

# 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  
Wednesday  
May 14, 1997

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

Prayer by Reverend Brad Mitchell of the Unitarian-Universalist Church in Brunswick.

**REVEREND BRAD MITCHELL:** God, Eternal One, who is addressed by many names in many tongues, Universal Spirit, manifested in and through all the diversity of Your creation, we here seek Your guidance as we meet to deliberate the statutes that give order to our life together in this great State. Grant that we may be guided in our decisions and actions by the highest sense of our calling. May we be guided, not so much by our fears as by our faith, not so much by our prejudices as by our passion for justice, not so much by our hurts as by our hopes for our life together. Renew in us this day our caring spirit. Even as we suffer momentary discouragement and are disheartened by the realities of life, guide us from the wellsprings of Your wholeness that we may experience the possibilities of life this day and discover our compassionate resources. Bless us with a vision of the good. Take from us our nearsightedness and bathe us in the waters of clear-mindedness that we may, with all humility and clarity of heart, honor Your universal law of love. In the name of the Highest we offer this our supplication and our prayer. Amen.

Doctor of the Day, James M. Kirsh, D.O., Falmouth.

Reading of the Journal of Tuesday, May 13, 1997.

Off Record Remarks

**COMMUNICATIONS**

The Following Communication: S.P. 654

**118TH MAINE LEGISLATURE**

May 13, 1997

Senator Beverly Daggett  
Representative John Tuttle  
Chairpersons  
Joint Standing Committee on Legal and Veterans Affairs  
118th Legislature  
Augusta, Maine 04333

Dear Senator Daggett and Representative Tuttle:

Please be advised that Governor Angus S. King, Jr. has nominated Dr. Charmaine Brown of Monmouth and Richard A. Crabtree of Readfield for reappointment and Willis A. Lord of N. Waterboro, Fred Lunt of Clinton and Goodwin O. Gilman of Newport for appointment as members of the Harness Racing Commission.

Pursuant to Title 8, MRSA Section 261-A, these nominations will require review by the Joint Standing Committee on Legal and Veterans Affairs 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 **LEGAL AND VETERANS AFFAIRS**.

Sent down for concurrence.

The Following Communication: S.P. 655

**118TH MAINE LEGISLATURE**

May 13, 1997

Senator Beverly Daggett  
Representative John Tuttle  
Chairpersons  
Joint Standing Committee on Legal and Veterans Affairs  
118th Legislature  
Augusta, Maine 04333

Dear Senator Daggett and Representative Tuttle:

Please be advised that Governor Angus S. King, Jr. has nominated Peter B. Webster of Yarmouth, Linda Cronkhite of Brunswick, G. Calvin MacKenzie of Bowdoinham, the Honorable Harriet P. Henry of Standish and Elena M. McCall of Portland for appointment as members of the Commission on Governmental Ethics and Election Practices.

Pursuant to Title 1, MRSA Section 1002, these nominations will require review by the Joint Standing Committee on Legal and Veterans Affairs 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 **LEGAL AND VETERANS AFFAIRS**.

Sent down for concurrence.

Off Record Remarks

**COMMITTEE REPORTS**

House

**Ought to Pass As Amended**

The Committee on **LEGAL AND VETERANS AFFAIRS** on Bill "An Act to Provide Equal Political Rights for Classified State Employees" H.P. 740 L.D. 1004

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-429)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-429)**.

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

The Bill **READ ONCE**.

Committee Amendment "A" (H-429) **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 **AGRICULTURE, CONSERVATION AND FORESTRY** on Bill "An Act to Protect Maine's Wild Lands" H.P. 881 L.D. 1198

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

Signed:

Senators:

KILKELLY of Lincoln  
PARADIS of Aroostook  
CASSIDY of Washington

Representatives:

BUNKER, JR. of Kossuth Township  
LANE of Enfield  
SAMSON of Jay  
GOOLEY of Farmington  
BAKER of Dixfield  
CROSS of Dover-Foxcroft  
DEXTER of Kingfield

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

Signed:

Representatives:

VOLENIK of Brooklin  
SHIAH of Bowdoinham  
MCKEE of Wayne

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

Which Reports were **READ**.

Senator **KILKELLY** of Lincoln 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 **BUSINESS AND ECONOMIC DEVELOPMENT** on Bill "An Act Regarding Information Provided to Pharmaceutical Companies" H.P. 1144 L.D. 1609

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

Signed:

Senators:

JENKINS of Androscoggin  
RAND of Cumberland  
MACKINNON of York

Representatives:

VIGUE of Winslow  
BODWELL, II of Brunswick  
FARNSWORTH of Portland  
CAMERON of Rumford  
SIROIS of Caribou  
SHANNON of Lewiston  
MACDOUGALL of North Berwick  
MACK of Standish  
WRIGHT of Berwick

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

Signed:

Representative:

MURPHY, JR. of Kennebunk

Comes from the House with the Minority **OUGHT TO PASS** Report **READ** and **ACCEPTED** and the Bill **FAILED OF PASSAGE TO BE ENGROSSED**.

Which Reports were **READ**.

On motion by Senator **RAND** of Cumberland, the Majority **OUGHT NOT TO PASS** Report **ACCEPTED** in **NON-CONCURRENCE**.

Sent down for concurrence.

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**Senate**

**Ought to Pass**

Senator **LIBBY** for the Committee on **STATE AND LOCAL GOVERNMENT** on Bill "An Act to Repeal the Requirement That Victualers Be Licensed by a Municipality" S.P. 563 L.D. 1720

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

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

The Bill **READ ONCE**.

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

Senator **NUTTING** for the Committee on **STATE AND LOCAL GOVERNMENT** on Resolve, Authorizing the Town of Southwest Harbor to Refinance Certain Temporary Bond Anticipation Notes Issued for Its Water Project (Emergency) S.P. 619 L.D. 1822

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

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

The Resolve **READ ONCE**.

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

**Ought to Pass As Amended**

Senator **LIBBY** for the Committee on **STATE AND LOCAL GOVERNMENT** on Bill "An Act to Clarify the Reimbursement of Legislators' Expenses" S.P. 100 L.D. 379

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-223)**.

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

The Bill **READ ONCE**.

Committee Amendment "A" (S-223) **READ** and **ADOPTED**.

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

**Divided Report**

The Majority of the Committee on **HEALTH AND HUMAN SERVICES** on Bill "An Act to Establish the Maine Compassionate Use Act" S.P. 319 L.D. 1059

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-219)**.

Signed:

Senators:  
PARADIS of Aroostook

LONGLEY of Waldo  
MITCHELL of Penobscot

Representatives:

MITCHELL of Portland  
BROOKS of Winterport  
FULLER of Manchester  
KANE of Saco  
PIEH of Bremen  
QUINT of Portland  
LOVETT of Scarborough  
JOYNER of Hollis  
SNOWE-MELLO of Poland

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

Signed:

Representative:  
BRAGDON of Bangor

Which Reports were **READ**.

Senator **PINGREE** of Knox moved the Senate **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-219)** Report.

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

The Doorkeepers secured the Chamber.

The Secretary called the Roll with the following result:

**ROLL CALL**

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

NAYS: Senators: AMERO, BENNETT, BENOIT,  
BUTLAND, CAREY, CASSIDY, FERGUSON,  
HALL, LAFOUNTAIN, LIBBY, MACKINNON,  
MILLS, SMALL

ABSENT: Senators: CLEVELAND, HARRIMAN

EXCUSED: Senator: KIEFFER

19 Senators having voted in the affirmative and 13 Senators having voted in the negative, with 2 Senators being absent and 1 Senator being excused, the motion by Senator PINGREE of Knox to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-219)** Report, **PREVAILED**.

The Bill **READ ONCE**.

Committee Amendment "A" (S-219) **READ** and **ADOPTED**.

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

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**Divided Report**

Ten Members of the Committee on **STATE AND LOCAL GOVERNMENT** on Bill "An Act to Ensure Ethical Conduct in the Office of Treasurer of State" S.P. 225 L.D. 794

Reported in Report "A" that the same **Ought to Pass as Amended by Committee Amendment "A" (S-221)**.

Signed:

Senators:

NUTTING of Androscoggin  
LIBBY of York

Representatives:

GIERINGER, JR. of Portland  
AHEARNE of Madawaska  
BUMPS of China  
LEMKE of Westbrook  
SANBORN of Alton  
DUTREMBLE of Biddeford  
FISK, JR. of Falmouth  
KASPRZAK of Newport

One Member of the same Committee on the same subject reported in Report "B" that the same **Ought Not to Pass**.

Signed:

Representative:

BAGLEY of Machias

One Member of the same Committee on the same subject reported in Report "C" that the same **Ought to Pass**.

Signed:

Senator:

GOLDTHWAIT of Hancock

One Member of the same Committee on the same subject reported in Report "D" that the same **Ought to Pass as Amended by Committee Amendment "B" (S-222)**.

Signed:

Representative:

GERRY of Auburn

Which Reports were **READ**.

Senator **NUTTING** of Androscoggin moved the Senate **ACCEPT** Report "A", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-221)**.

On further motion by same Senator, **TABLED** until Later in Today's Session, pending motion by same Senator to **ACCEPT** Report "A", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-221)**.

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**Divided Report**

The Majority of the Committee on **STATE AND LOCAL GOVERNMENT** on Bill "An Act to Make Changes to the Official Maine State Symbols" S.P. 530 L.D. 1635

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

Signed:

Senators:

NUTTING of Androscoggin  
LIBBY of York

Representatives:

AHEARNE of Madawaska  
BUMPS of China  
BAGLEY of Machias  
GIERINGER, JR. of Portland  
KASPRZAK of Newport  
SANBORN of Alton  
DUTREMBLE of Biddeford  
FISK, JR. of Falmouth

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

Signed:

Senator:

GOLDTHWAIT of Hancock

Representative:

GERRY of Auburn

Which Reports were **READ**.

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

Sent down for concurrence.

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**Divided Report**

The Majority of the Committee on **TRANSPORTATION** on Resolve, Regarding the Posting of Certain Roads by the Department of Transportation S.P. 412 L.D. 1333

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

Signed:

Senators:

O'GARA of Cumberland  
CASSIDY of Washington

Representatives:

WINGLASS of Auburn  
FISHER of Brewer  
JOYCE of Biddeford  
CHARTRAND of Rockland  
LINDAHL of Northport  
DRISCOLL of Calais  
BOUFFARD of Lewiston  
SAVAGE of Union  
WHEELER of Eliot

The Minority of the same Committee on the same subject reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-220).**

Signed:

Representative:

CLUKEY of Houlton

Which Reports were **READ.**

Senator **O'GARA** of Cumberland moved the Senate **ACCEPT** the Majority **OUGHT NOT TO PASS** Report.

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

Senator **PARADIS:** Mr. President and men and women of the Senate. I humbly urge you to vote against the Ought Not to Pass motion. This legislation was brought by the people of northern Maine on Route 11. Route 11 is a road that essentially, we were told, was some dirt that was bulldozed from the side of the road onto a path and we tarred over it and that's been the road since. A Department of Transportation person on that road recently said that the traffic is 40% to 60% heavy trucks. This is a major gateway in and out of the county for our natural resources and our agricultural products. The original price tag was \$30 million and we sent them back a check, ignoring this section, a few sections that were rebuilt, and that it would be a \$16 million job to do Route 11 from one end to the other which is incredible. It's a pretty large amount of miles so it's not as bad as we thought. We wanted it to be on the radar screen. Some legislators who were up for the legislative visit recently told us to start putting it on the radar screen because it has been an area of the state that has been absolutely neglected. Needless to say, once this legislation popped up, a ton of other pieces came up, different roads all over the state. However, as a fairness issue, I think we should go back to the oldest pieces of roads that have never been touched and do something about them. And that's why, with all due respect to the committee that really looked at this price tag and looked the other way, others felt that since they had had such a number expressed from all over the state that we should once again be relegated to the back burner. And so, that's the reason and I urge your support against the Ought Not to Pass.

**THE PRESIDENT:** The Chair recognizes the Senator from Cumberland, Senator O'Gara.

Senator **O'GARA:** Thank you Mr. President. First of all, Mr. President and members of the Senate, an unfortunate choice of words. The committee did not look the other way. The committee considered, very seriously, the issue and it is an issue. There is no question about it. But each of us, in each of our districts, and each of the members of the other body in their districts, have roads that are in serious condition as well. You heard the price tag that was mentioned. The committee overwhelmingly supported it. It was 11 to 1 and the only person that was opposed to it just added an amendment that just changed the date. Ladies and gentlemen of the Senate, we have some major, major problems in our roads around the state and taking them one at a time, as this bill would propose, and making an exception for this one section, while we had sympathy for the people who came down and spent a lot of time traveling to be with us that day, we understand their situation but this is not the way to handle it. And I would certainly ask the Senate to support the Majority Ought to Pass report. Thank you. It has been inadvertently brought to my attention that I may have said Ought to Pass and by looking at the smile on the Senator's face, that's exactly what I must have said. The Transportation Chair meant to say Ought Not to Pass. Thank you.

The Chair ordered a Division. 21 Senators having voted in the affirmative and 7 Senators having voted in the negative, the motion by Senator **O'GARA** of Cumberland to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report, **PREVAILED.**

Sent down for concurrence.

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## SECOND READERS

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

### House As Amended

Bill "An Act to Expand Access to Maine's Technical Colleges"  
H.P. 263 L.D. 327  
(C "A" H-348)

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  
(C "A" H-426)

Resolve, to Name the New Topsham-Brunswick Bridge across the Androscoggin  
H.P. 838 L.D. 1143  
(C "A" H-423)

Bill "An Act to Create a Family Division within the State's District Court"  
H.P. 896 L.D. 1213  
(C "A" H-347)

Bill "An Act to Amend the Professional Service Corporation Act As It Relates to Eye Care Providers"  
H.P. 1301 L.D. 1844  
(C "A" H-437)

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

Resolve, Authorizing the Maine Technical College to Achieve Cost Savings through the Lease-purchase of Facilities" (Emergency)  
H.P. 444 L.D. 594  
(C "A" H-228)

Which was **READ A SECOND TIME**.

On motion by Senator **MICHAUD** of Penobscot, Senate Amendment "B" (S-174) **READ** and **ADOPTED**.

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

Senator **MICHAUD:** Thank you Mr. President, men and women of the Senate. What Senate Amendment "B" does is that it takes off the emergency preamble. After the committee had voted out the bill we found out that it violates the Constitution as far as leases. There's a provision in the Constitution that says, "That there cannot be an emergency preamble on a bill if there are provisions for sale or purchasing, or renting, for more than five years, of real estate." So this amendment would take care of any constitutional problems that there might be with the bill.

On motion by Senator **DAGGETT** of Kennebec, Senate Amendment "C" (S-209) **READ**.

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

Senator **DAGGETT:** Thank you Mr. President. This amendment changes the terminology from lease-purchase agreement to a purchase agreement. Since it is my understanding that that is what we would be doing, we are authorizing the purchase. The arrangement would be made between the Technical Colleges and a bank, not an actual lease-purchase agreement. It also requires that the purchase agreement come back before the legislature so that we can see it and ratify it. Thank you very much.

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

Senator **MICHAUD:** Thank you Mr. President. I hope that you vote against this amendment. Primarily what this amendment will do is it will void out what the Technical Colleges have done. Currently, under the lease-purchase agreement that's intact, they have the option until December 31, 1997 to purchase that building at the current price. Clearly, if this amendment is adopted that option is no longer there because the legislature will no longer be meeting until January. So I hope that you would not support Senate Amendment "C".

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

Senator **DAGGETT:** Thank you Mr. President and members of the Senate. I hope you will support the amendment. The lease-purchase option agreement that the Technical Colleges are

in allows them an opportunity to purchase the property throughout the term of the lease which is a ten year lease. It's very difficult for me to believe that the price, the offer on the property, would change in any way if the time were extended unless it would be for the price to go down considering, certainly, the current market we are in and the sale of other properties in the area which certainly has been for considerably less than the offer on this property. So I would suggest there's no way that we could not save money, and if this is such a good deal, I would like to think that the legislature would be happy to approve it. 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 request a roll call when a vote is taken and I just want to restate, yes, they do have the right with the ten year for a lease-purchase. However, that will expire, as far as the price that they have now, at the end of this year. And I might remind the Senate that when we had talked about this and asked the Technical Colleges, the landlord of the building was very reluctant to enter into this lease-purchase agreement. So my concern and the majority of the committee's concern is that if it has to come back to the legislature for approval, the Technical College will no longer be able to get it for that price. That option runs out at the end of this year for that particular price. So I would hope that you would vote against the pending motion.

On motion by Senator **MICHAUD** of Penobscot, 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, BENOIT, DAGGETT, KILKELLY, NUTTING, O'GARA, RAND, RUHLIN, THE PRESIDENT - MARK W. LAWRENCE

**NAYS:** Senators: ABROMSON, AMERO, BUTLAND, CAREY, CASSIDY, CATHCART, FERGUSON, GOLDTHWAIT, HALL, JENKINS, LAFOUNTAIN, LIBBY, LONGLEY, MACKINNON, MICHAUD, MILLS, MITCHELL, MURRAY, PARADIS, PENDLETON, PINGREE, SMALL, TREAT

**ABSENT:** Senators: CLEVELAND, HARRIMAN

**EXCUSED:** Senator: KIEFFER

9 Senators having voted in the affirmative and 23 Senators having voted in the negative, with 2 Senators being absent and 1 Senator being excused, the motion by Senator **DAGGETT** of Kennebec to **ADOPT** Senate Amendment "C" (S-209), **FAILED**.

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



Sent down for concurrence.

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 (C "A" H-425)

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

Sent down for concurrence.

**Senate As Amended**

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 (C "A" S-214)

Bill "An Act to Include Flunitrazepam in the List of Schedule W Drugs" S.P. 603 L.D. 1800 (C "A" S-217)

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

Sent down for concurrence.

**Off Record Remarks**

**ENACTORS**

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

**Emergency**

An Act to Fund the Collective Bargaining Agreement for the Maine State Police Bargaining Unit S.P. 640 L.D. 1862 (C "A" S-195)

This being an Emergency Measure and having received the affirmative vote of 30 Members of the Senate, with no Senators having voted in the negative, and 30 being more than two-thirds of the entire elected Membership of the Senate, was **PASSED TO BE ENACTED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

Under suspension of the Rules, all matters thus acted upon were ordered sent down forthwith for 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 (5/8/97) Assigned matter:

Bill "An Act to Amend Coded Licenses" H.P. 865 L.D. 1182 (C "A" H-262)

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

Pending - **PASSAGE TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-262)**, in concurrence

(In House, May 1, 1997, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-262)**.)

(In Senate, May 5, 1997, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-262)**, in concurrence. Subsequently, on motion by Senator **LIBBY** of York, **RECONSIDERED**.)

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

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

**SENATE REPORTS** - from the Committee on **TRANSPORTATION** on Resolve, to Establish a Maine Mobility Fund Task Force (Emergency) S.P. 429 L.D. 1377

Majority - **Ought to Pass as Amended by Committee Amendment "A" (S-206)** (8 members)

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

Tabled - May 9, 1997, by Senator **O'GARA** of Cumberland.

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

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

On motion by Senator **O'GARA** of Cumberland, the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-206)** Report **ACCEPTED**.

The Resolve **READ ONCE**.

Committee Amendment "A" (S-206) **READ** and **ADOPTED**.

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

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

Bill "An Act Requiring the Department of Human Services to Provide Custodial History of Children in the Care of the Department"  
H.P. 738 L.D. 1002  
(C "A" H-303)

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

Pending - **FURTHER CONSIDERATION**

(In Senate, May 6, 1997, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-303)**, in concurrence.)

(Comes from the House, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-303) AS AMENDED BY HOUSE AMENDMENT "A" (H-408)** thereto, in **NON-CONCURRENCE**.)

On motion by Senator **PINGREE** of Knox, the Senate **RECEDED** and **CONCURRED**.

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

Bill "An Act to List Specific Threatened and Endangered Species"  
H.P. 598 L.D. 789  
(C "A" H-367)

Tabled - May 12, 1997, by Senator **AMERO** of Cumberland.

Pending - **PASSAGE TO BE ENGROSSED AS AMENDED**, in concurrence

(In House, May 8, 1997, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-367)**.)

(In Senate, May 12, 1997, **READ A SECOND TIME**.)

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

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

**HOUSE REPORTS** - from the Committee on **LEGAL AND VETERANS AFFAIRS** on Resolve, Authorizing Robert O'Malley to Sue the State  
H.P. 201 L.D. 254

Majority - **Ought Not to Pass** (7 members)

Minority - **Ought to Pass as Amended by Committee Amendment "A" (H-337)** (6 members)

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

Pending - motion by Senator **CAREY** of Kennebec to **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED** Report, in concurrence

(In House, May 12, 1997, the Minority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Resolve **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-337)**.)

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

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

Senator **DAGGETT:** Thank you Mr. President, men and women of the Senate. I am asking you to oppose the motion that is on the floor, and that being to accept the Minority Ought to Pass as amended committee report. These issues of suits against the state are very difficult for a committee to decide, particularly when the issue is one that involves a very human element. When we see the distress that is caused to a family, particularly one with litigation, and we know the upheaval that is caused by that, it's only natural to want to do what we can to try to fix things to make them right. But I'm going to ask you for a moment just to set that human element aside and look at what we are required to do when we are asked to lift the state's immunity or to make a settlement. The Legal and Veterans Affairs Committee regularly gets requests to sue the State and we have certain kinds of standards that we look at. One of the major things that we look at is whether the elements of a particular case are so unique that it is appropriate to lift the immunity of the state and allow a suit to go forward. Yesterday there was an article that was distributed on our desks, and in that newspaper article there was one small paragraph that I would like to call your attention to, if you still have that. And that is the fact that the facts of this case, and the information regarding this case, were presented to a grand jury and there was an indictment. If you have a question as to the facts of the case, and those can certainly be argued, I've read the newspaper articles. I've looked at the information, but I would suggest to you that when information is given to a grand jury and there is an indictment that there must have been some reason why those members of the jury went forward with the indictment. I am as concerned as anyone with an issue of prosecutorial excess, and certainly I don't want to see that happen, but in this case I would remind you that there was an indictment. I would also like to remind you that the reason that we have immunity is because there are cases that would never go forward if prosecutors had to be concerned about being held liable if there was no conviction. There are many cases that have no convictions. There are many cases that end in acquittal and my concern is that if we feel that we need to pay the legal cost for one that ends in an acquittal, we must consider paying those costs for all. My concern is one of setting a precedent. In cases of this type, when allegations are made in the past, things that happened in the past, when there are allegations of a sexual nature, it is very difficult to come to conclusive agreements and regularly there is great difficulty in making these determinations. But I just would remind you that there was a grand jury indictment in this case. So I would ask that you not support the motion that is on the floor. Thank you.

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

Senator **BENOIT:** Thank you Mr. President, may it please the Senate. I rise to speak in support of the pending motion and I will be brief. The matter is very simple for me. It's a matter of

fairness. If you look over the record of this case, it's true that there was an indictment but that's not the whole picture. There was as well, a sloppy investigation by the state, and so as I see it, the state carried the ball, fumbled it badly, didn't get hurt. Mr. O'Malley got hurt and something ought to be done about it. This is not your run of the mill case where the state has done it's best with an investigation, made a full and complete investigation. The case has gone through the works and the decision comes out against the state. There's more to it. And I would say that, in fairness, this motion ought to be voted and supported. Thank you.

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

Senator **CAREY:** Thank you Mr. President and members of the Senate. The good Senator from Franklin, Senator Benoit, said that this is a matter of fairness and I would tell you that it's a matter of justice. The man was prosecuted after the Attorney General's Office knew, full well, all of the matters in the case, but yet, they continued to carry the thing out. Immunity is a nice thing to have because then if you have it, you can do anything you want and not have to worry about ever having to live up to facing credit of the state. In this case there was a tremendous error that was made by the Attorney General's Office and the process allows the legislature to make corrections when there is a process. Now, I have been on the Legal and Veterans Affairs Committee for seven years, have another year to go on that, at least, hopefully Mr. President, and during all of that time we have always had the Attorney General, or one of his representatives, come up and plead the case with the Legal Affairs Committee, "Don't let this thing go to court." Three years ago I finally determined that the reason the Attorney General's Office comes up and says, "Don't let this thing go to court," is because they're scared to death they are going to lose in court. Well, this will take care of their reputation of not having lost in court, really, because what happens is that we will be granting a sum of money to these people which is only half, really, of what the state allows at the \$300,000 level, but more importantly, it will take care of some of the bills that Mr. O'Malley has had to incur. He has, to this date, not been allowed to have worker's compensation coverage. He has, to this date, still had to be under the care of a psychiatrist. And when they talked about the claim that was made, the state was fully aware that Mr. O'Malley had been cleared by the Internal Investigative Department in the Sheriff's Office and all that information had been given to the Attorney General's Office, and the claim that this man had, in fact, had an affair with this lady on a certain date, it happened to be a date where the records indicated that he was not working, and beyond that he had not been working that entire week, and she had made the very same claim against two other officers. She was not a reliable witness and had been in trouble with the law for some time but was still given the opportunity to at least bring the case forward. The case was found to be really meritless and based on that claim, within two hours the gentleman was acquitted from the crime. It's unfortunate that the newspapers all over the state know about this thing. I would like the newspapers in the state to know that, in fact, he will finally get justice from the legislature.

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

Senator **MILLS:** Mr. President and men and women of the Senate. I don't agree that all of the facts have been disclosed to the committee of jurisdiction in this case and I don't agree that the Attorney General's Office necessarily was guilty of misconduct or did anything wrong in the investigation and presentation of this case. I'm aware, loosely, of another side of that story and there's a lot more to this than meets the eye. On the other hand, I think almost everyone who has looked at this agrees that the man, himself, was innocent. The procedure by which he was found innocent, the procedure by which he was prosecuted and so forth, is something we could discuss until the cows come home. Nevertheless, he's a simple, public servant who got caught up in a controversy of extraordinary notoriety. He was just doing his job as a guard at the jail, got wrongly accused, had his name all over the front of the local newspapers, had his reputation sullied, incurred an enormous legal expense in order to defend himself and find vindication in the criminal justice system, and for a whole host of reasons, I can easily justify making an appropriation to this poor man of \$150,000 to compensate him in raw terms. To compensate him for what he went through as one of our public servants. And for that reason, I have no qualms at all about voting for the pending motion to award him the money. But I would caution everybody to be a little more reserve about condemning the Attorney General's Office out of hand for its handling of this case. I really think that there is more to the background of it that cannot, and could not, be fairly disclosed in the legislative hearing process. Thank you.

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

Senator **FERGUSON:** Thank you very much Mr. President and ladies and gentlemen of the Senate. I, too, rise to support the pending motion. This is a question that only the accuser and the accused really know what happened, but the preponderance of the evidence indicate that an innocent man went to trial and I base that on two facts, the reputation of the accuser and also, the reputation of the gentleman in question. During the course of the hearing the Attorney General for the State of Maine spoke before the committee and he did indicate to us that in all probability, if he had the evidence before him that came out at the trial, that they probably wouldn't have gone forward with the prosecution. I know, the good remarks of Senator Mills, that we don't want to condemn the Attorney General because they proceeded on the evidence that they had before them at that time. I don't want to belabor this point but I feel in my heart that there was a great injustice and that the \$150,000 will go partly to alleviate that injustice and I would urge you to vote for the pending motion. Thank you.

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

Senator **RAND:** Thank you Mr. President and men and women of the Senate. I, too, would urge you to support the pending motion to accept the Minority Ought to Pass as amended report. We've heard from several people that the Attorney General's Office really messed up this case. I'm not saying that in the forefront of my discussion here and I'm certainly not about to sully the Attorney General's Office. I think they do an extremely difficult job and they do it pretty well, but the legislature recognizes, it recognizes by statute that things can sometimes go awry, mistakes can happen, busy bureaucracies or departments

can not do as thorough a job, sometimes, as they usually do. That's why the law provides for people to come forward and petition the legislature to examine their particular case and ask for a decision, first from the committee of jurisdiction and then from the legislature as a whole. This is not an unusual appeal that the O'Malleys made to the legislature. We have a process. They didn't create the process. We have laws on the books that allow these types of supposed injustices to be brought before the legislature for us to decide. So the process itself was already in place and also, please remember that the O'Malleys did not come to this legislature seeking a settlement. They came seeking their right to another day in court because they firmly believed and I, personally after learning what I have about the case, believe that in this instance the system went awry. Two of the more convincing pieces of evidence that came forth to convince me that, in this instance, a real, a grave injustice was perpetrated upon the O'Malleys. First, the Attorney General's Office should have known before the trial that the accuser had discussed this whole matter with her then boyfriend, and admitted to him that she was going to bring this charge forward with hopes of getting a cash settlement from the insurance company, so that she could open her own business. That much of the information was made available to the Attorney General's Office long before the trial but they never followed up on it. If they had made a phone call to the York County jail they would have found this boyfriend of the accuser incarcerated there and I'm sure that they could have questioned him. To me, that was not malice, but it was falling down on the job. It was a type or bit of incompetence on probably an already overworked Attorney General's Office. The second part of this that I find very convincing is that the committee itself, who hears cases like this all of the time, we are continuously asked year after year, I've been here eleven years now, to allow people to sue the State and time, and time, and time again, we usually get a unanimous report out of the committee, unanimous Ought Not to Pass. Because it is true, we don't want our law enforcement agencies living under this fear that they make one little, tiny mistake and somebody is brought to trial and is found innocent, the State will be sued. So just by the very fact that you not only had a divided report on the committee, but that this particular settlement was proposed not to allow the O'Malleys to go forward to sue but to grant them some type of compensation. In this case it was \$150,000 which, as the good Senator, Senator Carey, mentioned is half of what would be allowed, the maximum allowed in a settlement, should this case have gone forward and the O'Malleys allowed to sue and won because \$300,000 is the cap that is set in place for suits against the State. So also, it should be noted that the Attorney General's Office approved of this settlement, this \$150,000 settlement. There is, as the good Senator Mills mentioned, a lot of things involved in this and I don't believe malice is one of them but I do believe that a real, thorough investigation by the Attorney General's Office would have prevented this case from going to trial and would have saved the O'Malley family an enormous amount of heartache and grief, embarrassment, humiliation, of having their personal lives exposed on the front page of the Portland Press Herald. So, I do hope that you will go along in this instance and support the Minority Ought to Pass report. Thank you.

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

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

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

Senator **LAFOUNTAIN:** This is a question to anyone who can answer it. Other than being half the amount allowed by law in the Maine Tort Claims Act, what specific information or criteria was used by the minority in the committee to derive at the \$150,000 settlement offer?

**THE PRESIDENT:** The Senator from York, Senator LaFountain, 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. The original bill was for \$250,000 if he would have been allowed to go ahead and sue in the courts. Normally an attorney would get one-third of that and two-thirds would have brought it down to about \$167,000, and he would have had other incidental expenses that occurred with that. So the number of \$150,000 came to mind as being, if he successfully sued for the \$250,000, he would probably have realized about \$150,000, so that was the rationale of going ahead with that amount, Mr. President.

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

Senator **ABROMSON:** Thank you very much Mr. President. I was hesitant to rise because Kathy and Bob O'Malley are my constituents and I didn't want to stand up and speak on their behalf on a matter like this. It would make it sound like I was doing it for some political purpose. I do however, stand to ask you to support the report that was called for in a motion by the Senator from Kennebec, Senator Carey. I would also point out, as long as I am standing, lawyers have told me, when it comes to indictments you can indict a hamburger if the Attorney General does it. So I wouldn't place too much credence on the indictment. It's the verdict that counted. Thank you Mr. President.

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

Senator **CAREY:** Thank you Mr. President and members of the Senate. If it appears that I thought that the Attorney General's Office acted with malice, I may have given you the very wrong opinion because that is not the case. However, the case is, and I've served on grand juries before, one of them was a federal grand jury that lasted 18 months and we were quite busy with the gambling industry at that time and several of the people from my own home town were indicted as well as some people from Portland, luckily. What happens at a grand jury hearing, for those of you who have never been involved in it, is that the grand jury listens to one side only and that is the prosecutors side and that prosecutor will release as much information as he or she feels that they need for an indictment. And just because some of these things that went on were not revealed at the grand jury hearing does not necessarily mean that the Attorney General's Office was not fully aware of some of those things. When the vote is taken, Mr. President, I would ask for a roll call.

On motion by Senator **CAREY** 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, BENNETT, BENOIT, BUTLAND, CAREY, CASSIDY, FERGUSON, GOLDTHWAIT, HALL, JENKINS, MACKINNON, MILLS, MITCHELL, MURRAY, NUTTING, O'GARA, PARADIS, PENDLETON, PINGREE, RAND, RUHLIN, SMALL

NAYS: Senators: CATHCART, CLEVELAND, DAGGETT, KILKELLY, LAFOUNTAIN, LIBBY, LONGLEY, MICHAUD, TREAT, THE PRESIDENT - MARK W. LAWRENCE

ABSENT: Senator: HARRIMAN

EXCUSED: Senator: KIEFFER

23 Senators having voted in the affirmative and 10 Senators having voted in the negative, with 1 Senator being absent and 1 Senator being excused, the motion by Senator **CAREY** of Kennebec to **ACCEPT** the **Minority OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-337)** Report, in concurrence, **PREVAILED**.

The Resolve **READ ONCE**.

Committee Amendment "A" (H-337) **READ** and **ADOPTED**, in concurrence.

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

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Off Record Remarks

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

HOUSE REPORTS - from the Committee on **STATE AND LOCAL GOVERNMENT** on Bill "An Act to Modify the Prequalification Laws to Allow the Disqualification of Contractors for a Time Not to Exceed One Year" H.P. 285 L.D. 349

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-343)** (11 members)

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

Tabled - May 12, 1997, by Senator **NUTTING** of Androscoggin.

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-343)**.)

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

On motion by Senator **NUTTING** of Androscoggin, the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-343)** Report **ACCEPTED**, in concurrence.

The Bill **READ ONCE**.

Committee Amendment "A" (H-343) **READ** and **ADOPTED**, in concurrence.

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

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The Chair laid before the Senate the following Tabled and Later (5/13/97) Assigned matter:

An Act to Amend the Maine Pharmacy Act  
H.P. 538 L.D. 729  
(C "A" H-288)

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

Pending - **ENACTMENT**

(In Senate, May 5, 1997, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-288)**, in concurrence.)

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

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

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The Chair laid before the Senate the following Tabled and Later (5/13/97) Assigned matter:

HOUSE REPORTS - from 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

Majority - **Ought Not to Pass** (12 members)

Minority - **Ought to Pass** (1 member)

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

Pending - motion by same Senator to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report

(In House, May 12, 1997, Bill and Accompanying Papers **INDEFINITELY POSTPONED.**)

(In Senate, May 13, 1997, Reports **READ.**)

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

The Chair laid before the Senate the following Tabled and Later (5/13/97) 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 13, 1997, by Senator **LAWRENCE** of York.

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).**

(In Senate, May 13, 1997, motion by Senator **MITCHELL** of Penobscot to **ACCEPT** Report "**A**", **OUGHT NOT TO PASS, FAILED.** Motion by Senator **HALL** of Piscataquis to **INDEFINITELY POSTPONE** Bill and Accompanying Papers, **FAILED.** Motion by Senator **GOLDTHWAIT** of Hancock to **ACCEPT** Report "**B**", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-198), FAILED.** Motion by Senator **LONGLEY** of Waldo to **ACCEPT** Report "**C**", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "B" (S-199), FAILED.**)

**THE PRESIDENT:** Is it now the pleasure of the Senate to reconsider it's action? The Chair recognizes the Senator from Penobscot, Senator **Mitchell**.

Senator **MITCHELL:** Mr. President, I make a motion that we vote Ought Not to Pass on this reconsideration.

**THE PRESIDENT:** The Chair would answer that the motion is out of order. The pending motion is to reconsider our action whereby the Senate failed to accept report "B" of the committee Ought to Pass as amended by Committee Amendment "A". Is it now the pleasure of the Senate to reconsider?

At the request of Senator **AMERO** of Cumberland a Division was had. 15 Senators having voted in the affirmative and 11 Senators having voted in the negative, the motion by Senator **LAWRENCE** of York to **RECONSIDER** whereby the Senate **FAILED** to **ACCEPT** Report "**B**", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-198), PREVAILED.**

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

Senator **MITCHELL:** Mr. President, I make a motion Ought Not to Pass on amendment "B".

**THE PRESIDENT:** That motion is out of order. The pending question is acceptance of report "B" Ought to Pass as amended by Committee Amendment "A". The Chair recognizes the Senator from Piscataquis, Senator **Hall**.

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

The Chair ordered a Division.

On motion by Senator **PINGREE** of Knox, 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, BENOIT, BUTLAND, CASSIDY, DAGGETT, FERGUSON, HALL, KILKELLY, LIBBY, MACKINNON, MICHAUD, MITCHELL, O'GARA, PENDLETON, SMALL**

**NAYS:** Senators: **BENNETT, CAREY, CATHCART, CLEVELAND, GOLDTHWAIT, JENKINS, LAFOUNTAIN, MILLS, MURRAY, NUTTING, PARADIS, PINGREE, RAND, RUHLIN, TREAT, THE PRESIDENT - MARK W. LAWRENCE**

**ABSENT:** Senators: **HARRIMAN, LONGLEY**

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

Senator **AMERO** of Cumberland requested and received leave of the Senate to change her vote from **NAY** to **YEA**.

16 Senators having voted in the affirmative and 16 Senators having voted in the negative, with 2 Senators 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 **CASSIDY** of Washington, supported by a Division of at least one-fifth of the members present and voting, a Roll Call was ordered.

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

Senator **GOLDTHWAIT:** Thank you Mr. President, ladies and gentlemen of the Senate. I would just like to say that although we have a lot of anecdotal evidence about the effects on businesses of being smoke-free, the actual studied statistical evidence shows that, not only does it not harm those businesses, it enhances them. And I would also like to say that, for those of us who received a number phone calls between yesterday's vote and today, I urge you to think about the people who are perhaps less organized into a network, but certainly as important in this issue, and those are the average, everyday citizen who contends with more in public places. And I would urge your support for committee report "B". Thank you.

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

Senator **CASSIDY:** Thank you Mr. President, men and women of the Senate. We have certainly spent some time on this and I'm almost out of ink. As I was saying, we have certainly taken a lot of roll calls on this particular issue as the good Senator from Hancock had mentioned, Senator Goldthwait. I got the first call this morning at 7:00 a.m. from my wife saying that I will never be able to smoke again now, because the front page of the Bangor, they told my whole story. And I said that yesterday, that I would regret saying that and I knew I would but I'll have to live with that. On this particular issue, I passed out some things to you that you should have on your desk regarding this and one thing that I want to say to you that just a few years ago 75% of the seats in restaurants, in the State of Maine were in smoking areas. Today, 80% of those seats are non-smoking areas. This issue isn't if smoking isn't good for us, or we need to smoke in public, private or we need to inhale other folks smoke. The issue here is a person's right. Number one, the owner of the restaurant, do they have the right to either post it for smoking or non-smoking? If they want to, under the current law, have no smoking in their restaurant they are entitled to do that. If I, as an individual, want to patronize that restaurant whether it's smoking or non, I have the right to do that. And again, this is another issue where we're trying to control issues that affect everybody and everything they do. This issue isn't about smoking, whether it's good or bad. This issue is about our right to make a choice whether we want to go to a restaurant that smokes or non-smokes, own a restaurant that allows smoking or non-smoking. I urge you to defeat this motion. Thank you.

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

Senator **CAREY:** Thank you Mr. President and members of the Senate. In answer to the good Senator from Hancock, Senator Goldthwait, when she said there was not really any harm to businesses, I think I mentioned earlier and I think most of you know, if you talk to the people at the store where you go, that the most valuable piece of real estate within their store is the counter area. And tobacco companies are in that area because they pay a lot of money to get those cigarettes on the counter. So, in fact, they will be harmed.

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

Senator **MITCHELL:** Thank you Mr. President. Good morning men and women of the Senate. I would ask you again, once again this morning, to please vote against Senate Amendment "B" because this amendment prohibits smoking in restaurants except for those with separate bars in which smoking is allowed. This clearly discriminates against our small businesses, our small coffee shops, the diners and our lounges. It is forcing the people, the percentage of the people who patronize these restaurants, to go to the larger restaurants that have the capability of providing no smoking and smoking in their particular areas. So, it definitely is a loss to these businesses. We can still support the American Lung Association. We can support groups for reducing smoking but let's also support our businesses in this state who take great pride in the decor of their small, little restaurants in the small communities of our towns and tucked in the corners of our large cities that patronize the people who like to go there for the sociability, the friendship and meeting of friends whether it be smoking or non-smoking. Do not take the choice from our great State. Please support the helping and supporting of businesses and vote against amendment "B".

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

Senator **LONGLEY:** Thank you Mr. President and colleagues in the Senate. Yesterday we tried a bunch of different ways to address the tobacco problem that we have in this state. We have a problem. Some of us tried to push a compromise and even that didn't get through for some legitimate reasons, but the sum and substance is we are on the brink of not doing anything. And for me, the choice, having tried a compromise and that compromise not having prevailed, I'm left with the choice, do nothing or do something. Driving in today thinking long and hard, how do I cast my vote on this issue, remembering that I've received letters only from restaurants who want the ban? And then thinking, okay, if I'm voting just for me how would I vote? I would vote for the ban. And then I thought, well let's do some telephone polling. So on my drive in I got on the phone and again I heard, we actually prefer the ban. If you were me would you vote for the ban? And the answer came back, yes. So I was trying to strike a compromise. Even with that people found reason not to vote for that and faced with the decision, doing something or doing nothing, I will be supporting the ban. Thank you.

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

Senator **BUTLAND:** Thank you. Mr. President, could you just restate the motion?

**THE PRESIDENT:** The pending question before the Senate is to accept Report "B" - Ought to Pass as amended by Committee Amendment "A".

The Doorkeepers secured the Chamber.

The Secretary called the Roll with the following result:

**ROLL CALL**

**YEAS:** Senators: ABROMSON, BENNETT, BUTLAND, CATHCART, CLEVELAND, FERGUSON, GOLDTHWAIT, JENKINS, LONGLEY, MILLS, MURRAY, NUTTING, PARADIS, PINGREE, RAND, RUHLIN, TREAT, THE PRESIDENT - MARK W. LAWRENCE

**NAYS:** Senators: AMERO, BENOIT, CAREY, CASSIDY, DAGGETT, HALL, KILKELLY, LAFOUNTAIN, LIBBY, MACKINNON, MICHAUD, MITCHELL, O'GARA, PENDLETON, SMALL

**ABSENT:** Senator: HARRIMAN

**EXCUSED:** Senator: KIEFFER

18 Senators having voted in the affirmative and 15 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), PREVAILED.**

The Bill **READ ONCE.**

Committee Amendment "A" (S-198) **READ.**

On motion by Senator **MILLS** of Somerset, Senate Amendment "A" ( S-225) to Committee Amendment "A" (S-198) **READ.**

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

Senator **MILLS:** Mr. President and men and women of the Senate. Quite simply, this amendment would ban smoking in all restaurants, class A restaurants and the like, but it would not affect bars and lounges. The report that was just accepted would have created smoking and non-smoking areas in bars and lounges. This amendment, if you choose to accept it, would eliminate those provisions that would regulate smoking in bars and lounges but it would continue to ban smoking all together in those areas where people have dinner, where people eat in class A restaurants and other restaurants as well. That's it. Thank you.

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

Senator **HALL:** Thank you Mr. President and Senators of Maine. I'm going to urge you to vote against this. This was the big thing that I was opposed to in the original start of this, to ban smoking in restaurants. Telling businesses what they can and cannot do. I find this body to be very inconsistent. A little while ago, by a vote of 19 to 13, you allowed the smoking of a controlled drug. Now, with a vote of 18 to 15, you have reversed yourself. Think about what you are doing. Think about your vote. I urge you to vote this down. Thank you.

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

Senator **RAND:** Thank you Mr. President. Just to make a point, the smoking of marijuana is not allowed in public places therefore it would not be allowed in restaurants or bars.

The Chair ordered a Division. 16 Senators having voted in the affirmative and 15 Senators having voted in the negative, the motion by Senator **MILLS** of Somerset to **ADOPT** Senate Amendment "A" ( S-225) to Committee Amendment "A" (S-198), **PREVAILED.**

Committee Amendment "A" (S-198) As Amended by Senate Amendment "A" ( S-225) thereto, **ADOPTED.**

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

The Chair laid before the Senate the following Tabled and Later (5/13/97) 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 13, 1997, by Senator **GOLDTHWAIT** of Hancock.

Pending - motion by Senator **RUHLIN** of Penobscot to **RECEDE** and **CONCUR** (Division Requested)

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

(In House, May 9, 1997, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-126) AND HOUSE AMENDMENT "B" (H-374) in NON-CONCURRENCE.**)

At the request of Senator **MILLS** of Somerset a Division was had. 25 Senators having voted in the affirmative and 3 Senators having voted in the negative, the motion by Senator **RUHLIN** of Penobscot to **RECEDE** and **CONCUR, PREVAILED.**

The Chair laid before the Senate the following Tabled and Later (5/13/97) 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 **PINGREE** of Knox.

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 **DAGGETT** of Kennebec, the Senate **RECEDED** from whereby the Resolve was **PASSED TO BE ENGROSSED, AS AMENDED BY COMMITTEE AMENDMENT "A" (H-320)**.

On further motion by same Senator, the Senate **RECEDED** from whereby **COMMITTEE AMENDMENT "A" (H-320)** was **ADOPTED**, in concurrence.

House Amendment "A" (H-449) to Committee Amendment "A" (H-320) **READ**.

On motion by Senator **DAGGETT** of Kennebec, House Amendment "A" (H-449) to Committee Amendment "A" (H-320) **INDEFINITELY POSTPONED** in **NON-CONCURRENCE**.

On further motion by same Senator, Senate Amendment "A" (S-226) to Committee Amendment "A" (H-320) **READ** and **ADOPTED**.

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

Senator **DAGGETT:** Thank you Mr. President and members of the Senate. This amendment allows an additional person on the Task Force to review the Regional Applied Technology Centers and makes one addition to its mission. There was an issue in front of our committee that had to do with the competition of publicly funded enterprise and its relationship to private enterprise and this would allow the Legal and Veterans Affairs Committee to continue to follow up on this issue, in tandem with the Education Committee and it's my understanding the Education Committee is not opposing this and would hope that this would meet with the Senate's approval. Thank you.

Committee Amendment "A" (H-320) As Amended by Senate Amendment "A" (S-226) thereto, **ADOPTED** in **NON-CONCURRENCE**.

Which was **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-320) AS AMENDED BY SENATE AMENDMENT "A" (S-226)** thereto, in **NON-CONCURRENCE**.

Sent down for concurrence.

The Chair laid before the Senate the following Tabled and Later (5/13/97) Assigned matter:

**JOINT ORDER** - relative to the Joint Standing Committees on Natural Resources and Inland Fisheries and Wildlife jointly reporting 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.

S.P. 656

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

Pending - motion by Senator **KILKELLY** of Lincoln to **PASS**

(In Senate, May 13, 1997, **READ**.)

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

Senator **HALL:** I'd like to pose a question through the Chair if I may?

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

Senator **HALL:** Did both of these committees vote whether to present this Joint Order or not?

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

Senator **KILKELLY:** Thank you Mr. President. Yes, both committees met last Friday and at the end of the meeting there was a vote on behalf of the two committees, members of both committees, and there were, it was not an unanimous vote but in fact, was a majority vote of the two committees, barely a majority but a majority vote. And, if I may continue Mr. President?

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

Senator **KILKELLY:** The attempt in this order is to bring about some semblance of order, if you will, to the issue of personal watercraft. Both the Committees of Natural Resources and Inland Fisheries and Wildlife, have bills dealing with personal watercraft. Of all of the issues that we've dealt with in the Inland Fish and Wildlife Committee this year, I must say, that this is the most contentious and the most challenging and the most frustrating. There are folks on both sides of the issue, folks that really want to make sure that something gets done this year because they're concerned about activities that have taken place on ponds, lakes and on the coast. For others who don't believe there is a problem and that we shouldn't do anything, and the bills that have come to both committees reflect all of those views. When the Inland Fisheries and Wildlife Committee met, we began reviewing these bills and have, in fact, worked on a couple of them. And the Natural Resources Committee which has the Great Ponds Task Force also has a number of issues dealing with personal watercraft. We felt that it made sense to get the two committees together to determine if there was common ground on a number of the issues rather than having reports coming from one committee that, in fact, conflicted with a report from the other committee to see what we could do in terms of some common ground on this issue. So, the effort was made last Friday to meet together and, as I said, it was not certainly a unanimous request but there are a majority of the people on the two committees that would like the opportunity to report a bill back to the legislature for its attention. So I would urge you to support passage of this order. Thank you.

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

Senator **HALL**: Thank you Mr. President, ladies and gentlemen of the Senate. There may have been a vote. I had to leave the Inland Fisheries and Wildlife Committee a little early, Friday. I did ask somebody that did stay. They didn't remember of a vote being taken but be that as it may. We've worked long and hard on this particular issue. As a matter of fact, over a week ago, we took a vote on one of these bills in the Inland Fisheries and Wildlife Committee and then I noticed that the person or persons on the Minority report had us meet with the Natural Resources Committee. That bill has not been reported out, I don't know why, of our committee but it seems to be a kind of back-door approach, to me, to gain a little more support for one side and that bothers me. We are on time constraints here. The other two bills that we have relating to this subject are to be worked today in our committee. If this Joint Order is passed, it will only prolong the process. Deadlines will not be met. We've been told that we have to meet almost weekly here. I think that these bills have had proper hearings and more than proper work sessions. The vote has been taken. I think the bills should either rise or fall on their own merits, from their own committee. And, I will state one more time, this will only prolong the process. Everyone will have a right to speak either for or against these bills when they come before us and the sooner that we bring them to you, the quicker we'll all get out of here. So, I'm going to urge you to please vote against this Joint Order. 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. I hope that you will vote for this Joint Order. In doing so, you will not be voting for or against the subject matter of what comes out in the bill. You will have an opportunity to do that later. This is, as the good Senator from Lincoln stated, an opportunity to figure out how to deal with something procedurally that is in two different committees. There are indeed, overlapping bills in both committees. I want to assure the good Senator, who just spoke, that there is no overlap with the issues coming out of the other bill. We had a presentation to us, there's a joint group of people that have been working on legislation here. This is basically a sub-set which does not deal with the age issues which were in the bill which was voted out of the Inland Fisheries and Wildlife Committee. It's not a second crack at that issue whatsoever. It's an attempt to try to do something now, while postponing the more complicated and difficult issues to another time. I do urge your support of this. We did have a vote. It was 14 people out of those present that were willing to do that.

The Chair ordered a Division. 14 Senators having voted in the affirmative and 13 Senators having voted in the negative, on motion by Senator **KILKELLY** of Lincoln, **PASSED**.

Sent down for concurrence.

The Chair laid before the Senate the following Tabled and Later (5/13/97) 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 13, 1997, by Senator **FERGUSON** of Oxford.

Pending - **ENACTMENT**

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

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

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. Now last night, when we terminated work on this matter, and as it stands it's pending enactment, we heard some presentation by Senator Murray from Penobscot speaking for this legislation and Senator LaFountain, the Senator from York, speaking against enactment. I rise to speak against enactment of this measure. You're probably going to hear some more lawyer talk before this is over but not from me today. Here's how I see this and you'll notice in the part of the papers, here, attending this bill, the mention of a law court case, State versus Stade. Now, I want to share the facts with you and on the basis of those facts, it seems to me, there's the support for denying enactment of this measure. A driver was stopped by an officer. There was reasonable cause for the stop. Probable cause existed, no problem. The officer did not read the implied consent information, so the statute that we are given here for change was not even in the picture. Look what happened. The officer was a friend of the defendant, so when he pulled the vehicle over to the side of the road and went to the vehicle, the person inside, the defendant said, "I can't afford to lose my license. I need it for my work." The officer did not give the implied consent information from the law but said something else. "Oh," he said, "not to worry. You can get a driver's license to go to work from the Secretary of State's office." Nothing about the statute exists in the case. The law court said, "This is a matter of fairness, as to what happened here." There was a motion to suppress and it was granted. Officer Chandler's errant advice made the defendant, his submission to the breath test, fundamentally unfair. The law is not at fault. The officer is at fault in what happened. In fact, the law court describes the officer's advice as "off the cuff" legal advice. We're going to change a law that's not even involved in the case on the basis of an officer giving "off the cuff" legal advice to somebody that's stopped? Give me a break. That isn't right. To me it's a knee jerk reaction to the case. The district court judge who had the case said, "Officer Chandler did more than just fail to read the implied consent form to the defendant. The officer gave false information to him, enhancing the involuntary nature of the test." See, he didn't follow the statute. So, why do we need to change it? And you'll notice what the change is. The change makes the law worse than what we have. It says right now, before a test is given, the law enforcement officer shall inform the person etc., etc. We're going to change that "before the test is given" to, "if the person fails to submit to a test," see, the submission, fail to submit, then you're going to tell him the effect of the failure. No. Tell him up front what the consequences are as to what the law is today. Tell him up front. So, you've heard the adage "bad cases make bad law." This is a bad case because the officer made a mistake. It has nothing to do with the statute that's before us that the Criminal

Justice Committee wants us to amend. It has nothing to do with the statute. The officer didn't even talk about the statute. He gave an "off the cuff" bit of legal advice. I've got some doggerel, Mr. President. I don't want to make light of this but I can't believe that this august body is going to change a law that wasn't even involved in a case at all. An officer's "off the cuff" advice didn't put this defendant on ice. The mistake that he made should make us afraid to deny our law a passing grade. Thank you.

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

Senator **MITCHELL:** Thank you Mr. President, women and men of the Senate. Our Criminal Justice Committee takes great pride in the depth of work and analysis that it does on every single bill that is brought before the committee this year. As you can see from the report, this was unanimous by your three Senators who are on the committee to support this particular bill. What the good Senator has recited to you, earlier in testimony this morning, pertains to one individual case. Yes, we reviewed that at our hearing but we also listened to testimony from various other people who asked us to please submit this law and approve it because of the confusion that it gives to the people that they stop. Our Maine State Police work for us. They are the people that are out there on the roads. They are the people that best know what confuses the people they stop when there are statements of law, what is misleading and what is also incriminating to them. It is the opinion of the majority of these people, brought forth from their leader, that we need this law in effect because it does change, but it gives the person who has already submitted that they will take the test, to not have to listen to what would happen if they didn't agree to this. If you are innocent you are going to submit to this, and you are also very scared and incriminated because of the fact that you're listening to rhetoric of the law. You don't need to listen to something that does not apply to you. It confuses the issue. You're very nervous under the circumstances. We don't need to treat our people like this. Please support the majority of your people on the Criminal Justice Committee by voting to pass this particular law. Thank you.

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

Senator **BENOIT:** Thank you Mr. President, may it please the Senate. This law that we are considering to change has been in the law books for years and there's been no confusion about it and there's no confusion, really, about it in this particular case. I would suggest to you that we shouldn't fault the message in the law but rather the officer. He's the culprit because he didn't even refer to the law. He should have talked apples but he talked pomegranates. There's nothing wrong with the statute, nothing at all. It's not even in the case. Please don't make any changes in it and thank you Sir.

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

Senator **MILLS:** Thank you Mr. President and men and women of the Senate. Just briefly, I have to agree with the Senator from Franklin. If the warning is to have any impact at all it has to be given before the test is offered, otherwise we might as well strike the warning completely from the statute. I could

conceive of another way to word it so that it would suit the intentions of the committee but not render the warning just so much surplusage. If you adopt the bill as it's worded, I'm concerned that the warning doesn't have any purpose anymore because you would already have refused. Having done so, it does very little good for the officer to tell you the consequences of what you have already done. It's the cart before the horse and I think we need to fix it in another way if we are going to address it. That's my concern.

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

Senator **MURRAY:** Thank you Mr. President, men and women of the Senate. Let me try to summarize briefly again what I think the issue is with regards to this bill. As I pointed out briefly last night, it's a fairly simple concept. The issue is, and the issue that was presented to our committee very persuasively by a number of people is, that we want to have these tests actually administered because all sides agreed that it is a positive thing to encourage the administration of these tests. Criminal Defense Association agreed with that, the prosecutors agreed with that, the law enforcement community agreed with that. So the issue becomes, how do we accomplish that goal most effectively? The problem that was presented to us and the confusion that arose, given the current language of this bill is, there are times when you have someone, and you need to remember these people, because of the very nature of this type of stop, are most likely driving under the influence or, at least, there's probable cause to believe that they are driving under the influence, may be a tad confused to begin with. And the way the current law is written, regardless of whether the person agrees to their duty to submit to a test or whether they don't, the law requires that a notification be read explaining what happens if you don't submit. So if you therefore, have someone who has agreed to submit to testing under their duty, you then have an officer who has to read to them the consequences of not submitting and that's the issue that the people that testified before the committee found to be and to create in actuality, I beg to differ with my good friend, the Senator from Franklin, that did create the confusion where you had a situation where somebody who's already agreed to submit to the test has now read this notice as to what happens if they don't. So the only change this law focuses on is the situation where someone who has agreed to submit to their duty, you no longer have to read them the warning about what happens if they don't. That individual that does not agree to submit to the test, or refuses, or questions whether they ought to take the test, will be read the exact same warning as they are read now, and that will not have adverse consequences of their initial failure because the language expressly says that in order for there to be a suspension there has to be a failure to submit and a failure to complete the test. So if, in fact, they initially refuse they are then given the warning and submit to the test after that and complete it, there's no adverse consequences. The language is there and if the expressed language of the law isn't clear enough, certainly this legislative debate itself clarifies that issue even more. So, it's a very simple, direct approach aimed at eliminating confusion that is created. This is a unanimous committee report, unlike the Senator from Penobscot who made reference to a majority, it's a unanimous committee report. We addressed the issues that have been raised. I think it's fairly common sense and clear cut. I would urge you to join with our unanimous report in enacting this measure at this time.

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

Senator **MILLS:** Mr. President. Just in brief response. I would agree with the good Senator from Penobscot if the law were clear, that the person had to have a second chance at the test after having been given the warnings, but this is a very, very technical law. Words that are written into the OUI Law are studied much more carefully than many pieces of the Internal Revenue Code because people who are picked up for OUI, and who are in danger of losing their licenses and sometimes their livelihoods ask that these laws be looked at very, very carefully by both prosecutors and defense councils. So it's extremely important that the law be written in a technical way that answers these important questions that were originally raised by the Senator from York County, Senator LaFountain, and I agree with those concerns. I think that if we're going to change the law at all, we need to do so very, very carefully, and it needs to satisfy the concerns and the qualms of the people that have spoken to the issue here in this chamber. And I think that it can be redone, but this particular draft, I believe will cause some problems in the administration of the law. I understand how it came out of committee and I understand the intent of the committee, and I understand even how it could achieve a unanimous report. But other people have read it since, and I think there is a hole in it, there's a problem with it. It can be fixed and I'm not in any way impugning the fine work of the Criminal Justice Committee but I've served on committees where I have voted for things that hit the floor and then I had to change my mind as well and certainly that's what we exist for in this chamber, to read these things and to ask those questions and to raise these concerns when it's appropriate.

**THE PRESIDENT:** The Senator from Franklin, Senator Benoit, requests unanimous consent of the Senate to address the Senate for a third time. Is this the pleasure of the Senate? It's a vote. The Chair recognizes the Senator from Franklin, Senator Benoit.

Senator **BENOIT:** Mr. President, may it please the Senate. Please have in mind that what we are talking about is a Maine law that's been unchanged and on the books for many years, unchanged. It's gone to the Maine Supreme Court many, many times in OUI cases. There's nothing in this particular case that came before the Criminal Justice Committee that in any way makes the suggestion from the Maine Supreme Court that there's a need to change the statute. And so, we ought not to make a change in the law. And that's always been the position of the Attorney General's office, not to make a change in statutes unless there's absolutely a need for it. In this particular case, the facts do not bring the statute into play in any way. The officer gave an "off the cuff" bit of legal advice to the person that he stopped, and on the basis of that "off the cuff" legal advice the person consented to a test. The statute is not in the picture, there's no need to change it. Thank you.

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

Senator **MURRAY:** Mr. President and men and women of the Senate. I just want to briefly respond to the Senator from Somerset, Senator Mill's point, and point out to the Senate that

during the hearing and the work sessions that followed on this bill a representative from the Criminal Defense Association, the Maine Association of Criminal Defense lawyers, raised the question initially that the Senator has raised and, in fact, we discussed that very point in the course of the work session and he agreed, after discussing it, that the language of the current law satisfies that concern that Senator Mills from Somerset has raised. So that point has been addressed in our considerations and again, I would urge you to support this measure at this time.

On motion by Senator **MURRAY** of Penobscot, 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, FERGUSON, GOLDTHWAIT, HALL, LIBBY, LONGLEY, MICHAUD, MITCHELL, MURRAY, NUTTING, O'GARA, PINGREE, RUHLIN

**NAYS:** Senators: AMERO, BENNETT, BENOIT, BUTLAND, CAREY, CASSIDY, CATHCART, CLEVELAND, DAGGETT, KILKELLY, LAFOUNTAIN, MACKINNON, MILLS, PARADIS, PENDLETON, RAND, SMALL, TREAT, THE PRESIDENT - MARK W. LAWRENCE

**ABSENT:** Senators: HARRIMAN, JENKINS

**EXCUSED:** Senator: KIEFFER

13 Senators having voted in the affirmative and 19 Senators having voted in the negative, with 2 Senators being absent and 1 Senator being excused, the Bill **FAILED ENACTMENT** in **NON-CONCURRENCE**.

Sent down for concurrence.

The Chair laid before the Senate the following Tabled and Later (5/13/97) Assigned 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)

Tabled - May 13, 1997, by Senator **NUTTING** of Androscoggin.

Pending - motion by same Senator to **RECEDE** and **CONCUR**

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

(In House, May 13, 1997, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-293) AND HOUSE AMENDMENT "A" (H-435) IN NON-CONCURRENCE.**)

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

Senator **BENOIT:** Thank you Mr. President, may it please the Senate. Looking at my calendar it appears that this matter is on a motion to recede and concur and I would like to speak in opposition to that and share something with you, if I may, Mr. President. I've had a chance to talk with some of my constituents, up in Rangeley at Fitz's Donut Shop, recently about this matter and I indicated to them that we had this bill and what it proposes to do is to allow county commissioners and others to serve on the Land Use Regulatory Commission to wear two hats at the same time. And they said, "Well, what happens when the county, in performance of it's duties, when a county commissioner has a run-in with a Land Use Regulatory Commission? What happens there?" I said, "Well, it looks like the person would have to leave the Board for the purposes of the matter and also be cut from the LURC Board." And they seem to feel that it was watering down two boards when it wasn't really necessary to do that. I guess that the bottom line, Mr. President, is that we are about to codify a conflict of interest situation. We're going to put it right into the law. And the bottom line in my discussion with my constituents was, I had to remind them, do you remember the Dr. Suess book, "The Cat in the Hat" and that's where the discussion pretty much ended. Remember the mischief in that child's book of the "The Cat in the Hat" that resulted from too many hats? I think it's unfortunate, but we have a chance to correct it now, not to codify a conflict of interest situation. Allow the boards to do their jobs without a conflict. Don't require people when there is one to leave the Board, put a three member County Commissioner Board down to two and reduce the LURC Board from seven to six members just because of this statute. There are plenty of people out there willing to serve on LURC. We don't have to have to look to counties or municipal officials who also have run-ins with LURC, on occasion. I know up in my area in Sandy River, an unincorporated area, LURC is our planning board. The municipal officials often are found in opposition to LURC. This law allows them to serve on the LURC Commission. Here's our chance to correct a matter. Here's our chance for some good government. Here's our chance to recognize a conflict and not codify it. Thank you Mr. President.

**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 don't want to belabor this point because we have debated this before but I do want to make a couple of points. First, that a County Commissioner would only be in conflict in his particular county. He would be able to act in the seven other unorganized counties that have unorganized townships. And secondly, I served as a County Commissioner for 26 years and during that period I never once appeared before the LURC in official capacity. I did appear before them as a public official but never in an official capacity. So, the chance of conflict is very, very minimal. I would ask that you support this legislation. Thank you Mr. President.

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

Senator **NUTTING:** Thank you Mr. President. We have debated this once before. I will be brief, but in that first debate the good Senator from Franklin discussed that a verbal Attorney General opinion is not the same as a written one. I have distributed to your desks a written Attorney General's opinion, saying that we do have the legal right to do this. I will remind individuals in this body that the particular person that was involved in a nomination last year, this person's character was supported by the good Senator from Franklin at that confirmation hearing. I do not believe that it is wrong to have somebody with municipal experience be given the opportunity to go before a committee of jurisdiction and have their nomination confirmed by the committee and later by the Senate. Thank you very much.

The Chair ordered a Division. 14 Senators having voted in the affirmative and 12 Senators having voted in the negative, the motion by Senator **NUTTING** of Androscoggin to **RECEDE** and **CONCUR**, **PREVAILED**.

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

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

##### **House Papers**

Resolve, Regarding Legislative Review of Chapter 6: Regulations Relating to Coordination and Oversight of Patient Care Services by Unlicensed Health Care Assistive Personnel, a Major Substantive Rule of the Maine State Board of Nursing  
H.P. 1328 L.D. 1877

Comes from the House, referred to the Committee on **HEALTH AND HUMAN SERVICES** and **ORDERED PRINTED**.

Which was referred to the Committee on **HEALTH AND HUMAN SERVICES** and **ORDERED PRINTED**, in concurrence.

Resolve, to Allow Certain Employees to Continue to Sue the State to Recover Wages Improperly Denied under Federal Wage and Hour Laws  
H.P. 1327 L.D. 1876

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

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

Bill "An Act to Permit the Public Utilities Commission to Grant an Emergency Rate Increase" (Emergency)  
H.P. 1325 L.D. 1875

Comes from the House, referred to the Committee on **UTILITIES AND ENERGY** and **ORDERED PRINTED**.

Which was referred to the Committee on **UTILITIES AND ENERGY** and **ORDERED PRINTED**, in concurrence.

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Senate at Ease

Senate called to order by the President.

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

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Off Record Remarks

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

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Off Record Remarks

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

After Recess

Senate called to order by the President.

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On motion by Senator **MACKINNON** of York, **ADJOURNED** until Thursday, May 15, 1997, at 9:00 in the morning.