

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

One Hundred And Seventeenth Legislature

OF THE

State Of Maine

VOLUME III

FIRST REGULAR SESSION

Senate

December 7, 1994 to April 27, 1995

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

In Senate Chamber
Thursday
March 2, 1995

Senate called to Order by the President, Jeffrey H. Butland of Cumberland.

Prayer by Reverend David King of the Hollis Center Baptist Church in Hollis.

REVEREND DAVID KING: Good morning. It is an honor to be here today to assist you in coming before God for the wisdom and strength you need to make the often difficult and challenging decisions that you need to make. I want to share with you today, I have spent the last few days with a delegation of pastors and their wives from Russia, far eastern Russia. They have been overwhelmed by what they have seen in this country. They will be going back today. I want you to know that their favorite place - and they have been to Oregon, South Carolina, Pennsylvania and New York - their favorite place is Maine. They love the scenery and the ocean. Yesterday I took them to "Fill It Up Please", in Portland, for a car wash. They said, "We are going through hell now." They were just overwhelmed by all that they saw in this country. They were overwhelmed with our churches. In the City of Kaborsk, in far east Russia, there are eight hundred thousand people with one church building, one place to worship. The freedom of religion is still restricted. We are honored today, to be here in this land of freedom. Let us bow together.

Good morning Heavenly Father. Thank you for another beautiful day, to live in this land of peace, promise, and prosperity. As we come into your presence this morning, we recognize you as the God of creation, wisdom, power, and authority. We also acknowledge your sovereignty and ask that you would hear our prayers. Give us the discernment, wisdom, and courage to govern in a manner that will serve your eternal purposes. Guide and protect the people of this great State of Maine. Provide the opportunities necessary to ensure the future for our children and grandchildren. Lord God, we are weak, but you are strong. We lack truth, but your truth will stand forever. We all fail in many ways, but you are the One who will forgive our sins, and lead us through our failings, as we look to you and to your Word. Today, our Father, we ask you to revive our hope, renew our faith, refresh our love, and heal our land. We pray this in the name of your one and only Son, Jesus Christ, who is Lord of all. Amen.

Off Record Remarks

Reading of the Journal of Tuesday, February 28, 1995.

Off Record Remarks

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

S.O. 21

ORDERED, that a message be sent to the House of Representatives proposing a Joint Convention of both Branches in the Hall of the House at 10:20 o'clock in the morning for the purpose of extending to the Honorable J. Michael Orenduff, Chancellor of the University of Maine System, an invitation to attend the Convention and make such communication as pleases him.

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

The President appointed the Senator from Cumberland, Senator **AMERO**, to deliver the message.

Subsequently, the Senator from Cumberland, Senator **AMERO** reported that she had delivered the message with which she was charged.

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

S.P. 266

ORDERED, the House concurring, that when the House and Senate adjourn, they do so until Tuesday, March 7, 1995, at 9:30 o'clock in the morning.

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

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

PAPERS FROM THE HOUSE

Non-concurrent Matter

Bill "An Act to Authorize Municipalities to Pay Employees Biweekly"

S.P. 259 L.D. 695

Reference to the Committee on LABOR suggested and ORDERED PRINTED.

In Senate, February 28, 1995, referred to the Committee on LABOR and ORDERED PRINTED.

Comes from the House, referred to the Committee on STATE AND LOCAL GOVERNMENT, in NON-CONCURRENCE.

On motion by Senator LAWRENCE of York, the Senate INSISTED.

Sent down for concurrence.

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

The Following Communication: S.C. 78

STATE OF MAINE ONE HUNDRED AND SEVENTEENTH LEGISLATURE COMMITTEE ON EDUCATION AND CULTURAL AFFAIRS

February 28, 1995

The Honorable Jeffrey H. Butland President of the Senate of Maine 117th Maine Legislature State House Augusta, Maine 04333

Dear Mr. President:

In accordance with 3 M.R.S.A., Section 157, and with Joint Rule 38 of the 117th Maine Legislature, the Joint Standing Committee on Education and Cultural Affairs has had under consideration the nomination of Wayne L. Mowatt of Caribou, for appointment as the Commissioner of the Department of Education.

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

YEAS: Sen. 3 Small of Sagadahoc, Abromson of Cumberland, Esty of Cumberland Rep. 6 Martin of Eagle Lake, Desmond of Mapleton, Ault of Wayne, Barth of Bethel, Libby of Buxton, McElroy of Unity NAYS: 4 Cloutier of South Portland, Stevens of Orono, Brennan of Portland, Winn of Glenburn ABSENT: 0

Nine members of the Committee having voted in the affirmative and four in the negative, it was the vote of the Committee that the nomination of Wayne L. Mowatt of Caribou, for appointment as the Commissioner of the Department of Education be confirmed.

Signed:

S/Mary E. Small Senate Chair

S/John L.Martin House Chair

COMMUNICATIONS

The Following Communication: S.C. 79

DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES State Claims Commission State House Station 49 Augusta, Maine 04333

February 27, 1995

The Honorable Jeffrey H. Butland President of the Senate Senate Post Office State House Station 3 Augusta, Maine 04333

RE: Report of Small Claims to Legislature

Dear President Butland:

Herewith is Report of Small Claims which was received in this office during 1994 and which is being submitted to you for your information and records in accordance with Title 5 M.R.S.A., Section 1510-A, Subsection 8.

A similar report is also being submitted to the Honorable Dan A. Gwadosky, Speaker of the House, and if you or your staff should have any questions in connection with this report, please communicate with this office.

Yours very truly, S/Ronald M. Roy Chief Counsel

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

On motion by Senator **LAWRENCE** of York, the nomination Tabled until Later in Today's Session, pending **CONSIDERATION**.

Off Record Remarks

The Following Communication: S.C. 80

**STATE OF MAINE
ONE HUNDRED AND SEVENTEENTH LEGISLATURE
COMMITTEE ON AGRICULTURE, CONSERVATION AND FORESTRY**

February 28, 1995

The Honorable Jeffrey H. Butland
President of the Senate of Maine
117th Maine Legislature
State House
Augusta, Maine 04333

Dear Mr. President:

In accordance with 3 M.R.S.A., Section 157, and with Joint Rule 38 of the 117th Maine Legislature, the Joint Standing Committee on Agriculture, Conservation and Forestry has had under consideration the nomination of Edward J. McLaughlin of Clifton, for appointment as the Commissioner of the Department of Agriculture.

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

YEAS:	Sen. 3	Cassidy of Washington, Lord of York, Paradis of Aroostook
	Rep. 9	Kilkelly of Wiscasset, Ahearne of Madawaska, Hichborn of LaGrange, Tyler of Windham, Spear of Nobleboro, Strout of Corinth, Cross of Dover-Foxcroft, Kneeland of Easton, Dexter of Kingfield
NAYS:	1	Heeschen of Wilton
ABSENT:	0	

Twelve members of the Committee having voted in the affirmative and one in the negative, it was the vote of the Committee that the nomination of Edward J. McLaughlin of Clifton, for appointment as the Commissioner of the Department of Agriculture be confirmed.

Signed:

S/Vinton E. Cassidy
Senate Chair

S/Marge L. Kilkelly
House Chair

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

THE PRESIDENT: The Joint Standing Committee on **AGRICULTURE, CONSERVATION AND FORESTRY** has recommended the nomination of Edward J. McLaughlin of Clifton, be confirmed.

The pending question before the Senate is: "Shall the recommendation of the Committee on **AGRICULTURE, CONSERVATION AND FORESTRY** be overridden?"

In accordance with 3 M.R.S.A., Chapter 6, Section 151 and with Joint Rule 38 of the 117th Legislature, the vote will taken by the Yeas and Nays.

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

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

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEAS:	Senators:	None
NAYS:	Senators:	ABROMSON, AMERO, BEGLEY, BENOIT, BERUBE, BUSTIN, CAREY, CIANCHETTE, FAIRCLOTH, FERGUSON, GOLDTHWAIT, HALL, HANLEY, HARRIMAN, LAWRENCE, LORD, McCORMICK, MICHAUD, MILLS, PARADIS, PENDEXTER, RAND, RUHLIN, SMALL, STEVENS, and the PRESIDENT, Senator BUTLAND
ABSENT:	Senators:	CARPENTER, CASSIDY, CLEVELAND, ESTY, HATHAWAY, KIEFFER, LONGLEY, O'DEA, PINGREE

No Senators having voted in the affirmative and 26 Senators having voted in the negative, with 9 Senators being absent, and None being less than two-thirds of the Membership present, it was the vote of the Senate that the Committee's recommendation be **ACCEPTED** and the nomination of Edward J. McLaughlin, for appointment as Commissioner of the Department of Agriculture, was **CONFIRMED**.

The Secretary informed the Speaker of the House.

Sent down for concurrence.

At this point, a message was received from the House of Representatives, borne by Representative JACQUES of Waterville, informing the Senate that the House concurred in the proposition for a Joint Convention, to be held in the Hall of the House, at 10:20 o'clock in the morning for the purpose of extending to the Honorable J. Michael Orenduff, Chancellor of the University of Maine System, an invitation to attend the Convention and make such communication as pleases him.

Bill "An Act to Allow All Hunters to Hunt Deer on the 5th Saturday Preceding Thanksgiving"
S.P. 269 L.D. 720

Presented by Senator HALL of Piscataquis

Reference to the Committee on **INLAND FISHERIES AND WILDLIFE** suggested and **ORDERED PRINTED**.

Which was referred to the Committee on **INLAND FISHERIES AND WILDLIFE** and **ORDERED PRINTED**.

Sent down for concurrence.

Off Record Remarks

SENATE PAPERS

Bill "An Act to Coordinate Low-income Energy Assistance Programs"

S.P. 270 L.D. 721

Presented by Senator HARRIMAN of Cumberland
Cosponsored by Representative: ROBICHAUD of Caribou

Reference to the Committee on **BUSINESS AND ECONOMIC DEVELOPMENT** suggested and **ORDERED PRINTED**.

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

Sent down for concurrence.

Bill "An Act to Discourage Prescription Drug Fraud"

S.P. 265 L.D. 705

Presented by Senator PENDEXTER of Cumberland
Cosponsored by Senators: BENOIT of Franklin, FAIRCLOTH of Penobscot, Representatives: MARVIN of Cape Elizabeth, MITCHELL of Portland

Reference to the Committee on **HUMAN RESOURCES** suggested and **ORDERED PRINTED**.

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

Bill "An Act to Amend the Law Governing Mechanic's Liens"

S.P. 267 L.D. 718

Presented by Senator HANLEY of Oxford
Cosponsored by Senators: HALL of Piscataquis, MILLS of Somerset, Representatives: THOMPSON of Naples, WINSOR of Norway

Bill "An Act to Grant Immunity from Suit for Officers and Directors of Fish and Game Clubs"

S.P. 271 L.D. 722

Presented by Senator HANLEY of Oxford
Cosponsored by Senators: BENOIT of Franklin, CAREY of Kennebec, HALL of Piscataquis, MICHAUD of Penobscot, Representatives: UNDERWOOD of Oxford, WATERHOUSE of Bridgton, WINSOR of Norway

Reference to the Committee on **JUDICIARY** suggested and **ORDERED PRINTED**.

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

Sent down for concurrence.

Bill "An Act to Provide Limited Immunity to Former Employers Who Provide References"

S.P. 264 L.D. 704

Presented by Senator HARRIMAN of Cumberland

Reference to the Committee on **LABOR** suggested and **ORDERED PRINTED**.

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

Sent down for concurrence.

Bill "An Act to Change the Restricted Area around Aquaculture Pens from 500 to 300 Feet"
S.P. 268 L.D. 719

Presented by Senator **CASSIDY** of Washington
Cosponsored by Senators: **HALL** of Piscataquis, **HATHAWAY** of York, **LORD** of York, **MICHAUD** of Penobscot, Representatives: **CAMPBELL** of Holden, **KNEELAND** of Easton, **LAYTON** of Cherryfield, **PINKHAM** of Lamoine, **SPEAR** of Nobleboro

Reference to the Committee on **MARINE RESOURCES** suggested and **ORDERED PRINTED**.

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

Sent down for concurrence.

ORDERS

Joint Resolution

On motion by Senator **AMERO** of Cumberland.
Cosponsored by: Senator **ABROMSON** of Cumberland, Senator **BUSTIN** of Kennebec, Senator **CAREY** of Kennebec, Senator **CARPENTER** of York, Senator **CLEVELAND** of Androscoggin, Senator **ESTY** of Cumberland, Senator **HARRIMAN** of Cumberland, Senator **LAWRENCE** of York, Senator **McCORMICK** of Kennebec, Senator **O'DEA** of Penobscot, Senator **PARADIS** of Aroostook, Senator **SMALL** of Sagadahoc, Senator **STEVENS** of Androscoggin, Representative **ADAMS** of Portland, Representative **BOUFFARD** of Lewiston, Representative **BRENNAN** of Portland, Representative **CARLETON** of Wells, Representative **CHARTRAND** of Rockland, Representative **DRISCOLL** of Calais, Representative **FARNUM** of South Berwick, Representative **GOULD** of Greenville, Representative **HEINO** of Boothbay, Representative **KERR** of Old Orchard Beach, Representative **LINDAHL** of Northport, Representative **MORRISON** of Bangor, Representative **MURPHY** of Berwick, Representative **O'GARA** of Westbrook, Representative **OTT** of York, Representative **STROUT** of Corinth, Representative **TUTTLE** of Sanford.
(Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 35.)

S.P. 272

JOINT RESOLUTION MEMORIALIZING THE PRESIDENT AND CONGRESS OF THE UNITED STATES TO CONTINUE THE FUNDING COMMITMENT NECESSARY TO RESTORE PASSENGER RAIL SERVICE TO THE STATE OF MAINE

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

WHEREAS, the One Hundred and Fifteenth Legislature directed the Maine Department of Transportation to take all reasonably necessary actions to initiate passenger rail service between Portland and Boston and to seek funding necessary in an amount not less than \$40,000,000; and

WHEREAS, the Federal Transit Administration and AMTRAK have committed a combined capital investment of \$58,600,000 for the rehabilitation of the railroad corridor and for necessary rail-operating equipment; and

WHEREAS, in 1992 the citizens of Maine approved a bond issue in the amount of \$3,000,000 necessary to access these federally authorized funds for the initiation of this passenger rail service; and

WHEREAS, Maine's communities of Portland, Saco, Old Orchard Beach and Wells have assumed responsibility in planning, development and construction of local transportation centers in support of the passenger rail service with connections to bus service and other transportation modes; and

WHEREAS, conservative ridership demand forecasts that have been conducted in support of the passenger rail service verify this service to be a sound and viable financial investment for Maine; and

WHEREAS, the Federal Transit Administration issued a "Finding of No Significant Impact," finding no significant environmental impacts from the passenger rail service and further concluding that integrated rail and bus service is economically feasible in the Northeast corridor; and

WHEREAS, increased passenger rail traffic, consistent with the federal directives of the federal Intermodal Surface Transportation Efficiency Act, will relieve pressure on Maine's highways and bridges, thereby promoting energy conservation, reduced vehicle emissions and reduced consumption of fossil fuels; and

WHEREAS, Maine industries are petitioning the State to upgrade freight rail service to enhance their ability to access regional, national and global markets and this rail restoration will significantly improve the main rail line to Maine; now, therefore, be it

RESOLVED: That We, your Memorialists, recommend and urge the President and the Congress of the United States to sustain and fulfill all of the previously approved and authorized financial commitments of the Federal Government for the reinstatement of passenger rail service between Portland and Boston; and be it further

RESOLVED: That duly authenticated copies of this Memorial be submitted by the Secretary of State to

the Honorable William J. Clinton, President of the United States, the President of the Senate and Speaker of the House of Representatives of the Congress of the United States and to each Member of the Maine Congressional Delegation.

Which was **READ**.

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

COMMITTEE REPORTS

Senate

Ought to Pass

Senator **SMALL** for the Committee on **EDUCATION AND CULTURAL AFFAIRS** on Bill "An Act Concerning the Degree-granting Authority of Beal Business School"
S.P. 115 L.D. 290

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

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

The Bill **READ ONCE**.

The Bill, **TOMMOROW ASSIGNED FOR SECOND READING**.

Divided Report

The Majority of the Committee on **LEGAL AND VETERANS AFFAIRS** on Bill "An Act to Prohibit Registering to Vote on Election Day"
S.P. 99 L.D. 239

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

Signed:

Senator:

FERGUSON of Oxford
MICHAUD of Penobscot

Representatives:

NADEAU of Saco
TRUMAN of Biddeford
FISHER of Brewer
BUCK of Yarmouth
CHIZMAR of Lisbon
MURPHY of Berwick
LEMONT of Kittery
LABRECQUE of Gorham
GAMACHE of Lewiston

The Minority of the same Committee on the same subject reported that the same **Ought to Pass**.

Signed:

Senator:

STEVENS, JR. of Androscoggin

Representative:

TRUE of Fryeburg

Which Reports were **READ**.

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

SECOND READERS

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

Senate

Bill "An Act to Restore Funding to the Department of Conservation that was Deappropriated Due to Loon Plate Revenue"
S.P. 120 L.D. 295

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

Sent down for concurrence.

ORDERS OF THE DAY

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

JOINT ORDER - relative to recognizing Carolee and James Simeoni, of Alfred, as recipients of the Firefighter of the Year Award for Public Service.
SLS 36

Tabled - February 28, 1995, by Senator **LORD** of York.

Pending - **PASSAGE**

Which was **PASSED**.

Sent down for concurrence.

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

Senate at Ease

Senate called to order by the President.

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

COMMITTEE REPORTS

Senate

Ought to Pass

Senator **MICHAUD** for the Committee on **LEGAL AND VETERANS AFFAIRS** on Bill "An Act to Amend the Laws Pertaining to Renewal of Liquor Licenses by Restaurants"

S.P. 20 L.D. 51

Reported that the same Ought to Pass.

Which Report was READ and ACCEPTED.

The Bill READ ONCE.

The Bill, TOMORROW ASSIGNED FOR SECOND READING.

Off Record Remarks

Senator **CIANCHETTE** of Somerset was granted unanimous consent to address the Senate on the Record.

Senator **CIANCHETTE**: Thank you Mr. President. I would just like to announce that at noontime today, in Room 134, the Labor Committee Room, a meeting of Representatives and Senators who are interested and involved in the new proposed Rule Review legislation, which deals with the Administrative Procedures Act, will be discussed. Those people who are interested in the Administrative Procedures Act revisions are most welcome to attend. David Elliot, from OPLA, will be there to discuss the proposed draft. Thank you very much.

Off Record Remarks

On motion by Senator **LAWRENCE** of York, RECESSED until after the Joint Convention.

At this point, the Senate retired to the Hall of the House, where a Joint Convention was formed.

AFTER CONVENTION

IN SENATE

Senate called to order by the President.

On motion by Senator **CAREY** of Kennebec, RECESSED until 4 o'clock this afternoon.

After Recess

Senate called to order by the President.

The President requested that the Sergeant-at-Arms escort the Senator from Cumberland, Senator **AMERO**, to the rostrum where she assumed the duties as President Pro Tem.

The President took a seat on the Floor of the Senate.

The 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 Making Unified Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds, and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 1996 and June 30, 1997" (Emergency)
H.P. 516 L.D. 706

Bill "An Act to Make Allocations from the Maine Nuclear Emergency Planning Fund for the Fiscal Years Ending June 30, 1996 and June 30, 1997" (Emergency)
H.P. 519 L.D. 709

Bill "An Act to Make Allocations from the Public Utilities Commission Regulatory Fund and the Public Utilities Commission Reimbursement Fund for the Fiscal Years Ending June 30, 1996 and June 30, 1997" (Emergency)
H.P. 520 L.D. 710

Bill "An Act to Make Allocations from the Public Advocate Regulatory Fund for the Fiscal Years Ending June 30, 1996 and June 30, 1997" (Emergency)
H.P. 521 L.D. 711

Bill "An Act to Make Allocations from Various Funds of the Department of Environmental Protection for the Fiscal Years Ending June 30, 1996 and June 30, 1997" (Emergency)
H.P. 524 L.D. 714

Bill "An Act Making Allocations Relating to Federal Block Grants for the Expenditures of State Government for the Fiscal Years Ending June 30, 1996 and June 30, 1997" (Emergency)
H.P. 525 L.D. 715

Reference to the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS** suggested and **ORDERED PRINTED**.

Come from the House, referred to the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS** and **ORDERED PRINTED**.

Which were referred to the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS**, in concurrence.

RESOLUTION, Proposing an Amendment to the Constitution of Maine to Require Gubernatorial Appointment of the Attorney General
H.P. 518 L.D. 708

RESOLUTION, Proposing an Amendment to the Constitution of Maine to Require That the Treasurer of State Be Appointed by the Governor
H.P. 523 L.D. 713

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

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

Which were referred to the Committee on **STATE AND LOCAL GOVERNMENT**, in concurrence.

Bill "An Act to Protect Private Enterprise from Tax-subsidized Competition"
H.P. 515 L.D. 703

Bill "An Act to Include an Optional Contribution Check-off Box on State Income Tax Forms to Benefit Fort Knox"
H.P. 517 L.D. 707

Reference to the Committee on **TAXATION** suggested and **ORDERED PRINTED**.

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

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

Bill "An Act to Make Allocations from the Transportation Safety Fund for the Fiscal Years Ending June 30, 1996 and June 30, 1997" (Emergency)
H.P. 522 L.D. 712

Reference to the Committee on **TRANSPORTATION** suggested and **ORDERED PRINTED**.

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

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

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

PAPERS FROM THE HOUSE

Non-concurrent Matter

Bill "An Act to Extend the Reporting Deadlines of the Commission on Governmental Ethics and Election Practices and the Interim Advisory Committee on Alternative Dispute Resolution in the Public Sector" (Emergency)

S.P. 254 L.D. 692

In Senate, February 28, 1995, referred to the Committee on **STATE AND LOCAL GOVERNMENT** and **ORDERED PRINTED**.

Comes from the House under suspension of the rules, **READ TWICE** and **PASSED TO BE ENGROSSED**, without reference to a Committee, in **NON-CONCURRENCE**.

Under suspension of the Rules, the Senate **RECEDED** and **CONCURRED**.

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

PAPERS FROM THE HOUSE

Non-concurrent Matter

Bill "An Act Regarding Unredeemed Deposits on Beverage Containers"

H.P. 506 L.D. 687

Reference to the Committee on **BUSINESS AND ECONOMIC DEVELOPMENT** suggested and **ORDERED PRINTED**.

In House, February 28, 1995, referred to the Committee on **BUSINESS AND ECONOMIC DEVELOPMENT** and **ORDERED PRINTED**.

In Senate, February 28, 1995, referred to the Committee on **BUSINESS AND ECONOMIC DEVELOPMENT**, in concurrence. Subsequently reconsidered and referred to the Committee on **TAXATION** and **ORDERED PRINTED** in **NON-CONCURRENCE**.

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

The Senate **RECEDED** and **CONCURRED**.

Non-concurrent Matter

Bill "An Act to Amend the Municipal Subdivision Laws Regarding Application Requirements"

H.P. 481 L.D. 662

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

In House, February 28, 1995, referred to the Committee on **STATE AND LOCAL GOVERNMENT** and **ORDERED PRINTED**.

In Senate, February 28, 1995, referred to the Committee on **NATURAL RESOURCES** and **ORDERED PRINTED** in **NON-CONCURRENCE**.

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

The Senate **RECEDED** and **CONCURRED**.

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

COMMUNICATIONS

The Following Communication: H.P. 527

**Bureau of Corporations, Elections, and Commissions
Department of the Secretary of State
State House Station #101
Augusta, Maine 04333**

February 27, 1995

Honorable Dan A. Gwadosky
Speaker of the House
State House Station #2
Augusta, Maine 04333

Dear Speaker Gwadosky:

Please find enclosed a certified copy of the Secretary of State's certification of validity for the petitions circulated on behalf of initiative legislation entitled, "AN ACT to Repeal the Motor Vehicle Emission Inspection Program." The original certification has been delivered to the Clerk of the House for introduction.

Sincerely,

S/Rebecca Wyke
Assistant Secretary of State

State of Maine
Department of State

I, the Secretary of State of Maine, certify that written petitions bearing signatures of 59,722 electors of this State were addressed to the Legislature of the State of Maine and were filed in the office of the Secretary of State on January 26, 1995, requesting that the Legislature consider an act entitled "AN ACT to Repeal the Motor Vehicle Emission Inspection Program."

I further certify that the number of signatures submitted is in excess of ten percent of the total vote cast in the last gubernatorial election preceding the filing of such petitions, as required by Article IV, Part Third, Section 18 of the Constitution of Maine, that number being 51,131.

I further certify this initiative petition to be valid and attach herewith the text of the legislation circulated on the petition's behalf.

In testimony whereof, I have caused the Great Seal of the State of Maine to be hereunto affixed. Given under my hand at Augusta on the twenty-seventh day of February in the year one thousand nine hundred and ninety-five.

S/BILL DIAMOND
Secretary of State

Comes from the House **READ** and with Accompanying Papers **ORDERED PLACED ON FILE.**

The accompanying Bill "An Act to Repeal the Motor Vehicle Emission Inspection Program"
I.B. 2 L.D. 716

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

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

The accompanying Bill referred to the Committee on **NATURAL RESOURCES** and **ORDERED PRINTED**, in concurrence.

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

COMMUNICATIONS

The Following Communication: H.P. 528

Bureau of Corporations, Elections, and Commissions
Department of the Secretary of State
State House Station #101
Augusta, Maine 04333

February 27, 1995

Honorable Dan A. Gwadosky
Speaker of the House
State House Station #2
Augusta, Maine 04333

Dear Speaker Gwadosky:

Please find enclosed a certified copy of the Secretary of State's certification of validity for the petitions circulated on behalf of initiative legislation entitled, "AN ACT to Establish the Maine Outdoor Heritage Fund." The original certification has been delivered to the Clerk of the House for introduction.

Sincerely,

S/Rebecca Wyke
Assistant Secretary of State

State of Maine
Department of State

I, the Secretary of State of Maine, certify that written petitions bearing signatures of 52,678 electors of this State were addressed to the Legislature of the State of Maine and were filed in the office of the Secretary of State on January 26, 1995, requesting that the Legislature consider an act entitled "AN ACT to Establish the Maine Outdoor Heritage Fund."

I further certify that the number of signatures submitted is in excess of ten percent of the total vote cast in the last gubernatorial election preceding the filing of such petitions, as required by Article IV, Part Third, Section 18 of the Constitution of Maine, that number being 51,131.

I further certify this initiative petition to be valid and attach herewith the text of the legislation circulated on the petition's behalf.

In testimony whereof, I have caused the Great Seal of the State of Maine to be hereunto affixed. Given under my hand at Augusta on the twenty-seventh day of February in the year one thousand nine hundred and ninety-five.

S/BILL DIAMOND
Secretary of State

Comes from the House **READ** and with Accompanying Papers **ORDERED PLACED ON FILE.**

The accompanying Bill "An Act to Establish the Maine Outdoor Heritage Fund"
I.B. 3 L.D. 717

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

Which was **READ** and **ORDERED PLACED ON FILE**, in concurrence.

The accompanying Bill referred to the Committee on **LEGAL AND VETERANS AFFAIRS** and **ORDERED PRINTED**, in concurrence.

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

PAPERS FROM THE HOUSE

Non-concurrent Matter

Bill "An Act Concerning Fraudulent Redemptions"
H.P. 512 L.D. 700

Reference to the Committee on **BUSINESS AND ECONOMIC DEVELOPMENT** suggested and **ORDERED PRINTED**.

In House, February 28, 1995, referred to the Committee on **BUSINESS AND ECONOMIC DEVELOPMENT** and **ORDERED PRINTED**.

In Senate, February 28, 1995, referred to the Committee on **JUDICIARY** and **ORDERED PRINTED** in **NON-CONCURRENCE**.

Comes from the House, that body having **INSISTED**.

The Senate **RECEDED** and **CONCURRED**.

ORDERS OF THE DAY

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

NOMINATION - Wayne L. Mowatt as Commissioner of the Department of Education.
S.C. 78

Tabled - Earlier in the day by Senator **LAWRENCE** of York.

Pending - **CONSIDERATION**.

THE PRESIDENT PRO TEM: The Joint Standing Committee on **EDUCATION AND CULTURAL AFFAIRS** has recommended the nomination of Wayne L. Mowatt of Caribou, be confirmed.

The pending question before the Senate is: "Shall the recommendation of the Committee on **EDUCATION AND CULTURAL AFFAIRS** be overridden?"

In accordance with 3 M.R.S.A., Chapter 6, Section 151 and with Joint Rule 38 of the 117th Legislature, the vote will be taken by the Yeas and Nays.

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

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

Is the Senate ready for the question? The Chair recognizes the Senator from Sagadahoc, Senator Small.

Senator **SMALL:** Thank you Madame President, Ladies and Gentlemen of the Senate. I urge you to vote in support of Dr. Wayne Mowatt, as Governor King's Commissioner of Education and Cultural Affairs, today. It is unusual for an Education Commissioner-nominee to have a split vote for confirmation and, in all honesty, this has been an unusual confirmation. We received many calls and letters, both for and against Dr. Mowatt. The only person who testified against him was Senator O'Dea, and I applaud his courage for coming before our Committee to share his views on the candidate. But, I think Senator O'Dea and I have different opinions about who should select the Education Commissioner, and how he or she should be appointed. There have been several attempts in past sessions to take the power to appoint a Commissioner from the Governor and place it with the State Board of Education. I have repeatedly supported the Governor's right to choose his or her own Commissioner and, in this light, support Dr. Mowatt for confirmation today. Our role here today is to approve or disapprove the Governor's selection. During a lengthy public hearing we heard Dr. Mowatt's opinion on virtually every education issue that has been raised in recent years. I disagreed with Dr. Mowatt on some issues, like the magnet school, but generally felt comfortable with his philosophy of how we should educate our children.

In his testimony, Dr. Mowatt made the statement that defined his philosophy of education. "All children can, and will, learn if provided adequate time and appropriate learning support." As a parent of two children at different places on the learning curve, I am searching for a Commissioner who is as concerned about the child who needs to progress at their own rate of learning, as the gifted child who can learn with relative ease. As a legislator, I am looking for a Commissioner who can assist us in finding new ways to balance local school budgets with less dollars. Dr. Mowatt has begun this process in his own school district with Eco 2000, which is a collaborative effort of five school districts to reduce costs through bulk purchase and resource sharing. The new buzz word in education is "consolidation", but it is not always easy to achieve because of local autonomy and closely guarded local budgets. Dr. Mowatt is a leader in that effort and can lead the state in this direction by example, instead of mandates. Which leads me to a very key area in which I support Dr. Mowatt. He is an advocate for local control, and as Commissioner, will look to lead, not push, the state in new educational directions.

The one criticism of Dr. Mowatt at the hearing was that "he is not a people person". He endured a lengthy legislative grilling that went way beyond anything I have experienced on a Committee. He kept his cool and earned my respect for his composure. I'm looking forward to the upcoming debate on educational policy, as Governor King unveils his plans for Maine's future. I am also ready, and willing, to work with Dr. Mowatt for the educational future of our children. I hope you will join me today in confirming Dr. Wayne Mowatt as Commissioner of Education and Cultural Affairs. Thank you.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Penobscot, Senator O'Dea.

Senator O'DEA: Thank you Madame President, Men and Women of the Senate. Let me begin this afternoon by thanking the Body for holding off the vote until this afternoon. I understand that it was an inconvenience to some people to be in this afternoon, however, as one member who had an appointment that I could not change, I appreciate it very much. I had not intended to speak this afternoon, but merely wished to have been recorded as having voted against the recommendation of the Committee. However, after the Senate Chair, the Senator from Sagadahoc, spoke, I felt compelled to offer my reasons for opposing the nominee.

Let me begin by saying that within the broadest of parameters I believe it is the Governor's prerogative to appoint his cabinet. I have felt that way for some time. In this case, I think that there are some mitigating circumstances, though, that we need to look at. As one member, I found myself unable to participate in sanctioning the Governor's choice. First, I need to say that as a former student in the Caribou school system, I have had some first-hand interaction with the nominee. While I never ran afoul of him myself, I am fortunate to say, I had concerns at the time about how some things were handled. This past month I had occasion to be in Caribou, on some non-legislative business, and while I was there I sought out a couple of people who were employees in the same school system at the same time that Dr. Mowatt was employed there. I became increasingly concerned about the suitability of the nominee. I guess that would be the part of the discussion that the Senator from Sagadahoc referred to as whether or not he is "a people person". I don't believe for a second that not being "a people person" should disqualify somebody from being the Commissioner of Education, nor do I think it should be the sort of thing on which this kind of nomination rests. But, I do believe that there are some other things that are important, and they haven't received a great deal of play in the hallways here. The first, and foremost, of these is whether or not the nominee has been active in his leadership in educational issues. In Aroostook County the ECO 2000 initiative, that Dr. Mowatt was responsible for, was innovative, did save money, did do some neat consolidation that hasn't been done in other parts of the State, but while that was being done, as one policy-member of the Education Committee, I found that Dr. Mowatt was absent from any kind of discussion of statewide issues, including the largest of the statewide issues - funding. I have some

concerns about whether or not he will be able to step up into the fray as we discuss more funding later this session, and be able to be a full and active participant in that. Surely, superintendents do have some experience in schoolfunding, but I have some concerns about bringing somebody to be Commissioner of Education who has not been active, as an advocate at the state level, for school funding. Further, I have concerns about the level of support that the nominee has for the magnet school. Although I do not wish the vote today to be a referendum on the magnet school, I think it is an important initiative and one that the last Legislature felt to be quite important. I would hope that we would see our way through to fulfill it. I'm not confident that Dr. Mowatt has a great deal of personal support for that. For these reasons - the relationship issue, the so-called "people skills", and because of the lack of involvement at the state level - I will be voting today against the nomination of the Governor. I take no pleasure in doing it and I really hadn't intended to discuss the issue today, however I wish to be recorded on the Record as opposing the nomination. Thank you very much.

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

Senator PARADIS: Merci beaucoup Madam President. It is indeed a pleasure to see somebody of our own gender up there this afternoon. I, too, rise to ask the Men and Women of the Senate to uphold the Education Committee's decision to endorse Wayne Mowatt for Commissioner of Education. As you know, we the legislators, are pretty much grassroots, and if there is trouble in town you hear about it. For example, a few years ago we had problems with the President of our University and I got multiple calls about situations that people, students and people in the community, felt were unfair. I have been living next door to Dr. Mowatt's shop and I have never had one phone call complaining about anything. I interpret that to mean that they were able to resolve their issues. I am very involved with bilingual education up there and Dr. Mowatt, in spite of the fact that he is not bilingual himself, saw the advantage of looking at the people in front of him, the students, and treating them accordingly and they have a wonderful, wonderful program. Another thing I discovered recently is that he was able to get seventy-five computers off the base before they closed. That was never advertised, it was never publicized, but he was on the ground looking every second, to find the resources that were needed. This morning I bumped into a young teacher from Caribou, he asked me where the nomination was, that he hadn't heard anything. I said, "Why, do you have an opinion?" He said, "Yes, I served under Dr. Mowatt for five years and I didn't have a problem." He also said he is a brilliant man. We have a lot of problems in the State, education-wise, and we need a brilliant man to attack those problems. I urge your support. Thank you so very much.

PRESIDENT PRO TEM: The pending question before the Senate is: "Shall the recommendation of the Committee on **EDUCATION AND CULTURAL AFFAIRS** be overridden?"

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEAS: Senators: BUSTIN, CAREY, O'DEA, RUHLIN
 NAYS: Senators: ABROMSON, AMERO, BEGLEY, BENOIT, BERUBE, CARPENTER, CLEVELAND, ESTY, FAIRCLOTH, FERGUSON, GOLDTHWAIT, HALL, HANLEY, HARRIMAN, HATHAWAY, LAWRENCE, LONGLEY, LORD, MICHAUD, MILLS, PARADIS, PENDEXTER, PINGREE, RAND, SMALL, STEVENS, and the PRESIDENT, Senator BUTLAND
 ABSENT: Senators: CASSIDY, CIANCHETTE, KIEFFER, McCORMICK

4 Senators having voted in the affirmative and 27 Senators having voted in the negative, with 4 Senators being absent, and 4 being less than two-thirds of the Membership present, it was the vote of the Senate that the Committee's recommendation be **ACCEPTED** and the nomination of Wayne L. Mowatt, for Commissioner of the Department of Education, was **CONFIRMED**.

The Secretary informed the Speaker of the House.

Off Record Remarks

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

JOINT RESOLUTION - relative to Memorializing the President and the Congress of the United States to continue the funding commitment necessary to restore passenger rail service to the State of Maine.
 S.P. 272

Tabled - Earlier in the day by Senator **AMERO** of Cumberland.

Pending - **ADOPTION**

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

Senator **BUTLAND:** Thank you Madam President, Ladies and Gentlemen of the Senate. You have in front of you a Joint Resolution memorializing the President and the Congress of the United States to

continue the funding commitment necessary to restore passenger rail service to the State of Maine, on page seven of your printed calendar. There are several paragraphs which paint a very rosey picture of why we should be putting our efforts in this vein. I would like to say a few words this afternoon, which give the other half of the picture, and a little balance to the debate.

I understand there are strong pockets of interest in restoring passenger rail service to Maine. But, I also understand that federal money is not free money, and that it comes from the same pockets as do any other tax dollars. The American people elected a Congress last November with a clear mandate to reduce the size and cost of government. It would not be fair, or responsible, for us to discourage them from making all spending cuts because, whether it is federal or state tax dollars, it is our constituents who are paying. We do have affordable mass transit already in place in Maine, and we do have the time to thoughtfully study the financial impact of passenger rail service on the State of Maine and its economy. I would like to put on the Record my concerns with the start-up of the Portland-to-Boston passenger service. First, although Amtrak will be providing the rail service, the State of Maine will be responsible, both legally and financially. The State will contract out the service to Amtrak and the State will assume most, if not all, financial liabilities for the service from Boston to Portland. Even though the service will pass through the States of Massachusetts and New Hampshire, only the State of Maine will be liable for any funding or financial losses. New Hampshire refuses to participate so it can avoid any financial responsibility and so does the State of Massachusetts.

Congressional auditors, in the General Accounting Office, predict that Amtrak will not survive nationally without several changes, including a huge amount of money for capital improvements, much larger subsidies from state and local governments, and changes in its labor contracts. The GAO reports that Amtrak has deteriorated steadily since 1990 and has several billion dollars in unmet needs for equipment and for repair of facilities and track. Does that sound like a good financial partnership? Maine's Department of Transportation estimates an annual operating loss of \$4 million for passenger rail, which will have to be partially, if not entirely, subsidized by the State of Maine. During these tough economic times, where will we find the money? Demands on Maine's limited resources - for example, funding for the mentally ill, for education, for health care - rank much higher on the list than passenger rail service. Now is the time to set priorities. The 13(C) labor agreement also concerns me. That agreement will hold the State of Maine, and any municipalities accepting project-related federal funds, liable for paying loss-of-employment claims that arise as a result of the rail service. For example, if a bus route in New Hampshire is eliminated, Maine will have to pay up to six years of unemployment benefits to that New Hampshire bus driver. The Town of Wells and the Cities of Saco and Portland could be forced to join with the State in paying for these benefits and a federal arbitrator, not someone from Maine, will be making that decision.

The State has every reason to move with caution before giving final approval to the agreements with Amtrak. We must know who will have ultimate responsibility for a train accident. Will it be the State? Some people are proposing the creation of a Rail Authority to shield the State from any financial liability. That proposal only shows that they also view passenger rail service as a risky proposition. I hope the State of Maine will take the responsible approach and address the liability and subsidy problems before any commitment to passenger rail service is made. We need to look at the economics of the passenger rail proposal - looking objectively at the issue and keeping the best interest of the State in mind. It's never too late to look at the facts. Thank you very much.

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

Senator CAREY: Thank you Madam President. May I pose a question through the Chair to the Senator from Cumberland, the President of the Senate? Seeing as how the sponsor of this bill is now sitting up at the rostrum, would it be out of order if I ask you to assume the rostrum so that she could come down and defend her own resolution? Thank you.

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

Senator BUTLAND: Thank you Madam President. If it is the Senator from Cumberland, Senator Amero's, wish to address this, I would be more than willing to oblige.

Which was **ADOPTED**.

Sent down for concurrence.

The **ADJOURNMENT ORDER** having been returned from the House **READ** and **PASSED**, in concurrence, on motion by Senator **GOLDTHAIT** of Hancock, **ADJOURNED** until Tuesday, March 7, 1995, at 9:30 o'clock in the morning.