

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
21st Legislative Day
Thursday, March 4, 1999

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

Prayer by Father Michael Seavey, St. Andrews Catholic Church, Augusta.

National Anthem by St. John's Jazz Band, St. John's Catholic School, Brunswick.

Pledge of Allegiance.

Doctor of the day, Harry W. Grimmnitz, M.D., Readfield.

The Journal of yesterday was read and approved.

SENATE PAPERS

The following Joint Resolution: (S.P. 560)

**JOINT RESOLUTION SUPPORTING EFFORTS TO
ACHIEVE COMPLETE RESTITUTION TO
HOLOCAUST VICTIMS AND THEIR HEIRS**

WHEREAS, it has been over 55 years since the Holocaust silenced millions of innocent victims as part of a systematic program of genocide; and

WHEREAS, many survivors and heir claimants of this time period have been denied benefits by insurers due to the expropriation and nationalization of insurance company assets in the former communist nations in eastern Europe, and the lack of adequate documentation of loss; and

WHEREAS, the expedient resolution of unpaid Holocaust claims is imperative to ensure that Holocaust survivors and heir claimants are indemnified in their lifetime; and

WHEREAS, several states have enacted legislation that would ensure citizens have an expeditious, inexpensive and fair mechanism to resolve outstanding Holocaust insurance claims; now, therefore, be it

RESOLVED: That We, the Members of the One Hundred and Nineteenth Legislature of the State of Maine now assembled in the First Regular Session, are committed to public policy providing for fair and expeditious payment of insurance claims to all policyholders, including victims of the Holocaust and their heirs; and be it further

RESOLVED: That we encourage the work of the International Holocaust Commission and of other states, and we support Maine's Bureau of Insurance and its superintendent in their efforts to achieve complete restitution to Holocaust victims and their heirs; and be it further

RESOLVED: That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to the Bureau of Insurance and the Holocaust Human Rights Center of Maine on behalf of the people of Maine.

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

Bill "An Act to Improve the Efficiency of Environmental Regulation in the Unorganized and Deorganized Areas of the State"

(S.P. 574) (L.D. 1654)

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

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

Bill "An Act Regarding Service Contracts"

(S.P. 573) (L.D. 1640)

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 to Increase Penalties for Certain Drug-related Crimes Committed In or Near Low-income Housing"

(S.P. 565) (L.D. 1632)

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 Implement the Recommendations of the Advisory Committee on Results-based Initial Certification of Teachers"

(S.P. 568) (L.D. 1635)

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 to Ensure That Sales Free and Clear of Liens Through Bankruptcy Do Not Result in the Acquisition of a Predecessor Employer's Experience for the Purpose of Contribution Rate Determination"

(S.P. 562) (L.D. 1629)

Bill "An Act to Fully Comply with the Requirements of the Older Workers Benefit Protection Act"

(S.P. 563) (L.D. 1630)

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

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

Resolve, Authorizing Richard Paradise to Sue the State

(S.P. 564) (L.D. 1631)

Bill "An Act to Clarify the Laws Regarding Fund Raising During the Legislative Session" (EMERGENCY)

(S.P. 575) (L.D. 1655)

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 Change the Provisions of the Lobster License Apprentice Program"

(S.P. 561) (L.D. 1628)

Bill "An Act to Allow Certain Aquaculture Activities by Rule"

(S.P. 567) (L.D. 1634)

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

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

Bill "An Act to Create a Transporter License Plate for Light Trailers"
(S.P. 566) (L.D. 1633)

Bill "An Act Regarding the Boundaries of State and State Aid Highways"
(S.P. 570) (L.D. 1637)

Resolve, to Review Traffic Congestion Including Truck Traffic along the Route 1 York Corridor (EMERGENCY)
(S.P. 571) (L.D. 1638)

Bill "An Act to Amend the Laws Governing the Maine State Pilotage Commission" (EMERGENCY)
(S.P. 572) (L.D. 1639)

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

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

Non-Concurrent Matter

Resolve, to Regulate the Use, Operation and Type of Watercraft on Coastal Waters
(H.P. 1064) (L.D. 1495)

REFERRED to the Committee on **NATURAL RESOURCES** in the House on February 25, 1999.

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

The House voted to **RECEDE AND CONCUR**.

COMMUNICATIONS

The Following Communication: (H.C. 54)

STATE OF MAINE
HOUSE OF REPRESENTATIVES
SPEAKER'S OFFICE
AUGUSTA, MAINE 04333-0002

March 4, 1999
Honorable Joseph W. Mayo
Clerk of the House
2 State House Station
Augusta, Maine 04333-0002
Dear Clerk Mayo:

Pursuant to my authority under House Rule 201.1(I), I have made the following changes in appointments to the House Committee on Leaves of Absence:

I appointed Representative Rosaire J. Sirois of Caribou to serve as chair of the Committee on Leaves of Absence.

I appointed Representative Martha A. Bagley of Machias to fill the vacancy on the Committee of Leaves of Absence.

Sincerely,
S/G. Steven Rowe
Speaker of the House

READ and ORDERED PLACED ON FILE.

The Following Communication: (S.C. 88)

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

March 3, 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 Inland Fisheries and Wildlife the nominations of Lila S. Ware of Skowhegan, Ellen N. Peters of New Gloucester and Richard A. Neal of Acton for reappointment, and Kenneth E. Bailey of Camden and Matthew P. Libby of Ashland for appointment as members of the Inland Fisheries and Wildlife Advisory Council.

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 to Exempt from Certain Regulations Crabmeat That Does Not Cross State Lines"

(H.P. 1163) (L.D. 1674)

Presented by Representative PERKINS of Penobscot.

Cosponsored by Senator KILKELLY of Lincoln and Representatives: PIEH of Bremen, PINKHAM of Lamoine, TOWNSEND of Portland, VOLENIK of Brooklin, Senator: CASSIDY of Washington.

Bill "An Act to Protect Holders of Camp Lot Leases"

(H.P. 1178) (L.D. 1689)

Presented by Representative JOY of Crystal.

Cosponsored by Representatives: CROSS of Dover-Foxcroft, SIROIS of Caribou, STANLEY of Medway.

Bill "An Act to Amend the Conservation Easement Laws"

(H.P. 1159) (L.D. 1670)

Presented by Representative DUNLAP of Old Town.

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

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

APPROPRIATIONS AND FINANCIAL AFFAIRS

Bill "An Act to Provide Adequate Maine State Museum Services"

(H.P. 1164) (L.D. 1675)

Presented by Representative COWGER of Hallowell.
Cosponsored by Senator DAGGETT of Kennebec and
Representatives: MADORE of Augusta, McKEE of Wayne,
O'BRIEN of Augusta, WATSON of Farmingdale.

Bill "An Act to Provide Funding for the Frye Island Ferry"

(H.P. 1171) (L.D. 1682)

Presented by Representative MACK of Standish.

BANKING AND INSURANCE

Bill "An Act to Enhance the Integrity of Processing
Insurance Claims Relating to Motor Vehicle Glass"

(H.P. 1166) (L.D. 1677)

Presented by Representative O'NEIL of Saco.

Bill "An Act to Expand and Clarify the Opportunities for
Small Employers to Purchase Health Insurance"

(H.P. 1167) (L.D. 1678)

BUSINESS AND ECONOMIC DEVELOPMENT

Bill "An Act to License Installers of Septic Systems"

(H.P. 1165) (L.D. 1676)

Presented by Representative COWGER of Hallowell. (BY
REQUEST)

Bill "An Act to Clarify the Regulation of Viatical Settlement
Contracts When Sold as Investments"

(H.P. 1182) (L.D. 1693)

Presented by Representative O'NEIL of Saco.
Cosponsored by Senator ABROMSON of Cumberland.
Submitted by the Department of Professional and Financial
Regulation pursuant to Joint Rule 204.

CRIMINAL JUSTICE

Bill "An Act to Broaden Victim Notification of Release of
Defendant Placed in Institutional Confinement Following a
Verdict of Not Criminally Responsible by Reason of Insanity"

(H.P. 1160) (L.D. 1671)

Presented by Representative POVICH of Ellsworth.
Cosponsored by Representatives: McALEVEY of Waterboro,
PEAVEY of Woolwich, TOBIN of Dexter, Senator: DAVIS of
Piscataquis.

Bill "An Act Regarding Supervised Community
Confinement"

(H.P. 1168) (L.D. 1679)

Presented by Representative PIEH of Bremen.
Cosponsored by Representatives: McALEVEY of Waterboro,
MUSE of South Portland, PERKINS of Penobscot, POVICH of
Ellsworth, SAVAGE of Union, SKOGLUND of St. George,
Senators: KILKELLY of Lincoln, PINGREE of Knox.

HEALTH AND HUMAN SERVICES

(3-12) Bill "An Act Relating to Medicaid Liens"

(H.P. 1176) (L.D. 1687)

Presented by Representative THOMPSON of Naples.

INLAND FISHERIES AND WILDLIFE

Bill "An Act to Require the Inspection of Commercial Inland
Vessels"

(H.P. 1175) (L.D. 1686)

Presented by Representative THOMPSON of Naples.

JUDICIARY

Bill "An Act Concerning Service Relating to the Disclosure
of Financial Records"

(H.P. 1161) (L.D. 1672)

Presented by Representative POVICH of Ellsworth.
Cosponsored by Representative: TOBIN of Dexter, Senator:
DAVIS of Piscataquis.

Bill "An Act to Amend the Abandoned Property Laws"

(H.P. 1162) (L.D. 1673)

Presented by Representative THOMPSON of Naples.

Bill "An Act Governing Privileged Communications between
Victims of Crimes and Governmental Victim Witness Advocates"

(H.P. 1174) (L.D. 1685)

Presented by Representative POVICH of Ellsworth.
Cosponsored by Representatives: PEAVEY of Woolwich, TOBIN
of Dexter.

NATURAL RESOURCES

Bill "An Act to Protect Maine's Lakes and Ponds from
Camp Road Runoff"

(H.P. 1180) (L.D. 1691)

Presented by Representative McKEE of Wayne.
Cosponsored by Senator NUTTING of Androscoggin and
Representatives: COWGER of Hallowell, DAIGLE of Arundel,
DUPLESSIE of Westbrook, FULLER of Manchester, GREEN of
Monmouth, MITCHELL of Vassalboro, SHIAH of Bowdoinham,
Senator: TREAT of Kennebec.

Bill "An Act to Expedite the Contaminated Groundwater
Remediation Process"

(H.P. 1181) (L.D. 1692)

Presented by Representative CLOUGH of Scarborough.
Cosponsored by Senator AMERO of Cumberland and
Representatives: COWGER of Hallowell, JOY of Crystal,
LABRECQUE of Gorham, MURPHY of Kennebunk, TOBIN of
Windham, USHER of Westbrook, Senators: MITCHELL of
Penobscot, TREAT of Kennebec.

TAXATION

Bill "An Act to Establish a Flat Tax Rate for the Maine
Income Tax"

(H.P. 1170) (L.D. 1681)

Presented by Representative MACK of Standish.
Cosponsored by Representatives: BRAGDON of Bangor,
GLYNN of South Portland, MacDOUGALL of North Berwick,
McKENNEY of Cumberland, PLOWMAN of Hampden, SHIELDS
of Auburn, TRAHAN of Waldoboro, WATERHOUSE of Bridgton.

Bill "An Act to Require the State to Pay Interest on Refunds
of Taxes and Fees"

(H.P. 1177) (L.D. 1688)

Presented by Representative MACK of Standish.

Cosponsored by Representatives: BERRY of Belmont, DUNCAN of Presque Isle, GERRY of Auburn, MacDOUGALL of North Berwick, PLOWMAN of Hampden, WATERHOUSE of Bridgton, Senators: DAVIS of Piscataquis, FERGUSON of Oxford.

TRANSPORTATION

Bill "An Act to Require the Equitable Taxation of Motor Vehicles"

(H.P. 1169) (L.D. 1680)

Presented by Representative MACK of Standish.
Cosponsored by Senator FERGUSON of Oxford and Representatives: BERRY of Belmont, DUNCAN of Presque Isle, KNEELAND of Easton, McKENNEY of Cumberland, PLOWMAN of Hampden, Senators: DOUGLASS of Androscoggin, KIEFFER of Aroostook, PARADIS of Aroostook.

Bill "An Act Regulating the Transportation of People and Dogs in Pickup Trucks"

(H.P. 1179) (L.D. 1690)

Presented by Representative BRUNO of Raymond.
Cosponsored by Representative GOOLEY of Farmington, Senator KILKELLY of Lincoln and Representative: MURPHY of Berwick.

**Pursuant to Statute
Public Utilities Commission**

Representative DAVIDSON for the **Public Utilities Commission** pursuant to Maine Revised Statutes, Title 5, section 8072 asks leave to report that the accompanying Resolve, Regarding Legislative Review of Chapter 307: Sale of Capacity and Energy of Undivested Generation Assets, Extension of Divestiture Deadline, a Major Substantive Rule of the Public Utilities Commission (EMERGENCY)

(H.P. 1172) (L.D. 1683)

Be **REFERRED** to the Committee on **UTILITIES AND ENERGY** and printed pursuant to Joint Rule 218.

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

Sent for concurrence.

**Pursuant to Statute
Public Utilities Commission**

Representative DAVIDSON for the **Public Utilities Commission** pursuant to Maine Revised Statutes, Title 5, section 8072 asks leave to report that the accompanying Resolve, Regarding Legislative Review of Chapter 306: Uniform Disclosure and Informational Filing Requirements, a Major Substantive Rule of the Public Utilities Commission (EMERGENCY)

(H.P. 1173) (L.D. 1684)

Be **REFERRED** to the Committee on **UTILITIES AND ENERGY** and printed pursuant to Joint Rule 218.

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

Sent for concurrence.

On motion of Representative AHEARNE of Madawaska, the following Joint Order: (H.P. 1158)

ORDERED, the Senate concurring, that the Joint Standing Committee on State and Local Government report out to the House such legislation as is necessary to revise the salaries of county officers and lay the county taxes for the calendar year 1999.

READ and **PASSED**.

Sent for concurrence.

On motion of Representative WATSON of Farmingdale, the following Joint Order: (H.P. 1183) (Cosponsored by Senator SMALL of Sagadahoc and Representatives: BELANGER of Caribou, BRENNAN of Portland, GREEN of Monmouth, MAYO of Bath, MURPHY of Kennebunk, NORBERT of Portland, POWERS of Rockport, SHIAH of Bowdoinham)

WHEREAS, the Legislature funds that the Governor Baxter School for the Deaf is a unique institution in Maine, a state-funded school for the deaf and hard-of-hearing, with a statewide obligation and role to help local schools educate deaf and hard-of-hearing children and a critical role as the centerpiece of deaf culture in the State; and

WHEREAS, the Legislature finds that to take best advantage of its unique features, the Governor Baxter School for the Deaf needs a governance system and management powers that reflect the school's unique status; and

WHEREAS, the Committee to Review the Governance Structure of the Governor Baxter School for the Deaf concluded that the current governance system of the Governor Baxter School for the Deaf does not fit the Governor Baxter School for the Deaf School Board's need to effectively and efficiently govern the school and further recommended that a new governance system must be designed to give the school greater autonomy in managing its affairs; and

WHEREAS, the Legislature finds that there is an urgent need for a task force to redesign the governance system of the Governor Baxter School for the Deaf; now, therefore, be it

ORDERED, the Senate concurring, that the Task Force to Redesign the Governance System of the Governor Baxter School for the Deaf is established as follows.

1. Task force established. The Task Force to Redesign the Governance System of the Governor Baxter School for the Deaf, referred to in this order as the "task force," is established.

2. Task force membership. The task force consists of 11 members as follows.

A. The President of the Senate shall appoint 3 members from the Senate, including one member who serves on the Joint Standing Committee on Education and Cultural Affairs, one member who serves on the Joint Standing Committee on Health and Human Services and one member who serves on the Joint Standing Committee on Agriculture, Conservation and Forestry.

B. The Speaker of the House of Representatives shall appoint 3 members from the House of Representatives, including one member who serves on the Joint Standing Committee on Education and Cultural Affairs, one member who serves on the Joint Standing Committee on Health and Human Services and one member who serves on the Joint Standing Committee on Agriculture, Conservation and Forestry.

ORDERS

C. The President of the Senate shall appoint 2 members from the Committee to Review the Governance Structure of the Governor Baxter School for the Deaf who represent the deaf community.

D. The Speaker of the House shall appoint one member from the Committee to Review the Governance Structure of the Governor Baxter School for the Deaf who represents an interested party other than a state agency or the deaf community.

E. The Commissioner of Education or the commissioner's designee must be a member of the task force.

F. One of the school board cochairs of the Governor Baxter School for the Deaf or the school board cochairs' designee must be a member of the task force.

3. Chairs. The first Senate member named is the Senate chair and the first House member named is the House chair.

4. Appointments; convening task force. All appointments must be made no later than 30 days following the effective date of this order. The appointing authorities shall notify the Executive Director of the Legislative Council upon making their appointments. When the appointment of all members is complete, the chairs of the task force shall call and convene the first meeting of the task force no later than July 1, 1999.

5. Duties. The task force shall design a new governance system for the Governor Baxter School for the Deaf and shall prepare a plan that will help the school develop the capacity to implement a system that is more autonomous from the State than the current governance system. In conducting this review, the task force shall:

A. Request, as appropriate, the assistance of the Department of Education, the Department of Administrative and Financial Services, the Bureau of Parks and Lands within the Department of Conservation, the Department of the Attorney General, the School Board of the Governor Baxter School for the Deaf, the College of Education within the University of Southern Maine and other appropriate state agencies and educational institutions;

B. Invite the participation of experts and interested parties;

C. Hire an impartial consultant to help the school, the Department of Education and other state agencies to redefine their roles and shift responsibilities;

D. Define the basic structure of the new governance system by addressing what it means for the school to have autonomy from State Government and defining the respective roles and responsibilities of the school board, school administrators and state agencies;

E. Identify the resources needed for the school board to develop the capacity to perform functions that the school would take over from state agencies, such as personnel and budget management functions. If the School Board of the Governor Baxter School for the Deaf is to bargain directly with employee unions and is to address

employee relations issues such as grievance proceedings, the school must build the capacity to undertake these functions as well. This may involve securing additional staff for the school to strengthen its personnel management capacity;

F. Develop a plan to address the recommendations from the Department of Education's basic school approval review conducted in December 1998 and conduct any other necessary reviews, such as a comprehensive review of the residential program at the school. A plan to address the results of these reviews should be developed and factored into the transition planning for the new governance system;

G. Consult with Governor Baxter School for the Deaf employees and their representatives so that their interests can be taken into account in designing a new governance system. Employees have an interest in the potential for changes in salary, benefits and working conditions. The task force must take into account existing employee rights under union contracts or state law that may impact the timing or scope of change that may occur at the school;

H. Develop strategies for properly managing state-owned facilities and the natural resources of the island. The deed from Governor Baxter granting Mackworth Island to the State requires the island to be used and managed in a certain way. The strategies must address what role, if any, state agencies play in managing school property and Mackworth Island, what improvements are needed in the school's physical plant, who should make the improvements and whether a state agency should continue to be involved in managing the island or only in overseeing the school's compliance;

I. Establish benchmarks to measure the school's progress toward a more autonomous governance system and require that the consultant, the school and the Department of Education make progress reports to interested parties, including the Joint Standing Committee on Education and Cultural Affairs; and

J. Draft legislation to create the new governance system in Maine law. The redesigned governance system must be implemented by July 1, 2000. The legislation must be submitted to the Second Regular Session of the 119th Legislature by December 3, 1999.

6. Staff assistance; interpreter services; consultant.

The task force may request staffing assistance from the Legislative Council. The task force, with the approval of the Legislative Council, may contract with interpreter services to provide appropriate interpreting services for the deaf and hard-of-hearing and shall contract with a consultant to provide professional services for reviewing and analyzing the status of the governance system of the Governor Baxter School for the Deaf.

7. Expenses. Legislative members of the task force are entitled to receive the legislative per diem and reimbursement of necessary expenses for their attendance at authorized meetings of the task force. Public members not otherwise compensated by their employers or other entities whom they represent are entitled to receive reimbursement of necessary expenses and a

per diem equal to the legislative per diem for their attendance at authorized meetings of the task force.

8. Report. No later than December 3, 1999, the task force shall submit a report that must include its findings, together with any recommendations for legislation to the Joint Standing Committee on Education and Cultural Affairs or for supplemental budget appropriations to the Joint Standing Committee on Appropriations and Financial Affairs. The Joint Standing Committee on Education and Cultural Affairs is authorized to report out any legislation during the Second Regular Session of the 119th Legislature concerning the findings and recommendations of the task force. If the task force requires an extension of the reporting deadline, it may apply to the Legislative Council, which may grant the extension.

9. Task force budget. The chairs of the task force, with assistance from the task force staff, shall administer the task force's budget. Within 10 days after its first meeting, the task force shall present a work plan and proposed budget to the Legislative Council for its approval. The task force may not incur expenses that would result in the task force exceeding its approved budget.

Upon request from the task force, the Executive Director of the Legislative Council or the Executive Director's designee shall provide the chairs and staff with a status report on the task force budget, expenditures incurred and paid and available funds.

READ.

On further motion of the same Representative, the Joint Order was **REFERRED** to the Committee on **EDUCATION AND CULTURAL AFFAIRS.**

Sent for concurrence.

On motion of Representative SIROIS of Caribou, the following House Order: (H.O. 15)

ORDERED, that Representative Edward R. Dugay of Cherryfield be excused February 23rd and February 25th for personal reasons.

AND BE IT FURTHER ORDERED, that Representative Roger D. Frechette of Biddeford be excused March 2nd for health reasons.

AND BE IT FURTHER ORDERED, that Representative Donna M. Loring of the Penobscot Nation be excused February 23rd and February 25th for personal reasons.

AND BE IT FURTHER ORDERED, that Representative Lois A. Snowe-Mello of Poland be excused February 23rd for health reasons.

AND BE IT FURTHER ORDERED, that Representative Shirley K. Richard of Madison be excused February 25th for health reasons.

AND BE IT FURTHER ORDERED, that Representative Richard W. Rosen of Bucksport be excused February 25th for personal reasons.

AND BE IT FURTHER ORDERED, that Representative Jane W. Saxl of Bangor be excused February 25th for personal reasons.

READ and PASSED.

REPORTS OF COMMITTEE

Change of Committee

Representative KANE from the Committee on **HEALTH AND HUMAN SERVICES** on Bill "An Act to Establish Minimum Criteria for Siting Community Living Arrangements"

(H.P. 809) (L.D. 1132)

Reporting that it be **REFERRED** to the Committee on **STATE AND LOCAL GOVERNMENT.**

Report was **READ** and **ACCEPTED** and the Bill **REFERRED** to the Committee on **STATE AND LOCAL GOVERNMENT.**

Sent for concurrence.

Representative KANE from the Committee on **HEALTH AND HUMAN SERVICES** on Bill "An Act to Allow Emergency Medical Technicians to Draw Blood Samples for Alcohol Analysis"

(H.P. 987) (L.D. 1385)

Reporting that it be **REFERRED** to the Committee on **TRANSPORTATION.**

Report was **READ** and **ACCEPTED** and the Bill **REFERRED** to the Committee on **TRANSPORTATION.**

Sent for concurrence.

Divided Report

Majority Report of the Committee on **BANKING AND INSURANCE** reporting **Ought Not to Pass** on Bill "An Act to Require Insurance Companies to Provide Certain Information to the Department of Human Services"

(H.P. 301) (L.D. 409)

Signed:
Senators:

LaFOUNTAIN of York
DOUGLASS of Androscoggin
ABROMSON of Cumberland

Representatives:

RICHARDSON of Brunswick
DUDLEY of Portland
O'NEIL of Saco
SAXL of Bangor
SULLIVAN of Biddeford
PERRY of Bangor
GLYNN of South Portland
MAYO of Bath

Minority Report of the same Committee reporting **Ought to Pass as Amended by Committee Amendment "A" (H-23)** on same Bill.

Signed:
Representatives:

JONES of Pittsfield
NUTTING of Oakland

READ.

On motion of Representative SAXL of Bangor, 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. 158) (L.D. 478) Bill "An Act to Establish a Maine Agriculture Market and Production Development Program" Committee on **AGRICULTURE, CONSERVATION AND FORESTRY** reporting **Ought to Pass**

(S.P. 284) (L.D. 802) Bill "An Act to Make Technical Changes in the Marine Resources Laws" Committee on **MARINE RESOURCES** reporting **Ought to Pass**

(H.P. 532) (L.D. 739) Bill "An Act to Form a New Local Education Agency" (EMERGENCY) Committee on **EDUCATION AND CULTURAL AFFAIRS** reporting **Ought to Pass**

(H.P. 19) (L.D. 29) Resolve, Regarding Legislative Review of Chapter 15: Fees, Section 15.8: Inspection Fees-Tramway, a Major Substantive Rule of the Board of Elevator and Tramway Safety (EMERGENCY) Committee on **BUSINESS AND ECONOMIC DEVELOPMENT** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-31)**

(H.P. 21) (L.D. 31) Resolve, Regarding Legislative Review of Chapter 8: Fees, Section 1: A Major Substantive Rule of the Board of Veterinary Medicine (EMERGENCY) Committee on **BUSINESS AND ECONOMIC DEVELOPMENT** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-32)**

(H.P. 263) (L.D. 367) Bill "An Act to Clarify the Criteria for Renewal of Agency Liquor Store Licenses" Committee on **LEGAL AND VETERANS AFFAIRS** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-27)**

(H.P. 291) (L.D. 399) Bill "An Act to Ensure That All Students With Disabilities Exit School Ready for Employment or Postsecondary Education" Committee on **EDUCATION AND CULTURAL AFFAIRS** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-26)**

(H.P. 326) (L.D. 442) Resolve, to Create a Study Group to Prepare Pharmaceutical Guidelines for Geriatric Residents in Long-term Care Settings Committee on **HEALTH AND HUMAN SERVICES** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-24)**

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

(S.P. 303) (L.D. 905) Bill "An Act Concerning the 1999 Elver Fishery" (EMERGENCY) Committee on **MARINE RESOURCES** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-13)**

On motion of Representative PINKHAM of Lamoine, was **REMOVED** from the First Day Consent Calendar.

The Committee Report was **READ** and **ACCEPTED**. The Bill was **READ ONCE**. **Committee Amendment "A" (S-13)** was **READ** by the Clerk.

The same Representative **PRESENTED** **House Amendment "A" (H-28)** to **Committee Amendment "A" (S-13)**, which was **READ** by the Clerk.

The SPEAKER: The Chair recognizes the Representative from Lemoine, Representative Pinkham.

Representative **PINKHAM**: Mr. Speaker, Men and Women of the House. I present this amendment. I am sure most of you have heard more in the last few days about elvers than you care to know. This bill is very important. My amendment is very important to me and approximately 1,500 Maine residents. The Committee Amendment that you have heard would eliminate about 1,500 people that held licenses in the elver fishery for the years '97 and '98. It would allow everybody in that had one for the '96, '97 and '98 season. I feel that this is a fairness issue. Last year there were more licenses issued than ever before and these people were allowed to fish. This year the Committee

Amendment wants to cut about 1,500 people out and limit the licenses to around 800.

My amendment would allow these people back in the fishery at a minimum. Last year they fished five fyke nets. Those are the big ugly nets that people don't like to see in the water. My amendment would cut the number of the big ugly nets by 2,500 while allowing these 1,500 people that have been shut out to go back in with dip nets only. I am not sure if everybody understands the difference between a dip net and a fyke net. A fyke net is a permanent net that is put in the water. It fishes 24 hours a day. It catches everything in its path. Whereas, a dip net is only fishing when there is a warm body that has a hold of the other end of it fishing. These people that were shut out for the last two seasons would be able to fish at a minimum. Last year they could use up to five nets. My bill would allow them to just fish with dip nets. I feel this is very minimal. It wouldn't hurt the fishery.

Reports from the Department of Marine Resources, they are the first to admit that they really don't have any concrete data about what is happening with the elver fishery, whether it is being depleted or whether it is in good shape. They can only guess that it is probably being over fished. There is no record saying it is being over fished. Until we get some scientific proof that it is in danger, I don't know why we should be eliminating some of the people that need to make a living. This really impacts my district, as well as other districts in the state. Hancock and Washington County unemployment rate probably hovers around the 12 or 13 percent range. These people depend on this six to eight week fishery to make enough money to carry them over until another fishery starts. They don't have unemployment benefits to fall back on. When you figure the unemployment rate at 12 or 13 percent, that is only figuring on people that qualify for unemployment. These people don't qualify for unemployment. They are self-employed, small business people. If we want to show our support for small business in the State of Maine, this is a great way to do it. Like I say, small business, money wise, one of the smallest in the state because these people aren't getting rich collecting elvers.

There are people that make a lot of money. If you look at the Committee Amendment, it still keeps most of those people in that have been in it for three years that have been making the money. I would ask that if the fishery is in trouble, who is to blame for the fishery being in trouble? Is it the people that just started fishing last year or is it the people that have been in it for three years that have been fishing all of the other nets? To me, if the fishery is in trouble, that is to blame for the decline of the elvers. Not the people that fish with the dip net and have only been in it for one or two years. I would like to see those people being left in it.

Next year there is going to be a whole new set of rules. Today, our committee will be looking at a whole new set of rules that will take affect next year and forever probably. I don't see why we should make this big drastic change this year in cutting out these people. We have already cut out this year 2,500 of the nets, no matter which passes, the House Amendment or my amendment. We have already cut out 2,500 of the big ugly nets in the water next year. To me, that is conserving quite a few elvers right there without putting these people out of business. A dip net is only fishing when somebody has a hold of the handle. It is not a 24 hour a day fishing utensil. It is only fished when someone has a hold of the handle. It will have a minimum impact on the number of elvers. These people are hardworking people. They are willing to do it to make a minimum amount for six to eight weeks to continue putting food on the table and

paying their payments until another fishery starts, which probably would be the lobster fishery in the late spring.

I ask that you support my amendment. It is a fairness issue. To cut these people out and leave other people in, if the industry is in such bad shape, then keep everybody out. To shut out a certain amount and to leave other people in, it is not fair to these people. We have never done it in any other fishery. When we have had problems or when there has been perceived problems in the other fisheries, we have put a moratorium on licenses and the number of people that get in. We have always let the people that had licenses stay in. This is the only fishery that we are taking away licenses that people had. I ask you, as a fairness issue, to keep these people in and fishing at a minimum. It is only for six to eight weeks and then the whole thing is going to be reviewed this summer and fall and we will come up with a whole new plan this year. I ask for your support on this amendment. Thank you.

Representative ETNIER of Harpswell moved that **House Amendment "A" (H-28) to Committee Amendment "A" (S-13) be INDEFINITELY POSTPONED.**

The SPEAKER: The Chair recognizes the Representative from Harpswell, Representative Etnier.

Representative ETNIER: Mr. Speaker, Men and Women of the House. A very incredibly brief history of elver management within this state. I am not going to go back to the Magna Carta. I am going to go back four years and go fast forward so quickly it will probably make your head spin. Four years ago we had for the first time ever a bill before us in this Legislature relating to elvers. It was the first time ever. Representative Heino of Boothbay Harbor, at that time, brought the bill forward. It was an eye opener for the entire state. I think that is where I, personally, and I believe this Legislature, perhaps, and perhaps the department and also the industry of elver fisherman started making some mistakes. I personally feel we made a mistake four years ago in allowing this fishery to go ahead to the degree that we did. We attempted to rein it into control with some limits on gear, but that has proven to be inadequate. Two years ago I think we made another mistake. We had another bill before our committee, it was Representative Pinkham's bill that we supported unanimously in committee to lower the fees for the nets and licenses for this fishery. I supported it then and I support that bill now. I think it was the right thing to do. These fees were too high, but the end result of that by not having done anything else to limit entry concurrent with that reduction fee lead to yet another increase in the number of licenses, fyke nets and dip nets, as you have all heard in your caucuses considerably about this today. I don't want to beleaguer this point.

The House Amendment that is before us here today, as Representative Lemoine has indicated, will increase effort in this fishery from what is proposed in the Committee Amendment by 1,500 dip nets. That is an enormous increase over the Committee Amendment. Two or three weeks ago, we had 11 bills before our committee related to elvers. We saved two of them aside as emergency measures. One of them is here at this moment. There were 11 bills before us a couple of weeks ago because all over the state people realized there was a serious problem with this fishery. We, as a committee, worked hard and diligently for three work sessions, many hours, and as you have heard last Thursday amazingly, much to my surprise, got a unanimous report out of the committee in support of the Committee Amendment. We all gave up something in that Committee Amendment. There were those of us on the

committee that wished to go further in terms of restrictions. There were those who wished to not go so far in terms of restrictions. Of course, there were some in the middle. We all, on either side, gave considerably in the effort to achieve a unanimous committee report in the effort to conserve the resource and address, for this season, what we all agreed was a serious situation that could not be allowed to continue as it had in the last year and the two years before that.

Ladies and gentlemen of this body, we all have constituents who are participants in this fishery. I have dozens if not more. Many of them will be hurt by what I am endorsing personally with the Committee Amendment. I understand that. I have spoken to a number of them. I can live with that. I wasn't sent up here to rubber stamp and perpetuate mistakes that I believe I have made in the past regarding the fishery. We have made mistakes. I think it is time now to bite the bullet and address them. There will be some pain. Do not get me wrong. There will be pain associated with this to individuals. The number, I am not quite sure of, but there are hundreds of them.

Last year, about this time, I flew over the state in the Department of Marine Resources plane. I spent a day up in the air getting nauseous circling slowing, tight circles around the rivers and streams in the midcoast area. I was appalled at what I saw. As you know, there were 3,800 fyke nets, apparently sold last year. The effort last year was an abomination and something that we cannot allow to continue in any form. The substitute of 1,500 dip nets is going to only make matters worse I fear. You have heard the claim that we have inadequate data. I don't argue with that claim. I just view the fact that we had inadequate data as not a reason to leave the breaks off and steam full speed ahead or even any where near full speed ahead given the nature of this fishery. I would err on the side of conserving this fishery and the resource given the lack of data and say let's put the breaks on now if we really don't know what we are doing. I believe we really don't know what we are doing with this fishery. We do not proceed any where near full speed ahead and potentially cause great damage. The great damage that I refer to is that this is an extremely unusual fishery. This is why I personally have a great deal of problem with this fishery. I know I have allowed it to continue personally and voted for continuing it up to this point and will with the Committee Amendment.

We are fishing on the bottom of the food chain. It is a very unique situation with this fishery. We do this no where else in the fishery of the State of Maine that I am aware of. Do we fish on the bottom of the food chain as we are when we are fishing for the elvers? We also fish on every other life stage of this particular fishery. When you are fishing on the bottom of the food chain, you are really treading on some thin ice. When you are fishing on the bottom of the food chain with nets that are made out of, essentially, cheese cloth type material, you are really on thin ice. The reason I ask you to join me in Indefinitely Postponing the House Amendment is a serious step backwards from the Committee Amendment that was agreed upon the other day, which has wide support from a number of the fishermen out there from conservationists in the state and the Department of Marine Resources.

Lets take a step backwards, ladies and gentlemen, from that Committee Amendment that we worked so diligently on and which is a good reasonable compromise which only affects this season. Please join me in supporting the Indefinite Postponement. Thank you.

The SPEAKER: The Chair recognizes the Representative from Boothbay, Representative Honey.

Representative **HONEY**: Mr. Speaker, Men and Women of the House. Representative Etnier has given you a pretty good recap of what has gone on in the committee for the past four or five years. I will give you a little bit of a background. I expect there are a lot of people in this House that would not know an elver from an alewife. First of all, an elver is a small baby eel. These are spawned in the Sargaso Sea, which is located off from Cuba. They drift passively with the gulf stream all along the eastern seaboard and when they feel it is the right time they go into the coastal streams and rivers from Florida all the way up through the Maritime Provinces. Once they enter fresh water, these baby eels, they stay there any where from 8 to 40 years. These are the eels that probably everybody in this House has caught in a freshwater stream in their adult life here. There is very little data on the life history of the eels. That is why we should think a lot more about what we are doing here. They run back out of the streams and rivers. They return to the Sargaso Sea. There they spawn and then they die. It is just the opposite life cycle from the Pacific Salmon. Pacific Salmon live in the ocean their adult life and they go back to freshwater and then they die.

What happens to elvers after the fishermen catch them here in the State of Maine, they are purchased by dealers. A lot of them are Maine people, but there are some of them from out of state also. These elvers are then air freighted to the Orient where they are used in an aquaculture. They grow them in freshwater ponds in the Orient in Taiwan and Japan. Why are they shipped to the Orient? Their populations have been decimated. There are no wild populations or very little left of their populations of eels. They have overexploited their elvers and eels and they don't have any anymore. The same thing has happened in Europe by overfishing.

All of the fisheries here in the State of Maine target eels that have to reproduced and have not had a chance to reproduce. There are only two other states that allow any type of fishery for elvers. That being South Carolina and Connecticut. All the other states have seen fit to close their fisheries because of the lack of data and because of climbing declines in the numbers of elvers returning every year. In South Carolina and Connecticut they only allow a small number of people to participate in the fishery. They have banned these fyke nets that both Representative Pinkham and Etnier talked about. They only allow dip netting with a dip net. In Canada, there are only 18 fishermen allowed in the province of Nova Scotia. There are a few more allowed in the province of New Brunswick. Fisheries agencies and Legislatures from Florida to the Maritimes have seen fit to put severe curbs or outlaw the elver fishery. I support the efforts they have made. I hope we will indefinitely Postpone the amendment to the committee's bill. Thank you.

The **SPEAKER**: The Chair recognizes the Representative from Cherryfield, Representative Dugay.

Representative **DUGAY**: Mr. Speaker, Ladies and Gentlemen of the House. I urge you to support the good Representative from Lemoine, Representative Pinkham's amendment. Thank you Mr. Speaker.

The **SPEAKER**: The Chair recognizes the Representative from Brooklin, Representative Volenik.

Representative **VOLENIK**: Mr. Speaker, Men and Women of the House. With other parts of this Committee Amendment, we will already be reducing the effort in the elver industry in conserving the resource. By reducing the season by three weeks, we potentially reduce efforts by 25 percent. By

establishing a moratorium we will in all likelihood see 500 to 600 fewer licensees as that number of fishermen traditionally drop out of this fishery every year. That is also a 25 percent reduction. By prohibiting licensees from tending another's net, we will eliminate the major loophole that allowed fishermen to tend relative's nets and fish more than their share. These are all good measures. In addition, the fishermen came to us and said they could live with the maximum of three nets this coming season. They currently fish a maximum of five fyke nets and one dip net. They, too, want to conserve the resource.

We had several good proposals before the committee that would cut the number of nets, but would allow current fishermen to fish. We all know that conservation is necessary. We all know there have been too many elver nets in the water. We, as a committee, and we, as a Legislature, are partly to blame. By our previous regulation or lack of regulation of this industry. Eventually we may have a dip net only fishery or we may have no fishing for elvers at all. The writing is on the wall and we all must face it soon. Do we go from nearly 6,000 nets last year to only 1,100 nets this year? That is an 80 percent reduction. Severely reducing the income of many of the 2,314 fishermen, men and women, who fished this industry last year. The majority of whom, about 1,400 will be ineligible to fish again this year without this amendment. Do we reduce the maximum number of nets by approximately 42 percent in one year as proposed in this amendment and allow all of last years fishermen to retain at least some income by fishing one dip net only?

For some of you a few hundred dollars or a few thousand dollars at a slow time of the year may mean nothing except an addition to your asset portfolio. To many of these fishermen a few hundred or a few thousand dollars in the spring of the year, between other seasonal work, may mean the difference between hanging on by their fingernails or plunging into the depths of debt, poverty and dependence. Let's protect our resources. Let's reduce the fishing of elvers. Let's do it in a humane way that does not destroy our most precious resource, our people and their fragile sources of income. I will support this good amendment and I urge you to vote with me against the pending Indefinite Postponement motion. Thank you.

The **SPEAKER**: The Chair recognizes the Representative from Bremen, Representative Pieh.

Representative **PIEH**: Mr. Speaker, Men and Women of the House. As a member of the Marine Resources Committee, I was not real thrilled as 11 bills made their way in front of us to be considered. Those bills were put in by a combination of inter-city industry and interest of the department, interest of conservation organizations, people who were concerned about what was happening on the shores of the rivers and streams and it was a process coming to our committee. I was really glad I wasn't a Chair. I want to commend our Chairs for the job they did on dealing with this bill, this series of 11 bills. We sat at a public hearing with maybe 150 people and someone would get up and testify and you all know this from being in public hearings. You look at the audience and try to get an idea of what is the best result here. Half the crowd would shake their heads no and the other half the crowd would nod as each different possible solution to the problem came up. One thing that everyone was in agreement with was that we have an industry in trouble. We have a resource in trouble. We have the catch way down. We have adult eels being caught at a much lower rate than they have been caught in the past. We know that there is a problem and everyone agrees on that.

Our committee had many hearings and work sessions to try to figure out a way to come to a solution that we could agree on. We hesitantly, last Thursday, had a unanimous committee report. It was hesitant and you are seeing people now that have rethought that agreement and are uncertain about it. They are uncertain because of the economic hardship it creates. One elver fisherman called me up and he said that last year he invested \$19,000 in equipment. He brought in \$20,000. He made \$1,000 in that eight weeks that the fishery was open. He supports this bill. He will not be able to fish. He wants to be able to come back once we have figured it out and be able to fish. Our job is not a pleasant job. We are the people that have to draw the line. We are the buck stops here.

We blew it. We blew it two years ago when we lowered the fees without limiting entry. We blew it four years ago when we tried to put in some laws and everyone found loopholes because it is a gold rush mentality. It is not my elvers. The elvers don't belong to anyone. They go to the Sargaso Sea. I don't know what their citizenship is, but it is not just American. They go all over the world. No one owns them. It is our job to take care of that resource. We don't know how many loons, frogs or other fish may be dying as a result of not having food to eat because we are taking the elvers. When our committee came to its decision, we made a tough decision. We decided that those with a long history in the fishery were more able to fish carefully and effectively. Elvers are a delicate species and when they are taken, there is every chance for them to be killed. They cannot be sold dead. They go to Asia and they are raised there in captivity to adults. We made that decision. We are under federal obligation to reduce the effort. We took that seriously. We said if we are going to have to do it, let's do it now.

As my colleague who I very much respect said, the writing is on the wall. The writing has been on the wall. The writing was on the wall two years ago and we failed to take the steps we needed to take. Many of us who are on that committee were on it then. We want to take that step now. I encourage you to support the Indefinite Postponement. Thank you.

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

Representative **DUNLAP**: Mr. Speaker, Ladies and Gentlemen of the House. I usually have a rule about speaking on legislation that is pretty simple. I try to speak only on bills that I have sponsored, cosponsored or have come out of my committee. However, when you have sponsored or cosponsored every third bill in this chamber, it almost compels oratory at times. I was a sponsor of one of the elver bills. This was brought to me by some concerned citizens in my area. I have been following the history of the fishery now through its inception. I have heard a lot of statements made in this chamber today dealing with economic hardship, fairness and it seems almost satirical at times. Given the impact that we do not even know that we have had on this resource. This fishery has been going on for a number of years. We have almost no scientific data on the number of eels we have spawning in our waters. It just boggles the mind when we talk about the unknown and unforeseen impacts. It seems only reasonable that we should proceed in a fishery with extreme caution.

We have not done this historically. We are only now beginning to know the impact that we have had on the urchin fishery. Recent scientific data shows that the minimum size for keeping an urchin has a problem with it. There are two specific species of urchins. They grow at different rates and one may live 20 years and never get to the legal catch size and the other may actually become legal catch size before it reaches sexual

maturity. It will never actually reproduce. You are actually wiping out one species of urchin without even knowing it because you can't tell the difference until you break them open. We are just discovering this now after many, many years of very high impact urchin fishing.

We have been dealing in the Inland Fisheries and Wildlife Committee with salmon issues now for some 50 years, actually more than 100 years. Believe it or not, at the turn of the century when the Atlantic Salmon Commission first began spawning salmon, taking salmon eggs for hatcheries, they were buying the salmon from ware fishermen on the rivers. On the Penobscot River there are over 450 salmon wares, commercial fishing on that river. As I have mentioned before to some of my colleagues, we are now looking at the Atlantic Salmon being listed as endangered in the State of Maine. There is a very good reason for that. We never step back and say no to anyone who wanted to make a living on that fishery. Even recreationally, 10 years ago, we were still allowing a take of three salmon a day on the rivers. Now all of Down East Maine is threatened by a lawsuit that could list the salmon as endangered or threatened.

It was mentioned here today that we have never done this to any fishery today. My good friend from Lemoine said that. That is true. Most of the fisheries in the Gulf of Maine are in the state of total collapse. I wonder why. We never have tried to regulate them. We look at the cod fishery now with these specific zones. People losing their homes, boats and not being able to pay mortgages. The economic damage argument will be made when there is one fish left in the Gulf of Maine or when there is one eel left in the rivers. Somebody has to catch that to make a mortgage payment. If we don't do something to protect these resources now, there will be no resources for anyone to fish for in the future. That is all I really basically want to say. We are not thinking about the future fishermen. We are not thinking about the future of the resource. We are talking about making payments on equipment or homes and supporting families this year with a resource that if we take now will not provide any support for anyone in the future, wildlife or human.

I would ask you to support the Indefinite Postponement motion. Mr. Speaker, when the vote is taken, I request it be taken by the yeas and nays.

Representative DUNLAP of Old Town **REQUESTED** a roll call on the motion to **INDEFINITELY POSTPONE House Amendment "A" (H-28) to Committee Amendment "A" (S-13)**.

More than one-fifth of the members present expressed a desire for a roll call which was ordered.

The SPEAKER: The Chair recognizes the Representative from Machias, Representative Bagley.

Representative **BAGLEY**: Mr. Speaker, Ladies and Gentlemen of the House. I will make this short. You have heard a lot of rhetoric. I am a member of the Marine Resources Committee. I did vote for the unanimous report. I do not support the Indefinite Postponement and I will be following the Representative from Lemoine in supporting his amendment. Thank you.

The SPEAKER: The Chair recognizes the Representative from Kittery, Representative Lemont.

Representative **LEMONT**: Mr. Speaker, Ladies and Gentlemen of the House. I would just like to say that I think everything on this issue has been said. I would add that it has been said very well. The amendment that is before us, every one of us on Marine Resources had the opportunity to hear this proposal. It was rejected within committee. I would hope that

you would support the Indefinite Postponement so we can go on and pass the unanimous committee report. It does a great deal for conservation in this state and in this fishery. I know conservation is really tough. We hate to talk about it, but it is a resource we need to protect. Please help me continue on to pass this excellent legislation. Thank you.

The SPEAKER: The Chair recognizes the Representative from Rockland, Representative McNeil.

Representative **MCNEIL**: Mr. Speaker, Ladies and Gentlemen of the House. I, too, am a member of the Marine Resources Committee. I ask you to Indefinitely Postpone this amendment. We worked long and hard on this committee as the other Representatives have said. I represent people on both sides of the issue, but there are elver fishermen out there that do support this bill because they, too, are afraid for the industry. If there is no industry, there will be nothing to fight about next year. Thank you.

The SPEAKER: The Chair recognizes the Representative from Lemoine, Representative Pinkham.

Representative **PINKHAM**: Mr. Speaker, Men and Women of the House. After listening to some of the testimony here, I wonder why we are still catching eels. If the industry is in such bad shape, why are we still issuing licenses? If we knew this four years ago, as some of the testimony has already said, then why has there been an increase in licenses? Last year was the biggest year of licenses and the department is still selling licenses today for people to fish in this industry. If it is in such bad shape, I wonder why there has been more licenses sold in the last four years than ever and are even being sold today. Four years ago we did have a bill to do away with eel season, but we didn't do it. We put the fees up. The Department of Marine Resources in the last four years has collected approximately \$2 million to do research to find out what is going on with these baby eels. To date, we haven't got any substantial information about the fisheries. It is all guesswork as far as the committee is concerned and everybody else that we have talked to. We have no substantial data saying the fishery is in trouble. You have heard that the adult eel population, the catch is way down. Why wouldn't it be? There is only 25 fishermen in the state that catch adult eels. In the '40s and '50s it was a big business. There were a lot of people that caught them, but they got out of the business. Whether they are just starting back in or not, I don't know, but with the testimony we had, the catch would be down if we go from 400 or 500 licenses down to 25, that stands to reason.

I still say if we want to limit the elver fishery, then do it the way we have done the other ones. Put a moratorium on. Allow people that have had licenses in. If you want to cut the year, fine, but let's do it fairly across the board. Don't cut people out that are already in there. If you want to cut the gear, fine, but let's do it fairly across the board. Don't cut people out that are already in there that have spent money. We heard testimony that one guy spent several thousand dollars, \$13,000, I think it was and now he is going to be out of the fishery. We had people that do support the Committee Amendment, but it is the people that are staying in. I have no support from the people that are going to be put out of business. That stands to reason. If you can stay in, that is good. Your competition is gone. I don't think the fishery is in such dire straits as we have heard here today. We have no concrete evidence that it is.

If my amendment passes, it is only good for this year. The whole thing is going to be reviewed and something new will come along next year. Let's keep these people in it to make a minimum income to keep them going for a few weeks. I can't

stress this enough. Last year there were 3,800 of the big nets in the streams. This year there is only going to be 1,300. That is a drastic reduction in the effort right there. Like I said, there is going to be an increase in dip nets, but those dip nets aren't the problem. Ask citizens in your district what the problem is. The problem in fyke nets. Again, the fyke net fishes 24 hours a day. The dip nets only fish when there is a warm body on the other end of it. As far as the food chain is concerned, I love animals just as much as anybody else, but when it comes right down to feeding the frog, I will go with feeding my citizens. No matter how minimal it is. I guess that is all.

One more thing. Somebody had mentioned that we will have to live with the decision that is made here today. We will have to live with it. Some of us will live better than others. Keep that in mind.

The SPEAKER: The Chair recognizes the Representative from Rockland, Representative McNeil.

Representative **MCNEIL**: Mr. Speaker, Ladies and Gentlemen of the House. I will submit to you the reason why we have not made these drastic cuts in the past and why we have not closed off the elver fishing business before. It is gut wrenching. It will be so whether we do it today, tomorrow or a year from now. This is never ever going to be a pleasant decision. It is better today and to be on the side of conservation. Thank you.

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

Representative **TRAHAN**: Mr. Speaker, Men and Women of the House. I had not intended to speak today, but I have changed my mind after hearing this. One concern that I had that I didn't think was addressed was there are two components to this, conservation and the effects of elver fishing on the rest of our society. Living in Waldoboro, which is a big area for elver fishing, I can speak from experience that the elver fishery has a big impact on everyone in our town during elver season. That was a lot of the reason that the dip net fishery, in my opinion, is so troubling to me is that it does not, in my opinion, reduce the number of fishermen in the industry so that it is compatible with the rest of our town. Sure, we don't have enough information on the conservation side of the issue to have a good management plan on the side of conservation. I can tell you right now the evidence is there that the fishery itself impacts all of our towns in those areas where they take place. That is why we have to support the Indefinite Postponement of this.

I was part of this debate from the beginning. I tried to support the fishermen at every level and get for them the best deal that I possibly could. When I went to the committee, I spoke at the public hearing and I asked that they treat the fishermen as fairly as possible and to do within their powers and the best of their ability to treat the fishermen on an equal level. I think they have done that. I have great respect for the work they did. They did a good job with what they had. What they came up with, I think, was as fair as we could come up with from all sides. Nobody is happy, but this is just what they came up with. I respect that and I ask you to support that. Thank you.

The SPEAKER: The Chair recognizes the Representative from Cherryfield, Representative Dugay.

Representative **DUGAY**: Mr. Speaker, Ladies and Gentlemen of the House. I still have the concern for the almost 90 fishermen that filled out applications and sent in a check and received their license back from the department and then today, or next week, we are going to tell those fishermen that they can't fish. I think they showed good faith by sending in their license

application and getting their license back. I would ask that, once again, you support the good gentleman from Lemoine. Thanks you Sir.

Representative PERKINS of Penobscot asked leave of the House to be excused from voting on **House Amendment "A" (H-28) to Committee Amendment "A" (S-13)** to L.D. 905 pursuant to House Rule 401.12.

The Chair granted the request.

The SPEAKER: A roll call has been ordered. The pending question before the House is Indefinite Postponement of House Amendment "A" (H-28) to Committee Amendment "A" (S-13). All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 15

YEA - Andrews, Baker, Belanger, Berry DP, Berry RL, Bouffard, Bragdon, Brennan, Bruno, Bryant, Bull, Bumps, Cianchette, Collins, Colwell, Cote, Cowger, Davidson, Davis, Desmond, Dudley, Duncan, Dunlap, Duplessie, Etnier, Fisher, Fuller, Gagne, Gagnon, Glynn, Gooley, Green, Hatch, Heidrich, Honey, Jacobs, Jones, Kneeland, Labrecque, LaVerdiere, Lemoine, Lemont, Lindahl, Madore, Mailhot, Marvin, Matthews, Mayo, McGlocklin, McKee, McNeil, Mitchell, Murphy T, Muse, Norbert, O'Brien, O'Neal, O'Neil, Peavey, Pieh, Powers, Quint, Richard, Rines, Samson, Savage C, Savage W, Saxl JW, Saxl MV, Schneider, Shiah, Stanwood, Stevens, Sullivan, Tessier, Thompson, Tobin D, Townsend, Trahan, Tripp, True, Twomey, Usher, Watson, Wheeler GJ, Mr. Speaker.

NAY - Ahearne, Bagley, Bolduc, Bowles, Brooks, Buck, Cameron, Campbell, Carr, Chizmar, Clark, Clough, Cross, Daigle, Dugay, Foster, Frechette, Gerry, Gillis, Goodwin, Jodrey, Joy, Kasprzak, MacDougall, Mack, Martin, McAlevey, McKenney, Mendros, Murphy E, Nass, Nutting, Perry, Pinkham, Povich, Richardson E, Rosen, Sanborn, Sherman, Shields, Shorey, Sirois, Snowe-Mello, Stanley, Stedman, Tobin J, Tracy, Treadwell, Tuttle, Volenik, Waterhouse, Weston, Wheeler EM, Williams, Winsor.

ABSENT - Chick, Jabar, Kane, Lovett, McDonough, Plowman, Richardson J, Skoglund.

Yes, 86; No, 55; Absent, 8; Excused, 1.

86 having voted in the affirmative and 55 voted in the negative, with 8 being absent and 1 excused, **House Amendment "A" (H-28) to Committee Amendment "A" (S-13) was INDEFINITELY POSTPONED.**

Subsequently, **Committee Amendment "A" (S-13) was ADOPTED.**

Under suspension of the rules, the Bill was given its **SECOND READING** without **REFERENCE** to the Committee on **Bills in the Second Reading.**

Under further suspension of the rules, the Bill was **PASSED TO BE ENGROSSED as Amended by Committee Amendment "A" (S-13)** in concurrence. **ORDERED SENT FORTHWITH.**

CONSENT CALENDAR

Second Day

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

(S.P. 21) (L.D. 13) Bill "An Act to Designate the First Saturday of Each October as Firefighter's Recognition Day"

(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"

(S.P. 260) (L.D. 755) Bill "An Act Regarding the Assignment of Insurance Benefits for Dental Care"

(H.P. 69) (L.D. 82) Bill "An Act to Amend the Laws Prohibiting Terrorizing" (C. "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" (C. "A" H-21)

(H.P. 398) (L.D. 540) Resolve, Authorizing the Transfer of Certain State Historic Site Property (C. "A" H-22)

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

BILLS IN THE SECOND READING

Senate

Bill "An Act to Increase Nonregular Island Ferry Service from 24 to 36 Trips" (EMERGENCY)

(S.P. 91) (L.D. 194)

Reported by the Committee on **Bills in the Second Reading**, read the second time, the Senate Paper was **PASSED TO BE ENGROSSED** in concurrence.

ENACTORS

Mandate

An Act to Restrict the Posting on the Internet of Personal Information About Public School Students

(S.P. 93) (L.D. 232)

(S. "A" S-8)

Reported by the Committee on **Engrossed Bills** as truly and strictly engrossed. In accordance with the provisions of Section 21 of Article IX of the Constitution, 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 3 against, and accordingly the Mandate was **PASSED TO BE ENACTED**, signed by the Speaker and sent to the Senate. **ORDERED SENT FORTHWITH.**

Acts

An Act to Make Materiality a Jury Issue Relative to the Crime of Perjury

(H.P. 544) (L.D. 765)

An Act to Clarify Sentencing Alternatives Involving Probation and Unconditional Discharge Under the Criminal Code

(H.P. 570) (L.D. 791)

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.

An Act to Clarify the Criminal Code Relative to Strict Liability Crimes

(H.P. 545) (L.D. 766)

Was reported by the Committee on **Engrossed Bills** as truly and strictly engrossed.

On motion of Representative TRAHAN of Waldoboro, was **SET ASIDE.**

Subsequently, the Bill was **PASSED TO BE ENACTED**, signed by the Speaker and sent to the Senate.

Representative TRAHAN of Waldoboro moved that the House **RECONSIDER** its action whereby An Act to Make Materiality a Jury Issue Relative to the Crime of Perjury (H.P. 544) (L.D. 765)

Was **PASSED TO BE ENACTED**.

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

Representative **TRAHAN**: Mr. Speaker, Men and Women of the House. Could I please have an explanation on this bill, on its content and clarification of the bill? Please. Thank you.

The SPEAKER: The Representative from Waldoboro, Representative Trahan has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Ellsworth, Representative Povich.

Representative **POVICH**: Mr. Speaker, Men and Women of the House. This is a unanimous Ought to Pass bill out of the Criminal Justice Committee. It was brought to us by the Criminal Law Advisory Commission. It is a housekeeping item. This bill removes the current directive that the trial court rather than the jury determine the materiality question. Since materiality is the element of the crime of perjury, it is legally defined. A defendant has the constitutional right to have a jury, rather than a trial court determine the question of materiality. It comes to us in case law. Thank you.

The same Representative withdrew his motion to **RECONSIDER PASSAGE TO BE ENACTED**.

Subsequently, the Bill was **PASSED TO BE ENACTED**, signed by the Speaker and sent to the Senate.

MATTERS PENDING RULING

Bill "An Act to Amend the Maine Governmental Facilities Authority"

(H.P. 781) (L.D. 1104)

(Committee on **STATE AND LOCAL GOVERNMENT** suggested)

TABLED - February 25, 1999 by Speaker ROWE of Portland.

PENDING - **RULING OF THE CHAIR**.

Bill "An Act to Amend the Laws Authorizing the Renovation of the State Capitol Building and Other State Buildings"

(H.P. 823) (L.D. 1146)

(Committee on **STATE AND LOCAL GOVERNMENT** suggested)

TABLED - February 25, 1999 by Speaker ROWE of Portland.

PENDING - **RULING OF THE CHAIR**.

The SPEAKER: The Chair has considered the questions of the Representative from Naples, Representative Thompson, as to the propriety of L.D. 1104 and L.D. 1146 under Rule 107 of the House Rules of the 119th Legislature.

Both L.D. 1104 and 1146 propose to change from a majority to two-thirds the requisite vote necessary to authorize the Maine Government Facilities Authority to issue securities to fund the construction, reconstruction, purchase or acquisition of facilities.

House Rule 107 states:

"A member may question the appropriateness of a bill that attempts to establish proceedings of the House in

statute. Such legislation may be ruled not properly before the House by the Speaker."

The Chair finds that both L.D. 1104 and L.D. 1146 attempt to establish the proceedings of the House in statute and are thus not properly before the House.

House Rule 107 is based upon the Maine Constitution, Article IV, Part Third, Section 4, which reads in part, "Each House may determine the rules of its proceedings." As the Chair has said before, the working principle upon which the Chair must rely is provided by reading the constitutional phrase, "Each House may determine the rules of its own proceedings," in conjunction with the House's parliamentary manual, Mason's Manual of Legislative Procedure (1989 ed.) (hereinafter Mason's), at section 3, part 4. The principle may fairly be summarized:

Each house may determine:

- A. the rules of the proceedings of the body in ordinary legislative matters; and
- B. the propriety and effect of any action taken by the body in:
 1. the exercise of any power;
 2. the transaction of any business; or
 3. the performance of any duty conferred upon it by the constitution.

The rules of the proceedings of the House in ordinary legislative matters are implicated by both L.D. 1104 and L.D. 1146 to the extent that they would both require a two-thirds vote of approval from the House as a prerequisite for the issuance of securities by the Maine Governmental Facilities Authority.

Moreover, the House cannot by its own act require a two-thirds vote to take an action when the Maine Constitution requires only a majority vote. Mason's discusses two-thirds votes in section 512. The parts of section 512 relevant to this ruling are parts 6 and 10:

Section 6 "A deliberative body cannot by its own act or rule require a two-thirds vote to take any action where the constitution or controlling authority requires only a majority vote. To require a two-thirds vote, for example, to take any action would be to give to any number more than one-third of the members the power to defeat the action and amount to a delegation of the powers of the body to a minority."

Section 10 "Since it is a fundamental principle of parliamentary law that the deliberative will and judgment of the majority shall prevail in the decision of such questions as can properly come before the legislative body, the requirement of a two-thirds vote is exceptional. Such a vote is not required except in the particular cases in which it is prescribed by a controlling authority."

See also Mason's §51(6)

Mason's also provides at section 50, under the heading "Majority Control":

Section 6 "The power that establishes a public body can require the vote of more than a majority to take certain actions, but unless more than a majority vote is clearly required a majority vote can take any action which the body has the power to take."

The House is established by the Maine Constitution and, in its internal affairs, is constrained only by the Maine Constitution. Rules of the House, 119th Legislature preamble; See also Mason's §19(3) and §22(3). It is instructive to note that the Maine Constitution does require two-thirds approval for certain actions. For example, the Constitution requires two-thirds

approval: to pass emergency measures, Me. Const. art. IV, pt. 3, §16; to impose state mandates on municipalities, Me. Const. art. IX, §21; to propose a general obligation bond issue question to the voters, Me. Const. art. IX, §14; to propose a constitutional amendment to the voters, Me. Const. art. X, §4; to call for a constitutional convention, Me. Const. art. IV, pt. 3, §15; to enact a reapportionment plan, Me. Const. art. IV, pt. 1, §3; and to override the governor's veto, Me. Const. art. IV, pt. 3, §2; among others.

To summarize, since L.D. 1104 and L.D. 1146 propose to change from a majority to a supermajority the requisite vote necessary for the House to take an action, these bills attempt to establish the proceedings of the House. It is therefore the ruling of the Chair that L.D. 1104 and L.D. 1146 are not properly before the House.

Subsequently, the Chair **RULED** L.D. 1104 and L.D. 1146 was not properly before the body pursuant to House Rule 107.

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

SENATE PAPERS

The following Joint Order: (S.P. 591)

ORDERED, the House concurring, that when the House and Senate adjourn, they do so until Tuesday, March 9, 1999, at 10 o'clock in the morning.

Came from the Senate, **READ** and **PASSED**.
READ and **PASSED** in concurrence.

SENATE PAPERS

The following Joint Resolution: (S.P. 590)

JOINT RESOLUTION RECOGNIZING JOBS FOR MAINE'S GRADUATES AND ITS OUTSTANDING PERFORMANCE OUTCOMES: RETAINING, GRADUATING AND TRANSITIONING STUDENTS INTO THE WORLD OF WORK

WHEREAS, the Legislature and Governor created Jobs for Maine's Graduates on June 15, 1993 as an independent, 501(c)3 corporation to develop a statewide system of school-to-work transition and dropout prevention services for Maine students; and

WHEREAS, since 1993, Jobs for Maine's Graduates has grown from 17 to 48 sites and serves 2,127 students in 138 communities; and

WHEREAS, Jobs for Maine's Graduates' performance outcomes for the last 4 consecutive years have earned recognition for Maine as the most successful Jobs for America's Graduates affiliate in the nation; and

WHEREAS, this outstanding performance record has led to the formation of the Northeast Center for Excellence at Jobs for Maine's Graduates and has led to today's visit of Governor Thomas Carper of Delaware; and

WHEREAS, Jobs for Maine's Graduates embodies the true spirit of a public-private partnership with a dynamic funding mix that includes federal, state, community and private sector contributions; and

WHEREAS, Jobs for Maine's Graduates has met or surpassed the Legislature's expectations for organizational

excellence, promoting Maine Career Preparation Learning Results and developing public-private partnerships; now, therefore, be it

RESOLVED: That We, the Members of the 119th Legislature, now assembled in the First Regular Session, take this opportunity to recognize the outstanding commitment of the Jobs for Maine's Graduates' students, specialists and board of directors and their community partners and private sector donors who have helped give birth to this thriving and essential not-for-profit organization; and be it further

RESOLVED: That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to the Department of Education, the Department of Labor, the Honorable Angus S. King, Jr., Governor of Maine, the Honorable Thomas Carper, Governor of Delaware and to each member of the Maine Congressional Delegation.

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

ENACTORS

Emergency Measure

An Act Concerning the 1999 Elver Fishery

(S.P. 303) (L.D. 905)

(C. "A" S-13)

Reported by the Committee on **Engrossed Bills** as truly and strictly engrossed.

Representative PINKHAM of Lamoine **REQUESTED** a roll call on **PASSAGE TO BE ENACTED**.

More than one-fifth of the members present expressed a desire for a roll call which was ordered.

Representative PERKINS of Penobscot asked leave of the House to be excused from voting on L.D. 905 pursuant to House Rule 401.12.

The Chair granted the request.

The **SPEAKER:** A roll call has been ordered. The pending question before the House is Enactment. All those in favor will vote yes, those opposed will vote no.

This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken.

ROLL CALL NO. 16

YEA - Baker, Belanger, Berry DP, Berry RL, Bouffard, Bowles, Bragdon, Brennan, Brooks, Bruno, Bryant, Bull, Bumps, Cameron, Campbell, Cianchette, Clough, Collins, Colwell, Cote, Cowger, Cross, Davidson, Davis, Desmond, Dudley, Duncan, Dunlap, Duplessie, Etnier, Fisher, Foster, Frechette, Fuller, Gagne, Gagnon, Gooley, Green, Heidrich, Honey, Jabar, Jacobs, Jones, Kneeland, LaVerdiere, Lemoine, Lindahl, MacDougall, Madore, Mailhot, Martin, Marvin, Matthews, Mayo, McGlocklin, McKee, McKenney, McNeil, Mitchell, Murphy T, Muse, Nass, Norbert, Nutting, O'Brien, O'Neal, O'Neil, Peavey, Perry, Pih, Powers, Quint, Richard, Rines, Samson, Savage C, Savage W, Saxl JW, Saxl MV, Schneider, Shiah, Shields, Sirois, Skoglund, Snowe-Mello, Stanwood, Stevens, Sullivan, Thompson, Tobin D, Townsend, Trahan, Tripp, Twomey, Usher, Volenik, Watson, Wheeler GJ, Williams, Winsor, Mr. Speaker.

NAY - Ahearne, Bagley, Carr, Chizmar, Clark, Daigle, Dugay, Gerry, Gillis, Glynn, Goodwin, Jodrey, Joy, Kasprzak, Mack, Mendros, Pinkham, Povich, Richardson E, Rosen, Sanborn, Sherman, Stanley, Stedman, Tobin J, Tracy, Treadwell, Tuttle, Weston, Wheeler EM.

LEGISLATIVE RECORD - HOUSE, March 4, 1999

ABSENT - Andrews, Bolduc, Buck, Chick, Hatch, Kane, Labrecque, Lemont, Lovett, McAlevey, McDonough, Murphy E, Plowman, Richardson J, Shorey, Tessier, True, Waterhouse.

Yes, 101; No, 30; Absent, 18; Excused, 1.

101 having voted in the affirmative and 30 voted in the negative, with 18 being absent and 1 excused, 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**.

On motion of Representative BAKER of Bangor, the House adjourned at 11:53 a.m., until 10:00 a.m., Tuesday, March 9, 1999 pursuant to the Joint Order (S.P. 591).