they then be accepted?"

And Cohen replied, "Well, they could go through the same process as a new municipality. Representative Post discussed this with us a week or two ago, and our feeling is that as a new municipality would come and initially their plan under LURC Commission for approval and the same procedure that would exist in any other municipality, would exist in this particularly newly acquired area." And Representative Brown responded, "So then,

the new ordinances would have to be at least as strict as those that are now imposed by LURC." Attorney General Cohen replied, "Yes, that is correct." I do think there is wide evidence here on what the intention of land use was to be once the Tribes acquired their Trust Lands. Thank you.

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

Senator **PEARSON:** Thank you Mr. President. Ladies and Gentlemen of the Senate. My recollection of the law is that if you are in LURC status at any point, outside of Indian Land, you are in LURC status and you become organized as a new municipality, you have the ability to go out from under LURC.

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

Senator **TITCOMB:** Thank you very much Mr. President. Ladies and Gentlemen of the Senate. The summary that the good Senator from Penobscot just gave is absolutely correct—that if you are within the LURC jurisdiction and you go through the planning process, that you also are able to, through a specific procedure, remove yourself from under LURC jurisdiction and have the same standing as any other municipality which would then fall under DEP jurisdiction. That is exactly what would happen in this case.

This was a very unique situation for our Committee primarily because we deal with environmental law and it was a very sensitive issue that came before the Energy and Natural Resources Committee; and I assure you that it was handled most sensitively by the Committee, and with the greatest cooperation of the Representatives from the Indian Nations. Very simply put, and this is coming from someone who really didn't understand the history of the Land Claim Settlement Act and how we could apply it to this situation. When the settlement took place, lands were given to the Indian Nations. Those lands, for the purpose of such things as an environmental law, had the same status as a municipality. When Trust Lands were purchased, there was a question as to whether these Trust Lands were going to fall under LURC, which is unorganized territory, or whether they were going to fall in the same status as the original settlement lands as a municipality.

What has happened through this process that we have just completed, is that we have set up a procedure that is consistent with the procedure we would set up for any territory that chose to become a municipality. We did so with the full cooperation of the Indian Nations. Without their willingness to cooperate with us on this, it could have been an unsolvable problem.

I believe we've put into place, with their help, a process that would ensure proper land use planning, that would ensure, with their willingness, that they will come back to the Legislature to the Energy and Natural Resources Committee, and then receive approval from the whole Legislature that this land use plan is consistent with other good plans for the same type of land. At that point, the Indian Nations would receive the same rights that any other municipality would have the right to expect from the State. This is with full understanding that Indian Nations are different. They are unique. They are Nations under themselves, although they fall within the same laws in many cases as other citizens of the State of Maine fall. So it was a very sensitive

issue, one where the Committee, throughout the whole process, had the highest regard and respect for the issues that were brought before us that are very unique to Indian Nations.

But I believe that this bill allows the process for good, sound, land use planning, and it provides a process for Indian Nations to move ahead as municipalities in this State are allow to move ahead. I believe that DEP law is appropriate after these Nations move their Trust Lands out from under LURC, which is what the case would be. They would fall under DEP law just like other municipalities. One thing that I did want to clear up that the good Senator from Androscoggin made reference to, is that he did make reference to bringing the plan to the Legislature if the Nations so chose. I would clarify that unless this plan is brought to the Legislature and gains approval, the Indian Nations would then remain under LURC. It was not just a frivolous intent and I know that the good Senator did not intend that to be interpreted that way; but if the Nations chose not to go through the process to take them out from under LURC and put them under DEP, they don't need to do that. If they do chose, this is the process that we would follow. I would encourage your support as the good Senator from Androscoggin has encouraged your support for this movement.

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

Senator **COLLINS:** Thank you, Mr. President.

Ladies and Gentlemen of the Senate. Since I have a great many thousands and thousands of acres of unorganized territory in my District, I do have some concern about this particular legislation, and I understand that the term "municipality" is properly applicable to the Indian Nations, although it is a rather different interpretation of the term "municipality" that most of us are used to. And, so it does sort of create a special situation to a group that owns hundreds of thousands of acres in the unorganized territory. I understand the concern that those of you who advocate for this - and the case you make is on reasonably firm grounds. Yet, it is quite different from the rules and regulations that those of us who have unorganized territory in our districts, and who have a limited number of people in those areas, have to deal with. We deal daily with LURC and I presume that since 1980, the Indian Tribes have also been under their jurisdiction; and I don't really understand why they want to attempt making this change. I'm curious to know. If this were to occur and a comprehensive plan developed and brought back to the Legislature, why would it be brought back to the Legislature as opposed to the Executive Branch? It seems to me that the organized communities in the State who develop comprehensive plans don't bring those to the Committee on Energy and Natural Resources for approval—they bring them to the designated department of the Executive Branch. I wonder why, in this instance, it is proposedly done differently? If we are to accept the term "municipality" as applying to the Tribes, why shouldn't they follow exactly the same procedure in order to have their plan approved?

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

Senator **GAUVREAU:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I believe that my seatmate from Aroostook, Senator Collins, has asked the appropriate question and really gotten to

the heart of the issue this morning. His question as, "Why would we craft a procedure whereby the Indian Nations would submit a comprehensive Land Use Plan to the Legislature rather than to the Executive Branch, currently LURC, for approval of a land use plan?"

The issue, squarely put, is because this issue is one of policy, and not one of law - that I would differ from the remarks of the Senator from Lincoln, Senator Holloway, and also from the remarks of Senator from Androscoggin, Senator Titcomb. It is not agreed upon, there is no consensus, there is no agreement, that the Trust Lands, currently held by the Indian Nations, fall within the jurisdiction of LURC. That is an open, legal question, upon which I intimate no opinion. It is certainly clear that the Attorney General believes that those lands fall within LURC jurisdiction. It is certainly clear that LURC believes those lands fall under its jurisdiction. It is equally and precisely clear the Indian Nations do not hold to that view at all. And let me suggest to you that the reason the bill is here is because the Nations have chosen to try to mediate, to negotiate an amicable resolution to this issue of public policy.

They have another recourse. This recourse is to go to the Courts of our State or the Federal Government and litigate this issue. They have chosen not to take that step. Certainly you recognize that if the Nations were to propose a comprehensive plan to LURC, that would be tacit acquiescence in the jurisdiction of the State on their part and that is precisely why the compromise which was struck has the Nations not go to LURC, but to come to this Legislature for the policy decision. And the policy decision is basically this. Do we believe the Nations have given us a responsible comprehensive land use plan; and equally, do we believe the Nations have the ability to provide appropriate self-governance, in this case, stewardship over the lands in the trust territories?

If you answer yes to both of those questions, we allow the land use plan to become law and the Nations are responsible for their own destiny. If you choose, as a matter of policy, not to accept either one of those, either you don't believe the plan is appropriate or you don't believe the Nations can implement a plan and manage it, then you answer the question in the negative. That is why the compromise was struck. This is a matter of policy and I, as one legislator, have infinite faith the Nations will provide at least quality suitable land use. I suggest to you that they'll do a much better job. Thank you, Mr. President.

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

**THE PRESIDENT PRO TEM:** The pending question before the Senate is the motion by Senator **GAUVREAU** of Androscoggin to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in 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 11 Senators having voted in the negative, the motion by Senator **GAUVREAU** of Androscoggin to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence, **PREVAILED**.

The Bill **READ ONCE**.

Committee Amendment "A" (H-1125) **READ** and **ADOPTED**, in concurrence.

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

The President Pro Tem laid before the Senate the Tabled and Later Today Assigned matter:

**HOUSE REPORTS** - from the Committee on **LEGAL AFFAIRS** on Bill "An Act to Restore Control and Stability to the Bureau of Alcoholic Beverages"

H.P. 1670 L.D. 2346

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-1120).**

Minority - **Ought Not to Pass.**

Tabled - March 18, 1992, by Senator **SUMMERS** of Cumberland.

Pending - **ACCEPTANCE OF EITHER REPORT**

(In House, March 17, 1992, the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1120).**)

(In Senate, March 18, 1992, Reports **READ.**)

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

**THE PRESIDENT PRO TEM:** The Chair recognizes the Senator from Cumberland, Senator **SUMMERS**.

Senator **SUMMERS:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I rise in opposition to the Majority Ought To Pass As Amended Report. I will be as brief as possible. If this piece of Legislation were to pass it would reverse what was agreed upon in the Special Session in December in terms of the State privatizing liquor. I know a lot of us have varied opinions on this subject and I won't delve into that. I think it is important for this Body to know that by reversing this decision we will be creating in total a \$1.2 million fiscal note. Over \$600,000 in the remaining part of fiscal year '92 and another \$600,000 in fiscal year '93. It was obviously the majorities opinion on the Legal Affairs Committee to vote ought to pass with this Bill. I do feel it, respectively I say this, irresponsible of us to put a piece of Legislation forward that would create such a fiscal note without offering a viable alternative to fill that void. I think it is very unfair to the individuals who have pinned their hopes on this Legislation. It is my understanding that this Bill is actually DOA when it hits the Appropriations Table. Without a viable alternative, something to fill the holes on this, I feel we have a responsibility to not pass this Legislation and not let this continue on. For that reason I would urge you to vote against the pending motion. I request a division.

Senator **SUMMERS** of Cumberland requested a Division.

**THE PRESIDENT PRO TEM:** The Chair recognizes the Senator from Oxford, Senator **MILLS**.

Senator **MILLS:** Thank you Mr. President. Ladies and Gentlemen of the Senate. In order to get us to where we are today, I would like to quickly go over what has happened. Last year, the Legislature voted overwhelmingly not to privatize the liquor business in the State of Maine. There are lots of reasons for that and I am sure most of us here know those arguments. What happened after that was we got into many budget problems and finally the budget came

together. A unanimous budget package came to the floor and by a 7-6 vote in the Appropriations Committee, they voted to privatize liquor in the State of Maine. There was some concern about whether or not the budget might pass because of that item being in there. Our committee was asked to meet and come up with a possible amendment to the budget that might be better off in getting the whole package passed. We decided to go with a proposal of bidding out stores so we would not go into a full privatization mode and only close approximately 25 stores moving towards the 34 and then the eventual elimination of the stores. We did that in order to get that budget passed. There are a lot of us that felt at the time, that we still feel privatization of the liquor stores should be going a lot slower than it is. We should be looking at the numbers to make sure we are keeping the same volume of sales in this State.

It is a very difficult process to me and I realize it is for the Appropriations Committee because they have to deal with Bills that come along like this and wonder how they will fill the hole. Our committee felt the biggest thing was that we had continuously said we felt that privatization was a bad idea for the State and since we have gone out to the bidding process there have been many things that have come along to make us feel even stronger that the amount of volume of sales are not going to be there in the future. Since we voted on this proposal we had the Liquor Commission come speak to us. They have said that at the very least, if we do go ahead with the proposal that was passed last year that we do a moratorium after that for one year to see whether or not the volume of sales stay up. I hope that people who vote against this motion will be at least supporting the idea that we should wait and see how those stores that are being closed come along for at least a year. It is very difficult to reverse a process once it has started. I hope you support this majority motion but if you do not, I hope you will at least be supportive of the idea of a moratorium of one year as the Liquor Commission has supported to see how the liquor store closings go along. I hope you support the majority motion so we could keep the debate open on this. Thank you.

**THE PRESIDENT PRO TEM:** The Chair recognizes the Senator from Cumberland, Senator **SUMMERS**.

Senator **SUMMERS:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I want to concur on one part with the Senator from Oxford, Senator **MILLS**, that being that we do need to move into this with our eyes wide open and move slowly. The Committee did, in fact, slow the process down from 35 stores to approximately 25 stores. I do feel it is incumbent upon us to stand by the process at this point that has been going very well. Considering we are changing a policy the State has had for fifty years, I would once again say that it has been going well and there haven't been too many snafus in the process. I would urge you to vote against the pending motion. Thank you.

**THE PRESIDENT PRO TEM:** The pending question before the Senate is the motion by Senator **MILLS** of Oxford to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in 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.

20 Senators having voted in the affirmative and 14 Senators having voted in the negative, the motion by Senator MILLS of Oxford, to ACCEPT the Majority OUGHT TO PASS AS AMENDED Report, in concurrence, PREVAILED.

The Bill READ ONCE.

Committee Amendment "A" (H-1120) READ and ADOPTED, in concurrence.

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

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

The President Pro Tem laid before the Senate the Tabled and Later Today Assigned matter:

Bill "An Act Regarding the Purchase of Spirits at Agency Liquor Stores"

S.P. 890 L.D. 2283  
(C "A" S-636)

Tabled - March 18, 1992, by Senator PRAY of Penobscot.

Pending - PASSAGE TO BE ENGROSSED AS AMENDED  
(In Senate, March 18, 1992, READ A SECOND TIME.)  
Which was PASSED TO BE ENGROSSED, As Amended.  
Sent down for concurrence.

The President Pro Tem laid before the Senate the Tabled and Later Today Assigned matter:

An Act to Provide a Private Remedy for Violation of the Lead Poisoning Control Act

H.P. 1515 L.D. 2127  
(C "A" H-1066)

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

Pending - ENACTMENT

(In Senate, March 12, 1992, PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1066), in concurrence.)

(In House, March 17, 1992, PASSED TO BE ENACTED.)

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

Senator GAUVREAU: Thank you Mr. President. Ladies and Gentlemen of the Senate. L.D. 2127, if enacted, will provide for a private right of action under the unfair trade practices act for a violation of the States Lead Poisoning Control Act. The Joint Standing Committee on Judiciary is recommending enactment of this Legislation. We believe that with recent budget cutbacks, the Attorney General does not have sufficient resources to properly enforce the State's Lead Poisoning Control Act.

I rise, today, to address an important issue of insurance policy regarding this Legislation. My definition of the Unfair Trade Practice Act is different than an act of mere negligence. Under our statutes an Unfair Trade Practice Act is defined as an unfair method of competition or an unfair or deceptive trade practice. Traditionally in our law the financial responsibility for an Unfair Trade Practice is borne by the wrong doer not borne by its insurance company. The Committee on Judiciary is in no way intending to put on to insurers financial

responsibility for Unfair Trade Practices Act. It is our intent not to disturb the law. The current law is that the wrong doer has to bear the financial cost and that cost is not passed on to his insurance company. Simply put insurance companies do not insure for Unfair Trade Practices Act nor do they insure for punitive damages. I want to be clear, on the record, that nothing in this Legislation should be construed to impose financial burden on the insurance community which does not already exist under present law. Thank you.

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

Senator CAHILL: Thank you Mr. President. Ladies and Gentlemen of the Senate. Far be it from me to debate the eloquence of the good Senator from Androscoggin, Senator Gauvreau. I mean that quite seriously. I know he does a great job on that committee but I am confused about this Legislation. I have the amendment before me which I believe the Committee Amendment (H-1066) is now the Bill. Reading the one sentence that has changed in the Law, could the good Senator from Androscoggin, Senator Gauvreau help me out with that. I am not a lawyer and I have no idea what the sentence means. Could you interpret that for me? It would be very helpful. Thank you.

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

Senator GAUVREAU: Thank you Mr. President. Ladies and Gentlemen of the Senate. To respond to the question by my colleague from Sagadahoc, Senator Cahill, the Committee on Judiciary is recommending that a violation of the Lead Poisoning Control Act be a trauma faction of the violation of the States Unfair Trade Practice Act. That means that if one could demonstrate or prove to the courts satisfaction that a party had violated the Unfair Trade Practices Act then the presumption would be it would also be a violation of the States Lead Poisoning Control Act. It would not be a conclusive presumption and certainly the defendant would have the right to come into court and demonstrate that if he or she had not engaged in an Unfair Trade Practice Act. It is simply an allocation of burden of proof and in the law that is very important. What we are saying by this Legislation is that in the event the plaintiff or the defendant on a counter claim can come in and demonstrate that the other party has committed a violation of the State's Lead Poisoning Control Act then it is a presumed violation of the States Unfair Trade Practices Act. Clearly the other party would have the right to come into court to rebut that presumption. Thank you.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from York, Senator Carpenter.

Senator CARPENTER: Thank you Mr. President. Ladies and Gentlemen of the Senate. I am not all that familiar with this Bill either. From what I have heard it sounds to me like it really should have been titled "A Full Employment Act For Taut Attorneys." I would hope you would vote against it and request a division. Thank you.

Senator CARPENTER of York requested a Division.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Cumberland, Senator Gill.

Senator GILL: Thank you Mr. President. Ladies and Gentlemen of the Senate. I question whether we should be dealing with this particular piece right now. Before my own committee, the Human Resources

Committee, we are dealing with a major piece of legislation that will impact the Lead Poisoning Control Act. We are amending that act and adding lead screening a lot of different areas to that particular act. It hasn't even passed through these Bodies yet. I would hope that we could look at all of the Lead Poisoning or Screening Legislation together so we know exactly what piece impacts another piece as it goes through here. I have talked to both Senator Gauvreau and Senator Conley about doing this. They both feel comfortable with letting this go through. I don't feel comfortable about it and I expressed that to them. I feel it should be tabled until we see the other piece of legislation that is coming forth before we deal with this. Then this can go on its merry way. I would like someone to table it so we could deal with them all together. Thank you.

On motion by Senator GAUVREAU of Androscoggin, Tabled Unassigned, pending ENACTMENT (Division Requested).

The President Pro Tem laid before the Senate the Tabled and Later Today Assigned matter:

An Act Requiring the Provision of Information to Victims of Gross Sexual Assault

H.P. 359 L.D. 513  
(C "A" H-963)

Tabled - March 18, 1992, by Senator PRAY of Penobscot.

Pending - ENACTMENT  
(In Senate, March 18, 1992 RECONSIDERED ENACTMENT.)

(RECALLED from the Governor's Desk, pursuant to Joint Order S.P. 955, in concurrence.)

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

Senator GAUVREAU: Thank you Mr. President. Ladies and Gentlemen of the Senate. As you may recall yesterday I was the party who actually introduced a Joint Order to recall this Bill from the Governor's Desk. After this Bill left our committee, it came to the attention of the members of the Committee on Judiciary that there were some very practical problems on post HIV test counseling for victims of gross sexual assault. Simply put, we are not sure which agency of State Government will take responsibility for the post test counseling. That issue has still not been resolved. Our committee asked for the Department of Human Services to consult with us and work the issue over. I would appreciate someone tabling this matter until such time that our Committee can meet with the Department Representatives. Thank you.

On motion by Senator CLARK of Cumberland, Tabled Unassigned, pending ENACTMENT.

The President Pro Tem laid before the Senate the Tabled and Later Today Assigned matter:

Bill "An Act to Extend the Appraisal License Effective Date" (Emergency)

H.P. 1734 L.D. 2422

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

Pending - REFERENCE  
(Committee on BUSINESS LEGISLATION suggested and ORDERED PRINTED.)

(In House, March 17, 1992, under suspension of the Rules, READ TWICE and PASSED TO BE ENGROSSED, without reference to a Committee.)

On motion by Senator BALDACCI of Penobscot, Tabled until Later in Today's Session, pending REFERENCE.

The President Pro Tem laid before the Senate the Tabled and Later Today Assigned matter:

Bill "An Act to Impose a Sales Tax on All Items Sold at Flea Markets Except Those Sold by Nonprofit Organizations"

H.P. 1651 L.D. 2314  
(C "A" H-1137)

Tabled - March 18, 1992, by Senator BOST of Penobscot.

Pending - Motion by same Senator to INDEFINITELY POSTPONE Bill and Accompanying papers in NON-CONCURRENCE.

(In Senate, March 18, 1992, PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1137), in concurrence. Subsequently, RECONSIDERED PASSAGE TO BE ENGROSSED AS AMENDED.)

(In House, March 17, 1992, PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1137).)

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

Senator COLLINS: Thank you Mr. President. Ladies and Gentlemen of the Senate. This particular Bill came out of the Taxation Committee and I was out in the hall this morning when it arrived. I was rather shocked to find it had been indefinitely postponed by my good friend the Chairman of Taxation Committee, Senator Bost from Penobscot since he had joined with most of us in signing this out favorably. I think we all signed it out favorably.

Let me tell you a little about the Bill and then you can make your own personal judgement on it. The Bill was designed not to create a new tax but to help collect taxes that are currently due from people who engage in a regular continuing manner in flea markets. They are, in effect, retailers. It very distinctly takes care of people who are exempt because they are nonprofit. It eliminates those who are engaged in casual sales. It is aimed entirely and only at so called full time people who run an operation known as a piece of the flea market.

What the Bill attempts to do is to identify these people and get them to apply for a retail sales license from the State Tax Assessor. The mechanism suggests that anyone who owns the property that has four or more of these sales outlets set up should notify the Tax Assessor who these people are. The Tax Assessor finds these names coming up again and again. He will ask them to register and apply for a resale license. Obviously, once they have applied for it then they are subject to reporting. All of us who are engaged in the retail business must do on a monthly basis. It is not an attempt to enact a new tax. If it were I would be opposed to it. It is an attempt to collect what is estimated as some \$140,000 of lost sales tax revenues. That is what the fiscal note suggests. It points out that there is approximately a cost of \$34,000 to the State Tax Assessor and will require an additional person and other things in order to audit these folks. It will produce, according to the memo, \$141,000 to the general fund and \$6,900 to the local government. If you would like to be a party to having people engaged



in retail business pay the retail sales tax as those who are doing it from their stores then you will vote for this. If you think this is going to be a detriment and difficult to administrate then you will vote to indefinitely postpone it. Thank you Mr. President.

**THE PRESIDENT PRO TEM:** The Chair recognizes the Senator from Penobscot, Senator Pray.

Senator **PRAY:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I also notice this on the calendar this morning and pulled it out and looked at it. I appreciate and understand the concerns that the Senator from Aroostook, Senator Collins has raised here. My concern is I believe the State Tax Assessor already has the authority and ability to collect and require these people to register for the sales tax certificate. My concern is that here in State Government passing off to the private enterprise system a responsibility. The title reads "Registration of Owners of Space Temporarily Rented as Retail Spaces." As I read it I am concerned as to whether it just applies to the so called flea markets it made reference to in the title or if it is any person who owns property that temporarily rents space for retail sales. Does that person now become the person obligated and responsible to let the Bureau of Taxation know what type of businesses are rented those various spaces from them. I guess I have a question to the good Senator from Aroostook, Senator Collins or anyone who cares to respond. Am I not accurate that the current statutes allows the Tax Assessor the ability to require these people to pay sales tax for the transactions that presently occur? Are we not passing a responsibility to the proprietors of the space verses the obligation and responsibility to the retailer themselves? Thank you.

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

Senator **COLLINS:** Thank you Mr. President. Ladies and Gentlemen of the Senate. In response to the good Senator from Penobscot, Senator Pray's question, I would say that yes the State Tax Assessor does have the ability to assess the tax if he can determine who these folks are. He has the ability to require them to register and apply for a resale certificate. The problem is that he is not, under the present arrangement, able to do that very handley. As I suggested this is essentially a mechanism that would help him do it. There is not question that those people have the responsibility and the assessor is charged and has the authority to collect the tax. It is a very difficult thing for him to do. This puts some ability for him to do it by putting part of the burden on the person who owns the land where it occurs. That person is not responsible for the tax money. He is only responsible for providing names and addresses of the people that are doing this. The assessor then has some basis as to whether or not he can determine who these folks are and make them apply for a resale certificate. If that burden is to great then don't vote for it. You are loosing over \$140,000 that ought to be paid in legitimate sales tax under the present law. This gives you an opportunity to rectify that and correct it. Thank you.

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

**THE PRESIDENT PRO TEM:** The pending question before the Senate is the motion by Senator **BOST** of Penobscot, that the Bill and Accompanying Papers be **INDEFINITELY POSTPONED** 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.

20 Senators having voted in the affirmative and 14 Senators having voted in the negative, the motion by Senator **BOST** of Penobscot to **INDEFINITELY POSTPONE** Bill and Accompanying Papers in **NON-CONCURRENCE**, **PREVAILED**.

Sent down for concurrence.

Senator **PRAY** of Penobscot was granted unanimous consent to address the Senate on the Record.

Senator **PRAY:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I didn't want to prolong the debate on the last issue but it seemed as if last year we gave the State Tax Assessor additional personnel to go out and collect the sales taxes that were not currently being paid. I believe we added twelve people. There are additional people in this budget for the administration to continue to attempt to collect unpaid revenues to the State. I would hope the State Tax Assessor would use the authorities he has to see that we equitably apply these statutes for those people who are required to pay taxes. It is not secret in this State where a number of these so called flea markets rest. The ability of the State Bureau of Taxation to collect those revenues so everyone is paying their fair share. Thank you.

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 **BUSINESS LEGISLATION** on Bill "An Act to Establish the Petroleum Market Share Act"

S.P. 844 L.D. 2148

Reported that the same **Ought to Pass as Amended** by **Committee Amendment "A" (S-640)**.

Signed:

Senators:

**BALDACCI** of Penobscot  
**MATTHEWS** of Kennebec

Representatives:

**REED** of Dexter  
**VIGUE** of Winslow  
**CONSTANTINE** of Bar Harbor  
**GURNEY** of Portland  
**SHELTRA** of Biddeford  
**LIBBY** of Kennebunk  
**BAILEY** of Township 27

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

Signed:

Representatives:

**KUTASI** of Bridgton  
**STEVENS** of Sabattus

(Senator **RICH** of Cumberland Abstained)

(Representative **GRAHAM** of Houlton Abstained)

Which Reports were **READ**.

Senator **BALDACCI** of Penobscot moved that the Senate **ACCEPT** the Majority **UGHT TO PASS AS AMENDED** Report.

**THE PRESIDENT PRO TEM:** The Chair recognizes the Senator from Penobscot, Senator Baldacci.

Senator **BALDACCII:** Thank you Mr. President. Ladies and Gentlemen of the Senate. This has been one of the more difficult pieces of legislation for me to deal with in the five terms that I have been down here. Being someone who is in a small business, and the type of business we have in the real world, and then being able to try to grapple with this particular issue, I think there are so many signals that have been sent out on this that I think we probably need to have one of those people that the airports have on the runways who directs traffic.

When the bill was first developed, it had a moratorium on having any future developments by a refiner and prohibited that from occurring within a period of time. Well, that was sending the wrong signal to businesses whether they're in or outside of the State. We do want their investment, we do want their business, and we have a very good relationship which we would like continue and try to encourage. The Committee had grappled with and finally came out with a product which did removed the moratorium language which does not incorporate that. At the same time, they probably did something that wasn't very pleasing to many of the parties involved but was good public policy, which was trying to develop legislation that treated the refiner and the wholesaler alike. There's reporting requirement for the retailer but they're not being utilized because those reports are already part of the records with the State Tax Assessor's office and that they don't need to file additional reports. This is the reporting for the refiner and the wholesaler. It also beefs up the unfair trade practices for the wholesalers, the refiners, and the retailers. So we've gotten away from moratorium. We've really gotten away from singling out any particular entity, so it really is a market share petroleum act.

Now, in its inception, there have been a lot of accusations and complaints filed in regard to one particular refiner, and those have been on file with the Attorney General's office. But the Attorney General's Office, who has a long history of working on this particular legislation over the years. Four years ago, we went from a statewide review of the market shares into seeing if there was a domination in the market place, to a geographic area, because Maine was broken down into particular regions; and while you weren't really in control of state market share, you could be in a region. That is why they have the authority given to them by this Legislature two or three years ago to be able to look at it in a geographic sense.

In developing the legislation, we tried to produce a middle of the road approach which is establishing reporting to make determinations; and at the same time beefing up the unfair trade practices, because we don't want to stop growth in development and business and we don't want to prevent consumers from having choices. At the same time, however, if unfair trade practices are taking place which are covered by statutes, then the Attorney General's office would have the necessary tool needed. The Attorney General's office drafted the legislation with the Committee and I feel it is a pretty good middle of the road type of measure to address the situation. There are parties who don't want any type of legislation at all. They would rather kill this bill and try working it out amongst themselves.

Well, the last time this occurred, during the Arab oil embargo, and we all know what happened during that particular time.

You can't have collusion operating. As much as I would like to have people work this out themselves, it is more important that, as far as public policy is concerned, we have an established policy for the Attorney General's office to be able to use. We took the middle of the road approach. Other states have gone with enforcement legislation which have banned refiners from wholesale or retail operation. We have not done that. I really believe it is fair legislation, it is certainly not what some people would like to have. Some would prefer no legislation but it has been pointed out in public hearing of the market concentration and the concerns there. If you have any questions, I will be glad to answer them.

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

Senator **CAHILL:** Thank you, Mr. President. Ladies and gentlemen of the Senate. Once again, this is sort of an issue that I don't have a lot of background on but I would like to ask two questions. Before I ask my questions, I would like to say that I believe also, that the Committee on Business Legislation has come a long way to work this piece of legislation to try to reach some middle ground to make this a fair piece of legislation. I commend you all for doing that.

My questions - I have two - are: (1) In one section of the bill, there is language that precludes any refiner from controlling a retail outlet within a two mile radius of existing outlets controlled by a refiner unless, by the sole discretion of the Attorney General, the outlet will increase competition. My question is: When you give sole discretion to the Attorney General, is there an appeal process to that? And, how can you really determine in advance if competition exists or doesn't exist? (2) Regarding the fee which is imposed on heating and motor oil, the 45¢ fee on every hundred gallon of fuel oil and gasoline and while it's probably not a large fee, I think it generates about \$50,000 a year. You can probably bet your bottom dollar that the retailer is not going to bear the burden of that fee; it's going to be passed on to the consumer. I was wondering if there is any way we can pass this legislation without the fee.

**THE PRESIDENT PRO TEM:** The Senator from Sagadahoc, Senator Cahill poses two questions through the Chair to any Senator who may choose to respond. The Chair recognizes the Senator from Penobscot, Senator Baldacci.

Senator **BALDACCII:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I appreciate your kind words and I will try to be brief. The reason that's in there is that presently, under anti-trust laws according to the Attorney General, if there are mergers or acquisitions, that those are reviewable by the Attorney General's office. What is the loophole is that new establishment. We, on Business Legislation Committee, didn't want every single new establishment, filing reportse, even though there was a void. You'll notice in the bill that we also set up an Advisory Commission and it was a real clarification where it says "at the sole discretion of the Attorney General" so that it was not having to go through the Advisory Commission which has been established. It's a good point that you raise to reiterate the fact that this is not

appealable. It is appealable, it isn't ultimate in that decision making by the Attorney General's office when it says that. It was done for clarification purposes with the Advisory Commission clause.

As far as the fee, it's on 10,000 gallons. Each 10,000 gallons sold comes to \$51,000. It is my belief in talking with the Attorney General's office, to be very honest with you, is when you call its Anti-trust Division, you get an answering machine. We really need to have a person to be able to collect this data being submitted to be able to put it together, to be able to work with Steve Wessler in that Department. There was no way to do it, there are other approaches but it was more of a snapshot approach that we could do on a one-time basis. We could contract out and get a market analyst which would still cost money but it would be done just for the money. What we need is more information on a regular basis over a period of time. I did want to restate the fact that decisions are appealable. Hopefully, I have answered your two questions.

**THE PRESIDENT PRO TEM:** The Chair recognizes the Senator from York, Senator Carpenter.

**Senator CARPENTER:** Thank you, Mr. President. Ladies and Gentlemen of the Senate. I would like to ask a question through the Chair to any senator who cares to answer.

Under Section 1679, I noticed that you could be subject to a fine of up to \$10,000 if you violate Section 1676. That section has a provision that, after September 1, 1992, a retailer, wholesaler, or refiner may not enter into an agreement of duration of more than one year for the retail sale of home heating oil to any residential customer. I have an agreement, pretty much, with my oilman that he keeps coming until I tell him not to. There is nothing in writing, it's a verbal agreement. I don't really care to renew it every year. Under this Section, is he liable to pay a fine of \$10,000?

**THE PRESIDENT PRO TEM:** The Chair recognizes the Senator from Penobscot, Senator Baldacci.

**Senator BALDACCI:** Thank you Mr. President. Ladies and Gentlemen of the Senate. To try to help the good Senator from York, Senator Carpenter, this Section here deals with the duration of a home heating oil contract. Presently, the practice, an understanding, that he is going to keep coming and you're going to keep paying, unless there's a falling out along the way. What happened, and what was presented to the Committee, were practices where they had unlicensed oilburner people using telemarketing - going into somebody's home, saying there was inefficiency in their oilburner, that they needed a new one but, "Listen, we'll give you a new furnace if you sign a long-term contract, 5 year contract, with us. It was nothing more than incorporated finance charges. What we've tried to do was ban this type of practice, by eliminating it for more than one year. We felt that we got to that particular practice.

It has also been brought to the attention of the Oilburner Technicians' Board which is presently reviewing the matter and plan to come up with rules and regulations pertaining to this particular issue. It is my understanding that it is that Section deals with people going around selling a longer duration period than a year, it has been the Attorney General Office's experience because of the complaints through their office, that those are the penalties which would have to be ensued.

**THE PRESIDENT PRO TEM:** The Chair recognizes the Senator from York, Senator Carpenter.

**Senator CARPENTER:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I appreciate the answers. I believe they were more to paragraph 3. What I was more concerned with was the retail sale of home heating oil to any residential customers, not deceptive sales practices. I would think those are illegal now.

I probably will not get a direct answer because I'm not sure anyone knows that questions. It seems to me that it pretty much should say, or should have said, "enter into a written agreement". I could, maybe, understand that even though it's a lot of paper work. My agreement with my oilman would be pretty much open ended. Once in a while, he says, "everything going all right?" and keeps on pumping - and billing. Thank you.

**THE PRESIDENT PRO TEM:** The Chair recognizes the Senator from Penobscot, Senator Baldacci.

**Senator BALDACCI:** Thank you Mr. President. Ladies and Gentlemen of the Senate. The good Senator from York, Senator Carpenter, has a concern and there may some lack of understanding, or it may not be clear enough. Believe me, when you try to do things, it doesn't always come out perfect. I would be very amenable to clarifying that language in Second Reading of this Committee Report to help the Senator in his understanding of the whole issue if he would be supportive of that.

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

**Senator KANY:** Thank you, Mr. President. Ladies and Gentlemen of the Senate. I plan to vote for this bill at this time, but I, like Senator Carpenter of York, would like to see that particular Section eliminated. The reason for this is that this particular Section we are referring to is the one that prohibits any heating oil contracts longer than one year duration. The truth to the matter is, I'd like to encourage longer term contracts on home heating oil and I say that because the practice often in this State is just purchasing almost from month to month. It's too much competition. I see wholesalers purchasing on the open market, on the spot market; and we've had supply problems in the past. We've been waiting for ships to arrive in the Boston Harbor because of interruptions in supply.

We fought a war costing billions of dollars on somebody elses soil in which there are very rich, wealthy, billionaires. We protected their land because it was seen as our potential oil might be involved and supplies interrupted. I think we've had too little long-term planning and I believe that if we moved away from the current general practice of purchasing on the spot market, we would, in the long run, have a more stable situation.

Currently, we are paying very little, it's an unusual situation, we are paying one-quarter of what we might pay for electricity to heat our homes at this time. But I would assume that if we had longer term planning; that, although the price may be a little above what it is today, it would be much more stable.

Over time, in the last five years, it has been extremely unstable and I would very much like to encourage longer term contracts so that our wholesalers and retailers can make better buying decisions instead of on the spot market unknowing what the next market might be. While voting for this

measure this time, I would strongly support longer term contracts. In the last five years, it has been extremely unstable, and I would very much like to encourage longer term contracts so that our wholesalers and retailers can make better buying decisions instead of on the spot market not knowing what the next supply might be. I would strongly support an amendment at this time that would eliminate that section prohibiting longer term contracts to one year.

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

Senator **COLLINS:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I certainly appreciate the work of the good Senator from Penobscot, Senator Baldacci. I quizzed him throughout the process with his Committee on how he was coming on the bill and I am happy to recognize that he has made substantial improvements, moving away from the original moratorium and making many other changes. Nevertheless, having said that, I have some concerns that I would like to express. In spite of the fact that they have attempted not to aim this at a particular refiner, it still has, by the nature of what I read at least, some direct attempt at singling out refiners.

If you read the reporting requirements, you will note that it requires reports by the wholesaler, by the retailer, and by the refiner. We have perhaps, two refiners doing business in Maine. One directly and one perhaps indirectly. There is special attention in the language of the law which identifies refiner as a category in addition to the wholesale distributor. In this case, the refiner acts in both capacities, so I'm sure he reports as a refiner; he'll be reporting as retailer and reporting as a wholesaler, as well. That's a lot of reporting! I'm kind of surprised that retailers are buying into this because for them, if I read them correctly, they are not very much interested in the reporting or paperwork. I'm a little surprised that they have to enter into the equation also. It seems to me that if you're trying to establish market's share, that you ought to be able to get that information from the wholesale distribution person. They're the ones delivering to the various retailers; they have it within their ability and grasp to provide that information.

I am under the impression that there is a fair amount of reporting to the Federal government which should at least provide information on gallonage and prices on given days, weeks or parts of the year. I'm also aware that there's all kinds of existing laws which will permit the Attorney General to correct monopolistic situations or those things that are in restraint of trades. I wonder if we haven't worked too hard to come out with a piece of legislation that really is not entirely needed.

Another little concern I had was when I looked at the so-called two-mile rule and I surveyed my own hometown which is slightly under 10,000 people, I counted 15 service stations and everyone of them are within the two-mile radius and we have some that are owned by the same people that are within the two-mile radius. I'm sure there are towns or villages where that rule might work; but it seems to me that in many towns and cities, that's going to be a very difficult thing to determine. To think that somebody's got to get approval from the Attorney General because they are within that area every single time, this seems to

be to be a needless requirement. Having said all that, I know that your intention is one that has been brought as a result of people being concerned about the market in the State of Maine and being concerned about undo pressures. I am sympathetic with that but I'm really not certain that of this is necessary. Mr. President, I request a Division.

Senator **COLLINS** of Aroostook requested a Division.  
**THE PRESIDENT PRO TEM:** The Chair recognizes the Senator from Penobscot, Senator Baldacci.

Senator **BALDACCII:** Thank you Mr. President. Ladies and Gentlemen of the Senate. When talking about refiners, wholesalers, and retailers, we are not indicating that refiners are wholesalers and retailers. I can't tell you that Cumberland Farms who owns the Gulf Refinery in Newfoundland as a refiner, is a small business. And I certainly don't want to burden the small businesses with the same reporting requirements that we're asking of the large refiners. They are different categories. We have changed it so that the reporting, in essence, is the same; but they are different categories. In my mind, I can't say that a wholesaler or a retailer and a refiner all are like a manufacturer and should be under one category. It doesn't happen that way.

The legislation talks about reporting; and in fact, many of the reporting that's going on, is not necessarily the station that's being labeled. It may be owned by somebody else who has an agreement to maintain that station with that logo for a period of time. But, we need to have that reporting in on that information. If it's already being done at the Federal level, I don't know what the big deal is about copying the information for State level. I do take umbrage with the fact that somebody wants to categorize the refiner as a small retailer and that they should be treated the same is an inequity.

We, by many laws that are passed in the Legislature, differentiate between small business and big business. There are laws that mandate insurance protection if there are over 25 employees - or over 20 employees. We don't do it for smaller businesses. There are different rules for smaller businesses as they apply. We have to differentiate in statute. They can't all be lumped together.

It was made clear to us at the hearing and many work sessions on this particular legislation that it would be fine if it weren't anything here and we worked on it ourselves. There was a problem that was pointed out in the hearings, there were three or four areas in the state that share a market concentration by a refiner and are dominated by a refiner in those three or four market areas. Now the prices in some of those market areas are 10¢ or 15¢ higher a gallon than the statewide average. All we're looking for in this legislation is reporting on the market shares in those particular areas and to make a determination for the consumers of this state.

It has been brought to my attention and others, that we're picking on a refiner. If you've noticed a newspaper a couple of days ago, the Attorney General's office just entered into a consent decree with a wholesaler who has a franchise on the Turnpike and was selling higher than he was supposed to be selling. Thank God, that the Attorney General's office is here to protect the consumers and the public. This is not an oil cartel situation that we're trying to protect and let them go and solve themselves. We are talking about the general public. I don't mean to get worked up about this;

but when you're harassed at home, at your business, and here in the Legislature on this particular issue, and it's being portrayed as anti-business, anti-competitive.

As somebody who constantly tries to make sure that Maine is pro-business, pro-growth, and pro-development, it really gets in under my skin! They're very conglomeration and there is no question, if they wanted to, they could go (snapped his fingers) just like that! And I wouldn't be around! That's fine. But as long as I'm standing, as long as I'm breathing, the job that we have to do as a Legislature is the right thing for the people of the State of Maine.

This fiscal note of \$45,000 - \$51,000 altogether to oversee the oil market in the State of Maine, to guarantee to the consumers that wonder why the prices are higher in Augusta than they are in Bangor, or why they are lower in Skowhegan than they in Augusta, or whatever; to have some answers instead of calling the Attorney General's office and getting an answering machine to tell you that the only person in the office is busy now but will be back later, I think, is a small price to pay! We're not talking about food! We're not talking about washers and dryers! We're not talking about any individual item! We're talking about a commodity.

I remember in 1973 when my family's business was under the bridge and we had an oil embargo, and they couldn't buy gasoline on Sundays because it was being rationed while boats were off the shore, full, waiting to take advantage of whether it was old or new oil or gas. Those were tough times! We went out of business. I'm not suggesting that we do unto the oil industry as it has done unto many people. I'm suggesting that all we're looking for is a middle of the road approach, something that is fair to both parties, something that respects all parties, and gives them the opportunity to proceed. As the good Senator from Aroostook pointed out when he talked about existing law. Two of the sections are existing law, but just make it a stiffer penalty under the Unfair Trade Practices Act. That's all it does under that present act. There's not a lot of boogiemen or women in this particular legislation. It's very simple and straight forward and calls for an Advisory Committee made up of the industry and members of the Committee to sit down and go over these issues with the Attorney General's office. I would think it would be in the oil industry's interest for that to occur. I have nothing but praise for the work that the Attorney General has done in this area and I am very happy to have worked on this. Thank you, Mr. President.

The Senator from Cumberland, Senator RICH, requested and received Leave of the Senate to be excused from voting due to the appearance of a conflict of interest.

**THE PRESIDENT PRO TEM:** The pending question before the Senate is the motion by Senator BALDACCI of Penobscot, to ACCEPT the Majority OUGHT TO PASS AS AMENDED Report.

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.

23 Senators having voted in the affirmative and 7 Senators having voted in the negative, the motion by Senator BALDACCI of Penobscot, to ACCEPT the Majority OUGHT TO PASS AS AMENDED Report, PREVAILED.

The Bill READ ONCE.

Committee Amendment "A" (S-640) READ.

**THE PRESIDENT PRO TEM:** The Chair recognizes the Senator from Penobscot, Senator Baldacci.

Senator BALDACCI: Thank you Mr. President. Ladies and Gentlemen of the Senate. I would like an opportunity to have an amendment on that section drafted. Thank you.

On motion by Senator CLARK of Cumberland, Tabled until Later in Today's Session, pending ADOPTION of Committee Amendment "A" (S-640).

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

**SENATE PAPERS**

Bill "An Act to Certify Nonprofessionals Working in Chiropractic Offices"

S.P. 959 L.D. 2428

Presented by Senator BALDACCI of Penobscot

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

(Committee on BUSINESS LEGISLATION suggested and ORDERED PRINTED.)

On motion by Senator BALDACCI of Penobscot, under suspension of the Rules, READ ONCE, without reference to a Committee.

**THE PRESIDENT PRO TEM:** The Chair recognizes the Senator from Penobscot, Senator Baldacci.

Senator BALDACCI: Thank you Mr. President. Ladies and Gentlemen of the Senate. The Committee has already held a work session and discussed this issue. This is simply putting into statute what is presently what the Board is now doing in certifying Chiropractic Assistance which they now do under the State Board. It is just putting that into statute. It is merely a technical amendment to what is now in practice. Thank you.

**THE PRESIDENT PRO TEM:** The Chair recognizes the Senator from Cumberland, Senator Gill.

Senator GILL: Thank you Mr. President. Ladies and Gentlemen of the Senate. I would like to pose a question through the Chair. Can someone tell me whether Medical physicians and Osteopathic physicians have the same assistance to provide diagnostic and therapeutic services under their supervision? Thank you.

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

Senator CONLEY: Thank you Mr. President. Ladies and Gentlemen of the Senate. I believe they are called Physical Therapists. Thank you.

**THE PRESIDENT PRO TEM:** The Chair recognizes the Senator from Penobscot, Senator Baldacci.

Senator BALDACCI: Thank you Mr. President. Ladies and Gentlemen of the Senate. Let me be very brief and very narrow. What is going on now is the Chiropractic Assistants are certified through a board of the State Board and they are certified through that State Board presently. That is not totally recognized because we haven't put that practice into statute. It is already going on within that particular circumstance. That is all this is trying to do. Thank you.

**THE PRESIDENT PRO TEM:** The Chair recognizes the Senator from Cumberland, Senator Gill.

Senator GILL: Thank you Mr. President. Ladies and Gentlemen of the Senate. I appreciate the good Senator from Cumberland, Senator Conley responding that they are called Physical Therapists. I don't

believe when it talks about diagnosis that Physical Therapists are diagnosing. I think they provide treatment but I am not sure they are diagnosing. I would ask that maybe this be tabled so we can talk about it some more. Thank you.

On motion by Senator PRAY of Penobscot, the Bill, **LATER ASSIGNED FOR SECOND READING.**

On motion by Senator PRAY of Penobscot, **RECESSED** until 5:00 in the afternoon.

After Recess  
Senate called to order by the President Pro Tem.

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 Maine Transportation Authority As the Successor Agency to the Maine Turnpike Authority"

H.P. 1739 L.D. 2426

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:

**COMMITTEE REPORTS**  
**Senate**

**Ought to Pass As Amended**

Senator GAUVREAU for the Committee on **JUDICIARY** on Bill "An Act to Grant Immunity for Directors of Rural Electrification Cooperatives"

S.P. 915 L.D. 2352

Reported that the same **Ought to Pass as Amended** by **Committee Amendment "A" (S-641).**

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

The Bill **READ ONCE.**

Committee Amendment "A" (S-641) **READ** and **ADOPTED.**

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

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

**COMMITTEE REPORTS**  
**House**

**Ought to Pass**

The Committee on **APPROPRIATIONS & FINANCIAL AFFAIRS** on Bill "An Act to Distribute General Purpose Aid for Local Schools for Fiscal Year 1992-93"

H.P. 1740 L.D. 2427

Reported that the same **Ought to Pass,** pursuant to Joint Order H.P. 1738.

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

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

The Bill **READ ONCE.**

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

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

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

**HOUSE REPORTS** - from the Committee on **UTILITIES** on Bill "An Act to Require a Total Least-cost Energy Plan and to Establish a Moratorium on Fossil-fuel Fired Electric Generation Facilities in This State" (Emergency)

H.P. 1625 L.D. 2288

Majority - **Ought Not to Pass.**

Minority - **Ought to Pass as Amended by Committee Amendment "A" (H-1083).**

In House, March 16, 1992, the Minority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1083).**

In Senate, March 17, 1992, the Majority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED** in **NON-CONCURRENCE.**

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

Senator CLEVELAND of Androscoggin moved that the Senate **ADHERE.**

Senator GOULD of Waldo moved that the Senate **RECEDE** and **CONCUR.**

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

Senator PEARSON: Thank you Mr. President. Ladies and Gentlemen of the Senate. I was under the impression this was going to be amended but I must be mistaken. Thank you.

The Chair ordered a Division.

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

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

Senator CLEVELAND: Thank you Mr. President. Ladies and Gentlemen of the Senate. I rise, once again, because of my concern for the implications of this Bill. Let me share with you one additional piece of information that I have literally received minutes ago. It was handed to me as I walked into the Chamber. It was obviously handed to me because I have been the primary spokesperson for those indicating caution on this motion.

It has just come to our attention there is a new research and development project going on in Kennebunk, Maine or will undergo construction shortly in Kennebunk, Maine in an old building once occupied by Sharp. It is the largest program in the world on coal research to advance the technology for the use of coal to make it as clean as possible in future uses around the country. It is a project that was able to be granted and located in Maine because of the efforts of our own Senator Mitchell. The project will use coal for its burning. It will be the primary and sole fuel used within this project. As defined in our moratorium, the construction of this particular project even though it is granted under a Federal grant, will not be able to go forward. The research and development on this project will have to be stopped. I would urge you not to impose this moratorium. Thank you.

Senator GOULD of Waldo requested and received leave of the Senate to withdraw his motion for a Roll Call.

**THE PRESIDENT PRO TEM:** The pending question before the Senate is the motion of Senator GOULD of Waldo, to **RECEDE** and **CONCUR.**

The Chair ordered a Division.

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.

12 Senators having voted in the affirmative and 21 Senators having voted in the negative, the motion of Senator GOULD of Waldo, to RECEDE and CONCUR, FAILED.

Senator BALDACCI of Penobscot moved that the Senate INSIST and ASK FOR A COMMITTEE OF CONFERENCE.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Penobscot, Senator Pray.

Senator PRAY: Thank you Mr. President. Ladies and Gentlemen of the Senate. I would like to inquire of the Senator of Penobscot, Senator Baldacci the purpose of his motion. What does he think could be achieved? Thank you.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Penobscot, Senator Baldacci.

Senator BALDACCI: Thank you Mr. President. Ladies and Gentlemen of the Senate. After consulting with my colleagues there have been a couple of options that have been discussed. In a meeting that was held yesterday there were a couple of options we thought were going to be presented on this Legislation that aren't a part of this Legislation and a couple of other ideas we would like the opportunity to explore in a Committee of Conference which would discuss it with the other Body. It is for that purpose we would be able to do that. Thank you.

Senator PRAY of Penobscot requested a Division.

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

Senator CLEVELAND: Thank you Mr. President. Ladies and Gentlemen of the Senate. I think I am recognized as one who is often willing to compromise and find middle ground. We need to also recognize where we are in the Session. There are but a few days left to adjournment. We are not talking about an issue that necessarily has a simple amendment to correct language, delete or add something that will make it palatable. We are talking about the kinds of substantive amendments that talks about comprehensive integrated proposals to look at a very complex planning process for all sorts of energy and energy production within our State. All of which, I assure you, after having sat through weeks of discussions in the Comprehensive Planning Commission, are not simple subjects that will be rectified in my humble estimation in a Committee of Conference. The results, I think will be, that we will fail at the Committee of Conference. I don't believe it is a realistic hope. If it was I would participate. I would much rather use our time more effectively dealing with those issues in a separate Bill that can come before this Body in January and deal with it in a comprehensive way. I would ask you not to support the motion. Thank you.

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

Senator PEARSON: Thank you Mr. President. Ladies and Gentlemen of the Senate. There are a number of us who come from relatively close to that area who feel almost schizophrenic about this. On the one hand we would like to have it and on the other hand we want to make sure it is done right and that it is necessary. I support Senator Baldacci from Penobscot motion asking for a Committee of Conference. One of the reasons I support that is

because I know whose is going to do the appointment to the Committee of Conference. I have all the faith in the world that he will put on very good people. Thank you.

On motion by Senator PRAY of Penobscot, Tabled until Later in Today's Session, pending the motion by Senator BALDACCI of Penobscot, to INSIST and ASK FOR A COMMITTEE OF CONFERENCE (Division Requested).

#### COMMITTEE REPORTS

##### House

##### Ought to Pass As Amended

The Committee on JUDICIARY on Bill "An Act to Eliminate Mandatory Minimum Sentences"

H.P. 1698 L.D. 2378

Reported that the same Ought to Pass as Amended by Committee Amendment "A" (H-1144).

Comes from the House with the Report READ and ACCEPTED and the Bill PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1144).

Which Report was READ and ACCEPTED, in concurrence.

The Bill READ ONCE.

Committee Amendment "A" (H-1144) READ and ADOPTED, in concurrence.

The Bill as Amended, TOMORROW ASSIGNED FOR SECOND READING.

The Committee on LEGAL AFFAIRS on Bill "An Act to Repeal Increases in Concealed Weapons Permit Fees and to Increase the Fees Related to Arbitrations under the Lemon Law" (Emergency)

H.P. 1601 L.D. 2263

Reported that the same Ought to Pass as Amended by Committee Amendment "A" (H-1138).

Comes from the House with the Report READ and ACCEPTED and the Bill PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1138) AS AMENDED BY HOUSE AMENDMENT "A" (H-1147) thereto.

Which Report was READ and ACCEPTED, in concurrence.

The Bill READ ONCE.

Committee Amendment "A" (H-1138) READ.

House Amendment "A" (H-1147) to Committee Amendment "A" (H-1138) READ and ADOPTED, in concurrence.

Committee Amendment "A" (H-1138) As Amended by House Amendment "A" (H-1147) thereto, ADOPTED, in concurrence.

The Bill as Amended, TOMORROW ASSIGNED FOR SECOND READING.

##### Divided Report

The Majority of the Committee on JUDICIARY on Bill "An Act to Establish Consecutive Sentencing and Mandatory Minimum Sentences for Certain Persons Convicted of Gross Sexual Assault"

H.P. 1607 L.D. 2269

Reported that the same Ought Not to Pass.

Signed:

Senators:

GAUVREAU of Androscoggin  
BERUBE of Androscoggin  
HOLLOWAY of Lincoln

**Representatives:**

FARNSWORTH of Hallowell  
 KETTERER of Madison  
 CATHCART of Orono  
 HANLEY of Paris  
 PARADIS of Augusta  
 COTE of Auburn  
 ANTHONY of South Portland  
 RICHARDS of Hampden  
 STEVENS of Bangor

The Minority of the same Committee on the same subject reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-1145).**

Signed:

Representative:

OTT of York

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

Which Reports were **READ**.

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

**Divided Report**

The Majority of the Committee on **STATE & LOCAL GOVERNMENT** on Bill "An Act to Establish a Budget Committee and Process for Cumberland County" (Emergency)

H.P. 1603 L.D. 2265

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

Signed:

Representatives:

WATERMAN of Buxton  
 SAVAGE of Union  
 NASH of Camden  
 LARRIVEE of Gorham  
 HEESCHEN of Wilton  
 JOSEPH of Waterville  
 KILKELLY of Wiscasset  
 LOOK of Jonesboro  
 KERR of Old Orchard Beach

The Minority of the same Committee on the same subject reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-1129).**

Signed:

Senators:

BERUBE of Androscoggin  
 BUSTIN of Kennebec  
 EMERSON of Penobscot

Representative:

GRAY of Sedgwick

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

Which Reports were **READ**.

On motion by Senator **BERUBE** of Androscoggin, the Minority **OUGHT TO PASS AS AMENDED** Report **ACCEPTED** in **NON-CONCURRENCE**.

The Bill **READ ONCE**.

Committee Amendment "A" (H-1129) **READ** and **ADOPTED**.

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

Sent down for concurrence.

**SECOND READERS**

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

**Senate**

Bill "An Act to Certify Nonprofessionals Working in Chiropractic Offices"

S.P. 959 L.D. 2428

Which was **READ A SECOND TIME**.

On motion by Senator **BALDACCI** of Penobscot, Tabled 1 Legislative Day, pending **PASSAGE TO BE ENGROSSED**.

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

**COMMITTEE REPORTS**

**Senate**

**Ought to Pass As Amended**

Senator **TWITCHELL** for the Committee on **AGRICULTURE** on Bill "An Act to Expand the Membership of the Animal Welfare Board"

S.P. 696 L.D. 1861

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-639)**.

Which Report was **READ**.

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

Senator **GAUVREAU:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I apologize for rising on this Bill. I know it is a unanimous Committee Report. My purpose in rising deals with a small section of the Bill as I have read this evening for the first time. There is a section in L.D. 1861 or in the Committee Amendment to the Bill, which deals with the area of immunity on what is referred to as equine liability. I suppose that is fancy wording for negligence actions for stable operators. My purpose in rising is that the Committee on Judiciary dealt with this topic area in some detail last year in one of several Bills which was requesting immunity from Tort liability. The Committee at that time chose not to extend immunity and took a variety of other procedures of actions. I guess my question is if someone from the Committee could rise and explain specifically how L.D. 1861 or the Committee Amendment deals in this area of immunity. As far as I know no one from the Committee has actually reviewed the immunity portions of the Bill. Thank you.

On motion by Senator **CLARK** of Cumberland, Tabled 1 Legislative Day, pending **ACCEPTANCE** of Committee Report.

Senator **BALDACCI** for the Committee on **ENERGY & NATURAL RESOURCES** on Bill "An Act to Amend Various Provisions of the Laws Governing Solid Waste Disposal Facilities" (Emergency)

S.P. 897 L.D. 2311

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-642)**.

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

The Bill **READ ONCE**.

Committee Amendment "A" (S-642) **READ** and **ADOPTED**.

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

**ORDERS OF THE DAY**

The President Pro Tem laid before the Senate the Tabled and Later Today Assigned matter:

Bill "An Act to Reform the Workers' Compensation System"

H.P. 1735 L.D. 2423



Yorke. Tabled - March 18, 1992, by Senator **DUTREMBLE** of

Pending - **REFERENCE**  
(Committee on **BANKING & INSURANCE** suggested and **ORDERED PRINTED**.)

(In House, March 17, 1992, referred to the Committee on **BANKING & INSURANCE**.)

On motion by Senator **CLARK** of Cumberland, **REFERRED** to the Committee on **LABOR** and **ORDERED PRINTED** in **NON-CONCURRENCE**.

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

The President Pro Tem laid before the Senate the Tabled and Later Today Assigned matter:

Bill "An Act Concerning the Renewal of Agency Liquor Store Licenses"

H.P. 1443 L.D. 2055

Oxford. Tabled - March 18, 1992, by Senator **MILLS** of

Pending - **ADOPTION** of Committee Amendment "A" (H-1121), in concurrence

(In House, March 17, 1992, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1121)**.)

(In Senate, March 18, 1992, Committee Amendment "A" (H-1121) **READ**.)

Committee Amendment "A" (H-1121) **ADOPTED**, in concurrence.

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

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

Bill "An Act to Extend the Appraisal License Effective Date" (Emergency)

H.P. 1734 L.D. 2422

Penobscot. Tabled - March 18, 1992, by Senator **BALDACCI** of

Pending - **REFERENCE**  
(Committee on **BUSINESS LEGISLATION** suggested and **ORDERED PRINTED**.)

(In House, March 17, 1992, under suspension of the Rules, **READ TWICE** and **PASSED TO BE ENGROSSED**, without reference to a Committee.)

On motion by Senator **BALDACCI** of Penobscot, Tabled 1 Legislative Day, pending **REFERENCE**.

The President Pro Tem laid before the Senate the Tabled and Later Today Assigned matter:

Bill "An Act to Establish the Petroleum Market Share Act"

S.P. 844 L.D. 2148

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

Pending - **ADOPTION** of Committee Amendment "A" (S-640)

(In Senate, March 18, 1992, Committee Amendment "A" (S-640) **READ**.)

On motion by Senator **BALDACCI** of Penobscot, Tabled 1 Legislative Day, pending **ADOPTION** of Committee Amendment "A" (S-640).

On motion by Senator **PRAY** of Penobscot, the Senate removed from the Later Today Assigned Table, the following:

An Act to Require a Total Least-cost Energy Plan and to Establish a Moratorium on Fossil-fuel Fired Electric Generation Facilities in This State (Emergency)

H.P. 1625 L.D. 2288

Penobscot. Tabled - March 18, 1992, by Senator **PRAY** of

Pending - Motion by Senator **BALDACCI** of Penobscot to **INSIST** and **ASK FOR A COMMITTEE OF CONFERENCE** (Division Requested).

(In House, March 16, 1992, the Minority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1083)**.)

(In Senate, March 17, 1992, the Majority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED** in **NON-CONCURRENCE**.)

(In House, March 18, 1992, **INSIST**.)

(In Senate, March 18, 1992, motion to **RECEDE** and **CONCUR**, **FAILED**.)

**THE PRESIDENT PRO TEM:** The Chair recognizes the Senator from Penobscot, Senator Pray.

Senator **PRAY:** Thank you Mr. President. Ladies and Gentlemen of the Senate. It is my understanding now that there are not amendments being drafted. There are not amendments being drafted for this. If I am incorrect then I would like to hear from those who are proposing amendments at this time. If not I think that the good Senator from Androscoggin, Senator Cleveland, who is one of the foremost champions of local control on issues, explained very well the process that is there today and the permitting regulatory process and why he is the Chair of that Committee moved the Ought Not To Pass Report. For that reason I would continue with my request for a Division on the motion to Insist and ask for a Committee of Conference. Thank you.

**THE PRESIDENT PRO TEM:** The Chair recognizes the Senator from Penobscot, Senator Baldacci.

Senator **BALDACCI:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I am very appreciative and understanding of the Senator from Penobscot, Senator Pray's concerns. I share those concerns. I don't think there is anyone in this Chamber who would be presumptuous to think that something would already be drafted and ready to slap together and present for this Body. There is an honest disagreement between the branches. It would be my hope there would be an opportunity to present ideas to the other Body in regards to this particular matter. If we were unable to agree than we would be unable to agree. I am having a hard time supporting the moratorium language and if there was an opportunity to discuss this it is for that reason. Thank you.

**THE PRESIDENT PRO TEM:** The pending question before the Senate is the motion of Senator **BALDACCI** of Penobscot, to **INSIST** and **ASK FOR A COMMITTEE OF CONFERENCE**.

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.

16 Senators having voted in the affirmative and 17 Senators having voted in the negative, the motion of Senator **BALDACCI** of Penobscot, to **INSIST** and **ASK FOR A COMMITTEE OF CONFERENCE**, **FAILED**.

Senator **CAHILL** of Sagadahoc moved that the Senate **RECEDE** and **CONCUR**.

Senator PRAY of Penobscot requested a Division.

On motion by Senator GOULD of Waldo, supported by a Division of one-fifth of the members present and voting, a Roll Call was ordered. Subsequently the same Senator requested and received leave of the Senate to withdraw his motion for a Roll Call.

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

**THE PRESIDENT PRO TEM:** The pending question before the Senate is the motion of Senator CAHILL of Sagadahoc to **RECEDE** and **CONCUR**.

A vote of Yes will be in favor of the motion to **RECEDE** and **CONCUR**.

A vote of No will be opposed.

Is the Senate ready for the question?

Senator ESTY of Cumberland who would have voted **NAY** requested and received Leave of the Senate to pair his vote with Senator MCCORMICK of Kennebec who would have voted **YEA**.

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

**ROLL CALL**

**YEAS:** Senators BERUBE, BRAWN, CAHILL, CLARK, EMERSON, ESTES, FOSTER, GOULD, KANY, LUDWIG, MILLS, RICH, TITCOMB, WEBSTER

**NAYS:** Senators BALDACCI, BOST, BRANNIGAN, BUSTIN, CARPENTER, CLEVELAND, COLLINS, CONLEY, DUTREMBLE, GAUVREAU, GILL, HOLLOWAY, PEARSON, PRAY, SUMMERS, THERIAULT, VOSE, PRESIDENT PRO TEM - ZACHARY E. MATTHEWS

**PAIRED:** Senators ESTY, MCCORMICK

**ABSENT:** Senators TWITCHELL

14 Senators having voted in the affirmative and 18 Senators having voted in the negative, with 2 Senators having paired their votes and 1 Senator being absent, the motion of Senator CAHILL of Sagadahoc, to **RECEDE** and **CONCUR**, **FAILED**.

On motion by Senator CLEVELAND of Androscoggin, the Senate **ADHERED**.

The Secretary has so informed the Speaker of the House.

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

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

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

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

On motion by Senator PRAY of Penobscot, **RECESSED** until the sound of the bell.

After Recess

Senate called to order by the President Pro Tem.

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

**COMMITTEE REPORTS**

**House**

**Divided Report**

The Majority of the Committee on **LABOR** on 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

Reported that the same **Ought to Pass as Amended** by Committee Amendment "A" (H-1142).

Signed:

Senators:

ESTY of Cumberland  
CONLEY of Cumberland  
CARPENTER of York

Representatives:

LIPMAN of Augusta  
AIKMAN of Poland  
RAND of Portland  
PINEAU of Jay  
HASTINGS of Fryeburg  
ST. ONGE of Greene  
BENNETT of Norway  
RUHLIN of Brewer

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

Signed:

Representatives:

MCHENRY of Madawaska  
MCKEEN of Windham

Comes from the House with the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Resolve **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1142)**.

Which Reports were **READ**.

On motion by Senator ESTY of Cumberland, the Majority **OUGHT TO PASS AS AMENDED** Report **ACCEPTED**, in concurrence.

The Bill **READ ONCE**.

Committee Amendment "A" (H-1142) **READ** and **ADOPTED**, in concurrence.

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

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

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

**COMMITTEE REPORTS**

**House**

**Divided Report**

The Majority of the Committee on **BANKING & INSURANCE** on Bill "An Act to Allow Elementary and Secondary Schools to Obtain Insurance Coverage through the Risk Management Division"

H.P. 1449 L.D. 2061

Reported that the same **Ought to Pass as Amended** by Committee Amendment "A" (H-1143).

Signed:

Senators:

KANY of Kennebec  
MCCORMICK of Kennebec

Representatives:

MITCHELL of Vassalboro  
ERWIN of Rumford  
TRACY of Rome  
KETOVER of Portland

JOSEPH of Waterville  
 RAND of Portland  
 PINEAU of Jay  
 GARLAND of Bangor  
 CARLETON of Wells  
 HASTINGS of Fryeburg

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

Signed:

Senator:

BRAWN of Knox

Comes from the House with the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1143).**

Which Reports were **READ.**

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

The Bill **READ ONCE.**

Committee Amendment "A" (H-1143) **READ.**

On motion by Senator **BRAWN** of Knox, Senate Amendment "A" (S-644) to Committee Amendment "A" (H-1143) **READ.**

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

Senator **KANY:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I ask for a Division. I urge you to vote against the adoption of this amendment. The amendment would actually gut a very good Bill that has been worked out in conjunction with the Maine School Management Association, with the Administration, the Attorney General's Office, and many others. The Bill would separate a fund that now exists into two funds. One being a State fund for self insurance for liability for State and the other into a state administered fund which is like a mutual fund self-insurance fund for State related matters including education. Our vocational colleges are currently involved and there are many other entities that benefit and the taxpayers benefit from the state administering such a self-insurance fund. The Bill would allow our schools the option of choosing to join such a State administered self-insurance fund. This is a very positive thing to save taxpayers money if that is the choice of the individual school district. No one would be mandating or forcing them to choose this. The good Senator from Knox, Senator Brawn's amendment would delete that opportunity for our school systems to save their taxpayers that money and would deny them that option.

Second, it would require that the State administered fund come within Title 24A which is into the Bureau of Insurance and would mean the necessity of creating three additional positions. That would cost taxpayers money unnecessarily. Third, it would also cost the Vocational Technical Colleges and others more taxpayers money. I urge you to reject the amendment which is being offered at this time. I hope we can go on and enact this fine Bill which has been sought after by many school systems throughout this State and by others who want an improvement in the Laws in this area. Thank you.

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

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

Senator **BRAWN:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I dearly appreciate the remarks of the good Senator from Kennebec, Senator

Kany but I want to very strongly say that I am trying to save this Bill. I am trying to save this Bill and keep it from another veto. Before I share my written remarks with you I want to talk personally to say that this is a Bill that was vetoed last year. We went through that debate several times at the end of last year. The Bill passed and was vetoed by the Governor. We sustained the veto of the Governor. I was very upset to see this Bill before us again because in the Rules I did not believe that was allowed. Those are my remarks.

I would like to explain the amendment if you folks would give me the courtesy of having an open mind. This amendment, I believe, will save the Bill if you allow it to go on. The amendment does remove the requirement that the Director of the Risk Management Division provide insurance to schools. It allows insurance services to be provided to the University of Maine and the Maine Maritime Academy without reference to the Maine Insurance Code. I know some of you folks have had concerns about what would Maine Maritime? My amendment will take care of that. For non state agencies, the State Administered Fund must comply with the provisions that the Maine Insurance Code related to premiums, rating practices, solvency, reserving, and licenses as specifically listed in the Maine Revised Statutes Title 24A Section 1728A and 1737. I hope you will give some serious consideration to this amendment. I hope you will allow it to go on so this Bill may pass and we can be helpful.

The Bill, L.D. 2061 creates a State owned mutual insurance company which will be administered by the Risk Management Division. It will operate in direct competition with the private sector professional independent insurance agent. All of these professional independent insurance agents will be here tomorrow. They didn't know this Bill was coming tonight. Whatever we do here tonight our people will be here tomorrow. I didn't dare put my button on because I was afraid the President would rule me out of order. The State is broke, Ladies and Gentlemen. If you want to put the State in the part of being in insurance when we already broke. L.D. 2061 suggests that the Risk Management Division without any additional staffing will have the ability to handle the job of selling and servicing insurance policies to schools around the State. A job that in the private sector takes literally thousands of professionals to handle it appropriately. Who is kidding who? To protect insurance policy holders in this State, we have created and staffed a watch dog agency, the Bureau of Insurance. We have set up very strict standards of professionalism and integrity for the agents, brokers, consultants, claim adjusters and insurance companies that are involved in the business of insurance. We mandate that anyone who wants to sell insurance or advice about insurance must take and pass tough licensing exams. We are concerned that merely being licensed as an insurance agent, broker, or consultant wasn't enough protection for Maine citizens.

It was only a few short years ago that we passed a law to say that those licensed professionals could only renew their licenses if they took a minimum of 30 hours of accredited insurance education every two years. L.D. 2061 says lets throw the insurance licensing and continuing education laws right out the window. Let's not worry about who sells and services insurance policies. Let's allow employees of State

Government, without any need of professional qualifications, to sell and service insurance policies to Maine citizens. L.D. 2061 targets school insurances. It tries to put the insurance company that is to be run by the State as proposed policy holders under the umbrella of the \$300,000 cap of the Maine Tort Claim Act. A noble intention. I have talked to some pretty smart lawyers who tell me that if one of our school buses goes across Maine borders and gets involved in a serious accident then the \$300,000 cap becomes non-existent for the school system that owns the bus. In that accident the State of Maine will be protected by the cap. The Maine's Mutual Insurance Company will be protected by the cap. The school system will only have \$300,000 of coverage. The claim in the law suit could be settled for a lot more than the \$300,000 and guess who will be responsible for the settlement amount? The taxpayers of the State of Maine. Another problem with the cap is that it doesn't hold up if law suits are brought into Federal Courts. Most civil rights types of actions are brought into Federal Court.

What if this new insurance company is insuring your school and your School Board has unjustly fired a teacher. Where is that teacher going to bring that civil rights law suit. They will bring it into Federal Court. You can kiss that \$300,000 cap good-bye. Again, the State of Maine and its insurance company are going to be protected by the cap. The insurance policy is only going to cover up to \$300,000. Your local taxpayers are going to have to dig deep to pay the difference. It kind of sounds like Savings and Loan to me. Today those schools buy their insurance through professional independent insurance agents who put the business with companies that offer multi-million dollar limits of coverages. These companies reinsure a big part of that coverage to protect their solvency if they take a big hit. The policy holders of these companies are by Maine Law covered by the guarantee fund if the companies go belly up. None of these consumer protections are in place for the State's insurance company that is being proposed in this Bill without the amendment on it. This Bill says that the State's insurance company is only responsible to pay those claims it can afford. If it runs out of money the policy holders are left high and dry with no reinsurance and no guarantee fund. Talk about a gamble, I think this is worse than video gambling. Why do we have insurance laws, rules and regulations if not because in our collective wisdom we feel we need to protect our citizens from financial harm. Why are we creating an insurance company that is going to be run by the State and doesn't have to follow the same laws, rules, and regulations we impose on everyone else. It doesn't make sense to me and I think it is a dangerous precedent for us to tell the Risk Management Division to go ahead sell and service insurance to schools and other non state entities but don't bother with the laws and rules concerning rulemaking, claims reserving, professional licensing, continuing education, capitalization, and investment practices.

Ladies and Gentlemen of the Senate, do we really think we can do a better job than the thousands of professional independent agents in this State? Do you really think the citizens of this State will be better served when we expose them to unknown future tax burdens? The Director of the Risk Management Division needs to transfer two accounts out of the

Maine State self insurance fund as my amendment will allow, the University of Maine System and the Maine Maritime Academy. We need to do that to protect some Federal funding and protect our State against law suits. That can be easily done with this amendment. This Bill in its current form I think goes to far and causes a lot more problems than it cures. L.D. 2061 takes jobs away from the private sector. L.D. 2061 gives the State a preferentially uneven playing field that is not even imaginable. L.D. 2061 puts local taxpayers in jeopardy. Let's not lose sight of the fact that those premium dollars are today taxed. Those insurance companies today pay a hefty tax to the State. You drive them out and the revenues are going to be gone to the general fund. The State run mutual insurance company premium dollars will not be taxed. That loss of tax revenue could be substantial in a recessionary time. I ask that you will consider this amendment. I think we need to make the State run mutual insurance company subject to the insurance code. We need to limit the insurance it will provide to counts exclusively, the University of Maine System and the Maine Maritime Academy. I would respectfully ask for a roll call. This Bill has been worked on many times. I will give our Committee a great deal of credit for trying to do that. I hope you will be open minded to see both sides and allow this amendment to go on. Maine School Management has said they cannot put together an insurance policy that will be any less than what is already there. I guess that leaves me with why would we want to put the State in that situation? Thank you.

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

Senator KANY: Thank you Mr. President. Ladies and Gentlemen of the Senate. First of all this is a far different Bill than the one that the Governor vetoed last year. It had been, last year, opposed by the Department of Administration and the Maine School Management Association. They strongly favor this Bill. We worked very closely with them and others in developing this excellent Legislation which could save taxpayers a great deal of money. It is interesting to see some of the figures and then you will know why the insurance industry is so strongly opposed to this Legislation.

In 1990 schools paid \$3.8 million for this type of insurance coverage and claims were only \$500,000. In 1991 premiums were over \$4,000,000 and the claims were about \$800,000. No wonder they want it and I don't blame them for fighting that. We have to have the public interest in mind first as we develop our public policy. We have done so in the development of this Bill. I believe that we have done a good job keeping in mind we are not forcing schools to save these funds. They can choose if they wish to do so or not. We are making certain that self insurance, mutual funds are actuary sound. For those of you who are not familiar with Title 30A provisions on public self funded pools, there are plenty of provisions there that would safeguard these funds. By the way, the Risk Management Division has an excellent record and I urge you to allow our schools the same opportunity for less expensive self insurance if they so choose that the University and the Vocational Technical Colleges have long enjoyed. I urge you to oppose this amendment. Thank you.

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

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

Senator **CLEVELAND:** Thank you Mr. President. Ladies and Gentlemen of the Senate. There are those of you who suggest that this Bill somehow puts or students, local municipalities, and school districts in tremendous jeopardy. This is a new, radical and untried experiment that we, once again, are going to go off on by ourselves. Nothing could be further from the truth. This is a process and an opportunity that has existed here for years. Currently all our State buildings are insured under this program and have been for years. They have not lost a dime. All our Technical Colleges are insured under this program. The entire University of Maine System is insured under this program. I am not sure but they may take a bus across the state line to bring the basketball team to the game. We have not had a problem for years within this system. All the unorganized K-12 schools have been insured under this program for eight years and never has had a problem. This is not new nor is it untried. West Virginia has tried it, Virginia and Wyoming have tried it and all have had tremendous success. Additionally, 43 different groups and agencies including the Casco Bay Ferry, all foster homes which cannot get insurance in the private market, use this same insurance without any difficulty. Senator Brawn's amendment would put them under a new class that may well make them unable to collect that.

What is also important is to take a look at the potential savings here. Conservatively it is estimated that local districts can save \$2,500,000 a year. That money can go for much better purposes like education, teachers, and books. I have taken the opportunity to take a look at the same figures that Senator Kany has been looking at over the last several years. From 1986 through 1991 \$21,120,000 in premiums has been paid by our local municipalities. The claims paid out was some \$4.7 million. The difference is \$16.4 million in six years. Just give me the interest on that and I will do very well and retire from the Senate. This is about money and who gets money. This is about people like Tim Smith who had the courage in that Division to stand up and say the people of this State could save millions of dollars. We can do it. We have done it for years. We are responsible. There has never been a problem and we have never lost a cent. He was fired because he said that. He wasn't fired because he was incompetent or for any other reason but because he spoke up. Here is another attempt to somehow silence the will of the people. This is a proposal that should have been passed years ago. Now is our opportunity to do it. There isn't one valid reason not to and I would hope you would not support the amendment. Thank you.

**THE PRESIDENT PRO TEM:** The Chair recognizes the Senator from Cumberland, Senator Gill.

Senator **GILL:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I would like to pose a question. I am looking at the amendment that now is the Bill and it says that there is a fiscal note added. I wonder if someone can tell me whether there is personnel added and what is the fiscal note on that Bill? Thank you.

**THE PRESIDENT PRO TEM:** The Senator from Cumberland, Senator Gill posed a question through the Chair to anyone who would answer it. The Chair recognizes the Senator from Kennebec, Senator Kany.

Senator **KANY:** Thank you Mr. President. Ladies and Gentlemen of the Senate. Senator Brawn of Knox's amendment could create additional costs for three additional positions in the Bureau of Insurance. These positions are unnecessary. Without that the fiscal note is attached to the Committee Amendment that twelve out of the thirteen members of the Committee support. The Risk Management Division and the Bureau of Insurance are able to provide these services without additional costs. By the way, the Federal Government and the Attorney General's Office suggested that we needed this change in the law because the self insurance for the University and the Vocational Technical Colleges are currently lumped in with the State self insurance. They recommended these changes. I urge your support of the changes that the Committee is proposing and I urge you to oppose the Senator from Knox, Senator Brawn's amendment. Thank you.

**THE PRESIDENT PRO TEM:** The Chair recognizes the Senator from Cumberland, Senator Gill.

Senator **GILL:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I don't believe I got an answer to my question because what I am looking at is the Committee Amendment "A" (H-1143). On that amendment it says this amendment also adds a fiscal note. I don't have that information before me to tell me how many personnel that adds and what the fiscal note is there. As I look through that I see a lot of performing functions and it is going to provide services and additional help to all these entities. It seems to me, there will need to be a fiscal note and personnel there. Thank you.

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

Senator **PEARSON:** Thank you Mr. President. Ladies and Gentlemen of the Senate. The fiscal note is a positive fiscal note. Thank you.

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

Senator **KANY:** Thank you Mr. President. Ladies and Gentlemen of the Senate. The reason there is not additional costs is because it is basically a mutual fund. The State would charge a certain amount for the administration. We are really only expanding in three areas under this Bill. One is to allow schools to join and pay premiums. There would be a lid on the amount that would be paid. In addition, Senator Summers of York had a proposal which we decided to place within this Legislation and so did Representative Luther. We would allow certain specific childrens homes for children with special needs to be included here. Once again it would be a self insurance or a mutual fund in which the premiums would be paid by those who are getting the services. The reason that the Senator from Knox, Senator Brawn's amendment would cost more than this is because she is suggesting more services by the Bureau of Insurance. They are not the ones who are providing the services in the Committee's Bill. Thank you.

**THE PRESIDENT PRO TEM:** The Chair recognizes the Senator from Cumberland, Senator Gill.

Senator **GILL:** Thank you Mr. President. Ladies and Gentlemen of the Senate. Maybe it is getting too late and I am getting too tired. I am still looking at Committee Amendment "A" (H-1143) and on page 8 under C it says, it will obtain legal and other services necessary to administer or to defend claims against persons or entities insured by the State

administered fund. I don't see anywhere who is going to be the attorney that will pursue these claims? Thank you.

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

Senator **KANY:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I don't know how to explain this any differently. When you have self insurance or mutual fund, those that participate pay premiums of a certain amount to cover such expenses. It could be far cheaper than what they are doing in the private sector. You heard the outrageous and enormous premiums they are paying now in the private sector for the schools and how little their claims are. Under a mutual fund or group self insurance they will pay premiums only to what the expected claims are and the direct cost associated with pursuing those claims. It can be much cheaper. I am sorry maybe I am not communicating properly. I think you can see where you don't have a lot of profit in there or potential costs which may not occur. This is why it can be cheaper. We do have experts in this area now in the State. We have been extremely fortunate. Thank you.

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

Senator **COLLINS:** Thank you Mr. President. Ladies and Gentlemen of the Senate. As I understand the Bill in its present form we sort of have two separate pieces here. We have a State administered fund and we have another fund that handles State property. It seems to me that the second fund essentially is a mutual fund and it puts the State squarely in the insurance business. It charges premiums to the schools, mental health facilities and other high risk type of private facilities that are licensed by the Department of Human Services. What concerns me is that I don't think the State ought to be in the business of selling insurance. I don't think we ought to be putting forth resources that I am sure will be necessary in order to enter this business. This is like a private mutual fund. A private mutual fund does not have stock holders and supposedly is owned by the people who buy its insurance which is precisely the type of thing you are doing by opening this up to schools and other high risk but necessary facilities. You are doing it for a number of things. It seems to me that were you to start this and have a bad first year and you are restricting payments just to this fund, you could well be in a disastrous position right off the bat. There is no initial capital provided for this. It seems to me that is a terrible risk to put on the State or on the schools.

They used to have mutual funds that allowed you to assess your participants. In today's market that doesn't happen very much anymore because mutual funds eventually have built themselves up and have sufficient capital which is required. Under the supervision of the Bureau of Insurance there are certain capital requirements in order to sell this insurance. We are in the process of putting the State of Maine in exactly the same situation without any capital. If there isn't any capital then you are going to look to the State for payment of claims. If your estimates are wrong or you have a disaster you could well be in financial trouble. The property market right now is a soft market. I would bet in the private sector you could buy property for a school house probably cheaper than you could with an

arrangement like this. I don't see this as doing anything for schools. I don't think it is doing anything for the State other than putting us in the position where we have increased liability. I would suggest the amendment does make it somewhat more palatable because it does remove the school section from it. I am aware that State owned property is self insured and has been for some time. This expands it a great deal and I think it expands risk. I think we would be better served if we didn't do it. The next best thing would be to adopt this amendment which does put it back to where we are now. Thank you.

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

Senator **PEARSON:** Thank you Mr. President. Ladies and Gentlemen of the Senate. On page 10 of the amendment there is a fiscal note. With regards to schools it says that schools that choose to self insure through the Risk Management Division of the Department of Administration and Financial Services could realize savings in insurance expenditures. Any local savings will reduce future general fund appropriations for general purpose aid for eligible schools. If you wanted to you could probably buy some kind of insurance policy on the secondary market to cover you until you get your feet under you. That is what I would do if I were going to run it. I see some nods around this Chamber of people who know a lot more than I do about it. The fiscal note is on page 10. In any case it says the Bureau of Insurance within the Department of Professional and Financial Regulations can absorb the cost. The Department of Human Services can absorb the costs associated with liability insurance for licensed specialized foster homes. In every case it is a positive fiscal note. If you philosophically don't agree with that that is another question. I understand that argument but it is not going to cost money according to the people who do the analysis downstairs who I trust. The question is do you want to save money for local taxpayers? I do. Thank you.

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

Senator **BRAWN:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I didn't think of it until I was sitting here. I knew there was a reason I wore black and blue today. I sometimes feel like I am black and blue. I feel like I am beat up and I feel like the insurance companies are beat up. I feel like we fist fight here a lot. I want to make one last statement. Whether we are philosophically opposed is right. My father told me one thing. He said Linda if everybody else jumps off the Brooklyn Bridge that doesn't mean you need to. Look forward, think it all through, and be logical. You may say today there is no fiscal note but I really believe we are doing the wrong thing to do this. I won't be here because I am not running again. I really am very nervous about us taking a chance on our children or our schools when there isn't the back up of the actuary there. Thank you.

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

Senator **WEBSTER:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I would like to pose a question through the Chair. I would like to have someone explain something to me. The

schoolhouse in Madison, Maine burned flat, \$6,500,000 about five years ago. If we were insured under this Law that is being proposed today, would that \$6,500,000 come from the general fund? Thank you.

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

Senator **KANY:** Thank you Mr. President. Ladies and Gentlemen of the Senate. As has been explained many times there is a cap on the amount of insurance that would be allowed under the mutual fund. Excess insurance can be purchased on the open market. That is really the story as it is related to this long standing very successful fund which has been separated out at the urging of the Attorney General and the Federal Government. Thank you.

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

Senator **WEBSTER:** Thank you Mr. President. Ladies and Gentlemen of the Senate. In response to the question, there will be a cap which means we are assuming our schools won't burn and that we won't have a \$6,000,000 liability. Is that what the Senator from Kennebec, Senator Kany is saying? Thank you.

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

Senator **CLARK:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I find the question in and of itself interesting for we in our focus on this issue don't know that six years ago when Madison High School burned flat whether they would have exercised the option to buy a limited amount of insurance protection that would be available under the structure proposed in this Bill and any additional protection they would need to cover their potential risk on the private market. My assumption is that the town fathers and mothers of Madison, Maine provided for adequate insurance coverage on the private market because it was not available in the proposal that is before us. The proposal that is before us, should the town of Madison, Maine had access this option, would also adequately cover a disaster such as did occur in Madison, Maine. In this instance, I again feel sure, that the town fathers and mothers would have accessed or purchased the limited protection afforded under the structure of this Bill as well as to cover their potential liability and value of their properties on the private market. I feel secure for the people in Madison, Maine as I feel secure for the school units in Senate District 26.

For twelve years I served on the Committee on Business Legislation when all the topics covered by the Committee today as well as those covered by Banking & Insurance, a separate Joint Standing Committee today, were incorporated and found their way to the then famous Room 135.. I participated in two extensive studies that resemble what is before us. I find it very interesting that at a time of very obvious fiscal constraint and cutbacks in GPA to our local school units that we don't provide them the option of accessing a cost saving measure which may decrease their insurance premium costs thereby releasing needed monies to sustain their school programs all of which are being impacted negatively as a result of our inability at the State level to fund them adequately. Surely, the signatures on this Committee Report reflect the integrity and responsibility of a bi-partisan effort to present a legitimate proposal. I, for one, find the raising of

interesting red herrings approach while perhaps sincerely offered are offered not to support this vastly bi-partisan Committee Report but rather to defeat the Committee Report. I state that with some reservation, however, I state it most sincerely. The signatures on the Majority Report from the Committee on Banking & Insurance, bi-partisan in nature, support the Bill as presented without the amendment as tendered by the good Senator from Knox, Senator Brawn who in all sincerity embraces a different philosophy.

Senator **CLARK** of Cumberland moved that Senate Amendment "A" (S-644) to Committee Amendment "A" (H-1143) be **INDEFINITELY POSTPONED**.

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

Senator **WEBSTER:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I would like to pose an additional question. I would like to ask a member of the Committee to show me and explain to me where there is a cap in this Bill and why this would not impose a never ending liability on the State? I see no cap in this measure and I believe that is misinformation and I would like for someone to explain to me in this Bill where there is a cap that says you won't have a \$6,000,000 liability if a school building burns. Thank you.

Senator **BRAWN** of Knox requested a Division.

**THE PRESIDENT PRO TEM:** The pending question before the Senate is the motion by Senator **CLARK** of Cumberland, that the Senate **INDEFINITELY POSTPONE** Senate Amendment "A" (S-644) to Committee Amendment "A" (H-1143).

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.

17 Senators having voted in the affirmative and 16 Senators having voted in the negative, the motion by Senator **CLARK** of Cumberland, that the Senate **INDEFINITELY POSTPONE** Senate Amendment "A" (S-644) to Committee Amendment "A" (H-1143), **PREVAILED**.

Committee Amendment "A" (H-1143) **ADOPTED** in concurrence.

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

Senator **WEBSTER** of Franklin moved that the Bill and Accompanying Papers be **INDEFINITELY POSTPONED** in **NON-CONCURRENCE**.

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

**THE PRESIDENT PRO TEM:** The pending question before the Senate is the motion of Senator **WEBSTER** of Franklin that the Senate **INDEFINITELY POSTPONE** Bill and Accompanying Papers in **NON-CONCURRENCE**.

A vote of Yes will be in favor of the motion of Senator **WEBSTER** of Franklin to **INDEFINITELY POSTPONE** Bill and Accompanying Papers.

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 **BRAWN, CAHILL, CARPENTER, COLLINS, EMERSON, FOSTER, GILL, GOULD, HOLLOWAY, LUDWIG, RICH, SUMMERS, THERIAULT, WEBSTER**

**NAYS:** Senators BERUBE, BOST, BRANNIGAN, BUSTIN, CLARK, CLEVELAND, CONLEY, DUTREMBLE, ESTES, ESTY, GAUVREAU, KANY, MILLS, PEARSON, PRAY, TITCOMB, VOSE, THE PRESIDENT PRO TEM - ZACHARY E. MATTHEWS

**ABSENT:** Senators BALDACCI, MCCORMICK, TWITCHELL  
14 Senators having voted in the affirmative and 18 Senators having voted in the negative, with 3 Senators being absent, the motion of Senator WEBSTER of Franklin, that the Senate **INDEFINITELY POSTPONE** Bill and Accompanying Papers in **NON-CONCURRENCE**, **FAILED**.

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

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

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

**COMMITTEE REPORTS**

**House**

**Ought to Pass As Amended**

The Committee on **LEGAL AFFAIRS** on Bill "An Act to Strengthen the Campaign Finance Reporting Laws"

H.P. 1679 L.D. 2356

Reported that the same **Ought to Pass as Amended** by **Committee Amendment "A"** (H-1131).

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A"** (H-1131) **AS AMENDED BY HOUSE AMENDMENT "B"** (H-1140) thereto, **AND HOUSE AMENDMENT "A"** (H-1141).

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

The Bill **READ ONCE**.

Committee Amendment "A" (H-1131) **READ**.

On motion by Senator **CLARK** of Cumberland, Tabled 1 Legislative Day, pending **ADOPTION** of Committee Amendment "A" (H-1131), in concurrence.

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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 Resolve**

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

(C "A" H-1142)

This being an Emergency Measure and having received the affirmative vote of 32 Members of the Senate, with No Senators having voted in the negative, and 32 being more than two-thirds of the entire elected Membership of the Senate, was **FINALLY PASSED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

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Senate at Ease  
Senate called to order by the President.

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

**ENACTORS**

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

An Act to Improve and Expand the Operation of the Risk Management Division

H.P. 1449 L.D. 2061

(C "A" H-1143)

Senator **WEBSTER** of Franklin requested a Division. **THE PRESIDENT PRO TEM:** The pending question before the Senate is **ENACTMENT**.

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.

17 Senators having voted in the affirmative and 15 Senators having voted in the negative, the Bill was **PASSED TO BE ENACTED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

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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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On motion by Senator **WEBSTER** of Franklin, **ADJOURNED** until Thursday, March 19, 1992, at 9:00 in the morning.