

MAINE STATE LEGISLATURE

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Senate Legislative Record
One Hundred and Eighteenth Legislature
State of Maine

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Pages 981 - 1977

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

In Senate Chamber
Wednesday
March 18, 1998

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

Prayer by Reverend Linwood Bishop of the Hope Baptist Church in Manchester.

REVEREND LINWOOD BISHOP: Unite with me, together, in prayer please. Our Father and our God, at the outset of this day and these deliberations, we seek the wisdom and the strength that You have promised as exercise our faith. Coming, as we do, from various communities, backgrounds, various faiths even with our biases, we ask, Lord, for unity of purpose and mind as we reach our decisions here today. In this pre-Easter season, we become just a little more aware of what You have done for us and what You have promised us through our Lord Jesus Christ. Increase our faith so that by accepting the grace that we do not deserve and receiving the mercy that spares us what we do deserve, we may enjoy Your peace. We pray as a solemn assembly dedicated to the common affairs of the people of this state, that this body may truly act in their behalf with wisdom, honesty and integrity. We pray that we might be given the discernment to evaluate and resolve the issues that lie before this body today, according to Your will. Forgive us, Lord, for our failures and for our shortcomings, and grant that we may receive from You a right spirit within us. These mercies we ask in the name of the Lord Jesus Christ, through whom we are allowed and even encouraged to come today in prayer. Amen.

Doctor of the Day, Stephen Jendzjec, D.O., York.

Reading of the Journal of Tuesday, March 17, 1998.

COMMUNICATIONS

The Following Communication: S.C. 624

**STATE OF MAINE
ONE HUNDRED AND EIGHTEENTH LEGISLATURE
COMMITTEE ON UTILITIES AND ENERGY**

March 13, 1998

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

Dear President Lawrence and Speaker Mitchell:

Pursuant to the Government Evaluation Act, Maine Revised Statutes, Title 3, chapter 35, we submit the findings and recommendations of the Joint Standing Committee on Utilities and Energy with respect to the Office of the Public Advocate.

The committee has concluded that the Office is operating in accordance with its statutory authority. We are generally satisfied that the Office is conducting its work in accordance with its duties under the law and believe the Office is doing an adequate job fulfilling its statutory mandate. We have also concluded that due to recent increases in work load occasioned by, among other things, the restructuring of the electric industry, the Office should receive an increase in funding for this biennium. The committee is divided, however, over the amount of increased funding that is required. Our report provides further detail about our conclusions and our recommendations. Pursuant to Title 3, section 954, we are submitting with our report legislation that would implement our recommendations.

Sincerely,

S/Richard J. Carey
Senate Chair

S/Kyle W. Jones
House Chair

READ and with accompanying papers ORDERED PLACED ON FILE.

The Following Communication: S.C. 633

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

March 12, 1998

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

Dear Mr. President and Madam Speaker:

Pursuant to Title 3 Maine Revised Statutes, chapter 35, we are pleased to submit the findings and recommendations of the Joint Standing Committee on Agriculture, Conservation and Forestry from the review and evaluation of the Department of Agriculture, Food and Rural Resources under the State Government Evaluation Act. In its review, the committee found that the Department is operating within its statutory authority. However, the committee does make recommendations for statutory and administrative changes that are outlined in the report. Pursuant to 3 MRSA §955, sub-§5, we request permission for the committee to meet once in August or

September to review the department's progress in meeting the recommendations of the committee report.

Sincerely,

S/Sen. Marge L. Kilkelly
Senate Chair

S/Rep. George H. Bunker, Jr.
House Chair

READ and with accompanying papers **ORDERED PLACED ON FILE.**

The Following Communication: S.C. 625

**STATE OF MAINE
ONE HUNDRED AND EIGHTEENTH LEGISLATURE
COMMITTEE ON APPROPRIATIONS AND FINANCIAL
AFFAIRS**

March 16, 1998

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

Dear President Lawrence and Speaker Mitchell:

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

- L.D. 1658 An Act to Authorize a General Fund Bond Issue to Implement a Statewide Economic Improvement Strategy
- L.D. 1810 An Act to Authorize a General Fund Bond Issue in the Amount of \$6,000,000 for Critical Marine Infrastructure and Technology Investments
- L.D. 2045 An Act to Authorize a General Fund Bond Issue in the Amount of \$8,000,000 to Provide Affordable and Accessible Housing for Persons Who Are Mentally Retarded

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

Sincerely,

S/Sen. Michael H. Michaud
Senate Chair

S/Rep. George J. Kerr
House Chair

READ and with accompanying papers **ORDERED PLACED ON FILE.**

The Following Communication: S.C. 626

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

March 16, 1998

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

Dear President Lawrence and Speaker Mitchell:

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

- L.D. 2128 An Act Regulating the Practices of Feature Motion Picture Exhibitors and Distributors or Licensors and Providing Remedies for Violations

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

Sincerely,

S/Sen. John T. Jenkins
Senate Chair

S/Rep. Marc J. Vigue
House Chair

READ and with accompanying papers **ORDERED PLACED ON FILE.**

The Following Communication: S.C. 627

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

March 16, 1998

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

Dear President Lawrence and Speaker Mitchell:

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

- L.D. 2156 Resolve, to Ensure the Safety of Maine Children with Mental Health Problems

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

Sincerely,

S/Sen. Judy Paradis
Senate Chair

S/Rep. J. Elizabeth Mitchell
House Chair

READ and with accompanying papers **ORDERED PLACED ON FILE.**

The Following Communication: S.C. 628

**STATE OF MAINE
ONE HUNDRED AND EIGHTEENTH LEGISLATURE
COMMITTEE ON INLAND FISHERIES AND WILDLIFE**

March 16, 1998

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

Dear President Lawrence and Speaker Mitchell:

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

L.D. 1162 An Act to Clarify the Duties of the Maine Atlantic Salmon Authority

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

Sincerely,

S/Sen. Marge L. Kilkelly
Senate Chair

S/Rep. Norman R. Paul
House Chair

READ and with accompanying papers **ORDERED PLACED ON FILE.**

The Following Communication: S.C. 629

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

March 16, 1998

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

Dear President Lawrence and Speaker Mitchell:

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

L.D. 1729 An Act to Require Health-care Providers to Honor Do Not Resuscitate Orders

L.D. 2090 An Act to Protect Victims of Domestic Abuse from Eviction

L.D. 2168 An Act to Encourage Adoptions and Reduce the Number of Children in Foster Care in the State

L.D. 2183 An Act to Amend the Laws Regarding Intellectual Property Rights

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

Sincerely,

S/Sen. Susan W. Longley
Senate Chair

S/Rep. Richard H. Thompson
House Chair

READ and with accompanying papers **ORDERED PLACED ON FILE.**

The Following Communication: S.C. 630

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

March 16, 1998

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

Dear President Lawrence and Speaker Mitchell:

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

L.D. 2100 An Act to Permit a Local Development Commission to Assess a User Fee

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

Sincerely,

S/Sen. Richard P. Ruhlin
Senate Chair

S/Rep. Verdi L. Tripp
House Chair

READ and with accompanying papers **ORDERED PLACED ON FILE.**

The Following Communication: S.C. 631

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

March 16, 1998

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

Dear President Lawrence and Speaker Mitchell:

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

L.D. 2164 Resolve, to Enhance the Economy and Tourism Industry in Hancock County and Western Washington County by Requiring the Implementation of the Biennial Transportation Improvement Program Regarding Shared Use of the Calais Branch Rail Line

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

Sincerely,

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

S/Rep. Joseph D. Driscoll
House Chair

READ and with accompanying papers **ORDERED PLACED ON FILE.**

The Following Communication: S.C. 632

**STATE OF MAINE
ONE HUNDRED AND EIGHTEENTH LEGISLATURE
COMMITTEE ON UTILITIES AND ENERGY**

March 16, 1998

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

Dear President Lawrence and Speaker Mitchell:

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

L.D. 2208 An Act to Encourage the Development of Small Distributed Generation Technologies That Reduce Pollution

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

Sincerely,

S/Sen. Richard J. Carey
Senate Chair

S/Rep. Kyle W. Jones
House Chair

READ and with accompanying papers **ORDERED PLACED ON FILE.**

Off Record Remarks

ORDERS

Joint Order

On motion by Senator KILKELLY of Lincoln, the following Joint Order: S.P. 862

ORDERED, the House concurring, that the Joint Standing Committee on Agriculture, Conservation and Forestry report out, to the Senate, a resolve pertaining to a sustainable forestry initiative.

READ and **PASSED.**

Sent down for concurrence.

Joint Resolution

On motion by Senator KILKELLY of Lincoln (Cosponsored by Representative BUNKER of Kossuth Township, Senators KIEFFER of Aroostook, PARADIS of Aroostook, BENNETT of Oxford, Representatives LANE of Enfield, GOOLEY of Farmington, JONES of Greenville, CROSS of Dover Foxcroft, DEXTER of Kingfield, SHIAH of Bowdoinham, SAMSON of Jay, THOMPSON of Naples), the following Joint Resolution: S.P. 863

JOINT RESOLUTION IN HONOR OF THE 150TH ANNIVERSARY OF HANCOCK LUMBER COMPANY

WHEREAS, Hancock Lumber Company is one of the largest and oldest lumber companies in northern New England and owns and manages 14,000 acres of timberland, 2 sawmills, 9 contractor lumber yards and a construction financing company in Maine and New Hampshire; and

WHEREAS, Hancock Lumber Company was founded in 1848, when Nathan and Spencer Decker of Casco contracted with Ambrose Wight to build a sawmill on Meadow Brook west of Pleasant Lake 6 generations ago; and

WHEREAS, as Hancock Lumber Company has evolved over the years, their philosophy of "always changing to remain the same" has stayed true to the values and principles that have served it so well these 150 years; and

WHEREAS, Maine has been blessed with abundant and beautiful forests and has a rich history of lumbering, Hancock

Lumber Company has developed a sense of stewardship of those resources; and

WHEREAS, Hancock Lumber Company truly exemplifies the best of the Maine business community, remaining a local business that is sincere and community-minded; now, therefore, be it

RESOLVED: That We, the Members of the One Hundred and Eighteenth Legislature, now assembled in the Second Regular Session, take this occasion to recognize the 150th Anniversary of Hancock Lumber Company and to congratulate the Hancock family, their employees, customers and the communities served by Hancock Lumber Company, and to extend to all our very best wishes for continued success; and be it further

RESOLVED: That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to Hancock Lumber Company.

READ.

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

REPORTS OF COMMITTEES

House

Ought to Pass As Amended

From the Committee on **EDUCATION AND CULTURAL AFFAIRS** on Bill "An Act to Restore Advocacy for Handicapped Students" H.P. 1521 L.D. 2143

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (H-898)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-898)**.

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

READ ONCE.

Committee Amendment "A" (H-898) **READ** and **ADOPTED**, in concurrence.

TOMORROW ASSIGNED FOR SECOND READING.

From the Committee on **HEALTH AND HUMAN SERVICES** on Bill "An Act to Address the Crisis in Access to Dental Care for Low-income Children" (EMERGENCY) H.P. 1515 L.D. 2137

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (H-895)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-895)**.

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

READ ONCE.

Committee Amendment "A" (H-895) **READ** and **ADOPTED**, in concurrence.

LATER TODAY ASSIGNED FOR SECOND READING.

From the Committee on **TAXATION** on Bill "An Act to Provide for Equitable Taxation of All Financial Institutions" H.P. 1614 L.D. 2240

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (H-899)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-899)**.

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

READ ONCE.

Committee Amendment "A" (H-899) **READ** and **ADOPTED**, in concurrence.

LATER TODAY ASSIGNED FOR SECOND READING.

Divided Report

Majority of the Committee on **LABOR** on Bill "An Act Regarding Pension Benefits for Former Governors" H.P. 1381 L.D. 1936

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

Signed:

Senator:

MILLS of Somerset

Representatives:

CLARK of Millinocket
RINES of Wiscasset
STANLEY of Medway
PENDLETON of Scarborough
JOYCE of Biddeford
TREADWELL of Carmel
LAYTON of Cherryfield

Minority of the same Committee on the same subject reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-901)**.

Signed:

Senator:

TREAT of Kennebec

Representatives:
HATCH of Skowhegan
SAMSON of Jay
BOLDUC of Auburn

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

Reports **READ**.

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

Senate

Ought to Pass

Senator **HARRIMAN** for the Committee on **UTILITIES AND ENERGY** on Bill "An Act to Amend the Charter of Great Northern Paper, Inc." S.P. 854 L.D. 2267

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

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

READ ONCE.

LATER TODAY ASSIGNED FOR SECOND READING.

Ought to Pass As Amended

Senator **FERGUSON** for the Committee on **LEGAL AND VETERANS AFFAIRS** on Bill "An Act to Encourage Hospitality Industry Development in the State" S.P. 797 L.D. 2155

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (S-532)**.

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

READ ONCE.

Committee Amendment "A" (S-532) **READ** and **ADOPTED**.

LATER TODAY ASSIGNED FOR SECOND READING.

Senator **NUTTING** for the Committee on **STATE AND LOCAL GOVERNMENT** on Bill "An Act to Clarify the Law Requiring the Appointment of the Pineland Development Authority" S.P. 737 L.D. 2015

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (S-534)**.

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

READ ONCE.

Committee Amendment "A" (S-534) **READ** and **ADOPTED**.

LATER TODAY ASSIGNED FOR SECOND READING.

Senator **NUTTING** for the Committee on **STATE AND LOCAL GOVERNMENT** on Bill "An Act to Improve State House Utilization" S.P. 796 L.D. 2154

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (S-533)**.

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

READ ONCE.

Committee Amendment "A" (S-533) **READ** and **ADOPTED**.

LATER TODAY ASSIGNED FOR SECOND READING.

Senator **RUHLIN** for the Committee on **TAXATION** on Bill "An Act to Expand the Maine Seed Capital Tax Credit Program" S.P. 814 L.D. 2196

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (S-528)**.

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

READ ONCE.

Committee Amendment "A" (S-528) **READ** and **ADOPTED**.

LATER TODAY ASSIGNED FOR SECOND READING.

Divided Report

Majority of the Committee on **INLAND FISHERIES AND WILDLIFE** on Bill "An Act to Adopt Long-range Changes in the Methods by Which Whitewater Rafting Trips Are Allocated among Licensees" S.P. 604 L.D. 1801

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-530)**.

Signed:

Senators:
KILKELLY of Lincoln
HALL of Piscataquis

Representatives:
PAUL of Sanford
CLARK of Millinocket
CHICK of Lebanon
TRUE of Fryeburg
USHER of Westbrook
CROSS of Dover Foxcroft

Minority of the same Committee on the same subject reported that the same **Ought to Pass as Amended by Committee Amendment "B" (S-531)**.

Signed:

Representatives:

DUNLAP of Old Town
GOODWIN of Pembroke
PERKINS of Penobscot

Reports **READ**.

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

SECOND READERS

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

Senate As Amended

Bill "An Act to Reinstate Limited Rehabilitation Benefits under the Maine Workers' Compensation Act of 1992 for Those with Long-term Disabilities" S.P. 505 L.D. 1567 (C "A" S-519)

Bill "An Act to Create Incentives for Employers to Contribute toward the Costs of Comprehensive Health Insurance for Families" S.P. 696 L.D. 1931 (C "A" S-521)

Bill "An Act to Authorize a General Fund Bond Issue in the Amount of \$20 Million to Stimulate the Maine Economy through Research and Development" S.P. 819 L.D. 2205 (C "A" S-523)

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

Sent down for concurrence.

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

COMMUNICATIONS

The following Communication: S.C. 636

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

March 17, 1998

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

Dear Secretary O'Brien,

I have appointed to the Committee of Conference on the disagreeing action between the two bodies of the Legislature on the 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) the following:

Senator Beverly C. Daggett of Kennebec
Senator S. Peter Mills of Somerset
Senator Richard J. Carey of Kennebec

Sincerely,

S/Mark W. Lawrence
President of the Senate

READ and ORDERED PLACED ON FILE.

Senate at Ease

Senate called to order by the President.

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

Senator **PINGREE** of Knox 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:

SECOND READERS

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

House As Amended

Bill "An Act to Address the Crisis in Access to Dental Care for Low-income Children" (EMERGENCY) H.P. 1515 L.D. 2137 (C "A" H-895)

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Bill "An Act to Provide for Equitable Taxation of All Financial Institutions"
H.P. 1614 L.D. 2240
C "A" H-899

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

Senate

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

READ A SECOND TIME and PASSED TO BE ENGROSSED.

Sent down for concurrence.

Senate As Amended

Bill "An Act to Clarify the Law Requiring the Appointment of the Pineland Development Authority"
S.P. 737 L.D. 2015
(C "A" S-534)

Bill "An Act to Improve State House Utilization"
S.P. 796 L.D. 2154
(C "A" S-533)

Bill "An Act to Encourage Hospitality Industry Development in the State"
S.P. 797 L.D. 2155
(C "A" S-532)

Bill "An Act to Expand the Maine Seed Capital Tax Credit Program"
S.P. 814 L.D. 2196
(C "A" S-528)

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

Sent down for concurrence.

Off Record Remarks

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 (3/13/98) 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 13, 1998, by Senator **PINGREE** of Knox.

Pending - **FURTHER CONSIDERATION**

(In Senate, March 10, 1998, the Minority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED**.)

(In House, March 12, 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" (S-494)** in **NON-CONCURRENCE**.)

Senator **SMALL** of Sagadahoc moved the Senate **RECEDE** from **ACCEPTANCE** of the Minority **OUGHT NOT TO PASS** Report.

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 hope that the members will oppose the motion to Recede. This issue is a very emotional issue regarding this claim against the State, or a settlement. We have had debate and discussion on this earlier. It is my hope that we will oppose the motion so that the Ought Not to Pass report will go forward. Thank you.

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

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

THE PRESIDENT: The Senator may pose her question.

Senator **SMALL:** Mr. President, since this is only the motion to Recede, may I discuss what my intentions were by receding with the Body, or is that not allowed?

THE PRESIDENT: That would be allowed. To discuss the substance of any potential amendment the Senator would be proposing to offer would be not allowed.

Senator **SMALL:** Thank you Mr. President and men and women of the Senate. This was a very emotional issue that we discussed last week. The reason that I asked to Recede was so that I could offer an amendment for the Body to consider that might take care of some of the objections raised last week. I would certainly appreciate the courtesy of being allowed to offer that amendment for you to choose to accept or to not accept. Then we could go ahead and debate the merits of that amendment. And again, you could vote that up or down. Mr. President, I request a roll call.

On further motion by same Senator, 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 Kennebec, Senator Carey.

Senator **CAREY:** Thank you Mr. President. I am a Member of the Legal and Veterans Affairs Committee and I would hope that we do accept the motion that has been made. There is absolutely no question in anybody's mind that the State is at fault through the service of its troopers. Three times the State Police barracks were informed that there was a man weaving down the road for an extended period of time over a long distance of the pike. Once one trooper just answered the call, saying, "10-4." The dispatcher obviously felt that meant that that trooper was going to be covering that call when, in effect, that trooper was on his way home and made no effort at all to cover the situation. So the State, in my mind and in the minds of many people and several people on the Committee, was, in fact, at fault. There is going to be an attempt made which, in fact, may make the whole situation more palatable.

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. It is my hope that we will allow the motion to Recede to go forward so the amendment may be offered. Then we can debate the amendment on its merits. Thank you Mr. President.

THE PRESIDENT: The pending question before the Senate is the motion of the Senator from Sagadahoc, Senator Small, that the Senate **RECEDE** from its action whereby it **ACCEPTED** the Minority Ought Not to Pass Committee report. A roll call has been ordered. Is the Senate ready for the question?

The Doorkeepers secured the Chamber.

The Secretary called the Roll with the following result:

ROLL CALL

YEAS: Senators: ABROMSON, AMERO, BENNETT, BENOIT, BUTLAND, CAREY, CATHCART, FERGUSON, GOLDTHWAIT, HALL, HARRIMAN, KIEFFER, KILKELLY, LAFOUNTAIN, LONGLEY, MILLS, MITCHELL, MURRAY, NUTTING, O'GARA, SMALL, TREAT, THE PRESIDENT - MARK W. LAWRENCE

NAYS: Senators: CASSIDY, DAGGETT, JENKINS, LIBBY, MACKINNON, MICHAUD, PARADIS, PINGREE, RAND, RUHLIN

ABSENT: Senators: CLEVELAND, PENDLETON

23 Senators having voted in the affirmative and 10 Senators having voted in the negative, with 2 Senators being absent, the motion by Senator **SMALL** of Sagadahoc to **RECEDE** from **ACCEPTANCE** of the Minority **OUGHT NOT TO PASS** Report, **PREVAILED**.

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

READ ONCE.

Committee Amendment "A" (S-494) **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 offer Senate Amendment "A" under the filing number of (S-529) and move its Adoption and wish to speak to my motion.

On motion by Senator **SMALL** of Sagadahoc, Senate Amendment "A" (S-529) to Committee Amendment "A" (S-494) **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. The script that was prepared for me in the Secretary of the Senate's office said, "And you may speak briefly to your motion," so I will take their advice and try to be very brief. I do appreciate their script. I appreciate the Members that afforded me this opportunity to present this amendment, just to allow it to be aired before deciding upon it. Last week we debated this bill and some raised the question of why the family did not pursue all the avenues before coming to the State for restitution. And the answer is, as I stated then, that although they have the right to sue the State, as does every individual under the law, the State has immunity. Unless the immunity is waived, only through an act of the Legislature, the family would go to court without any expectation or hope of recovering damages. The only possible venue where they might be successful is to sue the three employees. Legal minds much better than my own, I must say I'm three years away from my legal degree, have said that they might, they just might have a successful case against the trooper. Recognize and understand that if they are successful and win a suit against the trooper, under current law, damages would be capped at \$10,000. All the expense of a trial, for both the family and the State, for a maximum award of \$10,000. For some here today that is acceptable. But I think others had assumed that the family had real alternatives to pursue. My amendment will allow the family to pursue a very real alternative by simply lifting the State's immunity, but retaining the State's cap of \$300,000 over damages. So, the family could go to court. The Court could award up to \$300,000 not more. And certainly they would have the option to award less. As some contended last week, if there is no case, if the State really was not to blame then the Court would have the authority to award zero in this case. But this would allow a judge and jury to decide whether the State shares

any responsibility for the deaths of Alan Leach's mother and sister. The argument that this sets a dangerous precedent is specious, I guess I've been reading too many law books, I had to use that word. I just want you to know, Maine Statute allows this procedure to take place under Title 14, chapter 741. As it says here, "Government entities, the State in its political subdivisions, are immune from court suits except for," and it lists under part A, "Suits arising out of negligence in the following activities," it talks about, "Ownership maintenance of motor vehicles, water craft, snowmobiles." That's part 1. Part 2, "Construction operation or maintenance of a public building." They would not apply for this. Part 3, "Sudden and accidental discharge of pollutants," another reason you could sue the State without having to lift the immunity. And Part 4, "Acts occurring during the performance of construction, street cleaning, or repairing of a highway, sidewalk, parking area, bridge, or other infrastructure." Those are the examples when an individual may sue the State and the State's immunity is lifted. Then, under Part C it says, "Suits authorized by the Legislature." So this is clearly setup in the law as an alternative, as a vehicle, for people who feel they have been wronged by the State, who do not come under Part 1, 2, 3, and 4, they're not operating a State motor vehicle or any of the other criteria, but they still feel that they have a legitimate case to go forward with. This is their opportunity to come to the Legislature and let the legislature decide whether or not they should proceed forward. As far as precedent goes, I know that issue has been raised, and since I began serving in the Legislature in 1979, we have had dozens of bills to sue the State. Some have passed and I have a listing of them here, and the alleged cause of loss is everything from loss due to failure to detect misappropriations of funds during audit, injury to a child placed in foster care, they go on and on. There are absolutely dozens of bills that have come before this Legislature. Some have passed. Some have gone on to become resolved. Some have been authorized to allow these people to sue. Most have not passed. Ought Not to Pass, Leave to Withdraw, back when we allowed that motion from a Committee. The majority are those determinations. So, this isn't a precedent. We've already allowed many bills to go forward. But we haven't allowed many more and I think that's important because this Body and the other Body are the watchdogs, as well as the Committee, to prevent frivolous suits to come through here and to go on and be waged against the State. But I think we have to determine today, whether or not this is a legitimate suit. Is this a frivolous suit or is this one that merits further action by a judge and jury? It will take it out of our arena to decide and put it in front of a judge and jury.

I want to close and I did not distribute the most recent editorial from the Bangor paper because, frankly, I even felt it was a little harsh and it was in my favor. I know most of us look at these and we decide that they either had all the material they needed, or not, according to whether they agree with our position or not. But on this one, I just wanted to take a couple of paragraphs out just to try to put this in perspective, and I think they said it well. "Knowing full well that the family Barbara Maxfield and 13 year-old Brooke Willis left behind is limited by State law to suing only those who can be proven to be directly negligent, probably one trooper and two dispatchers. And then, for no more than \$10,000 each, unless the Legislature lifts the immunity that protects it from civil law suits, which it somehow forgot to do. Contrast that with the case of David Prentiss of Limestone, another citizen wronged by sloppy government work. Prentiss was all set to sell his 13 acre property in Limestone last year until the prospective buyer found it incorrectly included on a

Maine development, a Department of Environmental Protection list of contaminated sites. The deal fell through and the Legislature's about to compensate Prentiss \$70,000 for his trouble." It's actually incorrect. They're allowing him to go forward with the suit. But I think the point is there, that we are allowing this one to go forward. "Then there's Dan Quarry of Montecello. Lawmakers are well on their way to paying him \$250,000 because of erroneous State testing preventing him from selling his potatoes in Canada. Prentiss and Quarry deserve compensation, no doubt. The State messed up, just not quite as much as they messed up with Alan Leach. The difference between land and potatoes on one hand and two human lives on the other hand, of course, is that money cannot buy human lives. But that's no reason for the State not to acknowledge its negligence, to admit that its agents, its employees, were derelict in their duty. The failure of the State Police to end its long-standing turf battle with local law enforcement, to correct the often noted inter-agency communication breakdown isn't really much different than bungled environmental agency paperwork, or flawed potato testing. But the big difference between land, potatoes, and human lives is that you can hand a landowner or a potato farmer a pile of money and make it all better. You can't do that with a three year-old boy, but that doesn't mean you shouldn't try." I thank you very much for affording me the opportunity to present this amendment and I hope you will consider it and vote to accept it. 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. It is indeed unfortunate that an editorial has been read as testimony because the three issues that were mentioned in that editorial, and are written about, have numerous, erroneous information. I'm not going to speak to the errors that are in that editorial because, frankly, the editorial of a newspaper is that newspaper's opinion. What we have here today are, frankly, the opinions of Legislators in trying to sort through a very difficult and very emotional issue. You cannot talk about the death of a family, of a mother and child, and talk about a surviving child and do it without serious emotion. As Legislators we have the right to vote based on our emotions. We also have the right to vote based on data and facts. We can vote on issues using both of those. In trying to explain my position today, I think there will be a combination of both of those.

First I want to make it very clear that if this suit is not allowed to go forward now, it does not mean that a suit could not be allowed to go forward later. As we all know, we see bills brought in front of this Legislature time after time, after time again, and each time the issue comes in front of us we use the information that we have, what we know, what we've heard, what we've seen, and what we feel to make the decision that we feel is best. With the information that I have now, I am making the decision that I feel is best. I know that each of you will be doing the same thing. So my efforts today are to explain why I will be voting against the amendment that is being offered.

As a Member of the Legal and Veterans Affairs Committee, those of us on the Committee handle the issues of suits against the State. Some we allow to go forward and some we don't. Some we've allowed, suggested a settlement, some the suit. It's a judgment call as to which decision we make. But we do have certain criteria that we are supposed to apply. One of those, and

the main one on which I'm resting my decision today, is if there are other remedies, those should be looked at first. Not coming here first, but looking at the other remedies. In this particular case it's been mentioned without legislative intervention a case can be brought against the individuals, who were State employees. I can do the math and I know that it's \$10,000 each. But the point is that when that case, or those cases are brought the Court would then be looking at a variety of issues and would be applying the law to those individuals. After that would happen, the Legislature would then have that information to make a decision. Again, it would be a judgment call as to whether or not we would lift the State's immunity to allow a suit to go forward. Basically that is the reason why I'm taking the position I am today, and I did in the past. We encourage people to look at the other remedies first and not to come here first. And again, a bill can be brought in next session, the session after that, or the session after that. It can continue to come back.

The second issue I'd like to mention today, and a part of my concern and a part of the issue of whether we allow suits to go forward is, if, when we look at one of these suits, the Committee feels that we could write a general law that would encompass all of these cases then that's what we would do. We would look to writing a general law that would say, for all of those people who fall under this particular circumstance, we will allow them to sue the State. That raises the question, in my mind, of the issue of failure to respond. Failure to respond. There are a lot of responsibilities that are laid on State Government and unfortunately, the responsibilities that are laid on us are rarely, rarely matched by the money to do the job, or the resources to do the job.

Yesterday, when I was talking with someone else about, actually another issue, another bill in front of us, I was given a fax sheet. It listed that 2,823 referrals to Child Protective Services were not seen. They were appropriate for services but they were not seen due to lack of resources. They were not seen. So we failed to respond in 2,823 cases. It concerns me about the number of cases that have been referred to State Government where we have not been able to respond because of the lack of resources. It's been suggested to me that even the response in this case was due to a lack of resources within the State Police. These are issues that we have to think about. Should we have 2,823 referrals from the children who expected some kind of intervention in their lives, perhaps? In any event, those children may not have had another resource. But there is another remedy in this case, and I suggest that that is the first place to go then come back to us with that information so we can make a decision based on information that is consistent with a way that we're supposed to handle the issues that come in front of our Committee. Thank you.

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

Senator **HARRIMAN:** Thank you Mr. President. Good morning ladies and gentlemen of the Senate. Last week when we had this issue before us, the press did an impressive job of covering the issue on both sides. As you may recall, at least in some of the media, there was a published Roll Call vote. It was one of those questions that often happens here where no could have meant yes, and yes could have meant no. And as a result, I'm sure, like you, I received numerous phone calls from people who had a special interest in this tragic incident. What was interesting was the number of people who thought I had voted

yes, on the motion to not let this go forward, thanking me. The number of people who thought my no vote meant I wasn't going to support the opportunity, for this family to seek an opportunity to air this issue on young Alan Leach's behalf, expressing their disappointment. So in many instances it was an opportunity to briefly explain to people how the legislative process works, which is my first point.

We had a bill before us that asked a simple question. Do you want to reject the opportunity for this family to move forward, or do you want to let them proceed? In its simplest form, that was the question. Yes or no. What we have before us today is an opportunity to answer the questions of people who have been reaching out to us. To those of you who say, let the Court decide, that the Legislature ought not to be determining before the fact, responsibility, or guilt, or innocence. The amendment before us allows us to answer in the affirmative. Yes, we hear you, and this is an issue that should be decided in Court, and this amendment will allow that to take place. For those of you who have said we have a responsibility to recognize that egregious mistakes were made, to assume responsibility for what has happened, and for those who feel that that is the case, this amendment says yes to you as well. But more importantly, Mr. President, I want to say today, to young Alan Leach, the three year-old boy who lost his mother and his sister, some day, as he becomes a young man, he's going to want to find out what happened. And like all curious youngsters, he's going to want to find out, from every available source, what happened to his mother and sister. When he does that in the years ahead, I want to say to Alan Leach, today, "Not only are we sorry for what has happened, but we made sure that although you're not able to speak for yourself today, that we have empowered you and your family to go to the Courthouse and let the story be told," and let a judge and a jury decide the answer to the question that he will most assuredly ask, "Why didn't anyone respond?"

I hope you'll join me in supporting the pending motion to allow the family to move forward, to go to Court once, not twice as proposed, where they would go to Court to prove responsibility and maybe be awarded up to \$10,000, only to come back to us a second time to ask for the immunity to be raised to go back to Court. Let's not do that to Alan Leach. Let's give him his day in Court, and let's do it now. Thank you Mr. President.

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

Senator **MILLS:** Thank you Mr. President and men and women of the Senate. It is probably best to begin by explaining that there are some profound reasons behind the Immunity Rules, which operate as a bar to suing the Maine State Police in a situation like this. If I just give you a few examples, I think you'll understand immediately why the law is the way it is. I suspect that every day in Somerset County there is someone who is being beaten in a domestic squabble who might be saved, or might be saved from further harm, if the Sheriff's Department were able to respond in a more timely way. I suspect there are dozens of situations in which the Department of Human Services might conceivably intervene in a family situation to avoid harm being done to a small child in an abusive household. And yet, the resources of this State are limited. There are probably some situations where one of us might have failed to get to a Roll Call vote, and a matter of some great moment, or great significance to one of our constituents, fails because you weren't there to put your light on. Judges make decisions, and quite frequently we're

all human, juries and judges make mistakes occasionally. And yet they are all immune, fundamentally immune from suit.

I accept what the Senator from Kennebec, Senator Carey, said, that the official investigation of this event certainly lays a foundation for concluding that there were omissions on the part of law enforcement officials and the dispatching personnel, who failed to attempt adequately to manage this crisis. But let me take that one step further and put you into a courtroom where these issues would be fully and completely litigated, and let's make some judgments about how that controversy would turn out. If it's true that the loss of the parent has value on the order of \$50,000 and I don't question that, let's assume that it's on the order of half a million dollars. If the tortfeasor, himself, the inebriate, the person who was driving down the highway and really caused this accident, is in the same courtroom with agents of the State, the dispatcher, the Maine State Police officer, and either a judge or a jury, or one of us is called upon to decide, well, how should this damage judgment be apportioned? Let's all agree that there is neglect, there is responsibility here, but how would you apportion, in percentage terms, the relative responsibility for what happened here? I think almost all of us would say that responsibility lies 80% or 90% at the hands of the person doing the driving. Assuming that he's financially responsible and able to respond, he would be paying easily the lions share of any judgment awarded. And the 10, or 20, or 30% that might be paid on behalf of the State's agents would be paid only if we found two things. Number one, that there was neglect, oversight, omission, if they failed to do something that reasonable and prudent State employees ought to have done. That's the standard by which their conduct would be measured. But there would be another element necessary to be proven, you would have to show that the intervention by a Maine State Police officer or by other law enforcement authorities would have produced a different outcome for this casualty. If the case were lost, I suggest to you, it might be lost on that issue, because that issue, called proximate causation, is the one that is the most difficult one, I think, to reconcile. Because we are all aware of situations where law enforcement officials give chase and the motorist speeds up, evades the police officer, comes around a corner and smashes head-on into an innocent motorist and the chasing of the criminal defendant, the inebriate, the very chasing of the drunken driver can sometimes exacerbate a situation that is pretty bad to begin with. So, there's a serious question in this case, in this claim, about whether the omission to act in a timely fashion produced the result that we all abhor. But if they were to overcome that in trial and it were found that the State officials, or the State employees, were guilty of some measure of fault, one would argue on their behalf that it was an act of omission, an oversight, a neglect to act in the face of grotesque, reckless conduct on the other. And when you start comparing those two, clearly, 80% or 90% of the damage judgment would come to rest at the hands of the motorist. Now why then is the plaintiff in this case, the child, presenting his situation through attorneys here? It comes here only, frankly, because of the inadequacy or the lack of insurance coverage on the part of the fellow driving the pickup truck. I think it is appropriate for us to evaluate, or to understand what there is there for ability to respond on his part. And I am informed that there is a certain amount of insurance coverage, not only on the driver of that vehicle but that the vehicle in which the boy was riding also had what they call uninsured motorist coverage, which will afford a recovery to the estate that is, I may not be correct on the figures, but on the order of a couple hundred thousand dollars. There may be some

expenses netted out of that. But in any case, there is a fairly substantial recovery coming to the boy as the result of insurance resources that are there specifically to cover this sort of tragic situation.

One of the things that I think it's important to bare in mind is that we are not leaving, by voting against the pending motion, this child destitute, not leaving him without resources. In my own view, if the child had been left destitute, if there were no opportunity for a recovery against those clearly responsible, or more responsible for this occurrence, I would be very concerned about leaving the child in those circumstances. I am of the view, having thought about fairly carefully, that I'm going to vote against the pending motion. I wasn't sure what I was going to do when I came here today, but I think that, perhaps, it is best that we close the chapter on this dispute. It's been thoroughly investigated by public officials. The people who were in public service, who had responsibility for the failure to act, have been dealt with administratively. I am not sure that a lawsuit to explore those issues at greater length would prove in the public interest in this case.

Off Record Remarks

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

Senator LIBBY: Thank you Mr. President and women and men of the Senate. I guess this is my first time weighing in on this particular issue. I had hoped it would have been dispensed by now. One of the reasons I stand today is because last weekend I had the good fortune of attending five different town meetings in my district, I guess that's good fortune. As busy as that was I took the time to speak to every single constituent that I could and the number one issue among my constituents, at that time, was the issue before us today. One of my constituents from East Waterboro, who I'd prefer to have remain nameless, wrote me a letter about this issue and I'd like to read it into the record and then I'd like to follow with just a couple of comments. "Dear Senator Libby, It is with great concern for our future, the future of our state, that I write you this evening. It was, without a doubt, a tragedy that the mother and child were killed by a drunk driver on the Maine Turnpike. There is no one who has more empathy for the family left behind than I. But the bill which passed in the House today, while perhaps well-intentioned, sets what I believe to be a dangerous legal precedent. This is a matter for the Courthouse not the State House. It is a civil matter. It is not the fault of the State of Maine. On any given day in this state, or any other, a law enforcement officer is dispatched to investigate the report of a driver operating their vehicle erratically. Indeed, just as many times, when the officer arrives on the scene the vehicle is nowhere to be found. In some cases an accident has occurred before they were able to intercept the vehicle. In our rural areas it is the rule rather than the exception. We just don't have enough officers to cover every inch of the highway. It is my firm belief that even if the call had been dispatched immediately, it seems unlikely that the accident could have been prevented. The Senate had good sense to vote down the bill the first time around. I pray they do the same when it returns. For if it does pass, another should be introduced posthaste. One authorizing funds to hire as many state troopers as it would take to stand fingertip to fingertip throughout the entire length of the Maine

Turnpike, and every other State road, 24 hours a day, 7 days a week. For I dare say, even then, irresponsible people will make inappropriate decisions which cost some innocent victim their life or limb. In addition I would recommend that we increase whatever liability insurance we have, for we are making ourselves vulnerable to future litigation. Please vote no when the bill returns to the Senate for reconsideration." Now, I feel that even the amended version of this bill leaves us with the exact same problem we had to begin with. In my area, in my district, when there is a chase, the officers many, many times back off the chase because they are afraid that the automobile that's flying down the highway, trying to elude the police officer, is going to run into somebody and hit them, and cause a life to be lost. My answer to the legal profession and to others who take a look at these situations is that we just can't have it both ways. Society tells our law enforcement officers to back off because they might kill somebody. Society also tells them, intercept them because they might kill somebody. It just can't work both ways. It's as simple as that. Probably the State has some responsibility in this matter. They have the responsibility to review their policies and make those policies work better in cases like this one. And you know, if the young person that is at issue here in the estate of Barbara Maxfield, if that young person were old enough to think for himself, he might just be man enough to say, it's my lot in life to make sure that we get the drunk drivers off the road. 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 listened to the good Senator from York, Senator Libby, talk about the letter that he received and in the letter, quoting that we would almost have to put State Police on the Turnpike almost fingertip to fingertip. Let me tell you that there were roughly 40 miles from the first report until the crash and no one intercepted that vehicle. When the good Senator spoke about the police backing off because the people they were chasing might, in fact, hit a car, well, you know the results of this accident. There are two people who are dead, laying in a car, cracked up against a toll booth. The first call to the police came in at 15:48, 3:48 in the afternoon. The last call that came in was at 16:11, which is 11 minutes after 4:00. There were two calls that came in after 15:48. One seven minutes later, again mentioning that there was a very erratic, possibly OUI driver. Fifteen minutes later the call came in saying, don't worry about it, to the effect, he hit the person and they're wedged in at the toll booth. There were 23 minutes from the first call, and not a single officer responded. But yet, when the call came in at 11 past 4:00 in the afternoon, within seven minutes there were two troopers at the accident. Now it seems as though, if they could move that fast and get to the accident scene in seven minutes after receiving a call, they might possibly have been able to intercept during a 23 minute period. There are people who are simply opposed to believing that, in fact, the State can do no wrong. And so there are people who get in positions on Committees who will never vote to allow the State to be sued. That's happened again in this case, without naming a single individual. But I would tell you that the State could not be any further from being not responsible for this accident than any that I have ever involved myself in. There definitely is something wrong. Obviously, the Chief of the State Police and the Commissioner of the Public Safety Department found something wrong because a dispatcher

and a trooper were suspended. They lost a few days pay and then they were put back on the job. That little boy lost much more than a few days pay that his mother might have earned. I would hope that you support the motion.

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 want to thank the good Senator from York, Senator Libby, for reading his constituents letter. The constituent, as I recall, suggested that this is a civil matter and it should go to the Courts, and that's all we're trying to do here, in this amendment, is to get redress in the Courts. Mistakes were made, as the good Senator from Kennebec, Senator Carey, has outlined very eloquently. Mistakes were made by the State. All we're trying to do is get an opportunity to go into the courts and get redress. I'm not going to belabor the point. Enough has been said on this already, but I would hope that the people in this chamber would support the pending motion. Thank you Mr. President.

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

Senator **BEHOIT:** Thank you Mr. President and may it please the members of this august chamber. I really don't believe some of things that I'm hearing in here, today, that are very disturbing to me and to my constituents. The State should never be above the law. Neither should the State ever be given the opportunity to hide behind a law, nor should it ever be allowed to set up an insufficient law in defense. Here we are, allowing the State to cut and run with the Courthouse key in its pocket. We ought to be ashamed of ourselves. Don't be afraid of fairness to allow the Courthouse door to open concerning this egregious situation. Don't be afraid. The good Senator from Somerset, Senator Mills, gave us a blow by blow description, I guess, of what would happen if the suit was allowed, and what would happen in the Courtroom. I say respectfully, that begs the question, open the Courthouse door, please, as we've done in the past in fairness, and allow this case to go forward because the State is not above the law. Thank you Mr. President.

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

Senator **LIBBY:** Thank you Mr. President and men and women of the Senate. The question that we need to answer here is, in my opinion, who is the State? The State is you and I and I don't think that you and I being sued over this case is the right answer. In fact, I'd like to stand here and tell you that I don't want to be sued in this case because human error is part of human nature. We do make mistakes. Nobody's saying there wasn't a mistake made here. But we are saying that if we get to the point where we're all suing each other and we're all suing the State so that we end up being the ones sued, who is going to win and who is going to lose? I understand that we have to take these things, look at them on a case by case basis, there is no law for the land that can be given, that is an across-the-board law that's going to fit every single case. I do understand that. But just who are we suing? Just who are we going after? Ourselves? I think a better alternative, ladies and gentlemen of the Senate, is to try to do something about the problem. If we have a problem that is a

social problem, if we have a problem of reckless driving, then we need to continue to work and work hard, and work diligently to do something about that. I would urge you to oppose the pending motion. Thank you.

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

Senator **JENKINS:** Thank you Mr. President. Could I pose a question through the Chair to anyone that may be able to answer?

THE PRESIDENT: The Senator from Androscoggin, Senator Jenkins may pose his question.

Senator **JENKINS:** Thank you Mr. President. I hear the term, the State at fault, and for clarification for myself have to ask, is the State at fault because of the people it hired? In other words, did we hire the wrong people who were involved in this accident? Number two, is the State at fault because of the judgment of the States employees, who were representative of the State, who were involved in this accident? Or number three, is the State at fault because of faulty policy and procedures which allowed this accident to happen? Thank you.

THE PRESIDENT: The Senator from Androscoggin, Senator Jenkins poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Kennebec, Senator Daggett.

Senator **DAGGETT:** Thank you Mr. President and men and women of the Senate. I would suggest that the questions that have been posed by the Senator from Androscoggin, Senator Jenkins, are precisely the questions that those of us here are trying to answer. And depending on the answer to those questions would depend on the way that one votes today. I just would remind us all that the Courthouse doors are open today, in this case, without legislative intervention. The beginning of the answer to those questions could take place right now.

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

Senator **BENNETT:** Thank you Mr. President and men and women of the Senate. We all have to exercise our own judgment on this as the law calls for us to do. I think it's probably a good law, as has been stated, that we should take these on a case by case basis. I would never have voted as judge and jury to support a direct appropriation in this case as the original bill would have called for. Because I do believe that this belongs in the Courthouse not the State House. With this amendment we don't have to have evidence of fault. We don't have to have evidence of State guilt or responsibility. We only have to have evidence enough to suggest that the victim deserves an opportunity to pursue this matter efficiently and quickly, to get some sort of justice. I also wanted to rise today to just share some information about the sources of funds that would be available under this proposed amendment, this \$300,000 cap. It's a small point but it's a point we should have heard asked in the corridors. The State has a Risk Management Pool, an internal service fund, which is maintained at about a \$6 million or \$7 million level. Currently, in that fund, there is \$6.2 million. Of that \$6.2 million, about \$2.4 million has some claim against it,

which leaves about \$3.8 million in that fund. I'm not suggesting that we should spend that well dry as well as every other well that is available to us, but I am suggesting that we do have, in the State, a fund already established to take care of cases like this, that \$300,000 is a significant amount of money and it would come from that fund. And I offer that as information. I thank you.

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 wanted to take a stab at answering the good Senator from Androscoggin, Senator Jenkins, question. I guess my choice was B and C, both. I think the State is responsible for its employees because it is the employer. If Bath Iron Works employees, while doing their job, caused damages it would be Bath Iron Works that, I believe, would be responsible in a suit. And again, I'm putting my lawyer hat on, that does not fit very well, but that has always been my understanding. I think C, whether or not the State Police procedures were at fault. I think one could also argue that, yes, they were at fault because as a result of this investigation they have changed their procedures. They've tried to cut down on the turf battles and become more accepting of calling in other Departments, whether it's sheriff or local municipal police, in order to prevent this type of situation from happening again. If they can't be in all places at all times, should they not then notify people who would have access to the perpetrator for whatever the crime. But again, that's just my opinion. What we're asking is that we allow a judge and jury to make those determinations.

The good Senator from York talked about solving the problem of drunk driving. I couldn't agree more, but I think that starts with stopping the drunk driver on the roads. If you know that there's a drunk driver out there, do we let them continue because chasing them might exacerbate the problem? I think you first have to see whether that drunk driver would at least pull over. Granted, had there been a high speed chase, it would have been appropriate for the policeman to pull back. We have no way of knowing whether Gary Sledzic was going to pull over or not. He was drunk but he was making lane changes. He was using signals and he was not evading police. He was just driving down the road drunk. Had he seen a blue light, we don't know whether he would have pulled over, but it certainly would have altered the course of events for this one family. I don't think anybody would deny that.

I think the other issue that was raised was, gee, we have omissions by employees all the time. We don't have enough people to do this work, and that is probably true. We should work to correct those. But I think the difference in this case is their own Department investigated this. It was a very open investigation. They found that there was serious errors committed. Serious enough to discipline two of the employees and to fire a third. I don't think we see that in the other situations that were brought up where someone has too many cases and just cannot see to all the people that they're responsible for. This was so serious that they fired one of the employees and they disciplined two others. So, I think this sets itself off from the other cases that were talked about. The bottom line is, we all have different opinions. We have different lawyers that get up and give a different idea of what is correct. I'm not a lawyer. I don't pretend to be. I, perhaps someday, could serve on a jury. But I do think that this situation, because there are differences of opinion, does deserve to have its day in Court. They may decide

to go with the cap of \$300,000. They may take the good Senator from Somerset, Senator Mill's advice and fine for a smaller amount because of the uninsured. But the bottom line is they would have their opportunity to be heard in court, to make their case and then let people who do this as part of their duty to decide what should be the proper judgment. So I hope you will accept the pending motion. Thank you Mr. President.

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 two quick points, Senator Jenkins from Androscoggin asked, actually, a very good question. I think the response should be, all three theories would be open. If the State's immunity is waved, the people arguing for responsibility can argue upon any theory that seems appropriate to the facts. The most obvious theory here would be a direct omission at the time by State agents, but a theory of responsibility for hiring, or failing to train, that sort of thing is fair game. So you're not limited in the theory that you might apply, but you might have difficulty establishing the facts or the proof behind such a theory.

The other point I wanted to make, and I'll sit down, is that by waving the immunity of the State in this fashion, we are also subjecting the State to what is called the Rule of Joint and Several Liability, which means that even if it should be found that the State is only 10% or 20% responsible for this casualty, to the extent that there is economic deficiency in the ability of the driver to respond, or if there's deficiency in the coverage on the UM coverage that's on the mother's car to act as a substitute for that responsibility, then the State, at that point, becomes responsible for paying much more, perhaps, than what would otherwise be regarded as its fair share. In other words, the reason why the State, in this case, might be compelled to pay more than a small percentage of the judgment is to make up for some partial inadequacy in the coverage for the party who is clearly responsible for this casualty.

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

Senator **BENOIT:** Thank you Mr. President and may it please the Senate. I thank the good Senator from Androscoggin, Senator Jenkins, for raising the three questions, Sir, that you posed. Your posing those three questions shows, to me, the basis for supporting this amendment. Your three questions, it seems, take up the substance of the case, some of the issues. Open up the courtroom so these issues can be litigated. The very questions you posed, to me, are a good basis for supporting the amendment. The good Senator from Kennebec, Senator Daggett, says the Courthouse door is already open. I will give her that, but when the victims of this egregious situation walk into the Courthouse, where do they find themselves but in the cellar, given the inadequacy of the statute that they will have to be there under and to litigate by. Downstairs justice is what they'll get, in the cellar of the courthouse. And all they're asking now, in fairness, is to be upstairs in the courtroom where everybody else is allowed to go and try their case. Thank you Sir.

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

Senator **CAREY:** Thank you Mr. President and members of the Senate. I have the testimony of David Fitz, the Director of Risk Management Division, and Lieutenant Shad of the Department of Public Safety, both who opposed the bill in its original form. I would read part of the statement of Lieutenant Shad. "While we maintained that we are not responsible for, or liable for the accident at the 6A Toll, we do believe that if the representative of Barbara Maxfield's estate wishes to pursue an action against us, that the appropriate forum is in the Judicial system rather than this Committee. A court is better equipped to perform necessary fact finding functions effectively and to apply the law to these facts." This amendment does that. As far as the Risk Management Division and the Director David Fitz, he came to us and said, "I further suggest that the cause of action underlying this resolve can and should be addressed through the State Judicial system. If the Department of Public Safety is found to be legally liable, under the Maine Tort Claims Act, or under the appropriate Civil Rights laws, any judgment up to the policy limits could be paid from the existing insurance. If the Resolve before you is passed, the policy of insurance will not be utilized in the best possible manner. It will not likely benefit the taxpayers of the State who's tax dollars have been paid." This amendment would then send us to Court. I appreciate your indulgence. 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. The testimony that was read to you which refers to pursuit in the Judicial system, as my recollection, I don't have the testimony in front of me, does, in fact, make reference to suing the employees individually. That is precisely the point. In order to bring into play the State's insurance policy, and to make a determination the remedy would be to go through the Judicial system by suing the employees individually. That is the reference that has been read to you. Thank you.

On further motion by same Senator, 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, CATHCART, FERGUSON, HALL, HARRIMAN, JENKINS, KIEFFER, KILKELLY, LONGLEY, MITCHELL, MURRAY, NUTTING, SMALL, TREAT, THE PRESIDENT - MARK W. LAWRENCE

NAYS: Senators: CASSIDY, DAGGETT, GOLDTHWAIT, LAFOUNTAIN, LIBBY, MACKINNON, MICHAUD, MILLS, O'GARA, PARADIS, PINGREE, RAND, RUHLIN

ABSENT: Senators: CLEVELAND, PENDLETON

20 Senators having voted in the affirmative and 13 Senators having voted in the negative, with 2 Senators being absent, the motion by Senator **SMALL** of Sagadahoc to **ADOPT** Senate Amendment "A" (S-529) to Committee Amendment "A" (S-494), **PREVAILED**.

Committee Amendment "A" (S-494) as Amended by Senate Amendment "A" (S-529) thereto, **ADOPTED** in **NON-CONCURRENCE**.

TOMORROW ASSIGNED FOR SECOND READING.

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

PAPERS FROM THE HOUSE

Joint Order

The following Joint Order: H.P. 1645

ORDERED, the Senate concurring, that Bill, H.P. 1500, L.D. 2122, "An Act to Support the Long-term Care Steering Committee" and all its accompanying papers be recalled from the Governor's desk to the House.

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

READ and **PASSED**, in concurrence.

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

COMMUNICATIONS

The Following Communication: H.C. 445

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

March 18, 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 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)

Representative **TUTTLE** of Sanford
Representative **GAGNON** of Waterville
Representative **SPEAR** of Nobleboro

Sincerely,

S/Joseph W. Mayo
Clerk of the House

READ and **ORDERED PLACED ON FILE.**

Senate at Ease

Senate called to order by the President.

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

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

Off Record Remarks

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

PAPERS FROM THE HOUSE

Joint Order

The following Joint Order: H.P. 1646

ORDERED, the Senate concurring, that the Joint Standing Committee on Agriculture, Conservation and Forestry report out legislation regarding forestry to the House.

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

READ and **PASSED**, in concurrence.

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

Off Record Remarks

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

Off Record Remarks

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

After Recess

Senate called to order by the President.

Off Record Remarks

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

REPORTS OF COMMITTEES

House

Ought to Pass As Amended

From the Committee on **AGRICULTURE, CONSERVATION AND FORESTRY** on Bill "An Act to Authorize the Director of the Bureau of Parks and Lands to Grant a License for Groundwater Extraction at Range Ponds State Park" H.P. 1586 L.D. 2217

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (H-903)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-903)**.

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

READ ONCE.

Committee Amendment "A" (H-903) **READ** and **ADOPTED**, in concurrence.

TOMORROW ASSIGNED FOR SECOND READING.

From the Committee on **BANKING AND INSURANCE** on Bill "An Act to Implement the Recommendations of the Commission to Study Insurance Fraud" H.P. 1545 L.D. 2174

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (H-914)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-914)**.

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

READ ONCE.

Committee Amendment "A" (H-914) **READ** and **ADOPTED**, in concurrence.

TOMORROW ASSIGNED FOR SECOND READING.

From the Committee on **HEALTH AND HUMAN SERVICES** on Bill "An Act to Conform Maine's Safe Drinking Water Laws with the 1996 Amendments of the Federal Safe Drinking Water Act" H.P. 1441 L.D. 2005

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (H-904)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-904)**.

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

READ ONCE.

Committee Amendment "A" (H-904) **READ** and **ADOPTED**, in concurrence.

TOMORROW ASSIGNED FOR SECOND READING.

From the Committee on **HEALTH AND HUMAN SERVICES** on Bill "An Act to Regulate the Functioning of End-stage Renal Disease Facilities" H.P. 1529 L.D. 2151

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (H-912)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-912)**.

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

READ ONCE.

Committee Amendment "A" (H-912) **READ** and **ADOPTED**, in concurrence.

TOMORROW ASSIGNED FOR SECOND READING.

From the Committee on **LABOR** on Bill "An Act to Clarify the Doctrine of Res Judicata in Workers' Compensation Cases" H.P. 955 L.D. 1318

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (H-907).**

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-907).**

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

READ ONCE.

Committee Amendment "A" (H-907) **READ** and **ADOPTED**, in concurrence.

TOMORROW ASSIGNED FOR SECOND READING.

From the Committee on **NATURAL RESOURCES** on Bill "An Act to Facilitate Delegation of the Federal Waste Discharge Permitting Program" H.P. 1291 L.D. 1836

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (H-910).**

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-910).**

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

READ ONCE.

Committee Amendment "A" (H-910) **READ** and **ADOPTED**, in concurrence.

TOMORROW ASSIGNED FOR SECOND READING.

From the Committee on **STATE AND LOCAL GOVERNMENT** on Resolve, to Repeal a Prior Resolve Authorizing the Exchange of a Parcel of Land Owned by the State with One Owned by Luke Bolduc H.P. 1581 L.D. 2211

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (H-909).**

Comes from the House with the Report **READ** and **ACCEPTED** and the Resolve **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-909).**

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

READ ONCE.

Committee Amendment "A" (H-909) **READ** and **ADOPTED**, in concurrence.

TOMORROW ASSIGNED FOR SECOND READING.

From the Committee on **TAXATION** on Bill "An Act to Implement the Recommendations of the Commission to Study the Restructuring of the State's Fiscal Policies to Promote the Development of High-technology Industry in Maine"

H.P. 1585 L.D. 2216

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (H-911).**

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-911).**

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

READ ONCE.

Committee Amendment "A" (H-911) **READ** and **ADOPTED**, in concurrence.

TOMORROW ASSIGNED FOR SECOND READING.

From the Committee on **TAXATION** on Bill "An Act to Amend the Law Concerning Tax Base Sharing" H.P. 1613 L.D. 2239

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (H-902).**

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-902).**

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

READ ONCE.

Committee Amendment "A" (H-902) **READ** and **ADOPTED**, in concurrence.

TOMORROW ASSIGNED FOR SECOND READING.

From the Committee on **UTILITIES AND ENERGY** on Bill "An Act to Facilitate Local Distribution of Natural Gas"

H.P. 1495 L.D. 2094

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (H-908).**

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-908).**

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

READ ONCE.

Committee Amendment "A" (H-908) **READ** and **ADOPTED**, in concurrence.

TOMORROW ASSIGNED FOR SECOND READING.

From the Committee on **UTILITIES AND ENERGY** on Resolve, Regarding Legislative Review of Chapter 301: Rules for Standard Offer Service, a Major Substantive Rule of the Public Utilities Commission (EMERGENCY)

H.P. 1591 L.D. 2220

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (H-913).**

Comes from the House with the Report **READ** and **ACCEPTED** and the Resolve **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-913).**

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

READ ONCE.

Committee Amendment "A" (H-913) **READ** and **ADOPTED**, in concurrence.

TOMORROW ASSIGNED FOR SECOND READING.

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

REPORTS OF COMMITTEES

Senate

Ought to Pass As Amended

Senator LONGLEY for the Committee on **JUDICIARY** on Bill "An Act to Promote Professional Competence and Improve Patient Care" S.P. 571 L.D. 1728

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (S-543).**

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

READ ONCE.

Committee Amendment "A" (S-543) **READ** and **ADOPTED.**

TOMORROW ASSIGNED FOR SECOND READING.

Senator MILLS for the Committee on **TAXATION** on Bill "An Act to Modernize Maine's Fuel Tax Laws" S.P. 585 L.D. 1748

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (S-537).**

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

READ ONCE.

Committee Amendment "A" (S-537) **READ** and **ADOPTED.**

TOMORROW ASSIGNED FOR SECOND READING.

Senator O'GARA for the Committee on **TRANSPORTATION** on Bill "An Act Concerning Enforcement of Parking Spaces for Persons with Physical Disabilities" S.P. 813 L.D. 2195

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (S-538).**

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

READ ONCE.

Committee Amendment "A" (S-538) **READ** and **ADOPTED.**

TOMORROW ASSIGNED FOR SECOND READING.

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

ORDERS

Joint Resolution

On motion by President LAWRENCE of York (Cosponsored by Speaker MITCHELL of Vassalboro, Senators PINGREE of Knox, PARADIS of Aroostook, GOLDTHWAIT of Hancock, MURRAY of Penobscot, RAND of Cumberland, AMERO of Cumberland, Representatives ROWE of Portland, KONTOS of Windham), the following Joint Resolution: S.P. 865

JOINT RESOLUTION PROCLAIMING THE MONTH OF MAY TO BE "IT'S MY FIGHT, TOO" MONTH AS A FIGHT AGAINST BREAST CANCER

WHEREAS, all of us in the State recognize that a woman's fight against breast cancer is a family matter and believe that children, husbands and brothers can offer strong emotional support as the women in their lives experience breast cancer treatment; and

WHEREAS, one out of every 8 women in the United States will develop breast cancer in her lifetime and it is especially important that this issue be highlighted to make certain that an entire family affected by breast cancer is helped in every way possible; and

WHEREAS, it is equally important that all our citizens educate themselves on how to support the women in their lives that have breast cancer; and

WHEREAS, the Northeast Health Care Quality Foundation has played a critical role in underscoring this disease as a matter for the whole family with its campaign of "It's My Fight, Too"; now, therefore, be it

RESOLVED: That We, the Members of the One Hundred and Eighteenth Legislature, now assembled in the Second Regular Session, take this occasion to recognize the importance of involving the whole family in the struggle against breast cancer and that we designate May, 1998 as "It's My Fight, Too" month in Maine; and be it further

RESOLVED: That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to the Northeast Health Care Quality Foundation and the American Cancer Society, Maine Division, Inc.

READ and ADOPTED.

Sent down for concurrence.

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

ORDERS

Joint Order

On motion by Senator LIBBY of York, the following Joint Order:
S.P. 864

ORDERED, the House concurring, that Bill, "An Act to Reduce the Maine State Sales Tax to 5%," S. P. 164, L. D. 493, and all its accompanying papers, be recalled from the legislative files to the Senate.

READ.

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

Senator **RUHLIN:** Thank you Mr. President and ladies and gentlemen of the Senate. Today is now late in March. We have already made decisions on policy in this Legislature. We have other decisions yet to be made, other discussions yet to be had. I would hope through all this that we would recognize that the Committee work should be coming to a closure, not starting again. There is no time, at this point, this is a major subject. I do not feel with the Committee on Taxation, and I assume this being a tax matter would go to that Committee, that we have the time to deal with it. We have dealt with sales tax issues earlier in the year. We found out that there was no merit to continue those discussions. Therefore, this could almost be considered a dilatory order, and as such would delay the workings of both the Committee and, I think, this Body. I would therefore, Mr. President, respectfully ask that the Members of this Senate Indefinitely Postpone this Order and its accompanying papers.

Senator **RUHLIN** of Penobscot moved to **INDEFINITELY POSTPONE** the Joint Order and all accompanying papers.

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

Senator **LIBBY:** Thank you Mr. President and men and women of the Senate. It was not lightly that I put this Joint Order in. I think it's important that we discuss this topic at length. And I'd like you to please bare with me as I go over some of the reasons why this Joint Order is so important for us to reconsider. First of all, in light of State policy, I think it's very important, now that we can actually take a look at a bill that discusses the reduction of sales tax, which is definitely a bill that has an impact on State revenue. Now that we have a different picture regarding

that State revenue, then we had last year, I think just from a public policy standpoint, we ought to be taking a look at the possibility of reduction of the sales tax as a way to return to the people of Maine some of the money that has been collected in the Tax Reduction Fund. It is, as you know, made up of two sources. One is the over-collection of taxes, and the other is the cigarette tax money. That fund has grown enormously to the size of \$197 million. We really didn't have, last year, that opportunity that we have this year to actually look at this bill in that light.

The second reason is a very serious reason and one that I can't express my bitter disappointment anymore with this Body, than the second reason. That is a bill that was heard while the Legislature was in session. I made a protest at the time and I'm going to make it again now, that that is against the Rules of this Body. And Mr. President, I hope you'll understand that when I say that when the Legislature is in session, we should never have a Committee hearing. I protested at the time. Now, as a result of this protest nothing came about. In other words, you can protest but nobody's going to listen. We can have rules but nobody's going to pay any attention to them. The bitter disappointment that I had was that, as I stood in front of the Committee and looked at a list on the wall of the priorities of the Taxation Committee, and the very top priority on that list was a reduction in the sales tax from 6% to 5%. You know how many people heard me at that hearing? Three. There was a Senator in the room for a brief moment, and the Senator left to come back down here and listen to a public debate, which he should have. Because we shouldn't have been having the hearing at that time. Now, not only did I protest to the secretary, but I protested to both Chairs of that Committee. I asked for the bill to be reheard. I did get an apology from the Chair of the Committee and I want to make sure I state that. I guess what really went even a step further than that is that then I was not given notice of the work session, and I was also not given notice of the vote on the bill. When the bill then came onto the calendar, in the form of a letter from the Committee, it stated on the letter that the sponsor has been notified of what has happened to this bill. Guess what? I was never notified. And again, I was given an apology from the Chair of the Committee, and it was a new Committee clerk, and I understand that.

I think what we need to do, in order to make things right, is to talk to the people of the State of Maine about the cost to the taxpayer of over-collections. We need to take a broad policy look at this issue, and we need to say to the people of Maine, yes, the sales tax will be considered as part of the tax relief process of discussion this year. This year when we have the revenues available, when we have \$197 million or so available to actually make some progress on this issue. So I hope you understand. I'm doing it for two reasons. Dilatory is not the right word. I feel badly that that has come up because this is not. This is public policy. We are going to discuss, over the next several days, whether for example a homestead exemption is the right public policy for the State of Maine, or whether or not we should increase the standard deduction on our income taxes. Within that debate of public policy we should be talking side by side about whether or not the sales tax should be reduced. I know you understand that, Mr. President, because I know that you have been supportive of reduction of the sales tax in the past and I know how important it is that we have a bipartisan effort. If it gets a fair discussion and it is then rejected, I think all of us in this Body can at least say, hey, it got its shot. But it did not get a fair hearing. It has not had a fair discussion. We're talking about an issue that is in a completely different context this year than it

would have been last year. I hope you understand that I am not trying to be over aggressive. I'm not taking my responsibilities as a Senator lightly, not at all. There's a lot of people in this state that would like to see the sales tax reduced and it's their number one priority. I think we need to listen to them, whether we agree or not, we at least need to listen. So for all of those reasons and many, many more I hope that you'll support me in opposing the motion to indefinitely postpone the Joint Order. Thank you.

Off Record Remarks

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

Senator **RUHLIN:** Thank you Mr. President and Honorable Senators of Maine. My motion to Indefinitely Postpone isn't based on the merits of the case. I'm not here now to debate those merits. I'm sure we will have that opportunity. There's a process we go through that will insure the merits of one type of tax reduction versus the other type of tax reduction. I assure you we'll have a full airing in this chamber. For one, I really look forward to, I have looked forward with anticipation for some time to that day, and it will get here, finally. What I'm objecting to here is procedure. You have a Committee that's worked hard, that still has some very, very difficult issues on its agenda, that wants to conclude its business and bring it in an orderly fashion before this Body. There are other ways to insure that the debate on whether or not we should have sales tax reduction or homestead exemptions, or personal exemptions, whatever it is, that's the substance of the issue. There are ways to handle that debate. There are a number of ways. The way I've always anticipated. The way that we've discussed it in Committee, is that when the Budget Bill comes up, the simplest, easiest way, and I fully expect that there will be a floor of amendments here to be discussed and fully debated. That's the way to do it. This Taxation Committee does not have the time to properly devote to this matter, this late in the session. Period. That's what I'm trying to tell you. We have several major items still there. We really are feeling the pressure, as I'm sure most Committees are. But we want to get those bills up. I'm sure you don't want us to bring them up at midnight of your last day here, and say, oh, we finally finished up and here you go. These are worthy subjects, fully deserving complete debate. That debate can happen. It can happen without referring it to the Committee on Taxation. It can happen on this floor, in this Body through floor amendments. That's always been the process at this late date and we should continue that. Also, I'd like to point out that the good Senator was disappointed in people having hearings while we are in session. Please note the empty seats. Those people have not gone to supper early. They're doing their business in the Committee. Thank you.

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

Senator **HALL:** Thank you Mr. President and men and women of the Senate. Two quick points, I think we ought to keep all our options open, and I relate this to a card game where all the players at the table watched a card fall onto the floor. Would they continue to play or would they pick their card up and continue the game? Thank you.

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

Senator **LIBBY:** Thank you Mr. President and men and women of the Senate. I will try not to prolong the debate, and I apologize for that. It's just really difficult when I'm confronted with the term procedure. I have made a request that conforms with the Rules of this Body, that I have a hearing when we are not in session. It conforms with the Rules of this Body. Then I'm told that because of procedure, I am wrong. That's just not the case. I thought that I would be given the opportunity in the Committee of Taxation to take a look at this issue in the context of having a \$197 million surplus. I thought that that would be the right thing to do. It's the right thing for the people of Maine, I believe that. We have the time. We have the inclination if we just want to go back and take a look at this issue. It makes sense. I would, again, ask you to not support the pending motion.

THE PRESIDENT: The pending question before the Senate is Indefinite Postponement of the Joint Order. The Chair recognizes the Senator from Cumberland, Senator Amero.

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

The Doorkeepers secured the Chamber.

The Secretary called the Roll with the following result:

ROLL CALL

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

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

ABSENT: Senators: CLEVELAND, JENKINS, LAFOUNTAIN, NUTTING, PENDLETON

15 Senators having voted in the affirmative and 15 Senators having voted in the negative, with 5 Senators being absent, the motion by Senator **RUHLIN** of Penobscot to **INDEFINITELY POSTPONE, FAILED.**

THE PRESIDENT: The pending question before the Senate is Passage of the Joint Order.

The Chair ordered a Division.

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

On motion by Senator **LIBBY** of York, 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, CASSIDY, FERGUSON, HALL, HARRIMAN, KIEFFER, LIBBY, MACKINNON, MILLS, MITCHELL, SMALL

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

ABSENT: Senators: CLEVELAND, JENKINS, LAFOUNTAIN, NUTTING, PENDLETON

Pursuant to Joint Rule 404 with 15 Members of the Senate having voted in the affirmative, and 15 Senators having voted in the negative, with 5 Senators being absent, and 15 being less than two-thirds of those present and voting, the motion by Senator **LIBBY** of York to **PASS, FAILED.**

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

ENACTORS

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

Emergency Measure

An Act to Simplify the Process of Transferring Ownership of a Business Licensed by the Board of Barbering and Cosmetology in Cases of Death or Divorce S.P. 701 L.D. 1946 (C "A" S-491)

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

Emergency Measure

An Act to Appropriate Funds for the Interpreter Service for the Deaf and Hard of Hearing S.P. 722 L.D. 1965 (C "A" S-490)

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

Emergency Measure

An Act to Allow the Department of Transportation to Provide Privately Contracted Ferry Services S.P. 788 L.D. 2115 (C "A" S-496)

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

Emergency Measure

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 (C "A" S-497)

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

Emergency Mandate

An Act to Require Law Enforcement Agencies to Collect Data Regarding Public Intoxication, to Extend Immunity from Liability to Law Enforcement Officers and to Establish a Group to Study Involuntary Commitment of Persons Suffering from Chronic and Life-threatening Substance Abuse H.P. 562 L.D. 753 (S "B" S-503 to C "A" H-798)

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

Acts

An Act to Clarify Various Marine Resources Violations and Enhance the Collectibility of Associated Penalties S.P. 476 L.D. 1478 (C "A" S-493)

An Act to Clarify the Role of Design Professionals under the Maine Human Rights Act H.P. 1480 L.D. 2079 (C "A" H-855)

An Act to Simplify Corporate Filings H.P. 1498 L.D. 2097 (C "A" H-854)

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

An Act to Create the Consumer Health Care Division within the Bureau of Insurance

H.P. 1305 L.D. 1848
(H "B" H-886 to C "A"
H-820)

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

An Act to Equalize and Clarify the Tax on Hard Cider

H.P. 1517 L.D. 2139
(C "A" H-856)

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

Resolve

Resolve, to Name the New Bridge on Route 157 in Medway the Harold C. Beathem Bridge

S.P. 809 L.D. 2187
(C "A" S-495)

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

ORDERS OF THE DAY

The Chair laid before the Senate the following Tabled and Later (3/17/98) Assigned matter:

SENATE REPORTS - from the Committee on **AGRICULTURE, CONSERVATION AND FORESTRY** on Bill "An Act to Amend the Laws Relating to Development and Centralized Listing of Municipal Ordinances That Apply to Forest Practices"
S.P. 583 L.D. 1746

Majority - **Ought to Pass as Amended by Committee Amendment "A" (S-527)** (7 members)

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

Tabled - March 17, 1998, by Senator **KILKELLY** of Lincoln.

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

(In Senate, March 17, 1998, Reports **READ**.)

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

Senator **PARADIS:** Thank you Mr. President and men and women of the Senate. I will urge your voting against the pending motion because, just this morning, I was having a discussion with a fellow Legislator on a piece of legislation that I'm very fond of. He made the statement that he didn't think our local people up

there would be able to decipher, or figure out the legislation. He was going to protect them from allowing the legislation to go forth. I feel very much the same about this piece of legislation, that we're trying to tell our local communities that they cannot handle these issues so we, the State, are going to get involved. It would definitely be an onerous infringement on the autonomy of our communities. It would bring other local levels of Government to the local table. Being a mandate and needing some of our scarce appropriations dollars, I don't think this is important for us to be doing at this time. I think that we can leave our communities alone to do what they need to do regarding these issues.

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

Senator **KIEFFER:** Thank you Mr. President and ladies and gentlemen of the Senate. This bill seems to me to be a very simple housekeeping matter. It certainly isn't the most important item that we're going to deal with, here, this year. This bill has been supported by the Small Wood Lot Owners Association, over 100,000 members in the State of Maine. I don't believe that it constitutes a mandate upon municipalities. It merely states that, in the event a municipality does, in fact, pass a forestry harvesting law, the terminology in their legislation will be the same as what is used by the Maine Forestry's Service. Certainly with 494 municipalities in the state, I don't believe that's going to create a hardship. And it certainly might be a step forward to try to bring some semblance of order into our Forestry Laws.

This morning, out at the Civic Center, I made mention of the condition of our Forestry Laws, and here is the booklet that I referred to. It looks like the Bible. It's 366 pages of Forestry regulation. It seems to me there has to be a simpler and a better way. I believe the passage of this legislation certainly is not going to cure all the ills that exist in this present law, but it might be one little step forward in trying to maintain some semblance of order in future bills that are passed by municipalities.

This bill does have fiscal note of \$10,000 the first year and \$15,000 the second year. That money is there to reimburse the municipalities for their expenses in mailing the notices that are spelled out, under this bill, to the proper land owners in the event they do propose to pass a municipal harvesting ordinance. I see absolutely nothing wrong with that. I would certainly ask you to support the Majority Report on this and, from a municipality standpoint with the 494 municipalities that we do have, I think that it would even create a better spirit of cooperation, even among the municipalities. Thank you Mr. President

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

Senator **CASSIDY:** Thank you Mr. President and men and women of the Senate. Just as quick as I can, I'll give you a brief history on this legislation that we have pending. Back in the 117th this bill came before the Conservation and Forestry Committee and it was submitted at the time, I think Senator Lord was the original sponsor of this bill. It was also requested by the Small Wood Lot Owners Association. We struggled with this bill quite a few days and tried to work at it as best we could. When we finally got down to the final analysis of the bill, because, as it says in this legislation as well, each land owner should be notified of a public hearing or a possible change in community ordinance, we couldn't put a mandate on the municipality. As

you all know, we have a law, unless we're willing to pay 90% of the cost, we are not allowed to put a mandate on a municipality. Therefore, the postage was a cost to the communities. Last year, during another proposed forestry legislation compact, this bill also was part of that bill. We know the history of that whole thing and, again, it didn't become law. This year this bill was submitted again by Senator Kilkelly. Again, the Small Wood Lot Owners Association supported the bill. I also am very familiar with this and talked with some of those folks, and am a member of the Small Wood Lot Owners Association, by the way. The intent of this bill is not to put a mandate on the municipalities. It does not require municipalities to have a Forest ordinance, if they don't wish to. It just says if a community does decide to have an ordinance referring to their forest practices that, at least, the State Department of Conservation through the Forestry Department would have a chance to come to those hearings. They would have State Foresters explain to them what the process is. Again, it unifies the terms that are used in wood harvesting and the forestry industry, that's the key point. The other point is that it prevents the municipality from deciding to put in a forestry issue, or ordinance, and the people wouldn't know about it. As you know, some land owners could be out-of-state, or live out of town, or whatever. This way every land owner, if this bill passes, would be notified days ahead that there was going to be a hearing. It would be fully discussed and it's, certainly, a local issue bill. This leaves the responsibility to every municipality. It doesn't force them to do. If they don't want an ordinance, they don't have to do it. But if they do decide to, they make the rules that will fit their municipality. I think that's what we always try to be about is supporting local control. The cost, as was mentioned earlier by the Senator from Aroostook, Senator Kieffer, is obviously a bill that would be paid by the State of Maine. This would be in the event that municipalities did decide to do this and it would, in fact, cover the postage. So I think it's a bill that the small land owners, although the majority of the large land in Maine is owned by maybe 15 companies, there are thousands and thousands of small lot owners including myself that feel that this would be an opportunity for us to practice forestry and have some uniformity and regulations. I urge you to support this bill. I think it's going to be good for the municipalities in the State of Maine. Thank you Mr. President.

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

Senator **TREAT:** Thank you Mr. President and men and women of the Senate. When I heard about this bill earlier today, I thought we already had legislation that does what this bill is supposed to do. What I was told was that this bill is very important because it requires consistency with the State laws that we have. I was told that it's very important because it requires a centralized listing of all of the ordinances that are out there, so people can go to a central location and find out what's there. And they won't have to comply with different ordinances. They'll know which ordinances are out there and they can look at them and figure out which ones to comply with and what standards apply to them. I was told that it requires consultation with the Department and that that's really important in developing the ordinance. It just seemed to me that we already had a law on the books and I hadn't researched this recently, so I opened up the book, Conservation Title 12, section 8869, and there, in fact, is a law on the book right now. It does a great deal of what is in this bill before you. It does not provide the land owner notice provision

but, in terms of the intent of the bill before you, it appears to already, in a few short paragraphs, do what this bill proposes to do in three and half pages. I think the three and half pages are significant. Three and half pages, 50 lines per page of detailed procedures that every community seeking to enact an ordinance must comply with. I think that what this bill is really about is on the last page of the bill. I hope people will take a look at this bill and actually look at the procedures that towns will have to go through. I do think this is a mandate. It is a mandate. It's just being proposed to be funded by the State. Not only is it a mandate in terms of cost, but it is a mandate in terms of very burdensome procedures that the towns will have to comply with. Beyond that, I think what is the crux of this bill is the paragraph on page 4, which says that within 30 days after the town adopts an ordinance it will be held in abeyance until it could be appealed to Court. And it could be nullified if any of the procedures, in section 8, weren't followed. I went to look at section 8, and that is indeed the three pages, 150 lines of procedures that the towns must comply with. This really strikes me as a setup where you make a couple of little mistakes, as a town, and your ordinance is dead. I think that is what this is going to lead to, is a lot of litigation about whether ordinances were procedurally adopted in appropriate manner. I did hand out a copy of the current law and I would urge you to take a look at it. It's a good law. It requires consistency with the definitions that are in our laws right now. It requires consultation and it requires a centralized listing. I'm not sure we need four more pages in our statute books designed to trip up towns, to prevent them from exercising their home rule authority.

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

Senator **KILKELLY:** Thank you Mr. President and men and women of the Senate. There is one key piece, obviously, that is missed in the current law and that does have to do with notice. The notice provision is essential because people often own land in towns in which they do not reside. We all know that this is the time of year when town meetings are happening. You have enough trouble to focus on your own town meeting without being aware of what's going on in all of the various town meetings in which you may, in fact, own land. What this requires is that those people who are land owners, who would be directly impacted by a change in a municipal ordinance dealing with forestry, would, in fact, be notified of the procedure of the process that was going on. That notification process we acknowledge as a mandate. And there is a fiscal note on the bill, so obviously this isn't the end of this bill even if it is to pass. The other piece that's been pointed out is the appeal process. As with any process within State Government, there generally is an appeal process. If a particular process has not been followed appropriately, then there is an opportunity for someone to challenge that. And that is built into this particular bill and is not built into current law. The other piece that is not clear in current law has to do with amendments to current forest practices, ordinances, that may be in towns. What we've done here is to also look at amendments. If a Forest ordinance is, in fact, amended within a community then that amendment should, in fact, go through the same process as a forestry ordinance that is, in fact, developed. It is an add-on to what's currently in place. What's currently in place is some structure. We're filling out that structure by looking at an appeal process if the process has not been followed appropriately. We're looking at amendments so that

amendments are, in fact, filed and have to go through the same process as the development of an ordinance. And again, in our process here, how many times have we seen a new law that's come in that has completely replaced a old one. In this scenario an amendment to Forestry ordinance potentially would not be covered. And then the issue of notice, and the issue of providing information to those people who, in fact, are going to be economically impacted, or in some other way impacted, by changes in Forestry regulations in the community in which they own land. So I would urge you to follow the majority of the Agriculture, Conservation and Forestry Committee and allow this bill to go forward. Thank you.

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

Senator **CASSIDY:** Thank you Mr. President. I'd like to ask a question through the Chair to anyone who wishes to answer it.

THE PRESIDENT: The Senator may pose his question.

Senator **CASSIDY:** Thank you Mr. President. The question that I have is, does this require in every municipality, 464 municipalities, to in fact enact an ordinance if they wish to, or do not wish to? Is it a requirement?

THE PRESIDENT: The Senator from Washington, Senator Cassidy 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. In response to that question, it does not require any municipality to adopt an ordinance dealing with Forestry.

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

Senator **BENNETT:** Thank you Mr. President. May I request the Secretary to Read the Committee Report?

At the request of Senator **BENNETT** of Oxford, Reports **READ.**

THE PRESIDENT: The pending question before the Senate is Acceptance of the Majority Ought to Pass as amended Committee Report. A Roll Call has been ordered. Is the Senate ready for the question?

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, HALL, HARRIMAN, KIEFFER, KILKELLY, LIBBY, MACKINNON, MICHAUD, MITCHELL, O'GARA, RAND, SMALL

NAYS: Senators: CATHCART, DAGGETT, GOLDTHWAIT, LONGLEY, MILLS, PARADIS, PINGREE, RUHLIN, TREAT, THE PRESIDENT - MARK W. LAWRENCE

ABSENT: Senators: CLEVELAND, JENKINS, LAFOUNTAIN, MURRAY, NUTTING, PENDLETON

19 Senators having voted in the affirmative and 10 Senators having voted in the negative, with 6 Senators being absent, the motion by Senator **KILKELLY** of Lincoln to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-527)** Report, **PREVAILED.**

READ ONCE.

Committee Amendment "A" (S-527) **READ** and **ADOPTED.**

TOMORROW ASSIGNED FOR SECOND READING.

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

Off Record Remarks

Senator **LIBBY** of York was granted unanimous consent to address the Senate off the Record.

Off Record Remarks

On motion by Senator **PINGREE** of Knox, **ADJOURNED** until Thursday, March 19, 1998, at 10:00 in the morning.