

# MAINE STATE LEGISLATURE

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

**Volume 2**

**First Special Session (Continued)**  
**May 20, 1997 to June 20, 1997**

**First Confirmation Session**  
**October 6, 1997**

**Second Regular Session**  
**January 7, 1998 to March 24, 1998**

**Pages 981 - 1977**

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

In Senate Chamber  
Tuesday  
March 10, 1998

Senate called to order by President Mark W. Lawrence of York County.

Prayer by Reverend Charles Reed of the Second Baptist Church of Bowdoinham.

**REVEREND CHARLES REED:** Let us pray. Our gracious God, we praise You and thank you for this day. We praise You for the awesomeness of your love, your goodness, and your grace. I thank You and praise You, Father, for this Senate body, for this group of men and women who have come to give their lives for the service of this State. Lord, I thank you for the awesomeness of their responsibility. And Lord, I ask that You might minister to each of them in such a wonderful and special way that, Lord, You may give them guidance in all the decisions that they make, that the decisions they make may be in accordance to your will. Lord, lead them in the conscience that they have that, Father, as they search for the right meaning, lead them. And Father, as they seek the good of this State that You might lead them in that. Lord, I thank you for their dedication and I pray for their families at home, that You might watch over their wives, their husbands and their children. Lord, as they spend much time here, in service to us and to You, that O God, You may give their family a sense of unity and oneness and courage. I thank you for the courage with which these men and women stand. I thank you for the love that they share with us. Lord, bless this State and bless, O God, the Governor that leads this State, that he may lead it in all wisdom and understanding. Father, we give ourselves to You, that Lord, we may seek and know your will. For we ask it in the name of God Almighty, even Jesus Christ His Son, the Messiah. Amen.

Reading of the Journal of Monday, March 9, 1998.

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

Off Record Remarks

**PAPERS FROM THE HOUSE**

**House Papers**

Bill "An Act to Promote and Encourage the Cultivation of Cranberries in the State" H.P. 1634 L.D. 2264

Comes from the House, **REFERRED** to the Committee on **AGRICULTURE, CONSERVATION AND FORESTRY** and ordered printed.

**REFERRED** to the Committee on **AGRICULTURE, CONSERVATION AND FORESTRY** and ordered printed, in concurrence.

**Pursuant to Resolve  
Joint Standing Committee on Natural Resources**

The Joint Standing Committee on **NATURAL RESOURCES**, pursuant to Resolve 1997, chapter 67, asked leave to report that the accompanying Bill "An Act to Reduce Nonpoint Source Pollution from Existing Sources" H.P. 1635 L.D. 2265

Be **REFERRED** to the Committee on **NATURAL RESOURCES** and ordered printed pursuant to Joint Rule 218.

Comes from the House, Report **READ** and **ACCEPTED** and the Bill **REFERRED** to the Committee on **NATURAL RESOURCES** and ordered printed pursuant to Joint Rule 218.

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

**REFERRED** to the Committee on **NATURAL RESOURCES** and ordered printed pursuant to Joint Rule 218, in concurrence.

Off Record Remarks

**COMMUNICATIONS**

The Following Communication: S.P. 852

**118<sup>TH</sup> MAINE LEGISLATURE**

March 6, 1998

Senator Peggy Pendleton  
Representative Shirley Richard  
Chairpersons  
Joint Standing Committee on Education and Cultural Affairs  
118<sup>th</sup> Legislature  
Augusta, Maine 04333

Dear Senator Pendleton and Representative Richard:

Please be advised that Governor Angus S. King, Jr. has nominated Kent Lyons of Calais for appointment as the student member of the Maine Technical College System Board of Trustees.

Pursuant to Title 20-A, M.R.S.A., §12705, this nomination will require review by the Joint Standing Committee on Education and Cultural Affairs and confirmation by the Senate.

Sincerely,

S/Mark W. Lawrence  
President of the Senate

S/Elizabeth H. Mitchell  
Speaker of the House

S.P. 856 L.D. 2269

**READ and REFERRED to the Committee on EDUCATION AND CULTURAL AFFAIRS.**

Sent down for concurrence.

The Following Communication: H.C. 411

**STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
AUGUSTA, MAINE 04333**

Monday, March 9, 1998

Honorable Joy J. O'Brien  
Secretary of the Senate  
118th Legislature  
Augusta, Maine 04333

Dear Madam Secretary:

The Speaker appointed the following conferees to the Committee of Conference on the disagreeing action of the two branches of the Legislature on Bill "An Act to Implement the Recommendations of the Interagency Committee on Outdoor Trash Burning" (H.P. 1408) (L.D. 1972)

Representative JONES of Greenville  
Representative DUNLAP of Old Town  
Representative WHEELER of Bridgewater

Sincerely,

S/Joseph W. Mayo  
Clerk of the House

**READ and ORDERED PLACED ON FILE.**

**SENATE PAPERS**

Resolve, to Establish the Task Force on Hospice Coverage and Palliative Pain Control (EMERGENCY)

S.P. 855 L.D. 2268

Presented by Senator MITCHELL of Penobscot.  
Cosponsored by Representative MITCHELL of Portland and Senators BENNETT of Oxford, KIEFFER of Aroostook, LONGLEY of Waldo, PARADIS of Aroostook, Representatives FULLER of Manchester, KANE of Saco, QUINT of Portland, SNOWE-MELLO of Poland.  
Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

**REFERRED to the Committee on HEALTH AND HUMAN SERVICES and ordered printed.**

Sent down for concurrence.

Bill "An Act to Reduce Mercury Use and Emissions"

Presented by Senator RUHLIN of Penobscot.  
(GOVERNOR'S BILL)

Cosponsored by Representative ROWE of Portland and Senators GOLDTHWAIT of Hancock, HARRIMAN of Cumberland, MITCHELL of Penobscot, NUTTING of Androscoggin, TREAT of Kennebec, Representatives BERRY of Belmont, COWGER of Hallowell, DUNLAP of Old Town.

**REFERRED to the Committee on NATURAL RESOURCES and ordered printed.**

Sent down for concurrence.

Resolution, Proposing an Amendment to the Constitution of Maine to Amend the Timing of Elections Following the Submission of a Petition for People's Veto

S.P. 857 L.D. 2270

Presented by Senator CLEVELAND of Androscoggin.  
Cosponsored by Senators ABROMSON of Cumberland, GOLDTHWAIT of Hancock, NUTTING of Androscoggin, Representatives BUMPS of China, CAMERON of Rumford, ETNIER of Harpswell, SHIAH of Bowdoinham, TAYLOR of Cumberland.

**REFERRED to the Committee on STATE AND LOCAL GOVERNMENT and ordered printed.**

Sent down for concurrence.

Bill "An Act to Amend the Charter of Great Northern Paper, Inc." S.P. 854 L.D. 2267

Presented by Senator MICHAUD of Penobscot.  
(GOVERNOR'S BILL)

Cosponsored by Representative CLARK of Millinocket and Senators CAREY of Kennebec, HARRIMAN of Cumberland, Representatives CROSS of Dover-Foxcroft, JONES of Bar Harbor, JOY of Crystal, KONTOS of Windham, STANLEY of Medway, USHER of Westbrook.

**REFERRED to the Committee on UTILITIES AND ENERGY and ordered printed.**

Sent down for concurrence.

**Pursuant to Resolve  
Commission to Study the Funding and Distribution of  
Teletypewriters and Other Telecommunications Equipment  
for People with Disabilities**

Senator TREAT for the **Commission to Study the Funding and Distribution of Teletypewriters and Other Telecommunications Equipment for People with Disabilities**, pursuant to Resolve 1997, chapter 72, asked leave to report that the accompanying Bill "An Act to Implement the Recommendations of the Commission to Study the Funding and Distribution of Teletypewriters and Other Telecommunications Equipment for People with Disabilities" (EMERGENCY)

S.P. 853 L.D. 2266

Be **REFERRED** to the Committee on **LABOR** and ordered printed pursuant to Joint Rule 218.

Report **READ** and **ACCEPTED**.

**REFERRED** to the Committee on **LABOR** and ordered printed pursuant to Joint Rule 218.

Sent down for concurrence.

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

Off Record Remarks

#### REPORTS OF COMMITTEES

##### House

##### Ought to Pass

From the Committee on **CRIMINAL JUSTICE** on Resolve, Regarding Legislative Review of Certification and Monitoring of Batterer Intervention Programs, a Major Substantive Rule of the Department of Corrections (EMERGENCY)

H.P. 1560 L.D. 2189

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

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

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

**READ ONCE**.

**TOMORROW ASSIGNED FOR SECOND READING**.

##### Ought to Pass As Amended

From the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS** on Bill "An Act to Improve Management of Contracted Personnel Services Costs" H.P. 1394 L.D. 1948

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (H-845)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-845)**.

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

**READ ONCE**.

Committee Amendment "A" (H-845) **READ** and **ADOPTED**, in concurrence.

**TOMORROW ASSIGNED FOR SECOND READING**.

From the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS** on Bill "An Act to Appropriate Funds for Library Resource Sharing and for Acquisitions for the Maine State Library" (EMERGENCY) H.P. 1431 L.D. 1995

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (H-844)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-844)**.

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

**READ ONCE**.

Committee Amendment "A" (H-844) **READ** and **ADOPTED**, in concurrence.

**TOMORROW ASSIGNED FOR SECOND READING**.

From the Committee on **EDUCATION AND CULTURAL AFFAIRS** on Bill "An Act to Promote Access to Public Higher Education" H.P. 1453 L.D. 2044

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (H-842)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-842)**.

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

**READ ONCE**.

Committee Amendment "A" (H-842) **READ** and **ADOPTED**, in concurrence.

**TOMORROW ASSIGNED FOR SECOND READING**.

From the Committee on **TAXATION** on Bill "An Act to Clarify the Tax-exempt Status of the Maine School of Science and Mathematics" (EMERGENCY) H.P. 1488 L.D. 2087

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (H-843)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-843)**.

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

**READ ONCE.**

Committee Amendment "A" (H-843) **READ** and **ADOPTED**, in concurrence.

**TOMORROW ASSIGNED FOR SECOND READING.**

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**Divided Report**

Majority of the Committee on **LEGAL AND VETERANS AFFAIRS** on Resolve, to Allow David Prentiss to Sue the State of Maine (EMERGENCY) H.P. 1476 L.D. 2075

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-841)**.

Signed:

Senator:

CAREY of Kennebec

Representatives:

LABRECQUE of Gorham  
CHIZMAR of Lisbon  
BIGL of Bucksport  
GAMACHE of Lewiston  
TRUE of Fryeburg  
BELANGER of Wallagras

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

Signed:

Senators:

DAGGETT of Kennebec  
FERGUSON of Oxford

Representatives:

GAGNE of Buckfield  
TUTTLE of Sanford  
TESSIER of Fairfield  
FISHER of Brewer

Comes from the House with the Majority **OULD TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Resolve **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-841) AS AMENDED BY HOUSE AMENDMENT "A" (H-851)** thereto.

Reports **READ**.

Senator **DAGGETT** of Kennebec moved the Senate **ACCEPT** the Minority **OULD NOT TO PASS** Report in **NON-CONCURRENCE**.

On further motion by same Senator, **TABLED** until Later in Today's Session, pending motion by same Senator to **ACCEPT** the Minority **OULD NOT TO PASS** Report in **NON-CONCURRENCE**.

---

**Senate**

**Ought to Pass As Amended**

Senator **MICHAUD** for the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS** on Bill "An Act to Appropriate Funds for the Interpreter Service for the Deaf and Hard of Hearing" (EMERGENCY) S.P. 722 L.D. 1965

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (S-490)**.

Report **READ** and **ACCEPTED**.

**READ ONCE.**

Committee Amendment "A" (S-490) **READ** and **ADOPTED**.

**TOMORROW ASSIGNED FOR SECOND READING.**

---

Senator **MACKINNON** for the Committee on **BUSINESS AND ECONOMIC DEVELOPMENT** on Bill "An Act to Simplify the Process of Transferring Ownership of a Business Licensed by the Board of Barbering and Cosmetology under the Terms of a Divorce Settlement" S.P. 701 L.D. 1946

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (S-491)**.

Report **READ** and **ACCEPTED**.

**READ ONCE.**

Committee Amendment "A" (S-491) **READ** and **ADOPTED**.

**TOMORROW ASSIGNED FOR SECOND READING.**

---

Senator **GOLDTHWAIT** for the Committee on **MARINE RESOURCES** on Bill "An Act to Decriminalize Various Marine Resource Violations and Enhance Collectibility of Associated Penalties" S.P. 476 L.D. 1478

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (S-493)**.

Report **READ** and **ACCEPTED**.

**READ ONCE.**

Committee Amendment "A" (S-493) **READ** and **ADOPTED**.

**TOMORROW ASSIGNED FOR SECOND READING.**

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**Divided Report**

Majority of the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS** on Bill "An Act to Change the State's Fiscal Year from July 1st to October 1st" S.P. 627 L.D. 1829

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

Signed:

Senators:

MICHAUD of Penobscot  
BENNETT of Oxford

Representatives:

KERR of Old Orchard Beach  
POULIN of Oakland  
BERRY of Livermore  
KNEELAND of Easton  
MARVIN of Cape Elizabeth  
WINSOR of Norway  
OTT of York

Minority of the same Committee on the same subject reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-492)**.

Signed:

Senator:

CLEVELAND of Androscoggin

Representatives:

TOWNSEND of Portland  
LEMAIRE of Lewiston

Reports **READ**.

Senator **MICHAUD** of Penobscot 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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**SECOND READERS**

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

**House As Amended**

Bill "An Act to Inform Crime Victims about the Disposition of Charges" H.P. 1369 L.D. 1919 (C "A" H-840)

Bill "An Act to Require a Tax Identification Number for Sales Tax Exemptions on Hay and Animal Bedding"

H.P. 1416 L.D. 1980  
(C "A" H-839)

Bill "An Act to Support the Long-term Care Steering Committee"

H.P. 1500 L.D. 2122  
(H "A" H-849 to C "A" H-837)

Resolve, to Approve a Maine Technical College System Lease with the South Portland Housing Authority

H.P. 1507 L.D. 2129  
(C "A" H-836)

**READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED**, in concurrence.

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**Senate As Amended**

Bill "An Act to Reduce Groundwater Contamination from Leaking Oil Storage Tanks" (EMERGENCY)

S.P. 778 L.D. 2105  
(C "A" S-488)

Bill "An Act to Implement the Recommendations of the Blue Ribbon Commission to Study the Effects of Government Regulation and Health Insurance Costs on Small Businesses in Maine"

S.P. 811 L.D. 2190  
(C "A" S-489)

**READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED**.

Sent down for concurrence.

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

**REPORTS OF COMMITTEES**

**Senate**

**Ought to Pass As Amended**

Senator **PARADIS** for the Committee on **HEALTH AND HUMAN SERVICES** on Bill "An Act to Increase Economic Security for the State's Low-income Children and Families and Prevent Additional Costs to Municipalities" S.P. 791 L.D. 2118

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (S-497)**.

Report **READ** and **ACCEPTED**.

**READ ONCE**.

Committee Amendment "A" (S-497) **READ** and **ADOPTED**.

**TOMORROW ASSIGNED FOR SECOND READING.**

---

Senator O'GARA for the Committee on **TRANSPORTATION** on Bill "An Act to Allow the Department of Transportation to Provide Privately Contracted Ferry Services" (EMERGENCY) S.P. 788 L.D. 2115

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (S-496)**.

Report **READ** and **ACCEPTED**.

**READ ONCE**.

Committee Amendment "A" (S-496) **READ** and **ADOPTED**.

**TOMORROW ASSIGNED FOR SECOND READING**.

---

Senator O'GARA for the Committee on **TRANSPORTATION** on Resolve, Naming the New Bridge in Medway the Harold C. Beathem Bridge S.P. 809 L.D. 2187

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (S-495)**.

Report **READ** and **ACCEPTED**.

**READ ONCE**.

Committee Amendment "A" (S-495) **READ** and **ADOPTED**.

**TOMORROW ASSIGNED FOR SECOND READING**.

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**Divided Report**

Majority of the Committee on **LEGAL AND VETERANS AFFAIRS** on Resolve, Compensating the Estate of Barbara Maxfield for Claims against the State S.P. 800 L.D. 2157

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-494)**.

Signed:

Senators:

CAREY of Kennebec  
FERGUSON of Oxford

Representatives:

GAGNE of Buckfield  
TUTTLE of Sanford  
TRUE of Fryeburg  
BELANGER of Wallagrass  
TESSIER of Fairfield

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

Signed:

Senator:

DAGGETT of Kennebec

Representatives:

LABRECQUE of Gorham  
CHIZMAR of Lisbon  
BIGL of Bucksport  
GAMACHE of Lewiston  
FISHER of Brewer

Reports **READ**.

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

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**ORDERS OF THE DAY**

**Unfinished Business**

The following matter 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 (3/4/98) Assigned matter:

HOUSE REPORTS - from the Committee on **TAXATION** on Bill "An Act Regarding the Taxation of Goods Purchased in Connection with the Operation of a High-stakes Beano or High-Stakes Bingo Game" H.P. 1307 L.D. 1855

Majority - **Ought Not to Pass** (8 members)

Minority - **Ought to Pass as Amended by Committee Amendment "B" (H-810)** (5 members)

Tabled - March 4, 1998, by Senator **PINGREE** of Knox.

Pending - motion by same Senator to **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED** Report, in concurrence (Roll Call Ordered)

(In House, February 26, 1998, the Minority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "B" (H-810)**.)

(In Senate, March 2, 1998, Reports **READ**.)

The Doorkeepers secured the Chamber.

The Secretary called the Roll with the following result:



**ROLL CALL**

YEAS: Senators: CASSIDY, CATHCART, HALL, KILKELLY, LONGLEY, MURRAY, NUTTING, O'GARA, TREAT, THE PRESIDENT - MARK W. LAWRENCE

NAYS: Senators: ABROMSON, AMERO, BENOIT, BUTLAND, CAREY, CLEVELAND, DAGGETT, FERGUSON, GOLDTHWAIT, HARRIMAN, KIEFFER, LAFOUNTAIN, MACKINNON, MICHAUD, MITCHELL, PARADIS, PINGREE, RAND, RUHLIN, SMALL

ABSENT: Senators: JENKINS, LIBBY, MILLS, PENDLETON

EXCUSED: Senator: BENNETT

10 Senators having voted in the affirmative and 20 Senators having voted in the negative, with 4 Senators being absent, and 1 Senator being excused, the motion by Senator PINGREE of Knox to **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED** Report, in concurrence, **FAILED**.

Senator **RUHLIN** of Penobscot moved the Senate **RECONSIDER** whereby the Senate **FAILED** to **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED** Report, in concurrence.

On further motion by same Senator, **TABLED** until Later in Today's Session, pending motion by same Senator to **RECONSIDER** whereby the Senate **FAILED** to **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED** Report, in concurrence.

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

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

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

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

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

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

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

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

After Recess

Senate called to order by the President.

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

**PAPERS FROM THE HOUSE**

**House Paper**

Bill, "An Act to Include Locally Funded Debt Service in the Formula for Purposes of the Circuit Breaker Program" H.P. 1637 L.D. 2271

Comes from the House, **REFERRED** to the Committee on **EDUCATION AND CULTURAL AFFAIRS** and ordered printed.

**REFERRED** to the Committee on **EDUCATION AND CULTURAL AFFAIRS** and ordered printed, in concurrence.

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

**REPORTS OF COMMITTEES**

**Pursuant to Resolve 1997, chapter 10  
Joint Standing Committee on Criminal Justice**

The Joint Standing Committee on **CRIMINAL JUSTICE**, pursuant to Resolve 1997, chapter 10, on Bill "An Act to Implement Recommendations of the Fire Marshal Study Group" H.P. 1639 L.D. 2272

Be **REFERRED** to the Committee on **CRIMINAL JUSTICE** and ordered printed, pursuant to Resolve 1997, chapter 10.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **REFERRED** to the Committee on **CRIMINAL JUSTICE** and ordered printed pursuant to Resolve 1997, chapter 10.

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

**REFERRED** to the Committee on **CRIMINAL JUSTICE** and ordered printed pursuant to Resolve 1997, chapter 10, in concurrence.

**ORDERS OF THE DAY**

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

HOUSE REPORTS - from the Committee on **LEGAL AND VETERANS AFFAIRS** on Resolve, to Allow David Prentiss to Sue the State of Maine (EMERGENCY) H.P. 1476 L.D. 2075

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-841)** (7 members)

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

Tabled - March 10, 1998, by Senator **DAGGETT** of Kennebec.

Pending - motion by same Senator to **ACCEPT** the Minority **OUGHT NOT TO PASS** Report in **NON-CONCURRENCE**

(In House March 9, 1998, the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Resolve **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-841) AS AMENDED BY HOUSE AMENDMENT "A" (H-851)** thereto.)

(In Senate, March 10, 1998, Reports **READ**.)

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

Senator **DAGGETT:** Thank you Mr. President and men and women of the Senate. I'm just going to speak briefly to the issue of this suit against the State to remind members of some of the reasons why the Legislature might intervene and allow a suit to go forward. Or, in some cases, we'll look to a direct settlement. In this case, Mr. Prentiss felt that the State, in fact, the Department of Environmental Protection had harmed him in some way because the Department had listed, on a Web-site, a piece of property which Mr. Prentiss owned as being a contaminated site. The information that was listed on the Web-site was, in fact, correct. It might not have been the most up-to-date, but it was, in fact, correct information. The other point is that the information that was listed was public information. It was a matter of public record. The piece of property in question was not sold. The sale fell through because the information was accessed and Mr. Prentiss felt that he had been wronged. In fact, I believe the amount that came out of Committee was around \$200,000. I just would remind you that Mr. Prentiss still has his asset, the land. There was nothing that was taken away from him. Granted the sale did not go through but, apparently, the purchaser decided to buy another piece of property. It's questionable whether the purchaser would have, in fact, made that decision or followed through with that purchase anyway. Mr. Prentiss made some unfortunate decisions prior to the sale being consummated.

So, number one, his allegations have to do with information that was correct, that was a matter of public record and, in fact, he still has his asset. So I hope that you would vote with the Ought Not to Pass report. Thank you.

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

Senator **CAREY:** Thank you Mr. President and men and women of the Senate. As Paul Harvey is prone to say, "Now, the other side of the story." Mr. Prentiss bought this piece of land. The Army Corp of Engineers came in, at his insistence, when he found that there was some asbestos in one of the ceilings. They were able to remove that. He, in fact, did everything that he

could to clear that site. Unfortunately, the State, and we had Commissioner Sullivan in, particularly to see what his staff people were doing in that Committee room. They're on the Internet and it really is just information that is both inaccurate and untimely. They change the Internet on the 1<sup>st</sup> of March, or immediately after the 1<sup>st</sup> of March, each and every year. So if you had your site decontaminated in April, as was the case with Mr. Prentiss, he would have to wait until the following March to come off. In questioning the Commissioner, he said that was not a very good system. As a matter of fact, I suggested to them that when the site is resolved, is not being contaminated any longer, why doesn't a note just go to the computer operator, who could take that off the Net. And he said, "Oh, we only do that once a year." So much for TQM. I do get somewhat upset. You will notice that the House amended this with House Amendment "A". They very clearly pointed out that since Mr. Prentiss did not make the sale, he is still in possession of the property. Therefore, they reduced it to \$70,000 rather than the \$250,000. They would certainly hope that the Department would settle.

I've been approached by a couple members of the Committee who have said that they were approached by the DEP saying that if, in fact, that case was settled, the money would come out of the upcoming bond issue. So I went to see Commissioner Sullivan and I asked him what he had for bond issues. He said, "Well, we've got one for sand and salt." So I said, "You're going to use sand and salt money to pay for a settlement?" He said, "Well, if we lose that's obviously what we'd have to do." I would say to him, as I did say to him, "It's got to come out of your operating budget and not out of some bond issue because we must have some idea as to how that money is to be spent. Hopefully some of it, at least, will be spent on sand and salt."

I would ask you to support this bill and vote against the motion of the Senator from Kennebec, Senator Daggett. This is pure and simple, an overload on the private citizens by the Administration and by the Departments.

**THE PRESIDENT:** The Chair recognizes the Senator from Arrostook, Senator Kieffer.

Senator **KIEFFER:** Thank you Mr. President and ladies and gentlemen of the Senate. When I was first approached on this issue, I approached it as I do most issues of spending, very cautiously. This location is in my district, in the town of Limestone. At home in my office, I have a file almost an inch thick on this issue that I have done some research on and background check. I think the key in this particular case though is the fact that this location was added by DEP to this Web-site and the owner of the property was not even notified. I find that just totally unacceptable. There was a purchase and sale agreement, a signed purchase and sale agreement, so I don't believe that there's any way to indicate that the sale may not have gone through. I have a copy of that here, in my possession, if anyone would care to review that. It is for an amount of \$100,000. As my good friend, Senator Carey from Kennebec, did say, the amendment was issued in the House reducing that amount to \$70,000. This site had been cleared, in letters, through the Corp of Engineer. Certainly, an annual review of what the DEP has on their Web-site is totally inadequate. Their excuse was that they only have 23 employees and therefore, they can't upgrade this a lot more often than once a year. That I also think is unacceptable. I think we owe more than that to our citizen tax payers. I would urge you to vote against the pending

motion so that we could go on and support the Ought to Pass, as amended report. Thank you Mr. President.

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

Senator **GOLDTHWAIT:** Thank you Mr. President and ladies and gentlemen of the Senate. It is always a matter of concern when we suspect that the State may, in some way, have contributed to the distress, and potentially the financial loss, of one of its citizens. But I have a greater concern in this particular matter. We are in the process of now considering, in my Committee and it will be before this body before long, a system of increasing the amount of public information that goes onto a variety of Web-sites. In fact, there is a new brochure which I find very helpful and have already used a lot for my constituents regarding how to access information about this Chamber and bills in progress, and so on. In this particular case, perhaps, updating that site annually is not sufficient. But I would suggest that were these sites updated daily, which is certainly well beyond the reach of our resources to do, that had this same information been accessed on a Wednesday and updated on a Thursday, we would be in the same situation. So I am quite concerned that we make a determination that someone has been harmed by our failure to update this information more frequently. Practically speaking, because of the speed of Web-site access, someone could connect with the site an hour before it was updated and still leave us in the same situation, or leave this family in the same situation that they are in now. It is my opinion that we are not able to update these sites frequently enough to possibly have all of that public information be current. Therefore, I suggest that we are on a rather precipitous slope if we make a determination now, that that failure to update, on what would almost have to be a momentary basis, results in harm to a citizen of our state. I would urge you to support the Ought Not to Pass motion before us. Thank you.

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

Senator **FERGUSON:** Thank you Mr. President and ladies and gentlemen of the Senate. I want to explain my position in this particular matter. I am on the Ought Not to Pass report and the reason I'm on there is that it seemed to me that this was a real estate deal that went sour. I have a sales and purchase agreement in my hand that indicates that it was for \$62,000. Be it \$62,000 or \$65,000 or \$100,000, whatever it is, I think Mr. Prentiss acted hastily in this particular situation. His wife had left her job and he had made arrangements to buy other property prior to the deal being completed. It seems to me that he should have waited until he had cash in the bank before he did these things. He may have been injured to a certain extent but I think my seat mate and colleague, Senator Goldthwait, played it out pretty good. DEP has become the whipping boy in this particular instance. As soon as the lending institution found that this site was on the Internet, the financial institution made contact with them and it was just a very short period of time until it was deleted and a clean bill of health was issued. According to the notes that I took at the hearing, it was a 22 day period. So, if the buyer had a real passion to buy this property, it seems to me that 22 days wouldn't be too long a period to wait, to complete the deal. These things are always hard, as to whether we're doing the right thing or not. But, in my judgment, it seems that the

seller made errors and the State did have a minor involvement, in that they did have it listed on the Internet. But as soon as the financial institution did check into it, that it was cleared in a very short period of time and the deal could have gone through. And Mr. Prentiss, in my judgment, unfortunately did make some bad decisions and is not entitled to go forward with this. Thank you Mr. President.

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

Senator **BENOIT:** Thank you Mr. President. May it please the Senate. Senator Ferguson, the Senator from Oxford, has just made a point. He says that this was a real estate deal that went sour because these folks who are now seeking relief didn't, perhaps, act properly or made some kind of an error, or did something wrong. At the same time, the DEP folks have done something wrong. In other words, two wrongs somehow will make this right. I've heard some argument made against this legislation, that it will, perhaps, set a bad precedent. I would ask you not to be intimidated by the precedent principle, but to stand in awe of the principle of fairness and to do what is right. You know, the Legislature of the three branches of Government is constantly called upon to correct errors in the other two branches. By way of an example, I would give you the situation where this Legislature, on occasion, will amend a statute in a sentencing situation where mandatory minimum sentences are required by judges to be imposed. Why? It's because our constituents feel that judges aren't imposing correct sentences. In order to correct the error, we come in and enact mandatory minimums. We correct a mistake being made in the judicial department. Here, we're being asked to look at a piece of legislation and consider whether we will open the courtroom door to a deserving set of circumstances. I say, don't be afraid to open the courtroom door. This bill does not involve the payment of any money. It's true, there's a cap, \$70,000. This case may very well go to court. Because it's pretty much agreed upon, the Attorney General's Office is not going to, perhaps, spend more than a day or two presenting this case to the judge. So you're not going to tie up the Attorney General greatly. Now these folks may get a judgment of less than \$70,000, or it may be \$70,000. But it's a situation, to me, where, on occasion, one of the other two branches of Government makes a mistake and this body should correct it. We'll take these on a case by case basis, I'm sure, as we do every session. So don't be afraid of the precedent principle. Stand in awe of the fairness principle. Thank you.

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

Senator **CAREY:** Thank you Mr. President and men and women of the Senate. I've heard the good Senator from Oxford, Senator Ferguson, speak about a 22 day, window, if you would, period of time that went on. And I heard the good Senator from Hancock, Senator Goldthwait, talk about going from a year and then maybe down to a month. At the end of her remarks she talked about, we can't have these things changed at a moments notice, or what have you. I would try to point out that, yes, the bank did, in fact, contact the DEP after looking at it on the Internet. The person who looked at it at the DEP did not go to the files, but found it much easier to go to the Internet, where it was on in April of 1997. As a matter of fact, we held a hearing on

this bill on the 10<sup>th</sup> of February of 1998, and it was still on the Internet.

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

Senator **KIEFFER:** Thank you Mr. President. I think the time-frame here is very important in this issue. We can talk about, if this had happened, and if that had happened, lot's of things would have happened, if. However, in this particular case, when we refer to the time-frame of some 22 days, as my good friend, the Senator from Oxford, Senator Ferguson, has done, that, when you put it in its proper perspective seems to be a very short period of time. But when this person who is buying this property had his loan, or their loan, turned down at the bank because this item was listed on the Internet as a contaminated site, and the previous owner had not been made aware of that. Should the purchaser be a mind reader? How, in the world, would they know that it was going to be 22 days, or 122 days, or 222 days before this error was removed from the Internet. I don't believe that, in fairness, we can ask people to be mind readers. In this particular case, I think we have to look at the facts. Not if this had happened, or if that had happened. The facts in this case are very clear. Thank you Mr. President.

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

Senator **DAGGETT:** Thank you Mr. President and men and women of the Senate. Earlier, it was mentioned that, in fact, indeed the Legislature must step in on a number of occasions and I would thoroughly agree with that. I think when any of these issues come in front of us, we look at them on an individual basis and on a case by case basis. It has been alleged that Mr. Prentiss was wronged and I would simply ask the question, exactly how was Mr. Prentiss wronged in this case? The information that went on the Internet was correct. It was not incorrect information. Perhaps it was on the Internet, could be dialed up and could be looked at. But if it had been paper information, if there had been a hard copy of this information, it would still have been the same information. If the bank had seen that and it hadn't been on the Internet, would there be a difference? Would people be looking at this differently? I would suggest that is simply not the case. The information that was placed on the Internet was correct. It was not incorrect information. If, in fact, the bank accessed the information and denied the loan on that basis, why didn't the buyer take a look at another bank? Why wasn't there an effort to shop around or to correct that information, or to update it? The information was correct. This was not an issue that was not known. I think we have to take a look at these cases very carefully, very carefully. It was not the DEP's determination that this particular piece of property had been a former NIKE missile site. It was not the DEP's determination that a loan could not be approved. None of these things fall to the responsibility of the Department of Environmental Protection. In fact, I would suggest to you that it is important to preserve the right of the citizens of this State to get information through the Department of Environmental Protection. Thank you.

The Chair ordered a Division.

On motion by Senator **KIEFFER** of Aroostook, 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: CATHCART, CLEVELAND, DAGGETT, FERGUSON, GOLDTHWAIT, LAFOUNTAIN, MICHAUD, MURRAY, O'GARA, PENDLETON, PINGREE, RAND, TREAT, THE PRESIDENT - MARK W. LAWRENCE

**NAYS:** Senators: ABROMSON, AMERO, BENOIT, BUTLAND, CAREY, CASSIDY, HALL, HARRIMAN, KIEFFER, KILKELLY, LIBBY, LONGLEY, MACKINNON, MITCHELL, NUTTING, PARADIS, SMALL

**ABSENT:** Senators: JENKINS, MILLS, RUHLIN

**EXCUSED:** Senator: BENNETT

14 Senators having voted in the affirmative and 17 Senators having voted in the negative, with 3 Senators being absent, and 1 Senator being excused, the motion by Senator **DAGGETT** of Kennebec to **ACCEPT** the Minority **OUGHT NOT TO PASS** Report in **NON-CONCURRENCE, FAILED.**

The Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-841)** Report **ACCEPTED**, in concurrence.

**READ ONCE.**

Committee Amendment "A" (H-841) **READ.**

House Amendment "A" (H-851) to Committee Amendment "A" (H-841) **READ** and **ADOPTED**, in concurrence.

Committee Amendment "A" (H-841) as Amended by House Amendment "A" (H-851) thereto, **ADOPTED**, in concurrence.

**TOMORROW ASSIGNED FOR SECOND READING.**

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

**SENATE REPORTS** - from the Committee on **LEGAL AND VETERANS AFFAIRS** on Resolve, Compensating the Estate of Barbara Maxfield for Claims against the State

S.P. 800 L.D. 2157

Majority - **Ought to Pass as Amended by Committee Amendment "A" (S-494)** (7 members)

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

Tabled - March 10, 1998 by Senator **DAGGETT** of Kennebec.

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

(In Senate, March 10, 1998, Reports **READ**.)

**THE PRESIDENT:** The Chair recognizes the Senator from Sagadahoc, Senator Small.

Senator **SMALL:** Thank you Mr. President and men and women of the Senate. I hope you will not accept the Minority Ought Not to Pass report so we can go on to accept the Majority Ought to Pass report on this, very intense and, I think, emotional, issue that's before us today. Many of you may have recalled last March 23<sup>rd</sup>, when there was an horrific accident on the Maine Turnpike and the events that transpired and what led up to the accident. If I could just read you a brief synopsis filed by the Maine State Police. "On March 23<sup>rd</sup>, 1997, Barbara Maxfield was traveling southbound in the left-hand lane, approaching the 6A tollhouse. Gary Sledzic, traveling in the same direction, sideswiped two vehicles traveling in the right-hand lane. The first vehicle was operated by Clifford Young and the second by Mark Verrochi. Sledzic's vehicle then struck Barbara Maxfield's vehicle directly from behind. Maxfield's vehicle spun around and entered the tollbooth area backwards. Sledzic's vehicle then moved to the left and struck another vehicle being operated by Thomas Fersella, who was stopping, waiting to enter the three lanes of the tollbooth. Sledzic's vehicle then crossed over the cement barrier and struck Maxfield's vehicle again. Sledzic's vehicle also struck the side of the tollbooth and came to rest behind Maxfield's, upon its side. Barbara Maxfield and Brooke Willis, a passenger behind the driver, were trapped and killed at the scene, due to the collision. It should be noted that alcohol is a factor in this accident." Now, that report, or a similar report, is probably filed many times over the course of the year because, unfortunately, we still do have carnage on the highway due to drunk drivers. But what was unusual about this event, what I hope is only going to be a one-time occurrence, was the fact that nobody tried to stop this drunken driver. Despite the fact that there were three calls into the State Police on that day. Excerpts from the emergency calls, from caller one at 3:40 from Bowdoinham and the excerpt from the transcript reads, "Some idiot is driving drunk down here. I just wanted to report it because he went flying past me and almost pushed the guy in front of me off the road, and then almost ended up in a ditch." The next call came in at 3:52 from Freeport. "There's a vehicle ahead of me driving erratically. It's a gray pickup truck and I'm not sure if the guy's intoxicated or in just such a hurry that he's trying to intimidate everyone on the road." Then, caller three at 4:03 from Portland, "I'm calling from southbound 295 and there was a Ford pickup truck that went by us. He's swerving from side to side, going into a snow bank. I don't know whether he's drunk, or going to sleep, or what." Then caller three calls back one more time. This is the fourth call at 4:10 from Scarborough. "Yeah, I phoned in that erratic pickup truck call. He's tipped over right at the tollbooth, right now, and he smashed into two or three cars." And that was the accident that resulted in the death of Barbara Maxfield, her daughter Brooke, and injured her young two-year-old son, Alan Maxfield. That's on who's behalf this bill is in. He is the estate of Barbara Maxfield. The legislation was to authorize the State to pay \$500,000 in damages. I could have, and perhaps should have, done what the previous bill did and

asked the State to lift the immunity and lift the caps on damages and allowed them to go to court. Because I don't think there is a judge and jury in this state that wouldn't find that there was negligence, on behalf of the State, and feel that that family did deserve to be compensated. But I, being new to this procedure, followed the advice of people in the Revisor's Office and we put in to seek compensation and they said, well, the Committee, after reviewing this, can make a determination whether they want to compensate outright or whether they think that this is something that should be allowed to go to court.

Just so you know that as a result of this accident, we do have new procedures set up. There was a State Police investigation that found a series of errors by Troopers and two emergency dispatchers. As Colonel Schofield said at a news conference, "There was a series of errors. Those errors were contrary to the employees training and what the State Police expects of its employees. We will never actually know if the Officer could have intercepted the offending vehicle in this case. But what we do know is they did not have an opportunity to try, because of errors made by the Trooper assigned the original complaint and errors made by the two dispatchers." The investigative report blamed the lack of Police response on the Trooper who was assigned to patrol a 30 mile stretch of the Interstate, of 295 and 95, between Scarborough and Topsham. When the first motorist called to report an out-of-control truck heading south on I95 in Bowdoinham, the Trooper said, "10-4," after being told by the radio dispatcher about the truck. But Schofield said, "He failed to tell a dispatcher or supervisor that he was, roughly, 30 minutes from I95, in Raymond, on his way home because his shift was ending." Schofield said that, "Since the Trooper acknowledged the call, he should have dealt with the complaint in some manner. Either by personally responding or informing the dispatcher or the Troopers supervisor that he was too far away to respond." What is significant to note is that they went through eight different towns, Sledzic drove through eight different communities on the Interstate before finally stopping at the Scarborough tollbooth. Almost all of those communities said their law enforcement could have and would have responded, had they been notified by the State Police. When the accident occurred at the tollbooth, police responded within four minutes of hearing about the accident. So certainly, there were patrolmen within range to have been able to, perhaps, intercept or deter Gary Sledzic before that fatal accident. Some have said, "Well, how do we know that the accident wouldn't have happened had the State Police responded?" I guess, from my own personal feeling, it's not, to me, whether or not they would have been able to deter that accident but they should have tried.

My expectations are, when I call the police because someone's breaking into my house, they will come. Whether they come in time or not, whether they're able to apprehend the person and protect the safety of the family, will depend situation by situation, but they will come. I guess I have that same expectation when I'm driving on the highway, that if someone reports a driver who is driving erratically, perhaps drunk, that someone is going to respond to that so that these types of tragedies don't happen. Had the policeman come up behind Mr. Sledzic, do we have any guarantee that Mr. Sledzic would have pulled over? No, we don't. But we do know that while he was drunk and driving erratically, he was making lane changes. He was slowing down and speeding up according to the traffic there. So there is reason to assume that he would have acknowledged that there was a blue light behind him, would have been able to understand that and perhaps have pulled over. He had no other

criminal record other than the fact of the drunk driving. Had he not pulled over but driven faster, taken an exit, rolled his car, Barbara Maxfield and her daughter would probably still be alive today. We all know that in an accident a split second or five seconds, or ten seconds, can make all the difference between who's involved and who isn't. But unfortunately, they'd never had the chance for intervention because nobody responded.

There will be, perhaps, some arguments that the family should have gone the route of the court system first before coming to the Legislature. I would argue that we've already had the trial. We had the trial when Colonel Schofield did his investigative report. And Colonel Schofield found that there were serious errors made. He has proclaimed the verdict. The estate of Barbara Maxfield could have sued the State of Maine, both the dispatcher and the trooper. Recovery against the State of Maine would have been limited to \$300,000 and recovery against the individuals would be limited to \$10,000 per individual. However, before you get thinking, well, why didn't they go that route and go after the \$300,000? Under Maine law, the State appears to be immune from suit in this instance. And of the three individuals, it is likely that two of them are immune because their actions, or inactions, were discretionary. Thus, going to the judiciary in this case, under present law, would likely result in a suit finally going forward against one individual, the trooper, against whom \$10,000 could be recovered. All the other defendants are probably immune. If we go along with the assumption that they should have gone through the courts first and then come back to the Legislature, and we defeat this proposal, then in all likelihood they will do that. Then the State will probably have to hire independent, private law firms to defend each of the three individuals, and at the same time, the Attorney General's Office will defend the State. If during the investigation phase of the lawsuit other State employees are also implicated as being negligent, then in all likelihood they, too would become main defendants in the lawsuit. For each of them the State would have to hire private counsel. In other words, by forcing the estate to file suit in this matter, the State is going to be paying a substantial amount of money in Attorney's fees, win or lose.

I would much rather have that money go to compensate the sole survivor of Barbara Maxfield, little three-year-old Allan Maxfield, then have us be spending that on Attorney's fees. Should this bill pass, and pass in the other body, and be signed and funded, then the money will be put into a trust for Allan Maxfield to have at the age of majority and perhaps tied up further than that. I think it's small compensation for losing a mother and a sister. It won't bring them back. It certainly won't, in any way, make his life better for having lost his mother and sister. But I think it will force the State to accept the responsibility and to make some small compensation to this little boy, who's family expected someone to be there and to look after them, and nobody came. Thank you very much.

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

The President retired from the Chamber.

The Senate called to order by the President Pro Tem.

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

Senator **DAGGETT:** Thank you Madam President and members of the Senate. It's certainly by no means easy to oppose a suit, or a settlement, that deals with a tragedy such as this one. It's certainly a tragedy when a child's mother is killed. However, there are certain kinds of standards that we apply when these suits come in front of the Legislature. There are numerous facts involving the case. I don't think there's anyone who disputes the facts of the issue. This has been a well-publicized event and there has been a lot of scrutiny of the State Police surrounding this. I don't believe there's any dispute over what actually happened. It was alleged at one point, to me, that the Department of Public Safety admitted their guilt. I don't believe that's the case. I believe that there were problems with the process. Absolutely, there were problems with the process of handling this call and I believe that the Department made an effort to address those issues.

The reason why I'm not supporting this is because, when someone comes to the Legislature to ask for a settlement, or a suit to go forward, they should be coming here as a last resort. This is the last resort. There are other remedies that have not been pursued in this case. Those are the remedies of suits against the individual employees. The reason why I feel that that is an appropriate step to take place before the issue comes in front of us is that a suit against the employees, individually, which can take place, and I believe that it's possible federally as well as under State Civil Rights law, is to allow the court to apply the facts of the case. After the court applied the facts, if there were liability on the part of the State, then our insurance would kick in. We would be able to call in our insurance to help pay the cost. If then there were a decision to bring an additional bill in front of the Legislature to allow a suit to go forward, the Legislature would have an opportunity to look at the facts of the case, as applied by the court, and to use those to help us determine whether it was appropriate to lift the State's immunity, or to make a settlement. We don't have that information now because all the remedies that are available were not sought. So, it is my hope that this particular bill will not pass and that a reasonable process, an additional process, take place to give us the information we would need to make the best decision regarding a settlement or a suit. Thank you.

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

Senator **HARRIMAN:** Thank you Madam President. Good afternoon, ladies and gentlemen of the Senate. I've risen to join my good friend from Sagadahoc, Senator Small, and ask you to defeat the pending motion. In fact, much of the chronological events that Senator Small has outlined for you took place in my Senate District. In fact, this event traveled through every single town in my Senate District. Although it may have happened on the Maine Turnpike, it could have happened anywhere along the road. There were some fundamental errors, as evidenced by Colonel Schofield's published reports, in quotes, "errors in inconsistencies in training." And I can tell you firsthand, prior to having the honor of sitting in this body, I used to serve as a Lieutenant in the Fire Department. I can attest firsthand that the relationship between local police, fire and rescue, and State Police, was not what it probably is today, as a result of this accident. There were Police Departments along this route,

ready, willing, and able to respond but they were never called. That has to change and I presume it has indeed already occurred. I also rise to ask you to defeat the pending motion because I can think of no greater fear, as a parent, than to lose one of my children. I can think of no greater fear for a child than to lose a parent, or a brother, or a sister. And yet, if this motion is accepted, what we're going to tell this family is to go to court, go through all the emotional turmoil that they have probably already gone through, to prove the point that we all know is crystal clear. It seems to me that we need to recognize our errors. We need to meet this family and help them get on with their lives. This is an opportunity for us to do that. I sure hope you'll join me and Senator Small from Sagadahoc in defeating the pending motion. Thank you Madam President.

The Chair ordered a Division.

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

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

Senator **GOLDTHWAIT:** Thank you Madam President and ladies and gentlemen of the Senate. This is clearly one of the most difficult kinds of issues that we face in this Body. I would like to add one comment from my other life, where I work in the emergency room and see far too much of the kind of tragedy that happened on the Interstate, on this occasion. There is certainly some reason to believe that practices within our state law enforcement needed to be reviewed, were reviewed, and then improvements were pointed out. It is hard for me to believe that in almost any situation of such consequence, that we could ever review our practices and say, well, we were perfect. There are a few things that go through my mind, here. One is the potential disincentive for our departments to ever indicate that maybe we could be doing things a little better, and make changes based on what we learned in a situation like this, if the results of that acknowledgment is always going to be punishment. The other issue is the responsibility for this disaster rests squarely on the shoulders of the person who made the unfortunate decision to drink and drive. And yes, there may have been things that the State, in retrospect, might wish that it had done differently. However, it troubles me to think that the person who is truly responsible for this situation could, in any way, feel that that is a shared blame. That part of it may have been his fault but, really, part of it was that we, as a state, should have done something to keep his bad judgment from causing this terrible accident. It's really because of that that I intend to support the Ought Not to Pass motion and I hope that you will too.

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

Senator **BENOIT:** Thank you Madam President. May it please the Senate. Senator Goldthwait from Hancock just indicated that the person who drove drunk is really the person at fault. That this person did something wrong. She, I guess, also admits that the law enforcement community did something wrong. I don't generally get the opportunity to argue that two wrongs don't make a right, twice in the same day but I will, respectfully, do that. There are times when law enforcement is

inconsistent. An officer, for example, may see a minor traffic infraction occur, a speeding case, somebody goes through a stop sign and doesn't stop. It is a pursuit, sometimes a high-speed chase. Here, passiveness. The offense, one of the most serious that we have, operating under the influence of alcohol. There's a sign in Kittery that says, "Maine is tough on drunk drivers." Not here, not in this case. I've heard some folks say, well, if this happened, or if that happened, it might have been different. I call that the Rudyard Kipling defense against this bill. If, that begs the question. You've got to take this case on its facts. When you do, the only thing to do that's right and fair is to vote against the pending motion. Thank you.

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

Senator **CASSIDY:** Thank you Madam President and men and women of the Senate. As has been said earlier, this is a very, very emotional situation and sometimes this is one of the jobs that we have to deal with that we wish we didn't. That's the responsibility we take when we offer to serve the people of Maine. Last year, when this tragedy happened, I was a member of the Transportation Committee and we reviewed this very closely with Colonel Schofield. We met with him and Colonel Dow on several occasions to find the facts. I think it was stated earlier, I won't repeat all that. There was no question that there were some errors made and there's no question that there have been some changes made in our Department of Public Safety and, in fact, the Maine State Police. However, I think it was very important, the good Senator from Hancock, Senator Goldthwait, mentioned that we must not forget that the perpetrator was the real person who caused this tragedy. It wasn't the State Police. It wasn't us. It wasn't the state of Maine. There's no question that we made some errors. I also think it needs to be mentioned that we also, with our responsibility as a state, prosecuted and found this person to be in error. I think he's now in the process of paying for his poor judgment. The other thing that we've done in the state of Maine is we've made as many laws on OUI as we can. You'll notice, on the national level, that Maine was a leader in having .08 as an alcohol content and it's going to be accepted nationally. Also, we've just had some bills go through our committee, in the last week or so, on teen driving and OUI laws. I suggested to the Committee that we need to change that sign, that we have a tough OUI law, to, a very tough OUI law. I think we're making all the efforts we can to try and make people, our citizens and our constituents, realize the seriousness and that these kinds of tragedies can happen. In one of the discussions, earlier today, it's my understanding that the family has had the opportunity to sue and go through the insurance companies, which is obviously what needed to be done. Apparently, I think, there were some funds awarded. We can't accept the responsibility for every bad judgment in this state. We accept the responsibility for the errors that were made by our police officers. I think we've learned from those. Unfortunately, we just can't be all things to all people. Therefore, I intend to support the pending motion. Thank you Madam President.

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

Senator **SMALL:** Thank you Madam President and men and women of the Senate. I just want to reiterate. We are, again, not talking so much about an error of judgment as a fact that there

was a lack of response. And I guess I would equate this with, in using the good Senator from Hancock's talking about her experience in working in the emergency room, that if a person was brought in with a bullet wound and was bleeding, the person that caused that accident would be the person that shot that person. No doubt about it. But if that person were brought into the hospital and nobody made an attempt to assist that person, then I think we would also hold the hospital responsible for the fact that this person died. Not just the person that inflicted the gunshot wound. We're not, again, talking about that they attempted to resuscitate the patient, and didn't use quite the right procedures, and the patient died. We're talking about not even trying to intervene. And again, that's what strikes the fear into my heart. Not that people are going to, perhaps, make a split decision and make the wrong decision and perhaps exacerbate the speeding driving. It's the fact that they did not even attempt to intervene. For that reason, I think that the State has erred and should accept the responsibility and that the family should, indeed, be compensated. Thank you.

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

Senator **BENOIT:** Thank you Madam President and may it please the Senate. We want to be careful, now, on this bill not to be hypocritical. Every day we pass laws on our citizens that tend to be fairly strict, calling for their accountability. Now, here, we have a situation where we might cut and run because a State agency is involved, and accountability is a factor. Pretty self-serving, if you ask me. Thank you.

The Chair noted the absence of the Senator from York, Senator **LAWRENCE**, 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: CASSIDY, CLEVELAND, DAGGETT, GOLDTHWAIT, HALL, KILKELLY, LAFOUNTAIN, LIBBY, MACKINNON, MICHAUD, MITCHELL, MURRAY, O'GARA, PARADIS, RAND, RUHLIN, TREAT, THE PRESIDENT PRO TEM - CHELLIE PINGREE

NAYS: Senators: ABROMSON, AMERO, BENOIT, BUTLAND, CAREY, CATHCART, FERGUSON, HARRIMAN, KIEFFER, LONGLEY, PENDLETON, SMALL

ABSENT: Senators: JENKINS, MILLS, MITCHELL, NUTTING,

EXCUSED: Senators: BENNETT, LAWRENCE

18 Senators having voted in the affirmative and 12 Senators having voted in the negative, with 3 Senators being absent and 2 Senators being excused, the motion by Senator **DAGGETT** of Kennebec to **ACCEPT** the Minority **OUGHT NOT TO PASS** Report, **PREVAILED**.

Sent down for concurrence.

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

Off Record Remarks

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

Off Record Remarks

On motion by Senator **RAND** of Cumberland, **ADJOURNED** until Wednesday, March 11, 1998, at 9:00 in the morning.