

MAINE STATE LEGISLATURE

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Legislative Record
House of Representatives
One Hundred and Nineteenth Legislature
State of Maine

Volume I

First Regular Session

December 2, 1998 – May 12, 1999

ONE HUNDRED AND NINETEENTH LEGISLATURE
FIRST REGULAR SESSION
20th Legislative Day
Wednesday, March 3, 1999

The House met according to adjournment and was called to order by the Speaker.

Prayer by Reverend David E. Avery, First Congregational Church, Eliot.

Pledge of Allegiance.

Doctor of the day, Dennis Chong, M.D., Falmouth.

The Journal of yesterday was read and approved.

SENATE PAPERS

The following Joint Resolution: (S.P. 531)

JOINT RESOLUTION MEMORIALIZING THE CONGRESS OF THE UNITED STATES TO DIRECT THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT TO RELEASE AN AMOUNT OF FUNDS COMMENSURATE WITH THE EXTENT OF THE DEVASTATION INCURRED BY MAINE'S ELECTRIC UTILITIES AND THEIR CUSTOMERS FROM THE FUNDS APPROPRIATED BY PUBLIC LAW 105-174

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

WHEREAS, from Monday, January 5, 1998 through Saturday, January 10, 1998, the State of Maine endured an ice storm, the length and severity of which is unprecedented in living memory, now known as the Ice Storm of '98, which produced downed trees, tree limbs and power lines throughout the State; and

WHEREAS, on January 8, 1998, the Honorable Angus S. King, Jr., Governor of the State of Maine, declared that a state of emergency existed throughout the State due to the severe condition and the associated loss of electrical power to many citizens; and

WHEREAS, the storm crippled the State's electric utility infrastructure, leaving almost 1/2 of its residents without power at the peak of the storm, thousands of whom remained without power for a week or more, and, on January 15, 1998, Vice President Albert Gore, upon personally witnessing the devastation in Maine caused by the ice storm, stated it was "like a neutron bomb aimed at the power system"; and

WHEREAS, on January 13, 1998, the Honorable William J. Clinton, President of the United States, declared the Maine counties of Androscoggin, Cumberland, Franklin, Hancock, Kennebec, Knox, Lincoln, Oxford, Penobscot, Piscataquis, Sagadahoc, Somerset, Waldo, Washington and York and a portion of Aroostook major disaster areas; and

WHEREAS, Central Maine Power Company, Bangor Hydro-Electric Company and other public and private entities, through their extraordinary organizational efforts combined with long hours of work, did an exemplary job rebuilding and repairing an electric infrastructure ravaged by this unprecedented storm at a cost of \$81,000,000; and

WHEREAS, the Governor categorized the extraordinary cost of restoring power as "purely a function of protecting life and safety of our people... the quick restoration of power... was not a matter of convenience, but was an unequivocal necessity"; and

WHEREAS, Congress passed and the President signed Public Law 105-174, An Act Making Emergency Supplemental Appropriations for the Fiscal Year Ending September 30, 1998, and Congress accepted a conference report that appropriated \$130,000,000 to be used for disaster relief, long-term recovery, and mitigation in disasters designated during fiscal year 1998; and

WHEREAS, the Federal Emergency Management Agency's "Blueprint for Action" for the Ice Storm of '98 notes that the "HUD Community Development Block Grant Program can supplement other federal assistance in repairing and reconstructing infrastructure, including privately-owned utilities"; and

WHEREAS, despite the diligent efforts of the Maine Congressional Delegation, administration officials charged with disbursing the emergency funds have failed to recognize the severity of the damage sustained to the State's electric infrastructure caused by the Ice Storm of '98; and

WHEREAS, the amount of emergency funds allocated to the State to date, \$2,100,000, is entirely insufficient to cover the cost to repair damage to the electric infrastructure and without additional emergency funds, the State's electric utility ratepayers will bear the remaining burden of the cost of repair to the infrastructure in the form of extraordinary rate increases; now, therefore, be it

RESOLVED: That We, your Memorialists, respectfully urge and request that the United States Congress direct the Department of Housing and Urban Development to release an amount of funds commensurate with the extent of the devastation incurred by the State's electric utilities and their customers from the funds appropriated by Public Law 105-174; and be it further

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

Came from the Senate, **READ** and **ADOPTED**.

READ and **ADOPTED** in concurrence.

Bill "An Act to Ensure Adequate Nutrition Services for Maine's Elderly and to Create the Senior One-stop Program"
(S.P. 518) (L.D. 1552)

Bill "An Act to Allow Philip Wolley to Receive Certain Legal Costs from the State"
(S.P. 537) (L.D. 1599)

Bill "An Act to Improve Accountability in the Budget Process"
(S.P. 555) (L.D. 1617)

Came from the Senate, **REFERRED** to the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS** and ordered printed.

REFERRED to the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS** in concurrence.

Bill "An Act to Expand Term Limits of Maine Employers' Mutual Insurance Company Directors"
(S.P. 540) (L.D. 1602)

Bill "An Act to Create a Standard Small Group Health Plan"
(S.P. 542) (L.D. 1604)

Bill "An Act to Conform Maine's Consumer Credit Laws to
Federal Law and Make Other Changes"
(S.P. 546) (L.D. 1608)

Bill "An Act to Create a Patients' Bill of Rights"
(S.P. 557) (L.D. 1619)

Came from the Senate, **REFERRED** to the Committee on
BANKING AND INSURANCE and ordered printed.

REFERRED to the Committee on **BANKING AND
INSURANCE** in concurrence.

Bill "An Act Regarding Complementary Health Care
Providers"
(S.P. 533) (L.D. 1595)

Bill "An Act to Integrate the Maine Economic Growth
Council's Economic Growth Plan with the State's Economic
Strategic Development Plan"
(S.P. 549) (L.D. 1611)

Bill "An Act to Amend the Laws Regarding Professional
Engineers"
(S.P. 556) (L.D. 1618)

Came from the Senate, **REFERRED** to the Committee on
BUSINESS AND ECONOMIC DEVELOPMENT and ordered
printed.

REFERRED to the Committee on **BUSINESS AND
ECONOMIC DEVELOPMENT** in concurrence.

Bill "An Act to Require Prior Agreement by Both the Sender
and the Receiver for a Recording to Take Place"
(S.P. 548) (L.D. 1610)

Committee on **JUDICIARY** suggested and ordered printed.

Came from the Senate, **REFERRED** to the Committee on
CRIMINAL JUSTICE and ordered printed.

REFERRED to the Committee on **CRIMINAL JUSTICE** in
concurrence.

Bill "An Act to Establish a Maine Student Leadership Pilot
Program"
(S.P. 526) (L.D. 1559)

Bill "An Act to Require High School Students to Earn a
Certificate of Mastery Before Graduating"
(S.P. 528) (L.D. 1561)

Bill "An Act to Create Greater Equity in Representation
Among Municipalities Belonging to School Administrative
Districts and Ensure That All School Referendum Votes Are
Preceded by a Public Hearing"
(S.P. 547) (L.D. 1609)

Bill "An Act to Ensure Equity in School Funding"
(S.P. 558) (L.D. 1627)

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

REFERRED to the Committee on **EDUCATION AND
CULTURAL AFFAIRS** in concurrence.

Bill "An Act Regarding Hospital Cooperation"
(S.P. 536) (L.D. 1598)

Bill "An Act to Provide a Definition of Cigarette for Retail
Purposes"
(S.P. 551) (L.D. 1613)

Came from the Senate, **REFERRED** to the Committee on
HEALTH AND HUMAN SERVICES and ordered printed.

REFERRED to the Committee on **HEALTH AND HUMAN
SERVICES** in concurrence.

Bill "An Act to Amend the Wrongful Death Laws"
(S.P. 541) (L.D. 1603)

Came from the Senate, **REFERRED** to the Committee on
JUDICIARY and ordered printed.

REFERRED to the Committee on **JUDICIARY** in
concurrence.

Bill "An Act to Increase the Health Benefits for Retired
Educators"
(S.P. 552) (L.D. 1614)

Bill "An Act Regarding the Calculation of Maine State
Retirement System Benefits"
(S.P. 554) (L.D. 1616)

Came from the Senate, **REFERRED** to the Committee on
LABOR and ordered printed.

REFERRED to the Committee on **LABOR** in concurrence.

Bill "An Act to Amend the Qualifications for Appointment of
the Adjutant General and Assistant Adjutant General"
(S.P. 527) (L.D. 1560)

Resolve, to Transfer the National Guard Armory in
Skowhegan to Somerset County for Use as a County Jail
(S.P. 535) (L.D. 1597)

Came from the Senate, **REFERRED** to the Committee on
LEGAL AND VETERANS AFFAIRS and ordered printed.

REFERRED to the Committee on **LEGAL AND
VETERANS AFFAIRS** in concurrence.

Bill "An Act to Establish the Environmental Leadership
Program"
(S.P. 529) (L.D. 1562)

Resolve, to Direct the Department of Environmental
Protection and the Department of Economic and Community
Development to Devise a Proposal for Long-term Funding of the
Removal of Tire Dumps
(S.P. 539) (L.D. 1601)

Came from the Senate, **REFERRED** to the Committee on
NATURAL RESOURCES and ordered printed.

REFERRED to the Committee on **NATURAL
RESOURCES** in concurrence.

RESOLUTION, Proposing an Amendment to the Constitution of Maine to Revoke Voting Rights of Convicted Felons While they are in Prison

(S.P. 545) (L.D. 1607)

Came from the Senate, **REFERRED** to the Committee on **STATE AND LOCAL GOVERNMENT** and ordered printed.

On motion of Representative AHEARNE of Madawaska, the RESOLUTION was **REFERRED** to the Committee on **JUDICIARY** in **NON-CONCURRENCE** and sent for concurrence.

Bill "An Act to Promote Equity Among Health Care Clinics"
(S.P. 532) (L.D. 1594)

Bill "An Act to Clarify the Sales Tax Exemption for Food Service in Educational Institutions"
(S.P. 534) (L.D. 1596)

Bill "An Act to Redefine Property Subject to the Business Equipment Tax Reimbursement Program to Include Manufacturing Real Estate and to Exclude Property That is not Used for Manufacturing or Research"
(S.P. 543) (L.D. 1605)

Bill "An Act to Make Manufacturing Real Estate Eligible for Business Equipment Property Tax Reimbursement"
(S.P. 544) (L.D. 1606)

Came from the Senate, **REFERRED** to the Committee on **TAXATION** and ordered printed.

REFERRED to the Committee on **TAXATION** in concurrence.

Bill "An Act to Clarify Language in the Motor Vehicle Laws with Respect to Farm Equipment"
(S.P. 550) (L.D. 1612)

Came from the Senate, **REFERRED** to the Committee on **TRANSPORTATION** and ordered printed.

REFERRED to the Committee on **TRANSPORTATION** in concurrence.

Bill "An Act to Repeal Registration Requirements of Cable Television Franchise Agreements and the Filing of Wage Rates and Benefits"
(S.P. 553) (L.D. 1615)

Came from the Senate, **REFERRED** to the Committee on **UTILITIES AND ENERGY** and ordered printed.

REFERRED to the Committee on **UTILITIES AND ENERGY** in concurrence.

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

Report of the **Commission to Study the Funding and Distribution of Teletypewriters and Other Telecommunications Equipment for People with Disabilities** pursuant to Resolve 1997, chapter 72, section 5 asks leave to report that the accompanying Bill "An Act to Implement the Recommendations of the Commission to Study the Funding and

Distribution of Teletypewriters and Other Telecommunications Equipment for People with Disabilities"

(S.P. 530) (L.D. 1563)

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

Came from the Senate, Report **READ** and **ACCEPTED** and the Bill **REFERRED** to the Committee on **UTILITIES AND ENERGY** and ordered printed pursuant to Joint Rule 218.

Report was **READ** and **ACCEPTED** and the Bill **REFERRED** to the Committee on **UTILITIES AND ENERGY** in concurrence.

Non-Concurrent Matter

JOINT ORDER - Relative to establishing a Commission to Study the Statewide Redemption of Returnable Containers
(H.P. 921)

REFERRED to the Committee on **BUSINESS AND ECONOMIC DEVELOPMENT** in the House on February 25, 1999.

Came from the Senate **REFERRED** to the Committee on **NATURAL RESOURCES** in **NON-CONCURRENCE**.

On motion of Representative O'NEAL of Limestone, the House voted to **ADHERE**.

Non-Concurrent Matter

Bill "An Act to Allocate the State Tax Windfall on the Sale of Generation-related Assets to the Reduction of Stranded Costs Otherwise Paid by Ratepayers"

(H.P. 1030) (L.D. 1452)

REFERRED to the Committee on **TAXATION** in the House on February 23, 1999.

Came from the Senate **REFERRED** to the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS** in **NON-CONCURRENCE**.

On motion of Representative GAGNON of Waterville, the House voted to **ADHERE**.

COMMUNICATIONS

The Following Communication: (S.P. 525)

119TH MAINE LEGISLATURE

February 25, 1999

Senator John Nutting

Representative Wendy Pieh

Chairpersons

Joint Standing Committee on Agriculture, Conservation and Forestry

119th Legislature

Augusta, Maine 04333

Dear Senator Nutting and Representative Pieh:

Please be advised that Governor Angus S. King, Jr. has nominated John M. Joseph, Jr. of Hallowell for appointment as a member of the Maine Milk Commission.

Pursuant to Title 7, M.R.S.A., §2952, this nomination will require review by the Joint Standing Committee on Agriculture, Conservation and Forestry and confirmation by the Senate.

Sincerely,

S/Mark W. Lawrence

President of the Senate

S/G. Steven Rowe

Speaker of the House

Came from the Senate, **READ** and **REFERRED** to the Committee on **AGRICULTURE, CONSERVATION AND FORESTRY**.

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

The Following Communication: (S.C. 80)

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

March 2, 1999

The Honorable G. Steven Rowe
Speaker of the House
2 State House Station
Augusta, Maine 04333

Dear Speaker Rowe:

Please be advised that the Senate today confirmed, upon the recommendation of the Joint Standing Committee on Business and Economic Development, the nomination of Earl C. Black of Bangor for appointment to the Maine State Housing Authority.

Thank you for your attention to this matter.

Sincerely,

S/Joy J. O'Brien

Secretary of the Senate

READ and **ORDERED PLACED ON FILE**.

The Following Communication: (S.C. 81)

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

March 2, 1999

The Honorable G. Steven Rowe
Speaker of the House
2 State House Station
Augusta, Maine 04333

Dear Speaker Rowe:

Please be advised that the Senate today confirmed, upon the recommendation of the Joint Standing Committee on Judiciary, the nominations of Paul K. Vestal, Jr. of Plymouth and James Varner of Old Town for reappointment as members of the Maine Human Rights Commission.

Thank you for your attention to this matter.

Sincerely,

S/Joy J. O'Brien

Secretary of the Senate

READ and **ORDERED PLACED ON FILE**.

**PETITIONS, BILLS AND RESOLVES REQUIRING
REFERENCE**

The following Bills were received, and upon the recommendation of the Committee on Reference of Bills were **REFERRED** to the following Committees, ordered printed and sent for concurrence:

AGRICULTURE, CONSERVATION AND FORESTRY

Bill "An Act Regarding Equine Massage Therapy"

(H.P. 1145) (L.D. 1642)

Presented by Representative BUMPS of China.

Cosponsored by Representatives: CROSS of Dover-Foxcroft, FOSTER of Gray, GAGNE of Buckfield, GILLIS of Danforth, PIEH of Bremen, WATSON of Farmingdale, Senators: KILKELLY of Lincoln, NUTTING of Androscoggin.

Bill "An Act to Remove Certain Wetland Sites Requirements for Proposed Developments within the Jurisdiction of the Maine Land Use Regulation Commission"

(H.P. 1146) (L.D. 1643)

Presented by Representative GOODWIN of Pembroke.

Committee on **AGRICULTURE, CONSERVATION AND FORESTRY** suggested.

On motion of Representative PIEH of Bremen, the Bill was **REFERRED** to the Committee on **NATURAL RESOURCES**, ordered printed and sent for concurrence.

APPROPRIATIONS AND FINANCIAL AFFAIRS

Bill "An Act to Provide Financial Support for Teachers Seeking National Board Certification"

(H.P. 1144) (L.D. 1641)

Presented by Representative McKEE of Wayne.

Cosponsored by Senator CATHCART of Penobscot and Representatives: BAKER of Bangor, FISHER of Brewer, GAGNE of Buckfield.

EDUCATION AND CULTURAL AFFAIRS

Bill "An Act to Amend Due Process Hearings for Exceptional Students"

(H.P. 1149) (L.D. 1646)

Presented by Representative DAVIDSON of Brunswick.

HEALTH AND HUMAN SERVICES

Bill "An Act to Ensure that Tobacco Settlement Funds Are Used for Health Purposes"

(H.P. 1154) (L.D. 1651)

Presented by Representative GERRY of Auburn.

Cosponsored by Senator PENDLETON of Cumberland and Representatives: DUGAY of Cherryfield, GAGNE of Buckfield, McKEE of Wayne, MURPHY of Berwick, SIROIS of Caribou, TRACY of Rome, USHER of Westbrook, Senator: BERUBE of Androscoggin.

Bill "An Act to Amend the Law Governing the Confidentiality of Health Care Information"

(H.P. 1156) (L.D. 1653)

Presented by Representative FULLER of Manchester.

Cosponsored by Senator MITCHELL of Penobscot and Representatives: BRAGDON of Bangor, CHIZMAR of Lisbon, KANE of Saco, MAYO of Bath.

LABOR

Bill "An Act Restoring the Right to Sue to Workers Injured Due to Gross Negligence"

(H.P. 1151) (L.D. 1648)

Presented by Representative HATCH of Skowhegan.

Cosponsored by Senator DOUGLASS of Androscoggin and Representatives: MATTHEWS of Winslow, SAMSON of Jay, TRACY of Rome.

LEGAL AND VETERANS AFFAIRS

Bill "An Act to Clarify Laws Governing Simulcasting" (EMERGENCY)

(H.P. 1147) (L.D. 1644)

Presented by Representative TUTTLE of Sanford.

Bill "An Act to Repeal the Atlantic Salmon Authority"

(H.P. 1155) (L.D. 1652)

Presented by Representative GOODWIN of Pembroke.

Committee on **MARINE RESOURCES** suggested.

On motion of Representative ETNIER of Harpswell, the Bill was **REFERRED** to the Committee on **INLAND FISHERIES AND WILDLIFE**, ordered printed and sent for concurrence.

TAXATION

Bill "An Act Regarding a Tax Refund when Money Is Owed to Both the State and a Custodial Parent"

(H.P. 1148) (L.D. 1645)

Presented by Representative MENDROS of Lewiston.

Cosponsored by Senator BENNETT of Oxford and Representatives: BUCK of Yarmouth, DUGAY of Cherryfield, MARVIN of Cape Elizabeth, McNEIL of Rockland, WATERHOUSE of Bridgton, WHEELER of Eliot, WINSOR of Norway, Senator: ABROMSON of Cumberland.

Bill "An Act to Reimburse Collectors of Sales and Use Taxes"

(H.P. 1150) (L.D. 1647)

Presented by Representative BUCK of Yarmouth.

Cosponsored by Representative: GAGNON of Waterville.

UTILITIES AND ENERGY

Bill "An Act Confirming the Charter of the Addison Point Water District" (EMERGENCY)

(H.P. 1153) (L.D. 1650)

Presented by Representative DUGAY of Cherryfield.

Cosponsored by Senator GOLDTHWAIT of Hancock and Representatives: BAGLEY of Machias, BROOKS of Winterport, FISHER of Brewer, GILLIS of Danforth, QUINT of Portland, SHOREY of Calais, USHER of Westbrook, WHEELER of Eliot.

Bill "An Act to Strengthen Maine's Research and Development Capacity in Renewable Energy Resources"

(H.P. 1152) (L.D. 1649)

Presented by Representative SHIAH of Bowdoinham.

JOINT SELECT COMMITTEE ON RESEARCH AND DEVELOPMENT suggested.

On motion of Representative COWGER of Hallowell, the Bill was **REFERRED** to the **JOINT SELECT COMMITTEE ON RESEARCH AND DEVELOPMENT** and the Committee on **UTILITIES AND ENERGY**, ordered printed and sent for concurrence.

ORDERS

On motion of Speaker ROWE of Portland, the following Joint Resolution: (H.P. 1157) (Cosponsored by Senator PINGREE of Knox and Representatives: FULLER of Manchester, KANE of Saco, QUINT of Portland, SAXL of Portland, SHIAH of Bowdoinham, Senators: LAWRENCE of York, PARADIS of Aroostook, RAND of Cumberland) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 214)

JOINT RESOLUTION MEMORIALIZING CONGRESS TO PASS THE PRESCRIPTION DRUG FAIRNESS FOR SENIORS ACT

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

WHEREAS, the elderly of the United States are 14% of the population and consume 30% of the prescription drugs and Medicare does not cover the cost of prescription drugs except in a very few cases; and

WHEREAS, the House Government Reform and Oversight Committee conducted studies in 20 congressional districts in 1998 and discovered there are vast differences between prices that pharmaceutical companies charge their favored customers, such as HMOs, large hospitals and the Federal Government, and the prices they charge uninsured senior citizens; and

WHEREAS, older Americans, who are often on fixed and limited incomes, pay on the average nearly double the price for prescription drugs that the favored customers of the pharmaceutical companies pay; and

WHEREAS, there is now before Congress legislation that would address this inequity by protecting the elderly from drug price discrimination and making prescription drugs available to Medicare beneficiaries at substantially reduced prices; and

WHEREAS, the Prescription Drug Fairness for Seniors Act, sponsored by Representative Tom Allen of the First District in Maine and cosponsored by countless others, would not establish new federal bureaucracy but would utilize an existing pharmacy distribution system; and

WHEREAS, this important legislation would ensure that no older American would need to choose between buying food or medicine or paying basic bills or choosing to live in pain and anxiety; now, therefore, be it

RESOLVED: That We, your Memorialists, request that the President of the United States and the United States Congress work together to pass this important and far-reaching legislation that would help the elderly and, in turn, all Americans; and be it further

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

READ and ADOPTED.

Sent for concurrence.

By unanimous consent, all matters having been acted upon were **ORDERED SENT FORTHWITH.**

REPORTS OF COMMITTEE

Divided Report

Majority Report of the Committee on **TRANSPORTATION** reporting **Ought to Pass** on Bill "An Act to Increase Nonregular Island Ferry Service from 24 to 36 Trips" (EMERGENCY) (S.P. 91) (L.D. 194)

Signed:
Senators:

O'GARA of Cumberland
CASSIDY of Washington

Representatives:

FISHER of Brewer
COLLINS of Wells
SANBORN of Alton
WHEELER of Eliot
LINDAHL of Northport
JABAR of Waterville
SAVAGE of Union
WHEELER of Bridgewater

Minority Report of the same Committee reporting **Ought Not to Pass** on same Bill.

Signed:
Representative:

CAMERON of Rumford

Came from the Senate with the Majority **OUGHT TO PASS** Report **READ** and **ACCEPTED**.

READ.

On motion of Representative JABAR of Waterville, the Majority **Ought to Pass** Report was **ACCEPTED**.

The Bill was **READ ONCE** and was assigned for **SECOND READING** Thursday, March 4, 1999.

Divided Report

Majority Report of the Committee on **INLAND FISHERIES AND WILDLIFE** reporting **Ought Not to Pass** on Bill "An Act to Require On-duty Government Employees to Wear the Same Orange Clothing as Hunters When in the Woods during Deer Season"

(H.P. 157) (L.D. 219)

Signed:
Senator:

KILKELLY of Lincoln

Representatives:

DUNLAP of Old Town
TRAHAN of Waldoboro
HONEY of Boothbay
TRUE of Fryeburg
BRYANT of Dixfield
TRACY of Rome
COTE of Lewiston

Minority Report of the same Committee reporting **Ought to Pass as Amended by Committee Amendment "A" (H-19)** on same Bill.

Signed:
Representatives:

PERKINS of Penobscot
CLARK of Millinocket

READ.

Representative DUNLAP of Old Town moved that the House **ACCEPT** the Majority **Ought Not to Pass** Report.

The **SPEAKER**: The Chair recognizes the Representative from Penobscot, Representative Perkins.

Representative **PERKINS**: Mr. Speaker, Ladies and Gentlemen of the House. This is a bill that I did submit. We had a similar bill a couple of years ago. My hindsight is getting better along with the failing of my night sight and my other type of sight. In hindsight, this should have obviously gone to the Labor Committee. It has to do with workplace safety. It got to the Fish and Wildlife Committee, but it shouldn't have. One of my friends said that it doesn't sound like a bill you would put in for more laws. It has to do with two basic things, workplace safety and dual standards.

When this came up two years ago, the Commissioner of Fish and Wildlife wrote a letter to his people saying that they will wear two pieces of orange clothing in the workplace, the woods, during deer season. He wrote a letter. I don't know how many of you have seen a warden or a biologist in the last couple of years with two pieces of orange on. I don't know. The whole issue of dual standards and the whole complexity of the thesis behind asking one group of people to wear something for their safety and not others, I will leave that for another day.

I would like to talk about the workplace safety. That is basically what it is. I have a letter from the Department of Labor, Alan Hinsey, Director of Bureau of Labor Standards. He agrees that it probably should have gone to Labor. While we are discussing this and debating it, I just hope you will keep in mind what we are talking about. We are talking about workplace safety.

The other thing to keep in mind is we are not just talking about game wardens. There was, indeed, a game warden killed in Connecticut two years ago because they did not require their wardens to wear orange clothing. He was killed, mistaken for a deer. He had on the regular clothing of a warden with no orange. This letter that the department sent out did not talk about just wardens. It would include the biologists and anybody else in the department. I want to get out of the department for a minute. This bill would require that all government workers wear orange for their own safety. This would include federal people. I have been told that we wouldn't have jurisdiction over federal people, but I would ask the question, why don't we? We certainly demand that federal people wear seat belts when they are in Maine in the car or have a life jacket in their boat. I think that it would reach into that. That is really not the main point.

The main point is that I think that as the legislative arm of government, we should be concerned about government employees and their safety. We are not talking about just wardens and biologists. We are talking about foresters or anybody that works for the state that is in harms way in the woods in November without two pieces of orange clothing.

I would just like to raise one other question, if we do not do this and somebody is killed, a worker in the workplace, who would be liable for this given the fact that we know it is a danger? We are obviously aware of the danger. The Legislature passed this law imposing this orange for people's safety if they are hunting. Who would be liable? Our first concern should be to protect the employees. Thank you very much.

The **SPEAKER**: The Chair recognizes the Representative from Millinocket, Representative Clark.

Representative **CLARK**: Mr. Speaker, Men and Women of the House. I, too, rise today in support of the Minority Ought to Pass Report. There is an amendment on this that exempts military and State Police. The simple fact is you can't regulate the military when they are out there doing weekend drill when they are out in the woods doing the drill for the protection of the men and women of the state. Like Representative Perkins said,

this is a safety issue. We are going to make sure that the people that do go out there during deer season, that they abide by the same laws and regulations that we, as ordinary citizens, apply to. That is to wear two pieces of orange. I hope that you support us and the Minority Report. Mr. Speaker, I ask for a division.

Representative CLARK of Millinocket **REQUESTED** a division on the motion to **ACCEPT** the Majority **Ought Not to Pass** Report.

The SPEAKER: The Chair recognizes the Representative from Old Town, Representative Dunlap.

Representative **DUNLAP**: Mr. Speaker, Ladies and Gentlemen of the House. The issue has been brought up about workplace safety and also a vein of fairness has been brought out. If we are going to ask a group of people in the woods in the autumn to be wearing blaze orange, then why don't we ask everyone? These are legitimate points that I think need to be addressed. We have discussed this at length in committee.

Essentially I would like to direct your attention to the Legislative Record dealing with the original blaze orange law. As Representative Perkins stated, we will be discussing this further later in the session. We had to look at a little bit of history in association with the record. This last fall, 1998, there was approximately 280,000 hunters in the woods. Out of that number of hunters, we had three documented hunting accidents where hunters actually shot themselves in the foot. That is not a bad record, really. I think we can all be proud of that. The legislation that promoted that was enacted in this chamber and in the other body.

I would like to direct your attention to that record. In the first week of June in 1967, documentation was put forth about the efficacy of blaze orange and talked about the tabulation of accidents for the years between 1959 and 1966. According to those records there is approximately 420 accidents in those seven years out of a population of 550,000 people and approximately 180,000 hunters. Approximately half as many hunters, half the population and significantly more accidents in a period of time. The question was brought out about why were we only forcing hunters to wear orange? Why not everyone? Would there not be a problem with children playing in the woods and possibly being mistaken for game? The Representative from Lewiston had indicated in his statements that that was basically pure speculation. "Records show, almost without exception," he says, "that mistaken for game and out of sight shooter accidents are other hunters. In 65 percent of all hunting accidents the shooter and the victim are members of the same party."

We do have statutes enacted in 1991 that deal with target identification laws, which were the product of some tragedies in the state including the shooting of Karen Wood in Herman when she was shot wearing white gloves and mistaken for game. Target identification laws were passed. The hunters are responsible for the shots that they take. They need to know what they are shooting at.

In terms of workplace safety, this bill does encompass all government employees. Never mind the amendment, we are not discussing the amendment. All government employees, that includes the members of this chamber, we are government employees. I am going to be wearing blaze orange in the woods in the fall anyway because I am going to be hunting. My good friend from Orono, Representative Stevens, does not hunt. She may be walking her dog in the woods. If she is not wearing blaze orange, is she not in violation of Title 12 under this statute

and could be adjudicated as such? What about the DHS worker who has to go to a remote area and parks their vehicle at the end of a driveway and has to walk up the long driveway to someone's house if they are not wearing blaze orange? Are they not in violation of this law? I think, realistically, it is impractical and does not address any problem. We do not have government employees being shot in the woods. It is not an issue of workplace safety. I hope that you will sustain the committee report, Ought Not to Pass, on this legislation. Thank you.

The SPEAKER: The Chair recognizes the Representative from Dover-Foxcroft, Representative Cross.

Representative **CROSS**: Mr. Speaker, Ladies and Gentlemen of the House. There again, this particular bill, as far as I am concerned, we go back to the time when the Warden Service backed hunting orange. Why? Safety. They didn't want people in the woods, unrecognizable, either in camouflage or green or whatever hiding behind a bush so people couldn't see them and they could get shot. By having the orange, which now is mandatory, the hunting accidents have decreased tremendously. Now, the Warden Service is saying they don't want this. They want to be an exception. They want to be a special group different from you and I. If you are in the woods during hunting season, I question that very highly. I haven't had the opportunity to ask the commissioner. Common sense tells you that if you are in the woods hunting and the law says to have orange, then have orange on. Don't make an exception to people. This bill should be Ought to Pass, not Ought Not to Pass. I would suggest to Representative Stevens that if she is walking in the woods, that she doesn't do it during hunting.

The SPEAKER: The Chair recognizes the Representative from Dixfield, Representative Bryant.

Representative **BRYANT**: Mr. Speaker, Ladies and Gentlemen of the House. The problem is, as Representative Dunlap said, there really is no problem. The game wardens and the Inland Fisheries and Wildlife Department already have rulemaking that makes it mandatory that their wardens and biologists wear orange during hunting season. We looked over the issue in committee. We raised all the debate with Representative Perkins on the issue. I would ask that you support the committee's Ought Not to Pass. Thank you.

The SPEAKER: The Chair recognizes the Representative from Waldoboro, Representative Trahan.

Representative **TRAHAN**: Mr. Speaker, Men and Women of the House. I rise as a member of the Inland Fisheries and Wildlife Committee. We debated this issue in length in our committee and there were several reasons why this bill should not be supported. I will start with the first.

The Department of Inland Fisheries and Wildlife has a policy on hunter orange. That policy allows for the warden to use his judgment, in certain cases, of enforcement in cases that might jeopardize his safety. He has the ability to make a choice to wear orange or not. In the apprehension of law breakers there are certain cases where wearing orange would jeopardize his safety. I think that as a legislator, I would not want to put wardens in those situations of having to make decisions for them, mandating that they wear orange in the woods when it could jeopardize their safety.

When you take part in hunting it is implied that you wear hunter orange because you are taking part in a sport with other people in the woods with rifles. For your safety, it is mandated that you wear orange. You know that going in when you buy your license and you know that when you take part in hunting,

To mandate that to another group because those people are in the woods hunting, shows a very, very bad light on hunting. Is that saying that all of the hunters in the woods are trigger happy and they are going to be shooting at people if they are not wearing orange? We should continue to work at improving safety in the woods. We are doing a good job with that. I think that this would send a really bad message to the rest of the public if everybody in the woods had to wear orange, including state employees, in every case. It would actually, in my opinion, jeopardizing their health.

If you go to court in the apprehension of a violation to the fish and wildlife laws of this state, if the warden is not wearing hunter orange, would you like to jeopardize the conviction of that violation with this law? Let's say that warden was not wearing his orange hat when he made the arrest, can't you see in court that that case would be thrown out because of the technicality based on a hat or a vest when it has nothing to do with the violation. That is very troubling to me. With that, I will say thank you.

The SPEAKER: The Chair recognizes the Representative from Penobscot, Representative Perkins.

Representative PERKINS: Mr. Speaker, Colleagues of the House. I would just like to comment on a few of the comments. First of all, please don't lose focus. This is a safety in the workplace issue. It does not just talk about game wardens. It is a safety in the workplace for all the people in the employment of the state. By the way, legislators are not considered employees of the state. This would not cover the person walking their dog. If she is not on duty, she is not an employee of the state.

I will start with the good Representative Trahan's comments. There again, he mentioned the letter that the Fish and Wildlife commissioner put out, the letter. It is safe enough just to have a letter for all people in the department, but that very department came and pushed through the legislation asking a group of citizens to put it into law. A letter wasn't good enough to protect the citizens, but it is to protect the IF & W workers. If this bill were to pass, anybody in this room could amend it to say, in fact, this came up in the committee, I suggested we do this, that if an enforcement officer felt that by wearing the orange he or she would be in more jeopardy than not, then that judgment could be made by the person. That goes without saying. On the other hand, I would say that there is probably no poaching violation that I can think of that would be worth not wearing your safety clothing. We wouldn't think about it if it were steel toes and hard hats in a construction job just because you were doing some sort of work there as a state worker. I guess I will decide whether or not I want to wear my steel toes. We wouldn't even think about that.

The other thing that was mentioned by the good Representative Trahan was that this is known. This is something that you know when you buy your license. This is something that was done up until 1972 when the first mandate came. It certainly wasn't known. It is not part of hunting. It is part of something the state did to protect a certain group of people.

I would like to comment, briefly on some of the comments of my friend from Old Town, Representative Dunlap. He talked about the fact that no wardens have been shot, but statistically we have under 100 wardens. He mentioned one year we had 280,000 hunters. We are down to 225,000, but statistically it might take 500 years before a warden would get shot. I certainly don't want to be here in this body having oversight over our state employees and not protecting them. As far as DHS workers go that might be out trying to find somebody walking

through the field or through the woods looking for somebody. If it is dangerous for the person who is hunting, it is the same danger. The definition of woods and waters should be the same for all state workers for their own protection. Thank you very much.

The SPEAKER: The Chair recognizes the Representative from Old Town, Representative Dunlap.

Representative DUNLAP: Mr. Speaker, Ladies and Gentlemen of the House. I would like to re-emphasize a point. The vast majority of mistaken for game accidents are hunters shooting other hunters. This is a point that is the pillar of the blaze orange law. This Legislature has for 35 years sought to balance the interests of hunters and non-hunters alike in the woods so that those who do not hunt may feel safe being there during hunting season. There was a time when they were not. I think a point that has to be raised, talk about workplace safety, that is an important issue, but suppose we take a hypothetical case. They are not actual cases to draw from. We don't need hypothetical cases. Take a hypothetical case where a biologist is mistaken for game and is shot in the woods. How are you going to adjudicate that under this particular piece of legislation? Is that biologist negligent in their duties for not wearing blaze orange? In that case, would you be unable to prosecute a negligent hunter under the target identification law? They weren't wearing the blaze orange. They are a government employee. It is their own fault for getting shot. I don't think that is the message we want to send. It is a very mixed message that we have created a sport of hunting which has more than doubled in participation in the last 50 years and officially, the statistics are there to prove it, it is actually safer than canoeing in the State of Maine. More people die in canoes than die hunting. That is a pretty remarkable achievement for this state to have attained.

To send a message out that we have been saying that it is safe for years. We have proven it, but it is not really safe. You had better wear blaze orange. We are leading by example here. If we are going to mandate that all government employees wear blaze orange and at the same time say to the general public that they don't need to wear blaze orange because we have a target identification law, we have hunter safety and all these laws mandating safety, what is that supposed to say to the mother of children who live in a remote area. You shouldn't let your children play in the woods in November, because there is a good possibility that they may get shot. The state says it is safe. I noticed that all government workers who are going up and down my street are wearing blaze orange clothing, maybe we should be wearing it too. Maybe hunting really isn't all that safe after all. Maybe we should ban it. That may be a strong extrapolation to take, but it certainly doesn't help the resource to not have the participation of those who pay for it.

I would strongly urge you to vote with me to accept this Ought Not to Pass report. Thank you.

The SPEAKER: The Chair recognizes the Representative from Fryeburg, Representative True.

Representative TRUE: Mr. Speaker, Ladies and Gentlemen of the House. As you will note, I am on the side of not passing this particular act. I have two or three little things that I don't think have been spoken to.

First of all, it has been said that a warden in Connecticut had been killed and perhaps he wouldn't have had he been wearing blaze orange. I would like to think that being an old Maniac that we, perhaps, do a better job in the woods than in Connecticut. We have not had one single warden that has been killed accidentally in the Maine woods because of the fact that

they did not wear the blaze orange. Quite quickly we found that, in discussing this, already the department has taken precautions and certainly these people being trained, they must have guidelines whether to wear it or not.

It has been said that we should protect these workers. If I remember, most of these workers are in labors, labor union people. Now, labor union people seem to articulate quite well when they are coming before a group to articulate exactly what they want in the area of safety. Yet, they did not appear before our committee.

Number two, in the same light. I imagine that many of the things that they have for safety are dictated by insurance people. We didn't have any insurance people coming to attack us about this. It seems to me and many of the people that we have on the committee had said, let's not micromanage. In my opinion, that is what we are trying to do. I would ask you to follow the light of those people that feel this is not necessary. Thank you.

The SPEAKER: The Chair recognizes the Representative from Dover-Foxcroft, Representative Cross.

Representative **CROSS**: Mr. Speaker, Ladies and Gentlemen of the House. We have been told by one legislator that the wardens have to, by rulemaking, wear orange. What we are talking about here, if you read the bill, unless it has changed, on duty government employees, during hunting season alone, have to wear orange. This is what the bill would like to have done. Common sense says that this is not a big handicap. Common sense, if you are talking about safety, it is the thing to wear. Up my way, in response to the children playing in the woods, they don't play in the woods during hunting season. The simple reason is, it is dangerous. We have great hunters in the State of Maine and without a doubt there are great hunters in Massachusetts and New York and everywhere else. The woods are full of them. Some of them are trigger happy. I say to protect those government employees that are not wardens, that we need this bill. I hope you will vote accordingly. Thank you very much.

The Chair ordered a division on the motion to accept the Majority Ought Not to Pass Report.

A vote of the House was taken. 99 voted in favor of the same and 34 against, the Majority **Ought Not to Pass** Report was **ACCEPTED** and sent for concurrence.

CONSENT CALENDAR

First Day

In accordance with House Rule 519, the following items appeared on the Consent Calendar for the First Day:

(S.P. 21) (L.D. 13) Bill "An Act to Designate the First Saturday of Each October as Firefighter's Recognition Day" Committee on **STATE AND LOCAL GOVERNMENT** reporting **Ought to Pass**

(S.P. 238) (L.D. 660) Bill "An Act to Include Counties in the Definition of Local Government in the Archives and Records Management Law" Committee on **STATE AND LOCAL GOVERNMENT** reporting **Ought to Pass**

(S.P. 260) (L.D. 755) Bill "An Act Regarding the Assignment of Insurance Benefits for Dental Care" Committee on **BANKING AND INSURANCE** reporting **Ought to Pass**

(H.P. 69) (L.D. 82) Bill "An Act to Amend the Laws Prohibiting Terrorizing" Committee on **CRIMINAL JUSTICE** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-20)**

(H.P. 196) (L.D. 274) Bill "An Act to Allow Registered Lab Technicians and Certified Phlebotomists to Draw Blood for Forensic Purposes" Committee on **HEALTH AND HUMAN SERVICES** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-21)**

(H.P. 398) (L.D. 540) Resolve, Authorizing the Transfer of Certain State Historic Site Property Committee on **AGRICULTURE, CONSERVATION AND FORESTRY** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-22)**

There being no objections, the above items were ordered to appear on the Consent Calendar tomorrow under the listing of Second Day.

CONSENT CALENDAR

Second Day

In accordance with House Rule 519, the following items appeared on the Consent Calendar for the Second Day:

(H.P. 128) (L.D. 159) Bill "An Act to Allow the Bureau of Labor Standards to Better Secure Payment of Unpaid Wages and Severance Pay for Workers"

(H.P. 199) (L.D. 277) Bill "An Act to Prohibit the Employment of Minors in Places Providing Nude Entertainment"

(H.P. 269) (L.D. 378) Bill "An Act to Expand the Use of Emergency Equipment on Vehicles Operated by Liquor Enforcement Officers"

No objections having been noted at the end of the Second Legislative Day, the House Papers were **PASSED TO BE ENGROSSED** and sent for concurrence.

ENACTORS

Emergency Measure

An Act to Permit the Sale of Moose Bones

(H.P. 46) (L.D. 60)

Reported by the Committee on **Engrossed Bills** as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 136 voted in favor of the same and 6 against, and accordingly the Bill was **PASSED TO BE ENACTED**, signed by the Speaker and sent to the Senate.

By unanimous consent, all matters having been acted upon were **ORDERED SENT FORTHWITH**.

Emergency Measure

An Act Relating to the Construction of a Locally Funded Arts and Technology Center in Maine School Administrative District No. 49

(H.P. 431) (L.D. 573)

Reported by the Committee on **Engrossed Bills** as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 139 voted in favor of the same and 0 against, and accordingly the Bill was **PASSED TO BE ENACTED**, signed by the Speaker and sent to the Senate. **ORDERED SENT FORTHWITH**.

Acts

An Act to Prevent Children from Acquiring Gunpowder
(S.P. 60) (L.D. 130)

Reported by the Committee on **Engrossed Bills** as truly and strictly engrossed, **PASSED TO BE ENACTED**, signed by the Speaker and sent to the Senate.

UNFINISHED BUSINESS

The following matters, in the consideration of which the House was engaged at the time of adjournment yesterday, have preference in the Orders of the Day and continue with such preference until disposed of as provided by House Rule 502.

Bill "An Act to Establish the Waste Motor Oil Disposal Site Remediation Program" (EMERGENCY)

(H.P. 1141) (L.D. 1626)

(Committee on **NATURAL RESOURCES** suggested)

TABLED - March 2, 1999 (Till Later Today) by Representative Cowger of Hallowell.

PENDING - **REFERENCE**.

Subsequently, the Bill was **REFERRED** to the Committee on **NATURAL RESOURCES**, ordered printed and sent for concurrence.

Bill "An Act to Amend Criminal Law Procedures Regarding Defendants Found Incompetent to Stand Trial"

(H.P. 1076) (L.D. 1523)

(Committee on **JUDICIARY** suggested)

TABLED - March 2, 1999 (Till Later Today) by Representative THOMPSON of Naples.

PENDING - **REFERENCE**.

Subsequently, the Bill was **REFERRED** to the Committee on **JUDICIARY**, ordered printed and sent for concurrence.

By unanimous consent, all matters having been acted upon were **ORDERED SENT FORTHWITH**.

On motion of Representative BUMPS of China, the House adjourned at 12:15 p.m., until 10:00 a.m., Thursday, March 4, 1999.