

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 SPECIAL SESSION
JOURNAL OF THE SENATE

In Senate Chamber
Friday
April 3, 1998

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

Prayer by Senator Philip E. Harriman of Cumberland County.

SENATOR HARRIMAN: Thank you, Mr. President. Good morning. Would you please join with me in prayer. Father, and Preserver, you've watched over us through another night and brought us to another day, not because of our merit but by your mercy. Strengthen and guard us this day, that we may spend it in your service knowing that it is a small thing to begin unless we persevere. We pray for strength to meet every trial, patience to face every frustration, courage to tackle every evil, faith to live and help live. Show in your mercy a loving regard for all men, women and children according to their several needs. And especially to those who we name silently and lovingly before you. Amen.

Reading of the Journal of Thursday, April 2, 1998.

Off Record Remarks

PAPERS FROM THE HOUSE

Non-Concurrent Matter

Bill "An Act Concerning Legislative Review of Rules Adopted under the Maine Clean Election Act" H.P. 1678 L.D. 2296

In House, April 2, 1998, **REFERRED** to the Committee on **LEGAL AND VETERANS AFFAIRS** and ordered printed.

In Senate, April 2, 1998, under suspension of the Rules, **READ TWICE** and **PASSED TO BE ENGROSSED**, without Reference to a Committee in **NON-CONCURRENCE**.

Comes from the House, that Body **ADHERED**.

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

Non-Concurrent Matter

Bill "An Act to Implement the Recommendations of the Great Pond Task Force"

S.P. 573 L.D. 1730
(S "B" S-677; S "C" S-686; S "F" S-691 to C "A" S-600)

In Senate, April 2, 1998, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-600) AS AMENDED BY SENATE AMENDMENTS "B" (S-677); "C" (S-686) AND "F" (S-691)** thereto.

Comes from the House, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-600) AS AMENDED BY SENATE AMENDMENTS "C" (S-686) AND "F" (S-691)** thereto, in **NON-CONCURRENCE**.

Senator **KILKELLY** of Lincoln moved the Senate **RECEDE** and **CONCUR**.

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

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

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL

YEAS: Senators: **ABROMSON, AMERO, BENOIT, CATHCART, CLEVELAND, DAGGETT, FERGUSON, GOLDTHWAIT, HARRIMAN, KILKELLY, LAFOUNTAIN, LIBBY, LONGLEY, MACKINNON, MURRAY, NUTTING, O'GARA, PARADIS, PENDLETON, PINGREE, RAND, SMALL, TREAT, THE PRESIDENT - MARK W. LAWRENCE**

NAYS: Senators: **BENNETT, BUTLAND, CASSIDY, HALL, KIEFFER, MICHAUD, MITCHELL**

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

EXCUSED: Senator: **CAREY**

24 Senators having voted in the affirmative and 7 Senators having voted in the negative, with 3 Senators being absent, and 1 Senator being excused, the motion by Senator **KILKELLY** of Lincoln to **RECEDE** and **CONCUR**, **PREVAILED**.

Non-Concurrent Matter

HOUSE REPORTS - from the Committee on **STATE AND LOCAL GOVERNMENT** on Bill "An Act to Amend the Amount of Retainage on Public Building Contracts"

H.P. 1108 L.D. 1551
(C "A" H-1087)

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-1087)** (7 members)

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

In House, March 27, 1998, the Minority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED**.

In Senate, April 1, 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-1087)** in **NON-CONCURRENCE**.

Comes from the House, that Body **INSISTED** and **ASKED FOR A COMMITTEE OF CONFERENCE**.

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

Non-Concurrent Matter

Bill "An Act to Reduce Air Pollution from Motor Vehicles and to Meet Requirements of the Federal Clean Air Act"

H.P. 1594 L.D. 2223
(C "A" H-1050)

In House, March 25, 1998, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1050)**.

In Senate, April 2, 1998, **PASSAGE TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1050)** **FAILED** in **NON-CONCURRENCE**.

Comes from the House, that Body **ADHERED**.

Senator **TREAT** of Kennebec moved the Senate **RECEDE** and **CONCUR**.

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

COMMUNICATIONS

The Following Communication: S.C. 684

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

April 2, 1998

The Honorable Mark W. Lawrence
President of the Senate
The Honorable Elizabeth H. Mitchell
Speaker of the House of Representatives
118th Legislature
State House
Augusta, Maine 04330-0003

Dear Mr. President and Madam Speaker:

Pursuant to Title 3 Maine revised Statutes, chapter 35, we are pleased to submit the findings and recommendations of the Joint Standing Committee on Education and Cultural Affairs from the review and evaluation of the Telecommunications Relay Services Advisory Council. In its review, the committee found that the council is operating within its statutory authority and continues to focus its efforts in pursuit of its mission. The Committee accepts the report of the Telecommunications Relay Services Advisory Council as submitted.

Sincerely,

S/Senator Peggy A. Pendleton

S/Representative Shirley K. Richard

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

The Following Communication: S.C. 685

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

April 2, 1998

The Honorable Mark W. Lawrence
President of the Senate
The Honorable Elizabeth H. Mitchell
Speaker of the House of Representatives
118th Legislature
State House
Augusta, Maine 04330-0003

Dear Mr. President and Madam Speaker:

Pursuant to Title 3 Maine revised Statutes, chapter 35, we are pleased to submit the findings and recommendations of the Joint Standing Committee on Education and Cultural Affairs from the review and evaluation of the Department of Education under the State Government Evaluation Act. In its review, the Committee found that the Department is operating within its statutory authority. However, the Committee does make several recommendations for administrative changes that are outlined in the report.

Sincerely,

S/Senator Peggy A. Pendleton

S/Representative Shirley K. Richard

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

The Following Communication: S.C. 686

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

April 2, 1998

The Honorable Mark W. Lawrence
President of the Senate
The Honorable Elizabeth H. Mitchell
Speaker of the House of Representatives
118th Legislature
State House
Augusta, Maine 04330-0003

Dear Mr. President and Madam Speaker:

Pursuant to Title 3 Maine revised Statutes, chapter 35, we are pleased to submit the findings and recommendations of the Joint Standing Committee on Education and Cultural Affairs from the review and evaluation of the State Board of Education. In its review, the committee found that the board is operating within its statutory authority and continues to focus its efforts in pursuit of its mission. The Committee accepts the report of the State Board of Education as submitted.

Sincerely,

S/Senator Peggy A. Pendleton

S/Representative Shirley K. Richard

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

The Following Communication: H.C. 478

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

April 2, 1998

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

Dear Madam Secretary:

The House voted today to adhere to its former action whereby it Failed to Finally Pass Resolution, Proposing an Amendment to the Constitution of Maine to Amend the Timing of Elections Following the Submission of a Petition for People's Veto (S.P. 857) (L.D. 2270).

Sincerely,

S/Joseph W. Mayo
Clerk of the House

READ and **ORDERED PLACED ON FILE.**

ENACTORS

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

Act

An Act to Reduce Nonpoint Source Pollution from Existing Sources, Amend the Shoreland Zoning Laws and Amend the Site Location of Development Laws

H.P. 1635 L.D. 2265
(C "A" H-1095)

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

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

COMMUNICATIONS

The Following Communication: H.C. 479

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

April 3, 1998

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

Dear Madam Secretary:

The Speaker appointed the following conferees to the Second Committee of Conference on the disagreeing action of the two branches of the Legislature on Bill "An Act to Implement the Recommendations of the Maine Indian Tribal-State Commission Relating to Tribal Land Use Regulation" (H.P. 1403) (L.D. 1961).

Representative ETNIER of Harpswell
Representative POWERS of Rockport

Representative MAYO of Bath

Sincerely,

S/Joseph W. Mayo
Clerk of the House

READ and ORDERED PLACED ON FILE.

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

Senate at Ease

Senate called to order by the President.

ORDERS OF THE DAY

Unfinished Business

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

The Chair laid before the Senate the following Tabled and Later (3/31/98) Assigned matter:

Bill "An Act to Facilitate Delegation of the Federal Waste Discharge Permitting Program"

H.P. 1291 L.D. 1836
(C "A" H-910)

Tabled - March 31, 1998, by Senator **TREAT** of Kennebec.

Pending - **FURTHER CONSIDERATION**

(In House, March 26, 1998, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-910) AS AMENDED BY HOUSE AMENDMENT "A" (H-1035)** thereto, in **NON-CONCURRENCE.**)

(In Senate, March 30, 1998, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-910)** in **NON-CONCURRENCE.**)

(In House, March 31, 1998, that Body **ADHERED.**)

On motion by Senator **NUTTING** of Androscoggin, the Senate **RECEDED** from whereby the Bill was **PASSED TO BE ENGROSSED AS AMENDED** in **NON-CONCURRENCE.**

On further motion by same Senator, the Senate **RECEDED** from whereby Committee Amendment "A" (H-910) was **ADOPTED.**

House Amendment "A" (H-1035) to Committee Amendment "A" (H-910) **READ.**

On motion by Senator **NUTTING** of Androscoggin, House Amendment "A" (H-1035) to Committee Amendment "A" (H-910) **INDEFINITELY POSTPONED** in **NON-CONCURRENCE.**

On further motion by same Senator, Senate Amendment "A" (S-705) to Committee Amendment "A" (H-910) **READ.**

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

Senator **NUTTING:** Thank you, Mr. President. Ladies and gentle of the Senate. This Bill has a long title. We call it the Delegation Bill in the Natural Resources Committee. We've given the Bill strong endorsement here for one-stop shopping for federal wastewater permitting. But there has come up the subject that we really are not, with the Bill in its present form, haven't given the Commissioner the authority to seek federal grants in certain areas to lower wastewater permit rates and that's all that this amendment is trying to do is just give the Commissioner more flexibility in seeking federal grants or other type of grants to lower the actual rates that would be charged for this. I urge your adoption of this Amendment. Thank you.

On further motion by same Senator, Senate Amendment "A"(S-705) to Committee Amendment "A"(H-910) **ADOPTED.**

Committee Amendment "A" (H-910) as Amended by Senate Amendment "A" (S-705) thereto, **ADOPTED** in **NON-CONCURRENCE.**

PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-910) AS AMENDED BY SENATE AMENDMENT "A" (S-705) thereto, in **NON-CONCURRENCE.**

Sent down for concurrence.

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

Senate at Ease

Senate called to order by the President.

On motion by Senator **PINGREE** of Knox, **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 (4/1/98) Assigned matter:

HOUSE REPORTS - from the Committee on **JUDICIARY** on Bill "An Act to Revise the Prelitigation Malpractice Screening Panel Procedures, Criteria and Composition"
H.P. 773 L.D. 1050

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

Minority - **Ought to Pass as Amended by Committee Amendment "A" (H-1077)** (6 members)

Tabled - April 1, 1998, by Senator **LONGLEY** of Waldo.

Pending - motion by same Senator to **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED** Report in **NON-CONCURRENCE**

(In House, March 31, 1998, Bill and accompanying papers **INDEFINITELY POSTPONED.**)

(In Senate, April 1, 1998, Reports **READ.**)

Senator **LONGLEY** of Waldo requested and received leave of the Senate to withdraw her motion to **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED** Report in **NON-CONCURRENCE**.

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

Senator **LONGLEY**: Thank you, Mr. President. Colleagues of the Senate. This isn't the medical malpractice Bill and suffice it to say that many of us realized that there are problems in the current statute and as we've worked on the Judiciary Committee, a Committee that prides itself on reaching a lot of consensus and a lot of unanimous reports. We haven't been able to find that solution here, and as we ended the last Session, occasionally "Know when to hold them, know when to fold them". We're folding and I appreciate you going along with the motion to Indefinitely Postpone in hopes that we can work something out another time. Thank you

Senator **LONGLEY** of Waldo moved the Bill and accompanying papers be **INDEFINITELY POSTPONED**, in concurrence.

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

Senator **BENOIT**: Thank you, Mr. President. And may it please the Senate. Just to be brief on this matter, I want to express my sincere appreciation to Senator Longley. Working with her on the Judiciary Committee, she's the Senate Chair as we all know, and has been an experience in this Body of the highest order. Her present motion is a clear reflection of that. And my appreciation of her professionalism in this Body and in her work for her constituents, is something that I wanted to recognize. This is not the first time that the Senator has stood in

this Chamber and has made an appropriate motion in the public interest. Although a difficult duty to make, it is done here in the public interest and I just want to go on record as to saying how much I appreciate that in her and it just reflects well upon her and her work in the legislative Body. I'm just taken by this aspect of her character and her ability and I wanted to say something, Mr. President, on the record about that, and I thank her sincerely in this matter.

On motion by Senator **LONGLEY** of Waldo, Bill and accompanying papers **INDEFINITELY POSTPONED**, in concurrence.

The Chair laid before the Senate the following Tabled and Later (3/31/98) Assigned matter:

Bill "An Act to Preserve Live Harness Racing in the State"
H.P. 1185 L.D. 1676
(C "A" H-1094)

Tabled - March 31, 1998, by Senator **PINGREE** of Knox.

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

(In House, March 30, 1998, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1094).**)

(In Senate, March 31, 1998, **READ A SECOND TIME.**)

On motion by Senator **DAGGETT** of Kennebec, under suspension of the Rules, the Senate **RECONSIDERED** whereby Committee Amendment "A" (H-1094) was **ADOPTED**.

On further motion by same Senator, Senate Amendment "B" (S-706) to Committee Amendment "A" (H-1094) **READ**.

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

Senator **DAGGETT**: Thank you, Mr. President and members of the Senate. The amendment in front of you is an effort to combine and deal with a number of issues and concerns that have been raised and I think will make this into a very good Bill that addresses a lot of concerns that and, in fact, accomplishes several things that many people would like to see accomplished. I'm just going to speak relatively briefly to it because where we have been working on this amendment for some time and the issue has been around, I think that most people have a fairly good idea of what we are looking to do.

The amendment, in fact, will place a limited number of video lottery machines in certain places in this State. It will bring all of these machines under appropriate regulation and will achieve certain things in doing that. The particular piece in the title that you see on the board in front of you regarding harness racing alludes to the fact that the proceeds will go to enhancing the purse accounts of the harness racing industry in this State. One of the serious concerns that many people have had is trying to preserve our harness racing industry. As many of you know, this is a huge industry in this State and a great part of the livelihood

and tradition here and we have looked at various ways of keeping the purse accounts at a level that keeps our horses here and gives them a livelihood. We have to be constantly aware of their need to maintain their livelihood and their being anxious to stay here but having to go to areas where the money is enough for them to continue to race. A few years ago we enacted off track betting and that enhanced the purse accounts somewhat and that was helpful but I think there is general consensus that this is really an appropriate and necessary move to help continue our harness racing industry. So, as amended, this Bill would address that. As also amended, it gives a small amount, in fact, fewer machines than in a previous Bill that was before us but several machines to non-profit organizations today who have had a history of using these machines. It protects that history and protects those non-profits but it insures that all of these machines will be used in a regulated and appropriate way. I would just remind you that this is something, frankly, that public safety has been looking for years as a mechanism to regulate these machines. Now in previous debate there had been a discussion of some language that in the way it regulated and how many of these machines, and I actually had an amendment to clarify and make certain that all of the machines would be regulated. This amendment incorporates that so that, indeed, all of the machines would be regulated or would be illegal. This has been an ongoing problem that would be solved by this amendment.

Many of us feel, including myself, that this does not expand gambling. It is very similar to the kinds of gambling that are already State authorized, State sponsored and legal in this State. It is simply a very similar kind of gambling. Granted these are electronic machines. I hope that you will support this. It solves a number of problems. It addresses a number of issues and it brings it all together in one Bill. I'm hopeful that you'll be supporting it. Thank you very much.

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

Senator **GOLDTHWAIT:** Thank you, Mr. President. I don't know a lot about the issue of harness racing. I know that it is something that is very important to at least one constituent of mine and having seen the title on our calendar, it seemed like something that I would be willing to support. Then when I looked at some of the provisions in this legislation, I began to grow a bit more concerned, particularly, when I looked at the definitions section and saw defined in that list terms like, drug abuser, drug addict, drug dependent person engaged in reckless or negligent conduct, formal charging instrument, fugitive from justice, and I began to wonder what exactly would cause terms like that to be brought into a Bill on harness racing. As I look further at that and I look at the amendment before us now, I become more uncertain about the value of supporting this. I feel that harness racing in itself if there was something that we could do, if this industry is in trouble to support it that didn't have to do with video gambling, I would be glad to do it. But the type of concerns that are raised apparently around the activity that we are now going to try to promote in order to save this industry makes me wonder whether its worth it or not, and the other argument that's raised is that other States do this. And so, in order to be able to compete and keep the good horses in the State of Maine that we need to follow suit. It seems to me, it reminds me of the arguments about some of the business incentives to attract business from other areas, I'm not sure that Maine will ultimately ever be able to compete on that level, and if we need to resort to this as a way of keeping

harness racing in this State, that nearby States who are apparently using video gambling as a way of attracting more customers will just think of something else that we will then have to compete with. And so, I'm afraid that because of the link between video gambling and the harness racing industry, I am not able to support this particular proposal or amendment before us now regarding this activity.

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

Senator **KIEFFER:** Thank you, Mr. President. Ladies and gentlemen of the Senate. In the brief opportunity that I've had to review this Bill, it looks like from the capitalization of this proposal that it's worse than it was before. The original Bill, if I understand it correctly, provided for a cash advance of \$250,000 to the Department of Administrative and Financial Services, Bureau of Alcoholic Beverages, and \$500,000 to the Department of Public Safety. The funds advanced for this purpose must be returned to the General Fund Unappropriated Surplus from the first \$750,000 received by the State. Once again, in the amended version, this has changed to read \$145,935 to the Department of Administrative and Financial Services, Bureau of Alcoholic Beverages and Lottery, \$77,177 to the Department of the Attorney General, and \$868,650 to the Department of Public Safety for a total of \$1,092,762. And once again, that entire amount comes back from a 1/3 of the revenue received by the State. I just absolutely can't understand and cannot support that kind of financing. Certainly, the people receiving the good of these machines ought to participate in paying for them. Here we are asking the taxpayers of Maine to fully pick up the cost of the first \$1,972,000, two thirds of that for the installation of these machines. I just can't support that ladies and gentlemen. Thank you, Mr. President.

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

Senator **CLEVELAND:** Thank you, Mr. President, and men and women of the Senate. What you have before you now is an amendment that really puts together the previous Bill on gambling that we defeated previously in this Chamber with the new idea about spreading gambling around this State. It combines the two to make it twice as bad as what we have. I do appreciate, however, that they did notice the structural defect in the illegal gaming machines so that they made it equally onerous both for profit and non-profit folks who do operate machines illegally. As a matter of fact, if we could delete everything but that section I would happily support the amendment.

I would like to talk to you this morning about two general issues that are fairly important. I hope that I might have your attention for just a few moments. One is the concept that the real thrust of this Bill is to save the harness racing industry. That is the thrust and purpose of what this public policy is to save that industry. It is very laudable and I think that we ought to look at that very closely. I am having some information distributed to you that I will review in a moment. I think that helps us focus on that premise. Secondly, there are those who would say to us that this is nothing more than sort of the entertainment that is going on now, that it doesn't have any huge public policy or social implications, that people are sort of engaging in this sort of activity anyway, so it's not something that we should be very mindful of.

I'd like to speak, if I may, to those two points because I think they are central to this debate and understanding. I'm having distributed, and hope that you have before you, a spreadsheet that I obtained that is a detailed back up sheet of your fiscal note. I think that explains a great deal about where the money is going. Remember the purpose of this is to raise money to save the harness racing industry. So, I think its important to take a look at where the money is coming from, and where the money is going. I'd like to first direct your attention to the top part, the smaller bracket that shows where the net terminal revenue is anticipated to be, and I'm going to use 2000-2001 because it would be fully implemented by that year to be about \$14.2 million net. Below that you'll see how it gets distributed at 24% to the licensee, that's the racetrack or the OTB, 22% to the distributor, 40% to the State, and down below we'll get 1% of for fund, 2% for agricultural fair support and harness racing. I want you to take a look at those numbers because out of \$14.2 almost \$14.3 million net, if you add everything together that goes to harness racing, you have a hard time of getting \$1.8 million. And you can see the percentages, 1%, 2%. And if you also look, you'll see some negative brackets, that's a net amount because they lose current money on their current racing because people are going to be playing the video gaming machines instead of betting on the horses, so they actually lose money they have to net out of what they gain. And so you see \$100,000 of sire stakes out of all of that. Agricultural fairs get \$285,000. Harness Racing Promotion Fund, which is a marketing thing gets \$275,000 and the like. But look above at the licensee and the distributor's share, they are going to get \$3.4 million and \$3.1 million annually. And the total number is a little less than ten actually, two commercial racetracks in Scarborough owned by Mr. Ricci and one up in Bangor and then I think there are about seven or eight OTB's. So that \$6.5 million goes to that group of less than ten entities and some distributors. Whereas the folks owning and running the horses are getting a tiny fraction of all of that. You also need to know that written in this law is an exception that says that if you are the commercial operator, the licensee of a commercial track, you can also by exception be the distributor because you can ask the manufacturer to give you machines for your commercial racetrack, i.e. Scarborough Downs, and therefore, you can also be the distributor. You can't distribute them anywhere else but you can put the 300 machines at Scarborough Downs. So your percentage is 46% because you get both. Now it seems to me that's a sort of interesting way to distribute the money if it's supposed to benefiting the harness racing industry. There are a few people who are going to become millionaires, and the folks who are raising horses and trying to enjoy the agricultural and farming sport of harness racing are going to get the crumbs. I don't think that's the best public policy in trying to support that industry. Frankly, I'm supportive of the industry. I have family members who have horses and love them. It also seems interesting to me that if that's what we really want to do, we could do that by other means that are much more direct and which we have already begun to do. We've passed \$75 million in income and homestead exemptions. If we believe in it, and I do frankly, that agriculture is important, that farming is important and that they provide open space, it's an important industry, we could have provided and expanded homestead benefit for people who are in agricultural, who have open land, who do farming and give them additional credits. We could provide either credits or deductions within the tax policy that would provide specifically to people for deductions of their expenses involved in harness racing. And we could have done that in that \$75 million with only a fraction of a

change of how we distribute it and it would have gone directly to the people whom we are trying to support as opposed to making millionaires by establishing gambling casinos in two or three locations within the State. That's a very odd way to provide a public benefit and there is a lot of danger involved in doing it that way as well.

I'd like to talk a little bit about what I think is the method on which we are going to get there. And I'd like to refer your attention up to the top of the page where it says Gross Terminal Income. Look at the year 2000-2001. \$142,800,000 is expected to be put in those machines in one year. \$142,800,000 is going to be put in those machines. That is from a universe of individuals who would like to attend those racetracks or are interested in horse racing, because, frankly, it's a small subset of all people in this State. But they are going to take \$142 million out of their pockets and put it in those machines. Now we are going to give them about \$128.5 million back out in payments, but remember how that goes. You know how gambling works. The house always wins. You are only going to get about 90% back. You put \$2 in and you can win maybe \$1,000. So if the house always wins, you have to have 500 players at \$2 to get to that \$1,000 so you pay back \$900. You are going to have lots and lots of losers to have a few big winners. That's the addiction of gambling. I might be the next big one! And so what happens is that you create a group of folks who lose a lot of money, a few who make some money and the consequences are that the folks who lose that kind of money don't have that money to put back in the economy. There is no multiplier effect on gambling. If that \$142 million that they put in those machines was spent at local retail stores, at local services, at purchases, that money would have a greater benefit in the local economy than in those machines which is going to go in the owners-licensees bank account, primarily. They are not going to have that money which would help the economy because you can't spend your money twice. On average these are not extraordinarily wealthy people who have that kind of disposable income and consequently they are taking from one pot of money that they would have spent for other activities into this. At that is a huge tax on those individuals because they have a predilection to play these machines. Frankly, if we were to impose that kind of tax mandatorily, there would be a revolution but what we do is prey on people's weaknesses at times to make revenue, to supposedly support an industry when we are only giving them a pittance. I also want you to notice what it costs to do this. The State gets 40% of the pot. But look how much we have to spend on administration to get this done, 9% about \$1.3 million a year in additional administration so we can hand out maybe \$1.8 not counting enforcement, not counting compulsive gambling treatment, so we are actually going to spend more on those activities to create a new administration, oversight and cost than what we'll give out in supporting the industry. Ultimately, what we are going to have with this amendment as well of course, you know the prediction is that we are going to have 3 machines instead of 5 and we are only going to have 300 at the tracks that that's going to be the limit. Once we get started with this and once the State gets this money in their hands, they'll never give it up. And not only will they not give it up, there's going to be enormous pressure to say, let's have a few more machines. You are already going in there, let's put 600 machines in. Let's let them have a dozen machines. And we will begin to have set a public policy where there will be gambling at every street corner, every social club, every racetrack and every community in this State. And we are going to ask people to take hundreds of millions of dollars of their money into this process so

we raise a few pittance of dollars supposedly to help some other industry and we are going to have to live with the social consequences of that. No great new job creation. No great new stimulus to the economy, as a matter of fact, if anything we are drawing down on the economy like pulling money out for this activity. Some people may suspect that somehow I have some particular animosity towards this industry. I don't. It's a legitimate industry. Racing is a legitimate sport. I have no qualms with that, but if we really want to support it why don't we think about public policies that really establish those ends and not use this as a guide on which we want to promote some other social policy that is much more destructive to this date. I hope that when you review these facts and you consider the consequences of what this does, you'll come to the same conclusion that I have that there is far, far more detriment to this policy that is only thinly disguised as a support for the harness racing industry. If there was real interest in doing that, we have a whole array of other ways we can do it that would eliminate the administrative cost, the expense and we would get the money directly to the people who really deserve to have it. And we would avoid all the detrimental aspects of spreading gambling throughout this State. I hope that you won't support the motion currently on the floor so that we can defeat this once and for all.

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

Senator **LONGLEY:** Thank you, Mr. President. I will be swift. This is a tough issue, trying to figure out what's best monetarily, morally and I find myself sitting here either feeling like a purist or a puritan and then, reflecting back on my Aunt Nellie, who was a milliner. In the rear of her millinery shop she had a bookie operation, and whenever she visited my mom and dad my parents would take her off to the horse races. And I'm thinking, you know we are competing with other states where they get the video and it seems like people really want the video gambling, and that's money and we heard the breakdown from Senator Cleveland on where that might not be equitable distribution of the money, but for me, I guess it's the purist and the Irish people in my background where you go to the horse races, you want pure horse racing. That's the focus and I think that Maine, the way life is in some respects, the slow lane, I just think that we should keep it pure. When you go to the horse races, let's make sure that we focus on the horses and maybe there is dead time in between horse races, but if in that dead time they go off to do the video and then they miss the next horse race, then we have defeated the purpose of having high class horse racing in Maine. Thank you for listening.

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

Senator **DAGGETT:** Thank you, Mr. President, men and women of the Senate. I would like to thank the Senator from Androscoggin, Senator Cleveland for passing this piece of information out because I think it makes a pretty good argument for the Bill. If you turn to the back, not the side that has all the numbers but the back of the page, you can see pretty clearly how the estimates are being made and where the money comes and when the estimated placement of the machines would be. And if you look into the first column, it says '98-'99 and we are talking actually about April of 1999 and that is the estimated time in which machines would be placed and they've got a number here

according to the piece of paper in front of me, it says 700. I'd just like to remind you all that the lowest estimate of the current number of machines is 3,500. Now that's a part of what this Bill does. It not only regulates the entire thing, but it reduces significantly the number of machines that are currently operating in this State. Now, my math isn't very good and I usually use a calculator but because I didn't have one here I had to use a pencil. So there could be an error. And I will freely admit that, but I took this little number of \$142 million of Gross Terminal Income and I figured that if there are currently 3,500 minimum machines out there and we are reducing that to 700, I thought maybe I could multiply the \$142 million by 5 and came up with \$710 million, so I'm suggesting to you today that there's probably somewhere between \$142 and \$710 million currently being cycled through these machines. I know that there are people who are opposed to these and I will not suggest to you that this is a perfect Bill that addresses everything. Machines would not be placed until next April. It reduces significantly the number of machines. It allows them to be regulated. I have never seen a Bill go through here that has not been re-adjusted and re-examined and re-worked. I can't imagine that this is one of those Bills that will not be looked at again. If you don't like the machines, I suggest that you vote against it but if you want to regulate them, if you want to reduce the number of machines significantly, please support the amendment.

The Chair noted the presence of the Senator from Kennebec, Senator **CAREY.**

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 Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL

YEAS: Senators: CAREY, CATHCART, DAGGETT, FERGUSON, KILKELLY, MICHAUD, MITCHELL, MURRAY, NUTTING, O'GARA, PARADIS, PENDLETON, THE PRESIDENT - MARK W. LAWRENCE

NAYS: Senators: ABROMSON, AMERO, BENNETT, BENOIT, BUTLAND, CLEVELAND, GOLDTHWAIT, HALL, HARRIMAN, KIEFFER, LAFOUNTAIN, LIBBY, LONGLEY, MACKINNON, MILLS, RAND, RUHLIN, SMALL, TREAT

ABSENT: Senators: CASSIDY, JENKINS, PINGREE

13 Senators having voted in the affirmative and 19 Senators having voted in the negative, with 3 Senators being absent, the motion by Senator **DAGGETT** of Kennebec to **ADOPT** Senate Amendment "B" (S-706) to Committee Amendment "A" (H-1094), **FAILED**.

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

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

Senator **DAGGETT:** Thank you, Mr. President. I hope that you will oppose the motion on the floor so that the harness racing piece of this Bill can go forward. Thank you

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

Senator **CLEVELAND:** Thank you, Mr. President. I'm unaware of what the great harness racing piece is that is going to come out of this. I think that at this point I don't really see where that's going to be constructive if we vote to Indefinitely Postpone and a Bill comes back to us at some later time for process. If we get something to present we can look at that point and make a consideration whether or not we want to reconsider.

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL

YEAS: Senators: ABROMSON, AMERO, BENNETT, BENOIT, BUTLAND, CLEVELAND, GOLDTHWAIT, HALL, HARRIMAN, KIEFFER, LAFOUNTAIN, LIBBY, LONGLEY, MACKINNON, MILLS, RAND, TREAT

NAYS: Senators: CAREY, CATHCART, DAGGETT, FERGUSON, KILKELLY, MICHAUD, MITCHELL, MURRAY, NUTTING, O'GARA, PARADIS, PENDLETON, RUHLIN, SMALL, THE PRESIDENT - MARK W. LAWRENCE

ABSENT: Senators: CASSIDY, JENKINS, PINGREE

17 Senators having voted in the affirmative and 15 Senators having voted in the negative, with 3 Senators being absent, the motion by Senator **CLEVELAND** of Androscoggin to **INDEFINITELY POSTPONE** the Bill and accompanying papers in **NON-CONCURRENCE, PREVAILED**.

Sent down for concurrence.

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

Bill "An Act Concerning Legislative Review of Rules Adopted under the Maine Clean Election Act"

H.P. 1678 L.D. 2296

Tabled - April 3, 1998, by Senator **PINGREE** of Knox.

Pending - **FURTHER CONSIDERATION**

(In House, April 2, 1998, **REFERRED** to the Committee on **LEGAL AND VETERANS AFFAIRS** and ordered printed.)

(In Senate, April 2, 1998, under suspension of the Rules, **READ TWICE** and **PASSED TO BE ENGROSSED**, without Reference to a Committee in **NON-CONCURRENCE**.)

(In House, April 2, 1998, that Body **ADHERED**.)

On motion by Senator **DAGGETT** of Kennebec, the Senate **INSISTED** and **ASKED FOR A COMMITTEE OF CONFERENCE**.

Sent down for concurrence.

Senate at Ease

Senate called to order by the President.

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

Off Record Remarks

On motion by Senator **RAND** of Cumberland, **RECESSED** until 2:30 in the afternoon.

After Recess

Senate called to order by the President.

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

COMMUNICATIONS

The Following Communication: H.C. 480

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

April 3, 1998

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

Dear Madam Secretary:

The House voted today to adhere to its former action whereby it accepted the Majority Ought Not to Pass Report of the Committee on Appropriations and Financial Affairs on Bill "An Act to Change the State's Fiscal Year from July 1st to October 1st" (S.P. 627) (L.D. 1829).

Sincerely,

S/Joseph W. Mayo
Clerk of the House

READ and ORDERED PLACED ON FILE.

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

PAPERS FROM THE HOUSE

Non-Concurrent Matter

SENATE REPORTS - from the Committee on **STATE AND LOCAL GOVERNMENT** on Bill "An Act to Have a Referendum on Whether or Not an Independent Public Commission Should be Established to Set Legislative Pay"

S.P. 781 L.D. 2108
(C "A" S-630; S "A"
S-694)

Report "A" - **Ought to Pass as Amended by Committee Amendment "A" (S-630)** (6 members)

Report "B" - **Ought Not to Pass** (5 members)

Report "C" - **Ought to Pass as Amended by Committee Amendment "B" (S-631)** (1 member)

In Senate, April 2, 1998, Report "A", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-630) READ and ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-630) AND SENATE AMENDMENT "A" (S-694)**.

Comes from the House, Bill and accompanying papers **INDEFINITELY POSTPONED in NON-CONCURRENCE.**

On motion by Senator **NUTTING** of Androscoggin, the Senate **INSISTED and ASKED FOR A COMMITTEE OF CONFERENCE.**

Sent down for concurrence.

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

Senate at Ease

Senate called to order by the President.

On motion by Senator **KILKELLY** of Lincoln, **RECESSED** until the sound of the bell.

After Recess

Senate called to order by the President.

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

REPORTS OF COMMITTEES

House

Divided Report

Majority of the Committee on **LABOR** on Bill "An Act to Provide a Cost-of-living Adjustment to Minimum Wage Earners" H.P. 462 L.D. 633

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-828)**.

Signed:

Senators:
CATHCART of Penobscot
TREAT of Kennebec
MILLS of Somerset

Representatives:
HATCH of Skowhegan
BOLDUC of Auburn
CLARK of Millinocket
STANLEY of Medway

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

Signed:

Representatives:
RINES of Wiscasset
PENDLETON of Scarborough
JOYCE of Biddeford
TREADWELL of Carmel
LAYTON of Cherryfield

Comes from the House with the Bill and accompanying papers
INDEFINITELY POSTPONED.

Reports **READ.**

On motion by Senator Cathcart, Bill and accompanying papers
INDEFINITELY POSTPONED.

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

REPORTS OF COMMITTEES

House

Divided Report

Majority of the Committee on **LABOR** on Bill "An Act to Give Collective Bargaining Rights to Legislative Employees"
H.P. 1497 L.D. 2096

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-900).**

Signed:

Senator:
CATHCART of Penobscot

Representatives:
HATCH of Skowhegan
SAMSON of Jay
BOLDUC of Auburn
CLARK of Millinocket
RINES of Wiscasset
STANLEY of Medway

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

Signed:

Senator:
MILLS of Somerset

Representatives:
TREADWELL of Carmel
PENDLETON of Scarborough
JOYCE of Biddeford

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 HOUSE AMENDMENT "C" (H-950).**

Reports **READ.**

Senator **CATHCART** of Penobscot moved the Senate **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence.

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

ORDERS OF THE DAY

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

HOUSE REPORTS - from the Committee on **STATE AND LOCAL GOVERNMENT** on Bill "An Act to Amend the Amount of Retainage on Public Building Contracts"

H.P. 1108 L.D. 1551
(C "A" H-1087)

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-1087)** (7 members)

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

Tabled - April 3, 1998, by Senator **PINGREE** of Knox.

Pending - **FURTHER CONSIDERATION**

(In House, March 27, 1998, the Minority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED**.)

(In Senate, April 1, 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-1087)** in **NON-CONCURRENCE**.)

(In House, April 2, 1998, that Body **INSISTED** and **ASKED FOR A COMMITTEE OF CONFERENCE**.)

On motion by Senator **NUTTING** of Androscoggin, the Senate **RECEDED** from whereby the Bill was **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1087)** in **NON-CONCURRENCE**.

The same Senator moved the Senate **RECEDE** from whereby Committee Amendment "A" (H-1087) was **ADOPTED**.

At the request of Senator **AMERO** of Cumberland a Division was had. 20 Senators having voted in the affirmative and 8 Senators having voted in the negative, the motion by Senator **NUTTING** of Androscoggin to **RECEDE** from **ADOPTION** of Committee Amendment "A" (H-1087) **PREVAILED**.

On motion by Senator **NUTTING** of Androscoggin, Senate Amendment "B" (S-707) to Committee Amendment "A" (H-1087) **READ**.

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

Senator **NUTTING:** Thank you, Mr. President. Ladies and gentlemen of the Senate. I want to thank the members of the Body for giving me at least the opportunity to offer this amendment. First, I worked on this issue as Chair of State and Local Government long enough so I'm really beginning to believe that I know what it is like to have retainage. I wanted to just first thank a couple members of this Body. We in the State and Local Government Committee, and as I said in the other debate the other evening on this Bill, the group that worked on this issue for several months, everybody has worked very hard. As it turned out we've got a couple of members of this Body, the good Senator from Somerset, Senator Mills and the good Senator from Penobscot, Senator Murray. Both work in this area and have been a tremendous help in the last couple of days, helping the Committee and everybody involved with drafting this further clarification of the majority signers intent that's contained in S-707. I want to just very briefly go over what's in the amendment. First off, of course, retainage, as we said the night before, current Maine law says that retainage must be retained even if a subcontractor is finished his work and may be gone from the job site a year. This S-707, the amendment that I'm proposing puts right up front in the amendment that nothing in this chapter prevents an owner, contractor, or subcontractor from withholding payment in whole or part under this construction contract. Just to make sure that it was clear, the intent of the majority signers always has been that if something was not up to performance standards then much more than the 5% retainage can be withheld. Retainage, in effect, means what's retained if everything looks absolutely perfect. You still can retain up to 5%. All this Bill is trying to do is to speed up the payment of the last 5% once all the work is done, all the work is inspected, and all the work is signed off on. The other thing that this amendment does is clarifies the situations under which payments may be withheld. It defines nonperformance. It clarifies that the owners makes the determination of completion and acceptance of work on a contract line item. It clarifies that retention of payments is a percentage of the payment due for approved work on the line item under the contract. It clarifies that retainage may be up to 5% and it also clarifies that an owner is not obligated to make payments in the case of nonperformance. So again, I urge you to adopt this amendment and move forward with this Bill. It's a very, very small step towards what many other States and the Federal Government use for building relationships between subcontractors and general contractors and owners and architects. In conclusion, I would just leave you with the one statement that has always concerned me ever since this Bill was introduced last year and of course we held it over, that in Maine, your early subcontractors wait a tremendous amount of time for their last 5% to make sure that a different contractor, who comes

onto the job later does a good job. That's something that I feel we shouldn't continue. Thank you.

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

Senator **MILLS:** Thank you, Mr. President, men and women of the Senate. I just want to thank the good Senator from Androscoggin, Senator Nutting, for including Senator Murray of Penobscot and myself in the deliberations that went into the creation of this amendment and I'm sure that I speak for the Senator from Penobscot when I say that we claim full credit for everything that is right in this amendment and no responsibility for anything that is wrong with it. It is a very difficult area. I don't envy the task that lay before the Committee in attempting to address this difficult issue about retainages because it inevitably involves multiple parties and the interests of many different parties in a wide variety of situations. I hope that the Bill, as drafted, will address the abuse or the problem that you allude to. I'll be very interested to hear from some of my friends in my profession over the next couple of years to see if there is anything we need to fix about this next time. On that basis, although I was very lukewarm about this Bill last night, I believe that it seems appropriate at this time and I will support it.

On motion by Senator **NUTTING** of Androscoggin, Senate Amendment "B" (S-707) to Committee Amendment "A" (H-1087) **ADOPTED**.

Committee Amendment "A" (H-1087) as Amended by Senate Amendment "B" (S-707) thereto, **ADOPTED** in **NON-CONCURRENCE**.

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 opened the vote.

ROLL CALL

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

NAYS: Senators: **CLEVELAND, LONGLEY, RAND**

ABSENT: Senators: **CASSIDY, JENKINS**

30 Senators having voted in the affirmative and 3 Senators having voted in the negative, with 2 Senators being absent, was **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1087) AS AMENDED BY SENATE AMENDMENT "B" (S-707) thereto, in NON-CONCURRENCE**.

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

The Chair laid before the Senate the following Tabled and Later (3/20/98) Assigned matter:

HOUSE REPORTS - from the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS** on Bill "An Act to Preserve the State House and to Renovate State Facilities" H.P. 1631 L.D. 2259

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-939)** (9 members)

Minority - **Ought Not to Pass** (3 members)

Tabled - March 20, 1998, by Senator **MICHAUD** of Penobscot.

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

(In House, March 19, 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-939)**.)

(In Senate, March 20, 1998, Reports **READ**.)

At the request of Senator **AMERO** of Cumberland a Division was had. 20 Senators having voted in the affirmative and 12 Senators having voted in the negative, the motion by Senator **MICHAUD** of Penobscot to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence, **PREVAILED**.

READ ONCE.

Committee Amendment "A" (H-939) **READ** and **ADOPTED**, in concurrence.

Under suspension of the Rules, **READ A SECOND TIME.**

On motion by Senator **RAND** of Cumberland, under unanimous consent, on behalf of President **LAWRENCE** of York, Senate Amendment "B" (S-708) **READ**.

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

Senator **MILLS:** Thank you, Mr. President and men and women of the Senate. I note that Senate Amendment "B" would direct the Commissioner of Administrative and Financial Services to reserve 33,000 gross square feet of space in the State Office Building for use by the Legislature. Is that approximately, if anyone can answer, I would ask permission to ask, if that is approximately two floors of space or can anyone tell me how much of the other building this constitutes in terms that I might understand.

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

Senator **DAGGETT:** Thank you, Mr. President and members of the Senate. In an attempt to answer this question, I have had conversations with Commissioner Waldron in regards to this project. As you may know this is a fairly involved project. I would speak to this particular issue. It's my understanding that currently the second floor of the State Office Building will be reserved, or will be allocated, for legislative use. It's my understanding that the purpose of the amendment is to affirm that that is the amount of space that has been agreed upon and has been discussed and I had my amendment here, and it seems to be a very elusive amendment but it is my understanding that it just deals with the process of how that space will be allocated and the relationship between the Legislative branch and the Executive branch in handling legislative space. The amount of space in there is the amount of space that the Commissioner and I have spoken about and it's my understanding that it is the second floor.

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

Senator **CAREY:** Thank you, Mr. President. If in fact the figure is 33,000 feet, divide that by 17 committees, you would find that is 2,000 square feet per committee. That could be a room which would roughly be 40x50 and I think there are times when even rooms 40x50 are much too small, when we talk about probably having a desk set aside for the clerk and a little office space for the two Chairs.

On motion by Senator **RAND** of Cumberland, Senate Amendment "B" (S-708) **ADOPTED**.

PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-939) AND SENATE AMENDMENT "B" (S-708) in NON-CONCURRENCE.

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

Senate at Ease

Senate called to order by the President.

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

Bill "An Act to Reduce Air Pollution from Motor Vehicles and to Meet Requirements of the Federal Clean Air Act" H.P. 1594 L.D. 2223 (C "A" H-1050)

Tabled - April 3, 1998, by Senator **TREAT** of Kennebec.

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

(In House, March 25, 1998, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1050).**)

(In Senate, April 2, 1998, **PASSAGE TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1050) FAILED in NON-CONCURRENCE.**)

(In House, April 2, 1998, that Body **ADHERED.**)

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

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

Senator **TREAT:** Thank you, Mr. President. Men and women of the Senate. I will save time by simply asking for a Roll Call. This is a Recede and Concur motion which means simply that I am asking you to Concur with what the House has done. They have accepted the Majority Report of the Natural Resources Committee to establish an inspection program in Cumberland County only, and a diesel inspections program statewide. I think it is a good program and I think you should vote for it. Thank you.

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

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

THE PRESIDENT: The Senator may pose her question.

Senator **MITCHELL:** Thank you, Mr. President. Could I ask when you mentioned the diesel program statewide. If you could clearly define that? Was that on an amendment?

THE PRESIDENT: The Senator from Penobscot, Senator Mitchell, poses a question through the Chair to anyone who may be able to answer. The Chair recognizes the Senator from Kennebec, Senator Treat.

Senator **TREAT:** Thank you, Mr. President. I, too, was up very late but probably not as late as you, and I'm a bit spaced out myself. I actually was able to find on my desk the green fact sheet which probably no one has anymore on their desk. I did hand this out some time ago which explains the heavy duty diesel truck testing program. This is a program that is supported by the Maine Motor Transport Association. It's also supported by the Maine Aggregate Haulers Association. It is a compromise that came out of the testimony from the hearing on that. The original Bill, as well as both reports, the majority and the minority reports, establish a statewide program which is roadside testing for diesel trucks which is consistent with what is happening in the entire Northeast. And this particular program has been designed with that in mind, so that trucks traveling from one end of the northeast through to Maine will be dealt with the same way in terms of diesel testing. And as far as I know there is not opposition to this section of the program. I'm sure there is always someone out there that opposes something but at least not organized opposition at this point.

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL

YEAS: Senators: CAREY, CATHCART, CLEVELAND, DAGGETT, FERGUSON, GOLDTHWAIT, JENKINS, KILKELLY, LONGLEY, MICHAUD, MILLS, MITCHELL, MURRAY, NUTTING, PARADIS, PINGREE, RUHLIN, TREAT, THE PRESIDENT - MARK W. LAWRENCE

NAYS: Senators: ABROMSON, AMERO, BENNETT, BENOIT, BUTLAND, HALL, HARRIMAN, KIEFFER, LAFOUNTAIN, LIBBY, MACKINNON, O'GARA, PENDLETON, RAND, SMALL

ABSENT: Senator: CASSIDY

19 Senators having voted in the affirmative and 15 Senators having voted in the negative, with 1 Senator being absent, the motion by Senator **TREAT** of Kennebec to **RECEDE** and **CONCUR, PREVAILED.**

Under suspension of the Rules, ordered sent forthwith to the Engrossing Department.

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 Preserve Live Harness Racing in the State"
H.P. 1185 L.D. 1676

In House, March 30, 1998, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1094).**

In Senate, April 3, 1998, Bill and Accompanying Papers **INDEFINITELY POSTPONED in NON-CONCURRENCE.**

Comes from the House, that Body **INSISTED** and **ASKED FOR A COMMITTEE OF CONFERENCE.**

Senator **CLEVELAND** of Androscoggin moved the Senate **ADHERE.**

Senator **DAGGETT** of Kennebec moved the Senate **INSIST** and **JOIN IN A COMMITTEE OF CONFERENCE.**

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

Senator **CLEVELAND:** Thank you, Mr. President. Men and women of the Senate. I hope that you will vote against that motion. We've had long and extensive discussion about this issue. I think that the different points of view are very well known

and well defined. There are, on occasion, Committee of Conferences that have merit and may well produce a productive result. I see no characteristics of this Bill that would suggest that a Committee of Conference would produce any productive results at all. I think it's time that we say we've taken all the action, we've had all the amendments, we've had all the opportunities, let's just get this behind us so we can move forward. I request a Roll Call.

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 Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL

YEAS: Senators: BUTLAND, DAGGETT, HARRIMAN, LONGLEY, MITCHELL, MURRAY, NUTTING, O'GARA, RUHLIN, THE PRESIDENT - MARK W. LAWRENCE

NAYS: Senators: ABROMSON, AMERO, BENNETT, BENOIT, CAREY, CATHCART, CLEVELAND, FERGUSON, GOLDTHWAIT, HALL, JENKINS, KIEFFER, KILKELLY, LAFOUNTAIN, LIBBY, MACKINNON, MICHAUD, MILLS, PARADIS, PENDLETON, PINGREE, RAND, SMALL, TREAT

ABSENT: Senator: CASSIDY

10 Senators having voted in the affirmative and 24 Senators having voted in the negative, with 1 Senator being absent, the motion by Senator **DAGGETT** of Kennebec to **INSIST** and **JOIN IN A COMMITTEE OF CONFERENCE**, FAILED.

On motion by Senator **CLEVELAND** of Androscoggin, the Senate **ADHERED**.

Senate at Ease

Senate called to order by the President.

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

ORDERS

Joint Order

On motion by Senator PINGREE of Knox, the following Joint Order:

S.P. 875

ORDERED, the House concurring, that when the House and Senate Adjourn they do so until Tuesday, April 7, 1998, at 10:00 in the morning.

READ and PASSED.

Sent down for concurrence.

Off Record Remarks

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

On motion by Senator **PINGREE** of Knox, **RECESSED** until 6:45 in the evening.

After Recess

Senate called to order by the President.

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

COMMUNICATIONS

The Following Communication: H.C. 481

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

April 3, 1998

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

The House today voted to Insist and Join in a Committee of Conference on Bill "An Act to Have a Referendum on Whether or Not an Independent Public Commission Should be Established to Set Legislative Pay" (S.P. 781) (L.D. 2108)

The Speaker appointed the following members of the House to the Committee:

Representative THOMPSON of Naples
Representative QUINT of Portland
Representative McALEVEY of Waterboro

Sincerely,

S/Joseph W. Mayo
Clerk of the House

READ and ORDERED PLACED ON FILE.

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 Mandate

An Act to Implement the Recommendations of the Governor's Commission on School Facilities

H.P. 1622 L.D. 2252
(S "A" S-634; S "B" S-637; S "C" S-698; H "A" H-1143 to C "A" H-1088)

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

Acts

An Act Relating to the Taxation of Certain Federal Entities, the Business Equipment Tax Reimbursement Program, the Administration of the Tax Laws and to Make a Technical Correction

H.P. 1679 L.D. 2297

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

Senator **MILLS:** Thank you, Mr. President. Men and women of the Senate. Since it's the only item on the list, I won't ask that it be set aside but I do wish to say just a couple of words about this before our action is finalized. This a highly technical amendment to the tax laws involving the Business and Equipment Tax Reimbursement system. As you may recall, it is the Bill that takes certain energy generating facilities out of the BETR Program and we have, in drafting this Bill, run into some minor problems about words to use, words that have certain meanings to the engineering profession but those of us who are trying to write some tax policy had to borrow them and for the record I'd like to say a couple of things about what we meant or intended by using these words or borrowing them from the engineering professionals. One of the terms that we used in paragraph (D) of the measure was Co-generation Facility. As I understand it, co-generation, to an engineer, means a facility that generates electricity but also heat, in particular, uses the heat or the exhaust from a boiler or turbine system to generate steam and apply the heat for other purposes after electricity is generated. So that you're generating, in a sense, two forms of energy at once. We have used it in this statute in a somewhat broader vein to mean not only a Co-generation Facility in the classic engineering sense,

but also to apply it to those facilities that generate electricity, for instance hydro facilities that may generate electricity for industrial applications, direct industrial applications, but also may be selling it out to the grid to commercial customers. And so we've used the phrase in a somewhat broader fashion than would be customary in the engineering use of the phrase.

The other thing that we've done is define a term called useful energy which is energy in any form that does not include waste, heat, efficiency losses, line losses or other energy dissipation. We wanted to make it clear that although we have excluded from that phrase, the term waste heat, what we meant by that was heat that is no longer usable, in other words heat that goes up the smoke stack and is not applied to any useful purpose. I think in some engineering context, heat that might be regarded as wasted at one stage is sometimes discharged to another stage and actually put to use. Work that is done with thermal energy that is residual to a combustion process. Our sense of the use of this word was that we wanted useful energy to be just exactly that, energy that is put to work and the only energy to be excluded from our formula was that which actually goes up the smoke stack or is otherwise lost to measuring or to efficient use. With that having been said, I will sit down. Thank you.

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

An Act to Amend the Laws Relating to Vesting in the Maine State Retirement System

H.P. 812 L.D. 1100
(C "A" H-1092)

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

An Act to Implement the Recommendations of the Great Pond Task Force

S.P. 573 L.D. 1730
(S "C" S-686; S "F" S-691 to C "A" S-600)

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

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

COMMUNICATIONS

The Following Communication: H.C. 482

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

April 3, 1998

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

Dear Madam Secretary:

The House voted today to adhere to its former action whereby it accepted the Minority Ought Not to Pass Report of the Committee on State and Local Government on Bill "An Act to Amend the Amount of Retainage on Public Building Contracts" (H.P. 1108) (L.D. 1551).

Sincerely,

S/ Joseph W. Mayo
Clerk of the House

READ and ORDERED PLACED ON FILE.

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

REPORTS OF COMMITTEES

House

Committee of Conference

The Second Committee of Conference on the disagreeing action of the two branches of the Legislature, on Bill "An Act to Implement the Recommendations of the Maine Indian Tribal-State Commission Relating to Tribal Land Use Regulation"
H.P. 1403 L.D. 1961

Had the same under consideration and asked leave to report:

That they are **Unable to Agree.**

On the Part of the Senate:

Senator CLEVELAND of Androscoggin
Senator MACKINNON of York
Senator BENOIT of Franklin

On the part of the House:

Representative ETNIER of Harpswell
Representative POWERS of Rockport
Representative MAYO of Bath

Comes from the House with the Committee of Conference Report **READ and ACCEPTED.**

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

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

PAPERS FROM THE HOUSE

Joint Order

The following Joint Order: H.P. 1680

ORDERED, the Senate concurring, that the Joint Standing Committee on Taxation shall report out, to the House, a Bill to study the taxation of telecommunications property.

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

READ and PASSED, in concurrence.

Senate at Ease

Senate called to order by the President.

ORDERS OF THE DAY

The Chair laid before the Senate the following Tabled and Later (3/31/98) Assigned matter:

SENATE REPORTS - from the Committee on **NATURAL RESOURCES** on Bill "An Act to Reauthorize the Toxics and Hazardous Waste Reduction Laws"

S.P. 784 L.D. 2111

Majority - **Ought to Pass as Amended by Committee Amendment "A" (S-662)** (8 members)

Minority - **Ought to Pass as Amended by Committee Amendment "B" (S-663)** (5 members)

Tabled - March 31, 1998, by Senator **TREAT** of Kennebec.

Pending - motion by same Senator to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-662)** Report

(In Senate, March 31, 1998, Reports **READ.**)

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

Senator **TREAT:** Thank you, Mr. President. Men and women of the Senate. I wish to speak to this Bill. It was a very big effort to get this legislation passed. It was a combined effort of a lot of people, not just environmentalists, like myself, but labor groups, some businesses that were interested in looking at ways to reduce the use of toxics in our workplaces. It's been an extremely successful law and now that it's been in effect for approximately eight years, the time has come to look at it and make sure that it makes sense for the future. Let me just explain what this Bill does and how the amendments that we have put in

will reauthorize this legislation in a way that makes it work very well for the decade to come.

This Legislation is, I want make clear what it is and what it isn't, even though this is the TURA, TURA, TURA Bill. You've all heard about that, it stands for Toxic Use Reduction Act. In fact, this legislation is not a Toxic Use Reduction Act in the technical terms that you might think. Many people have become confused about this, and they think that it is a mandatory use reduction law, a law that requires companies to meet certain deadlines to reduce the amount of toxics they use in the workplace. And that is not true. What it is, is a Bill that does require reductions of air emissions, of white wastewater discharges, and hazardous waste shipments or productions. It has been extremely successful as I said. The 1989 law has, in fact, reduced 5 million pounds of hazardous waste, over 7 million pounds of toxic releases and 30 million pounds of toxics have been reduced in use. Companies have voluntarily shifted over to different kinds of production methods which save them money in many cases, and which reduce the amount of toxics that they use. So some have said, well we've come to the deadline, we've met the 30% reduction goal, why go any farther, why bother? Haven't we actually achieved everything there is to achieve? And the answer to that is no. As a matter of fact there is still a great deal to be done. There are indeed a number of companies in this State that you could consider very high achievers. And one of the excellent qualities of the legislation before you is that it recognizes that high achievement and it will, in fact, recognize it positively. But there are others that have not gone so far and the fact remains that even though we may have reached many of these goals in terms of reducing toxic releases, there's a lot more to do. With just a couple of figures, right now we still have 7 million pounds of hazardous waste shipped over Maine roads every year. 15 million pounds of toxic chemicals are still released into our air, water and land and over 400 million pounds of toxic chemicals are still being used by Maine companies. And this is an issue for both workers and for people out in the community and our environment. We've already, this Session, talked about mercury, for example, and everyone has a very good idea about those issues about mercury. Mercury is in loon feathers. Mercury is in fish. Mercury has caused lakes to be closed so that people can't go fishing on them, can't eat the fish that are in those lakes. What this Bill is designed to do is focus on substances like mercury which are still ubiquitous in the environment, which still cause worker health problems for people who are exposed to those chemicals, which still costs tremendous amounts of money to dispose of properly under the Federal and State Hazardous Waste Disposal Laws. Those are the kinds of issues that this is attempting to deal with.

Well what does the Bill do and how does it do it? The first thing about this legislation that is different from the previous law is that it changes the chemicals that are governed by the law. It uses three lists of chemicals. The previous law had three parts. One was releases to the air, one was releases to the water and the third was hazardous waste. There was a different list for each of these. This Bill actually reduces a lot of paper work by combining the lists. Companies know that only one list of substances is the list that will be covered by this law. And what it covers is the following: the Federal SARA 313 Toxic Chemical Listing, which is basically the extremely hazardous air substances. It includes the priority pollutants, water toxics. These are both in federal law. And it includes hazardous air pollutants as adopted by the Board of Environmental Protection. Now you may hear from people that this new version of this law

includes in it all kinds of chemicals that shouldn't be included and, I want to make it very clear that the chemicals included are appropriately included. They are very toxic substances that are already recognized in other laws and there is already reporting going on under other laws for these chemicals. This revised law will establish new reduction goals for each of these, for toxics release and toxics waste starting with a 1998 baseline. And these goals are 10% by 2002, 20% by 2004, and 30% by 2006. For toxic use the goals remain voluntary. Companies will be asked to try to figure out how they might reduce those toxics but they are not required to do that, if they do not reduce by 10% or 20%, nothing happens to them. It is a voluntary program. The other goals are mandatory because they are direct releases into the environment of extremely hazardous substances. The law also exempts a number of businesses that are currently covered by the current law. 1,800 small businesses will be exempted from the program entirely. This is done by raising the threshold of when you are covered. You now have to produce a lot more hazardous waste to be covered by this law. The law recognizes business concerns for confidentiality. The original legislation that came to our Committee had a paragraph on confidentiality and our Committee looked at that language and said, well it may cover the subject but we heard concerns from businesses that wasn't good enough. We spent a lot of time, did a lot of research and came up with very tight language that actually fills up a whole page now detailing, making it very, very clear that only information that is releasable to the public, that will in no way jeopardize a company's competitive position, that will not release trade secrets, only that sort of information can be released to the public. And we put all kinds of protections in the Bill in terms of segregating the information and showing that it's confidential until ruled otherwise. And I know that there are going to be some amendments offered to tighten that up even more. And those are amendments that I support and are supported by the Majority Report on this legislation.

The law also, as I said, recognizes the value of those who have been pioneers, and we call it the 51% Club. Those businesses, and there are quite a number of them, and there is a handful that the good Senator from Cumberland, Senator Harriman, has passed out which is on Maine Senate stationery and it lists many of these companies. These are companies that have already met the new goals. They've met the 30% goal from the previous law and they already have met the new 30% goal based on their old list. And that's what we are looking at. And we are recognizing the achievements of these companies by saying that they will be exempt of this law. The only thing they are going to have to do is continue to pay the fees and report on the chemicals that they are using and releasing into the environment, but they will not have to comply with the new goals. They will not have to file plant summaries with the DEP. They are exempt. And not only that but we have a whole section which will recognize their achievement by giving them environmental awards if they go a little bit farther than that and act as a mentor to another company, do an audit, or do another pollution prevention project. We've worked very hard not to penalize those who are ahead of the curve, but to recognize them and also to basically profit from their talents and share that with other companies that could learn from them. And that's really what this Bill is all about. The current program has worked extraordinarily well, because it has been a program of business assistance and technical assistance. Working together is a concept that I know many people would like to see more of in this government, and I think it's a part of our Department of

Environmental Protection that you will not hear complaints about. They have worked hand in hand with companies, and companies have benefited from this. A survey was done by the Department of Environmental Protection. They looked at seventeen companies that had done major toxic use reduction projects. Those companies saved \$2.4 million by toxics reductions. A lot of times toxic reduction is indeed good business sense.

Some questions have come up and I just want to make sure that these questions can be answered and perhaps people will raise them on the floor and that is a better way to respond to them if they come up. I did want to mention a couple of questions that have come up because they have been raised to me by various members of this Chamber and also in letters that come from different companies. One thing I want to make clear is I think that many of the companies that have concerns about this legislation have not read the Committee Report "A". They haven't seen it. They are hearing reports about it but they haven't actually read what the provisions are. What I am suggesting to you, you have on your tables, if it looks like mine it will be hard to find, but you have a summary of an amendment that I will be asking to offer later on that tightens up even more the way this law works so that it is even more business friendly than it is at this time. But let me just walk through a couple of questions.

First, why reauthorize? I've said there is still much, much more to go on this. Secondly, some people have said, "well this subject is so complicated you just didn't have enough time to work on it, go with the minority report which is a true reauthorization, it just extends the dates on the laws another year and be done with it. We'll go back and have a state quota group and figure out what to do." Well, that was done. There was a state quota group. A lot of work has gone into this. Our Committee has worked night and day on this Bill and it is a very good Bill. I really don't think that waiting another year and doing it all over again is going to result in a Bill that is significantly different from this or works any better. I think this is an excellent Bill and I think that you can be very proud to vote for it. The third question. Does this mandate reductions in chemical use? I want to emphasize again, no! There are no mandated use reductions and we were asked time and time again to put them into this Bill. I, in fact, came in on the first day when I presented the Bill and said "I'm in favor of mandatory use reductions". But I didn't vote for it as part of the Committee Amendment. I became convinced that what we have in here is going to work very well. Instead, what we are doing is encouraging companies to plan. They do have to file a summary of how they would reduce their toxic use with the DEP. It is a very general summary. There are no confidentiality questions. No questions have been raised but I think that when you see our confidentiality provisions and the amendments that are coming forward that you will be comforted that there are no concerns with that. We do not mandate but we ask them to look into how they could do it. And we're looking at incentives as well. The fees in the program are based on the amount of chemicals used which right in itself is an incentive to reduce. And we've put in a provision to ask DEP to come back in two years with a plan about how chemical fees could be based on their toxicity. Again trying to get at an incentive base voluntary system. Another question has come up. Are we penalizing companies that have done well? And again, the majority report recognizes that companies that have already done well deserve a break and they are exempted out of most of the provisions of this plan. Not only that but those that have not yet met this 51% target have several years to get there and we

will be offering an amendment which will even give them more time to do that. So what we are saying is, that you have a couple of years to get up to the point where you are exempted for the rest of the time that this law is in effect. That very definitely recognizes achievements and encourages companies to do a little bit more without mandates.

Questions again have come up about the list. As I said this list is based on lists that are being used at this time. This is not a huge expansion of the list. It combines three lists into one. Again, confidentiality is very tight in this law and we are going to make it even tighter if you accept the amendments that we will be offering today. I've heard questions about does this Bill discourage recycling and reuse? Absolutely not! There is nothing in this reauthorization that is different from the previous legislation in that it would discourage recycling or reuse. Nothing! There was one section on the planned summaries that said that you have to go and tell us everything you are doing about recycling. Businesses came to DEP and said "Do we really have to do this? It's a lot of paperwork." And so they said. "Okay, let's take out that line". That doesn't mean that we are discouraging recycling. It's a response to a business request to get rid of unnecessary paperwork, but that is a question that has been raised. Finally, people say, "what if a company simply can't make these goals?" Maybe they've already reduced everything they can? Maybe there isn't any equipment out there that can make any more emission reductions? Maybe they have to use a very toxic chemical and a lot of it to produce this particular product? Well, the law provides for that. There are exemptions in every single one of the areas. Exemptions for hazardous waste, for air emissions and for water discharges. And those exemptions are very broad. They say, essentially, that a company can get an exemption, if it can show any of the following: that practicable release reduction methods do not exist, that all such methods have been implemented, or if they can show that reduction of toxics would have an adverse impact on their product quality or quantity, or that there is some legal or contractual obligations that prevent them from taking these steps. And again, there will be an amendment offered that will even make these exemptions better, that will ensure that, for example, legal and contractual aspect of this is not just a one time thing. So, as I've said, we've worked hard to make this a law that works for the public, the environment, and for workers as well as for businesses. I think it's a very measured and effective Bill, and I urge you to support the Majority Ought to Pass as Amended Report.

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

Senator HARRIMAN: Thank you, Mr. President. Good evening ladies and gentlemen of the Senate. I want to begin by sharing with you my first hand involvement with this legislation long before it became a legislative document. Indeed it goes back to this fall, participating in one of the stakeholder groups where I got an opportunity to see first hand the atmosphere, if you will, that was charged, to say the least, from both sides of this very important issue. And like most other contentious issues, finding common ground is generally an act of time and patience and unfortunately, time ran out before this legislation needed to be printed and presented to the Legislature. And in view of that, at the public hearing, as members of the Natural Resources Committee in this Chamber can attest, it was a little bit confusing. The room was packed to the brim and while the

Bill was being presented, right on its heels was the spokesperson for the Commissioner and the Commissioner, himself, offering at the public hearings something like 13 proposed amendments to structurally address some of the issues in the Bill that were not contained in its original form. So, I can attest to the complication of this issue. The frustration that perhaps some have found with it. But I can assure you, having attended four of the Committee work sessions myself, that the Committee has nothing but our thanks to be bestowed upon them because they, indeed, spent somewhere around four or five hours just understanding the legislation as it was being proposed. So I want to say to the good Senator from Kennebec, Senator Treat, my very good friend from Cumberland, Senator Butland and my new found friend from Androscoggin, Senator Nutting, thank you for your patience and your willingness to stick with this issue. It was not an easy one. And I couldn't move on without paying a special compliment to Amy Holland from the Office of Policy and Legal Analysis, who I have had the pleasure to work with on other issues. She was a consummate professional on this issue. Having said all of that, I hope that you will recognize that we have a lot to be proud of in this State of Maine in the reduction and use of toxic materials. In fact, no other country in the world and no other state in the nation can claim the remarkable and positive achievements that we have in this area. And as the good Senator from Kennebec, Senator Treat has mentioned, continuing thought is being put into this legislation. Thoughts that will be offered in amendments that, I think, will answer most all of the concerns that you may be hearing from your districts so that we can go on to once again prove to people who care about our environment, people who work in our businesses and used these chemicals and most importantly about the next generation, that we have a workable solution that balances the needs of people who take the risk of creating jobs and most especially our responsibility to be good stewards of the environment. So if you will join with me in supporting Report "A", I am confident that the amendments that we will offer will be well worth your support and I hope that you will join me in doing so. Thank you, Mr. President.

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

Senator **MACKINNON:** Thank you, Mr. President. Colleagues of the Senate. I rise to thank the good Senator from Kennebec, Senator Treat, for working so diligently on this because, as you know, or if you have looked at the list, many of these large companies are in my Senate district. These companies are companies that have reached the 51% level and they have a very major concern about how some of these things are going to affect them. I do appreciate the stakeholders being considered in this. I do hope that as we go along to accept this that they are allowed to look to see and make sure how we go from there. I don't think anyone had any intention of saying this is a poor program. It's how the process works in making sure that we continue to make our State safe for workers, the environment and also making sure that the business community and the manufacturing community continue to be major players within our great State. Thank you.

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

Senator **HALL:** Thank you, Mr. President. Ladies and gentlemen. I hate to be the wet blanket but if you read the handout I just gave you, you'll notice that one of my companies, Dexter Shoe of Dexter is opposed. And even though they will be exempt, they are on the list of exempt companies, they are still opposed. So, I will be not supporting the pending motion.

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

Senator **BUTLAND:** Thank you, Mr. President. Ladies and gentlemen of the Senate. I too want to just take a moment to commend the efforts of the Natural Resources Committee led by the good Senator from Kennebec, Senator Treat. This is a very complex issue. We did receive a lot of testimony during the public hearing and I don't think it took more than a paragraph or two for everyone who testified that day to mention how extremely complex it was. You know Napoleon, when he went to war, had a Corporal who used to stand outside of his tent and when Napoleon was formulating his battle plan, and when he was finished, he would call the Corporal in and he would hand it to the Corporal. If the Corporal could read it and understand it, he would give it to the Courier to distribute to his Generals. We don't have any Corporals here in the Maine State Senate, but I did give the Bill to the good Senator from Somerset, Senator Mills, who I consider to be one of the brightest individuals that we have here and I believe he said that it was very complex and it actually gave him a headache. As has been mentioned, the original legislation was enacted in 1990 actually. And for the first time it established reduction goals for toxic use, release and hazardous waste generation. For the past seven years, the regulated community and the DEP have worked in a very positive and productive manner and significant gains have been made. The original TURA legislation sunsets this year, and this Bill seeks to extend the law well into the next century. I can't tell you exactly how successful the program has been. It receives a lot of praise from every corner, however. But one of the problems is that the last good set of data that they have was collected in 1995. I'm not sure just exactly what gains have been made since 1995. I do know that according to an editorial in the Portland Press Herald, where they talked about the gains that we had made, gains that other States would be very proud of, the nation as a whole had an increase use in toxic substances by 6%. I think we need to keep this in mind that we have made some tremendous progress. Unfortunately, some of the companies that have made some of the most progress are the ones who are most concerned about where the Reauthorization Act heads us. And for any regulatory system to continue to work properly and productively, I believe that it must have the willing cooperation of all affected parties.

For seven years, the regulated community has worked very hard to reduce toxic use release and hazardous waste generation. Some have been successful and some have not and some have been more successful. However, I get the sense that they now feel that the reauthorization goals represent an unfair and unreasonable burden. I fear that without the willing cooperation of this group, the program will under achieve. As was stated, there was a stakeholders group put together last fall that began working on this and from talking to the people there was a lot of agreement, a lot of common ground. The original Bill that came to the Legislature and came to the Committee was nine and half pages long. At that public hearing, the Commissioner of the DEP, Commissioner Sullivan, introduced

14½ pages of amendments, 13 amendments which tried to address some of the additional concerns from the regulated community. I commend him for that. But here I would disagree with the good Senator from Kennebec, Senator Treat, where she said that it was a Department Bill. After the Committee heard the Bill and started working on it, it changed. And with each succeeding stage of the process, the concerns of the regulated community were given less and less consideration. And that concerns me because I want this program to work and I think that we need to have those folks on board in order for it to work.

The good Senator from Piscataquis, Senator Hall, has spoken about a letter that was received from Dexter Shoe. I think the letter speaks to the unintended consequences of the proposed Bill. They said in the third paragraph, "While our reductions to date have more than exceeded the State mandate at 30% by January 1, 1998, our accomplishments have not come without some negative impact. In the process of achieving our reduction goals, we experienced a major setback in the quality of one of our lines of footwear. This product failure ultimately cost our company a significant share of business in that line of shoe. As we generally support the reauthorization of Maine's toxics reduction law, there are portions of the proposed L.D. 2111 Committee Amendment "A" which would similarly cause negative impact on our business." I don't think that this Body, or for that matter the DEP, is familiar enough with all of the processes that the various companies in this State undertake to produce their products or to be second guessing these people. The assumption is made that for every toxic substance out there you can simply go down to the Green Grocer and buy a substitute and that is not a fact. In the letter from Dexter Shoe, they tried to substitute, and it caused numerous malfunctions in the shoe line, so much so that they lost a significant portion of that line. From time to time companies fall upon hard times financially and threaten to cease operations in this State and when that happens there is a collective wringing of hands and gnashing of teeth, especially in this building. The wagons are circled and we do all that we can to provide the necessary assistance for companies to remain viable. Sometimes our efforts succeed, but most of the time they don't. We all bemoan the loss of jobs, whether in Waterville, Wilton, Winslow or Biddeford. We posture and pontificate always assuming that our past actions have absolutely nothing to do with the demise of a particular facility or industry. I'm here to tell you that if we don't consider the possible unintended consequences of every piece of legislation that we put forth, and if we don't listen to the regulated community, we are going to be guilty of contributing to the demise. The good Senator from Franklin, Senator Benoit spoke last week about a chart that he saw in a prominent national publication. The publication stated that Maine ranks 49th among States with regards to its business friendly or unfriendly climate. We did that. You and I and all the members of the past Legislatures. We did that and we did it with minimal incremental changes to our tax codes and regulatory policies. We've heard several times during the last week and a half about this or that proposal being minimalist. Let me tell you that the weight of that minimalist doctrine is bearing down heavily upon the brow of our business and working community. As I mentioned in an earlier debate, as the Session progresses we obviously have to spend more time in this Chamber and less time back in our districts, and a transformation takes place very, very insidiously, very slow and very undetectable. We need to be careful in our deliberations during the final days that we don't have that natural tendency to go native. You know we all campaign on a platform

of economic development, more jobs, increased opportunity and prosperity for all, but after spending 18 months in Augusta, we have a tendency to go native to a varying degree. We start believing in the gravity of every worse case scenario that's paraded before us by some interest group. We compound this error by further believing that government has a solution, the only solution to each of these worst case scenarios. We are continuously bombarded by numbers and facts and figures, big numbers and we tend to believe in their veracity. We even start to speak the language. We lose our original perspective and Augusta becomes our new reality. The best way to avoid this trap is to play or pay close attention to the folks back home.

I want to read you a letter, if I can find it, a portion of a letter from National SemiConductor in the City of South Portland. I think we all remember a couple of years ago, I certainly do, I attended a few ground breaking ceremonies and contract signing ceremonies over at their facility in South Portland. They were probably the poster child for economic development here in the State of Maine. It was a huge victory when they decided to move that fabrication facility not to some other state but to bring it here to the State of Maine. Let me quote from their letter, I might add that the letter is addressed to the Governor of the State of Maine. "As you may know, National SemiConductor Corporation has completed the initial phase of an \$838 million manufacturing expansion in South Portland. The facility, the most modern state-of-the art semiconductor lab helped establish South Portland and the State of Maine as a major center for semiconductor production. This expansion which is the largest single private investment the State of Maine has, and will continue to create highly skilled and sought after engineering jobs in an environmentally friendly facility." \$830 million expansion. Do you know how many small businesses we have to create in the State of Maine to achieve that level of economic development? The jobs that that construction project creates. The jobs that are on going year after year that facility will create. Good, high paying jobs. It concerns me when they are concerned. When they take the time to write a letter to seriously question the advisability of this act. I want to continue on. "Given Maine's six-year history of successful pollution prevention efforts and National's extensive environmental health and safety programs, implementation of a new regulatory program such as the one L.D. 2111 would create jeopardizes our, and many other Maine companies, global competitiveness." It jeopardizes National SemiConductor, the company that we all put the red carpet out for when they decided to build this facility. "Implementing L.D. 2111 would specifically threaten the success of our modern state-of-the art semiconductor lab by publicly disclosing confidential trade secrets at the discretion of the DEP commissioner, provide the DEP broad, new discretionary powers on how our products are manufactured in Maine and what materials can be used in our technologically advanced manufacturing process and require our already state-of-the art chemical emission controls to be refined further despite the existence of technical limits." This is a company that's doing everything it can do to meet these levels. And they are meeting these levels and unfortunately, for right now they are state-of-the art, and they are concerned about what lays ahead. They are concerned about their ability to meet the reauthorized levels. We want to do a lot of things in the State of Maine for economic development, and we have high hopes for creating jobs and opportunities and prosperity. We want to be the retirement capital of the United States and yet we have one of the most punitive tax codes in the country. I don't know how we ever

expect to bring those people here if we don't allow them to keep a little more of what they have saved and earned their entire life for their retirement. We've seen a lot of Bills this session that talk about research and development. We would like to be the Silicon Valley of east coast. We would like to be one of the leaders in the nation as far as research and development goes, but I don't think that's going to happen if the regulated community both here in the State of Maine and throughout the nation express the serious concerns of where reauthorization is taking us. The good Senator from Kennebec, Senator Treat spoke, I think on four occasions during her talk, about amendments to this. As written, Committee Amendment "A", I cannot support. I hope that I can support the Bill after I've had a chance to look at the amendments over the weekend. There's been a flurry of paperwork and a flurry of amendments that have come out today and they are probably very good, and probably address a lot of the concerns that I have here tonight. But I quite frankly haven't had a chance to sit down and to look at them and to try to understand them and understand whether they address my concerns. I hope that you will give some serious consideration to the pending motion. I will not be supporting it and I hope that you will not be supporting it. And I hope that should we accept Committee Amendment "A" that we would then Table this Bill so that we can all take home these amendments and spend the weekend with them and try to determine where we stand from there. Thank you very much.

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

Senator **NUTTING:** Thank you, Mr. President. Ladies and gentlemen of the Senate. I'll try to be very brief this evening. I want to talk about the kind of the mood of the program. I think that possibly hasn't been discussed or hasn't been portrayed so that everybody can relate to it. First of, in the years that this program has been in existence, there has never been one job lost because of this voluntary program. If businesses can't reduce their use or their generation of transport, they apply to the DEP for a waiver and this is very important. There's never been a waiver denied that's been applied for. There was a talk by the previous speaker, the good Senator from Cumberland, Senator Butland, that this Bill started out one way and ended another after the Committee process. As a Committee member, I can't agree with that. Businesses came to the Committee and said that they needed more time to make the 51% Club. And the Committee, in the report before us, gave them more time to meet the 51% Club. They wanted the confidentiality section of the original drafted Bill strengthened, and the Committee did that. It perplexes me that the Dexter Shoe Company, who was not forced into trying a new process but did so on their own, and National SemiConductor who are both exempt because they have done a great job and have met all the standards, would be opposed to the Bill. Possibly those concerns can be addressed with the amendments that will be offered, but I think this program has been a great success in saving businesses money and having workers at Maine businesses subject to less toxins. On average just talking to the gentleman, Mr. Dyer from the DEP, on average our release has dropped 51%, our hazardous waste has dropped over 30% and our use statewide has dropped 15%. I want to close with one other statement about our use. If you take one large facility out of the mix, I'll use Poltra-Chem, which we have just addressed in a different Bill just a few days ago, the statewide use has dropped 30% as well. In my mind, very close

to all three goals having been met, and it's a voluntary program, and this Bill before us today continues a voluntary program. So, I would urge your support. I do think that we can improve the Bill with the amendments. Thank you very much.

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

Senator **MITCHELL:** Thank you, Mr. President. Ladies and gentlemen of the Senate. Just to quickly acknowledge what the good Senator Nutting has just commented addressing the reasons on why SemiConductor and the businesses would oppose the Bill. I think mainly the reason for the opposition from the businesses currently is because when it started out they supported. They were involved at the work sessions, but now that we are doing these amendments, we have not solicited input from the people who best know the technology and who are working with it day by day. And I think their cry to us to ask for an extension of TURA for a year tells us that they want input to the changes. They want to provide you the technical background, what affects their businesses the most so that you can resolve with them as a team to come forward with the best resolution to where we go forward. The TURA has obtained objectives and our people have worked diligently at exceeding those objectives in some cases. For those who have not reached those objectives, they have an opportunity during the next year to work towards that attainment while you are working around the table to come up with where do we go from here and to make Maine a leader in achieving these results. But let's not exclude them from the process. Let's make sure that they are at the table and that they are part of the resolution. So what I would ask you to not vote in favor of the Majority Ought to Pass so that we can move on to Amendment "B", to allow a year's time and come back next year with the resolution where our businesses can proudly stand and say we're part of that resolution and that we work together as a team as the government that represents them best to build for the future of building on the economy in Maine with our businesses being part of that venture. Thank you for your support.

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

Senator **MILLS:** Thank you, Mr. President and men and women of the Senate. I have a question for anyone who might be able to answer, or care to answer it, and it has to do with the category known as toxic users. I understand that the law fundamentally regulates and restricts those who generate toxics and those who release toxics into the environment but that on the surface businesses that merely use toxic substances are subject only in a voluntary way, but when I look at the language I'm confused by whether it truly is? And I think that this would apply to the Bill whether amended later or not. It says "owners and operators of facilities or businesses are not required to meet the toxic use reduction goals" but then it goes on to say "but they shall examine, plan and implement the means of reducing the use of toxics without impairing their manufacturing processes, basically". And then it goes on to say that they are required, I believe, they are required to submit a plan and that if the DEP determines that the plan is inadequate they may be subjected to penalties and that even if they do submit a plan that is acceptable they are, nevertheless, subjected to fees that increase from what was \$50 a substance to \$100 per substance

to a maximum of \$5,000 in the aggregate. And it would appear, from a broad reading of the statute, that users, that in fact users are subject to certain mandatory requirements and it is not clear to me that the law has been accurately represented in some of the literature circulating concerning it. I'm happy to be better informed about the issue, but I think that many of us are concerned about that particular category. I think most of us would support the view that those who release chemicals, or at least generate them ought to be subject to ongoing requirements and should be subject to very close scrutiny of how those chemicals are used and generated and released. But those who must use certain toxic chemicals in their manufacturing or commercial processes, it seems to me that we need to examine with great care what sort of burdens we are putting on those industries because there are certain processes that can only be done using toxic substances, even if those substances are used with great care. One of the concerns they have in reading the Bill as amended is whether we are imposing more stringent requirements on users than before and, if so, what is the nature of those restrictions and those impositions. I'm sorry to ask such a long question so late in the evening but it is the question that concerns most of my constituents the most, those who are engaged in manufacturing and who are using chemicals in day to day processes and I have read the Bill with an effort to try to ferret out how we are imposing on those people and in what fashion. It would appear to me that we are imposing on them certain mandatory requirements that may not be very easy for them to fulfill.

THE PRESIDENT: The Senator from Somerset, Senator Mills poses a question through the Chair to anyone who may be able to answer. The Chair recognizes the Senator from Kennebec, Senator Treat.

Senator **TREAT:** Thank you, Mr. President. Men and women of the Senate. I will attempt to answer the multi-part question of the good Senator from Somerset, Senator Mills. I think there is a disadvantage that most members of this Body have that is not a disadvantage that members of the Committee have. And that is that members of the Committee are familiar with the existing law which has many of the same provisions in it that are in the reauthorization. And so, we've gotten a lot of concern about provisions that are in the reauthorization and people saying that gee, this sounds really onerous and isn't this a mandatory thing and couldn't this have terrible consequences and when I look at the language, it's almost identical to what's in the current law. And, in fact, the current law requires facilities subject to regulation under this chapter to develop and update every two years plans for their own use in meeting the State's goals for toxic use, toxic release and toxic waste reduction. Plans must include management policy, production unit analysis, identification of appropriate technologies, procedures, processes, equipment or production changes that may be used or utilized by the facility to reduce the amount of toxicity or amount of toxics released or used or hazardous waste generated, strategy and schedule etc. etc. Current law. Current Law. It applies to everyone that is covered by this law and the new law is very similar.

A toxic user, what does a toxic user have to do? They have to report and the penalties that the good Senator referred to address the requirement that someone who uses toxics in their facility must report if they use toxics in reportable quantities that is on the list that is in the legislation. That's the first thing they

have to do. They also have to do a plan to show how they might reduce the use of their toxics. That plan is also required right now under current law. Current Law. It's been in effect since 1990, passed in 1989. Now there are parts of this Bill that are mandatory and they concern releases of hazardous chemicals in the air, releases of hazardous chemicals into the water and hazardous waste generation. In those areas the goals of 10, 20, and 30% are mandatory in the sense that that's when penalties kick in. But a company that shows that it cannot achieve those goals for very good reasons, because equipment doesn't exist to achieve that level of air pollution control, because they have already got a state-of-the art facility that reduces pollution as much as possible, because they have some kind of legal or contractual requirement that requires that they use substance X. Bath Iron Works, for example made sure that the law that was enacted almost 10 years ago had a provision in it that said if we have to use this stuff for legal or contractual reasons, we can get an exemption. That's in this law. That's in the reauthorization. It's the same law.

There are some differences. The chemical list is somewhat broader but it's combined into one instead of three different lists. One for hazardous waste, one for air and one for water. There are some advantages to that and one of the advantages to the changes is that 1,800 businesses won't be covered by this law at all.

This law definitely tries to get companies to think about their processes and think about changing them. And they have to go through some steps but it is very similar to the law that we have at this time and I hope that when questions like this are raised, I mean that I have been answering questions about this law for quite some time, especially over the last two or three days, and a lot of the questions have come from businesses that are completely exempt from the law except that they have to report the quantities of chemicals that they use, completely exempt or people are complaining about language that is almost identical to current law. And that's, in fact, the language that the Senator from Somerset, he wouldn't know because he doesn't work in this area of the law and he wouldn't be familiar with the current law but it's very similar. And in many ways what we have done in the Committee Amendment is to clarify that law and make it better. So, for example, in the original law, the confidentiality section said, and we will use the confidentiality provisions of section 1304B which deals with hazardous waste, and it sort of cross referenced it. Well, when we looked at that we said I'm not sure that this really works with the provisions of this Bill. We are not really sure that it's tight enough. It leaves a lot to rule making and the commissioner's discretion. Let's put the standards right in the law. Let's make it very clear. And that is what we did. Most of what is in here is an accommodation to business concerns. The point was made that we need to listen more to business. We listened a lot to business. A lot. And we are still listening and acting. If you let us get past this Majority Report, there will be two amendments that I think people will like a lot. Maybe three! Three amendments that are good amendments that make the Bill better. This is a good Bill and I think that you can vote with it. Vote for it with confidence. It will make great progress. It will continue the progress we have made already. It will improve the environment. It will improve the health of workers and for many businesses it will save them money. It already has.

On motion by Senator **TREAT** of Kennebec, 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 Kennebec, Senator **CAREY**, and further excused the same Senator from today's Roll Call votes.

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL

YEAS: Senators: ABROMSON, BENNETT, CATHCART, CLEVELAND, DAGGETT, FERGUSON, GOLDTHWAIT, HARRIMAN, JENKINS, KILKELLY, LAFOUNTAIN, LONGLEY, MACKINNON, MICHAUD, MILLS, MURRAY, NUTTING, O'GARA, PARADIS, PENDLETON, PINGREE, RAND, RUHLIN, TREAT, THE PRESIDENT - MARK W. LAWRENCE

NAYS: Senators: AMERO, BENOIT, BUTLAND, HALL, KIEFFER, LIBBY, MITCHELL, SMALL

ABSENT: Senator: CASSIDY

EXCUSED: Senator: CAREY

25 Senators having voted in the affirmative and 8 Senators having voted in the negative, with 1 Senator being absent and 1 Senator being excused, the motion by Senator **TREAT** of Kennebec to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-662)** Report, **PREVAILED**.

READ ONCE.

Committee Amendment "A" (S-662) **READ**.

Senate at Ease

Senate called to order by the President.

On motion by Senator **TREAT** of Kennebec, Senate Amendment "B" (S-712) to Committee Amendment "A" (S-662) **READ**.

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

Senator **TREAT:** Thank you, Mr. President. Men and women of the Senate. I hope you will Adopt Senate Amendment "B". It

basically was designed to address many of the concerns that we heard from business about the Majority Report. I have a little fact sheet that I passed out on it. It gives more time for businesses to get into this 51% level so that they are completely exempt. It gets rid of the provision called the "anti backsliding provision" which upset many people. It basically said that once you get into the 51% Club, if you back slide a little bit you are out of it and have to do all the stuff in the law that you don't want to do. It puts in place a better environmental awards program and it takes many things out of the planned summary that used to be in there that were giving businesses concerns about confidentiality. So, I hope that you will support it. It's a good amendment and improves the Bill.

On further motion by same Senator, Senate Amendment "B" (S-712) to Committee Amendment "A" (S-662) **ADOPTED**.

On motion by Senator **HARRIMAN** of Cumberland, Senate Amendment "A" (S-682) to Committee Amendment "A" (S-662) **READ**.

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

Senator **HARRIMAN:** Thank you, Mr. President. Ladies and gentlemen of the Senate. The amendment that I have just offered does two very important things. First, as you may know, under current law the exemption from toxics release and hazardous waste requirements for legal and contractual obligations may not be renewed. And the amendment before you would authorize the Commissioner to review and renew such exemptions at 3 year intervals. The second piece of my amendment, amends the confidentiality provisions to allow an owner-operator of a facility that is aggrieved, or is in conflict with the decision of the Commissioner regarding confidentiality in a plan summary, to apply to the Department for a 30-day stay of the decision to give the owner an opportunity to petition for judicial review. If someone seeks through the Freedom of Information Act, information the Commissioner then decides that it is something that he or she decides to release unless he/she must notify the owner-operator. If the operator objects, the Commissioner must issue a 30 day stay to get a judicial review. Thank you, Mr. President.

On further motion by same Senator, Senate Amendment "A" (S-682) to Committee Amendment "A" (S-662) **ADOPTED**.

On motion by Senator **BENNETT** of Oxford, Senate Amendment "C" (S-749) to Committee Amendment "A" (S-662) **READ**

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

Senator **BENNETT:** Thank you, Mr. President. Fellow members of the Senate. The last piece of paper, I believe, to hit your desk this evening is Senate Amendment "C". This is a small but important change in this Bill. I believe it has the support of all interested parties. The change is essentially this, it says that any new facilities, new business undertakings, whether they be a new facility in an existing business or a new business altogether that may be coming into the State, when such a business would fall under the provisions of this Act, they would not, as the current law

has it, have to prove to the Department of Environmental Protection to the Commissioner of the Department that their facilities are not the highest and best state-of-the art in the industry. In other words, this amendment would shift from the business to the Department the proof of showing that those processes and those facilities are not in keeping with the spirit of this Act. So this would shift from for new businesses to the Department that presumption, and I think that therefore it is good because it doesn't do the disservice of unwelcome to new business undertakings in the State of Maine. I hope that you support this and thank you very much.

On further motion by same Senator, Senate Amendment "C" (S-749) to Committee Amendment "A" (S-662) **ADOPTED.**

Committee Amendment "A" (S-662) as Amended by Senate Amendments "A" (S-682); "B" (S-712) and "C" (S-749) thereto, **ADOPTED.**

TOMORROW ASSIGNED FOR SECOND READING.

On motion by Senator **KIEFFER** of Aroostook, **ADJOURNED**, pursuant to the Joint Order, until Tuesday, April 7, 1998, at 10:00 in the morning.