

# MAINE STATE LEGISLATURE

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**Senate Legislative Record**  
**One Hundred and Eighteenth Legislature**  
**State of Maine**

**Volume 1**

**First Regular & Special Session**  
**December 6, 1996 to May 19, 1997**

**Pages 1 - 980**

**STATE OF MAINE  
ONE HUNDRED AND EIGHTEENTH LEGISLATURE  
FIRST SPECIAL SESSION  
JOURNAL OF THE SENATE**

In Senate Chamber  
Tuesday  
May 13, 1997

Senate Called to Order by the President, Mark W. Lawrence of York.

Prayer by Reverend Barry Judd of the Calvary Bible Church in Kezar Falls.

**REVEREND BARRY JUDD:** Mr. President. Senators. The Bible says in Psalm 111:10 that "the fear of the Lord is the beginning of wisdom. " Each one of you stands in an awesome position of responsibility today. Not merely to those who elected you into office, but also to the Almighty. I believe, in accordance with Romans 13, that you have been assigned a position of governing authority by the very hand of God. I am certain there are times when you must feel inadequate to this grave undertaking. For if one fulfilling this office did not, it would be most sad for him. Wisdom in making decisions such as you face each day must focus on more than popular opinion or the day's fad, but must be rooted in real wisdom and understanding of what is best and what is right. As a life-long resident of this great State I know I speak for many of your constituents that we rely on your judgment and decision making power in many issues that continually face us. I hope that I am not too forward in presuming that such a task is too much for any of us on our own. Any mortal would need to rely on strength from a greater source to be a reliable agent in such a capacity. I hope you will further indulge me to say I believe no one can be fit for this task relying solely on himself because each one of us is born into this world at enmity with God in sin. But whoever desires to know the love of God, His righteousness, and tap into this power can do so at anytime by admitting his sinful state to himself and God and giving allegiance to His Son, the perfect sacrifice for sin. My prayer for you today is that you, too, will find this awesome source of strength. That it will be useful to you in decisions which concern all of us today, and to make your life better by fulfilling the need for communion with God each one of us carries.

Let us pray. Our heavenly Father, we pray You today will work in the hearts of these individuals to bring each one closer to Yourself and Your source of strength. And that all that is done here this day will bring glory to You forever. Amen.

Doctor of the Day, Rebecca Chagrasulis, M.D., Casco.

Reading of the Journal of Monday, May 12, 1997.

Off Record Remarks

The President requested the Sergeant-at-Arms escort the Senator from Knox, Senator **PINGREE** to the Rostrum where she assumed the duties as President Pro Tem.

The President retired from the Senate Chamber.

The Senate called to Order by the President Pro Tem.

**PAPERS FROM THE HOUSE**

**Non-concurrent Matter**

Resolve, to Establish a Task Force to Review the Regional Applied Technology Centers  
H.P. 771 L.D. 1048  
(C "A" H-320)

In Senate, May 7, 1997, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-320)**, in concurrence.

Comes from the House, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-320) AS AMENDED BY HOUSE AMENDMENT "A" (H-449)** thereto, in **NON-CONCURRENCE**.

On motion by Senator **DAGGETT** of Kennebec, **TABLED** until Later in Today's Session, pending **FURTHER CONSIDERATION**.

**Joint Order**

The following Joint Order: H.P. 1323

**ORDERED**, the Senate concurring, that the Joint Standing Committee on Taxation report out legislation relating to the taxation of domestic group disability income insurance companies to the House.

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

Which was **READ** and **PASSED**, in concurrence.

**COMMUNICATIONS**

The Following Communication: S.C. 271

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

6 May, 1997

Hon. Joy J. O'Brien  
Secretary of the Senate  
3 State House Station  
Augusta, ME 04333

Dear Secretary O'Brien:

Please find enclosed a copy of the final application and strategy submitted to the Bureau of Justice Assistance for funding of the FY 97 Edward Byrne Memorial State and Local Law Enforcement Assistance Formula Grant Program.

The program requires that the application and strategy be submitted to the State Legislature or its designated body for review. Unless I receive further instructions, I will consider that the Department of Public Safety has fulfilled its obligation in this area.

Sincerely,

S/Alfred Skolfield  
Commissioner

Which was **READ** and with Accompanying Papers **REFERRED** to the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS**.

The Following Communication: S.P. 650

**118TH MAINE LEGISLATURE**

May 12, 1997

Senator Sharon Treat  
Representative Steven Rowe  
Chairpersons  
Joint Standing Committee on Natural Resources  
118th Legislature  
Augusta, Maine 04333

Dear Senator Treat and Representative Rowe:

Please be advised that Governor Angus S. King, Jr. has nominated Dennis L. Higgins and Warren Balgooyen for appointment as members of the Land for Maine's Future Board.

Pursuant to Title 5, MRSA Section 6204, this nomination will require review by the Joint Standing Committee on Natural Resources and confirmation by the Senate.

Sincerely,

S/Mark W. Lawrence  
President of the Senate

S/Elizabeth H. Mitchell  
Speaker of the House

Which was **READ** and referred to the Committee on **NATURAL RESOURCES**.

Sent down for concurrence.

The Following Communication: S.C. 272

**STATE OF MAINE  
ONE HUNDRED AND EIGHTEENTH LEGISLATURE  
COMMITTEE ON BANKING AND INSURANCE**

May 12, 1997

Honorable Mark W. Lawrence, President of the Senate  
Honorable Elizabeth H. Mitchell, Speaker of the House  
118th Maine Legislature  
State House  
Augusta, Maine 04333

Dear President Lawrence and Speaker Mitchell:

Pursuant to Joint Rule 310, we are writing to notify you that the Joint Standing Committee on Banking and Insurance has voted unanimously to report the following bill out "Ought Not to Pass":

L.D. 1016 An Act to Amend the Laws Pertaining to Infant Formulas

We have also notified the sponsor and cosponsors of the Committee's action.

Sincerely,

S/Sen. Lloyd P. LaFountain III  
Senate Chair

S/Rep. Jane W. Saxl  
House Chair

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

The Following Communication: S.C. 273

**STATE OF MAINE  
ONE HUNDRED AND EIGHTEENTH LEGISLATURE  
COMMITTEE ON BUSINESS AND ECONOMIC  
DEVELOPMENT**

May 12, 1997

Honorable Mark W. Lawrence, President of the Senate  
Honorable Elizabeth H. Mitchell, Speaker of the House  
118th Maine Legislature  
State House  
Augusta, Maine 04333

Dear President Lawrence and Speaker Mitchell:

Pursuant to Joint Rule 310, we are writing to notify you that the Joint Standing Committee on Business and Economic Development has voted unanimously to report the following bill out "Ought Not to Pass":

L.D. 1528 An Act to Create the Community Business Bonds for Maine Program

We have also notified the sponsor and cosponsors of the Committee's action.

Sincerely,

S/Sen. John T. Jenkins  
Senate Chair

S/Rep. Marc J. Vigue  
House Chair

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

The Following Communication: S.C. 274

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

May 12, 1997

Honorable Mark W. Lawrence, President of the Senate  
Honorable Elizabeth H. Mitchell, Speaker of the House  
118th Maine Legislature  
State House  
Augusta, Maine 04333

Dear President Lawrence and Speaker Mitchell:

Pursuant to Joint Rule 310, we are writing to notify you that the Joint Standing Committee on Education and Cultural Affairs has voted unanimously to report the following bills out "Ought Not to Pass":

- L.D. 352 An Act to Provide Additional Funds to Educate Students with Limited English Proficiency
- L.D. 1149 An Act to Protect Local Education Agencies from Excess Costs Attributable to Special Education Students
- L.D. 1158 An Act to Amend the Laws Concerning Special Education of Exceptional Students
- L.D. 1164 An Act to Amend the Laws Regarding Child Development Services
- L.D. 1315 An Act to Make the University of Maine System Board of Trustees an Elected Body
- L.D. 1338 An Act to Restructure Public Higher Education
- L.D. 1394 An Act to Establish a State Residential Treatment Center for Certain Students
- L.D. 1425 An Act to Provide for Direct Reimbursement of Special Education Costs
- L.D. 1553 Resolve, to Establish the Commission to Study the Restructuring of the University of Maine System
- L.D. 1597 An Act to Make Certain Changes in the University of Maine System to Promote Lifelong Learning
- L.D. 1632 An Act to Improve Taxpayer Equity in School Funding
- L.D. 1699 An Act to Expand the Law Pertaining to Nepotism
- L.D. 1765 An Act to Amend the Structure of the University of Maine System

We have also notified the sponsors and cosponsors of each bill listed of the Committee's action.

Sincerely,

S/Sen. Peggy A. Pendleton  
Senate Chair

S/Rep. Shirley K. Richard  
House Chair

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

The Following Communication: S.C. 275

**STATE OF MAINE  
ONE HUNDRED AND EIGHTEENTH LEGISLATURE  
COMMITTEE ON HEALTH AND HUMAN SERVICES**

May 12, 1997

Honorable Mark W. Lawrence, President of the Senate  
Honorable Elizabeth H. Mitchell, Speaker of the House  
118th Maine Legislature  
State House  
Augusta, Maine 04333

Dear President Lawrence and Speaker Mitchell:

Pursuant to Joint Rule 310, we are writing to notify you that the Joint Standing Committee on Health and Human Services has voted unanimously to report the following bills out "Ought Not to Pass":

- L.D. 790 An Act to Provide Health Insurance Coverage to Children in Maine
- L.D. 1211 An Act to Reduce Teenage Smoking by Increasing the Tax on Cigarettes to Fund an Advertising Campaign
- L.D. 1627 An Act to Promote Healthy Maine Families
- L.D. 1663 An Act to Ensure the Appropriate Treatment of Autism
- L.D. 1691 An Act to Significantly Reduce Smoking and Tobacco Use among the Young People of Maine
- L.D. 1722 An Act to Ensure Quality Care for Persons with Mental Illness
- L.D. 1762 Resolve, Establishing the Task Force to Evaluate the Creation of a Centralized State Office of Advocacy Services
- L.D. 1792 An Act to Decrease Young Adult and Adolescent Pregnancies

We have also notified the sponsors and cosponsors of each bill listed of the Committee's action.

Sincerely,

S/Sen. Judy Paradis  
Senate Chair

S/Rep. J. Elizabeth Mitchell  
House Chair

Pursuant to Joint Rule 310, we are writing to notify you that the Joint Standing Committee on Legal and Veterans Affairs has voted unanimously to report the following bills out "Ought Not to Pass":

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

The Following Communication: S.C. 276

**STATE OF MAINE  
ONE HUNDRED AND EIGHTEENTH LEGISLATURE  
COMMITTEE ON LABOR**

May 12, 1997

Honorable Mark W. Lawrence, President of the Senate  
Honorable Elizabeth H. Mitchell, Speaker of the House  
118th Maine Legislature  
State House  
Augusta, Maine 04333

Dear President Lawrence and Speaker Mitchell:

Pursuant to Joint Rule 310, we are writing to notify you that the Joint Standing Committee on Labor has voted unanimously to report the following bills out "Ought Not to Pass":

L.D. 1606 An Act to Amend the Laws Governing Severance Pay Obligations

L.D. 1755 Resolve, to Study the Efficiency of the State's Work Force Development Programs

We have also notified the sponsors and cosponsors of each bill listed of the Committee's action.

Sincerely,

S/Sen. Mary R. Cathcart  
Senate Chair

S/Rep. Pamela H. Hatch  
House Chair

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

The Following Communication: S.C. 277

**STATE OF MAINE  
ONE HUNDRED AND EIGHTEENTH LEGISLATURE  
COMMITTEE ON LEGAL AND VETERANS AFFAIRS**

May 12, 1997

Honorable Mark W. Lawrence, President of the Senate  
Honorable Elizabeth H. Mitchell, Speaker of the House  
118th Maine Legislature  
State House  
Augusta, Maine 04333

Dear President Lawrence and Speaker Mitchell:

L.D. 563 An Act to Clarify Enforcement Provisions of the Gambling Laws

L.D. 1270 Resolve, to Waive Sovereign Immunity and Tort Claims Limitation on Damages Relative to the Wrongful Death of Wrendy Hayne

L.D. 1317 An Act to Prohibit Party Change While in Public Office

L.D. 1773 Resolve, Directing the Maine State Housing Authority to Recommend Certain Safety Standards

We have also notified the sponsors and cosponsors of each bill listed of the Committee's action.

Sincerely,

S/Sen. Beverly C. Daggett  
Senate Chair

S/Rep. John L. Tuttle, Jr.  
House Chair

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

The Following Communication: S.C. 278

**STATE OF MAINE  
ONE HUNDRED AND EIGHTEENTH LEGISLATURE  
COMMITTEE ON TRANSPORTATION**

May 12, 1997

Honorable Mark W. Lawrence, President of the Senate  
Honorable Elizabeth H. Mitchell, Speaker of the House  
118th Maine Legislature  
State House  
Augusta, Maine 04333

Dear President Lawrence and Speaker Mitchell:

Pursuant to Joint Rule 310, we are writing to notify you that the Joint Standing Committee on Transportation has voted unanimously to report the following bills out "Ought Not to Pass":

L.D. 242 An Act Requiring Reimbursement to Municipalities for Fire and Rescue on the Maine Turnpike

L.D. 627 An Act to Reimburse Part-time Police Departments

L.D. 637 An Act Concerning Shared Compensation for Traffic Violations for Municipalities

L.D. 1461 Resolve, Requiring the Department of Transportation to Investigate Increasing the Speed Limit on Certain Portions of the Interstate Highway System in Portland and Bangor

L.D. 1507 An Act to Change the Fine for Speeding in a School Zone

L.D. 1690 An Act to Allow Law Enforcement Agencies Access to Motor Vehicle Insurance Information

We have also notified the sponsors and cosponsors of each bill listed of the Committee's action.

Sincerely,

S/Sen. William B. O'Gara  
Senate Chair

S/Rep. Joseph D. Driscoll  
House Chair

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

The Following Communication: S.C. 279

**THE SENATE OF MAINE  
OFFICE OF THE PRESIDENT  
3 STATE HOUSE STATION  
AUGUSTA, MAINE 04333**

May 8, 1997

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

Dear Secretary O'Brien:

Pursuant to my authority under 3 MRSA §227, I have appointed the following Senators to the Maine-Canadian Legislative Advisory Commission:

- Senator Judy Paradis of Aroostook
- Senator Richard P. Ruhlin of Penobscot
- Senator Lloyd P. LaFountain III of York
- Senator John T. Jenkins of Androscoggin

Please let me know if you have any questions regarding these appointments.

Sincerely,

S/Mark W. Lawrence  
President of the Senate

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

The Following Communication: S.C. 280

**THE SENATE OF MAINE  
OFFICE OF THE PRESIDENT  
3 STATE HOUSE STATION  
AUGUSTA, MAINE 04333**

May 8, 1997

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

Dear Secretary O'Brien:

Pursuant to my authority under 3 MRSA §231, I have appointed Senator Judy Paradis of Aroostook and Senator Richard Ruhlin of Penobscot to the New England and Eastern Canada Legislative Commission.

Please let me know if you have any questions regarding these appointments.

Sincerely,

S/Mark W. Lawrence  
President of the Senate

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

The Following Communication: S.C. 281

**STATE OF MAINE  
ONE HUNDRED AND EIGHTEENTH LEGISLATURE  
COMMITTEE ON NATURAL RESOURCES**

May 12, 1997

The Honorable Mark W. Lawrence  
President of the Senate of Maine  
118th Maine Legislature  
State House  
Augusta, Maine 04333-0003

Dear Mr. President:

In accordance with 3 M.R.S.A., Section 157, and with Joint Rule 505 of the 118th Maine Legislature, the Joint Standing Committee on Natural Resources has had under consideration the nomination of Cheryl A. Bascomb of New Gloucester, for appointment to the Board of Environmental Protection.

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

YEAS: Senators 3 Treat of Kennebec, Nutting of Androscoggin, Butland of Cumberland

Representatives 9 Rowe of Portland, Shiah of Bowdoinham, Bull of Freeport, Cowger of Hallowell, Jones of Greenville, McKee of Wayne, Dexter of Kingfield, Nickerson of Turner, Meres of Norridgewock

Dexter of Kingfield, Nickerson of Turner

NAYS: 1 Rep. Meres of Norridgewock

ABSENT: 1 Rep. Foster of Gray

NAYS: 0

ABSENT: 1 Rep. Foster of Gray

Twelve members of the Committee having voted in the affirmative and none in the negative, it was the vote of the Committee that the nomination of Cheryl A. Bascomb of New Gloucester, for appointment to the Board of Environmental Protection be confirmed.

Signed,

S/Sharon Anglin Treat  
Senate Chair

S/G. Steven Rowe  
House Chair

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

On motion by Senator **RAND** of Cumberland, **NOMINATION, TABLED** until Later in Today's Session, pending **CONSIDERATION**.

The Following Communication: S.C. 282

**STATE OF MAINE  
ONE HUNDRED AND EIGHTEENTH LEGISLATURE  
COMMITTEE ON NATURAL RESOURCES**

May 12, 1997

The Honorable Mark W. Lawrence  
President of the Senate of Maine  
118th Maine Legislature  
State House  
Augusta, Maine 04333-0003

Dear Mr. President:

In accordance with 3 M.R.S.A., Section 157, and with Joint Rule 505 of the 118th Maine Legislature, the Joint Standing Committee on Natural Resources has had under consideration the nomination of Andrew A. Cadot of Freeport, for appointment to the Board of Environmental Protection.

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

YEAS: Senators 3 Treat of Kennebec, Nutting of Androscoggin, Butland of Cumberland

Representatives 8 Rowe of Portland, Shiah of Bowdoinham, Bull of Freeport, Cowger of Hallowell, Jones of Greenville, McKee of Wayne,

Eleven 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 Andrew A. Cadot of Freeport, for appointment to the Board of Environmental Protection be confirmed.

Signed,

S/Sharon Anglin Treat  
Senate Chair

S/G. Steven Rowe  
House Chair

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

On motion by Senator **RAND** of Cumberland, **NOMINATION, TABLED** until Later in Today's Session, pending **CONSIDERATION**.

**SENATE PAPERS**

Bill "An Act to Establish Limitations on Swine-feeding Operations" S.P. 653 L.D. 1874

Presented by Senator PARADIS of Aroostook  
Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

Which was referred to the Committee on **AGRICULTURE, CONSERVATION AND FORESTRY** and **ORDERED PRINTED**.

Sent down for concurrence.

Bill "An Act to Make Changes to the Maine Economic Growth Council" S.P. 651 L.D. 1872

Presented by Senator PINGREE of Knox  
Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

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

Sent down for concurrence.



Bill "An Act to Authorize the Public Utilities Commission to Establish Reasonable Registration and Reporting Requirements and to Study Market Power Issues Associated with Electric Industry Restructuring" (Emergency) S.P. 649 L.D. 1871

Presented by Senator CAREY of Kennebec  
Cosponsored by Representative JONES of Bar Harbor and  
Representatives: BERRY, SR. of Belmont, COLWELL of  
Gardiner, JOY of Crystal, LAVERDIERE of Wilton, O'NEAL of  
Limestone, TAYLOR of Cumberland, USHER of Westbrook,  
VEDRAL III of Buxton  
Approved for introduction by a majority of the Legislative  
Council pursuant to Joint Rule 205.

Bill "An Act to Increase the Debt Limit of the Vinalhaven  
Water District" (Emergency) S.P. 652 L.D. 1873

Presented by Senator PINGREE of Knox  
Cosponsored by Representative: VOLENIK of Brooklin  
Approved for introduction by a majority of the Legislative  
Council pursuant to Joint Rule 205.

Which were referred to the Committee on **UTILITIES AND  
ENERGY** and **ORDERED PRINTED**.

Sent down for concurrence.

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

#### COMMITTEE REPORTS

##### House

##### Divided Report

The Majority of the Committee on **EDUCATION AND  
CULTURAL AFFAIRS** on Bill "An Act to Repeal the Guiding  
Principles of the Learning Results System" H.P. 503 L.D. 694

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

Signed:

Senators:

PENDLETON of Cumberland  
CATHCART of Penobscot  
SMALL of Sagadahoc

Representatives:

RICHARD of Madison  
BRENNAN of Portland  
DESMOND of Mapleton  
WATSON of Farmingdale  
BAKER of Bangor  
BARTH, JR. of Bethel  
MCELROY of Unity  
BELANGER of Caribou

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

Signed:

Representatives:

SKOGLUND of St. George  
STEDMAN of Hartland

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

Which Reports were **READ**.

Senator **PENDLETON** of Cumberland moved the Senate  
**ACCEPT** the Majority **OUGHT NOT TO PASS** Report, in  
concurrence.

On motion by Senator **RAND** of Cumberland, **TABLED** until  
Later in Today's Session, pending the motion by Senator  
**PENDLETON** of Cumberland to **ACCEPT** the Majority **OUGHT  
NOT TO PASS** Report, in concurrence.

#### Divided Report

The Majority of the Committee on **EDUCATION AND  
CULTURAL AFFAIRS** on Bill "An Act to Prohibit the Denial of  
Teacher Certification Based on Refusal to Participate in Learning  
Results" H.P. 1025 L.D. 1442

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

Signed:

Senators:

PENDLETON of Cumberland  
CATHCART of Penobscot  
SMALL of Sagadahoc

Representatives:

RICHARD of Madison  
BRENNAN of Portland  
DESMOND of Mapleton  
WATSON of Farmingdale  
BAKER of Bangor  
BARTH, JR. of Bethel  
MCELROY of Unity  
BELANGER of Caribou

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

Signed:

Representatives:

SKOGLUND of St. George  
STEDMAN of Hartland

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

Which Reports were **READ**.

Senator **PENDLETON** of Cumberland moved the Senate **ACCEPT** the Majority **OUGHT NOT TO PASS** Report, in concurrence.

On further motion by same Senator, **TABLED** until Later in Today's Session, pending motion by same Senator to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report, in concurrence.

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**Senate**

**Ought to Pass As Amended**

Senator **O'GARA** for the Committee on **CRIMINAL JUSTICE** on Bill "An Act to Include Flunitrazepam in the List of Schedule W Drugs" S.P. 603 L.D. 1800

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-217)**.

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

The Bill **READ ONCE**.

Committee Amendment "A" (S-217) **READ** and **ADOPTED**.

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

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**Off Record Remarks**

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Senator **O'GARA** for the Committee on **TRANSPORTATION** on Bill "An Act to Define the Projects That Public Works Departments May Undertake Without Procuring the Services of a Registered Professional Engineer" S.P. 244 L.D. 813

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-214)**.

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

The Bill **READ ONCE**.

Committee Amendment "A" (S-214) **READ** and **ADOPTED**.

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

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**SECOND READERS**

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

**House**

Bill "An Act Requiring the Department of Education to Perform Annual Cost-benefit Analysis of Special Education Programs in the State" H.P. 1043 L.D. 1460

Bill "An Act Allowing Appellate Review by an Aggrieved Contemnor" H.P. 1058 L.D. 1490

Bill "An Act to Enable Victims to Benefit from the Profits from Crimes" H.P. 1064 L.D. 1502

Bill "An Act to Appropriate Funds for the Education Research Institute" H.P. 1298 L.D. 1841

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

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**House As Amended**

Bill "An Act to Clarify the Authority of County Commissioners to Close Roads for Winter in the Unorganized Territories" (Emergency) H.P. 14 L.D. 39 (C "A" H-417)

Bill "An Act Concerning Threatening the Use of Deadly Force Against a Law Enforcement Officer Engaged in Carrying out Public Duty" H.P. 79 L.D. 104 (C "A" H-407)

Bill "An Act to Expand Recycling through Reduced Burning" H.P. 703 L.D. 967 (C "A" H-392)

Resolve, to Address Issues Raised by the Select Committee to Study Rate Increases in Nursing Homes H.P. 727 L.D. 991 (C "A" H-415)

Bill "An Act to Amend the Certificate of Need Laws" (Emergency) H.P. 734 L.D. 998 (C "A" H-414)

Bill "An Act to Create a Permanent Funding Source for the Saco River Corridor Commission" H.P. 850 L.D. 1155 (C "A" H-396)

Bill "An Act to Transfer the Responsibility for the Certification of Batterers' Intervention Programs to the Department of Corrections" H.P. 974 L.D. 1354 (C "A" H-406)

Bill "An Act to Allow Partially Consumed Bottles of Wine to be Taken from Restaurants" H.P. 997 L.D. 1389 (C "A" H-308)

Bill "An Act to Require the Release of the Results of an HIV Test to an Emergency Services Worker Who Was Possibly Exposed" H.P. 1000 L.D. 1392 (C "A" H-404)

Bill "An Act to Strengthen Maine's Search and Rescue Capabilities" H.P. 1082 L.D. 1519 (C "A" H-413)

Bill "An Act to Eliminate Inconsistencies and Unnecessary Duplication Regarding the Training and Certification of Individuals Who Enforce Land Use Regulations" H.P. 1111 L.D. 1554 (C "A" H-418)

Bill "An Act Regarding Confidentiality of Information Concerning Residents of Certain Facilities"

H.P. 1128 L.D. 1584  
(C "A" H-412)

Bill "An Act to Amend the Laws Regarding Intervenor Status for Foster Parents in Certain Cases of the Department of Human Services"

H.P. 1156 L.D. 1620  
(C "A" H-411)

Resolve, Directing the Department of Environmental Protection to Study and Make Recommendations on the Establishment of a Motor Vehicle Inspection and Maintenance Program to Meet the Requirements of the Federal Clean Air Act (Emergency)

H.P. 1174 L.D. 1651  
(C "A" H-391)

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

Sent down for concurrence.

Bill "An Act to Implement the Recommendations of the Task Force on Production and Issuance of Registration Plates"

H.P. 207 L.D. 260  
(C "A" H-364)

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

Sent down for concurrence.

#### ENACTORS

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

An Act to Require the Public Utilities Commission to Align Telecommunications Carrier Access Rates with Costs to Foster Economic Development and Competition throughout the State

S.P. 243 L.D. 812  
(C "A" S-162)

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

#### Off Record Remarks

An Act to Amend the Maine Pharmacy Act

H.P. 538 L.D. 729  
(C "A" H-288)

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

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

#### PAPERS FROM THE HOUSE

##### Non-concurrent Matter

Resolve, to Determine the Appropriate Tuition Rate for Public High School Students Who Live in a Municipality without a High School  
H.P. 632 L.D. 857  
(C "A" H-305)

In Senate, May 6, 1997, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-305)**, in concurrence.

Comes from the House, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-305) AS AMENDED BY HOUSE AMENDMENT "A" (H-448)** thereto, in **NON-CONCURRENCE**.

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

##### Non-concurrent Matter

Bill "An Act to Reestablish the State Compensation Commission"  
H.P. 999 L.D. 1391  
(C "A" H-309)

In Senate, May 7, 1997, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-309)**, in concurrence.

Comes from the House, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-309) AND HOUSE AMENDMENT "A" (H-440)** in **NON-CONCURRENCE**.

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

#### COMMITTEE REPORTS

##### House

##### Divided Report

The Majority of the Committee on **EDUCATION AND CULTURAL AFFAIRS** on Bill "An Act to Encourage Art Education in the State"  
H.P. 29 L.D. 54

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-349)**.

Signed:

Senators:

PENDLETON of Cumberland  
CATHCART of Penobscot

Representatives:

RICHARD of Madison  
BRENNAN of Portland  
DESMOND of Mapleton  
SKOGLUND of St. George  
WATSON of Farmingdale  
BAKER of Bangor  
MCELROY of Unity

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

Signed:

Senator:

SMALL of Sagadahoc

Representatives:

BARTH, JR. of Bethel  
STEDMAN of Hartland  
BELANGER of Caribou

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-349).**

Which Reports were **READ.**

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

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**Divided Report**

The Majority of the Committee on **EDUCATION AND CULTURAL AFFAIRS** on Bill "An Act to Expand Access to Maine's Technical Colleges" H.P. 263 L.D. 327

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-348).**

Signed:

Senators:

PENDLETON of Cumberland  
CATHCART of Penobscot  
SMALL of Sagadahoc

Representatives:

RICHARD of Madison  
DESMOND of Mapleton  
SKOGLUND of St. George  
BAKER of Bangor  
BARTH, JR. of Bethel  
WATSON of Farmingdale  
BELANGER of Caribou

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

Signed:

Representatives:

BRENNAN of Portland  
MCELROY of Unity  
STEDMAN of Hartland

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-348).**

Which Reports were **READ.**

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

The Bill **READ ONCE.**

Committee Amendment "A" (H-348) **READ** and **ADOPTED**, in concurrence.

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

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**Divided Report**

The Majority of the Committee on **INLAND FISHERIES AND WILDLIFE** on Bill "An Act Relating to the Designation of Species As Endangered or Threatened" H.P. 430 L.D. 580

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

Signed:

Senators:

KILKELLY of Lincoln  
RUHLIN of Penobscot  
HALL of Piscataquis

Representatives:

PAUL of Sanford  
CLARK of Millinocket  
CHICK of Lebanon  
DUNLAP of Old Town  
UNDERWOOD of Oxford  
TRUE of Fryeburg  
GOODWIN of Pembroke  
CROSS of Dover-Foxcroft  
PERKINS of Penobscot

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

Signed:

Representative:

USHER of Westbrook

Comes from the House, Bill and Accompanying Papers **INDEFINITELY POSTPONED.**

Which Reports were **READ.**

Senator **RAND** of Cumberland moved the Senate **ACCEPT** the Majority **OUGHT NOT TO PASS** Report.

On further motion by same Senator, **TABLED** until Later in Today's Session, pending motion by same Senator to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report.

**ENACTORS**

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

An Act to Clarify Requirements Pertaining to the Maine Certificate of Need Act  
H.P. 767 L.D. 1044  
(C "A" H-302)

An Act to Require Economic Impact Criteria on State Procurement Procedures  
S.P. 361 L.D. 1220  
(C "A" S-147)

An Act to Authorize Shellfish Management Committees to Determine Fees for Clam Licenses  
H.P. 1292 L.D. 1837

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

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

**PAPERS FROM THE HOUSE**

**Joint Order**

The following Joint Order: H.P. 1324

**ORDERED**, the Senate concurring, that the Joint Standing Committee on Taxation report out legislation concerning tax reform to the House.

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

Which was **READ** and **PASSED**, in concurrence.

**ORDERS OF THE DAY**

**Unfinished Business**

The following matters in the consideration of which the Senate was engaged at the time of Adjournment had preference in the Orders of the Day and continued with such preference until disposed of as provided by Senate Rule 516.

The Chair laid before the Senate the following Tabled and Later (5/9/97) Assigned matter:

**SENATE REPORTS** - from the Committee on **HEALTH AND HUMAN SERVICES** on Bill "An Act to Ban All Smoking within Workplaces, Restaurants and Public Accommodations"  
S.P. 134 L.D. 413

Report "A" - **Ought Not to Pass** (7 members)

Report "B" - **Ought to Pass as Amended by Committee Amendment "A" (S-198)** (3 members)

Report "C" - **Ought to Pass as Amended by Committee Amendment "B" (S-199)** (3 members)

Tabled - May 9, 1997, by Senator **RAND** of Cumberland.

Pending - **ACCEPTANCE OF ANY REPORT**

(In Senate, May 9, 1997, Reports **READ.**)

Senator **MITCHELL** of Penobscot moved the Senate **ACCEPT** Report "A", **OUGHT NOT TO PASS.**

**THE PRESIDENT PRO TEM:** The Chair recognizes the Senator from Waldo, Senator Longley.

Senator **LONGLEY:** Thank you Madam President. I rise in opposition to the pending motion and I do so because we all know that we've got to do something about the horrible amount of smoking going on among our youth, ages 18 to 34. We lead the nation. What this Ought Not to Pass motion would do is just turn our heads away and say we don't want to hurt our businesses. This would be the best argument in favor of the Ought Not to Pass, but I say that it hurts us all, our businesses and our ourselves, when we just turn our heads away from voting whenever we can to stop people from having access to tobacco and the second-hand smoke effects. We know they're dangerous. What this bill does is, it bans smoking in restaurants and lounges, and I would encourage you to vote against the pending motion on the grounds that there are many things that we can do to decrease the amount of smoking. This is one area, and given the fact that we lead the nation in the number of kids starting to smoke, most of them by age 14, I think, that we have to fight smoking at every place and in every level we can. I ask you not to turn your heads on this issue and to wait for further motions so that we can do something to address the epidemic of smoking. Thank you.

**THE PRESIDENT PRO TEM:** The Chair recognizes the Senator from Somerset, Senator Mills.

Senator **MILLS:** Thank you Madam President and men and women of the Senate. There is a report that is the second of three options available to you that would, in a very reasonable way, respond to the request that actually came from restaurant owners in the State of Maine who said that we, as individual business owners, found it very difficult to do what we would like to do, which is to ban smoking within our restaurants where we try to welcome people to come in and eat and enjoy a meal. We would like to protect our help. It is impossible to distinguish one

area from another in the restaurant. It really is impossible to ask waitresses and waiters to wait on one segment of the restaurant without waiting on the other. One restaurant owner came to us in public hearing, he's a constituent of mine, he has two daughters that work in his family restaurant and he is sick and tired of having his kids, in order to earn a living in the family business, to be constantly exposed to secondary smoke in approximately 25% to 30% of the restaurant area that he owns. And he said, "Look, I'd like to ban smoking in my restaurant. I'd like to do it all by myself and I would even put a sign out advertising that I am a smoke-free restaurant. I know very well, in my region, that I would lose such a substantial fraction of my business to my nearby competitors and that I would have to close my doors. You have to do this for us. We can't do it for ourselves." It's one of the areas where a reasonable measure of government regulation seems to be required in order to get the job done and do it properly. Otherwise, if we leave restaurants with the current policies in effect, with divided areas, some smoking, some non-smoking areas within the same spaces, we have effectively very little regulation over the subject. There were strong voices of restaurant owners who appeared at the public hearing, who pleaded with us to pass some reasonable measure of restraint.

The choices that will lie before you will include banning smoking in restaurants but leaving it as a permitted activity in bars and lounges and in other areas of public accommodation. I think that the committee, which worked very, very hard on this issue, deserves to have its work acknowledged by going on to accept report "B". Thank you.

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

Senator **MITCHELL:** Thank you Madam President. Good morning women and men of the Senate. I speak to you this morning on behalf of our committee and the Majority report that came out of the committee. I speak to you also on behalf of the people who came before us at our hearing, and of the businesses that I've talked to over the last two weeks since we had the hearings and the work sessions on this particular bill. Let's talk about this for a minute. We are talking about private businesses. Businesses in Maine make the decision on the type of business they want to run, how they want to derive their profits and the clientele they're going to cater to. That's across the board for all businesses. Now we are talking about restaurants and lounges. We have a situation here where we have small restaurants. You have restaurants with areas for them to prohibit smoking and allow smoking in a lounge area. To enclose that lounge area would be very difficult because of the size. When we had people come before us at the hearing, we had people like Pat's Pizza in Orono, Maine. Pat Farnsworth has been in business for 60 odd years there and many of us, or those of us who have visited the University of Maine in Orono, I'm sure, patronize Pat's Pizza. This restaurant has an area where smoking is allowed and has been for years. Now, for them to renovate, with the age of that particular place and for the extra cost, would be an inconvenience and an added expense. We would be dictating and putting our hands in the pockets of these businesses and telling them that they have to put up walls.

Now, the technology of air purifiers was brought to our attention. This past weekend I patronized and went into 3 small restaurants in the little town of Newport, Maine. Friday evening I stopped, on the way home from a session, at Pat's Pizza. The woman, the manager, met me at the door and said "What are

you doing about this no smoking situation. Look at what you see here. Can you smell smoke?" No, you couldn't. The bar area and lounge, pizza places, beer and pizza, you could not smell the smoke because of the air purifier. The people were having their beer and pizza at one end and the non-smokers were sitting in the other. They were not inconvenienced. They had a choice to go in there and you could not smell smoke with the air purification. She pleaded, "Please, I cannot change the decor, or build, or enclose this lounge in this small restaurant. And I have better protection than Hawaiian Paradise, the restaurant on the other side of town." I ventured down to the Chinese restaurant, Hawaiian Paradise, which is one big, open room with a sign in the middle of it that says NO SMOKING on one end and SMOKING on the other. Again, because of the air purification you couldn't smell the smoke. Irving's, the truck-stop in Newport, as you come off the interstate, last evening after my education forum, I met there with the participants of our forum and we went in and there's a sign in the middle of the restaurant SMOKING on one side and people smoking at the bar area where you have food and one area for NON-SMOKING. Once again, air purifiers keep the smoke cleared and people go in there because it's a convenience. They patronize it because they want to go in to that particular restaurant. They have a choice. People of Maine currently have a choice. We are putting our hands in these people's pockets, incurring additional expense when there are precautions. We have choices to go to other restaurants. Bangor, Maine, The Lemon Tree, a small restaurant, no smoking, we, all of us, know smokers go there. But it gives people a choice. We had people from a small diner down in Wiscasset come to our hearing. One woman said, "People come in here and not just spend an hour to eat, but they play cribbage, they play cards and part of the reason they come here is because they can smoke and socialize, and if you ban smoking from here or tell me that I have to put a wall up, I'd have to close my doors." Small restaurants in downtown Portland, in the Old Port area, same rationale. I have not had one small restaurant or lounge area say to me, put this law into effect. We need it.

The excuse that Peter illustrated to, from the restaurants in Skowhegan that are saying, if you enact this law that gives me the reason that I can tell my people I can't have smoking here. Now, how many businesses come to government and ask them to protect them? If you're in business you make a decision on what clientele to serve and address that clientele. We should not be doing this. When you look at one of the amendments, it states having a lounge area with a no smoking area. The Days Inn here in Augusta, if you go into that lounge area you cannot smell smoke, again, because of the air purifiers, but where would you put a no smoking area? The manager said, "I could put one table in the corner and put a NO SMOKING sign in front of it." Is that what we want to do for them, to say that we are appealing government so we're sticking a NO SMOKING sign up there instead of letting them run their business the way they want to run it? On one of the amendments it states that we can allow the wait staff to make a choice, if they want to work in a smoking or a non-smoking area of the restaurant. Now, stop and think about that. You're telling the managers of these businesses that they are going to offer their wait staff a choice. Now, if all of their wait staff wants to work in the restaurant area, who are they going to look at and say, "If you want a job, you have to work in the lounge area." We have air purifiers. You can't smell smoke, but because you don't want to work in their lounge, are they going to keep you there where they don't need you? Again, we are micro-

managing business folks and I don't think that's what we want to do.

I've never smoked, and no one in my family smokes. My children have never smoked and I'm against it. But I have a choice on where I want to go, on where I want to participate in eating and social activities and I can make that choice. And I make sure there are air purifiers when I go into an area that has smoking allowed. It's children we're focusing on. Yes, we are going to work hard with our programs, with our education programs. We have schools on board and communities working to eliminate smoking with youth. But remember, we can talk to people who are older and made the decision to smoke, but one other factor that I would say to you, I spoke to some people on welfare in the Portland area. I said to them, "Now this is finally something that is going to force you to quit smoking, if we would put a cigarette tax on." Their response was, "No, I will take more money from my welfare check and buy cigarettes and go without what I need because I'm addicted. It's a disease and that's my choice and I don't need you telling me. If you put a tax on cigarettes or enact a smoking bill, I'm still going to do what I want to do with my life." So I ask you, please, to support the businesses of Maine and support my motion this morning of Ought Not to Pass on this bill. Thank you.

**THE PRESIDENT PRO TEM:** The Chair recognizes the Senator from Hancock, Senator Goldthwait.

Senator **GOLDTHWAIT:** Thank you Madam President, ladies and gentlemen of the Senate. I just want to speak briefly to this issue because I do feel strongly about smoking in public places and I, too, did a bit of a survey in the town that I live in. It's just opening up for the summer, one of my favorite events of the year. I did have an opportunity, in this early quiet season, to speak with many of the restaurant owners in the Bar Harbor area. Many of them did say that the issue would be better resolved as a uniform policy rather than trying to do it as an individual policy. It creates a lot of competitive issues that they are concerned about and that, in fact, they would just as soon not expose their employees to cigarette smoke. It's difficult for them to make that choice because of their marketing situation and so, they would prefer that we manage this at the state level. It reminds me of another issue that came up last session where businesses did come to us and say, "This would be helpful if you would do this for us."

The attitudes of our society about smoking have changed significantly, and I'm happy to say that the State of Maine has been a leader in that area. It always surprises me, when I visit other states and attend business, or go out in the evening, and find that many states have a much more liberal smoking policy than our state does, and I'm proud of that. Our kids have been increasingly involved in anti-smoking campaigns. I know I have a very active project-assist group in my own community. Really, it's our kids who are asking us to tighten up the controls on smoking so that they can go about their normal business and not have to worry about if this is a particular establishment that allows smoking or not, to know that they can go to any restaurant and not have to be subjected to cigarette smoke.

I would submit that even the best of air purifiers does not solve the problem, particularly for people with respiratory disease, and they will react to the cigarette smoke despite the best purification systems available. So, if you want to leave the current situation in place, press 1. If you want to mostly ban smoking in restaurants, press 2. If you want to slightly ban smoking in restaurants, press 3. We have all those choices in

front of us today and I would urge you to vote against the Ought Not to Pass motion.

**THE PRESIDENT PRO TEM:** The Chair recognizes the Senator from Piscataquis, Senator Hall.

Senator **HALL:** Thank you Madam President, ladies and gentlemen. I've heard a couple of people speak that this will help our young people from smoking. I beg to differ with you. You can ban cigarettes everywhere and they will be smoking. Nicotine is a very addictive substance. I'm living proof of that. I've smoked for many, many years and have attempted to quit, many, many times. I am also attempting to quit this morning, so be careful of what you say to me today. I may bite your head off.

It's interesting, when we passed the other smoking bill a few years ago, that a lot of people were going to be run out of business and so on and so forth. Most of those people made the right choice and banned smoking in their restaurants.

Let me tell you a little story that happened to me on Sunday. I decided to take my wife out to dinner. Well, dummy me, I neglected to make any reservations. So we went to two well-established large restaurants and couldn't get in. The only restaurant that I could find was a smoking restaurant. That restaurant is for sale. It's doing the poorest business of any restaurant in my District. I elected not to go in there, a smoker. I didn't want to go in there. So, I ended up taking my wife to Subway and ended up getting a nice sandwich and that was our dinner, at her suggestion by the way. I think she was getting hungry.

I'm for letting these people decide what they want to do themselves, and anyone who is still allowing smoking in their restaurants, once they come to the realization that they should ban smoking completely, they will be happy. Their business will be better. I will assure them of that. Regardless, there will be a few outspoken people, but it will be better for everyone if there is no smoking in any restaurants. The purifiers do a good job, there is no question about that. But I will be voting for the pending motion of Ought Not to Pass because I think it's the right of the owners of these businesses to make up their own mind of what they want to do. And you may have heard from one or two who don't want to make that decision. They want us to be the heavies. It's still eroding personal rights and therefore, I'll be voting for the Ought Not to Pass. Thank you.

On motion by Senator **RAND** of Cumberland, supported by a Division of at least one-fifth of the members present and voting, a Roll Call was ordered.

**THE PRESIDENT PRO TEM:** The Chair recognizes the Senator from Washington, Senator Cassidy.

Senator **CASSIDY:** Thank you Madam President, men and women of the Senate. I wanted to speak briefly about this proposal that we have before us as well. I probably am using poor judgment telling you, but, three weeks ago tomorrow I quit smoking, and the reason I shouldn't tell you now is because it's going to put pressure on me not to start again. It was tough. I want to tell you the truth, and I agree with the good Senator Hall from Piscataquis that it frosts me when I hear people say that nicotine is not addictive. I think the thing that pushed me over during my weak points was when the President of one of the large companies told us, if you heard on the news, that "cigarettes and nicotine are no more addictive than gummy

bears." I don't know if any of you heard that, but that made me say that I was very ugly when I heard him say that because it is very addictive. The toughest thing that I have ever had to do, and I tried these patches and all kinds of things for a day or two and I said the heck with it. I'm going to do this cold turkey. I'm not going to suffer with this, I mean, I was ready. As a matter of fact, I was not very kind to a couple of people here one day as well. They didn't realize. I mean your nerves, it's terrible, it's a withdrawal but fortunately, that chemical withdrawal, I think from my experience, only lasts about three days. The rest of it is a psychological thing. There's no question about it. When I drove home Saturday, eleven hours from Delaware, as I mentioned yesterday, and I got through that eleven hour drive without a cigarette, so I think I can do it. Now that I have told you all, I'll have to do it. I really wanted to quit smoking years ago and my family and my children, and so on and so forth, have been after me and some of you, as a matter of fact, Senator Hall was the one that sort of inspired me to do it because I'm quitting and if you ever looked around here, I don't know if you ever realized this, there's 35 of us in this Chamber and Senator Hall and I were the only two that were out on the deck other than to get fresh air. So I think it will be great if we both can do this and we can say that we have 100% non-smokers in the Maine State Senate.

That being said, I have to go back to where I have on some other bills here, that I just hate the government telling people what to do from the time they get up in the morning until we rest our heads in the evening. I go into restaurants, and I tell you this that after you quit smoking you really notice it more than people that never smoked. I go into a restaurant that is full of smoke and it bothers me more than it did, more than it may some of you that have never smoked. But I have that choice, I can go to the non-smoking area, I can go to the smoking area, I can go to a non-smoking restaurant. I can smoke. I can chew tobacco or whatever I want to do. And that's the right we have because we live in this country. I think that Number 1, you are going to put a burden, I've heard, on the people who own restaurants. The government is telling them what to do again and I don't agree with that. The other thing is that there are people who enjoy smoking, and like to go to a smoking restaurant and have a cup of coffee or glass of wine, or whatever they would enjoy. I don't think it's right for us to get in people's lives again, and I hope you realize the value of living in this country. I hope you realize that I know smoking is terrible for us. It's terrible for you. And I'm going to do everything I can to hope that the young folks don't smoke, and all those kinds of things, but yet, I'm not going to take the rights away from citizens in Maine to go or not to go. To smoke or not to smoke. And I hope that you will join me in supporting this motion Ought Not to Pass. Thank you.

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The Chair noted the absence of the Senator from Aroostook, Senator **KIEFFER**, and further excused the same Senator from today's Roll Call votes.

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The Doorkeepers secured the Chamber.

The Secretary called the Roll with the following result:

**ROLL CALL**

**YEAS:** Senators: AMERO, BENOIT, BUTLAND, CAREY, CASSIDY, DAGGETT, HALL, LAFOUNTAIN, MICHAUD, MITCHELL, O'GARA, PENDLETON, SMALL

**NAYS:** Senators: ABROMSON, BENNETT, CATHCART, CLEVELAND, FERGUSON, GOLDTHWAIT, JENKINS, KILKELLY, LAWRENCE, LIBBY, LONGLEY, MACKINNON, MILLS, MURRAY, NUTTING, PARADIS, RAND, RUHLIN, TREAT, THE PRESIDENT PRO TEM - CHELLIE PINGREE

**ABSENT:** Senator: HARRIMAN

**EXCUSED:** Senator: KIEFFER

13 Senators having voted in the affirmative and 20 Senators having voted in the negative, with 1 Senator being absent and 1 Senator being excused, the motion by Senator **MITCHELL** of Penobscot to **ACCEPT** Report "A", **OUGHT NOT TO PASS**, **FAILED**.

Senator **GOLDTHWAIT** of Hancock moved the Senate **ACCEPT** Report "B", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-198)**.

The Chair ordered a Division.

**THE PRESIDENT PRO TEM:** The Chair recognizes the Senator from Hancock, Senator Goldthwait.

Senator **GOLDTHWAIT:** Thank you, Madam President, ladies and gentlemen of the Senate. This amendment would ban smoking in restaurants, except for those with separate bars in which smoking would be allowed, and it would also require that taverns and lounges would have a no smoking area similar to the current no smoking areas in restaurants, and I urge your support for this.

**THE PRESIDENT PRO TEM:** The Chair recognizes the Senator from Somerset, Senator Mills.

Senator **MILLS:** Madam President. I have my light on purely for the same purpose as Senator Goldthwait had, just to support the Report "B".

**THE PRESIDENT PRO TEM:** The Chair recognizes the Senator from Piscataquis, Senator Hall.

Senator **HALL:** Thank you Madam President, ladies and gentlemen. This amendment further restricts business and I will not vote to do that and I wish that you would think about that and read that amendment before you vote. And, to give you time, I'd make the motion to indefinitely postpone this L.D. and all its' accompanying papers.

Senator **HALL** of Piscataquis moved to **INDEFINITELY POSTPONE** the Bill and Accompanying Papers.



**THE PRESIDENT PRO TEM:** The Chair recognizes the Senator from Somerset, Senator Mills.

Senator **MILLS:** Madam President, I would ask for a roll call if that is the pending motion, but I would inquire of the good Senator whether there is any point to the motion since it seems to be exactly the same on which we have already had a roll call, which was on the Ought Not to Pass and wonder whether it would not be appropriate to withdraw that motion so that we could go on to address one report or the other?

**THE PRESIDENT PRO TEM:** The motion is in order. The Chair recognizes the Senator from Piscataquis, Senator Hall.

Senator **HALL:** Thank you Madam President. I am more than willing to answer that question. This is entirely a different motion. We won't know until we take the vote to what the outcome is, so I think it's very appropriate and go along with the roll call.

On motion by Senator **MILLS** of Somerset, supported by a Division of at least one-fifth of the members present and voting, a Roll Call was ordered.

The Doorkeepers secured the Chamber.

The Secretary called the Roll with the following result:

**ROLL CALL**

**YEAS:** Senators: AMERO, BUTLAND, CAREY, CASSIDY, DAGGETT, HALL, MICHAUD, MITCHELL, O'GARA, PENDLETON, SMALL

**NAYS:** Senators: ABROMSON, BENNETT, BENOIT, CATHCART, CLEVELAND, FERGUSON, GOLDTHWAIT, JENKINS, KILKELLY, LAFOUNTAIN, LAWRENCE, LIBBY, LONGLEY, MACKINNON, MILLS, MURRAY, NUTTING, PARADIS, RAND, RUHLIN, TREAT, THE PRESIDENT PRO TEM - CHELLIE PINGREE

**ABSENT:** Senator: HARRIMAN

**EXCUSED:** Senator: KIEFFER

11 Senators having voted in the affirmative and 22 Senators having voted in the negative, with 1 Senator being absent and 1 Senator being excused, the motion by Senator **HALL** of Piscataquis to **INDEFINITELY POSTPONE** the Bill and Accompanying Papers, **FAILED**.

On motion by Senator **MILLS** of Somerset, supported by a Division of at least one-fifth of the members present and voting, a Roll Call was ordered.

The Doorkeepers secured the Chamber.

The Secretary called the Roll with the following result:

**ROLL CALL**

**YEAS:** Senators: BENNETT, CATHCART, FERGUSON, GOLDTHWAIT, JENKINS, LIBBY, MACKINNON, MILLS, MURRAY, NUTTING, PARADIS, RAND, RUHLIN, TREAT, THE PRESIDENT PRO TEM - CHELLIE PINGREE

**NAYS:** Senators: ABROMSON, AMERO, BENOIT, BUTLAND, CAREY, CASSIDY, CLEVELAND, DAGGETT, HALL, KILKELLY, LAFOUNTAIN, LAWRENCE, LONGLEY, MICHAUD, MITCHELL, O'GARA, PENDLETON, SMALL

**ABSENT:** Senator: HARRIMAN

**EXCUSED:** Senator: KIEFFER

15 Senators having voted in the affirmative and 18 Senators having voted in the negative, with 1 Senator being absent and 1 Senator being excused, the motion by Senator **GOLDTHWAIT** of Hancock to **ACCEPT** Report "B", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-198)**, **FAILED**.

Senator **LONGLEY** of Waldo moved the Senate **ACCEPT** Report "C", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "B" (S-199)**.

**THE PRESIDENT PRO TEM:** The Chair recognizes the Senator from Waldo, Senator Longley.

Senator **LONGLEY:** Thank you. Colleagues in the Senate. Obviously, this is a tough issue where we understand the hazards of smoking and we want to respect the interests of a business person deciding for themselves. I move Ought to Pass on Committee Amendment "C" because it tries to strike a happy middle, if there can be such a thing. Basically, in voting for this, and in voting against the Ought Not to Pass, I think we ought to do something. I couldn't vote for the Ought Not to Pass because it was, ought to turn my head away, and deny the fact that smoking is an epidemic in this state and it's costing us more than it's earning us, and for that reason I couldn't vote for that motion, and support this motion because it strikes a middle ground.

The middle ground is, if I am a waitress, going to any one of you who run a restaurant when I apply for a job, and supposing you want to hire me, you ask me do I have a preference, smoking or no smoking? As a non-smoker who hates being around smoke, of course, I'm going to choose non-smoking to the extent that the employer can accommodate me. I'm also going to choose non-smoking because I think that the tips are going to be higher in that area, if for no other reason that fewer coins have gone into a vending machine to buy cigarettes and the money goes to Maine workers as opposed to out of state tobacco companies. I was asked by my colleague next to me to be brief, I will end on that note. I think that it allows choice for the employer, choice for the employee and also as a note, it asks the employer to set aside one side of his or her bar for the non-smokers. 75% of us do not smoke. Many of us do not go out and deny other Mainers our business because we don't want to be around smoke. I think, that by sending a message and having employers be more aware of all of us who choose not to be

around smoke, we will get the message out that non-smoking is better for your business, as the good Senator from Piscataquis, has said. Thank you for listening and I urge you to vote for the pending measure.

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

Senator **MITCHELL:** Thank you Madam President, women and men of the Senate. I oppose the good Senator from Waldo County because once again I implore you, I'm speaking to you on behalf of the businesses of Maine. This is a burden that you are placing on the owners of these restaurants and lounges. You're asking them to make a decision and offering them, and demanding them to allow their wait staff to make a choice.

We do not need to micro-manage our businesses in Maine. We need to allow them the freedom of running their business at their choice and the way they prefer to manage their businesses. The current law allows that and I implore you to be very careful when you think about your vote on this, because it does affect the employers and the employees in a negative way. The people still have the choice, so let's allow the people of Maine the freedom of being able to make a decision on the clientele they wish to address coming into their lounges. Remember, the technology changes on air purifiers, the sizes of these lounges that we are talking about, and the impossibility for them to allow a no smoking area and have that enclosed, or even a sign in front of a small table in one end of the lounge. Lounges are atmosphere, they are not large rooms, they're small rooms which do not allow, when they were constructed, for a separation of smoking and non-smoking. That's why the business of air purification went into effect and became such a great business because they were able to purify the air in small enclosed areas for more health and safety precautions. I urge you to vote in opposition of this. Thank you.

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Off Record Remarks

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**THE PRESIDENT PRO TEM:** The Chair recognizes the Senator from Hancock, Senator Goldthwait.

Senator **GOLDTHWAIT:** Thank you Madam President, ladies and gentlemen of the Senate. Reluctantly, I wish to explain that I will be voting against this pending motion, although it is a weak, but not unreasonable, compromise in terms of the issue of smoking in restaurants. The part of the bill that would provide for wait staff to designate where they chose to work would, I believe, be unworkable for many of our small restaurants in Maine and because of that piece I'm unable to support the pending motion. Thank you.

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Off Record Remarks

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

Senator **PARADIS:** Thank you Madam President, men and women of the Senate. I was very, very proud that two of our Senators made the announcement on the floor of the Senate this

morning, while our students from all over the State who have been working diligently on alerting the state to the problems, the health problems with smoking, were in the room when those announcements were made and I couldn't be any prouder. I remember when our schools were starting to become smoke-free and after each teacher was walking away from the nicotine habit.

I urge your support for this amendment. This states any attempts at reasonably accommodating the wait staff. It's a small step. We, here in these halls, work very, very hard to compromise and this is a compromise that we arrived at to bring all the parties together, and always remembering that second hand smoke is a class A carcinogen. This is a small, small step for us to take this morning. It's not going to be onerous because of it's permissibility, in terms of stating that this needs to be reasonable at accommodating their employees. Thank you very much.

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

Senator **BENNETT:** Thank you Madam President, fellow members of the Senate. I am reminded, listening to the debate today, about the old notion of a camel as a horse created by a committee and, in my view, sometimes compromise is worse than either of the two alternatives. This is one of the cases where I believe that to be so. I believe this is not a happy medium. I believe this is poorly conceived. A tremendous burden on businesses and on individuals. I just cannot imagine this bill, as being suggested, working in any way in this state. This bill does not ask, as has been suggested, lounge owners to separate their lounges into non-smoking or smoking, it tells them to. It requires them to and I don't see how it's going to work. I supported report "B" because I think that we need to send a clear message on this, and the fairness and the equity involved with this legislation can only be achieved if everybody is playing under the same rules. I know all of you have lounges and pubs in your districts and they are vastly different, the way they are organized, the way they are managed, the hours they keep, the clientele they serve. There is no way that this legislation, this amendment, can properly serve, through this micro-management in any equitable way, that vast array of differences across the state. I urge you to defeat this motion. Thank you.

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

Senator **FERGUSON:** Thank you very much Madam President, fellow members of the Senate. I did vote to support report "B" and, even the original bill I would have supported that if that would have been before us but this is, in my judgment, too restrictive. It would be too hard to administer by the businesses and I would urge you all to vote against the pending motion. Thank you very much.

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

Senator **CATHCART:** Men and women of the Senate. I urge you also to vote against this amendment, as one who would support prohibiting smoking in restaurants and as a former restaurant owner myself. I voted for the previous amendment but I don't see where this prohibits smoking anywhere. Instead I just see that it really places the burden on the restaurant owner to

give the wait staff their choice of which section to work in. Having been in the position of that restaurant owner, I can tell you that it's just not always possible to honor those requests and it just seems like it totally got in the way from the original intent of the bill. Thank you Madam President.

The Chair ordered a Division.

On motion by Senator **AMERO** of Cumberland, supported by a Division of at least one-fifth of the members present and voting, a Roll Call was ordered.

The Doorkeepers secured the Chamber.

The Secretary called the Roll with the following result:

**ROLL CALL**

**YEAS:** Senators: CLEVELAND, LAWRENCE, LONGLEY, PARADIS, RAND, TREAT, THE PRESIDENT PRO TEM - CHELLIE PINGREE

**NAYS:** Senators: ABROMSON, AMERO, BENNETT, BENOIT, BUTLAND, CAREY, CASSIDY, CATHCART, DAGGETT, FERGUSON, GOLDTHWAIT, HALL, JENKINS, KILKELLY, LAFOUNTAIN, LIBBY, MACKINNON, MICHAUD, MILLS, MITCHELL, MURRAY, NUTTING, O'GARA, PENDLETON, RUHLIN, SMALL

**ABSENT:** Senator: HARRIMAN

**EXCUSED:** Senator: KIEFFER

7 Senators having voted in the affirmative and 26 Senators having voted in the negative, with 1 Senator being absent and 1 Senator being excused, the motion by Senator **LONGLEY** of Waldo to **ACCEPT** Report "C", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "B" (S-199)**, **FAILED**.

Senator **LAWRENCE** of York moved the Senate **RECONSIDER** whereby it **FAILED** to **ACCEPT** Report "B", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-198)**.

The same Senator moved to **TABLE** until Later in Today's Session, pending motion by same Senator to **RECONSIDER** whereby the Senate **FAILED** to **ACCEPT** Report "B", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-198)**.

At the request of Senator **BENNETT** of Oxford a Division was had. 22 Senators having voted in the affirmative and 9 Senators having voted in the negative, the motion by Senator **LAWRENCE** of York to **TABLE** until Later in Today's Session, pending motion by same Senator to **RECONSIDER** whereby the Senate **FAILED** to **ACCEPT** Report "B", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-198)**, **PREVAILED**.

Senate at Ease

Senate called to order by the President Pro Tem.

The President Pro Tem requested the Sergeant-at-Arms escort the Senator from York, Senator **LAWRENCE** to the Rostrum where he resumed his duties as President.

The Sergeant-at-Arms escorted the Senator from Knox, Senator **PINGREE** to her seat on the floor.

Senate called to order by the President.

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 **BANKING AND INSURANCE** on Bill "An Act to Amend the Continuing Care Retirement Community Laws to Repeal Certain Exemptions and Place Other Requirements on Providers and Developers of Continuing Care Retirement Communities" H.P. 827 L.D. 1132

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-426)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-426)**.

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

The Bill **READ ONCE**.

Committee Amendment "A" (H-426) **READ** and **ADOPTED**, in concurrence.

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

The Committee on **BUSINESS AND ECONOMIC DEVELOPMENT** on Bill "An Act to Amend the Professional Service Corporation Act As It Relates to Eye Care Providers" H.P. 1301 L.D. 1844

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-437)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-437)**.

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

The Bill **READ ONCE**.

Committee Amendment "A" (H-437) **READ** and **ADOPTED**, in concurrence.

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

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The Committee on **CRIMINAL JUSTICE** on Bill "An Act to Reduce the Presumptive Amount for Trafficking in Marijuana from 2 Pounds to One Pound" H.P. 749 L.D. 1026

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-422)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-422)**.

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

The Bill **READ ONCE**.

Committee Amendment "A" (H-422) **READ** and **ADOPTED**, in concurrence.

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

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The Committee on **EDUCATION AND CULTURAL AFFAIRS** on Bill "An Act Regarding Balances Remaining in General Purpose Aid for Local Schools" H.P. 73 L.D. 98

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-424)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-424)**.

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

The Bill **READ ONCE**.

Committee Amendment "A" (H-424) **READ** and **ADOPTED**, in concurrence.

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

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The Committee on **HEALTH AND HUMAN SERVICES** on Bill "An Act to Amend the Child and Family Services and Child Protection Act" H.P. 1182 L.D. 1673

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-430)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-430)**.

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

The Bill **READ ONCE**.

Committee Amendment "A" (H-430) **READ** and **ADOPTED**, in concurrence.

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

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The Committee on **LEGAL AND VETERANS AFFAIRS** on Bill "An Act to Amend the Liquor Laws" H.P. 204 L.D. 257

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-428)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-428)**.

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

The Bill **READ ONCE**.

Committee Amendment "A" (H-428) **READ** and **ADOPTED**, in concurrence.

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

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The Committee on **LEGAL AND VETERANS AFFAIRS** on Bill "An Act Concerning Public Notice of Lottery Odds" H.P. 918 L.D. 1261

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-427)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-427)**.

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

The Bill **READ ONCE**.

Committee Amendment "A" (H-427) **READ** and **ADOPTED**, in concurrence.

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

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The Committee on **TRANSPORTATION** on Resolve, to Name the New Topsham-Brunswick Bridge across the Androscoggin H.P. 838 L.D. 1143

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-423).**

Comes from the House with the Report **READ** and **ACCEPTED** and the Resolve **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-423).**

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

The Resolve **READ ONCE.**

Committee Amendment "A" (H-423) **READ** and **ADOPTED**, in concurrence.

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

\_\_\_\_\_  
Off Record Remarks  
\_\_\_\_\_

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 Strengthen the Mandatory Child Abuse Reporting Laws  
H.P. 382 L.D. 527  
(C "A" H-346)

An Act to Clarify the Right of a Real Estate Broker to a Lien on Land, Improvements or Structures  
H.P. 577 L.D. 768  
(C "A" H-323)

An Act to Establish the Interstate Economic Development Commission for the Northern New England States  
S.P. 538 L.D. 1657

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

\_\_\_\_\_  
**Mandate**  
\_\_\_\_\_

An Act to Protect the Voting Rights of Stalking Victims  
H.P. 998 L.D. 1390  
(C "A" H-332)

This being a Mandate, in accordance with the provisions of Section 21 of Article IX of the Constitution, having received the affirmative vote of 26 Members of the Senate, with no Senators having voted in the negative, and 26 being more than two-thirds of the entire elected Membership of the Senate, was **PASSED TO BE ENACTED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

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

**COMMITTEE REPORTS**

House

**Ought to Pass As Amended**

The Committee on **TAXATION** on Bill "An Act to Amend the Watercraft Registration Laws" (Emergency) H.P. 564 L.D. 755

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-438).**

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-438).**

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

The Bill **READ ONCE.**

Committee Amendment "A" (H-438) **READ** and **ADOPTED**, in concurrence.

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

\_\_\_\_\_  
**Divided Report**  
\_\_\_\_\_

The Majority of the Committee on **HEALTH AND HUMAN SERVICES** on Bill "An Act to Provide Funding for Mental Health Services for Homeless Shelters" H.P. 660 L.D. 913

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-409).**

Signed:

Senators:

PARADIS of Aroostook  
LONGLEY of Waldo

Representatives:

MITCHELL of Portland  
BROOKS of Winterport  
FULLER of Manchester  
KANE of Saco  
PIEH of Bremen  
QUINT of Portland  
BRAGDON of Bangor  
SNOWE-MELLO of Poland

The Minority of the same Committee on the same subject reported that the same **Ought to Pass as Amended by Committee Amendment "B" (H-410).**

Signed:

Senator:  
MITCHELL of Penobscot

Representatives:  
LOVETT of Scarborough  
JOYNER of Hollis

Comes from the House with the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-409)** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-409)**.

Which Reports were **READ**.

Senator **PARADIS** of Aroostook moved the Senate **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-409)** Report, in concurrence.

On further motion by same Senator, **TABLED** until Later in Today's Session, pending motion by same Senator to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-409)** Report, in concurrence.

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

#### **PAPERS FROM THE HOUSE**

##### **Non-concurrent Matter**

Bill "An Act to Allow County Commissioners to Serve on the Maine Land Use Regulation Commission" (Emergency)  
H.P. 9 L.D. 6  
(C "A" H-293)

In Senate, May 8, 1997, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-293)**, in concurrence.

Comes from the House, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-293) AND HOUSE AMENDMENT "A" (H-435) in NON-CONCURRENCE**.

Senator **NUTTING** of Androscoggin moved the Senate **RECEDE** and **CONCUR**.

On further motion by same Senator, **TABLED** until Later in Today's Session, pending motion by same Senator to **RECEDE** and **CONCUR**.

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##### **Non-concurrent Matter**

Resolve, to Establish a Commission to Designate Outstanding Maine Citizens Whose Portraits Are to Be Displayed in the State House  
H.P. 1145 L.D. 1610  
(C "A" H-328)

In Senate, May 8, 1997, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-328)**, in concurrence.

Comes from the House, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-328) AS AMENDED BY HOUSE AMENDMENT "A" (H-452)** thereto, in **NON-CONCURRENCE**.

Senator **NUTTING** of Androscoggin moved the Senate **RECEDE** and **CONCUR**.

**THE PRESIDENT:** The Chair recognizes the Senator from Oxford, Senator Bennett.

Senator **BENNETT:** I request permission to pose a question through the Chair?

**THE PRESIDENT:** The Senator may pose his question.

Senator **BENNETT:** Thank you. To anybody who can answer. Could you explain to me the benefits of receding and concurring? Thank you.

**THE PRESIDENT:** The Senator from Oxford, Senator Bennett poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Androscoggin, Senator Nutting.

Senator **NUTTING:** Hang in there Mr. President. I'll attempt to answer the good Senator. This L.D. was brought before the State and Local Government Committee. The title pretty much explains the bill. We worked with the Historic Preservation people of the State of Maine, Mr. Shuttleworth and others. The amendment, put on in the House, is a technical amendment that corrects who makes the appointment of a legislative member of a panel. This was an 11 to 1 tripartisan committee report. And, if there are any other questions I'd be happy to attempt to answer them as well. Thank you.

At the request of Senator **GOLDTHWAIT** of Hancock a Division was had. 23 Senators having voted in the affirmative and 2 Senators having voted in the negative, the motion by Senator **NUTTING** of Androscoggin to **RECEDE** and **CONCUR**, **PREVAILED**.

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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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#### **ORDERS OF THE DAY**

The Chair laid before the Senate the following Tabled and Later (5/7/97) Assigned matter:

Bill "An Act to Create an Historic Preservation Tax Credit"  
S.P. 126 L.D. 405  
(C "A" S-139)

Tabled - May 7, 1997, by Senator **PINGREE** of Knox.

Pending - **FURTHER CONSIDERATION**

(In Senate, April 30, 1997, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-139).**)

(In House, May 7, 1997, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-139) AND HOUSE AMENDMENT "A" (H-372) in NON-CONCURRENCE.**)

On motion by Senator **RUHLIN** of Penobscot, the Senate **RECEDED** and **CONCURRED**.

The Chair laid before the Senate the following Tabled and Later (5/8/97) Assigned matter:

**JOINT RESOLUTION** - relative to memorializing Congress to request that the Balanced Budget Amendment to the Constitution of the United States be submitted to the States for ratification.  
H.P. 1240

Tabled - May 8, 1997, by Senator **PINGREE** of Knox.

Pending - **ADOPTION** (Roll Call Ordered)

(In House, April 8, 1997, **READ** and **ADOPTED**.)

(In Senate, April 15, 1997, **ADOPTED**. Subsequently, on motion by Senator **PINGREE** of Knox, **RECONSIDERED**.)

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

Senator **KILKELLY:** Thank you Mr. President. May I pose a series of questions through the Chair?

**THE PRESIDENT:** The Senator may pose her series of questions.

Senator **KILKELLY:** Thank you. First, to set the stage for the questions. I guess, in the debate that we had earlier on this particular Joint Resolution, there were folks who were in favor of the concept of Joint Resolutions and folks who were opposed. I would like to go on record as being in support of the concept of Joint Resolutions because I think it is an opportunity for us to communicate to Congress a concern that we share as members of this Legislature. So, I think that the process makes sense.

What concerns me about this particular resolution is the same thing that concerns me about letters that I often get from constituents in which they say, "Please do something." They are not specific about what the something is. I did a little bit of research in terms of the current status of a balanced budget amendment and have a number of questions about what it is we are actually asking for in this resolution. According to the Congressional Quarterly in March 1997, first of all, this issue is dead in the Senate, the vote has been taken, the vote has failed, so the balanced budget amendment is not going to be coming out of the Senate. That being the case, I'm not sure what it is we are asking for since the issue is already dead.

In the course of four days of debate in the Senate, there were a number of issues, a number of amendments, brought forward. One, for example, would require a three-fifths vote if we were

going to increase the federal debt. One presented, the Congress would have the authority to enforce the balanced budget amendment, as opposed to the proposal in the balanced budget amendment which allowed the Judiciary to do that. There were amendments to deal with ratification limits. Currently, the limit in law is seven years, there is an amendment to reduce that to three years. There was an amendment to suggest that any budget surpluses would accumulate in a separate pool of money that could then be used for other sources, other projects. There was a budget resolution in which the outlays, exceeding receipts for any fiscal year, would trigger the process for setting up the balanced budget situation. There was also an amendment that would exempt social security from the conditions that trigger balanced budget actions, and so, my question to anyone who would care to answer is, what is the position of the folks who are putting forth this resolution, in light of the fact that this issue is dead in Congress according to their sources? Also, if we are asking for an amendment to the Constitution, are there any of those conditions that we are requesting, or are we opposed to those? Thank you.

**THE PRESIDENT:** The Senator from Lincoln, Senator Kilkelly poses a series of questions through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Oxford, Senator Bennett.

Senator **BENNETT:** Mr. President, fellow members of the Senate. I appreciate the interest of the Senator from Lincoln, Senator Kilkelly. First of all, let me just address the issue of the position of the amendment in the Congress. When this memorialization was introduced early this year, the issue was very much alive parliamentarily in Congress. There is some question, as the Senator has indicated, as to what extent that can be resuscitated in the legislative process in Washington. My view is that memorializations speak to the sentiments of this legislature, and it is entirely appropriate, notwithstanding the political and parliamentary occurrences in Washington, to speak to those concerns. As we know, here in this process, bills can be resuscitated very easily. They can come back from the quote, unquote, "dead file." There can be a motion to kill a bill and it can easily be overturned. My hope is that Congress, being a responsive, living entity, will listen to those who are in a position to speak for constituents, to speak for all people across the nation for fiscal restraint. And, I believe, passing this memorialization will do that.

To answer the Senator's second question, with respect to the particular version of the amendment that this resolution would support, I would call the Senator's attention to the language in the resolve. The first Resolved paragraph in the resolution which states that "We, your memorialists, urge the Congress of the United States to pass expeditiously and propose to the several legislatures of the several states," that would be us, "for ratification an amendment to the Constitution of the United States requiring, in the absence of a national emergency, that the total of all federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated federal revenues for that fiscal year." And then there is another resolve clause. The point is that without getting into the specifics of the deliberative process in Washington, that we state clearly that we favor fiscal responsibility in Washington. And I would be happy to see the debate resuscitated in the Congress and for there to be an effort to get this proposal out to the states for ratification. The process is clear that we have to pass upon ratification as a

Legislature, and we can deal with whatever amendments that are put on the proposed amendment at that point through our action, in terms of the ratification process. The resolution does not speak to a particular version of the balanced budget amendment, out of respect for Congress' notable and enormous responsibility in deliberating over this specific language of the resolution. Thank you.

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

Senator **CLEVELAND:** Mr. President, I would yield to Senator Kilkelly for the moment.

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

Senator **KILKELLY:** Thank you Mr. President. Thank you Senator Cleveland. One question that was not resolved, does the resolution, in fact, include social security in its conditions for a balanced budget amendment? Does it include or exclude social security?

**THE PRESIDENT:** The Senator from Lincoln, Senator Kilkelly poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Oxford, Senator Bennett.

Senator **BENNETT:** Thank you Mr. President. In an attempt to respond to the question, I thought I had earlier. The particular resolution before us does not specifically address that question, which is one of the issues which is being debated in the Congress as a proposed amendment to the balanced budget amendment that they are considering. This document does not speak to that. Thank you.

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

Senator **CLEVELAND:** Thank you Mr. President and men and women of the Senate. I'd like to make a few additional summary points on this issue because I really think it's one that we ought not to take casually. Too often we do and I think we do so at our own detriment. First of all I think that we need to be clear that we are asking that this document, this Joint Resolution, be sent under our name, our name of both parties. So I think if we are going to, we ought to be real clear about what the language is that we are asking, because it represents what we want to say. First of all, I really think you ought to look at what the language is and its tone, and intent, and whether that is what you want to represent as the character of this Body.

Let's look at the second Whereas. In that second Whereas it says, "continued deficit spending demonstrates an unwillingness or inability of both the federal and legislative branch to spend no more than the available revenues." An unwillingness or inability. Is that what we want to charge the President of the United States, the Speaker of the House, the President of the Senate, the Majority Leaders of those parties and each member of the Congress, an inability and unwillingness? Is that the kind of tone that we wanted to send under our own name when we are asking them to act? We begin by telling them that they don't have either the will or the ability or the courage to act properly. And the second Whereas, and the third one, say, "fiscal responsibility at

the federal level," fiscal responsibility at the federal level. I guess we're charging those elected officials with being totally irresponsible fiscally, and therefore we are asking them to act in a way, yet we read that the President of the United States and the Majority Leader in the Senate, the Speaker of the House, have come to an agreement on a budget and on a financial plan to balance the budget by the year 2,002, and to further reduce deficit thereafter. Yet we want to use tone and language that really is abrasive and derogatory to our elected national figures in, I suppose, some hope to get them to act in some other way. I don't know about you, but when constituents contact me, or when local elected officials contact me, and that's the initial tone that they want to use, I'm not necessarily favorably inclined to consider their comments as thoughtful or carefully reasoned out and intending to constructive purpose. I'd rather think other implications are involved with their request.

As we talked about earlier, this resolution is factually inaccurate. It doesn't represent the facts. There are other alternatives and methods to the resolution of deficit issue which has been with us for far too long. It's not timely. It's not before the Congress. The issue has been set aside. Certainly, they can always take it up but there's no likelihood that they plan to do that. And it doesn't even specify the specific action that we're asking them to take, in regards to the constitutional amendment regarding the budget deficit. We leave it completely up in the air on which amendment it is that we are telling them to pass out.

Finally, under the fifth Whereas, just before you get to the resolve, I find that the most interesting of all whereas'. The framers of our Constitution felt that the changing of our basic governmental document, the Constitution of this country, was so important and so critical of this nation that they created a super-majority requirement when that document would be changed, so it would not be done frivolously. It would not be done without major consideration by at least two-thirds of both bodies of Congress. And yet, in the fifth Whereas, we say that opposition by a small minority repeatedly has dwarfed the will of the people. Are we suggesting that the framers of the Constitution had it wrong? That it's not appropriate that two-thirds majorities of both bodies concur in doing such an important act and it is the right of every member to express their opinion whether or not they are in the majority? And that was the intent of that provision in the United States Constitution, and yet, we ridicule it. We suggest that somehow those who have a difference of opinion are somehow trying to dwarf the will of the majority as opposed to expressing their constitutional obligation to cast their vote in a way they think that is appropriate in such an important regard. It's also particularly curious to me that we would ridicule those, because less than a two-thirds would vote for it. And yet, there are members in this body, including some members who have signed on the repeal of the budget, that suggests that we ought to have a two-thirds provision for our budget here. I guess, apparently, so a minority could dwarf the will there as well. But yet, it's inappropriate to dwarf the will of the majority when you are talking about a constitutional amendment as the basic document of our country. I find it hard to understand the consistency here, in what the serious intent of this resolution really is. I still believe if you strip away the color of its representation and look at the words, look at the tone, look at its factual basis, look at its lack of timeliness, look at its contradiction. My suggestion is that you find its real intent as sort of a political statement that accomplishes little.

Is anyone in favor of greater deficits? Of course not. Is this necessarily going to make any constructive change to that?



None whatsoever. I would urge you to vote against the passage of this Joint Resolution and Mr. President, when the vote is taken, I request that it be done by the yeas and nays.

**THE PRESIDENT:** The Senator from Androscoggin, Senator Cleveland requests roll call. A roll call has already been ordered. The Chair recognizes the Senator from Oxford, Senator Bennett.

Senator **BENNETT:** Thank you Mr. President, fellow members of the Senate. I appreciate the interest of members of the Senate in this matter. I would caution against too much sensitivity toward the feelings of the members of Congress. Let me address some of the concerns raised by the Senator from Androscoggin, Senator Cleveland. First of all the Senator raises questions about the terms "unwillingness" or "inability" that appears in one of the whereas clauses to spend no more than available revenue. Well, it's clear to me, and I submit to you that if something has not been accomplished there are two reasons why that has not been accomplished by people who purportedly have the power to do it. One is that they are unwilling to exercise the power to accomplish it. The other possibility is that they truly don't have the power, in some measure, to accomplish it. In other words, they are unable to accomplish it. So, I do not consider those two terms to be pejorative in any way. It would have to be either unwilling or unable to produce an outcome if it hasn't been accomplished. Secondly, the question of fiscal responsibility. Well yes, I believe it is fiscal irresponsibility to rack up \$5.2 trillion in debt. Actually now, it's \$5.4 trillion. The cap is \$5.5 trillion. We're probably going to have to raise that again soon, notwithstanding the agreement by the President and certain leaders in Congress to reach a balanced budget in 5 years. I would, just again, call your attention to a few facts that were presented during the debate earlier, one evening last week. The amount of money that is being spent on interest, just interest payments per day, is well in excess of \$700 million that the federal government is spending in interest payments on that \$5.4 trillion in debt each and every day. And to put that number in some perspective, as the Senator from Androscoggin knows full well, since we're seat mates in the Appropriations Committee, our General Fund budget for the upcoming biennium is \$3.8 billion, roughly. That's \$1.9 billion per year. In other words, within 3 days the Federal Government is spending more on interest payments on our debt than we are spending on our General Fund Appropriations in an entire year. I consider that irresponsible. And no, I don't lay it at the feet of the President. I don't lay it at the feet of the current members of Congress, and neither does this resolution. It clearly states, "at the federal level." It doesn't name names, point at people, but there is a structural problem that this seeks to address, and it's been caused by Republicans and Democrats and members of the Congress and people in the White House for more than a generation now.

Between the years of 1789 and 1930, 142 years, we had 96 balanced budgets out of 142 years. Between 1931 and 1969, those 39 years, we had eight balanced budgets. Since 1970, in the last 27 years, we have had zero balanced budgets. I consider that to be irresponsible.

Lastly, to the Senator's final point toward the will of the people. I would just simply submit to you that if you do believe that it is the will of your constituents to pass the balanced budget then that will should be represented on the floor. If however, you believe that your constituents are not in favor of it then don't vote for this resolution. It's as simple as that. I encourage you to pass this balanced budget resolution that doesn't do a lot. It's a

political statement, yes. It's a relevant political statement because we are the ones who will have to deal with this issue. It is in the public debate despite whatever parliamentary position it's in at the present time. It is before the people. It's before the country. And it is time to pass the balanced budget amendment and it is time to tell our Congress that we ask them to do so. Thank you.

**THE PRESIDENT:** The Chair recognizes the Senator from Oxford, Senator Ferguson.

Senator **FERGUSON:** Thank you very much, Mr. President, ladies and gentlemen of the Senate. I've listened to this debate going back and forth and indeed, probably the best two debaters in the State Senate, here, and I agree with both of them. They both are making good points. But we haven't had a balanced budget in this country since Richard Nixon's first term. That's a long time ago, 26 or 27 years. Apparently, the Congress and the President just don't have the will to do it. Now, they've gotten together and there's been a lot of publicity that they're going to balance the budget in 2002. That's good and I commend them for that but it hasn't happened yet and probably won't happen. Does this do any good? Probably not. Does it do any harm? Probably not. But I think all we are doing is putting something before them, encouraging them to proceed in a matter in which they had been proceeding and, I believe, and I sincerely believe, that the most serious problem facing this country today is our deficit spending and we've got to address it. We can't wait much longer before we do address it. So I would urge the members of this Body to send that down to Washington and, like I said, it probably won't do much good but it probably won't do any harm either. Thank you Mr. President.

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

Senator **BENOIT:** Thank you Mr. President, may it please the Senate. I wish I could get up on the top of this building and shout the praises of Senator Cleveland, the Senator from Androscoggin, for his remarks about the Constitution. Unfortunately, I feel that his remarks about recognizing the Constitution are falling on deaf ears, pretty much the same way that my remarks earlier, concerning the strike breaker bill, so called, and the constitutional aspect of that, fell on deaf ears. It's an issue that reaches me but I'm afraid that the Senator from Androscoggin and I are in a boat and we're rowing against the tide. I wish that was a forceful argument, but if what we have been doing earlier, in not recognizing the constitutional issue is any precedent, then I think it is, then I can't follow that argument that he advances. I wish I could but I can't. Thank you Mr. President.

The Doorkeepers secured the Chamber.

The Secretary called the Roll with the following result:

#### ROLL CALL

YEAS: Senators: ABROMSON, AMERO, BENNETT, BENOIT, BUTLAND, CASSIDY, FERGUSON, HALL, LIBBY, MACKINNON, MILLS, MITCHELL, SMALL

NAYS: Senators: CAREY, CATHCART, CLEVELAND, DAGGETT, GOLDTHWAIT, JENKINS, KILKELLY, LAFOUNTAIN, LONGLEY, MICHAUD, MURRAY, NUTTING, O'GARA, PARADIS, PENDLETON, PINGREE, RAND, RUHLIN, TREAT, THE PRESIDENT - MARK W. LAWRENCE

ABSENT: Senator: HARRIMAN

EXCUSED: Senator: KIEFFER

13 Senators having voted in the affirmative and 20 Senators having voted in the negative, with 1 Senator being absent and 1 Senator being excused, **ADOPTION** of the Joint Resolution, **FAILED** in **NON-CONCURRENCE**.

Sent down for concurrence.

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

NOMINATION - Cheryl A. Bascomb of New Gloucester, for appointment to the Board of Environmental Protection.

Tabled - May 13, 1997 by Senator **RAND** of Cumberland.  
Pending - **CONSIDERATION**

(In Senate, May 13, 1997, Communication from the Committee on **NATURAL RESOURCES READ** and **ORDERED PLACED ON FILE.**)

The President laid before the Senate the following: "Shall the recommendation of the Committee on **NATURAL RESOURCES** be overridden?"

In accordance with 3 M.R.S.A., Chapter 6, Section 151 and with Joint Rule 506 of the 118th Legislature, the vote was taken by the Yeas and Nays.

The Doorkeepers secured the Chamber.

The Secretary called the Roll with the following result:

**ROLL CALL**

YEAS: Senators: None

NAYS: Senators: ABROMSON, AMERO, BENNETT, BENOIT, BUTLAND, CAREY, CASSIDY, CATHCART, CLEVELAND, DAGGETT, FERGUSON, GOLDTHWAIT, HALL, JENKINS, KILKELLY, LAFOUNTAIN, LIBBY, LONGLEY, MACKINNON, MICHAUD, MILLS, MITCHELL, MURRAY, NUTTING, O'GARA, PARADIS, PENDLETON, PINGREE, RAND, RUHLIN, SMALL, TREAT, THE PRESIDENT - MARK W. LAWRENCE

ABSENT: Senator: HARRIMAN

EXCUSED: Senator: KIEFFER

No Senator having voted in the affirmative and 33 Senators having voted in the negative, with 1 Senator being absent and 1 Senator being excused, 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 nomination of **Cheryl A. Bascomb**, for appointment to the Board of Environmental Protection was **CONFIRMED**.

The Secretary has so informed the Speaker of the House.

Off Record Remarks

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

NOMINATION - Andrew A. Cadot of Freeport, for appointment to the Board of Environmental Protection.

Tabled - May 13, 1997, by Senator **RAND** of Cumberland.

Pending - **CONSIDERATION**

(In Senate, May 13, 1997, Communication from the Committee on **NATURAL RESOURCES READ** and **ORDERED PLACED ON FILE.**)

The President laid before the Senate the following: "Shall the recommendation of the Committee on **NATURAL RESOURCES** be overridden?"

In accordance with 3 M.R.S.A., Chapter 6, Section 151 and with Joint Rule 506 of the 118th Legislature, the vote was taken by the Yeas and Nays.

The Doorkeepers secured the Chamber.

The Secretary called the Roll with the following result:

**ROLL CALL**

YEAS: Senators: None

NAYS: Senators: ABROMSON, AMERO, BENNETT, BENOIT, BUTLAND, CAREY, CASSIDY, CATHCART, CLEVELAND, DAGGETT, FERGUSON, GOLDTHWAIT, HALL, JENKINS, KILKELLY, LAFOUNTAIN, LIBBY, LONGLEY, MACKINNON, MICHAUD, MILLS, MITCHELL, MURRAY, NUTTING, O'GARA, PARADIS, PENDLETON, PINGREE, RAND, RUHLIN, SMALL, TREAT, THE PRESIDENT - MARK W. LAWRENCE

ABSENT: Senator: HARRIMAN

EXCUSED: Senator: KIEFFER

No Senator having voted in the affirmative and 33 Senators having voted in the negative, with 1 Senator being absent and 1 Senator being excused, 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 nomination of **Andrew A. Cadot**, for appointment to the Board of Environmental Protection was **CONFIRMED**.

The Secretary has so informed the Speaker of the House.

The Chair laid before the Senate the following Tabled and Later (5/12/97) Assigned matter:

Bill "An Act to Allow a Greater Share of the Transfer Tax to Remain in the Counties Where it is Collected"

S.P. 91 L.D. 271  
(C "A" S-126)

Tabled - May 12, 1997, by Senator **PINGREE** of Knox.

Pending - **FURTHER CONSIDERATION**

(In Senate, April 29, 1997, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-126).**)

(In House, May 12, 1997, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-126) AND HOUSE AMENDMENT "B" (H-374) in NON-CONCURRENCE.**)

Senator **RUHLIN** of Penobscot moved the Senate **RECEDE** and **CONCUR**.

**THE PRESIDENT:** The Chair recognizes the Senator from Somerset, Senator Mills.

Senator **MILLS:** Mr. President, may I inquire of anyone who may answer, the substance of House Amendment "B" how it comes to us?

**THE PRESIDENT:** The Senator from Somerset, Senator Mills poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Penobscot, Senator Ruhlin.

Senator **RUHLIN:** Thank you Mr. President. I'd be more than pleased to respond to the good Senator from Somerset. What this transfer tax does, it's the issue that we debated the other day, a certain amount of the funds go to, just to refresh everybody's memory, a certain amount goes to the counties, we voted also to the Maine Housing Authority and to the General Fund. It was the intent of the committee, when it redistributed the share, to have that not impact on this current budget and somehow in the drafting it was overlooked. We had made a recommendation earlier to the Appropriations Committee that it be included in this biennial budget. That request was not handled successfully. The committee went ahead and made its own proposal to protect the General Funds and also to protect those funds that were originally going to the Maine State Housing Authority, but in the process of being in a hurry to get the bill, frankly, we did it so it would take effect in the second year of the

biennium. This delays its impact until the next biennium. Thank you.

**THE PRESIDENT:** The Chair recognizes the Senator from Somerset, Senator Mills.

Senator **MILLS:** Mr. President. I ask for a division and would urge the Body to vote against the pending motion.

Senator **MILLS** of Somerset requested a Division.

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

Senator **RUHLIN:** Thank you Mr. President. I guess I'll ask the question through the Chair. Is it the good Senator's intent to undo the existing budget?

**THE PRESIDENT:** The Senator from Penobscot, Senator Ruhlin poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Somerset, Senator Mills.

Senator **MILLS:** Mr. President. The answer to that is, if this bill is passed, it will most certainly do that.

On motion by Senator **GOLDTHWAIT** of Hancock, **TABLED** until Later in Today's Session, pending the motion by Senator **RUHLIN** of Penobscot to **RECEDE** and **CONCUR**. (Division Requested)

The Chair laid before the Senate the following Tabled and Later (5/12/97) Assigned matter:

**JOINT ORDER** - relative to the Joint Standing Committee on Health and Human Services reporting out a bill on smoking and health to the House  
H.P. 1322

Tabled - May 12, 1997, by Senator **PINGREE** of Knox.

Pending - **PASSAGE**

(In House, May 9, 1997, **READ** and **PASSED**.)

(In Senate, May 12, 1997, **READ**.)

On motion by Senator **PARADIS** of Aroostook Senate Amendment "A" (S-215) **READ**.

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

Senator **AMERO:** Thank you Mr. President. What is the filing number of Senate Amendment "A"?

**THE PRESIDENT:** Senate Amendment "A" has a filing number of S-215.

Senator **AMERO:** Thank you Mr. President. Would someone please explain what this amendment does?

**THE PRESIDENT:** The Senator from Cumberland, Senator Amero poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Aroostook, Senator Paradis.

Senator **PARADIS:** It's strictly changing the word "bill" to "legislation".

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

Senator **ABROMSON:** Thank you Mr. President. May I ask a question through the Chair?

**THE PRESIDENT:** The Senator may pose his question.

Senator **ABROMSON:** Am I the only one that doesn't have S-215?

**THE PRESIDENT:** The Senator from Cumberland, Senator Abromson poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Oxford, Senator Ferguson.

Senator **FERGUSON:** Thank you very much Mr. President. I don't seem to be able to locate S-215 on my desk either.

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

Senator **AMERO:** Thank you Mr. President. I also have not found the Senate Amendment on my desk as well but while we are searching, or if it's coming, I'd like to ask another question.

**THE PRESIDENT:** The Senator may pose her question.

Senator **AMERO:** To the Chairs of the committee, I'm wondering why it's necessary to have a new piece of legislation on this matter. I thought there were plenty of pending pieces of legislation in this regard.

**THE PRESIDENT:** The Senator from Cumberland, Senator Amero poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Aroostook, Senator Paradis.

Senator **PARADIS:** I have no clue. We just have different pieces and we're putting them together. It's nothing new. We are just taking what we have out on the table, that is a long list.

Senator **FERGUSON** of Oxford moved to **TABLE** until Later in Today's Session, pending the motion by Senator **PARADIS** of Aroostook to **ADOPT** Senate Amendment "A" (S-215).

The Chair ordered a Division. 12 Senators having voted in the affirmative and 16 Senators having voted in the negative, the motion by Senator **FERGUSON** of Oxford to **TABLE** until Later in Today's Session, pending the motion by Senator **PARADIS** of Aroostook to **ADOPT** Senate Amendment "A" (S-215), **FAILED**.

Senator **BENNETT** of Oxford moved that the Joint Order and Accompanying Papers be **INDEFINITELY POSTPONED**.

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

Senator **PINGREE:** Thank you Mr. President, men and women of the Senate. I want to oppose this motion. I think it's not an uncommon thing for committees to work through the process, to put a lot of issues on the table, look at a lot of different bills, come back to either leadership and ask for another bill or come back to this body and say that we would like to report one bill that is a committee bill that might bring in more members. I think it's something we frequently do to make the process be more inclusive. This is not an out of the ordinary request. I do have some concerns that people don't have the amendment, that merely changes one word, on their desks and I would urge us to make sure that it is distributed, and I think that it's on its way. So, it should be here in a minute and I apologize for its unavailability, and understand why members might not want to vote until they've seen that change in language, but as I understand, that's merely a technical change in the language and, I think, that in terms of the process, this is something that we do all the time and I would urge you to vote to oppose an indefinite postponement.

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

Senator **CAREY:** Thank you Mr. President. Mr. President, is it my understanding that the amendment by the good Senator from Aroostook, Senator Paradis, has now been added to the committee amendment?

**THE PRESIDENT:** The Chair would answer that there is no committee amendment on this Joint Order. The Senator from Aroostook, Senator Paradis, has offered a Senate amendment. That Senate amendment has not yet been adopted. The Chair recognizes the Senator from Oxford, Senator Ferguson.

Senator **FERGUSON:** Thank you very much Mr. President. I very likely will vote for this order, but I'd like to have the paper before me before I do vote and I can't understand why it hasn't been distributed.

**THE PRESIDENT:** The Chair would answer that the amendment has been read once by the Secretary. The Chair would instruct the Secretary to read the amendment. The Chair would answer that the amendment has been read once in its entirety to the Body and it is now being distributed to the Body. The Chair recognizes the Senator from Penobscot, Senator Mitchell.

Senator **MITCHELL:** Thank you Mr. President. I would ask a question through the Chair?

**THE PRESIDENT:** Senator Mitchell may pose her question.

Senator **MITCHELL:** Being on the committee, I apologize for this, but at the meeting we last had, we voted Ought Not to Pass on four of the five bills that address this area and we held open, and tabled the good Senator of Waldo, Senator Longley's, bill, which I was under the interpretation we were going to use as a committee bill. I apologize for the confusion but I would like to

know why we need another vehicle of legislation and I hoped that by tabling it, this could be discussed at our committee meeting this afternoon and then resolved when we came back into session. But because that was denied, I would ask the question, why do we need another piece of legislation for the committee to utilize in the existing bill which was tabled?

**THE PRESIDENT:** The Senator from Penobscot, Senator Mitchell poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Aroostook, Senator Paradis.

Senator **PARADIS:** Thank you Mr. President, men and women of the Chamber. So many of our major pieces of legislation this year, we have chosen to do in this way.

**THE PRESIDENT:** The Chair recognizes the Senator from Oxford, Senator Bennett.

Senator **BENNETT:** Thank you Mr. President, fellow members of the Senate. Through the media and statements in this chamber, I understand that we are attempting to adjourn this special session of the 118th Legislature by the end of this month. Personally, I don't think it's a time to be adding new bills, generating new bills, when we have papers which can be used for that purpose before this legislature. And also I, frankly, object to, and am concerned about, the broad nature of this Joint Order. Calling upon, as I understand from the title, a bill on Smoking and Health which could involve just about any matter known to a person. So I would suggest that this Joint Order is a bit of a reach, for my personal purposes, in creating a new instrument at this point and time. That's why I move to indefinitely postpone. I encourage you to vote with me and indefinitely postpone this order.

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

Senator **RUHLIN:** Senators of Maine. Yes, I usually like to stay out of something like this. It's not my committee. I just have to respond to that. The committee process is the primary function of how we are going to accomplish things here in the Legislature. How you get a committee bill, that is, one that does not allow a sponsor to have the great pride of ownership or authorship, is by doing a so-called committee bill, where you ask the legislature or the committee to report out, a piece of legislation. Simple, we've doing it for years, very legitimate. It doesn't increase the legislative load, generally it decreases the legislative load. It allows you to take ten bills and condense them into one committee bill that nobody has to walk around with the pride of authorship, and then you get rid of all those other ten bills that are kicking around in your committee. It's a very effective, efficient manner of operating our committee system, pure and simple. It doesn't add any new legislation. I just had to make that comment. Thank you.

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

Senator **CAREY:** Thank you Mr. President. I'd like to pose a question to anyone in the Chamber.

**THE PRESIDENT:** The Senator may pose his question.

Senator **CAREY:** Can anyone tell me how many bills we've had on tobacco to date, all of which might have been touching upon this particular subject and therefore having been able to add what the committee wanted to do to a tobacco bill?

**THE PRESIDENT:** The Senator from Kennebec, Senator Carey poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Oxford, Senator Bennett.

Senator **BENNETT:** I don't rise to respond to the question.

**THE PRESIDENT:** The Senator has the floor.

Senator **BENNETT:** Thank you. I just wanted to respond to the comments by the good Senator from Penobscot, Senator Ruhlin. I'm very respectful of tradition and custom and the committee process in the legislature. My concern here is, customarily, when the committee decides to put out a committee bill, or ask for a committee bill and send up a Joint Order, they usually discuss it in committee. My understanding is at least some members of the committee were not involved in such a discussion for one reason or another, and that's the reason for my concern about this legislation.

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

Senator **PARADIS:** I think most of us are aware. We are split in fifteen different directions with some of our legislation, and we are not always present for 100% of the discussions that go on in the committee, including myself.

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

Senator **LIBBY:** Thank you Mr. President, men and women of the Senate. I would like to point out that it's really important that we note this, too. I agree that there is a history and tradition behind committee bills and in general, I guess, I can say that we ought to be changing that kind of history, but on the other hand, let me just point out that when we have committee bills that take a whole bunch of ideas and put them into one, and you have seven or eight ideas all in one bill, the problem is that you might not like three or four of those ideas, but you might like five others. This has been my problem with a couple of committees that have been taking good ideas and then conglomerating them into one package. I mean, if we took ideas piece by piece and said that this makes sense, let's vote on it individually, you know, even though that's an incremental form of government, at least I understand that incrementalism and I think we all do. But when we take a lot of ideas and put them into a huge package and then make that an excuse to pass some things in there that you know that are grade A ideas and some things in there that are grade B and C ideas, it really causes damage to the process and the way we are trying to put forward, to the people of Maine, very good legislation. And you know, I'm not going to bring in a whole bunch of arguments here about the way the committees have been proceeding this term, but I will say that it hurts when you have that pride of ownership, you've got a bill in front of a committee, it's a good bill, it deserves a vote, literally, it deserves a vote because you brought it on behalf of constituents and when

it doesn't get a vote, we lose a little piece of the process. Thank you.

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

Senator **BENOIT:** Thank you Mr. President, may it please the Senate. Years ago, when my dad was a baggage master for the Boston & Maine Railroad, I used to go down, as a youngster, to the railroad station and see the fast freights there in operation, and I used to see these little hand cars that they propel, two fellows on a seesaw affair, the repair crews use that. We may not give a whole lot of consideration in here to constitutional issues but how about the regularity of the process. Are we interested in that in this Body? Now, some of us in the committees have been on a fast freight and now it looks like this committee is on a hand car situation. Are we going at a different speed in these committees? I thought we were all suppose to be working toward deadlines to meet, and Judiciary certainly has worked hard to do that, a committee that I've worked with. Now, we are still lurking here, with this particular committee, to come out with some kind of a piece of legislation. Judiciary is all through as far as that issue goes. We can't work on anything new, particularly on a subject that we've been over repeatedly, the smoking issue. Senator Paradis, I give her high marks, the Senator from Aroostook, she tried to answer a question that was put on the floor, what is this all about? And to her credit she stood up and she said, well I don't want to try to repeat what she said exactly, but I got the impression that it was something that she was not, in her frankness Mr. President, familiar with, you know, with all it's four corners. And so, it's unfortunate to me to even be talking about this situation at this juncture in our session. I'm just disappointed. The regularity of the process now seems to be changing in midstream. Thank you.

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

Senator **TREAT:** Thank you Mr. President, men and women of the Senate. This was done to me. I had a bill in the Business and Economic Development Committee, so did Senator Harriman, the good Senator from Cumberland. The committee decided to come out with a committee bill. They came in with a Joint Order. I thought it was a win-win solution, nobody was offended. Both Senators can claim that their bill has now passed. I think it's a good thing to do and I hope you will vote against the indefinite postponement.

The Chair ordered a Division. 7 Senators having voted in the affirmative and 23 Senators having voted in the negative, the motion by Senator **BENNETT** of Oxford to **INDEFINITELY POSTPONE** the Joint Order and Accompanying Papers, **FAILED**.

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

Senator **BUTLAND** of Cumberland moved to **TABLE 1** Legislative Day, pending the motion by Senator **PARADIS** of Aroostook to **ADOPT** Senate Amendment "A" (S-215).

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

At the request of Senator **RAND** of Cumberland a Division was had. 13 Senators having voted in the affirmative and 18 Senators having voted in the negative, the motion by Senator **BUTLAND** of Cumberland to **TABLE 1** Legislative Day, pending the motion by Senator **PARADIS** of Aroostook to **ADOPT** Senate Amendment "A" (S-215), **FAILED**.

Senator **MITCHELL** of Penobscot moved to **TABLE** until Later in Today's Session, pending the motion by Senator **PARADIS** of Aroostook to **ADOPT** Senate Amendment "A" (S-215).

The Chair ordered a Division. 14 Senators having voted in the affirmative and 18 Senators having voted in the negative, the motion by Senator **MITCHELL** of Penobscot to **TABLE** until Later in Today's Session, pending the motion by Senator **PARADIS** of Aroostook to **ADOPT** Senate Amendment "A" (S-215), **FAILED**.

On motion by Senator **PARADIS** of Aroostook, Senate Amendment "A" (S-215) **ADOPTED**.

At the request of Senator **BENNETT** of Oxford a Division was had. 26 Senators having voted in the affirmative and 6 Senators having voted in the negative, the Joint Order was **PASSED AS AMENDED BY SENATE AMENDMENT "A" (S-215)** in **NON-CONCURRENCE**.

Sent down for concurrence.

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

Off Record Remarks

Senate at Ease

Senate called to order by the President.

Off Record Remarks

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

Off Record Remarks

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

Off Record Remarks

On motion by Senator **PINGREE** of Knox, **RECESSED** until 3:30 in the afternoon.

**After Recess**

Senate called to order by the President.

**Off Record Remarks**

**ORDERS OF THE DAY**

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

**Emergency**

An Act to Authorize the Conversion and Reuse of the Perry Hayden Hall at Pineland Center as an Elementary School  
S.P. 370 L.D. 1229  
(C "A" S-178)

Tabled - May 12, 1997, by Senator **MICHAUD** of Penobscot.

**Pending - ENACTMENT**

(In Senate, May 6, 1997, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-178).**)

(In House, May 12, 1997, **PASSED TO BE ENACTED.**)

This being an Emergency Measure and having received the affirmative vote of 26 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.

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

**Off Record Remarks**

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

**Off Record Remarks**

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

On motion by Senator **PINGREE** of Knox, **RECESSED** until the sound of the bell.

**After Recess**

Senate called to order by the President.

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

**SECOND READERS**

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

**House As Amended**

Bill "An Act Regarding Balances Remaining in General Purpose Aid for Local Schools" H.P. 73 L.D. 98  
(C "A" H-424)

Bill "An Act to Amend the Liquor Laws" H.P. 204 L.D. 257  
(C "A" H-428)

Bill "An Act to Amend the Watercraft Registration Laws" (Emergency) H.P. 564 L.D. 755  
(C "A" H-438)

Bill "An Act to Reduce the Presumptive Amount for Trafficking in Marijuana from 2 Pounds to One Pound" H.P. 749 L.D. 1026  
(C "A" H-422)

Bill "An Act Concerning Public Notice of Lottery Odds" H.P. 918 L.D. 1261  
(C "A" H-427)

Bill "An Act to Amend the Child and Family Services and Child Protection Act" H.P. 1182 L.D. 1673  
(C "A" H-430)

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

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

**PAPERS FROM THE HOUSE**

**Non-concurrent Matter**

Resolve, to Establish Qualifications for Constitutional Officers S.P. 80 L.D. 219  
(C "A" S-99)

In Senate, April 14, 1997, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-99).**

Comes from the House, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-99) AS AMENDED BY HOUSE AMENDMENTS "B" (H-419) AND "C" (H-436)** thereto, in **NON-CONCURRENCE**.

On motion by Senator **PINGREE** of Knox, **TABLED** until Later in Today's Session, pending **FURTHER CONSIDERATION**.

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**House Papers**

Bill "An Act to Amend Criminal OUI Penalties Concerning Suspension of a Motor Vehicle Driver's License"  
H.P. 1321 L.D. 1870

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

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

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**COMMITTEE REPORTS**

**House**

**Divided Report**

The Majority of the Committee on **AGRICULTURE, CONSERVATION AND FORESTRY** on Bill "An Act to Require Labeling on Genetically Engineered Food"  
H.P. 790 L.D. 1078

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-394)**.

Signed:

Senator:  
KILKELLY of Lincoln

Representatives:  
SAMSON of Jay  
VOLENIK of Brooklin  
SHIAH of Bowdoinham  
BAKER of Dixfield  
MCKEE of Wayne  
CROSS of Dover-Foxcroft

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

Signed:

Senators:  
PARADIS of Aroostook  
CASSIDY of Washington

Representatives:  
BUNKER, JR. of Kossuth Township  
LANE of Enfield  
GOOLEY of Farmington  
DEXTER of Kingfield

Comes from the House, Bill and Accompanying Papers **INDEFINITELY POSTPONED**.

Which Reports were **READ**.

Senator **PINGREE** of Knox moved the Senate **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-394)** Report in **NON-CONCURRENCE**.

On further motion by same Senator, **TABLED** until Later in Today's Session, pending motion by same Senator to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-394)** Report in **NON-CONCURRENCE**.

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**Divided Report**

The Majority of the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS** on Bill "An Act to Authorize the Unfunded Portion of the School Cost for the Development of the Poland High School Project to be Funded in 1997 and 1998"  
H.P. 607 L.D. 832

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

Signed:

Representatives:  
WINSOR of Norway  
KERR of Old Orchard Beach  
POULIN of Oakland  
KNEELAND of Easton  
STEVENS of Orono  
TOWNSEND of Portland  
MARVIN of Cape Elizabeth  
OTT of York  
BERRY of Livermore

The Minority of the same Committee on the same subject reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-425)**.

Signed:

Senators:  
MICHAUD of Penobscot  
CLEVELAND of Androscoggin  
BENNETT of Oxford

Representative:  
LEMAIRE of Lewiston

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

Which Reports were **READ**.

On motion by Senator **MICHAUD** of Penobscot, the Minority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-425)** Report **ACCEPTED** in **NON-CONCURRENCE**.

The Bill **READ ONCE**.



Committee Amendment "A" (H-425) **READ** and **ADOPTED** in **NON-CONCURRENCE**.

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

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**ENACTORS**

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

An Act to Provide Recipients of All Assisted Living Programs and Services Residents' Rights and Equivalent Reporting and Enforcement Opportunities  
S.P. 484 L.D. 1492

An Act to Amend the Lobster Laws and Study the Issuance of Lobster and Crab Fishing Licenses Based on Income Derived from Commercial Fishing  
H.P. 1063 L.D. 1501  
(C "A" H-307; H "A" H-340)

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

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**Emergency Resolve**

Resolve, to Ensure Quality Care to Residents of Nursing Facilities through the Establishment of a Task Force on Minimum Staffing  
H.P. 828 L.D. 1133  
(C "A" H-304)

On motion by Senator **PINGREE** of Knox, **TABLED** until Later in Today's Session, pending **FINAL PASSAGE**.

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 **LEGAL AND VETERANS AFFAIRS** on Bill "An Act to Create the Maine Scholarship Lottery Game"  
H.P. 1254 L.D. 1781

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

Signed:

Senators:

DAGGETT of Kennebec  
CAREY of Kennebec  
FERGUSON, JR. of Oxford

Representatives:

TUTTLE, JR. of Sanford

GAMACHE of Lewiston  
TESSIER of Fairfield  
TRUE of Fryeburg  
LABRECQUE of Gorham  
BIGL of Bucksport  
BELANGER of Wallagrass

The Minority of the same Committee on the same subject reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-441)**.

Signed:

Representatives:

CHIZMAR of Lisbon  
GAGNE of Buckfield  
FISHER of Brewer

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

Which Reports were **READ**.

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

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**ORDERS OF THE DAY**

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

Resolve, to Establish a Task Force to Review the Regional Applied Technology Centers  
H.P. 771 L.D. 1048  
(C "A" H-320)

Tabled - May 13, 1997, by Senator **DAGGETT** of Kennebec.

Pending - **FURTHER CONSIDERATION**

(In Senate, May 7, 1997, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-320)**, in concurrence.)

(In House, May 12, 1997, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-320) AS AMENDED BY HOUSE AMENDMENT "A" (H-449)** thereto, in **NON-CONCURRENCE**.)

On motion by Senator **PINGREE** of Knox, **TABLED** until Later in Today's Session, pending **FURTHER CONSIDERATION**.

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

HOUSE REPORTS - from the Committee on **JUDICIARY** on Bill "An Act to Create a Family Division within the State's District Court"  
H.P. 896 L.D. 1213

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-347)** (11 members)

Minority - **Ought Not to Pass** (2 members)

Tabled - May 12, 1997, by Senator **LONGLEY** of Waldo.

Pending - motion by same Senator to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence

(In House, May 12, 1997, 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-347)**.)

(In Senate, May 12, 1997, Reports **READ**.)

The Chair ordered a Division.

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

Senator **BENOIT:** Thank you Mr. President, may it please the Senate. As I understand the status of the matter, it's on a motion that the Majority Ought to Pass as amended report be accepted. I would like to speak, if I may, against this motion.

**THE PRESIDENT:** The Senator may proceed.

Senator **BENOIT:** Thank you. From the outset, on this piece of legislation, I have been respectfully in opposition to it for several reasons that I would like to share with you. First of all, the idea here is to create a family division in the court system, but you will notice, in this legislation, the Family Court would only exist in the District Court and not in the Superior Court. At the public hearing, several attorneys pointed out to the committee that this bill, if enacted, will create two kinds of justice for the citizens of the State of Maine in domestic matters and divorce cases. One for the rich and one for the poor. Chief Justice Walthen came to our committee sessions and pointed out that on an annual basis there are 14,000 divorces in the State of Maine, of which 8,000 are cases where people do not have counsel. We have a situation, under this Family Court now, which is going to make three steps required in a divorce case instead of the present two steps.

As you know right now, people with a divorce case go into the system, whether it's Superior Court or District Court, and if they have an uncontested matter they go right in to see the judge and the case is processed. If there is a contested matter, there's mediation as a condition preceding to seeing a judge. This third step will create 17 new positions in the state court system. The 17 positions will be eight Family Court administrators, and some support personnel and a counselor position. So there will be what are called the Eight Family Court Administrators and they will be the third step in the system. First, although the statute is not clear on this, the law is not clear as to who goes first. It's like an Abbot and Costello, "Who's on first" situation. It seems to me that what would happen here is that the Family Court administrators, you would go there first and try to process your case. If you are unsuccessful, you go to mediation, the second step, and if that doesn't work to process the case, you go and see the judge with a contested matter. Now what's unfortunate about the bill is that the majority of people, 8,000 on an annual basis who represent themselves, would be going through this

Family Court process. They represent themselves. They don't have the money for an attorney. Now you can make an end around if you have an attorney and go to Superior Court and you do not have to go through the Superior Court process, three-step process. I think it's unfortunate to find then that the poorer of our citizens are forced through a three step process and it's hard enough now, as we know, to go through a divorce situation, let alone three steps, three hoops to go through, three rungs in the ladder, if you will, in the process. Hire a lawyer, go to Superior Court and avoid the Family Court situation. Now the price tag on this is just under a \$1 million. Now, if you want to purchase that kind of a system, a system for the rich and one for the poor, fine, but I don't think it's a good way to spend taxpayer's money. And that's the first problem that I see with the situation, two kinds of justice.

And by the way, I'd like to point out that these administrators are being sought by the court families for the purpose of freeing judges up to do other things. Work other than divorce work, apparently. They say these administrators are going to work to keep divorce cases from going to the judge. They are going to try their darndest to see that the judges do not get these issues. These important issues of the divorce, the custody, visitation and support of children, the disposition of property whether it's real or personal. These are important issues. You're going to be diverted by this Family Court to an administrator to handle your case. You won't see a judge. I think it's unfortunate because if you have a small claims case for \$100 you'll always see a judge. And to me, if the judges are going to be doing anything at all, it seems to me that they should be working in the domestic area. Other work can be given to administrators, forcible entry in detained cases where somebody is being put out of property, they haven't followed the contract or for whatever reason, small claims cases. There's plenty of work that the judges can give over to administrators and do this important domestic relations work. I think it's unfortunate that you will see a judge in the lesser type case but in these divorce cases you will not. And by the way, we're all familiar with the legislation pending before us. This Family Court bill is before us to free judges up. In effect, give them less work and pretty soon we're going to hear a judicial compensation bill to pay them more money. My constituents get a warm fuzzy feeling, I guess you could say, knowing we are going to pay our judges more and they are going to work less. There's something out of whack there. When you look at the bill you're going to notice that these administrators must follow judicial canons of ethics. So I would ask you, what are they? Are they judges or administrators? They're called Family Court Administrators. That doesn't sound like a judge. Then we see that they are to follow the canons of judicial ethics. Well, that sounds like they're a judge. What are they? If they are not judges then why should they be under the canons of judicial ethics. If they are judges, fine. That's a problem. For just a moment I'm going to refer to some of the correspondence and statements that were presented to the committee.

I want you to know that the Maine Bar Association came to the public hearing in opposition to this Family Court. I want you to know that the Family Law section of the Maine Bar Association came to the public hearing in opposition to the Family Court bill. I'm going to start right off with a Family Court that the very people that are suppose to make it work don't want it. The lawyers do not want this legislation enacted. The lawyers in my District that have contacted me, and none have come to me in support of this Family Court. They're in opposition to it. In fact, the Maine Bar Association has a nine page amendment that they presented to

the committee of changes, they say, that are needed to make this a program, a workable program. Remember, what we have here for a price tag is just under \$1,000,000,000 of citizens or taxpayers money. Good luck then, enacting a system that the lawyers don't want. I know that, I guess, you could. I've heard some thinking, "Well, if the lawyers don't want it, I guess I'll vote for it." Please don't think that way because you're just hurting your constituents. We're hurting the citizens in taking that attitude or that approach. It's not the lawyers that I'm thinking about as much as the people who are going to be going through this, so-called, Family Court procedure.

There's a rural versus urban issue here that bothers me. There are 14,000, on the average, divorce cases yearly in Maine. Eight administrators to process them. That amounts to 200 cases a month for each administrator in the State of Maine. Now where do you suppose these administrators are going to work? None of us knows, because no one told us where they were going to be assigned. We don't know where they're going but I can tell you where I think they're going. They're going to go where the work load is. They're going to go to the urban areas of Maine - Portland, Bangor, Lewiston, Auburn and Augusta. That's where the bulk of cases exists and that's where they're going to go. And so my constituents, if this is supposed to be a positive program, won't see it in Farmington. They won't see this program. If they do they'll see it on a very limited basis, and if it's a positive program, they should see it as much as other areas of the state will see it.

Let me close by referring to a couple of notes. An attorney that came to see us, John Carver, has two law offices. He has one in Belfast and one in Unity. And he said that the compensation level that is being proposed for these case managers, these administrators, will virtually guarantee inexperienced, unseasoned lawyers performing the most important functions that our District Court judges currently perform. This is not in the interest of the people of Maine, who, from my experience, view these family law issues to be, without exception, the most important issues of their lives. I can honestly say that in 20 years of practice he's done a lot of work in the domestic area.

I don't know of any proposed piece of legislation that I have seen or have been aware of that proposes to create as much disappointment, pain and suffering upon the average Mainer. This piece of legislation should not pass. It should be studied and modified. Here's a statement by the President of the Maine Bar Association. "As representative of the Bar Association, I would like to correct any misunderstandings that we oppose the creation of the Family Court in Maine. However, it is the Bar's position that L.D. 1213, as drafted, contains significant policy differences that will create more problems for families and children of the State." Now, they have offered an amendment and you will notice that there is an amendment to this original bill, but the committee does not go to the extent of the requested changes of the Maine Bar Association and the Family Law Section of the Maine Bar Association. I'm really bothered about the matter because we are spending so much money and we're getting nothing for it.

I'm going to conclude my remarks, for the moment, by referring to the statement made before the committee by Sean Faircloth, the Legislative Agent of the Maine Bar Association. He expressed respectful opposition to the bill and he indicates what judges duties are when they have a domestic relations case. He says, "These decisions often involve those of modest means. This bill seems to free judges to spend more time on landlords

evicting tenants, corporate collection of debt and arraignments, leaving someone with less than judicial authority to handle the most important issues." And I couldn't agree more with Mr. Faircloth's statement here, that the Bar Association emphasizes that the judges should be freed to do more family law and not the other way around. He concludes by stating that, "As drafted, this bill gives the administrators wide authority to act as mediator and judge, educator and decision maker." These roles are difficult to reconcile. So I would ask you please, now, take a hard look at what is being created here as a Family Court and ask yourself whether we should enact a program, just under \$1 million, that forces the poorer of our citizens through a three step process which people can hire a lawyer and just go to Superior Court and get by it, make an end to round, is a judicial end to round, that is created for the people with money to do that, and ask yourself if it appears that this is well thought out.

Are they judges or aren't they? No one knows. Where are they going to go? No one can say. What will the work load be? Staggering? Why are we doing it? Because we have some judges in the State of Maine that say they are overworked? Got to free them up and look how we do it. We take them out of the most important jurisdictional things they do, domestic relations. We give that important work to eight administrators scattered around the State of Maine with the 14,000 divorce case load a year. Respectfully, please do not allow the program to be placed into the law. Thank you Mr. President.

**THE PRESIDENT:** The Chair recognizes the Senator from Waldo, Senator Longley.

**Senator LONGLEY:** Thank you Mr. President, colleagues in the Senate. No one is advertising this as the perfect solution. We do know that there is a problem. We do know that 8,000 people, 8,000 families, are showing up in court without a lawyer because yes, we do have a two-tier system, probably a multi-tier, of those who can afford a lawyer all of the time, some of the time, and the bulk of Maine people, none of the time. And not as much on behalf of what I considered to be the highest work loaded judges in the nation or right up there with the highest number of cases and not the highest compensation by a long shot. I don't stand up here in favor of the lawyers who are reluctant and resistant to change. That's our nature. And I don't want to just say, "Oh, okay, you don't like change, let's not have change." My focus is the families who arrive at the courthouse without a lawyer and they're entering one of the most critical junctures in their life. The family is having either a family dispute or a family separation issue. There's trouble in the family. And for the children in that family, what seems to me is if we have, yes, a case manager with lawyer skills and mediation skills, people skills, they're meeting that family at the door of the courthouse and they are bringing them into a room and explaining to them the different rights of the different people. And you know what, the kids in that family, as mom and dad are getting help at the courthouse door and they're getting helpful legal information on how to resolve disputes because that's what mediators are trained to do, basically, from the first time they enter the courthouse there is someone extending a helping hand and if you think of no one else in this process, I ask you to think of the kids in that family whose parents cannot afford a lawyer at this critical juncture in their life, where they are tempted to argue, have extended to them a hand of someone who can help them through the byzantine nature of the legal process. That's my major point. Thank you for listening. The \$1 million is, for what it's worth, a 2

to 1, federal state match. No, we don't expect all these eight case managers to handle 8,000 cases. It's not a perfect solution. It's an attempt at a solution because we know we have a problem. Thank you for listening.

**THE PRESIDENT:** The Chair recognizes the Senator from Somerset, Senator Mills.

Senator **MILLS:** Mr. President and men and women of the Senate, this evening. Just a couple of points to respond to things that I heard raised. My understanding of this bill is that it does not take District Court judges out of the family law adjudication business, but that these people would be in supplement. These court administrators are management officers who are legally trained and supplement the efforts that are being made to the District Court to manage these very heavy case loads. The other thing is that I understand that the Maine Bar Association, although it had initial reservations concerning this bill, that they have agreed that the current draft meets their objections and that the main issue that they were concerned about had to do with the power of case management officers, to make certain decisions involving the custody of children and to make them stick on an interim basis. My understanding is that the power of these case management officers, in regards to parental rights and responsibilities, that the power is there only by consent by both parties. In other words, if the two parents agree that the issue of where the children are going to live may be decided by these folks, then it will be decided at that level. If they choose not to, they may have a District Court judge make the issues determined for them. So in many ways, the adding of these people creates an option that doesn't presently exist in our court system.

The biggest single complaint that I hear, in regards to family and domestic relations matters, is that there is a crying need for speed and responsiveness in addressing issues among families in conflict, and that getting an answer before the weekend is the crying need of these people who are customers of our judicial service delivery system. Because the case loads are so high, because District Court judges have so many cases to tend to and a wide spectrum of litigation, it isn't possible, in many counties, for parents to get the relief that they really need in a responsive way. These added people will go a long way towards granting speedy relief to folks who are in desperate conflict with each other.

The annual cost of this program, as I understand it, is \$900,000. Only \$300,000 of that comes from state resources. The remaining \$600,000 is available as federal funds but those federal funds are not available to our court system unless they are focused and oriented toward family court matters. We do not have the power or the capacity to use those if they are diverted to such things as evictions and corrections and criminal prosecutions and other things that the District Court does for work. So in a certain sense our hands are tied but that is not all bad.

The need for these folks in the court system, the need to address the tensions in family law practice, is staggering. These people, who I believe, will be more than adequately trained to do what resolves the issues that will arrive before them, and will go a long way toward easing the domestic tension that many of us are witness to in our own communities. It's not really a three step process. We have a mediation process that is required, whether you are in Superior Court upstairs, or whether you're in District Court. It doesn't matter. Mediation is required no matter where you go. In this case however, in the District Court, you will have

certain options of getting certain issues that you can't get resolved through mediation. If you need a judge to make a ruling and resolve the dispute for you because you can't come to terms with the assistance of a mediator, then in the District Court there will be two options. There will be one of these case management officers to go to, if they are available within the limits of that persons authority, or you will have a judge also, who may be serving, particularly if it's a remote county where these case management officers may not come as frequently as they will to the larger counties. I do not view it as a constraint on access to the court system. I view it as a freeing up, an enlargement and a great boon, to serving the public at a time in their hour of greatest need.

You have to have seen and handled a great number of these cases to understand just how badly people need this kind of help. It's analogous to emergency room assistance in a medical setting. Many of these domestic problems cannot wait and they are waiting. And people are living in misery because they do not have prompt access to the court system. By adding these eight people, it will greatly improve access to the courts and I think we will see some significant improvement in the administration of justice. Thank you.

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

Senator **CAREY:** Thank you Mr. President. Mr. President, I stand here in support of the good Senator from Franklin, Senator Benoit. Twenty years ago I made a suggestion for a family and juvenile court. I thought of using what is still a very waste of time and talent. We have currently pros in handling family matters, who do it on a part time basis. They currently handle estates, some juvenile matters, marriages, families. They are people who are called Probate Judges. There are 16 of them and they're in each and every county in the state. I would hope that maybe someday, if this bill is defeated, that we can really look at making the probate court a full-time court so that when they are not handling estates and matters with AMHI and what have you, in the case of Kennebec County Probate Judge, they can also do juvenile work and they can also become involved in the settling of family matters. Thank you.

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

Senator **CATHCART:** Thank you Mr. President. I wish to ask permission to pose two questions through the Chair, if I may?

**THE PRESIDENT:** The Senator may pose her questions.

Senator **CATHCART:** Thank you Mr. President. My first question is, what are the qualifications of the quasi judges for the Family Division? I assume they are attorneys but do they have specialized training in domestic violence and child welfare, juvenile law and other areas that I think would be important for a Family Court judge to have? My second question is, what is the scope of jurisdiction of this court? Is it divorce cases, parental rights and responsibilities in those cases only, or would it also include protection from abuse, child welfare cases, juvenile cases and other matters other than just divorce? Thank you.

**THE PRESIDENT:** The Senator from Penobscot, Senator Cathcart poses two questions through the Chair to anyone who

may wish to answer. The Chair recognizes the Senator from York, Senator LaFountain.

**Senator LAFOUNTAIN:** Thank you Mr. President. Specifically, your first question, as far as qualifications, family case management officers must be members of the Bar of the State and must have experience in the area of family law. They must also have interest, training or training in mediation and other alternative dispute resolutions, techniques, domestic violence and child development. In answer to your second question, I believe the amendment specifically states what their jurisdiction is relative to the type of orders they may enter into dealing with contested motions on interim orders involved in actions involving paternity or parental rights and responsibilities excluding interim child support orders. Thank you.

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

**Senator BENOIT:** Thank you Mr. President, may it please the Senate. As further effort to answer the question just posed, as to the qualifications of the administrators, I want to point out that the particulars that the Senator from York, Senator LaFountain, just mentioned are optional rather than mandatory qualifications. Optional rather than mandatory. And I would like to, if I may please, while on my feet, point out to you that the family court legislation before us is really going to amount to our District Court judges "rubber stamp judges" because, you will notice in the reading of the bill, that the judge sees the case at the end just, perhaps, to sign papers, if you will, to "rubber stamp" what has gone on before in the administrative provokes. I don't know about you, but if we are thinking about increasing the salaries of our District Court judges, and we will be talking about that soon, I'd like to be paying taxpayers money for judges who are more than a rubber stamp.

I want to read just a statement from the Maine State Bar Association's President. "It is unusual," he writes, "for a President of this Association to appear before the Legislature personally," but there he was. "I came because I feel strongly about the proposed legislation. The Maine State Bar Association has strongly favored a Family Court for at least a decade." What they are talking about here is the very same court that Senator Carey, the Senator from Kennebec, has just been talking about, a family court, not eight administrators and the staff of seven or eight. He writes, "Opposing this bill might therefore seem inconsistent for us now. We believe the bill is seriously flawed." This is the Bar Association. I wouldn't be standing up here today, and I realize that I'm probably doing a vain thing, but somebody has to speak up for the people who came to the committee. It seems to me, not just rubber stamp this thing. "Opposing this bill might therefore seem inconsistent. We believe that it is seriously flawed. The Association has expressed broad concerns about the potential, unintended harm this bill will do to the rights of prose and low-income citizens." There it is. That's what they are concerned about and I'm concerned about that. Also, against rural citizens and a court system already overburdened with delay, how are going to help delay by adding another step to the process? How?

Finally, I realize the facts of life on this bill. The money is in the budget. It's there. It's the cart before the horse. The money is there before the legislation comes to us and I realize that if the money is there, than I'm probably talking, you know, for a vain purpose. I understand that. I'm willing to speak for those who

came before the committee, the Bar Association, the attorneys in private practice, the family law section of the bar in opposition to this Family Court and I'm doing this respectfully to the process. It seems to me that it's almost like a rush, rush situation. Those who have looked at this don't even know what to call these administrators. They call them administrators but I've already pointed out they're under the cannons of judicial ethics. It's almost like being partially pregnant. It just doesn't make sense to me, as I look over the bill and the problems with it, why we should enact something just because there's federal money there, which of course is our money, too, and spend it, almost a \$1 million. We don't even know how much money these folks are going to get paid. We don't even know where they are going to work. It just doesn't make sense to the people who came to the committee and said, "Look, would you sunset this at least." There's no sunset here. We do have these people reporting back by the year 1999. So the committee is a little apprehensive here, about the way this program is going to work. Is it going to work? But you know, when you get a program in place, how difficult it is to get it out of place if it doesn't work. So respectfully, maybe for a vain purpose, we speak for the people who came to the committee and said, "Please don't enact this legislation. We're going to work with this, we lawyers. We're going to have to work with this and we don't like it. It's not in the best interest of the people of Maine." Thank you.

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

**Senator LAFOUNTAIN:** Thank you Mr. President, men and women of the Senate. I rise today to speak in favor of the pending motion which supports the Family Court. Initially I was a skeptic, in reference to this bill, and in fact, at the first committee work session, I walked in with a three to four page list of amendments, but through the committee process, we ironed out a lot of those issues. And specifically, the good Senator from Franklin mentioned to you that there is no sunset on here and there was a good reason why we didn't put on a sunset. It was our fear that if a sunset was on that bill that we should have great difficulty, or at least the court would have great difficulty, in attracting qualified candidates for the family case management officers, since their jobs would certainly be in jeopardy in two years or three years down the road. What the committee did, in fact, was put into the amendment an annual reporting date and that annual reporting date is every two years on odd numbered calendar years and if this amendment becomes law, the Family Court will come into existence in January of 1998, and the first review will be in January of 1999. One of the reasons that we wanted that review is for the very reason that the good Senator from Franklin mentioned, and that was the fact that we were concerned where, exactly, some of these case management officers would be placed.

A number of our committee members live in rural areas and do have District Courts nearby, but they were concerned that they would not be serviced by this. This way the bill, the law, will come back for review. The Family Court and the committee, at that time, can take appropriate action to see if these family case officers are properly being utilized. One of the reasons why I support the bill is just because of my own experiences as a trial lawyer. I know that in York County, if I was to file a divorce action today and serve the other party, we have to, obviously, wait for 60 days before we can go to court, but if I wanted to go to court in 60 days, contested or uncontested, it would be virtually

impossible in York County. In the District Court in Biddeford, to get in on an uncontested issue, may take you months, three or four months. To get in on a contested issue can take anywhere from six months to a year and then you never are guaranteed that your case will be heard in the Biddeford District Court because we have, what we call, a trailing docket. And because we only have two courtrooms in the Biddeford District Court, the bulk of these cases on the trailing docket are sent down to the York District Court, requiring people who live in that area to travel 40 miles in order to get justice in their case.

Ultimately, as the good Senator from Waldo mentioned, the ultimate beneficiary of this bill is truly the children who are affected by divorce. Children who are involved in a divorce situation, who have parents who have contested issues relative to parental rights and responsibilities are truly kept in limbo land, never quite sure where they are going on any given weekend because there is no court order in place relative to that issue.

I think, in closing, one of the convincing arguments came from a Professor Michael Mulhane of the University of Maine School of Law and he indicated in his testimony the following, "This bill proposes to assign eight full time family case management officers to the Family Division. Assuming each officer is available for 48 weeks per year, exclusive of vacation, sick leave and court holidays, that will provide just over 1,900 work days to handle the 7,000 cases." The bottom line is that those eight officers can save an average of 16.5 minutes in judge time per case. Sixteen minutes does not sound like much until you realize how little time judges have to decide cases now. District Court judges routinely face family case dockets of more than 30 cases that must be dealt with during a session of less than four hours. I have seen dockets in Portland District Court with more than 90 family law cases that one judge is assigned to deal with in three hours. Typically, it will take the judge more than an hour to just explain the process to the pro-se litigants in the court and sort through the docket to determine who is present, who has been served, who needs mediation and which case needs a hearing. Even more time is lost when the judge examines the individual files to make sure that the required paperwork is present. And I'm sure that the other lawyers in this Body can confirm that in the last couple of years there certainly has been a proliferation of documents that need to be included in a divorce file. When set against a day to day reality of our District Court, an extra 16 minutes of judges time per case is of significant increase. I encourage you to vote for the Family Court.

**THE PRESIDENT:** The Chair recognizes the Senator from Washington, Senator Cassidy.

Senator **CASSIDY:** Thank you Mr. President, men and women of the Senate. You know, I really wondered in the beginning of our session, why you sat me between two attorneys, and then we finally get an issue like this and they are on opposite sides and I'm really in the middle here, I guess you'd say. Seriously though, I was so excited during the Joint Session we had earlier this year when Chief Justice Walthen explained to us in his speech that he was going to propose this Family Court. I spoke with him shortly afterwards, that day. I met him in the corridor and when he started to talk about it and explain some of the situations, it brought back so many things that have happened to me, as I have served my constituents for the last three years in District 4, in Washington County. As you all know, we deal with some minor things, like what we should have on our

license plate, to somebody's culvert is plugged, to something that is real serious. Some of the situations that I've dealt with that involve child protection, domestic violence and these kind of things, you know, when you lay down that evening and you can't sleep because you're so upset about some of the things you tried to deal with that day. You don't know who to turn to and you talk with some of the folks here, the bureaucrats who deal with these things daily, you know that there are real problems when those kinds of things upset you.

I think this is a step in the direction, hopefully, to try to correct some of the ills that we have created in our society. What seems to me to be real important is, there is no question and I think we all agree here in this Chamber this evening, the courts are overworked. There are too many cases or too many things to do and they just can't handle the caseload that they have. It's just common sense to me, that if we can offer some other options for people to lessen that load that they will be able to deal with some of these situations in a more timely fashion. I think, as I heard the good Senator from Somerset, Senator Mills, speak earlier that this is a time of crisis for these families and the people I care mostly about. I care about all of us, but we all care, I think, and we have a close concern for the children. If there is anything that we can do to make that terrible situation be a little better I think we need to do it. I agree with the good Senator from Franklin, Senator Benoit, that this probably isn't a perfect situation but I think that we would be going down the wrong trail if we killed an issue like this just because we're afraid that it may not be the best that we can possibly do. I think that we need to look at this in a positive way. This is a start in the right direction. Hopefully, we can work things out that will make it even more susceptible to folks, to be more of a service to the people. Hopefully someday, we'll be able to add to that, to offer a much better service than what we had before us. I think the other issue of the financing, that we can have some federal funds to help us to get this program off the ground, is real important. I could go on and on about some of the situations that I've dealt with in my district but I won't. I think you got my message and I obviously will support this and I hope that you will join me and maybe we can make life a little better for a lot of folks in the State of Maine. Thank you Mr. President.

**THE PRESIDENT:** The Chair recognizes the Senator from Hancock, Senator Goldthwait.

Senator **GOLDTHWAIT:** Thank you Mr. President, ladies and gentlemen of the Senate. I'd like to address briefly a couple of the points raised in this discussion. One was raised by the good Senator from Franklin, Senator Benoit, who was concerned about the geographical distribution of these new workers and that is always a concern of mine, living in rural Maine, but the bill specifically addresses that by specifying that geography must be considered as these workers are assigned. As far as the complaints or issues the Bar Association had, although lawyers jokes are always tempting, I think that in a case like this, when they are the people who work inside this system, that any objections or concerns that they point out must be taken very seriously. In fact, I believe that they were in this process and there were a number of compromises built into this legislation based on those very concerns. Probably the Senator from Washington County, Senator Cassidy, said it as well as I possibly could, and he and I have talked at some length of some of the cases that come to our attention, and both feel somewhat disadvantaged by not having any particular training that has

prepared us for dealing with those most difficult of constituents calls which have to do with deteriorating, or in many cases, hopeless relationships between some of the adults in our communities. But the fall out of those relationships inevitably lands on the children. And that is why, if there were no other reason, I would be supporting this legislation, because if there is anything that offers the chance of resolving these issues more rapidly, that has got to be in the best interest of our children.

I sent this bill to a judge in my area and asked for his opinion about it and the comments that he made were that he would look forward to a system that relieved him of what, for him, certainly not for the people whose lives are involved, but from a judge's perspective are rather more mechanical. It would take some of those cases out of that stream and refer them to people who had particular training in being able to resolve them. It would take out some of the people who are pro-se cases who are working on issues of trying to resolve the dollar figures in child support issues. He felt that he might have as much as an hour a day of extra time, were we to go to this Family Court situation, in which he could process far more difficult cases and far from being a rubber stamp judge. He looked at it as an opportunity to spend more time on cases that are more complicated, more difficult to resolve and do need our highest qualified professionals to deal with. So in the absence, not only of objections from that judge, but in the face of his positive enthusiasm for this approach and particularly because of its impact on our children, I would urge you to support this bill.

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

Senator **CLEVELAND:** Thank you Mr. President, women and men of the Senate. I rise because I thought it might be useful for you to hear the experiences of an individual when he isn't in the Senate, who spends part of his time as a certified court mediator in divorce cases in the State of Maine, which I've been doing for about six years. So in that role I get to meet with these families in the process of divorce. During that six years I've come to learn and experience that there are many families in this state, and particularly the children of those families, who really don't get an opportunity to have these issues resolved, or basic issues of family concern dealt with in a timely way. Many of the families that I deal with often have few resources. One or both have no legal representation. They have been waiting weeks and, in many cases, months before they've gotten to mediation. There's been no child support paid, usually, to the woman who has the care of the children. They're struggling to get along. Often times on public assistance to nominal wage jobs. The children's issue of being able to meet with both parents in some reasonable visitation schedule has not been addressed. The children have not been, often times, with their father for months which is distressful both to the children and the parent, and breaks the relationship, particularly if the children are young, that is critical in maintaining and forming. And then, after we complete mediation, in those cases where we don't have full agreement, they have to be scheduled for a contested hearing, a trial, which is then several more months away before those issues can be resolved. It seems to me that we don't serve our families well, and particularly the children in these families, when we can't provide them with an opportunity in an objective and fair legal forum to try to resolve the most basic of issues. Children need to be taken care of. Some reasonable amount of support wherever the children are, needs to be maintained until those issues are

resolved. Children deserve to be able to associate with both of their parents to maintain that critical relationship for their lifetime substance and support and nurturing. The process that we have now is damaging to those children because it takes far too long to deal with those basic substantive issues.

This is a process that helps get those issues organized early. It helps them make some interim decisions on how children should be cared for, and it helps use the judicial time most expeditiously. I can tell you, as a mediator, often times these parents come to me unprepared. They haven't brought their financial information, they haven't filled out the forms, they haven't brought their pay stubs in for verification, they haven't thought through or prepared themselves for visitation and how that can occur, and a myriad of other issues. And so I spend a fair amount of time just helping both parties organize themselves so that they can deal with the issues that are so important to them. This is time that the judges really have to deal with the basic, fundamental get yourself prepared to deal with the issues. Having this system will allow those individuals to be much better prepared when they go to the judge and to have their interest much better served if the judge doesn't have to spend critical time on sort of clerical and administrative activities.

One of the other things I'd like to note for you as well, talking about rubber stamping, and I never thought of myself as having that kind of power, but in those cases where we are successful and find a mediated resolution. The process is that mediated resolution goes to a non-contested hearing, five to ten minutes long in the judge's chambers, and the judge nearly always blesses that agreement. It doesn't go to a contested trial. Often times you don't even have to have both parties present. The judge just reviews it to see that it is in conformity with the general requirements of the State's statutes and proofs it. It's directly from the mediation process. This is not a lot different from that. It provides the opportunity for a judge to review the basic facts that need to be reviewed, make sure that each party's interests have been reasonably represented and that the agreement is in the conformity of the law. It's much more expeditious to do it that way. It's a lot less contentious and reduces the animosity between the parties. It helps build a relationship much more quickly so that the focus can be on the interest of the children as opposed to the interest of the parents. It reduces that animosity, anger and contention that breaks that relationship, that makes it more difficult to continue, two parents that will, at least, be cooperative with one another to provide the essential and basic nurturing necessary from two parents, not one. I would certainly agree that this proposal is not absolutely perfect and it will not solve every problem in this state, but if our standard was that every piece of legislation had to be perfect upon presentation then we would pass few laws and address few issues in this Body. We need to recognize when we have the opportunity to make substantial improvements and to recognize when we will build upon those improvements and build a better system. I ask you not to be dissuaded from supporting this because it's not perfect yet. From my personal experience with six years, it's a major step in the right direction and the beneficiaries will be the children in our state. I can't imagine anything more important that we can do. I would hope that you would support the motion.

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

Senator **CATHCART:** Thank you Mr. President, men and women of the Senate. I hesitate to rise because I have been

sitting here struggling with my feelings about this legislation, and I support the concept of a Family Court. I think it's very important and I really wanted to support this bill but I'm just unable to do that. I just am going to have to oppose it and largely it's because I fear that what we are doing here is setting up a second-class court for the cases and the people who should be of the utmost importance to the courts of our State of Maine. And that's our families and our children and I really am afraid that if we pass this legislation that our vulnerable children, the children of parents divorcing, separating or never married, are going to be worse off, rather than better off, if we send them to this type of court. I really don't like doing this because I think that a Family Court would be great.

I sat for four years as a House member on the Judiciary Committee and family law has always been one of my primary concerns. Another concern that I've had over the years is the training of judges, and from reading the amendment, asking the question, and reading the amendment as proposed, I do not believe that these quasi-judges will have the kind of training that I think any judge handling family matters should have to do the best job. And that's a serious concern I have.

I was very privileged in 1995 to be chosen to chair a Federal Government Commission made up of 15 people from all over the United States. It was the U.S. Commission on Child and Family Welfare, and our primary objection was to make recommendations regarding parental rights and responsibilities, custody of our children. We spent a great deal of our time at our public hearings focusing on the court system in our country. We all believed that, really, a Family Court with mediation with other services, support services for families, was what we all should aim for, but we also recognized that most states are not in the position to afford really fine, separate Family Courts and that they have to make do. So, what we decided to do, instead of recommending that every state set up a Family Court, was to recommend what we thought were basic criteria for the type of court that should handle family law matters. The one criteria that we thought was most important was that any court handling family law cases should have the level of jurisdiction of the highest trial court in that state. I must say that I just do not believe that this court would not have that level of jurisdiction and for those reasons I'm going to oppose the motion. Thank you Mr. President.

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

The Doorkeepers secured the Chamber.

The Secretary called the Roll with the following result:

**ROLL CALL**

**YEAS:** Senators: **ABROMSON, AMERO, CASSIDY, CLEVELAND, DAGGETT, FERGUSON, GOLDTHWAIT, KILKELLY, LAFOUNTAIN, LONGLEY, MICHAUD, MILLS, MURRAY, NUTTING, O'GARA, PARADIS, PENDLETON, PINGREE, RAND, RUHLIN, SMALL, TREAT, THE PRESIDENT - MARK W. LAWRENCE**

**NAYS:** Senators: **BENNETT, BENOIT, BUTLAND, CAREY, CATHCART, HALL, LIBBY, MITCHELL**

**ABSENT:** Senators: **HARRIMAN, JENKINS, MACKINNON**

**EXCUSED:** Senator: **KIEFFER**

23 Senators having voted in the affirmative and 8 Senators having voted in the negative, with 3 Senators being absent and 1 Senator being excused, the motion by Senator **LONGLEY** of Waldo to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-347)** Report in concurrence, **PREVAILED**.

The Bill **READ ONCE**.

Committee Amendment "A" (H-347) **READ** and **ADOPTED**, in concurrence.

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

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

Resolve, to Ensure Quality Care to Residents of Nursing Facilities through the Establishment of a Task Force on Minimum Staffing  
 H.P. 828 L.D. 1133  
 (C "A" H-304)

Tabled - May 13, 1997 by Senator **PINGREE** of Knox.

Pending - **FINAL PASSAGE**

(In Senate, May 12, 1997, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT (H-304)**, in concurrence.)

(In House, May 13, 1997, **FINALLY PASSED**.)

This being an Emergency Measure and having received the affirmative vote of 30 Members of the Senate, with 1 Senator having voted in the negative, and 30 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.

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

**PAPERS FROM THE HOUSE**

**Non-concurrent Matter**

**SENATE REPORTS** - from the Committee on **LEGAL AND VETERANS AFFAIRS** on Bill "An Act to Restrict Circulators of Initiated Petitions from Being within 250 Feet of Voting Places"  
 S.P. 102 L.D. 381  
 (C "A" S-181)



**Majority - Ought to Pass as Amended by Committee Amendment "A" (S-181) (7 members)**

**Minority - Ought Not to Pass (6 members)**

In Senate, May 5, 1997, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-181).**

Comes from the House, Bill and Accompanying Papers **INDEFINITELY POSTPONED** in **NON-CONCURRENCE**.

On motion by Senator **DAGGETT** of Kennebec, the Senate **RECEDED** and **CONCURRED**.

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**Non-concurrent Matter**

Bill "An Act to Establish the Rider Safety Act"  
H.P. 713 L.D. 977

In Senate, May 5, 1997, **PASSED TO BE ENGROSSED**, in concurrence.

Comes from the House, **PASSED TO BE ENGROSSED AS AMENDED BY HOUSE AMENDMENT "A" (H-454)** in **NON-CONCURRENCE**.

On motion by Senator **DAGGETT** of Kennebec, the Senate **RECEDED** and **CONCURRED**.

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**COMMITTEE REPORTS**

**House**

**Divided Report**

The Majority of the Committee on **AGRICULTURE, CONSERVATION AND FORESTRY** on Bill "An Act to Provide Public Information on Forest Management Practices"  
H.P. 804 L.D. 1092

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

Signed:

Senators:

KILKELLY of Lincoln  
PARADIS of Aroostook  
CASSIDY of Washington

Representatives:

LANE of Enfield  
GOOLEY of Farmington  
CROSS of Dover-Foxcroft  
DEXTER of Kingfield

The Minority of the same Committee on the same subject reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-431).**

Signed:

Representatives:

BUNKER, JR. of Kossuth Township  
SAMSON of Jay  
VOLENIK of Brooklin  
SHIAH of Bowdoinham  
BAKER of Dixfield  
MCKEE of Wayne

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

Which Reports were **READ**.

Senator **KILKELLY** of Lincoln moved the Senate **ACCEPT** the Majority **OUGHT NOT TO PASS** Report, in concurrence.

On motion by Senator **TREAT** of Kennebec, **TABLED** until Later in Today's Session, pending the motion by Senator **KILKELLY** of Lincoln to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report, in concurrence.

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**Divided Report**

The Majority of the Committee on **LEGAL AND VETERANS AFFAIRS** on Bill "An Act to Prohibit the Gathering of Signatures at a Polling Place"  
H.P. 64 L.D. 89

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

Signed:

Senator:

**DAGGETT** of Kennebec

Representatives:

FISHER of Brewer  
TUTTLE, JR. of Sanford  
CHIZMAR of Lisbon  
GAGNE of Buckfield  
TESSIER of Fairfield  
BIGL of Bucksport  
BELANGER of Wallagrass

The Minority of the same Committee on the same subject reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-339).**

Signed:

Senators:

CAREY of Kennebec  
FERGUSON, JR. of Oxford

Representatives:

GAMACHE of Lewiston  
TRUE of Fryeburg  
LABRECQUE of Gorham

Comes from the House, Bill and Accompanying Papers  
**INDEFINITELY POSTPONED.**

Which Reports were **READ.**

Senator **DAGGETT** of Kennebec moved the Senate **ACCEPT**  
the Majority **OUGHT NOT TO PASS** Report.

On further motion by same Senator, **TABLED** until Later in  
Today's Session, pending motion by same Senator to **ACCEPT**  
the Majority **OUGHT NOT TO PASS** Report.

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**Divided Report**

The Majority of the Committee on **LEGAL AND VETERANS**  
**AFFAIRS** on Bill "An Act to Prohibit Landlords from Collecting  
Rent More than 3 Months in Advance" H.P. 1107 L.D. 1550

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

Signed:

Senators:

**DAGGETT** of Kennebec  
**FERGUSON, JR.** of Oxford

Representatives:

**TUTTLE, JR.** of Sanford  
**GAMACHE** of Lewiston  
**CHIZMAR** of Lisbon  
**TESSIER** of Fairfield  
**LABRECQUE** of Gorham  
**BIGL** of Bucksport  
**BELANGER** of Wallagrass  
**TRUE** of Fryeburg

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

Signed:

Senator:

**CAREY** of Kennebec

Representatives:

**FISHER** of Brewer  
**GAGNE** of Buckfield

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

Which Reports were **READ.**

Senator **DAGGETT** of Kennebec moved the Senate **ACCEPT**  
the Majority **OUGHT NOT TO PASS** Report, in concurrence.

On further motion by same Senator, **TABLED** until Later in  
Today's Session, pending motion by same Senator to **ACCEPT**  
the Majority **OUGHT NOT TO PASS** Report, in concurrence.

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

**PAPERS FROM THE HOUSE**

**Joint Order**

The following Joint Order: H.P. 1326

**ORDERED**, the Senate concurring, that the Joint Standing  
Committee on Business and Economic Development report out  
legislation regarding warranty reimbursement to the House.

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

Which was **READ** and **PASSED**, in concurrence.

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

**ORDERS**

**Joint Orders**

On motion by Senator **KILKELLY** of Lincoln, the following  
Joint Order: S.P. 656

**ORDERED**, the House concurring, that the Joint Standing  
Committee on Natural Resources and the Joint Standing  
Committee on Inland Fisheries and Wildlife jointly report out  
legislation pertaining to the use and regulation of personal  
watercraft and addressing noise, wildlife habitat and  
environmental issues associated with watercraft to the Senate.

Which was **READ.**

On motion by Senator **PINGREE** of Knox, **TABLED** until Later  
in Today's Session, pending motion by Senator **KILKELLY** of  
Lincoln to **PASS.**

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**ORDERS OF THE DAY**

The Chair laid before the Senate the following Tabled and  
Later (5/1/97) Assigned matter:

**HOUSE REPORTS** - from the Committee on  
**APPROPRIATIONS AND FINANCIAL AFFAIRS** on Resolve,  
Authorizing the Maine Technical College to Achieve Cost Savings  
through the Lease-purchase of Facilities. H.P. 444 L.D. 594

Majority - **Ought to Pass as Amended by Committee**  
**Amendment "A" (H-228)** (9 members)

Minority - **Ought Not to Pass** (4 members)

Tabled - May 1, 1997, by Senator **MICHAUD** of Penobscot.

Pending - motion by same Senator to **ACCEPT** the Majority  
**OUGHT TO PASS AS AMENDED** Report, in concurrence

(In House, April 30, 1997, 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-228).**)

(In Senate, May 1, 1997, Reports **READ.**)

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

Senator **DAGGETT:** Thank you Mr. President and members of the Senate. I'm asking for your support in opposing the motion that is on the floor. I appreciate your indulgence. I have sent a letter to you indicating some of my concerns and I have a few pieces of information that I would just like to pass out now, and I would ask for a brief moment. It's very difficult to address issues that are complex on the floor, but when considering the appropriateness of the purchase of this property by the Technical College System, I'm suggesting that there are two questions that we need to ask. One of them has to do with the appropriateness of government subsidizing itself with profit-making activities. I would suggest to you that is a part, in my opinion, of what is being done with the purchase of this property. The purchase would be two buildings, one of which would be rented out, and the income from that rental would be used to help pay for the purchase. If you feel comfortable with that particular issue of rental income being used, then I would suggest to you there is a second question that needs to be asked and that is, is this purchase a good business decision? I happen to believe that it's not appropriate for government to use \$20,000 to \$30,000 of rental income to help pay this mortgage, and I also feel that taking \$17,000 of property tax money from citizens of Augusta to pay for this mortgage is also inappropriate. So my answer to the first question is, that isn't appropriate. But the second question I find a very disturbing one because I personally, after a lot of time looking at the numbers and the figures, feel that this is a very bad business decision. And I would submit to you that documents that have been just passed out to you regarding this particular building, and commercial buildings in general, a standard that is used is price per square foot. And I would suggest to you that it's a pivotal issue in the discussion of this purchase.

The price per square foot, and I am going to limit most of my remarks just to that one piece. If you look at a piece that's titled "Office Buildings" and the calculator method under D, you see several, four different types, one of those is called good and one of those is called average. So how you designate that building, whether you call it good or average, makes quite a difference in price per square foot that would be considered an appropriate price. Over on the right hand page of the paper you will see that for a building that is considered good, which is described as best stucco on good frame, brick or stone trim, is a \$70 per square foot cost. When you call it average, which you will see stucco or wood siding on wood, some trim etc., it's \$49 per square foot. So that is the bench mark that you use for commercial property. Now in this area, property has been valued since we had our evaluation done in the late 80's. Some properties are actually valued at 105% because our valuation was done at the height of the market and it's very much softened since that time and has not rebounded. So how you designate property is very important. The second page is simply a set of specs on a sales comp and that's how you make decisions and you compare a property that's been sold to the property that you are going to buy. It gives you

an idea of what the market will bear and what's going on in that area at that time. And this is just a description of one of the properties that was used as a comp. On the next page you can see there are several comps that are listed, and the last one that is listed there is called the subject property and is about 15,000 square feet, two buildings at 323-331 State Street, calls it a multistory, wood frame building. Now one of the problems here is in your comparison. You see your unit price per square foot, the comp has been listed at \$96 per square foot. However, if you look to the bottom of the page you will see some handwriting there and you'll see on the left side, 7 Community Drive. That was used as the comp but if you don't add your numbers up properly, you don't use the unfinished basement or the finished basement, you don't make an apples to apples comparison, you come out with numbers that are different, and if you add the little numbers on the left you'll see that that building, which is a good building, which is brick, which is three years old has a \$79 per square foot cost. Now the appraisals that you see in front of you, and those numbers on the bottom are on there by the Tax Assessor for the city of Augusta who tried to help me figure some of this out. You'll see that this comp which is considered good, has been given a \$96 per square foot selling price because the space was not all figured in. So if you look to the bottom again, the numbers that my tax assessor wrote up, you see that the real square footage selling price was \$79. This is a 3 year old building, brick front. The building that we are talking about was originally a home. It was made over into an office building. It's an old building. It is not a good building. You'll see that they've listed it as average. And again, if you look to your descriptions, you'll see that there's a big difference between a three year old building that is brick and is a top of the market, and an old vinyl-sided building whose heating system was originally designed for an old residential home and you compare that. It's very difficult to see that the 331 State Street purchase is anywhere close to the 3 year old brick building on Community Drive. Now if you will indulge me for one minute further, on the next page, written in over on the far right hand side, you will see a building that was sold in July of 1996, next door to 331 State Street and the selling price for an average building was \$41 per square foot. There's a big difference my friends between \$41 and \$76.

So I would submit to you, number one, it's inappropriate for income property to be used to subsidize this purchase as well as the property tax money, and number two, it is a grievous overspending of taxpayer dollars. And I hope you will pay close attention to these figures. Thank you.

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

Senator **LIBBY:** Thank you Mr. President and men and women of the Senate. I will be brief. I think it's important to note that the great leadership that we have in the Maine Technical College System, and I think when they make an operational decision like this one, if it's a decision to collect rent and that rent amounts to \$20,000, I think they ought to be given the credit for researching that decision, for making the right decision and I think that's true in this case. I think we ought more often to run the state like a business, but not from this body right here when it has to do with an agency structure that we created in law and set aside and said, "Look, this is higher education, we're not going to get involved in the day to day operational aspects of what you do. We'll make appropriations but we are not going to tinker with the day to day operations of your organization." That's our higher ed

agency structure. We set it up in 1968 originally. It was a great idea and I think we ought to stick with it. I'm not saying that we ought not to have changes to that structure, but that structure has served us pretty well and at this time, and particularly in this case, when you have a business decision to be made, it ought not be made in this Chamber. I'm not going to be the judge of whether or not a lease to own in Augusta is an appropriate decision in this particular case in a higher rent institution, because if we do that now we're going to end up doing that for the University of Maine System in every decision that they make, and we can't do that. We ought not do that. We've delegated that authority by law. So I would ask you that you would oppose the pending motion. Thank you.

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

Senator **MICHAUD:** Thank you Mr. President and men and women of the Senate. I hope you support the pending motion to accept the Majority Ought to Pass report. This legislation would authorize the Maine Technical College to enter into a lease-purchase agreement with the facility that it currently leases now. Last year when the lease expired under the current faculty, the Technical College negotiated with this landlord to include a new 10 year lease with the option to buy that property. The Technical College and the staff had been looking at other property to purchase in the Augusta area. They started this process about three years before the lease that they currently own expired and they determined that the current facility that they presently lease was the best option for them. I did take a moment before I voted on the bill to tour the facility. It is an exceptional facility. It's a very nice facility. In addition to the lease-purchase, it would also allow the Technical Colleges to save roughly about \$500,000 over 10 years, there in that 10 year lease. They are going to stay there regardless of what happens with this bill. So the question is, do we allow them the option to buy that and save \$500,000? I think that's the wise choice. For those of you who have been in the legislature since the 90's anyway, you know that the budgets have been cut dramatically or flat funded over the last five to six years. This is a chance for the Technical College to make a wise decision on behalf of the State and to save money as well. The system also has had an engineering study by E. Pro Environmental Consulting in Augusta and they have determined that the building is structurally sound and well-maintained and it is in good condition. Ladies and gentlemen of the Senate, I think we ought to commend the Technical College for taking the initiative to have a lease-purchase agreement. For those of you who are familiar with the contracts and leases that the state has, we spend way too much money on leases and rent. It's time that the state start owning their own buildings. I sympathize with the city of Augusta. They might lose some property tax, but since this bill has been presented to the legislature, we had the public hearing. I have not had one city official contact me, not one on this bill. They have contacted me on the Augusta bridge and a number of other projects affecting the city, but not one city official has contacted me on this building to say don't do it. I would love to have the Technical College in my district. They spend, in the Augusta area, roughly \$150,000 yearly that benefits the businesses in Augusta. That's substantial. And that's not counting the meals, and what have you, that people on the staff, who attend meetings at the Technical College, spend in the Augusta area. And I wish that probably the Technical College could look up in Northern Penobscot and Aroostook area for their

central office because I know we would welcome them with open arms because it does have an effect. And I hope that this Body would join me in supporting the Majority Ought to Pass report. Thank you Mr. President.

**THE PRESIDENT:** The Chair recognizes the Senator from Washington, Senator Cassidy.

Senator **CASSIDY:** Thank you Mr. President and men and women of the Senate. I, too, rise this evening to ask your support for the pending motion. I've spoken to you many times in the last three years about the different experiences and opportunities I've had to visit all the schools in the Technical College System and the administrative facility here in Augusta. As you know, I've spent quite a few years in that system and I must tell you that I have the greatest respect and admiration for President Fitzsimmons and his staff, for the ability they have shown to manage our system in a very efficient way. You know, as I've visited the schools, including our own Washington County Technical College, you would be amazed at some of the unique things that the instructors themselves and some of the staff do to keep programs going, to get equipment from companies, and just the unique opportunities and, I guess, creative ways that they keep programs going and educate our young folks and our non-traditional students here in the state. It's just wonderful to see so many dedicated people and what they are trying to do.

As the good Senator from Penobscot mentioned, we know about the flat funding and what we've had over the last few years here, for all our higher education and many of our budgets here in the state government. I think this is a situation that was mentioned where we are seeing a \$50,000 annual savings. We have a lease that's signed, that we are going to spend this money even if this doesn't happen, and I just think as Senator Libby from York mentioned earlier, when we start to micro-manage all these programs, we can't seem to get through all these bills and things that we have without some real timely debates etc. But I just hope that you will join us, who have spoken in favor of this motion. It makes sense. Again, I have full faith in the system and President Fitzsimmons and his folks and, obviously I intend to vote for this and I hope you will join me in that. Thank you.

**THE PRESIDENT:** The Chair recognizes the Senator from Oxford, Senator Bennett.

Senator **BENNETT:** Thank you Mr. President, friends and colleagues of the Senate. Let me very briefly explain the three reasons that I, in committee, voted Ought Not to Pass on this piece of legislation. But before I do, I'd like to say at the outset, that in no way is my opposition to this bill reflective of any lack of respect or concern about the leadership at the Maine Technical College System. I have a lot of respect and faith in President Fitzsimmons and his capable staff. That's not the issue here. I'd also like to say that I don't like either, the fact that we appear here to be micro-managing the Technical College System, but the fact is that this bill has come to this body for a reason. It is because it had to come here. Under the current statute we are required to review these things. Maybe that's not a good law. I know many of us felt similarly about county budgets because how can we truly be accountable for county budgets when we're not the people who administer them or oversee them? But nonetheless, just like a county budget, having the issue before you, we have to pass judgment, not that I like to but that's the situation. So we get beyond those issues and we look at the

merits of the case and we do so with the best ability we have, given the time restrictions and our limited knowledge of the subject, and just like any committee, you look at the facts. I decided that, on balance, the facts supported a different conclusion than that drawn by my esteemed colleagues on the Appropriations Committee and this body. Let me just address the three reasons.

The first, I won't belabor, it's been well articulated by the Senator from Kennebec, Senator Daggett, the question of the price, the value of the building. The fundamental flaw is that the price that has come onto the building comes from an assessed value which she has stated is problematic at best. It's not based on a market price. The second reason that I oppose it is that the savings in this proposal is predicated on two things. First, receiving \$42,000 in rent money from one building that they will not be using at all and part of a building that they will be using on the property. The \$42,000 there and the \$16,660 or so, in property tax savings that they won't be paying. Those two items add up to over \$58,000 which exceeds the savings that the Technical College System will receive. The third reason that I put before you, and the final reason is that it is just, in my judgment, too much space. The facility altogether is something like 19,000 square feet. Of that, about 12,000 square feet is usable. Space planning guidelines from the federal government allocate 152 square feet per person for a building like this. There's 22 people that work at the Technical College System. If we can easily do the math, it's 3,344 square feet necessary given their current employment. As I said, usable space in this facility, 12,000 square feet. It is simply well in excess of what they need for their current staff. Maybe the Technical College will be growing. Maybe the system will be expanding. Maybe the system office will be expanding in personnel. They need to go a long way to reach to 3,344 square feet according to federal standards, and let me just put that in some perspective. 22 individuals that would be occupying 3,344, under the federal guidelines, to give you some sense. It encompasses roughly the size of this Senate Chamber, the Senate President's Office and the Secretary's Office all put together. That would be the size that would be required under federal guidelines. What we are looking at here is nearly four times that size. For those three reasons, the price is too high, the predication on the rent and the property taxes to make the savings of \$50,000 and thirdly, the super abundance of space, I had to vote Ought Not to Pass. I encourage you to give those considerations as well. Thank you.

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

**Senator LIBBY:** Thank you Mr. President and men and women of the Senate. I rise simply to make a correction. I rise to correct an earlier statement that I made, that I do support the Majority Ought to Pass as amended by committee amendment "A" report and I apologize for the error.

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

**Senator DAGGETT:** Thank you Mr. President and members of the Senate. I certainly want to make it very clear that my concern about this purchase in no way reflects on the management and the type of education provided through the Technical College System. Personally, I've always supported them in their mission, but my concern is that this is not a part of

their mission. I'm also somewhat surprised to find that my good friend, Senator Libby, the Senator from York, who has indicated to me in the past his interest in privatization seems to have meandered away from that in this particular instance.

I think we need to look very carefully if this is a wise decision for a purchase. I would just remind members here of the purchase some years ago, maybe eight years ago, of Oak Grove Coburn School, which was purchased with a vision at the time, at an inflated cost at the height of the market and today I would suggest that purchase which was, I think, in the range of a couple of million has been put out to bid and I believe there were no bidders. And I would suggest to you that this is exactly what happens when government tries to get in the real estate business. This bill is in front of us appropriately. It is here for us to look at and if we do not feel that the taxpayer is getting their moneys worth, then I submit to you that we should oppose it.

There are a variety of options. There's no rush to purchase this. There's no rush. There could be another appraisal. There could be a re-negotiation of the lease cost. I'm not involved in commercial property but I can assure you, as a residential income property owner, I have negotiated on many occasions with people who rent from me. There's no reason why anyone needs to be held hostage to feeling they have to pass this now. If you feel it's not a good buy, it's in front of us. It's our decision to make.

I'd also like to address quickly just another issue. It is not my understanding that this is going to be a lease-purchase agreement. My conversations with President Fitzsimmons indicate that the purchase would be between the Technical College and the bank. It is not a lease purchase agreement. It will be a purchase agreement. It's been somewhat of a matter of confusion trying to wind my way through this but this is a purchase agreement that we are looking at. Thank you.

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

**Senator CLEVELAND:** Thank you Mr. President and men and women of the Senate. As a member of the Appropriations Committee I obviously had the responsibility and duty to review this legislation and I voted in favor of Ought to Pass. I'd like to share with you some reasons why I felt that was an appropriate decision to make. One of the questions that we asked was, how did you determine that this was a fair price to pay? The response was that during this careful review and study over several years, the Maine Technical College System had an independent appraisal done by Dwyer Associates of Augusta. A very extensive, very careful appraisal by professionals and in that appraisal they came back clearly saying that the asset was worth more than \$1,200,000 more than the asking price. Now I'm not an appraiser. Perhaps you can determine, from any material that you have been handed, what the fair appraisal price is. I think it's fair to take a look at professionals who work in this area and look at what their opinion is, and their opinion is that it is worth that price. I also think that it is important to take a look at the fact that the Technical College System, in looking for savings, found that because the facility has additional space that those rental incomes could be used towards the maintenance and utilities of the building, reducing the overall cost to the system and therefore, helping to realize savings. I think we encourage people to be good managers, encourage our department heads in our institutions and agencies to look for ways to be creative. We ought not to be chastising them when they find opportunities

to do that. I think it's also important for you to know that there were two buildings on the site and because there are two buildings on the site the package was offered with two buildings and the choice was either to take both of them because they're situated on the same lot or not to take it. So consequently, there is some additional space that is greater than they currently need, but they will be utilizing it effectively by renting it out. They already have potential renters, nonprofit organizations, who will take the space at a firm market price for that space. We need to also recognize that the Maine Technical College System is somewhat unique in that they bring people in from all across the state, from all of their campuses and they need meeting space, conference space, organizational space that is not typical to your typical office. They need a board room for the Board of Trustees to meet in, so those are spaces that are necessary in that kind of facility and are not exorbitant at all. I would say to any of you who suspect that it is, to go take a look at the facility and see how effectively they use the space and for what purposes that they use that space. This was not come to lightly. This was not come to overnight like some decisions to purchase property, but through careful review and evaluation. And by careful evaluation of a net savings of nearly \$500,000 to the taxpayers of this state. You have to recognize that the lease-purchase agreement has already been executed. It's a 10 year agreement. It's a contract that is in place and there's an obligation to pay that lease for the next nine years. The choice is either to pay it out in rent or to exercise the purchase option and therefore save \$50,000 a year or nearly \$500,000. Those are the two choices currently before us. This has been unanimously approved, reviewed and approved by the Board of Trustees as a prudent, fiscal action.

Individuals, who in their own lives and own businesses act accordingly in making their own decisions and feel it's prudent for the state to act this way as well. I think we need to be clear on what we are encouraging and asking our agencies and institutions of higher education to do. If we want them to be good managers, if we want them to be aggressive, if we want them to reduce their costs to increase their revenues from other sources, if we want them to put more money and make more money available for students and programs as opposed to buildings then we need to support those decisions when they come to us with a well thought out, well-planned, well-researched and a financially prudent solution to do that. I would encourage you to support the motion because I believe it's consistent with what we ask good managers to do and the proposal is a sound, fiscal proposal that saves state taxpayers the college money and allows that money to be used for educational purposes.

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

The Doorkeepers secured the Chamber.

The Secretary called the Roll with the following result:

**ROLL CALL**

**YEAS:** Senators: **ABROMSON, AMERO, BUTLAND, CAREY, CASSIDY, CATHCART, CLEVELAND, FERGUSON, GOLDTHWAIT, HALL, LIBBY, LONGLEY, MICHAUD, MILLS, MITCHELL, MURRAY, PARADIS, PENDLETON, PINGREE, RUHLIN, SMALL, TREAT**

**NAYS:** Senators: **BENNETT, BENOIT, DAGGETT, KILKELLY, LAFOUNTAIN, NUTTING, O'GARA, RAND, THE PRESIDENT - MARK W. LAWRENCE**

**ABSENT:** Senators: **HARRIMAN, JENKINS, MACKINNON**

**EXCUSED:** Senator: **KIEFFER**

22 Senators having voted in the affirmative and 9 Senators having voted in the negative, with 3 Senators being absent and 1 Senator being excused, the motion by Senator **MICHAUD** of Penobscot to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-228)** Report, in concurrence, **PREVAILED**.

The Resolve **READ ONCE**.

Committee Amendment "A" (H-228) **READ** and **ADOPTED**, in concurrence.

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

The Chair laid before the Senate the following Tabled and Later (5/2/97) Assigned matter:

An Act to Require Law Enforcement Officers to Inform a Person Who Fails to Submit to a Blood Test about the Informed Consent Law  
H.P. 777 L.D. 1065

Tabled - May 2, 1997, by Senator **RAND** of Cumberland.

Pending - **ENACTMENT**

(In Senate, April 29, 1997, **PASSED TO BE ENGROSSED**, in concurrence.)

(In House, May 2, 1997, **PASSED TO BE ENACTED**.)

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

Senator **MURRAY:** Mr. President and men and women of the Senate. I look at the clock and look at my good friend from Oxford, Senator Ferguson and I'll try to be very quick. I rise today to urge you to support the unanimous committee report on this measure and vote for the pending motion to enact this legislation. Very briefly I'll explain why the committee voted the way it did, since there apparently have been some questions raised as to what this proposal does. Currently there is a duty to submit to breath testing or blood alcohol testing to obtain a blood alcohol level test and that duty is in present law and current law because of the fact that you submit to having a driver's license. Their duty then allows law enforcement to obtain an accurate test using the best means that we have to try to determine whether or not somebody is operating under the influence. All of the parties that appeared before us on this legislation agreed that it is a good and positive thing to have this type of a test when one

suspects that they may be operating under the influence. Both the criminal defense bar and the prosecutors agree it is positive and a good thing and beneficial to actually have the test administered in these types of circumstances. And there is a positive duty to submit to such a test because of one having a license to operate a motor vehicle. So the issue when someone is stopped, based on a probable cause and believing that they are operating under the influence, one of two things happens. Either that person will submit to a test in response to the duty or they'll refuse to submit to the test. If, in fact, they refuse to submit to the test, they will, under both current law and with this proposed amendment, be read a warning and given notice by the law enforcement officer as to the consequences of failing to submit to a breath test and those consequences are laid out in statute now and will remain. That's if there is a refusal to submit to the test. If there isn't a refusal to submit the test will be given. The change that this legislation proposes is that in those circumstances where the person who is stopped under a belief of probable cause that they have been operating under the influence, if in fact they don't fail to submit or they agree to submit pursuant to their duty, we are not going to require that the law enforcement officer explain to them the consequences of failing to submit as the current law does. Currently that explanation of the consequences failing to submit to a test has to be provided whether they fail to submit or whether they refuse to submit. It made little sense to those proposing this legislation and the unanimous committee support behind it, that we require that there be an explanation of the consequences of failing to submit to a test when somebody agrees to submit to a test. And that's all this legislation does, it makes that one change to make it clear that you only are going to require this explanation as to the consequences of failing to refuse, in those situations where somebody actually does refuse to submit. And we would hope that this simple change gains the support of this body as it did the unanimous support of the Criminal Justice Committee.

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

Senator **LAFOUNTAIN:** Thank you Mr. President, men and women of the Senate. I rise this evening and encourage you to vote against enactment of this L.D. Current law is as follows, once an individual is arrested for operating under the influence, in 99% of those cases it's actually after being arrested, he or she is usually transported to the police department of the State Police barracks in the area, at which time they are asked to or told, they have a duty to submit to a test, intoxilizer, where they breathe in to the apparatus and a test result is given which is used later on, down the road, by the District Attorney's Office towards a conviction for operating under the influence. Prior to giving the test, current law states that, "The law enforcement officer must advise the individual that he has a duty to submit to a test and what those consequences are if they do not comply with the test." And in order to aid law enforcement officials in the State of Maine, the Secretary of State's Office has actually generated a form which specifically states what those consequences are for failing to take a test. One of those consequences is the possibility of having your license suspended administratively by the Secretary of State's office for up to a period of six years. Another is that the failure to take a test may be evidence at trial and finally, if convicted at trial, the failure to take the test may be used as an aggravating factor at sentencing. It would seem to me that the current law is working. As a practicing attorney who

does do some criminal work, I've never experienced a situation where this law didn't work unless the officer clearly did not advise the individual that he had a duty to submit to the test which is actually quite rare. My understanding is that this L.D. was brought forward as a result of a case that went before the Law Court, State versus Harold Stade, which actually isn't on point to the issue that we are actually addressing this evening.

Law enforcement, in order to garner a conviction, and the best tool that they have in a OUI case are the officers observations relative to the driving of the individual, his observations of the field sobriety test that he performs and finally introduced in evidence the result of an intoxilizer which will tell you if an individual is .08 or greater of blood alcohol in his system. By amending this law to state that if the person fails to submit and complete a test, what we are doing is, we are basically not advising people and not encouraging people to take the test. Now, I submit to you that in my practice of law when people have read to them the statement that people are going to lose their license administratively, just for refusing a test no matter what the result is, the majority of people will take that test. The problem that I have with this bill as printed, and with what was passed by the committee, it seems to me once an individual refuses to take a test, which in all essence is a refusal, and a refusal to complete a test, that at that point what is really the purpose to read him what the consequences are? I mean, is this just basically to rub in what the consequences are, that you are going to lose your license? If we are going to require them to read it, have them read it up front. Encourage the test to be done so that law enforcement, such as the District Attorney's Office, can utilize the test result. Thank you.

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

Senator **BENOIT:** Mr. President, may it please the Senate. I will be no more than 30 seconds. Bad cases make bad law and that's where we are here. The law is fine but the officer, in trying to give the recital of warnings, flubbed up the situation.

Senator **FERGUSON:** Thank you Mr. President. I think the time has come to conclude our business in a **POINT OF ORDER**. I don't believe the item is properly before the Body.

**THE PRESIDENT:** The Chair will answer that the Senate is in violation of Rule 514.

On motion by Senator **FERGUSON** of Oxford, **TABLED** until Later in Today's Session, pending **ENACTMENT**.

On motion by Senator **FERGUSON** of Oxford, pursuant to Senate Rule 514, **ADJOURNED** until Wednesday, May 14, 1997, at 9:00 in the morning.