

MAINE STATE LEGISLATURE

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Senate Legislative Record
One Hundred and Eighteenth Legislature
State of Maine

Volume 3

Second Regular Session (Continued)
March 25, 1998 to March 31, 1998

Second Special Session
April 1, 1998 to April 8, 1998

Second Confirmation Session
August 18, 1998

Senate Legislative Sentiments

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

In Senate Chamber
Friday
March 27, 1998

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

Prayer by Reverend Glenn Palmer of the Nativity Lutheran Church in Rockland.

REVEREND GLENN PALMER: Could we bow our heads in prayer? Gracious Lord, we come before You humbly this morning remembering always that you are God and we are **not**. You give us governments and those who govern as a gift. We ask for Your spirit to fill this place this day. We ask in prayer that You bless and move the hearts and minds who serve You and their neighbor in this Senate. And we simply pray now and always that Your will, not ours, be done. Amen.

Doctor of the Day, Paul Dumdey, M.D., Woolwich.

Reading of the Journal of Thursday, March 26, 1998.

Off Record Remarks

Senate at Ease

Senate called to order by the President.

Off Record Remarks

PAPERS FROM THE HOUSE

Non-Concurrent Matter

SENATE REPORTS - from the Committee on **BUSINESS AND ECONOMIC DEVELOPMENT** on Bill "An Act to Prohibit Discrimination against Osteopathic Physicians and Provide Patient Choice"
S.P. 772 L.D. 2099
(S "A" S-597)

Majority - Ought Not to Pass (12 members)

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

In Senate, March 25, 1998, the Minority **OUGHT TO PASS** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY SENATE AMENDMENT "A" (S-597)**.

Comes from the House, the Majority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED** in **NON-CONCURRENCE**.

On motion by Senator **RAND** of Cumberland, the Senate **RECEDED** and **CONCURRED**.

JOINT ORDER - relative to Legislative Sentiment recognizing the members of the Maine State Grange, patrons of husbandry, who are celebrating 124 years of service to and support of the life and spirit of farming in Maine. HLS 1314

On motion by Senator **KILKELLY** of Lincoln, **READ**.

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

Senator **KILKELLY:** Thank you Mr. President and men and women of the Senate. It is my privilege this morning to be a Cosponsor of this sentiment. I've been a member of the Grange for the last several years. And never have I been with a group of people who are more willing to help and more willing to find ways to help then folks who are participants in the Grange. All of you who came to the lunch that we had last week at the Grange Headquarters, certainly felt part of that spirit as people were doing their outreach and their magic with food and fellowship and friendship. During the ice storm there was a tremendous effort on the part of the Grange to support farmers. We all know that part of what happened during that ice storm is that we all, as a state, felt more a part of community. The Grange was absolutely a part of that and it is my privilege this morning to recognize the Maine State Grange for their efforts during the ice storm, but more than that, for their efforts over the last 124 years to really be an integral part of the Maine community. Thank you.

PASSED, in concurrence.

Off Record Remarks

COMMUNICATIONS

The Following Communication: S.C. 677

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

March 26, 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 Legal and Veterans Affairs has voted unanimously to report the following bill out "Ought Not to Pass":

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

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

Sincerely,

S/Sen. Beverly C. Daggett
Senate Chair

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

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

Off Record Remarks

ORDERS

Joint Resolution

On motion by Senator PINGREE of Knox (Cosponsored by Representative SAXL of Portland, Senator PENDLETON of Cumberland, Senator O'GARA of Cumberland, Senator DAGGETT of Kennebec, Senator MURRAY of Penobscot, Senator KILKELLY of Lincoln, Representative MORGAN of South Portland, Representative FULLER of Manchester, Representative PIEH of Bremen), the following Joint Resolution: S.P. 871

JOINT RESOLUTION MEMORIALIZING CONGRESS TO ENSURE THE VIABILITY OF THE UNITED STATES SOCIAL SECURITY SYSTEM

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

WHEREAS, the United States Social Security System provides American workers with universal, contributory, wage-related, inflation-proof benefits in the event of the retirement, disability or death of a primary wage earner; and

WHEREAS, the United States Social Security System is more than a retirement program; it is a family program, as it helps so many in need. Without it, almost 54% of America's senior

citizens and more than 15,000,000 beneficiaries would be living in poverty, and it is a safety net for 98% of American children under 18 years of age in the event a working parent dies; and

WHEREAS, over the course of its existence as a federal program, the United States Social Security System's trustees and administrators have carefully modified the benefit and financing structure to ensure the program's viability in light of major demographic trends and economic developments; and

WHEREAS, in his State of the Union address, President Clinton called for "saving Social Security first" and urged the United States Congress to enact bipartisan legislation to ensure the United States Social Security System's long-term solvency by 1999; and

WHEREAS, the long-term solvency of the United States Social Security System can be guaranteed for future generations with reasonable and timely adjustments to the program made by Congress; now, therefore, be it

RESOLVED: That We, your Memorialists, respectfully recommend and urge:

1. That the United States Congress give priority to reforming the United States Social Security System to ensure its continued financial viability;
2. That the United States Social Security System be a universal, mandatory, contributory social insurance system where risk is pooled among all workers rather than transferred to each individual worker;
3. That the United States Social Security System continue as a federal program and that states not be allowed to choose to withdraw and form their own retirement system, since this would destroy the universal, progressive nature of the current system. It would be too difficult to run 50 separate retirement systems and more difficulties would arise if a person moved from state to state, not only in lower benefits but also in burdensome bookkeeping. The cost for funding any new system would be staggering and choosing to withdraw would put low-wage and moderate-wage workers' retirement security at risk; and be it further

RESOLVED: That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to the Honorable William J. Clinton, President of the United States, the President of the Senate and the Speaker of the House of Representatives of the Congress of the United States and to each member of the Maine Congressional Delegation.

READ and **ADOPTED.**

Sent down for concurrence.

REPORTS OF COMMITTEES

House

Divided Report

Majority of the Committee on APPROPRIATIONS AND FINANCIAL AFFAIRS on Bill "An Act Concerning the Maine State Housing Authority's Share of the Transfer Tax"
H.P. 1465 L.D. 2056

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-1068).**

Signed:

Senator:
CLEVELAND of Androscoggin

Representatives:
LEMAIRE of Lewiston
STEVENS of Orono
TOWNSEND of Portland
BERRY of Livermore
KERR of Old Orchard Beach
POULIN of Oakland

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

Signed:

Senators:
MICHAUD of Penobscot
BENNETT of Oxford

Representatives:
OTT of York
MARVIN of Cape Elizabeth
WINSOR of Norway
KNEELAND of Easton

Comes from the House with the Majority OUGHT TO PASS AS AMENDED Report READ and ACCEPTED and the Bill PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1068).

Reports **READ.**

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

Divided Report

Majority of the Committees on APPROPRIATIONS AND FINANCIAL AFFAIRS and EDUCATION AND CULTURAL AFFAIRS on Bill "An Act to Encourage High School Students to Pursue Higher Education at Postsecondary Educational Institutions in this State"

H.P. 1583 L.D. 2213

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-1082).**

Signed:

Senators:
MICHAUD of Penobscot
PENDLETON of Cumberland
CATHCART of Penobscot

Representatives:
KERR of Old Orchard Beach
POULIN of Oakland
TOWNSEND of Portland
STEVENS of Orono
BERRY of Livermore
LEMAIRE of Lewiston
RICHARD of Madison
DESMOND of Mapleton
McELROY of Unity
BRENNAN of Portland
SKOGLUND of St. George
WATSON of Farmingdale

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

Signed:

Senators:
BENNETT of Oxford
SMALL of Sagadahoc

Representatives:
OTT of York
KNEELAND of Easton
MARVIN of Cape Elizabeth
WINSOR of Norway
BARTH of Bethel
STEDMAN of Hartland
Belanger of Caribou
Baker of Bangor

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

Reports **READ.**

On motion by Senator **MICHAUD** of Penobscot, the Minority **OUGHT NOT TO PASS** Report **ACCEPTED.**

Divided Report

Majority of the Committee on **STATE AND LOCAL GOVERNMENT** on Bill "An Act to Require Abutting Landowners to Pay a Fair Share of the Costs of Maintaining a Private Road"
H.P. 1410 L.D. 1974

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

Signed:

Senator:
LIBBY of York

Representatives:

DUTREMBLE of Biddeford
GIERINGER of Portland
BUMPS of China
FISK of Falmouth
KASPRZAK of Newport
GERRY of Auburn

Minority of the same Committee on the same subject reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-1031).**

Signed:

Senators:

NUTTING of Androscoggin
GOLDTHWAIT of Hancock

Representatives:

AHEARNE of Madawaska
LEMKE of Westbrook
BAGLEY of Machias
SANBORN of Alton

Comes from the House with the Minority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1031) AS AMENDED BY HOUSE AMENDMENT "C" (H-1085)** thereto.

Reports **READ**.

Senator **NUTTING** of Androscoggin moved the Senate **ACCEPT** the Minority Ought to Pass **AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1031)** Report, in concurrence.

On further motion by same Senator, **TABLED** until Later in Today's Session, pending motion by same Senator to **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1031)** Report, in concurrence.

Divided Report

Majority of the Committee on **STATE AND LOCAL GOVERNMENT** on Bill "An Act to Implement the Recommendations of the Maine Commission on Outstanding Citizens"

H.P. 1620 L.D. 2250

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

Signed:

Senators:

NUTTING of Androscoggin
GOLDTHWAIT of Hancock

Representatives:

LEMKE of Westbrook
DUTREMBLE of Biddeford
BAGLEY of Machias
SANBORN of Alton
GIERINGER of Portland
BUMPS of China
FISK of Falmouth
KASPRZAK of Newport
AHEARNE of Madawaska

Minority of the same Committee on the same subject reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-1064).**

Signed:

Senator:

LIBBY of York

Representative:

GERRY of Auburn

Comes from the House with the Majority **OUGHT TO PASS** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED**.

Reports **READ**.

Senator **NUTTING** of Androscoggin moved the Senate **ACCEPT** the Majority **OUGHT TO PASS** Report, in concurrence.

On further motion by same Senator, **TABLED** until Later in Today's Session, pending motion by same Senator to **ACCEPT** the Majority **OUGHT TO PASS** Report, in concurrence.

Senate

Ought to Pass As Amended

Senator **LONGLEY** for the Committee on **JUDICIARY** on Bill "An Act to Correct Errors and Inconsistencies in the Laws of Maine" (EMERGENCY) S.P. 803 L.D. 2173

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (S-622).**

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

READ ONCE.

Committee Amendment "A" (S-622) **READ** and **ADOPTED**.

LATER TODAY ASSIGNED FOR SECOND READING.

Off Record Remarks

Divided Report

Majority of the Committee on **EDUCATION AND CULTURAL AFFAIRS** on Bill "An Act to Authorize a Tuition Savings Plan to Encourage Attendance at Institutions of Higher Education"
S.P. 622 L.D. 1825

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-620)**.

Signed:

Senators:

PENDLETON of Cumberland
CATHCART of Penobscot

Representatives:

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

Minority of the same Committee on the same subject reported that the same **Ought to Pass as Amended by Committee Amendment "B" (S-621)**.

Signed:

Senators:

SMALL of Sagadahoc

Representatives:

BARTH of Bethel
STEDMAN of Hartland
BELANGER of Caribou
McELROY of Unity

Reports **READ**.

Senator **PENDLETON** of Cumberland moved the Senate **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-620)** Report.

On further motion by same Senator, **TABLED** until Later in Today's Session, pending motion by same Senator to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-620)** Report.

Divided Report

Majority of the Committee on **LABOR** on Bill "An Act to Restore the Normal Retirement Age for State Employees and Teachers"
S.P. 707 L.D. 1955

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-623)**.

Signed:

Senators:

CATHCART of Penobscot
TREAT of Kennebec
MILLS of Somerset

Representatives:

HATCH of Skowhegan
SAMSON of Jay
BOLDUC of Auburn
CLARK of Millinocket
RINES of Wiscasset
STANLEY of Medway
JOYCE of Biddeford
TREADWELL of Carmel
LAYTON of Cherryfield

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

Signed:

Representative:

PENDLETON of Scarborough

Reports **READ**.

On motion by Senator **CATHCART** of Penobscot, the Majority **OUGHT TO PASS AS AMENDED** Report **ACCEPTED**.

READ ONCE.

Committee Amendment "A" (S-623) **READ** and **ADOPTED**.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-623)**.

Sent down for concurrence.

Divided Report

Ten members of the Committee on **STATE AND LOCAL GOVERNMENT** on Bill "An Act Creating the InforME Public Information Act to Ensure Access to Electronic Public Records"
S.P. 785 L.D. 2112

Reported in Report "A" that the same **Ought to Pass as Amended by Committee Amendment "A" (S-624)**.

Signed:

Senators:

NUTTING of Androscoggin
GOLDTHWAIT of Hancock

Representatives:

Ahearne of Madawaska
Lemke of Westbrook
Dutremble of Biddeford
Bagley of Machias
Gieringer of Portland
Sanborn of Alton
Bumps of China
Fisk of Falmouth

Two members of the same Committee on the same subject reported in Report "B" that the same Ought Not to Pass.

Signed:

Senator:
LIBBY of York

Representative:
Kasprzak of Newport

One member of the same Committee on the same subject reported in Report "C" that the same Ought to Pass as Amended by Committee Amendment "B" (S-625).

Signed:

Representative:
Gerry of Auburn

Reports READ.

Senator NUTTING of Androscoggin moved the Senate ACCEPT Report "A", Ought to Pass as Amended by Committee Amendment "A" (S-624).

On further motion by same Senator, Tabled until Later in Today's Session, pending motion by same Senator to ACCEPT Report "A", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-624)**.

Divided Report

Majority of the Committee on TAXATION on Bill "An Act to Establish a System of Tax Revenue Targeting"
S.P. 621 L.D. 1824

Reported that the same Ought to Pass as Amended by Committee Amendment "A" (S-618).

Signed:

Senators:
RUHLIN of Penobscot
MILLS of Somerset

Representatives:
Lemont of Kittery
Tuttle of Sanford
Gagnon of Waterville
Spear of Nobleboro

Buck of Yarmouth
Cianchette of South Portland

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

Signed:

Senator:
DAGGETT of Kennebec

Representatives:
Green of Monmouth
MORGAN of South Portland
Tripp of Topsham
Rowe of Portland

Reports READ.

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

ENACTORS

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

Emergency Mandate

An Act to Amend the Laws Regarding Reimbursement to the Counties for Community Corrections

H.P. 40 L.D. 65
(H "A" H-1022 to C "A" H-919)

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

Acts

An Act to Establish a Requirement That Holders of Lobster Fishing Licenses Must Own or Control the Vessel from Which They Conduct Authorized Activities

H.P. 1028 L.D. 1445
(C "A" H-1028)

An Act to Reorganize and Clarify the Laws Relating to the Establishment, Powers and Duties of the Bureau of Parks and Lands

S.P. 635 L.D. 1852
(C "A" S-501; S "A" S-551)

An Act to Establish and Maintain an Immunization Information System

H.P. 1511 L.D. 2133
(C "A" H-1021)

An Act to Create a Nonlegislative System to Adjust Municipal Valuations in the Circumstance of Sudden and Severe Valuation Disruption

H.P. 1561 L.D. 2192
(C "A" H-1019)

An Act Regarding Telecommunications Regulation

H.P. 1661 L.D. 2288

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 Allow Maine Technical College System Employees Represented by the Maine Education Association Faculty and Administrative Units to Participate in a Defined Contribution Retirement Plan

H.P. 1395 L.D. 1949
(C "A" H-1027)

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

An Act to Improve the Delivery and Effectiveness of State Correctional Services

S.P. 834 L.D. 2232
(C "A" S-603)

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

An Act to Enter into the Emergency Management Assistance Compact

S.P.836 L.D. 2242
(C "A" S-591)

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

An Act to Encourage Intergovernmental Cooperation

H.P.1617 L.D. 2244
(C "A" H-1016)

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

An Act to Promote and Encourage the Cultivation of Cranberries in the State

H.P.1634 L.D. 2264
(C "A" H-1006)

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

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

Senator **CASSIDY:** Thank you Mr. President. Is the Senate in possession of Joint Resolution, S.P. 866?

THE PRESIDENT: The Chair would answer in the affirmative, having been held at the Senator's request.

HELD MATTER

Senator **CASSIDY** of Washington, moved that the Senate **RECONSIDERED** whereby the following Joint Resolution **FAILED ADOPTION:**

JOINT RESOLUTION - relative to Encouraging the Development of a Sustainable Forestry Initiative
S.P.866

(In Senate, March 26, 1998, **READ** and **FAILED ADOPTION**.)

On further motion by same Senator, **TABLED** until Later in Today's Session, pending motion by same Senator to **RECONSIDER** whereby the Joint Resolution **FAILED ADOPTION**.

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.

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

The President retired from the Senate Chamber.

The Senate called to order by the President Pro Tem.

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 Amend and Clarify Laws Concerning Nuclear Safety
S.P. 714 L.D. 1960
(C "A" S-578)

This being an Emergency Measure and having received the affirmative vote of 28 Members of the Senate, with no Senators having voted in the negative, and 28 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 Pro Tem, was presented by the Secretary to the Governor for his approval.

Acts

An Act to License Massage Therapists
S.P.494 L.D. 1525
(H "A" H-1049 to C "A" S-561)

An Act to Amend the Laws Governing Secession
H.P.1420 L.D. 1984
(C "A" H-1024)

An Act to Improve the Integrity of Notaries Public
S.P.771 L.D. 2098
(C "A" S-590)

An Act to Ensure Access to Confidential Records
H.P.1514 L.D. 2136
(C "A" H-1032)

An Act to Amend the Laws Concerning Participating Local Districts in the Maine State Retirement System
H.P.1524 L.D. 2146
(C "A" H-1009)

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

An Act to Provide Computers for Use in the Legislature
H.P.416 L.D. 566
(C "A" H-1033)

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

An Act to Clarify the Confidentiality of Public Employee Information
H.P. 1362 L.D. 1913
(C "A" H-998)

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

An Act Regarding Electric Utilities
H.P.1380 L.D. 1935
(C "A" H-984)

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

Senator **HARRIMAN:** Thank you Madam President. Before we take the vote on item L.D. 1935, "An Act Regarding Electric Utilities," I just wanted to state for the record, and for this Legislature and those Members of this session who will be returning, that L.D. 1935 does indeed signify a historic moment in time. As you no doubt recall, part of the electric deregulation legislation required, mandated, if you will, that our utilities sell their generating assets. What we are doing today with the passage of this bill is transferring hundreds, if not more, private and special laws that were created over the years to allow the harnessing of our natural resources into hydroelectric power. And while I am convinced that the legislation before us does assure that the rights and privileges that were granted will remain on the books and will be binding on new owners of these generating assets, I cannot let this moment pass without expressing my concern. As this issue moves forward to full implementation, we should be ever vigilant about the message that we are sending as we allow the transfer of some of our natural base resources to out-of-state private companies who will no longer be regulated under the Public Utilities Commission. I want to emphasize, for the record, that I am confident that the wording in this bill will assure that the private and special laws that were granted, that created the hydroelectric system that we have today, will remain in tact. New owners will be bound by these laws, but I just wanted to pause to ask you to pay particular attention to these issues as they unfold in the future. Thank you Madam President.

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

An Act to Reduce Motor Vehicle Fatalities and Injuries among Young Drivers

S.P. 782 L.D. 2109
(H "B" H-1017 to C "A" S-563)

On motion by Senator **O'GARA** of Cumberland, placed on the **SPECIAL HIGHWAY TABLE**, pending **ENACTMENT**.

An Act Regarding the Employment of Harness Race Track Officials

H.P. 1542 L.D. 2169
(C "A" H-981; S "A" S-583)

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

An Act to Amend the Authority of the Adjutant General to Sell Armories, to Increase the Authorized Size of the Veterans' Memorial Cemetery and to Authorize the Department of Administrative and Financial Services to Purchase Land in Houlton for a New Public Safety Facility

S.P. 823 L.D. 2212
(S "A" S-581 to C "A" S-556;
S "B" S-582)

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

Resolve

Resolve, Regarding Legislative Review of Rules Governing the Implementation of Hypodermic Apparatus Exchange Programs, a Major Substantive Rule of the Department of Human Services

H.P. 1607 L.D. 2234
(C "A" H-940; H "B" H-1059)

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

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

REPORTS OF COMMITTEES

House

Ought to Pass As Amended

From the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS** on Bill "An Act to Implement the Recommendations of the Task Force On Improving Access to Prescription Drugs for the Elderly" H.P.1587 L.D. 2218

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (H-1074)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1074)**.

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

READ ONCE.

Committee Amendment "A" (H-1074) **READ** and **ADOPTED**, in concurrence.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1074)**, in concurrence.

From the Committee on **EDUCATION AND CULTURAL AFFAIRS** on Bill "An Act to Implement the Recommendations of the Governor's Commission on School Facilities"

H.P. 1622 L.D. 2252

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (H-1088)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1088)**.

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

READ ONCE.

Committee Amendment "A" (H-1088) **READ** and **ADOPTED**, in concurrence.

LATER TODAY ASSIGNED FOR SECOND READING.

From the Committee on **HEALTH AND HUMAN SERVICES** on Resolve, Regarding Legislative Review of Section 71.05: Application Process; Certificate of Need for Nursing Facility Level of Care (Policy Manual), a Major Substantive Rule of the Department of Human Services, Bureau of Elder and Adult Services (EMERGENCY)

H.P.1649 L.D. 2279

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (H-1080)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Resolve **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1080)**.

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

READ ONCE.

Committee Amendment "A" (H-1080) **READ** and **ADOPTED**, in concurrence.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1080)**, in concurrence.

From the Committee on **HEALTH AND HUMAN SERVICES** on Resolve, Regarding Legislative Review of Chapter 32: Rules for the Licensing of Children's Day Care Facilities and Chapter 33: Rules for Home Day Care Providers, Major Substantive Rules of the Department of Human Services, Auditing, Contracting and Licensing Service Center (EMERGENCY)

H.P. 1650 L.D. 2281

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (H-1084)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Resolve **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1084)**.

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

READ ONCE.

Committee Amendment "A" (H-1084) **READ** and **ADOPTED**, in concurrence.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1084)**, in concurrence.

Divided Report

Majority of the Committee on **CRIMINAL JUSTICE** on Bill "An Act to Amend the Laws Regarding Sex Offenders
H.P.1473 L.D. 2072

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-1056)**.

Signed:

Senators:

MURRAY of Penobscot
O'GARA of Cumberland
MITCHELL of Penobscot

Representatives:

MUSE of South Portland
O'BRIEN of Augusta
MCALEVEY of Waterboro
POVICH of Ellsworth
FRECHETTE of Biddeford

Minority of the same Committee on the same subject reported that the same **Ought to Pass as Amended by Committee Amendment "B" (H-1057)**.

Signed:

Representatives:

PEAVEY of Woolwich
JONES of Greenville
TOBIN of Dexter
BUNKER of Kossuth Township
WHEELER of Bridgewater

Comes from the House with the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1056)** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1056)**.

Reports **READ**.

On motion by Senator MURRAY of Penobscot, the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1056)** Report **ACCEPTED**, in concurrence.

READ ONCE.

Committee Amendment "A" (H-1056) **READ** and **ADOPTED**, in concurrence.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1056)**, in concurrence.

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

ORDERS OF THE DAY

Unfinished Business

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

The Chair laid before the Senate the following Tabled and Later (3/25/98) Assigned matter:

SENATE REPORTS - from the Committee on **LEGAL AND VETERANS AFFAIRS** on Bill "An Act to Establish Ethical Standards for the Office of Governor"

S.P.786 L.D. 2113
(C "A" S-586)

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

Minority - **Ought to Pass as Amended by Committee Amendment "A" (S-586)** (1 member)

Tabled - March 25, 1998, by Senator **RAND** of Cumberland.

Pending - motion by same Senator to **INSIST** and **ASK FOR A COMMITTEE OF CONFERENCE** (Division Requested)

(In Senate, March 25, 1998, the Minority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-586)**.)

(In House, March 25, 1998, the Majority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED**, in **NON-CONCURRENCE**.)

Senator **RAND** of Cumberland requested and received leave of the Senate to withdraw her motion to **INSIST** and **ASK FOR A COMMITTEE OF CONFERENCE**.

The same Senator moved the Senate **ADHERE**.

At the request of Senator **GOLDTHWAIT** of Hancock a Division was had. 13 Senators having voted in the affirmative and 12 Senators having voted in the negative, the motion by Senator **RAND** of Cumberland to **ADHERE, PREVAILED**.

Sent down for concurrence.

Off Record Remarks

The Chair laid before the Senate the following Tabled and Later (3/24/98) Assigned matter:

Resolve, Regarding Legislative Review of Chapter 820: Requirements for Non-Core Utility Activities and Transactions Between Affiliates, a Major Substantive Rule of the Public Utilities Commission
H.P.1611 L.D. 2237

Tabled - March 26, 1998, by Senator **CAREY** of Kennebec.

Pending - **ADOPTION OF COMMITTEE AMENDMENT "A" (H-956)**, in concurrence

(In House, March 23, 1998, the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-956)** Report **READ** and **ACCEPTED** and the Resolve **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-956) AND HOUSE AMENDMENT "A" (H-960)**.)

(In Senate, March 26, 1998, the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-956)** Report **ACCEPTED. READ ONCE. COMMITTEE AMENDMENT "A" (H-956) READ.**)

Senate at Ease

Senate called to order by the President Pro Tem.

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

On motion by Senator **CLEVELAND** of Androscoggin, Senate Amendment "A" (S-592) to Committee Amendment "A" (H-956) **READ**.

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

Senator **CLEVELAND:** Thank you Madam President and men and women of the Senate. I'd like to explain my amendment and also where we are. I know this is one where a number of you have had conversations with interested parties. As you may recall, I'm originally on the Minority report. I will be supporting the Majority report with this amendment. This is an amendment that solely establishes a date in which the good will provisions would begin. That date is September 19, 1997, which is the date on which the Deregulation Bill became law in the state of Maine, which we passed in the last regular session. In that bill we had directed the Public Utilities Commission to move forward to establish, by Rule, procedures on which good will would be considered as an asset that may have value that should be repaid from an affiliate to the ratepayers. That was the date on which everyone was put on notice that that provision would be looked at and rules would be developed. There's been some very lengthy discussion between the interested parties on that issue, and I think it's fair to say, and I'm pleased to say, that as a result of those discussions we've come to an understanding that this is a reasonable compromise and that the parties are willing to accept that and that's why I'm willing to accept as well the Majority report. It's also my understanding that there has been some concern that we don't want to put this bill in the position where it may be in non-concurrence. I am 100% confident that that will not occur, that that will move smoothly between both bodies of this institution, we'll proceed forward not to put ourselves in the position where we would be in non-concurrence. I have said to many, and I will say publicly, that if that becomes a problem I will reexamine this amendment to remove it if that's necessary but I have no belief that that will be a difficulty at all.

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

Senator **HARRIMAN:** Thank you very much Madam President. Men and women of the Senate. As a Member of the Senate on the Majority report, I would just like to state that this amendment is considered a friendly amendment, and much appreciated to crystallize our intent. It simply establishes that the Rule that we asked the PUC to put forth applies to any affiliate that is created after September 19, 1997. It establishes a clear message to the PUC that we intend this issue of good will to be looked at from this day going forward. I trust that the PUC would have come to that conclusion anyway, but the good Senator from Androscoggin, Senator Cleveland, has made our Legislative intent crystal clear therefore, I appreciate him taking this step. Thank you Madam President.

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

Senator **CAREY:** Thank you Madam President and men and women of the Senate. I had a little concern about this amendment when we first got started. I talked to many of the parties, both pro and con. Our major concern in this whole issue was exactly what the good Senator from Androscoggin had pointed out, the possibility of going down to the other Body in non-concurrence. Those fears have now been alleviated and we are in much better shape than we might have been otherwise. Two nights ago I spoke with Tom Welch, who is the Chair of the PUC, about what effects this amendment might have. He felt that it would be an amendment that would be extremely helpful in that it established a starting point as to when good will would be

counted. And it also laid out the foundation that it would be forward moving rather than going back, which was a major concern of most of us. I'll give you a few examples. For instance, in our discussion he said, if a company called itself Bangor Gas, it would not be libel for good will because Bangor is a city. However, if they called themselves Bangor Hydro Gas, then there would be good will involved. He went on to say that if a gas company was going to be calling itself Central Maine Gas, that there was no problem with that because there is Central Maine Plate Glass, Central Maine Motors, Central Maine everything. But when they suddenly became Central Maine Power Electric and Gas or CMP Gas that, in all probability as far as the PUC was concerned, would be classified as needing the good will provision. And so, I'm satisfied that we are well protected by the amendment that the good Senator has put on, especially that portion as to when the time starts. Thank you Madam President.

On motion by Senator **CLEVELAND** of Androscoggin Senate Amendment "A" (S-592) to Committee Amendment "A" (H-956) **ADOPTED.**

Committee Amendment "A" (H-956) as Amended by Senate Amendment "A" (S-592) thereto, **ADOPTED** in **NON-CONCURRENCE.**

House Amendment "A" (H-960) **READ** and **ADOPTED**, in concurrence.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-956) AS AMENDED BY SENATE AMENDMENT "A" (S-592)** thereto, **AND HOUSE AMENDMENT "A" (H-960)** in **NON-CONCURRENCE.**

Sent down for concurrence.

Off Record Remarks

Senate at Ease

Senate called to order by the President Pro Tem.

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

Off Record Remarks

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

Off Record Remarks

On motion by Senator **AMERO** of Cumberland, **RECESSED** until the sound of the bell.

After Recess

Senate called to order by the President Pro Tem.

ORDERS OF THE DAY

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

HOUSE REPORTS - from the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS** on Bill "An Act Concerning the Maine State Housing Authority's Share of the Transfer Tax" H.P.1465 L.D. 2056

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-1068)** (7 members)

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

Tabled - March 27, 1998, by Senator **MICHAUD** of Penobscot.

Pending - **ACCEPTANCE OF EITHER REPORT**

(In House, March 26, 1998, the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1068).**)

(In Senate, March 27, 1998, Reports **READ.**)

Senator **CLEVELAND** of Androscoggin moved that the Senate **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence.

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

Senator **CLEVELAND** of Androscoggin Senator **CLEVELAND:** Thank you Madam President and men and women of the Senate. What this bill does is simply restore to its original condition the percentage of the real estate transfer tax that was going to the Maine State Housing Authority for their Home Program and other housing assistance programs. In the last budget that amount had been reduced, I think if I remember correctly, by about 10%.

So what it would do is move that back to the percentage that it was, which is the percentage that when the program was originally initiated is the percentage that was included within that Program specifically for purposes of helping those folks who are lower income either purchase a home for the first time, or will be able to make renovations and rehabilitations to the home that are affordable to them so that they can pay the loan back.

Thirdly, the provisions were to take place in the next biennial fiscal year which would be July 1 of 1999. So there would be no fiscal impact within the remaining fiscal year that we are in to do that. Finally, Senator Michaud from Penobscot has been kind enough, even though he is Chair of the Committee, has asked me to make this motion. If he were here, he would say to you that he would be supporting it as well. Thank you Madam President.

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

Senator **RUHLIN:** Thank you Madam President. I would ask a question through the Chair if I may?

THE PRESIDENT PRO TEM: The Senator may pose his question.

Senator **RUHLIN:** Thank you Madam President. The good Senator from Androscoggin didn't mention what the fiscal note, or fiscal cost was in 1999, and that that might be coming out of the General Fund. What programs would he propose to cut to offset it? Would he please let me know?

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

Senator **CLEVELAND:** Thank you Madam President. Without having the benefit of looking into the book, I think the fiscal note is something in the order of \$2.5 million per year. I would be happy to stand corrected if someone looks it up and it's something different from that. We would address that issue the same way that we address all issues that affect the budget. It would create a bit of a structural gap. We have a structural gap now, and what we would need to do is do the same thing with the increase with General Purpose Aid to Education, the individual increase cost to the BETR Program, which is substantial by the way. We would have to look at all of the budget priorities and make adjustments to meet this and all other needs. I am confident that we would do that, and I'm confident that it's an appropriate action to take, to put this back in line with what we had originally intended the Program to do not to be another tax to support the General Fund. That never was the original intention, but it was intended to be a tax to help those who need housing assistance.

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

Senator **HARRIMAN:** Thank you, good afternoon Madam President and women and men of the Senate. I rise today to hope for your support on the pending motion, for indeed this is just another one of the infamous budget gimmicks that we have an opportunity to fix. And as my good friend from Androscoggin, Senator Cleveland, has so eloquently pointed out, this original program was not intended for General Fund revenues in fact, and most especially to me, it was a program designed to encourage and support first-time home ownership, so that people who are trying to get a leg up financially to go from renting an apartment perhaps to owning a home. This would be a way to stimulate that, to encourage it, to motivate it and to make sure that the

money rest within a department or an agency of State Government that specialized in this activity. Among the many things that were done in the early 1990's to balance the budget, this was one of them.

In fact, we will have an opportunity today, or perhaps the first of the week to vote on a number of other issues including teacher's retirement contribution levels that are expected from State employees for their retirement plans. Several other bills that are going to come before us, in my view, are an opportunity for us to restore credibility with our constituents and, in fact, the people who employ the programs that this Legislature helps create.

So, I do hope that you will support my good friend, from Androscoggin, Senator Cleveland, and I hope that the comments of my very good friend from Penobscot, Senator Ruhlin, are heeded. He's right. There are a lot of bills out here that have fiscal notes on them that will impact the budget. I hope that it is a very positive and strong, bipartisan message to the Appropriations Committee to wait. Don't finalize your budget yet, because there are a number of important issues that many of us in this Legislature feel are worthy of your priorities before the budget comes upstairs to be voted on. Thank you Madam President.

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

Senator **MILLS:** Due to technical difficulties, Senator Mill's remarks were regrettably not recorded.

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

Senator **CLEVELAND:** Thank you Madam President and men and women of the Senate. I want to clarify a couple of points and add some additional information that I think is important to understand. The increase in the real estate transfer tax was not done to provide additional revenue at the time for the General Fund. It was done to provide additional revenue for the Home Fund. As a matter of fact, it was done in 1985, well before we got into the financial problems that we had here. Now, it wasn't until about 1991 that the percentage was changed so that it could help balance the budget at that point. Originally for instance, when the tax was originally initiated about \$4.25 million was going annually for that subsidy. During the 80's, what happened was they were able to get somewhat more than that because the real estate market was very good and there were a lot more real estate transfers, and they very prudently used the money in a way that allowed them to meet needs at that point. But they didn't use all of the money that they had in the account so that during the down years they were able to maintain the program at about \$5 million a year to continue their efforts and obligations that they had made. As a matter of fact this year, they had about \$5 million in the fund and that will be completely obligated this year. So, they won't have additional money. They just have about \$2.5 million for the program if we don't readjust the tax back to where it was originally, a percentage of the income. Incidentally, perhaps a simpler way to think of it is, of that 100% tax, 10% remains with the counties, 45% goes for the Home Program and 45% goes to the General Fund in that division. So, it is very consistent with the amount of money that they have been getting. They manage their money very prudently, but they will be using all of that up this year. The

program will essentially be cut in half unless we can restore it back to the original percentage level for the purposes for which it was intended originally to do that.

I guess, my sense is that we need new revenue to balance the budget and I think we ought to be very honest and straightforward about that. And we ought to go forward and raise taxes or get the revenue specifically for budget purposes. We ought not to be doing it in a, sort of, backdoor method of creating a tax for one purpose and then when we find it convenient for us to say, well, we really are going to use that to fund the General Fund. We did it in dire circumstances, to try to minimize the impact on other services. But we are now in a period where we are moving back into a better economy and now is the time, I think, to make those adjustments and be honest and straightforward with what the intention of the program was. So, I hope that you can support the motion.

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

Senator **BENNETT:** Thank you Madam President and fellow Members of the Senate. I just want to make a few brief points. I think that everybody in this Chamber is certainly familiar with the issues at stake. I just can't help but notice how interesting it is to see what differing ways we can look at the same issue. For me, I think, it's also honest in addition to looking at this as restoring funding from some gimmick of the past. I think it's also, because of history, appropriate to look at this to vote for the pending motion as a vote for expanding an existing program. If we really want to go back to the good old days perhaps we should go back to the time when this transfer tax was 55 cents per thousand and wasn't going to this program at all. We live in a difficult world of making choices and in the appropriations process that's particularly true.

This morning, the Appropriations Committee, where this bill is coming from, worked on, and reported out finally, L.D. 1950, the Supplemental Budget with two reports, a Majority report and a Minority report. The Majority report leaves no money, that I can discern, available on the Table particularly not sufficient to fund this multiple million dollar fiscal note. If this were a different time in the session, I would say fine. Let's vote this. Let's send it to the Table and have it compete with the other needs. But I really don't think it's an honest treatment of the issue to suggest that we are going to find the money at some point here in the next few days when the cupboard is already dry. The cupboard is bare. For those who think this may be some sort of backdoor approach and gimmickry involved, I would suggest that that may be true, but the real problem is the fact that this is a dedicated revenue account to begin with. And if this is truly a worthy program, why don't we have it compete in the General Fund like so many other worthy programs for scarce dollars.

So there are different ways of looking at this program. I happen to have come down on the side that says the money is just not there this year. We can vote for this now and send it to the Table. Unfortunately, there won't be any money there to fund it. It will make a good statement, I guess, that part of the Legislature liked this program. But perhaps the time has come to really look at the way that we're funding this particular program and see that that is the flaw, and realize that we just can't expand this program without a significant, hard choices about where those General Fund dollars are going to come from. I would suggest you vote against the pending motion. Thank you.

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

Senator **CLEVELAND:** Thank you Madam President and men and women of the Senate. I want to clarify just two points to make sure that there wasn't confusion. This bill does not require any funding this fiscal year because the implementation of the tax change is in the next fiscal year. Now I wouldn't for a moment suggest to you that there isn't a fiscal impact because we talked about that just a few minutes ago. But there is no requirement or money to be funded from the Table this year. The purposes are to put it back the way it was for the purposes intended in future years and yes, there will be an impact and yes, we will deal with it the way that I have suggested to you.

Secondly, I know that there have been some who have raised some issues about the fact that this is a dedicated fund for this particular purpose. Reality is that we do that fairly frequently for specific purposes. One of the biggest that we have done, last session and that we are dealing with this session, is all of the tax relief funds. About \$197 million worth of money in there that is being used for a variety of both one-time and ongoing taxes, both from the tax relief packages and the income tax relief funds that we created last year. Now if we don't really want to do that, and we want to put everything in play, then we have to be consistent and say we should have done that with those tax relief moneys as well and let it all compete. This is not a new program. It's not a new expansion of any program. It's returning it to the formula that existed previous to our altering the program to provide more revenue for the General Fund to offset a previous deficit. Again, I would ask for your support in this motion.

THE PRESIDENT PRO TEM: The pending question before the Senate is the motion by the Senator from Androscoggin, Senator Cleveland, to Accept the Majority Ought to Pass as Amended Report, in concurrence.

The Chair ordered a Division. 12 Senators having voted in the affirmative and 10 Senators having voted in the negative, the motion by Senator **CLEVELAND** of Androscoggin to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence, **PREVAILED**.

READ ONCE.

Committee Amendment "A" (H-1068) **READ** and **ADOPTED**, in concurrence.

LATER TODAY ASSIGNED FOR SECOND READING.

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

SENATE REPORTS - from the Committee on **EDUCATION AND CULTURAL AFFAIRS** on Bill "An Act to Authorize a Tuition Savings Plan to Encourage Attendance at Institutions of Higher Education"
S.P.622 L.D. 1825

Majority - **Ought to Pass as Amended by Committee Amendment "A" (S-620)** (8 members)

**Minority - Ought to Pass as Amended by Committee
Amendment "B" (S-621) (5 members)**

Tabled - March 27, 1998, by Senator **PENDLETON** of Cumberland.

Pending - motion by same Senator to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-620)** Report

(In Senate, March 27, 1998, Reports **READ**.)

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

Senator **SMALL:** Thank you Madam President and men and women of the Senate. I hope you will not support the Majority Ought to Pass report so that you can go on to Accept the Minority report. Both bills set up a college savings plan which will allow parents to save for college in a State Fund which takes advantage of the recent federal tax exemptions and deferrals. The savings plan offers no guarantee to parents and families that they will be able to pay the full cost of tuition or college expenses when their children go onto college. But they do let parents invest at their own rate in a tax exempt program. I think it's crucial that we get this started right now.

The major difference between the two reports is the language that creates a prepaid tuition program in addition to the savings program to be administered by FAME. Section 8 has language which says, "the authority may solicit, establish and participate in a program providing limits on future increases in the cost of education at participating institutions of higher education on those terms and conditions that the authority may negotiate with the institutions." This is a prepaid tuition plan. The Majority report allows FAME to create and promulgate rules to administer the State's prepaid tuition program. But the Minority report, which also allows FAME to create and make rules, defines the rules as substantive which would require FAME to bring the rules back to the Legislature for approval next session before the program is implemented. The savings program could begin immediately but the prepaid tuition program would have to gain final approval of the Legislature.

The reasons for requiring the final approval are numerous. Savings programs have little risk involved. Prepaid tuition program, by nature, involve a level of risk. The question is, who assumes the risk? In some programs it's the family. In most programs it's the State and in one program, Massachusetts, it's the colleges and universities. Most states sell the program as risk free for parents. Pay now for tomorrow's college costs. The selling point is that if tuition prices go sky high again, you will be protected by the fund and the risk will belong to the state. In Massachusetts where over 86 colleges and universities participate in a hybrid program, they sell the parents bonds which are guaranteed to keep pace with CPI plus 2% and the colleges that participate in the program agree to keep the cost of the tuition at CPI plus 2%. If the tuition rises faster than that limit, the college eats the difference from the program participants. Thus far, none of the other states have copied the Massachusetts model.

If prepaid tuition is a good idea for Maine, it is certainly worth exploring. That's why the Minority report has FAME report back with a prepaid tuition program to the next Legislature. However, data on other state plans makes prepaid tuition, I think, a

questionable success in Maine. In states with successful prepaid tuition program, most of their students aspire to, and actually attend the state's universities and colleges. As you know in Maine, well over half of our students leave Maine and only 34% of graduating seniors going on to post-secondary education attend the University of Maine System. Participants in every other state tuition savings program, on average, the families earn \$50,000 and above. The programs do not attract lower income families because they have limited disposable income. According to a study conducted by Fleet Bank and FAME entitled, "Futures at Risk," which is something that they handed out this summer, it quoted, "interest in Maine schools and in particular the University of Maine and the Maine Technical College tends to decrease as income increases." Another section investigated where parents hope to send their children and cited, "only 20% of Maine parents were looking at the University of Maine for their children." So a prepaid tuition program which is based on students attending the local university would have little support from the very income group that it is most likely to invest in the program. Prepaid tuition programs are most successful where in-state tuition is low.

Maine, like the rest of the New England, has very high in-state university tuition. Although the first wave of states favored prepaid tuition plans, all of the New England states except Massachusetts, have enacted or are in the process of enacting college savings and not prepaid tuition programs. In addition to the New England states of New Hampshire, Connecticut and Rhode Island, Delaware, New York and New Jersey all have recently implemented college savings programs and not prepaid tuition programs. Vermont has passed a savings program in the House but awaits Senate action. And they have endorsed a savings program for the very same reasons that it makes sense in Maine. They have high tuition. They have a majority of their students going out-of-state to other universities and their income level is somewhat on parity with ours. There's also recent data coming out as the tuition increases have slowed and the stock market has increased. They're even now questioning whether or not this is a good investment for parents.

A recent article in the Chronicle of Higher Education, November 21, 1997, is entitled "Financial Experts Say Smaller Tuition Increase Have Eroded the Value of PrePaid Plans." So what is the risk if we go forward with a Prepaid tuition program without Legislative oversight? There may be none. Or the program may create inequities in how we finance higher education. Who will accept the risk of the prepaid tuition program? Remember, if there is no risk, there is no need for a prepaid tuition program. College savings programs will still allow tax free deferred investing for college.

What if FAME creates a program and it fails? My fear is the failure of the prepaid tuition portion of the program could jeopardize the college savings plan, and that is a plan that I wholeheartedly support. Maine, because of its smaller population and low income levels, does not have a huge pool of potential program participants. And I think that we will find an increasingly smaller pool of people who may participate in this. Factors that determine how many people participate are not only incomes but how well the program is marketed, and how much support there is. In some states, where the Governor didn't jump on early on the program, they had much lower than expected sales and participation in a newly opened program. If the program is not simple to understand and correctly marketed, it will fail to attract the numbers necessary to keep administrative cost low for all participants in the program. The state has a very important tool

at its disposal to help promote saving for college, the federal and state tax exemption. It should not waste this opportunity on a program that we have not had an opportunity to scrutinize. We, and not the bureaucrats, should determine if the prepaid tuition program fits the needs of our families, and having the rules come back to us for final adoption will guarantee this process. Thank you very much. I request the yeas and nays.

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

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

Senator **PENDLETON:** Thank you Madam President and men and women of the Senate. I hope that you will stay with us and vote for the Majority Ought to Pass report. As the good Senator from Sagadahoc, Senator Small said, both reports are very similar. There are just a few sticking points. Under the Majority report, **FAME**, Financial Authority of Maine, will be able to negotiate with colleges on a voluntary basis to investors for a college savings program that caps future tuition increases. In effect this would allow investors to lock in, I say lock in tomorrow's tuition cost at today's rates. Again, it's important to note that colleges participate in this part of this college program, prepaid tuition program purely on a voluntary basis which is part that the school would volunteer for. In negotiating tuition caps with Maine schools, neither the state of Maine nor **FAME** is accepting any risk whatsoever should the cost of higher education increase because the risk will be at the negotiating school or the school that agrees to lock in to the prepaid tuition. Basically, the tuition lock-in mechanism gives investors the certainty of knowing that an investment today buys the guarantee or lock-in on future tuition cost. The investors are buying something of more value than simply just investing in a program. I hope that you will vote with the Majority Ought to Pass report.

THE PRESIDENT PRO TEM: The pending question before the Senate is the motion by the Senator from Cumberland, Senator Pendleton, to Accept the Majority Ought to Pass as Amended by Committee Amendment "A" Report.

The Doorkeepers secured the Chamber.

The Secretary called the Roll with the following result:

ROLL CALL

- YEAS:** Senators: CAREY, CASSIDY, CATHCART, CLEVELAND, DAGGETT, GOLDTHWAIT, KILKELLY, LAFOUNTAIN, LONGLEY, MURRAY, NUTTING, O'GARA, PARADIS, PENDLETON, RAND, RUHLIN, TREAT, THE PRESIDENT PRO TEM - CHELLIE PINGREE
- NAYS:** Senators: ABROMSON, AMERO, BENNETT, BENOIT, BUTLAND, FERGUSON, HALL, HARRIMAN, KIEFFER, LIBBY, MACKINNON, MILLS, MITCHELL, SMALL
- ABSENT:** Senators: JENKINS, LAWRENCE, MICHAUD

18 Senators having voted in the affirmative and 14 Senators having voted in the negative, with 3 Senators being absent, the motion by Senator **PENDLETON** of Cumberland to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-620)** Report, **PREVAILED**.

READ ONCE.

Committee Amendment "A" (S-620) **READ** and **ADOPTED**.

LATER TODAY ASSIGNED FOR SECOND READING.

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

HOUSE REPORTS - from the Committee on **STATE AND LOCAL GOVERNMENT** on Bill "An Act to Require Abutting Landowners to Pay a Fair Share of the Costs of Maintaining a Private Road" H.P.1410 L.D. 1974

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

Minority - **Ought to Pass as Amended by Committee Amendment "A" (H-1031)** (6 members)

Tabled - March 27, 1998, by Senator **NUTTING** of Androscoggin.

Pending - motion by same Senator to **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1031)** Report, in concurrence

(In House, March 26, 1998, the Minority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1031) AS AMENDED BY HOUSE AMENDMENT "C" (H-1085)** thereto.)

(In Senate, March 27, 1998, Reports **READ**.)

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

Senator **NUTTING:** Thank you Madam President and ladies and gentlemen of the Senate. I'll try to be brief because I know that we have got several divided reports ahead of us. This particular report, as it comes to us from the other Body, I just want to clear something up. The House Amendment actually replaces the Committee Amendment. This bill was brought forth by several Local Road Associations in Maine that are in existence. There is no real mechanism in current law to allow them to have a situation occur whereby everyone that lives along this private road would continue to contribute toward that road's maintenance. This bill has been through several drafts in Committee. It just sets up a process amending current law slightly where people can form a Road Association, or work together to have a fairly simple mechanism where if there are 50 people living on this private road, 50 people can contribute toward the road's maintenance. Unfortunately, what has been happening for years now along many, many private roads, many

of them next to small lakes and ponds, is that approximately 50% of the people living along this private road are paying 100% of the maintenance cost. As the DEP testified before the State and Local Government Committee on this particular L.D., these unmaintained roads next to our small lakes and ponds are contributing to the degradation of the water quality in those small lakes and ponds. This is just permissive language to allow a Road Association to work together, to help maintain the road better by having all members of Road Associations pay for its cost. I hope that you will support the Minority Ought to Pass report. Thank you.

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

Senator **LIBBY:** Thank you Madam President and men and women of the Senate. My strong recommendation is that you don't accept the Minority report. There are, as the good Senator from Androscoggin, Senator Nutting has said, other versions of this. There is a House version that completely replaces the bill. We are not supposed to talk about that nor do I intend to, but I just want to note that there are some serious flaws in this Minority Ought to Pass approach that have been discussed and are still trying to be ferreted out. When we get to that point maybe we can discuss it, but in the meantime I'm recommending that we move to the Majority Ought Not to Pass. So, I'm recommending that you oppose the pending motion and move toward that.

You know, it's true. The maintenance of public roads has been a difficult and thorny issue for many, many years. And I hope that you don't think that legislation that we are going to pass today, or sometime in the next week or so is going to really take a big, big step in overcoming some of the obstacles that go along with the maintenance of private roads. When it comes right down to it, people in Road Associations, and people not in Road Associations that live on a road, they ought to be paying their fair share. If we can come up with some legislation, here, in the 11th hour that may do that, I might just think about supporting it. But this piece of legislation in front of you right now isn't the vehicle and I think that even the Committee Chair might be willing to agree with that. This is not the vehicle because there are some serious flaws in the approach that you are looking at. I really would encourage you to read it over because it's a pretty technical bill. Certainly, we should be discussing the ability for these folks go through civil action and be able to come up with not only payment for the road, but any other attorney's fees that should be levied along the way. Certainly, we should be discussing those issues.

I really would hope that you would not support the pending motion so that we may go on and accept the Ought Not to Pass and then possibly, in non-concurrence. We can come back and discuss the issue when we have had it out with large tracks of landowners, folks that are involved in the paper industry for example, folks that are involved in other businesses and so forth. I think that we really need to have a long discussion about those folks before we ever start accepting this kind of legislation. It is not in here. There are some amendments out there and I think that we ought to take those up one at a time when we get to those. I hope you will oppose the pending motion.

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

Senator **DAGGETT:** Thank you Madam President and Members of the Senate. I do plan to support the Minority Ought to Pass report. Having dealt with issues of private roads, not just when I was on the State and Local Government Committee in the past, but currently living on one during the summer and being aware of the significant issue that this is in Maine, it hasn't been explained to me exactly what the problems are in this bill, that's in front of us, but it is an issue that seriously needs to be dealt with. And perhaps, even if it is somewhat flawed, it might be an impetus for us to, in fact, get something accomplished. I, for one, would be thrilled to see this issue dealt with and will absolutely be supporting this report.

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

Senator **GOLDTHWAIT:** Thank you Madam President and ladies and gentlemen of the Senate. This bill was one of the many that we looked at, and at first blush it appears to be a relatively simple issue and became something of a nightmare in terms of trying to resolve all the parts and pieces of it. The important thing to focus on here, I think, is that it attempts to solve and, I believe in its final version does solve a rather simple but extremely frustrating problem that was brought before us by several Road Associations, and that is, what you do when you have some people who live on a road or use a road paying to maintain it and others refuse to pay their share and reaping the benefit of the financial contributions of their friends and neighbors? The bill went through a variety of versions starting with an extremely complicated, and probably doomed to failure by its own weight, bill. It has been amended several times and the report that is in front of you is not the most recently perfected one. That would be available to us if this report passes. However, I hope you will support what is in front of you now so that we can move to the last perfection of this issue rather than vote it Ought Not to Pass.

One of the points that was raised at our hearing that probably made the greatest impression on me is that there is indeed a civil process available to address this problem. However, there is no provision in the existing statute to recover your court cost. So the Road Association that had used that civil process and was awarded \$1,500 by the court, found themselves having to pay \$1,800 in court costs. The version that we will complete by the last House Amendment, if we have the opportunity to look at that, reaches that final stage of providing for coverage for court costs. Frankly, it does not do a whole lot else since we had gotten into a long debate with the paper companies about what this would mean to them and were we going to have to pay for the golden road and everything else. All of that is now gone. This provides for a simpler and a less expensive system, I might say, of having a Road Commissioner for a private way, but also most importantly, for recovering court costs if a civil action is brought so that Road Associations that find themselves with this problem can undertake the existing civil remedy without finding themselves deeply in debt because of that. I would urge you to support the pending motion to accept the Minority report.

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

Senator **FERGUSON:** Thank you very much Madam President. I'd like to pose a question through the Chair, if I may?

THE PRESIDENT PRO TEM: The Senator may pose his question.

Senator **FERGUSON:** Thank you Madam President. For instance, if there is a property owner on this road that does not belong to the Association, are they going to be assessed in this particular instance under this legislation even though they don't want to pay,? Maybe it was the original owner of the property and they don't even have a camp, or dwelling, or domicile, or whatever it happens to be on the road? Then I would like to continue to hold the floor, if I may for a second, after my question is answered? Thank you Madam President.

THE PRESIDENT PRO TEM: The Senator from Oxford, Senator Ferguson, poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Hancock, Senator Goldthwait.

Senator **GOLDTHWAIT:** Thank you Madam President and ladies and gentlemen of the Senate. Since it's almost 9:00 o'clock, I'll make my answer brief. The answer to the question, as I understand it, is that this process could be initiated for any private way on which there are at least four separate property owners, or parcels in separate ownership. It is initiated by any three of those separate owners and then they go through a process through which they select a Road Commissioner. And yes indeed, they can assess equal shares for the maintenance fee. However, in the final version of the bill, it begins for the first year only covering existing Road Associations, which in effect gives us an opportunity to take the easier segment of the population to address those people who have already put themselves into Road Associations and give them the chance to work out the bugs, if there are any, before it is expanded to include the general population, by virtue of a simple alliance among these four parcel owners, could initiate this process for assessing for repairs.

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

Senator **FERGUSON:** Thank you very much Madam President. I apologize to the Senate for standing up when my good friend, Senator Goldthwait, was talking. It was ignorance on my part and I do apologize. It seems to me that this is a very complicated issue. I can assure you, with 26 years as a County Commissioner, this isn't the first time that I've dealt with road issues. Even when they are public ways, they are complicated. I don't know whether we should go forward with this or not. It seems to me that if a person is dragged into an association, or if they are not affiliated with it, that they shouldn't be assessed maintenance costs. It doesn't seem fair to me. And it also seems to me that if you have a road and you do have an association, that the document, the civil document should be such that it would take care of any contingencies that you would have. It's unfortunate that we, in the Legislature, have to come forward and solve problems of this nature that should be solved by the landowners themselves when you either build on the road, or have the use of that road. These are just my own thoughts. Thank you.

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

Senator **BENOIT:** Thank you Madam President. May it please the Senate. Sometimes in our work we have to wrestle with the principle of common sense. You know it's a difficult thing to wrestle with on occasion in here, but sometimes common sense ought to rear its ugly head and be followed. It seems to me that this bill is trying to address something that common sense calls for. A very simple situation not to be complicated. You've got a private road. You've got ten folks with places along the road, eight of them are paying the way for grading, culverts, plowing and these other two folks have the benefit of that. They traverse the road and they don't pay their way. This bill would attempt to get some fairness out of the situation and prevent, what I consider happening in that situation, which is called unjust enrichment. Somebody who has the right to use the road, they are not paying their way. They get unjustly enriched at the expense of their neighbors. This is a good neighbor bill as I see it. A good neighbor policy. Everybody along the road pays their fair share to maintain the road. Common sense seems to be calling to me to support this kind of legislation and I hope you will as well. Thank you.

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

Senator **MILLS:** Thank you Madam President. The idea that was just described by the Senator from Franklin is so sound and so well accepted that it has been part of our statutes for at least 50 years. The bill, as I understand it, is an amendment to an existing procedure. I just happen to look up in the Statute book and find that most of what is in the text of this bill is in these good, old red books and has been here since at least 1954, which was the last time that they published a codification of Maine Law. This signals to me that it has probably been part of our law for the better part of this century. So the underlying concept that a group of people who are abutting landowners to a road may call a meeting and ask for the appointment of a Commissioner and ask that certain repairs be done at common expense, and ask that the civil action be brought if necessary to collect a fair share from the recalcitrant landowner, that's part of our law now. That's here and we've had it, apparently, for decades.

The issue on the floor, as I understand it from the Senator from Hancock, and from perusing the draft for what we have for paperwork in front of us, is just to make some modest amendments to this long standing procedure so that in the unlikely event that this Road Association, or the Commissioner for it, has to go to court to collect for an allocate share of the gravel and grading costs, that they might also recover the filing fee paid in court, perhaps the interest on the amount and the incidental court costs. To me, it's not a big deal. It simply is reinforcing an existing, well established procedure that has apparently an old custom of ours. I would urge support for the pending motion and for the ultimate amendment when it comes. Thank you.

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

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

THE PRESIDENT PRO TEM: The Senator may pose his question.

Senator **KIEFFER**: Thank you Madam President. I didn't have a long enough opportunity here to thoroughly read this bill. Does this apply to lands owned or does it include lease land?

THE PRESIDENT PRO TEM: The Senator from Aroostook, Senator Kieffer poses a question though the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Somerset, Senator Mills.

Senator **MILLS**: Thank you Madam President. The answer as contained in current law says that when four or more persons are owners and occupants, and it doesn't say "or". So, it suggests that you must own the land and a leasehold interest would be insufficient to give you standing to participate in the process, only the owner. I would suggest that perhaps only the abutting owner would be liable. That is only owners may participate in forming the association and I believe that it is fairly clear that only an owner could be responsible for the cost if he refuses to participate.

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

Senator **KIEFFER**: Thank you Madam President. This bill, I believe, originated because of roads that are jointly used to primarily camp lots around lakes. Now if that is true, in many, many cases perhaps not the majority of cases but in many cases, these lots around those lakes are not owned, they are leased. So, I guess I have a little problem understanding exactly how this is going to benefit the people who lease these lots, or the Road Association in the event these lots are, in fact, leased. Could anyone clarify this for me?

THE PRESIDENT PRO TEM: The Senator from Aroostook, Senator Kieffer, has posed a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Hancock, Senator Goldthwait.

Senator **GOLDTHWAIT**: Thank you Madam President. In answer to those questions. The first question was whether it was owners or lease holders. It's actually described in the language of the bill as when four or more parcels of land are benefited by an eligible road as an appurtenant easement or through fee ownership. The existing language says owners and occupants of a private way or bridge. There was felt to be some uncertainty about who would be an occupant of a private way. Therefore, we were advised by someone who specializes in road law that it would be a good idea to change this language at this time to the language in front of you, the four or more parcels of land that then any three owners of those parcels may make written application.

The Senator from Aroostook, Senator Kieffer, raises an excellent point, and one which we certainly discussed at huge lengths because it is not only leased lake front ownership but also was one of the issues raised by the paper companies in terms of camp leases within their lands. It was felt that the existing language was a desirable narrowing of this legislation. We are well aware after the many, many, many hours and different varieties of possible consequences of this bill that this will not cover everybody who would like to be covered under this legislation. It takes a first cut at covering the most obvious of cases and a number of those that were directly brought to us

through the public hearing. There are undoubtedly other types of associations, or groups, or other sorts of ownership or users of these lands that will not be adequately addressed through this legislation. This is our best first shot at addressing at least one group of them. And again, moving into this in a more incremental way will give us a bit of an experience record so that when we make the next cut, which I hope will be made by someone other than me frankly, we will be able to incorporate more of those issues. My understanding is that the Senator is correct, that it does not address those leased parcels. And that was deliberately done by the Committee.

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

Senator **LIBBY**: Thank you Madam President. I would hope that this Body would have enough common sense not to vote for legislation that is flawed and admitted to be flawed by the people who are behind it. The question here is when we look at this piece of legislation, ask yourself this question. At what level should this camp road be maintained? Can you answer that question from this legislation? You are going to have a majority of people who get together in this Legislation, not in any amendment that might come down the road here. They are going to elect a Commissioner. That Commissioner is going to charge any fee he or she wants. It doesn't say in here what that fee will be and then they are going to decide at what level should this road be maintained. Now some people like to have bumpy camp roads and some people want to have it paved perfectly and painted green. It doesn't say anything about that in here. But what will happen is that this group will get together and the majority of the group will dictate to the rest at what level this road should be maintained and the rest are going to be left with the expense that they disagree with. Then you are going to go back into court and have the civil problem that is discussed here. I just think that what we need to do is certainly address the problem. Don't get me wrong. If we can address this with new legislation, I'm all for it. I've got all kinds of lakes in my district and it really is a problem. But I can't vote for this piece of legislation because it doesn't give me any direction as to what actually can happen here that will actually solve the problem. The camp owners and people that lease, that live down these camp roads know what they are getting into when they buy, or lease this piece of property, don't they? They are getting into a situation where the road and the right of way that they have to get to the place that they are leasing is less than perfect. They know that. It's really a local issue. It's not a state issue. We ought not be having our finger in every pie. What we ought to be doing is let the locals take care of this problem. Let's let honest people take care of it. There are a few situations around the state where people sit on their hands and they won't pay to keep the road maintained and I think that's unfortunate. But for those few situations where somebody is not being the kind of neighbor that they ought to be, we can't legislate an across the board solution to that. That's what this does. There may be an amendment that comes over from the other Body. When we get a chance, and we will get a chance, maybe we should consider that, but this is isn't going to do it. I can't vote for something that has some flaws in it. Thank you very much.

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

Senator **NUTTING**: Thank you Madam President. I can't resist complimenting the good Senator from Franklin, Senator Benoit's comment earlier made this afternoon. These local Road Associations came before the State and Local Government Committee. Again most of these roads are not maintained properly not because 80% of the people are paying their maintenance cost but, sadly, only about 50% on the roads are paying the maintenance cost. This is contributing to increased runoff of soil etc., into smaller lakes and ponds. I firmly believe that these local Road Associations are in charge of their own destiny. This is permissive legislation. They are going to meet and be able to assess everybody on the road a proper amount for that road maintenance and use their common sense, not to make a four lane highway, but to have a road that is decently maintained so that they can at least drive over it in the spring. So the culverts are replaced. I don't think they will, all of a sudden because they now have the ability to collect from everyone along the road if they so choose and if there is a problem, I don't think that they will also quadruple their own rate that they have been paying all along in order to build a four lane highway. I firmly believe that this is just enabling legislation to let them use their own common sense and fix the road up to a decent standard. So, I hope that you will support the motion before us so we can go on and then adopt the House Amendment which improves this even more. Thank you.

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

Senator **MILLS**: Thank you Madam President and men and women of the Senate. I just need to rise to remind the chamber that the debate, as I am seeing it unfold, seems to be a debate over whether we should be repealing the current law and that's not the issue before us. We are concerned about making some minor improvements to the existing law, apparently a law that's been here for longer than most of us have lived and has, I might say, undergone a very few changes. In fact, no changes since 1954, at least, and it appears to be working well. The question is, should we be doing some improvements to it as recommended by the majority of the Committee? I think that's the point that we need to address.

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

Senator **SMALL**: Thank you Madam President. I just wanted to pose a question through the Chair to anyone who cares to answer.

THE PRESIDENT PRO TEM: The Senator may pose her question.

Senator **SMALL**: Thank you Madam President. My apologies if this has already been brought up in the debate while I was out. It occurred to me, as I was looking and thinking of our own camp road, we kind of voluntarily chip in money every so often when you start losing children and dogs in the gullies in between the high points of the road, and we repair it. There are people who live ten feet in from where the town road ends and the dirt road begins. They basically drive a driveway's length to get to their driveway. There are people who use probably 400, or 500 yards of the road and people who use a quarter of a mile of the road. I guess my question is, are the fees based on the amount of road that you need to travel to get to your property, or

is it a one size fits all structure? Because I could certainly understand the reluctance of people who only have to drive for a few feet on the road to want to pay for the maintenance of the entire road. Perhaps this is already figured into the legislation. I would appreciate a response or an answer if anyone has one to that.

THE PRESIDENT PRO TEM: The Senator from Sagadahoc, Senator Small, poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Hancock, Senator Goldthwait.

Senator **GOLDTHWAIT**: Thank you Madam President. I appreciate the question. I'm having a déjà vu that is taking me back to the hearing because it is these and many more questions that were raised then. The answer to this question is that the Commissioner has the authority to establish the assessments rather than us trying to prescribe issues like who lived near the front of the road, who lived toward the back of the road, who used it seasonally, who used it for commercial purposes, who used it for residential purposes and all of those things. The sense of the Committee, or at least the half of the Committee that voted in favor of this Minority report, was that it would be best left to the people involved in that decision making process to work that out and they have the ability and the authority to make whatever sort of agreement they choose to make. What this will do though is give some strength to once that agreement is made about who is going to be assessed what. There will be some peace behind actually causing those people to pay whatever that agreed upon amount of money is.

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

Senator **FERGUSON**: Thank you Madam President. I just want to make a correction for the good Senator from Somerset, Senator Mills. He said the majority of the Committee and he is in error. He said Minority and the Majority indicates that Ought Not to Pass. That's just a little correction on my part to set the record straight. Thank you very much.

THE PRESIDENT PRO TEM: The pending question before the Senate is the motion by the Senator from Androscoggin, Senator Nutting, to Accept the Minority Ought to Pass as Amended by Committee Amendment "A" Report. The Chair recognizes the Senator from Kennebec, Senator Carey.

Senator **CAREY**: Thank you Madam President. In an effort to try to clear the air, I would move Indefinite Postponement of L.D. 1974 and all its accompanying papers.

Senator **CAREY** of Kennebec moved to **INDEFINITELY POSTPONE** the Bill and accompanying papers in **NON-CONCURRENCE**.

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

Senator **LIBBY**: Thank you Madam President. I would just like to speak to this motion, if I might. I'm not sure whether I support it. I can honestly say that because I don't have in front of me an amendment that some people are excited about, and I'm

not going to discuss that Amendment because it is not appropriate to this conversation. Even though I don't agree with this bill, I just want you to know that. I think the question that the Senator from Sagadahoc raised earlier is the precise question that you ought to be focusing on. Can this bill lead to a fair assessment by this Commissioner of what the road costs ought to be, or will this be the Hatfields against the McCoys? And I'm afraid that it might be the latter. So if you are in favor of Indefinite Postponement, I certainly would agree. But there are some other materials, some other motions that will be made on this issue and maybe they ought to have their fair hearing. So I'm going to recommend against Indefinite Postponement of this bill as difficult as that is for me right now.

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

Senator **PARADIS:** Thank you Madam President and men and women of the Senate. I, too, rise to urge your negative vote regarding the pending motion. This is a simple little bill. It is not complicated. The genesis of it was some people in Aroostook County who have been fighting this battle for a long time. They have been to courts and all over the place and this is the court of last resort. It's a very, very modest beginning. I don't think they will believe the debate that has gone on here today. It is something that is very, very simple. It's a first step. Again, people from Aroostook County don't come here very often. There are some things that they are having a hard time to live with. This is one of the issues that has come up. They are business people. They are hard working people. I don't think that they are asking too much. I laud the Committee for the amount of time and energy they have spent on this. They were surprised, I think, with the number of people that the genesis of this bill might have been in the county but it touched a nerve statewide. So I urge your vote against this motion and go on to accept the Minority report.

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

Senator **CAREY** of Kennebec requested and received leave of the Senate to withdraw his motion to **INDEFINITELY POSTPONE** the Bill and accompanying papers in **NON-CONCURRENCE**.

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

Senator **CAREY:** Thank you Madam President. I have something like a 150 miles of lake frontage in my district. To reach some of these lakes people have to travel something like 2 miles, 2½ miles to even get to the shore. I don't see where there is any particular limit on this if, in fact, someone is holding land that's a mile long and is waiting for development, that water would never reach the lakes to begin with. So, I will give people an opportunity before remaking that motion, if it becomes necessary, to give them, at least, a chance to get their discussion finished.

THE PRESIDENT PRO TEM: The pending question before the Senate is the motion by the Senator from Androscoggin,

Senator Nutting, to Accept the Minority Ought to Pass as Amended by Committee Amendment "A" Report.

The Chair ordered a Division. 15 Senators having voted in the affirmative and 6 Senators having voted in the negative, the motion by Senator **NUTTING** of Androscoggin to **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1031)** Report, in concurrence, **PREVAILED**.

READ ONCE.

Committee Amendment "A" (H-1031) **READ**.

House Amendment "C" (H-1085) to Committee Amendment "A" (H-1031) **READ** and **ADOPTED**, in concurrence.

Committee Amendment "A" (H-1031) as Amended by House Amendment "C" (H-1085) thereto, **ADOPTED**, in concurrence.

LATER TODAY ASSIGNED FOR SECOND READING.

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

PAPERS FROM THE HOUSE

Non-Concurrent Matter

Bill "An Act to License Timber Harvesters and Deter Timber Trespassing"

H.P. 1013 L.D. 1405
(S "A" S-571 to C "A" H-951)

In Senate, March 23, 1998, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-951) AS AMENDED BY SENATE AMENDMENT "A" (S-571)** thereto, in **NON-CONCURRENCE**.

Comes from the House, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-951) AS AMENDED BY SENATE AMENDMENT "A" (S-571) AND HOUSE AMENDMENT "A" (H-1076)** thereto, in **NON-CONCURRENCE**.

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

Non-Concurrent Matter

Bill "An Act to Provide Educators More Authority to Remove Violent Students from Educational Settings"

H.P.1520 L.D. 2142
(C "A" H-1001)

In Senate, March 24, 1998, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1001)**, in concurrence.

Comes from the House, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1001) AS AMENDED BY HOUSE AMENDMENT "A" (H-1075)** thereto, in **NON-CONCURRENCE**.

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

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 Implement the Recommendations of the Governor's Commission on School Facilities"
H.P.1622 L.D. 2252
(C "A" H-1088)

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

Senate As Amended

Bill "An Act to Correct Errors and Inconsistencies in the Laws of Maine" (EMERGENCY)
S.P. 803 L.D. 2173
(C "A" S-622)

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:

ENACTORS

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

Emergency Measure

An Act Concerning the Taking of Marine Resources by Members of the Passamaquoddy Tribe
H.P. 1523 L.D. 2145
(S "A" S-599 to C "A" H-983)

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

THE PRESIDENT PRO TEM: The pending question before the Senate is Passage to be Enacted.

The Doorkeepers secured the Chamber.

The Secretary called the Roll with the following result:

ROLL CALL

YEAS: Senators: BENNETT, BUTLAND, CASSIDY, CATHCART, CLEVELAND, DAGGETT, FERGUSON, HALL, KIEFFER, LAFOUNTAIN, LIBBY, LONGLEY, MACKINNON, MURRAY, NUTTING, O'GARA, PARADIS, RAND, RUHLIN, TREAT, THE PRESIDENT PRO TEM - CHELLIE PINGREE

NAYS: Senators: ABROMSON, AMERO, BENOIT, CAREY, GOLDTHWAIT, HARRIMAN, MICHAUD, MILLS, MITCHELL, PENDLETON, SMALL

ABSENT: Senators: JENKINS, KILKELLY, LAWRENCE

This being an Emergency Measure and having received the affirmative vote of 21 Members of the Senate, with 11 Senators having voted in the negative, with 3 Senators being absent, and 21 being less than two-thirds of the entire elected Membership of the Senate, **FAILED ENACTMENT**.

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

Senator **CAREY:** Thank you Madam President. Having voted on the prevailing side, I would ask for Reconsideration and ask that it be Tabled until Later.

Senator **CAREY** of Kennebec moved the Senate **RECONSIDER** whereby the Bill **FAILED ENACTMENT**.

On further motion by same Senator, **TABLED** until Later in Today's Session, pending motion by same Senator to **RECONSIDER** whereby the Bill **FAILED ENACTMENT**.

On motion by President Pro Tem **PINGREE** of Knox, **RECESSED** until the sound of the bell.

After Recess

Senate called to order by the President Pro Tem.

Under suspension of the Rules, all matters thus acted upon, with exception of those matters being held, were ordered sent down forthwith for concurrence.

ORDERS OF THE DAY

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

SENATE REPORTS - from the Committee on **STATE AND LOCAL GOVERNMENT** on Bill "An Act Creating the InforME Public Information Act to Ensure Access to Electronic Public Records"

S.P.785 L.D. 2112

Report "A" - Ought to Pass as Amended by Committee Amendment "A" (S-624) (10 members)

Report "B" - Ought Not to Pass (2 members)

Report "C" - Ought to Pass as Amended by Committee Amendment "B" (S-625) (1 member)

Tabled - March 27, 1998, by Senator **NUTTING** of Androscoggin.

Pending - motion by same Senator to **ACCEPT** Report "A", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-624)**

(In Senate, March 27, 1998, Reports **READ**.)

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

Senator **NUTTING:** Thank you Madam President and ladies and gentlemen of the Senate. This particular Bill, L.D. 2112, "An Act Creating the InforME Public Information Act to Ensure Access to Electronic Public Records," is a bill that has been worked on for several months with the Administration and the Secretary of State's office. This bill recognizes that the computer age is here and that we, in Maine State Government, have fallen a little bit behind the curve in getting information out to the public via the Internet. Our current Secretary of State's concern with us not passing this particular bill was that some private company could come along and do these services and charge any amount they wanted to and there would be absolutely no oversight.

What this bill does is create the formation of a board with public members, other State Agency people to oversee the hiring of a network manager. This network manager would set up and make the investment, this private company would, and this would facilitate public records that are already currently public being put out on the Internet to the general public. This network manager would also be able to sell things such as value added type of information services, no different than what is being done currently to various interested parties. For instance, insurance companies are currently very interested in and currently receive lists of drivers who are maybe under a certain age and have had many driving infractions or other types of information. That's a premium service. That's undergoing now.

The concerns that were brought forth at the public hearing were addressed, I feel, in the Committee. One of the concerns was from the press. They were concerned that premium services, this network manager could charge so much for a certain type of information that the press wouldn't be able to afford to buy it. There was concern that whatever is free information now might cost money in the future. That is not going to be the case with the Majority report which is S-624, by the way.

The Committee added a provision that this Board would report annually to the Legislature on all fees for services provided through InforME and the Legislature will have the opportunity to refine those fees if appropriate. This was something that made this Legislator much more comfortable with this process. The public generally has a real hunger for information, be it Legislative schedules, hearing schedules, or department information. This system will function very, very similarly to the systems already up and operating in many other states.

The last point I want to make to you, ladies and gentlemen of the Senate, this afternoon is that the state of Georgia attempted to run this system on their own. The investment was made by the state of Georgia and then the premium services were charged out by the state of Georgia. They tried this for two years and just recently abandoned this and went with the network manager proposal that is contained in this Majority report before you today. It's not a replacement for current methods on informational retrieval. Rather, it just enhances and compliments Maine's Freedom of Access Law by providing additional access through a medium through which the public may obtain information. What is free information now will remain free. What is a premium service information value added, what you pay money for now will stay the same. What is confidential information now will remain confidential. That hasn't changed either in this L.D. So I would urge you to support the Majority, I believe, 11 to 2 report. Thank you.

THE PRESIDENT PRO TEM: 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 Chair noted the absence of the Senator from York, President **LAWRENCE**, and further excused the same Senator from today's Roll Call votes.

The Doorkeepers secured the Chamber.

The Secretary called the Roll with the following result:

ROLL CALL

YEAS: Senators: **ABROMSON, BENNETT, BENOIT, BUTLAND, CAREY, CASSIDY, CLEVELAND, DAGGETT, FERGUSON, GOLDTHWAIT, HARRIMAN, LAFOUNTAIN, LONGLEY, MACKINNON, MICHAUD, MILLS, MITCHELL, MURRAY, NUTTING, O'GARA, PARADIS, PENDLETON, RAND, SMALL, THE PRESIDENT PRO TEM - CHELLIE PINGREE**

NAYS: Senators: **AMERO, CATHCART, HALL, KIEFFER, LIBBY, TREAT**

ABSENT: Senators: **JENKINS, KILKELLY, RUHLIN**

EXCUSED: Senator: **LAWRENCE**

25 Senators having voted in the affirmative and 6 Senators having voted in the negative, with 3 Senators being absent and 1 Senator being excused, the motion by Senator **NUTTING** of Androscoggin to **ACCEPT** Report "A", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-624)**, **PREVAILED**.

READ ONCE.

Committee Amendment "A" (S-624) **READ** and **ADOPTED**.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-624)**.

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

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

HOUSE REPORTS - from the Committee on **STATE AND LOCAL GOVERNMENT** on Bill "An Act to Implement the Recommendations of the Maine Commission on Outstanding Citizens"

H.P. 1620 L.D. 2250

Majority - **Ought to Pass** (11 members)

Minority - **Ought to Pass as Amended by Committee Amendment "A" (H-1064)** (2 members)

Tabled - March 27, 1998, by Senator **NUTTING** of Androscoggin.

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

(In House, March 26, 1998, the Majority **OUGHT TO PASS** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED**.)

(In Senate, March 27, 1998, Reports **READ**.)

On motion by Senator **NUTTING** of Androscoggin, **TABLED** until Later in Today's Session, pending motion by same Senator to **ACCEPT** the Majority **OUGHT TO PASS** Report, in concurrence.

Senate at Ease

Senate called to order by the President Pro Tem.

The Chair laid before the Senate the following Tabled and Later (3/19/98) Assigned matter:

SENATE REPORTS - from the Committee on **NATURAL RESOURCES** on Bill "An Act to Allow the Department of Environmental Protection to Process an Application by the Ivan Davis Family for a Hydropower Project at an Existing Dam on the St. George River"

S.P.849 L.D. 2262

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

Minority - **Ought to Pass** (5 members)

Tabled - March 19, 1998, by Senator **TREAT** of Kennebec.

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

(In Senate, March 19, 1998, Reports **READ**.)

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

Senator **LONGLEY:** Thank you Madam President and colleagues in the Senate. I'm here to tell you about the dream in my community of Liberty, Maine. It's called "Ivan's Dream." Ivan, in his 20's, back in the 1940's, bought all of the dams along the river flowing out of Lake St. George. We're in the beautiful Lake St. George watershed. This area of dams, mostly strewn leftovers from the Industrial era when Liberty, Maine, the "men of Liberty," as the history books said, made the mills work, the tanneries, the saw mills, the slate mills. It was a pumping place. Come the Depression, down the drain. All that's left is strewn dams through this river. According to one of my neighbors, it's a junk yard of the Industrial Revolution with remnants of foundations, mill ponds, old buildings, decaying boilers and, last but not least, a very significant leaning smokestack hung up in the trees even evident to a casual visit to the area.

Ivan bought this in the 40's and kept some of the dams going. In 1990 he wanted to rebuild dam No. 2. Dam No. 1 was working well but dam No. 2, he wanted to rebuild. Ivan got caught between the cracks. By the time that he got his application completed, low and behold, the entire St. George River had been classified from C to AA. Double "A" means natural and free flowing and navigable and recreational and many things that this area of the river, 660 feet area of the river, is not. I consider this a truth in "Ivantising" bill. You'll hear from people who want to talk about why the St. George should be class AA all the way through. It's beautiful, pristine and I say, yes, they are right, but not in this section. They'll say that there is a process in there for reclassification. Reclassification and I say great. It's only four years late. It's supposed to happen every three years. It didn't happen in 1993. It didn't happen in 1996. It was supposed to happen this fall. It was delayed through next year. Meanwhile, Ivan is in his 80's and Ivan may not live to see another winter or spring.

So, I am here on behalf of Ivan Davis and everyone in my town to simply allow Ivan Davis and the town to apply to hook up his existing dam in this arguably not double "A" area. Dam No. 1 is there, working and dam No. 2 is there, working. But dam No. 2, he wants to connect a 30 inch pipe and run it down 30 feet and run a sawmill set back enough to allow for his slate mill. We heard from business people who would buy everything he makes

as fast as he can make it because there is a shortage. It would employ ten people in our town. It is not a double "A" area. If it's a double "A" area, legally we are not allowed to hook up this pipe to run this mill. It's as simple as that. I can show pictures and I can tell you that even the DEP has written and said there's already a natural barrier to fish passage, so we don't require a fish way. The fish aren't even swimming up because of the four strewn dams just below. It's a simple request. He's been waiting more than he should have to. We're asking to help him get his application in. What you will hear is the re-class process is in place and working. I'm saying that it's been delayed, delayed, and delayed. Meanwhile he might not live to see it happen. It's a dream that shouldn't turn into his nightmare or the town's.

Lastly, when he applied, way back, he said that he wanted to hook up his dam to run water power. All he needs is the okay from you, before me, to say, we'll let you do this if you will trust that my description of this area is accurate, and I live in this area. I didn't hear people who came and testified against it say that they had even been to this area to check out what they said. With Ivan very much in mind, I stand to ask this request. Thank you.

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

Senator **RUHLIN:** Thank you Madam President and ladies and gentlemen of the Senate. Let's examine this for a moment. First of all, what is a double "A" river? First of all, it's our river. Let's keep that in mind because it belongs to all of the people of the State of Maine. When we classify these rivers, at one time we had "D", then "C", "B" and so forth up to "A" and "AA". Double "A" is a classification that is only given upon receipt of scientific data that examines many aspects of it such as dissolved oxygen, bacteria-coliform, purity of the water, clarity of the water. After that technical data is presented, the DEP makes it's recommendations to the BEP, a supporter of environmental protection. They then consider all the facts involved. Is it in fact a free running river? Is it in fact almost pristine? Is it in fact clear? Is it in fact clean? Is it in fact available for water supplies with little treatment? That's what Double "A" is. If BEP finds that that is true then they make the recommendation to this Legislature and this Legislature acts, yes or no, as it sees fit, upon the advice that it has been given by the BEP, who, by the way, Members of this Committee gives advice and consent on. Now, this piece of water is Double "A", the highest quality of free flowing water in the State of Maine that we give to our rivers. Let's keep that in mind. Point number one.

Point number two. This is not Mr. Davis' first time to come before the Legislature with private, special legislation, believe it or not. Behold what we have here. Chapter 40, this looks like it's one of the laws of the State of Maine, 1991. And it says under this law, whereas Mr. Davis' application included no proposals for development or redevelopment of hydro-generating power or hydro-mechanical water power, that we therefore, etc. So we will, for Mr. Davis, give him a private and special exception to the laws of Maine providing that he doesn't try to put in electro-generating and water power. Now, what do we do some years later? We come along and not only does the gentlemen wish to use hydro-mechanical power but he wants to de-water. Think about that for a moment. De-water our river. When you put that 30 inch pipe in, you take water out of the bed of the river. That de-waters the river bed. Class "A" water is for the highest recreational purposes, cold water fisheries, flora and fauna of this

state that is valuable and we are going to allow one person to de-water our river. It doesn't make a lot of sense to me. If he has a case that is so compelling, I'd suggest that he take it through the process through BEP. They start with DEP. They start someplace else other than this Legislature. One more time we're looking for the Legislature to grant him a special favor so that he can misuse our river. I hope you will vote with the Ought Not to Pass report and protect our valuable natural resources. Thank you.

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

Senator **BUTLAND:** Thank you Madam President and ladies and gentlemen of the Senate. We spent a lot of time over the last two years in the Natural Resources Committee talking about water related issues. And one of the issues that we have carried forward from the first session was the Great Ponds Task Force Bill. In a piece of research, reference material that was given out to us quite a while ago for that particular issue was a Down East Magazine from 1995, and it has an article in it on "Rangeley Lake." I had an opportunity to read that article and, low and behold, when I turned the page there was an article, "At Liberty in May." It talked about the town of Liberty. So I read on to see if it had anything to say about this particular dispute and it did. I'm not going to read the whole article or even more than a few sentences but I just want to give you a flavor for this particular issue. It says, "Two year ago, Ivan Davis completed the first in a series of hydro dams which he hopes to restore some of Liberty's yesteryear luster. The St. George River, he says, 'is the life blood of our town, always has been, always will be. Water power, after all, is nonpolluting and self renewing. I never tire of hearing the river flow by, thinking of how that natural resource of energy can't be tapped.'" It goes on to talk about his attempts to build the dam and a shovel handle mill over the past few years. The last paragraph says, "Some environmentalists assure themselves as Davis is, argue that the St. George should remain an unchecked naturally flowing river without any dams or any other encumbrances. The battle of philosophy has been joined and now the battle of philosophy has been sent to the Maine State Legislature."

I suspect that if Mr. Davis and I sat down and spoke for an hour or two that we would find that on about 99% of the issues, we would be in total agreement. I would love to see Mr. Davis have his dam completed, his pen stock completed, his factory completed and some jobs be gained in the local area. But I have too much respect for the Legislative process to allow that to happen.

As the good Senator from Penobscot, Senator Ruhlin, has laid out, back in 1989, Mr. Davis put in for the dam to be built and while his application was before the DEP, they were considering an upgrade in the river, a reclassification from "C" to "B". The DEP made their recommendation and sent it to the Legislature which was inundated, so I understand, with letters from the local folks saying that this was not good enough, that it should be upgraded or reclassified to "AA". By the time that the DEP got to Mr. Davis' application, it was a moot point because it was now a naturally free flowing river and he could not encumber it in any way. In the private and special law that the good Senator from Penobscot spoke of, he was allowed the ability to build the dam even though it says in there that there was no intention to use it for hydro-mechanical. If you look at the pictures, there is an

aperture down at the bottom of the dam, a 30 inch aperture for the pen stock which he obviously planned to utilize.

I think it is much more proper for this Legislature to defeat this measure with compassion towards Mr. Davis and have him go through the process of trying to get that portion of the river reclassified. If he fails after having gone through that process, then he can come back to the Legislature and the Legislature can intervene once again. But I feel very uncomfortable, although I am very sympathetic to this man's dream and to the plight that he is up against, but I just think that it would be inappropriate for us to intervene at this juncture. And I hope that you would support the Majority Ought Not to Pass report. Thank you.

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

Senator **TREAT:** Thank you Madam President and men and women of the Senate. I have but a few words to add because most of what I would have said has been said already by the Senators from Cumberland and Penobscot. But I did want to say a couple of other things. Again, this is a bipartisan, 8 to 5, Committee report asking the Senate and the House, the other Body, Ought Not to Pass this bill. I agree totally with the comments of the Senator from Cumberland, Senator Butland, that Mr. Davis made a compelling case as a compelling individual. I think the Committee was extremely sympathetic to what has been termed his dream.

The problem is that there is an ongoing proceeding right now, while we speak today, at the Department of Environmental Protection. That proceeding is intended to be wound up by the end of the fall with a piece of Legislation that will come back to this Legislature which will determine what the recommendations are of the Board of Environmental Protection for reclassification of all of the rivers of the state of Maine. Anyone, like Mr. Davis, who would like to have a section of river reclassified has gone before the Department of Environmental Protection and gone through this procedure and this bill will come back to the Legislature at that time. The Majority of the Committee was just extremely uncomfortable with the idea that we would sit in judgment as to whether this was a class "AA" river, a class "A" river, a class "B" river, or none of the above. And we were also uncomfortable in the bypassing, the end run around, an ongoing process which has not even been found to be defective. I know that the Senator from Waldo, Senator Longley is concerned that it has perhaps taken too long from the point of view of Mr. Davis, but it has not proven to be a defective process. It is ongoing and indeed Mr. Davis has an application pending right now.

When the Department of Environmental Protection performed its last comprehensive reclassification, which was in 1989 and 1990, they did determine that this section of the river met the standards of Double "A". There's been some commentary about and I know informally before our debate the Senator from Waldo actually termed this an industrial wasteland. I don't know and the other members of my Committee don't know. We haven't walked this river. We are not ready to sit in judgment of that. But certainly at the time that the DEP made their judgment ten years ago, they determined that the remnants of old dams that are in the river do not affect the water flow biologically or ecologically. And that's what counts in determining what is a Double "A" river. We have heard that these dams do not make it so that the river is not free flowing. Again, these are dams that are abandoned. But in fact fish and other aquatic organisms can move freely up and

down the stream and the only dam that impedes the flow is the dam that currently belongs to Mr. Davis.

This is not a jobs issue. That has been stated that jobs are associated with this. Mr. Davis has an existing factory in another town. Mr. Davis could indeed plug in his current factory to the electric outlet. He does not need hydropower to do it. I think the Committee is not necessarily opposed to Mr. Davis having hydropower for his factory, but just believes the appropriate way to do this is to go through the proper process. I think there really is some concern about what this might do in terms of opening up anybody coming to the Legislature and saying, "I'm a special case". This piece of river out here should be downgraded to be something else and allowing other things to happen in terms of industrial development. I think our rivers are very special in this State, and so do most of the citizens of this State. We take a lot of care. We are working on the Mercury Bill upstairs we are going to be having soon because we care so much about making sure that those rivers are clean. And this is just another aspect of how Maine citizens pay attention to our rivers and make sure that they are taken care of. I ask that you allow the existing administrative process to go forward and that you would defeat this bill by accepting the Majority Ought Not to Pass report.

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

Senator **LONGLEY:** Thank you Madam President. Quickly, some necessary rebuttals. First off, the town showed up, via their selectmen, in support of this saying in the letter, "The Town of Liberty has adopted variations of Ivan's dream as part of the downtown revitalization effort to provide increased appreciation for the river system, promote walkways and nature trails, and to resurrect an important piece of Liberty in Waldo County history by making this water body resource part of the local economy and a focus of our community spirit." If Ivan Davis hadn't been wronged so often, I wouldn't be here asserting his rights. He said in his application, way back in '89, I want to do hydropower here. In the law in 1991, guess what they put. They put his whereas. There's nothing in his application that he wants to do hydropower. Wrong. It was wrong and it got in there. Why else would he build a dam given his background if he didn't want a hydropower to get that turbine moving.

In terms of the fish, DEP says the fish can't come up there because of the dams. One Senator said it was because of his lower river dams were blocking the way. Well, they are strewn and they're dilapidated and they're remnants of a gone by era. We have the power. The DEP has to come to us for reclassification powers. DEP, when they first went to reclassify this section, didn't go for "AA". They went for "B". And if you read the law, that makes more sense in this area. Yes, the St. George is a beautiful watershed. But this 650 feet is not so beautiful, but might be made more beautiful if we show a little bit of flexibility in our environmental ethic to say truth in advertising "AA" where it belongs, other classifications where it doesn't belong. This is a strewn up area. It's not natural and free flowing as required by "AA". It's certainly not navigable. If you want to see pictures, I've got plenty of them. My point is, we have the power to help this man who has been wronged and make it right. He's been waiting longer than anyone should have to. Law requires reclass efforts every three years. We haven't had any in eight. We haven't had any results in eight. These are eight critical years for this octogenarian. Thank you for voting against

the pending motion. I wouldn't be taking up your time if I didn't think that he has been wronged and we can make it right.

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

Senator NUTTING: Thank you Madam President and ladies and gentlemen of the Senate. I would urge you, as did the previous speaker, to vote against the pending motion so that we can go on and Accept the Minority Ought to Pass report. You might be asking yourself, what would a Senator with a very, very high environmental voting record, the good Senator from Waldo, Senator Longley, and a Senator like myself, I sponsored Dioxin last year and Mercury this year, what would we be doing trying to help Mr. Davis?

The first thing I want to say is special circumstances exist. I don't know of any situation, any issue where you can't say that special circumstances exist. I think occasionally, and this is one of them, the system is broken. I've known the people that work at the DEP Water Bureau for over 20 years. I went to college with them. At the time this river was classified as a class "C" river, their recommendation to the Legislature was that it be raised to a class "B" river. Now, I'd like to have the Androscoggin be a "AA" river. Let's get letters going. But the fact of the matter is, Androscoggin River is not a "AA" river. This small section of the river, I've seen pictures of it, has mills that are falling into it, old dams, metal. It's not a free flowing river. I feel this elderly gentleman, who wants to create ten jobs, should be given the special circumstance.

In closing, I want to tell you why. The DEP right now has never been comfortable with this small section of the river being classified "AA" and they are in the process of recommending that it be lowered to a single "A". A single "A" river could have this hydropower project. So, I'm hoping that you will vote against the pending motion. This re-class should have happened years ago. He's waited and waited and waited. The DEP never wanted this small section to be a "AA" river. And I think this elderly gentleman, who wants to create ten jobs, should be given the opportunity to do so. I urge you to vote against the pending motion. Thank you.

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

Senator RUHLIN: Thank you Madam President and ladies and gentlemen of the Senate. I will only be just a moment or two. I just want to point out a couple of things. When they made the application originally to go from "C" to "B" which is a water quality standard, the people of that area, by actual count, petitioned 575 people. I don't know how many people live in that area but 575 people are a lot of people. Saying that we think that water quality is better. Would you please come and look at it? They responded to the citizens request and came up with their evaluation. I am not a technician. I'm involved in setting policy. I'm not involved in going out and being a technician in that policy. I accept the word of the technicians. If they are no good then we will get rid of the technicians or the people who selected the technicians in the first place. I'm not going to second guess them. They said it was worthy of being "AA". They made the recommendation to their Department that it be "AA". The Department made the recommendation to the Bureau that it be "AA". The Bureau recommended to the Legislature that it be "AA". We, in our wisdom, said it would be "AA". That's the

process. That's what this is all about, ladies and gentlemen, it's process.

The other old dams on that section of the St. George River do not impede the flow of the river. They do not impound the flow of the river. There were originally six dams, one is a water controlled dam at the foot of the lake which keeps the water level in the lake, in an "A" quality lake, I might add, of high quality. And we have Mr. Davis' special exemption. And then we have four old remnants, long gone, just a wing here and wing there, that do not impede or hinder the flow of the water nor do they impound any water. Allowing the free flow of fishes and everything else, oxygen flows, cooling of water. When you impound water, you encourage it to be heated during the summer hot days. Flowing water stays cooler. There have been reasons for doing it and calling it a "AA". That's why we have a process. That's what this report addresses, is a process, not whether I think it should be "AA" or I think that it should have dam. The report addresses process. Therefore, Madam President, I would request a Roll Call and I hope that we will all move on in that Roll Call to support the Ought Not to Pass report.

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

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

Senator TREAT: Thank you Madam President and men and women of the Senate. I would just like to correct, for the record, what the view of the DEP is. You may have thought, listening to some of the comments from others this afternoon, that they support this bill, or they support this section of the river being changed to a "A" classification, downgraded from "AA". They do not. In testimony to the Committee on March 16, the Commissioner stated at this point, "The Department is recommending that only the section of the St. George River from the outlet of Lake St. George, the existing Mill Pond dam be reclassified to class "A".' This will, quote, 'correct the current classification to take into account the presence of the dam. Mr. Davis should propose a change in classification to accommodate his hydro-project at the upcoming Reclassification Hearings scheduled for May.' Above Mr. Davis' dam they are recommending "A". Below the dam, they would like Mr. Davis to put in his application so that they can make a determination but they do object to this being decided by the Legislature at this time. Thank you.

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

Senator BENOIT: Thank you Madam President. May it please the Senate. The good Senator from Waldo, Senator Longley, has in her remarks pointed out how this gentlemen, the subject of this proposed legislation has been wronged. And I guess that's a given. When I was a kid, I saw a movie once with Jimmy Stewart acting out the part of a lawyer and he said something that I never forgot. I never thought I'd be able to use it here. He said, "For every wrong there's a remedy." Now to me there's been a wrong and this, here, is the remedy. Maybe that's looking at this thing in too simple a fashion but that's where I'm coming from. Thank you.

THE PRESIDENT PRO TEM: The pending question is the motion by the Senator from Kennebec, Senator Treat, to Accept the Majority Ought Not to Pass Report. A Roll Call has been ordered.

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

The Doorkeepers secured the Chamber.

The Secretary called the Roll with the following result:

ROLL CALL

YEAS: Senators: ABROMSON, BENNETT, BUTLAND, CATHCART, CLEVELAND, DAGGETT, GOLDTHWAIT, HARRIMAN, LAFOUNTAIN, LIBBY, MACKINNON, MICHAUD, MILLS, MITCHELL, MURRAY, O'GARA PENDLETON, RAND, RUHLIN, SMALL, TREAT, THE PRESIDENT PRO TEM - CHELLIE PINGREE

NAYS: Senators: BENOIT, CAREY, CASSIDY, FERGUSON, HALL, KIEFFER, KILKELLY, LONGLEY, NUTTING, PARADIS

ABSENT: Senator: JENKINS

EXCUSED: Senators: AMERO, LAWRENCE

22 Senators having voted in the affirmative and 10 Senators having voted in the negative, with 1 Senator being absent and 2 Senators being excused, the motion by Senator **TREAT** of Kennebec to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report, **PREVAILED**.

Sent down for concurrence.

Under suspension of the Rules, all matters thus acted upon, with exception of those matters being held, were ordered sent down forthwith for concurrence.

The Chair noted the presence of the Senator from Cumberland, Senator **AMERO**.

The Chair laid before the Senate the following Tabled and Later (3/25/98) Assigned matter:

An Act Implementing the Recommendations of the Governor's Advisory Committee on Gambling

H.P.1456 L.D. 2047
(C "A" H-965)

Tabled - March 25, 1998, by Senator **PINGREE** of Knox.

Pending - **ENACTMENT**

(In Senate, March 20, 1998, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-965)**, in concurrence.)

(In House, March 24, 1998, **PASSED TO BE ENACTED**.)

On motion by Senator **FERGUSON** of Oxford, under suspension of the Rules, the Senate **RECONSIDERED** whereby the Bill was **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-965)**, in concurrence.

On motion by Senator **FERGUSON** of Oxford, Senate Amendment "A" (S-608) **READ**.

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

Senator **FERGUSON:** Thank you Madam President. This is an amendment that would allow the Passamaquoddy to operate Beano or Bingo at Scarborough Downs, or within the Indian territory of a licensed organization. We have a situation in Oxford County, in Albany Township, where the Passamaquoddy have applied to LURC for a permit to operate Bingo. The citizens of Albany Township are deathly opposed to this. There's about 400 citizens over there and I dare say that 390 are very opposed to this. It seems to me that we have a situation here where Albany Township does not want to go forward with Beano. We have the town of Scarborough where Scarborough Downs is located, the racetrack where they are willing to have Beano. It seems to me that this would be a good opportunity to use a common sense approach to solve a problem that is an agitation to some of our citizens. I would hope that the Senate would adopt this amendment. Thank you very much.

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

Senator **DAGGETT:** Thank you Madam President and members of the Senate. I hope that you will oppose the pending motion to adopt this amendment. The bill in front of you is actually "An Act to Implement the Recommendations of the Governor's Advisory Committee on Gambling" and deals with Beano and Beano games. It has absolutely nothing to do with high stakes Beano, which is exactly what the amendment is. There are several problems regarding the Amendment and one of them has to do with equal protection under the law. Maine currently allows high stakes Beano on Trust land and Trust land only, specifically recognized as Indian territory as opposed to fee land. And if high stakes Beano were allowed to be operated off Indian lands, there could be some issues regarding the equal treatment of others.

The other issue, and I think it's somewhat unusual for us, in an amendment, to actually, specifically cite the location. If it were held off of Indian territory, it would have to be at Scarborough Downs racetrack. I am also concerned about the equal protection issue by citing the specific location where the game would have to be held. I hope that you will oppose the pending

motion so we can go ahead and enact the bill as it was meant to be and leave this for another day. Thank you.

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

Senator **LAFOUNTAIN:** Thank you Madam President. May I pose a question, or a series of questions through the Chair?

THE PRESIDENT PRO TEM: The Senator may pose his questions.

Senator **LAFOUNTAIN:** Thank you Madam President. Was the issue of Scarborough Downs discussed at the public hearing? That's my first question. The second question is, was the town of Scarborough consulted before the amendment was put in?

THE PRESIDENT PRO TEM: The Senator from York, Senator LaFountain, poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Oxford, Senator Ferguson.

Senator **FERGUSON:** Was the first question, is Scarborough Downs aware of this?

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

Senator **LAFOUNTAIN:** The first question is, was this issue discussed at public hearings? The second question is, was the town of Scarborough consulted?

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

Senator **FERGUSON:** The answer to both questions was no and no.

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

Senator **PENDLETON:** Thank you Madam President and men and women of the Senate. Because of those very two reasons, that this issue was not brought to public hearing and because Scarborough was not consulted, I did hear from one lobbyist who said that they were contacting people in Scarborough, that was this afternoon. I hope that you will vote against this amendment. Thank you.

THE PRESIDENT PRO TEM: The pending question before the Senate is the motion by the Senator from Oxford, Senator Ferguson, to Adopt Senate Amendment "A" S-608.

The Chair ordered a Division.

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

The Doorkeepers secured the Chamber.

The Secretary called the Roll with the following result:

ROLL CALL

YEAS: Senators: FERGUSON, HALL, KIEFFER

NAYS: Senators: ABROMSON, AMERO, BENNETT, BENOIT, BUTLAND, CAREY, CASSIDY, CATHCART, CLEVELAND, DAGGETT, GOLDTHWAIT, HARRIMAN, KILKELLY, LAFOUNTAIN, LIBBY, LONGLEY, MACKINNON, MICHAUD, MILLS, MITCHELL, MURRAY, NUTTING, O'GARA, PARADIS, PENDLETON, PINGREE, RAND, RUHLIN, SMALL, TREAT,

ABSENT: Senator: JENKINS

EXCUSED: Senator: LAWRENCE

3 Senators having voted in the affirmative and 30 Senators having voted in the negative, with 1 Senator being absent and 1 Senator being excused, the motion by Senator **FERGUSON** of Oxford to **ADOPT** Senate Amendment "A" (S-608), **FAILED**.

PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-965), in concurrence.

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

Senator **RAND** of Cumberland requested and received leave of the Senate for Senators and appointed staff to remove their jackets for the remainder of the day.

Senate at Ease

Senate called to order by the President Pro Tem.

The Chair laid before the Senate the following Tabled and Later (3/26/98) Assigned matter:

HOUSE REPORTS - from the Committee on **LABOR** on Bill "An Act to Repeal Certain Changes Made to State Employee and Teacher Retirement Benefits"

H.P.1499 L.D. 2121

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-1054)** (12 members)

Minority - **Ought Not to Pass** (1 member)

Tabled - March 26, 1998, by Senator **RAND** of Cumberland.

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

(In House, March 25, 1998, the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1054).**)

(In Senate, March 26, 1998, Reports **READ.**)

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

READ ONCE.

Committee Amendment "A" (H-1054) **READ.**

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

Senator **MILLS:** Thank you Madam President and men and women of the Senate. This bill, when it came to us, was completely rewritten in Committee and it accomplishes, or would purport to accomplish one thing and one thing only. I don't disagree with the sentiments behind the bill. But as we, I think, inevitably move toward passage of the bill and send it on down to the Appropriations Committee, I thought it appropriate to put a couple of footnotes on it as it travels.

First of all, the amendment, as worded, would change the retirement contribution for all State employees and all teachers. You may recall that as part of the changes that were made in 1993, we increased the amount of normal cost attributable to the employee. That is, we increased the employees contribution for both teachers and State employees from a figure of 6.5% of payroll up to 7.65% of payroll. Now that was, at that time, a 1.15% pay cut, less the taxes attributable to it, for all of the State employees and all of the teachers in the state. And it was done at that time, I assume, to preserve the budget process and to preserve the jobs perhaps of other State employees that might have had to been laid off if we hadn't made such a change.

The bill that is before you is to restore the payroll deduction to what it was before. In other words, reduce it from 7.6% of payroll down to 6.5% of payroll. I doubt seriously that anyone believes that the Appropriations Committee will appropriate the money necessary to make this change. It would cost, the bill is worded as I recall says that the change would go into effect on January 1st of 1999. So it would have impact for 6 months within this biennium. The approximate cost of this change would be on the order of \$6 million, as I recall. The annual cost of making this change would be about 12 or \$13 million per year in future years. And I don't believe that this measure will be taken. If we put it onto the Table in this session, it will eat up such a large portion of the money allocated to the Table that it has no serious chance of Passage. It may well be a worthy cause, in light of the past injustice from 1993, but I think it's an act of unrealism for the Labor Committee to simply pass this along with a unanimous, feel good vote and to send it on down to the Appropriations Table. And that is why I decided to vote against it simply because I thought it was an unrealistic setting of priorities for the Appropriations Committee.

There are also a couple of other things to be mentioned in that context. There were some good policy reasons for setting the contribution rate at 7.65%. At the time, it was said that it would match the Social Security rate, which for people in private employment is 7.65%. Those in public employment however point out, with some accuracy, that their wages also must suffer deductions for Medicare, which is another 1.45 % on top of the 7.65% so that the contribution made by public employees actually exceeds the contribution made by private employees in the private sector by 1.45%, the incremental cost of Medicare. However, there is an offsetting consideration and that is that the amount that comes out of a public employee's payroll is deductible on the Federal tax return. It is deductible to that public employee whereas Social Security and Medicare, when taken out of wages in the private sector, are not deductible. So if you bring into the equation the taxability issues, one can argue, one can assert that the payroll deduction system for public employees and for teachers is roughly comparable and equitable when you compare it with those in the private sector. I might also say that I think that since 1993, in most school districts, contracts have been re-negotiated with the knowledge that payroll deductions were imposed in 1993, beyond that is the change had been made in 1993. Every contract that has been rewritten or negotiated since 1993 has been done with the knowledge and against the backdrop of the fact that the new payroll deduction is 7.65% and has been so now for 5 years. And I suspect one can say the same about employment within the public sector, in the contracts that are negotiated with MSEA.

There's another policy reason for saying that this situation ought to be left about where it is. That has to do with how we compensate, how we provide funds for teacher retirement. To the extent that the cost of teacher retirement comes from teacher payroll, to that extent the distribution of that burden is apportioned among the communities, the school districts that pays for it, roughly in proportion to their ability to pay because it has to be paid for out of either the property tax or GPA distributions. To the extent that the State takes that back and says, we will make the normal cost contribution from the State House on behalf of all of these school districts. We are creating, or exacerbating, an inequity in the distribution of funds to support local Government. One of the concerns that I have is that teacher pensions alone, the normal cost contributed by us from this building, is about \$150 million a year now and in those rich school districts that pay their teachers more than poorer districts do, they get the benefit then of a larger subsidy. We are actually subsidizing richer school districts more than we are subsidizing the poorer districts through this very large sum of money that we contribute every year to teacher pensions. So, there are a couple of arguments for saying that the present payroll deduction for teachers is appropriate and it ought to be left about where it is, and allow the local districts to continue negotiating payroll levels based on the assumption that this 7.65% payroll deduction will be the one that we will live with from year to year. On the other hand, if we vote this through and it goes down to the Appropriations Committee, and if someone comes up with a vast amount of money necessary to fund this, we will have voted in a 1.15% payroll increase for every State employee and for every teacher in the state which has never been the subject of any particular bargaining or negotiation. I recognize fully that it might, in some sense of justice, make up for the fact that this was taken away from them in 1993. I acknowledge the original sin. I agree that the passage of the change in 1993 was, in fact, a tax increase paid for by State employees and by teachers. But I

think having done it, the issue before this Body and before this Legislature is, what should be the appropriate level of employee contribution from public employees and from teachers as we go forth? For reasons that I have just stated, I think that the level that they are currently set at has some justification and although I would like to join with the other Members of my Committee in giving sort of a vote of confidence to those public employees and teachers, I don't think that it represents an honest vote to say that we should send this down to the Appropriations Committee knowing that there will not be money there to fund this effort this year. Thank you.

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

Senator **CATHCART:** Thank you Madam President and men and women of the Senate. I urge you to support the Majority Committee Amendment "A". This bill is intended to right a wrong that was committed against all the school teachers and the State employees in this state, in 1993. What we did when we increased the employee contribution share to their retirement was not done because we cared about equity. It was done because the General Fund budget was short X millions of dollars. So what we did was increase the share that the State employees and teachers had to pay in order to come up with the money we had to have to balance the budget. Equity is important. It's something that we have considered a lot in the Labor Committee and we will continue to work on. But this issue really has nothing to do with that other than the fact that this is an unfair extra tax burden that we placed on our school teachers and State employees for no good reason other than we needed the money from them to balance the budget in 1993. I urge you to support this. Thank you Madam President.

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

Senator **HARRIMAN:** Thank you Madam President. Good evening men and women of the Senate. I was here in 1993 and the Senator from Penobscot, Senator Cathcart is exactly right. This was a gimmick on the backs of State employees and teachers and I stood up for them then and I'm standing up for them now because this was not right. It was not fair. It was a gimmick. I'd also say that this is yet another reason why there are several pieces of Legislation that are very important to Members of this Body and to the Legislature as a whole that do have implications to the State budget. That is why I, once again, put out the message that we should not be so quick to close this budget while negotiations are going on a different floor. We're trying to set public policy on this floor and to many of us this piece of legislation is important. Now, I'm sure it's not going to surprise you that the Teacher's Association and the State Employee's Association, for whatever reason, have determined that I've never been worthy of their support even though on each and every instance issues of this nature I have stood up on their behalf. I'm sure the comments that I am making to you now will not change their opinion. I guess that is as it should be. But as a matter of principle, we have an opportunity to undo a wrong and eliminate yet another gimmick in the State budget. Thank you Madam President.

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

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

THE PRESIDENT PRO TEM: The pending question before the Senate is Adoption of Committee Amendment "A" H-1054.

The Chair noted the presence of the Senator from York, President **LAWRENCE**.

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, CATHCART, CLEVELAND, DAGGETT, FERGUSON, HALL, HARRIMAN, JENKINS, KIEFFER, KILKELLY, LAFOUNTAIN, LAWRENCE, LIBBY, LONGLEY, MACKINNON, MICHAUD, MILLS, MURRAY, NUTTING, O'GARA, PARADIS, PENDLETON, RAND, RUHLIN, SMALL, TREAT, THE PRESIDENT PRO TEM - CHELLIE PINGREE

NAYS: Senators: GOLDTHWAIT, MITCHELL

33 Senators having voted in the affirmative and 2 Senators having voted in the negative, Committee Amendment "A" (H-1054) was **ADOPTED**, in concurrence.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1054)**, in concurrence.

The Chair laid before the Senate the following Tabled and Later (3/26/98) Assigned matter:

SENATE REPORTS - from the Committee on **LABOR** on Bill "An Act to Apply ERISA Standards to Pension Benefits for Teachers and State Employees to Clarify that They Are Nonforfeitable Once Accrued"

S.P.719 L.D. 1962

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

Minority - **Ought to Pass as Amended by Committee Amendment "A" (S-611)** (5 members)

Tabled - March 26, 1998, by Senator **TREAT** of Kennebec.

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

(In Senate, March 26, 1998, Reports **READ**.)

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

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

Senator **MILLS:** Thank you Madam President and men and women of the Senate. This is still another chapter arising from the budget crises of 1991 and 1993, and how to undo some things that happened at that time that had a dramatic impact on State employees and teachers in this state. The First Circuit Court of Appeals in August of 1997, eight months ago, ruled, I think inappropriately but they are the final word on this issue, that we have the power within this Legislature to consider the pension benefits given to State employees and to teachers ought to be treated as mere gratuities. As if to say that the pension that you get, or that you may get when you turn 60 or 62, is like the gold watch we may or may not give you after 25 or 30 years of faithful service. We have the power to give it to you or not to give it to you and doesn't vest with you. You don't get the right to receive the benefit until you actually enter retirement itself. I'm convinced that this was never what this Legislature intended and that as a result of a bill that was passed in 1975, we fully intended that benefits that are earned by public employees and by teachers should be theirs to keep. That is, we should not have the power to deprive people of pension rights that they have earned and vested as they accrue. Yes, we should have, I think, the power going forward to change or redefine the pension program prospectively for rights that may accrue in the future even if you are a vested employee. But we should not have the power, the right or the option of taking away the value benefits that have been earned by you through service.

The bill before as amended, if you reject the pending the motion and go on to pass the bill, will give our State employees and our teachers approximately the same rights, as close as we can draft it, that are enjoyed by most of us in the private sector who may work under an ERISA governed pension plan. And the rule in ERISA is that if you have a defined benefit coming to you after years of service, your employer must fund that plan and may not take away benefits that you have earned, benefits that are vested, benefits that you have accrued through your labor. The bill is worded in as strong a way as we can make it. It specifically invokes the Contract Clause of the State and Federal Constitutions and it says that this Law is a solemn commitment of this Legislature intended to bind future legislatures to this commitment. And we have that power under the Federal and State Constitutions. The bill specifically invokes that power and essentially follows a recipe that was laid out for us in the Court cases when they said that we had not succeeded in doing this back in 1975 when we had passed a predecessor statute that, according to many of us, attempted to do the same thing.

There has been much talk about an alternative arrangement for a Constitutional Amendment and that's another bill that will be before you. It's pending in the House. My suggestion is however, that we pass this statute. This statute will not degrade or detract from the rights of public employees or Maine teachers. It will enhance those rights. If it should be your pleasure at a later stage to pass or vote affirmatively on a Constitutional Amendment to give more powerful protections to our public employees, that's another issue. But I might remind you that that

issue has to be addressed in the public forum. It has to go to voters for approval. In the meantime, I do not see why this Legislature should not act now by majority vote to give teachers and State employees the protections that we thought we had given them in 1975 when we passed a predecessor statute that has very recently been interpreted in a way that it does not do the job that it was intended to. In other words, I don't think that anyone can argue that this bill does our teachers or our State employees any harm. It is intended to guarantee them their accrued and vested benefits. Some people say, well it's only a statute. Why can't we not withstand this statute? Why can't we affect benefits retroactively by repealing this statute or by not withstanding it? And the answer is that you can't because the statute in its own terms invokes the Contract Clause of the Constitution and says, this statute is binding on all Legislatures through the date when it is repealed. And for that reason, anybody who works in the public sector as a teacher or state employee, under the protection of this statute, will have the guarantees of this statute to protect the value of their accrued benefits up until the date when we might, for some unforeseen reason, choose to repeal this statute or not withstand it. And I suggest to you that no legislature in the future would be tempted to repeal this statute or not withstand it because the way its worded is that it would deprive any legislature of having the opportunity to get to acquire any financial gain within a current fiscal year or current biennium from repealing it. That's a little complicated. But because it makes contract commitments to all of our State employees and teachers, we would not be able to go back and rewrite, or rescind benefits or the value of benefits that have been earned. And if you can't do that then there would be very little temptation in budget discussions to get rid of the statute or to try to limit its effect.

I think that statute gives a fair amount of protection to State employees and to teachers. I think it gives them exactly the protection that we intended to give them through the passage of another statute back in 1975. It gives them the protection that they were in part arguing for in cases that were litigated to the Maine Supreme Court and the First Circuit Court of Appeals in Boston. It gives them protections that are parallel to the protections that are mandated by our federal government through the ERISA statute. It addresses the issue in a way that only requires a Majority vote of our two Bodies and the signature of the Governor. It is something that we can do in the next four or five days to give State employees and our teachers a level of protection that, I believe, they have always deserved and we can get it done here and now. If at some later stage this Legislature wishes to address a notion of a Constitutional Amendment, you can do that in addition if that's your pleasure. But this statute would, at least, get us back to where we thought we were before the litigation that ensued from the changes that were made in 1993. For that reason, I urge you to vote against the pending motion so that we may go one to accept the Ought to Pass report and put the statute on the books. Thank you.

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

Senator **HARRIMAN:** Thank you very much Madam President. Good evening men and women of the Senate. I would like to join my very good friend from Somerset, Senator Mills, in asking you to defeat the pending motion so that we can go on to accept the Majority report. I'd also take this opportunity, Madam President, to extend my compliments and my admiration

to the good Senator from Somerset, Senator Mills, who has done an admirable job of crafting the amendment before you. I think that in many ways this goes back to the discussion we had just a few moments ago about what the economic forest fire was like in Maine in 1991 and 1993, when every creative way to find money imaginable to keep State government afloat was sought after. In fact many gimmicks, if you will, were imposed on the pension plan to accomplish that objective. And as I stated before, there were many of us in the Chamber in 1993, certainly when I was first elected and those before who should have had the courage, as many of you did, to stand up and say no, that's not how we are going to balance our budget. That's not how we are going to treat the hard working employees and teachers of the state of Maine. We are going to find a different way to solve our problems and we are not going to do it through the retirement plan. And you know why that option was even possible? It was because the State budget had a financial gain by making the changes. By reaching back and changing benefits, it created a positive fiscal impact to the State budget and therefore, on paper, it made sense. How it made sense politically is beyond me regardless of your party affiliations. It should never have happened but it did.

If I could, Madam President, for just a moment, I would like to describe briefly the concept of a defined benefit pension as opposed to an IRA or a 401K, or a profit sharing plan where at the end of the year or at the beginning of the year as the case may be, you decide to contribute, let's say \$2,000 to an individual retirement account, or to voluntarily reduce your salary so that you avoid taxes on contributions going to a 401K plan. You have essentially defined the contribution that is going to be made. Hopefully, if you invest wisely and successfully, you have grown a nice nest egg. A defined benefit plan, on the other hand, is just the opposite. It says in essence, on the day that you come to work we will define the benefit that you will retire with right now. And in order for you to earn that defined benefit, you must have so many years of credible service. The formula that your defined benefit will be based on is a function of your salary over the last five years and so on and so forth. Well along the way in a defined benefit plan, an actuary has to take an assessment, a snap shot if you will, go where the plan rests in relation to the benefits that it has promised. It's sort of like stopping a movie and taking the next frame out of the movie and looking at it and predicting the ending. That's what an actuary does. And he or she considers how many active participants there are, the rate of contribution, the rate of return on investments, the benefits promised and so on. But essentially that analysis takes a snapshot in time and tries to predict the future. What happened in '91 or '93 as the case may be, is the actuary, so to speak, pulled out the frame of the movie and rather than predicting the ending tried to go back and create a new beginning. And that's where the financial benefit to the State budget came in. The good Senator from Somerset has crafted language that will assure that this will not happen again. That we cannot stop the movie, pull out a picture and decide what the beginning of the movie is going to look like. Therefore, there's no financial benefit. There's no gimmickry. There's no cash that the Appropriations Committee can find to put into the budget using a tax of this nature. And for me, that was abundantly clear when I first arrived in the Maine Senate. I didn't need to have a law to tell me that you don't go balance the State budget on the backs of the employees. So what we have before us is a clear and convincing message that says, never again will we look back and retroactively change benefits to balance the State budget. And

that is as it should be and, for me, the way it always was. So again, Madam President, I want to take this opportunity to thank and compliment the Senator from Somerset for his fine work and hope you will join him and me in defeating the pending motion. Thank you Madam President.

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

Senator **CATHCART:** Thank you Madam President and men and women of the Senate. I urge you to support the Ought Not to Pass motion. This is a very important bill and this is a very good intentioned bill, and the Senator from Somerset and I share the same goals. We both want to protect the retirement pensions of our teachers and our State employees. Where we differ is how that can best be done or, if indeed with this legislation, it can be done at all. I believe that L.D. 1962 fails to accomplish the worthy goal and that is why I have to ask you to oppose it. The decision by the Federal Court on the legality of the 1993 retirement benefit cuts was handed down last year, as you know. That decision in effect said that a State employee or teacher's retirement benefits could be cut at any time up to the day they actually retired. Imagine if you are a teacher or a child protective worker or a State Trooper and you have been working for the state for 20, 25 or 30 years and you are almost ready to retire and suddenly the Legislature comes in and cuts your retirement benefits so that that pension that you had been counting on having for all those years, you have been working for the State or as a teacher is suddenly going to be taken away from you. Sadly to say, if we were to pass this bill and this were in statute, had this bill been in statute in 1993, it would not have prevented any of the retirement benefit cuts that the Legislature made to balance the budget. For that reason, I have to ask you to support the Ought Not to Pass motion. The only way that we are really going to be able to protect the retirement for our State workers and for our teachers is through a Constitutional Amendment. That would be the only way to ensure that the next Legislature, the 119th didn't come in and find a budget shortfall and again go and raid that retirement system and cut the benefits, leaving those people with no security in their pensions. For us to do this even with the very best intentions, would be to perpetrate a hoax because it would give a false assurance to the people who work for the State and our schools that their retirement is protected. Please, I do urge you to Accept the Ought Not to Pass motion. Thank you.

THE PRESIDENT PRO TEM: The pending question is the motion by the Senator from Kennebec, Senator Treat, to Accept the Majority Ought Not to Pass Report. A Roll Call has been ordered.

The Doorkeepers secured the Chamber.

The Secretary called the Roll with the following result:

ROLL CALL

YEAS: Senators: CAREY, CASSIDY, CATHCART, CLEVELAND, DAGGETT, JENKINS, KILKELLY, LAFOUNTAIN, LAWRENCE, LONGLEY, MACKINNON, MICHAUD, MURRAY, NUTTING, O'GARA, PARADIS, PENDLETON, RAND, RUHLIN, TREAT, THE PRESIDENT PRO TEM - CHELLIE PINGREE

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

21 Senators having voted in the affirmative and 14 Senators having voted in the negative, the motion by Senator TREAT of Kennebec to ACCEPT the Majority OUGHT NOT TO PASS Report, PREVAILED.

Sent down for concurrence.

Under suspension of the Rules, all matters thus acted upon, with exception of those matters being held, were ordered sent down forthwith for concurrence.

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

Off Record Remarks

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

Off Record Remarks

On motion by Senator RAND of Cumberland, RECESSED until the sound of the bell.

After Recess

Senate called to order by the President.

ORDERS OF THE DAY

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

Emergency

An Act Concerning the Taking of Marine Resources by Members of the Passamaquoddy Tribe
H.P. 1523 L.D. 2145
(S "A" S-599 to C "A" H-983)

Tabled - March 27, 1998, by Senator CAREY of Kennebec.

Pending - motion by same Senator to RECONSIDER motion by same Senator to RECONSIDER whereby the Bill FAILED ENACTMENT

FAILED ENACTMENT

(In House, March 26, 1998, PASSED TO BE ENACTED.)

(In Senate, March 27, 1998, FAILED ENACTMENT in NON-CONCURRENCE.) FAILED ENACTMENT in NON-CONCURRENCE.)

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

Senator PINGREE: Thank you Mr. President. I request the yeas and the nays.

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

The same Senator further requested and received leave of the Senate to withdraw her motion for a Roll Call.

On motion by Senator CAREY of Kennebec, the Senate RECONSIDERED whereby the Bill FAILED ENACTMENT in NON-CONCURRENCE.

The same Senator further requested and received leave of the Senate to withdraw her motion for a Roll Call.

On motion by Senator CAREY of Kennebec, the Senate RECONSIDERED whereby the Bill FAILED ENACTMENT in NON-CONCURRENCE.

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

THE PRESIDENT: The pending question before the Senate is Passage to be Enacted.

The Doorkeepers secured the Chamber.

The Secretary called the Roll with the following result:

ROLL CALL

YEAS: Senators: BENNETT, BUTLAND, CAREY, CASSIDY, CATHCART, CLEVELAND, DAGGETT, FERGUSON, HALL, JENKINS, KIEFFER, KILKELLY, LAFOUNTAIN, LIBBY, LONGLEY, MACKINNON, MITCHELL, MURRAY, NUTTING, O'GARA, PARADIS, PINGREE, RAND, RUHLIN, TREAT, THE PRESIDENT - MARK W. LAWRENCE

NAYS: Senators: ABROMSON, AMERO, BENOIT, GOLDTHWAIT, HARRIMAN, MICHAUD, MILLS, PENDLETON, SMALL

This being an Emergency Measure and having received the affirmative vote of 26 Members of the Senate, with 9 Senators having voted in the negative, and 26 being more than two-thirds of the entire elected Membership of the Senate, was **PASSED TO BE ENACTED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

The Chair laid before the Senate the following Tabled and Later (3/10/98) Assigned matter:

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

Majority - **Ought Not to Pass** (9 members)

Minority - **Ought to Pass as Amended by Committee Amendment "A" (S-492)** (3 members)

Tabled - March 10, 1998, by Senator **MICHAUD** of Penobscot.

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

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

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

Senator **CLEVELAND:** Thank you Mr. President. I rise to ask you not to support the Ought Not to Pass report because I think that there are a number of good reasons that we ought to consider changing the fiscal year of the State. I'd like to start by reminding those of you who may not be familiar with the history of how we got into the position of having often having to pass a budget by two-thirds. This was never the intention of the drafters of the Constitution but rather it came about by two separate unrelated instances that inadvertently put us in that situation.

The first was when the Citizens Veto and Initiative process was adopted into the Constitution and it said that all bills would not become effective until 90 days after the adjournment of the session unless they were passed by two-thirds. When that was adopted the fiscal year was in January, I believe, so that was no particular problem because the sessions always adjourned far

before the new fiscal year began. That posed no particular problem. Sometime later the fiscal year was changed to July 1st, the sessions began to be extended and therefore, we found ourselves in the situation of not adjourning so that there were not 90 days before the new fiscal year began, so that two-thirds majority was required so that it could become effective immediately because we could not proceed with the fiscal year without having adopted a budget.

I think that's important because I think it's necessary to understand that it was not the intention of the drafters or the Constitution that it was a requirement and a necessity to pass a budget by two-thirds. In fact, it's my understanding that something over 40 states don't require a two-thirds vote to pass their budgets and routinely don't. So it's not a common practice shared within the United States. I also think that it's important to recognize that we have developed a new procedure, or found a new procedure that will, I think, most likely be the one adopted by whichever majority is in control and that is that a majority can be allowed to be used as long as we adjourn the session 90 days before the fiscal year begins. Now that that is a known and tried process, and the genie is out of the bottle, I suspect that it will become the common practice for the procedure for adopting any budget. But to do so puts enormous constraints on the process of the deliberation. Within less than three months, often times with brand new Legislators and with term limits more and more brand new Legislators and makes it very difficult, I think, in a deliberative way to really be inclusive and to look at all of the aspects of a responsible budget in that short a time frame.

I think it's also important because sometimes folks suggest that it's really a two-thirds majority requirement that really gets the best budget and I'd like to suggest to you that's exactly the opposite. Because anytime that you require a super majority, what you are really saying is that Minority becomes the control. And by the minority, let me be clear here. I'm not talking about one party or another. I'm talking about those Members who tend to be furthest away from the mainstream of general thought in any political Body. Those might be particularly to the right or left of any particular issue. And therefore, what tends to happen is to be able to find enough votes to be able to pass a responsible budget, often times measures are taken and we have seen many of them already with gimmicks and other kinds of questionable activities that really aren't good fiscal practice but they were done primarily so that you could find enough votes to do that.

I think this really provides us with a historic opportunity and that is that it will encourage those people who represent the more centrist thought and opinions of the citizens of this state to be able to come together to form a budget that is in the best interest of most of the citizens of this state regardless of party affiliation. There also still provides a check, which was the check that was intended to be in the Constitution, and that is that the Governor can always veto the budget, or threaten to veto the budget so that it forces the parties to act more responsibly, or at least to find ways to work together to build that coalition. I think that that provides enormous opportunity for us to change the way in which we put together budgets and in the way that we act more fiscally responsible and, I think as well, it really will provide an opportunity to put together those Majorities that are bipartisan and a responsible way to put together a budget. So, I hope that you would consider seriously the benefits of changing our fiscal year. October 1 would make us consistent with the federal fiscal year and would give us plenty of time from our adjournment for the budget to take place. I hope that you will defeat this motion so we can go on to accept the Minority recommendation.

THE PRESIDENT: The pending question before the Senate is the motion by the Senator from Penobscot, Senator Michaud, to Accept the Majority Ought Not to Pass Report.

The Chair ordered a Division.

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

Senator **CLEVELAND** if Androscoggin requested a Roll Call.

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

Senator **BENNETT:** Thank you Mr. President and fellow members of the Senate. I hate to interrupt the rising for the Roll Call, one of my favorite parts of the Legislative day. I'm just going to, very briefly in just two words sum up, beyond all of the politics in here and the majority party versus the minority party, why this is a very bad idea to switch the fiscal year from beginning July 1st to October 1st. Those two words are school budgets. We already put a huge burden on school districts because of their need to plan. We already do that with the budget the way it is. I just think that it's completely irresponsible for us to let our failures at building consensus in this Body get in the way of letting those folks do their jobs in school districts across the state, giving them the information that they need to responsibly plan their activities for the school year. October 1st just plainly doesn't cut it. I could stand up here and go into a lot of long winded colloquy about the mechanics of the Legislature but I will not. I will just simply encourage you to vote against this bill by voting for the pending motion. Thank you.

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

Senator **CAREY:** Thank you Mr. President and members of the Senate. I, too, at one time was very concerned about school budgets and municipal budgets. While I was Mayor of Waterville, it seems like a century ago, we had a fiscal year of January through December. I was fortunate enough to have a very understanding City Council that allowed me to express my opinion on going into an 18 month budget and the thought was because of the schools, as a matter fact. Because we kept getting hit constantly by the Superintendents who would come in for their budgets and would say, all you need to do is really appropriate 1/3 of the money at this time because we have already carried you through 2/3, January through June. I found that there are times when the budget really got out of hand because we had committed ourselves to 1/3 which thus committed us to the 2/3 in the following first six months of the year. The Council allowed me to change the fiscal year. We went from July 1st through June, which then put the school year entirely within the fiscal year. I think that if we were to only go to October, as it is, we would only be one month out of sync as far as the school budgets are concerned and I have to tell you that one month out of sync is a lot better than having been six months out of sync.

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

Senator **CLEVELAND:** Thank you Mr. President. I rise with a little trepidation because I know that talking about fiscal years and the like can be somewhat of a dry and boring subject but I do so with purpose. I hope that those who oppose, I will completely put to sleep so that when we vote they may not be registered.

But I would like to speak a little to the school fiscal year. I want to remind you that what we're changing here is the State fiscal year. We're not changing the Legislative session. The Legislative session would meet at exactly the same time and therefore, we would come to a decision on what the budgets would be for school districts equal to, or I would hope, sooner than we currently do. It would be at no adverse effect to the school districts at all because we are not changing the length of our session. Therefore, we would have to complete our work and pass the budget within the same time frame that we do now. It would have no adverse impact whatsoever for having information ready for the school districts to make their decisions.

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

Senator **MACKINNON:** Thank you Mr. President and men and women of the Senate. I won't belabor the point. I think it may have some effect because if a good School Board and Administrators are going to plan for the coming year, they need to do their ordering in, hopefully, by May or June so things are into the schools by the end of August so they can open up. The preparation for the year may be impacted if they are not sure what their budget is going to be and it's going to be changed along the way. Also as far as hiring people, you would not be able to set your total package at that particular time. So I would think that it may have some type of impact as far as the learning process itself, maybe not opening the buildings. Thank you.

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

Senator **BUTLAND:** Thank you Mr. President and ladies and gentlemen of the Senate. I just wanted to rise for a second to support the good Senator from Oxford, Senator Bennett, in urging you to accept the Majority Ought Not to Pass report. I think that the good Senator from Androscoggin, Senator Cleveland, has misread the outcome of the budget debate in 1997. I certainly don't share his concerns that this is going to be the norm. I think some folks realized that when you pass a budget by a majority in March that you tend to lose a little bit of leverage for some of the other issues that you have concern and passion for, things like cigarette taxes, Workers Compensation and minimum wage. So, I guess, my concern would be that we would extend the length of the session past the statutory adjournment. I don't see any problem with the concerns that the Senator from Androscoggin, Senator Cleveland, has expressed in that we would institutionalize budgets being passed at the end of March.

THE PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Cleveland, who requests and receives leave of the Senate to speak for a third time.

Senator **CLEVELAND:** Thank you Mr. President. I rise because I think I've failed to clarify that issue of when School Boards would know. The Maine Legislature, let's take a normal year for example, would have the budget ready before the end of adjournment in June. Therefore, all of the school districts and

local municipalities would know. When we don't change the Legislative session, we have to act within the exact same time period that we are acting now so therefore the information is available exactly at the same time, hopefully sooner. If we have a budget adopted and ready in May or June, that's the same time that we are going to have it adopted if we were to require two-thirds. There's absolutely no difference.

Secondly, let me speak to another concern that I have, and I appreciate the good Senator from Cumberland, Senator Butland, reminding me of it and raising the issue. That is passion for other issues outside of the budget. I have the great misfortune, in some respects, that I was here in 1991 when the State of Maine shut down. And the State of Maine shut down not because there was disagreement over the budget but because there was disagreement over another issue that generated great passion. And because that issue generated great passion, votes were withheld for a budget until that other issue was resolved to the satisfaction of the folks who controlled the one-third votes. That is a big danger. We should never let ourselves be in that situation for any reason again. I submit to you that the threat of that even happening again will be one of the causes that will be a tremendous force in people adjourning before the end of March simply to avoid that outcome. So I think there is that additional benefit for us to change the fiscal year to remove that disastrous outcome from ever occurring in this state again.

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

Senator **BENNETT:** Thank you Mr. President and fellow members of the Senate. A very brief point and that point is that currently on the books we are supposed to tell the school districts what General Purpose Aid will be on March 15th. We rarely if ever have done that in recent past. Again, I just look at this and having served through a number of Legislative failures starting in 1990 and 1991, I've observed that this Legislature has a tendency to procrastinate. We will take up whatever available time we have to solve any particular problem. This is not the kind of solution to recognize our failures by codifying them in changing the fiscal year. So again, I encourage you to vote for the pending motion, the Majority Ought Not to Pass report from the Committee on Appropriations and Financial Affairs. Thank you.

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

THE PRESIDENT: The pending question before the Senate is the motion by the Senator from Penobscot, Senator Michaud, to Accept the Majority Ought Not to Pass Committee Report.

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, GOLDTHWAIT, HALL, HARRIMAN, KIEFFER, LIBBY, MACKINNON, MICHAUD, MITCHELL, SMALL

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

16 Senators having voted in the affirmative and 19 Senators having voted in the negative, the motion by Senator **MICHAUD** of Penobscot to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report, **FAILED**.

The Minority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-492)** Report **ACCEPTED**.

READ ONCE.

Committee Amendment "A" (S-492) **READ** and **ADOPTED**.

LATER TODAY ASSIGNED FOR SECOND READING.

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

SENATE REPORTS - from the Committee on **LABOR** on Bill "An Act to Limit Mandatory Overtime" S.P.789 L.D. 2116

Majority - **Ought to Pass as Amended by Committee Amendment "A" (S-518)** (8 members)

Minority - **Ought Not to Pass** (5 members)

Tabled - March 17, 1998, by Senator **CATHCART** of Penobscot.

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

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

Senator **AMERO** of Cumberland requested a Division.

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

Senator **CLEVELAND:** Thank you Mr. President and men and women of the Senate. I would urge you to go ahead and accept the Majority Ought to Pass report. This is an important issue, I think, for working men and women within this state. Currently, in Maine there is no limitation to the number of hours that an employee can be required to work as a condition of employment, in a mandatory overtime situation. What this bill does is ask, I think, for a very reasonable and fair balance to say that within a three week period an employer cannot require, as a condition of employment, mandatory employment, more than 96 hours of overtime within that three week period. It doesn't specify how many in any particular week so you may work more in the first and second week and somewhat less in the third, or any combination thereof that facilitates the work schedule in that particular employment. It also provides for a number of

exceptions so that individuals in specific occupations are excluded from these provisions. A very important aspect of recognizing the mandatory overtime is that it puts no limitation whatsoever on voluntary overtime. An individual may work as many hours as they choose in a voluntary situation and many individuals choose to do that for a number of reasons.

Secondly, it's also important because we know as a fact that as individuals work more and as they get more tired they become sometimes a little less focused. Their attention lapses for a few moments just at the time that injuries would occur. For matters of health and safety in this state, both employers and employees want to have safe, healthy working environments, and to require that individuals work beyond 96 hours in a three week period, raises the possibility of those individuals becoming more injured within the work place.

Finally, I would ask you to proceed to accept this report because if it is successful, I have an amendment that I would like to make further changes afterwards that would improve the bill beyond that. I know that there has been some criticism, for example, that it doesn't exempt seasonal employees and that's a valid criticism. I am prepared to address that. I am also prepared to address a criticism that it doesn't provide for situations where there are unforeseeable or uncontrollable circumstances and I am prepared to speak to that if we accept the Majority report.

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

Senator **MILLS:** Thank you Mr. President and members of the Senate. We gave this bill a lot of consideration in the Labor Committee. It was brought to our attention that at least one employer had, for reasons that were very difficult to understand, compelled certain members of its labor force to work as I recall twelve hours a day, six or seven days per week in succession, week after week in order to achieve a certain production level in a manufacturing plant. Many of us were curious about what employer would rationally choose to do that because our wage and hour laws require that you be paid time and half for time over 40 in a given week. And one would assume that economic incentive alone would make the employer recognize that at some point it would be cheaper to hire on new workers and pay straight time to get the same amount of work done rather than to work its existing work force 90 or 100 hours per week, paying time and half for over half of the time that they put in and probably not getting very efficient work out of them. It sort of boggled the imagination, boggled the mind as to why any sane, rational, economically motivated employer would continue that practice for any great length of time particularly against the will of those who were employed. I think one answer is, in some forms of employment, the fringe and benefit packages that are available to people or that are paid to people make it cheaper, if not cheaper then perhaps economically competitive to employ your existing labor force on heavy overtime duty than to go out and invest in another set of fringe benefits to put somebody on at straight time. We did some analysis of that and when we got to the end of our work on the bill, I came to the conclusion that probably the advice that we were looking at was isolated to one or two, or perhaps a few employment conditions in this state with a few employers for a relatively short period of time. In looking at the complexity of the bill that would be required to try to rectify the problem, I felt on balance that it was best not to pass the legislation.

Although I will confess to having had some role in wording the draft that is now before you. I don't think we are yet at the point where the fringe benefit packages that are customarily made available to employees will induce employers to exploit this situation to a degree that it requires us to take legislative action to correct the vice. I might also add that in those cases where there are heavy fringe benefits available to an employee, those are usually Union organized shops as was true of the case that was presented to us, and there is a voice of organized labor, a bargaining unit on the other side of the table from an employer who may choose to exploit its labor that way and that there is at least some remedy within contract negotiations to address those problems in those few cases where it seems to arise. So on balance, it was my thought that we don't perhaps need the legislation, that the Legislation itself is somewhat more complex than we first thought might be necessary. I think that it's difficult to predict exactly what the consequences may be for passing a piece of legislation like this and on balance felt that we should vote against it. For that reason I urge that you vote against the pending motion.

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

Senator **MITCHELL:** Thank you Mr. President. Good evening ladies and gentlemen of the Senate. I rise tonight to ask you to please vote against the Majority Ought to Pass as Amended. I do that because I am really surprised that this is an attempt for us to micromanage business. An attempt to dictate a mandate to our manufacturers. I do this on behalf of both labor and of our businesses. Our people, our businesses or manufactures may have a seasonal influx and they may have orders that have to be fulfilled, and the employees want that overtime. The employees' overtime provides them an opportunity of an income that is not part of an annual salary and that they can purchase the extras in life that they couldn't have. It also provides our businesses the opportunity to utilize the employees that they have on their payroll without hiring part time people whom they have to train and whom are just there on a transient basis. That doesn't work well in the workplace. People take pride in the companies they work for and they feel as though they are a part of what that manufacturer produces. I would ask you, do we really need to mandate an overtime to these companies? Why don't we let them run their business the way they feel is the most efficient and is in the best efforts of both their employees and of their financial standings. I would pose a question through the Chair, if I might, in that what input from manufacturers and industries have we had? How many other states do have a mandate overtime at this time?

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

Senator **CLEVELAND:** Thank you Mr. President. In response to the question, I think an extraordinary effort was made to include both representatives of employers and representatives of employees, or employees themselves. Both in the public hearing, in the extensive work sessions, after the work sessions, I personally talked with many of the employer representatives because it was very much my desire that we find language that met the interest of both. Because employers

themselves say, we want a good, safe, healthy, productive environment and having to work people more than those number of hours within that period of time is not what we wish to do. And so enormous effort was done requesting language directly from employers, asking in different ways what their concerns were and what ought to be included. For example, from those discussions we determined that it was important to include as an exception any declared emergency. It was important to exclude anyone who is performing essential services within this state for either a public or private employer. It was necessary to exclude anyone in the situation where work was performed that protected public health and safety. And we also excluded those individuals, for instance, in the agricultural industry, marine and fisheries industry exactly for the reasons why there are certain peaks in seasonal employment, or seasonal kind of work that they needed to be excluded from as well as employees of motels, hotels and other kinds of institutions. We worked very hard to define that common ground and I believe that we have succeeded pretty well with this bill. If it is supported, I'd like to go on from that point to improve the bill even further with an additional suggestion.

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

Senator **CAREY:** Thank you Mr. President. I understand the Senator from Androscoggin, Senator Cleveland, speaking on uncontrolled situations. My question deals basically with controlled situations. When a plant shuts down, usually the first week of July, and a crew comes in and they may be closed for two weeks and they are obviously in a controlled period. They have done as much preparatory work as they could be ready when the plant shuts down to move right in and all of their equipment is on site and what have you. I am very concerned about the pulp and paper industry. If they don't get that work completed in the two week period then the people who have the normal duties of going back to work once the work has been completed, those people who run pulp and paper mills, will not be able to get back on time. There's going to be a delay. I remember in caucus, I quite clearly understood the good Senator from Androscoggin, Senator Cleveland, addressing that and I would ask him if this bill, in fact, makes provisions for those things.

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

Senator **HARRIMAN:** Thank you very much Mr. President. Good evening ladies and gentlemen of the Senate. On close review of this bill my first reaction was that makes a lot of sense and considering that it came from my good friend Senator Cleveland from Androscoggin, whom I have had a chance to work with on some pretty complex and difficult issues, I thought, gee, this makes even more sense. It wasn't until I actually had a chance to review from the perspective of the people on Main Street in my District, if you will, that this bill has some real unintended consequences. For example, one of my constituents owns a fuel delivery business responsible for providing home heating oil to thousands of homes. He said to me, there are times when we are unexpectedly having to work large amounts of overtime. Let me give you one example. He said, remember when the Julienne ship hit the bridge in Casco Bay? Of course, we all remember the devastating environmental impact, but one of the impacts that perhaps was overlooked was that the

distributors of home heating oil could not get to the facility in South Portland so they had to travel over greater distances to find sources of fuel to be delivered to our homes. I heard from a relative of mine who happens to work in the paper industry, as the good Senator from Kennebec, Senator Carey alluded to, that said you are putting me in a tough position because these planned, or unplanned shutdowns are an opportunity for me to make a lot of money and it's an opportunity for me to put in a burst of my time and then have some free time. That made a lot of sense to me. We would be, once again, one of the first states in the country to have legislation of this order. And I think in many ways as my good friend from Somerset, Senator Mills alluded to, that this could indeed interfere with collective bargaining agreements and the assignment of overtime. So once again, I come back to the beginning, which considering the source of the legislation and how it looks on its surface, it appears to be pretty reasonable. But when you try to apply it to the circumstances that our citizens will have to live by this law, it becomes quite apparent to me that our good intentions could well harm the very people that we are trying to look out for. So respectfully, I hope that you will join me in opposing the pending motion. 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. As a member of the Labor Committee that was involved in most of the discussion around this bill, I did want to clarify one or two issues that have come up during the course of this debate. The first has to do with what is the impact of this bill on voluntary overtime? Two different Senators have alluded to the fact that this bill, in their opinion, would cut into the opportunity of workers to make lots of money working overtime. This bill would do nothing of the sort. There's nothing in this bill that prevents anyone from working as many voluntary hours of overtime as they want.

Secondly, the point was made that this may be a problem limited to one or two employers and that the bill is essentially overkill. It's unnecessary. It's solving a problem that is not a widespread problem. I would just like to address that point. One of the reasons that I did support this legislation and worked very hard actually with the Senator from Somerset, Senator Mills, to come up with language that we felt worked was because it did seem that there is a problem. I want to read from some testimony from Alan Hinsey of the Bureau of Labor Standards with the Department of Labor. What he said to us in Committee was as follows. "The bill before you addresses both issues of wage and hour fairness and workplace safety. While existing Maine law does make provision for overtime pay in most work situations where the employee works beyond 40 hours per week, there are no limits on the number of hours an employer can require that an employee work in any week. We often received calls at BLS from workers who want to know if their employer can fire them if they refuse to work mandatory overtime, even mandatory overtime that to most people would seem extreme. The answer at present is yes. The employer can require the employee to work mandatory overtime even if the required overtime hours are quite substantial. While the employee may consider this unfair, it also concerns us at BLS from a workplace safety perspective. Recent studies indicate that injury rates at work sites will increase as workers become fatigued due to excessive hours on the job." This is a legitimate concern for this

Body and I think the bill is a very reasoned response. It was changed pretty dramatically from the original bill to basically incorporate a three week period during which the overtime is collected. I know that there are other concerns about whether seasonal workers are included in this and also concerns about unforeseen circumstances. Those can be addressed if we can accept the Majority Ought to Pass report and I would urge the Senate to do so.

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

Senator **CLEVELAND:** Thank you Mr. President. I rise once again in an effort to respond to sincere, legitimate questions and to see if I can provide some additional clarity to those questions. My good friend from Kennebec, Senator Carey, has posed the question of the need to work individuals in a two week period. Again, I would remind you that there are plenty of additional hours that that could be done during that period in two ways. One, you are allowed to require individuals who work up to 96 hours, that would be 48 hours of overtime in that two weeks, or two weeks of 88 hours of work per week in a seven day period. Additionally, those individuals could work any and all additional voluntary hours that they would care to work. Many employees who work in the paper industry have told us that it's usually no trouble at all to get people to work because the time and half, double time benefits are so lucrative that people volunteer willingly to work those kinds of hours because it's an economic benefit for them to do that. That was an issue that was raised and an honest attempt. That's why we originally had it for one week at 32 hours, with the good help from the Senator from Somerset, Senator Mills, we expanded it to three weeks with 96 hours to allow that flexibility, to allow the adjustment in those firms so that they would be able to work or require their individuals to work during those periods of time when it was necessary.

Additionally, we have provided opportunity for emergency situations. The good Senator from Cumberland, Senator Harriman, has indicated that there may be some situations that occur where a firm needs to ask its employees to work somewhat more because the situation, such as an emergency spill, has occurred that has disrupted their usual pattern. That would fall under the exceptions of an emergency or protection of health and safety, or to perform the central services of getting heating oil to individual's homes. Those are contemplated and I think would fit into the exceptions that are already on the books.

Further, questions have been raised in two areas. One is of seasonal employers. That issue has been contemplated. I have crafted language and the language is on your desk, and I am prepared to offer that if I have an opportunity to offer that. It also provides contemplation of unforeseen circumstances so that in cases of emergencies or uncontrollable, or unforeseen events that occur, an employer may request from the Commissioner of Labor a waiver from the overtime requirements of this provision for up to three weeks so that they could meet those circumstances. It's been crafted carefully and intended to allow to capture a very wide set of different opportunities but also to recognize that we won't know every situation and we want to allow someone who is fair, reasonable and knowledgeable to use their good judgment in those cases so that harm will not come to any of those employers in those kinds of situations.

I think that I would be remiss if I didn't respond to a further question or statement that was posed, and that is that we simply

should let businesses run their businesses any way they want. Let them continue to have the freedom to work their employees any number of hours that they want. I think that we have to recognize that these employees are human beings. They have families. They have children. They have community responsibilities. When they are working those kinds of hours, they have little left to do but to sleep and drive back and forth to work and maybe grab a bite to eat once in while. Is that the kind of society, at the end of the 20th century that we really want from people who work for a wage. That employers ought to be able to demand from them anything that they want? That they ought not to be able to live a life to help raise their children, to participate in their community but rather to be used more as slaves to meet the production schedule no matter what circumstances? I hope that's not what we intended. I hope that we are far beyond that and that we try to provide reasonable parameters in which individuals can earn a living without being required to work in a way that is accessible.

I hope that you will accept the Majority report. A sincere effort has been made to try and make a fair and balanced proposal so that it doesn't unreasonably harm the employers who provide the jobs. But provide some measure of protection in those circumstances where the few employers in this state either now, or in the future, would take advantage of people who work for them, who in many cases don't have many choices, who can't quit their job, who need the health insurance and can't leave, who may be in their 50's and can't readily get employed, who may work in an area where there are few jobs available and who live from paycheck to paycheck and whose options are so limited that they have few choices but to accept that kind of excessive demand from their employer if they wish to continue to pay their bills, play by the rules and support their family. I didn't view this as an excessive demand or burden. That was never my intention and I have tried mightily to craft in a way to balance both. I'd like the opportunity to add additional language and I hope that you would support the motion so that we may do that.

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

Senator **FERGUSON:** Thank you Mr. President and ladies and gentlemen of the Senate. I rise tonight to support the pending motion. It seems to me that 96 hours in a three week period is enough time for any working man or woman and I'm talking from experience. I did work in a pulp and paper mill for 38 years. I worked in both the plant and in administration. For example, in a two week period you could work 88 hours per week, that's a lot of hours in that type of environment. It's hot normally. It's dirty and it's a strain upon a person. There's a great safety factor involved in this. For instance, if my recollection is right, we've worked till 9:00 o'clock every night this week. Last night we worked a little bit over and I apologize for letting down on my responsibilities in that regard. But this week we've worked 60 hours and we all seem to be anxious to get out of here just as an example. We have an easy job compared to a mill worker or a person working in a shoe shop, or in some other environment. I'm not going to belabor the point. I have stressed a couple of issues, but it seems to me that this is a fair piece of Legislation. It's balanced and the good Senator from Androscoggin has indicated that he's got something coming along behind this that will modify some of the concerns that have been addressed by some of the other members in the Body. I

urge the Body to vote favorably upon this motion. Thank you Mr. President.

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

Senator **HARRIMAN:** Thank you Mr. President and ladies and gentlemen of the Senate. I would just like to share with you three practical points before we move on to a vote on this pending question. The Legislation, as I read it, talks about a lot of opportunities for exemptions, seasonal, health and safety and so forth, but what it ignores is the heart and soul of Maine's economy. That is, there's no wording that will enable a business emergency to be included. I think that it's interesting that this legislation only seeks to address one side of the question and that is that you're restricting mandatory overtime but not voluntary overtime. How many people will voluntarily, for whatever reason, decide to work for more overtime hours perhaps than they ought to for safety reasons and for reasons that my friend from Oxford, Senator Ferguson, pointed out. And perhaps equally important is, what happens to the situation where someone decides by implication or by inference that they voluntarily want to work the overtime and then later, for whatever reason out of frustration or anger or a dispute between the owner and the employee, and then all of sudden we want to rewrite history and the worker says you forced me to do this. It was mandatory. How are we going to resolve that dispute?

The good Senator from Androscoggin mentioned an exemption process with the Department of Labor. In fact, in my example that I shared with you just a few moments ago with the oil delivery business, because they are considered transporting a toxic substance or hazardous substance, I forget what the correct environmental terminology is, but nonetheless, the law now says that if they are going to work more than 60 hours of overtime, they must get an exemption and that many times the process of applying for and granting the exemption takes, this isn't a matter of a few phone calls or faxing up a form, or declaring through public notice, internet or some other electronic device, this is a full fledged bureaucratic process that many times takes three or four days to get an answer. So we are creating, in my view, more uncertainty than certainty with what this legislation seeks to provide.

Lastly, Mr. President, I just have to say that I summarily reject the comments that this Body, myself in particular, would condone sweatshop implications, or the fact that we want our workers of this century and into the next to be working 14 and 18 hour days with barely time enough to grab a little bit of sleep and a sandwich. That's not what this is trying to prevent. Many of us in this chamber are employers. Myself being one of them. In fact, I imposed upon my employees today because of the schedule that we have set here, I asked my employees to meet me for breakfast at 7:00 o'clock this morning so that we could carry on our business affairs. And they did so and you know why? Not because I made it mandatory, because we have developed a team where employer and employee care about each other and we are all working for the common goal. I think that's the message that we are trying to send and by stepping in with well intentioned, and again I have to emphasize, the Senator from Androscoggin, Senator Cleveland's heart is in the right place, but I'm just firmly convinced this legislation is going to create more problems than it will solve. Thank you Mr. President.

THE PRESIDENT: The pending question before the Senate is the motion of the Senator from Penobscot, Senator Cathcart, to Accept the Majority Ought to Pass as Amended Committee Report.

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

THE PRESIDENT: The pending question before the Senate is the motion of the Senator from Penobscot, Senator Cathcart, to Accept the Majority Ought to Pass as Amended Committee Report.

The Doorkeepers secured the Chamber.

The Secretary called the Roll with the following result:

ROLL CALL

YEAS: Senators: **BENOIT, CAREY, CATHCART, CLEVELAND, DAGGETT, FERGUSON, JENKINS, KILKELLY, LAFOUNTAIN, LIBBY, LONGLEY, MACKINNON, MICHAUD, MURRAY, NUTTING, PARADIS, PENDLETON, PINGREE, RAND, RUHLIN, TREAT, THE PRESIDENT - MARK W. LAWRENCE**

NAYS: Senators: **ABROMSON, AMERO, BENNETT, BUTLAND, CASSIDY, GOLDTHWAIT, HALL, HARRIMAN, KIEFFER, MILLS, MITCHELL, O'GARA, SMALL**

22 Senators having voted in the affirmative and 13 Senators having voted in the negative, the motion by Senator **CATHCART** of Penobscot to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, **PREVAILED**.

READ ONCE.

Committee Amendment "A" (S-518) **READ**.

On motion by Senator **CLEVELAND** of Androscoggin, Senate Amendment "B" (S-627) to Committee Amendment "A" (S-518) **READ**.

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

Senator **CLEVELAND:** Thank you Mr. President and men and women of the Senate. This amendment does two things. First of all it adds the exemption, all employees who work for seasonal employers and there's a very lengthy list of those already codified in the laws of the State of Maine in the Labor section. Secondly, it provides for an emergency waiver. This amendment allows any employer who may request to the Commissioner of Labor for an emergency waiver in the event, under the provisions of this law, of any unforeseen and uncontrollable events that have occurred that without the waiver would result in some significant harm to the employer's business. I think that both of these amendments improve the legislation and provide for the opportunity for unforeseen events and to exempt

seasonal employers. I would ask you to adopt this amendment to the Committee Report.

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

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

THE PRESIDENT: The Senator may pose his question.

Senator **BENOIT:** Thank you Mr. President. For anyone who might be able to answer. Looking at the proposed amendment, if something is unforeseen or uncontrollable, how can it at the same time be considered used for the purpose for circumventing the law?

THE PRESIDENT: The Senator from Franklin, Senator Benoit, has posed a question through the Chair to anyone who might wish to answer. The Chair recognizes the Senator from Androscoggin, Senator Cleveland.

Senator **CLEVELAND:** Thank you Mr. President. The intention of including that phrase was to provide some clarity and guidance to the Commissioner of the Department of Labor. It sets out certain criteria and certain direction in regards to what would be eligible for a waiver. But the intention of that phrase is just to re-emphasize that, in reviewing the request, the Commissioner needs to consider the purposes for this request were not meant for the purpose of abusing the privilege of the waiver. Certainly, if it met the criteria it would not be.

On further motion by same Senator, Senate Amendment "B" (S-627) to Committee Amendment "A" (S-518) **ADOPTED.**

Committee Amendment "A" (S-518) as Amended by Senate Amendment "B" (S-627) thereto, **ADOPTED.**

Under suspension of the Rules, **READ A SECOND TIME and PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-518) AS AMENDED BY SENATE AMENDMENT "B" (S-627)** thereto.

Sent down for concurrence.

Under suspension of the Rules, all matters thus acted upon, with the exception of those matters being held, were ordered sent down forthwith for concurrence.

Off Record Remarks

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 Concerning the Maine State Housing Authority's Share of the Transfer Tax"

H.P. 1465 L.D. 2056
(C "A" H-1068)

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

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

SECOND READERS

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

Senate As Amended

Bill "An Act to Authorize a Tuition Savings Plan to Encourage Attendance at Institutions of Higher Education"

S.P.622 L.D. 1825
(C "A" S-620)

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:

ENACTORS

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

Emergency Measure

An Act Regarding Nutrient Management

S.P.653 L.D. 1874
(C "A" S-604)

This being an Emergency Measure and having received the affirmative vote of 35 Members of the Senate, with no Senators having voted in the negative, and 35 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 Make Supplemental Allocations from the Highway Fund and Other Funds and Changing Certain Provisions of the Law Necessary to the Proper Operation of State Government for the Fiscal Years Ending June 30, 1998 and June 30, 1999

H.P.1566 L.D. 2199
(C "A" H-1058)

This being an Emergency Measure and having received the affirmative vote of 35 Members of the Senate, with no Senators having voted in the negative, and 35 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 Implement the Recommendations of the Maine Commission on Children's Health Care

H.P. 1595 L.D. 2225
(S "A" S-615 to C "A" H-1008)

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

Emergency Measure

An Act Requiring Notification of Option to Request Judicial Review

H.P. 1618 L.D. 2245
(C "A" H-1023)

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

Senator **NUTTING:** Thank you Mr. President. I request a Roll Call and would like to speak briefly to my motion.

On motion by Senator **NUTTING** of Androscoggin, 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 Androscoggin, Senator Nutting.

Senator **NUTTING:** Thank you Mr. President. I'll be very brief. We debated this bill very briefly on the first reader before. This was in regards to when the Department of Agriculture mistakenly told a farmer in Aroostook County that he didn't have a right to appeal. The Department of Agriculture has committed and even sent a letter around to the parties involved and to the State and Local Government Committee saying that they are now going to notify people in this Seed Potato Program that they have a right to judicial review. I'd remind the members of this Body that Committee Amendment "A" (H-1023) which is before us now is drafted so broadly that according to Administration this is going

to require thousands of extra letters from corrections all kinds of departments, unnecessary paperwork. This is the type of issue, in my opinion, that needs to come next year to spend a lot more time crafting it and narrowing it so that it is not so broadly drafted. So, I urge you to vote against Enactment of this measure. Thank you.

THE PRESIDENT: The pending question before the Senate is Passage to be Enacted.

The Doorkeepers secured the Chamber.

The Secretary called the Roll with the following result:

ROLL CALL

YEAS: Senators: PINGREE, RAND

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

This being an Emergency Measure and having received the affirmative vote of 2 Members of the Senate, with 33 Senators having voted in the negative, and 2 being less than two-thirds of the entire elected Membership of the Senate, **FAILED ENACTMENT** in **NON-CONCURRENCE**.

Sent down for concurrence.

Emergency Measure

An Act Authorizing Certain Debt of Hancock County for Construction of a New Jail and Courthouse Renovations and Ratifying Certain Action Taken by Hancock County in Connection with the Authorization of this Debt

S.P.867 L.D. 2280

This being an Emergency Measure and having received the affirmative vote of 32 Members of the Senate, with no Senators having voted in the negative, and 32 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 Mandate

Resolve, Regarding Legislative Review of Chapter 231: Rules Relating to Drinking Water, a Major Substantive Rule of the Department of Human Services

H.P.1606 L.D. 2233
(C "A" H-993)

This being a Mandate, in accordance with the provisions of Section 21 of Article IX of the Constitution, having received the affirmative vote of 33 Members of the Senate, with 2 Senators having voted in the negative, and 33 being more than two-thirds of the entire elected Membership of the Senate, was **FINALLY PASSED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

On motion by Senator **FERGUSON** of Oxford, **ADJOURNED** until Monday, March 30, 1998, at 10:00 in the morning, pursuant to Senate Rule 514.

Mandate

An Act to Amend the Charter of the Ogunquit Sewer District
H.P. 1592 L.D. 2221
(H "A" H-1046 to C "A" H-947)

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

Senator **LIBBY:** Thank you Mr. President. I request a Roll Call.

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 same Senator requested and received leave of the Senate to withdraw his motion for a Roll Call.

This being a Mandate, in accordance with the provisions of Section 21 of Article IX of the Constitution, having received the affirmative vote of 34 Members of the Senate, with no Senators having voted in the negative, and 34 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.

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

Senator **FERGUSON:** Thank you Mr. President. Are we getting close to the hour? I would like to invoke Rule 514 and move that we do adjourn until Monday at 9 or 10 a.m. Whatever your desire is. I will defer for one or two minutes. Would that be to your satisfaction? Thank you.

THE PRESIDENT: The Chair appreciates the courtesy.

The President appointed the Senator from Lincoln, Senator **KILKELLY**, to serve as President Pro Tem for the session on Monday, March 30, 1998.

Under suspension of the Rules, all matters thus acted upon, with exception of those matters being held, were ordered sent down forthwith for concurrence.