

MAINE STATE LEGISLATURE

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

Volume II

First Regular Session

May 13, 1999 – June 19, 1999

Second Regular Session

January 5, 2000 – March 22, 2000

ONE HUNDRED AND NINETEENTH LEGISLATURE
FIRST REGULAR SESSION
60th Legislative Day
Thursday, May 27, 1999

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

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

Prayer by Reverend Jeffrey M. McIlwain, Green Memorial A.M.E. Zion Church, Portland.

National Anthem by The Note-Ables, Readfield.

Pledge of Allegiance.

Doctor of the day, Robert D. Weiss, M.D., Searsport.

The Journal of yesterday was read and approved.

COMMUNICATIONS

The Following Communication: (S.C. 307)

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

May 26, 1999

The Honorable Joseph W. Mayo

Clerk of the House

State House Station 2

Augusta, ME 04333

Dear Clerk Mayo:

Please be advised the Senate today Adhered to its previous action whereby the Minority Ought Not To Pass Report from the Committee on Health and Human Services on Bill "An Act to Prohibit the Use of Juveniles in a Tobacco Enforcement Action," (H.P. 1429) (L.D. 2052), was accepted.

Sincerely,

S/Joy J. O'Brien

Secretary of the Senate

READ and ORDERED PLACED ON FILE.

The Following Communication: (S.C. 306)

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

May 25, 1999

The Honorable Joseph W. Mayo

Clerk of the House

State House Station 2

Augusta, ME 04333

Dear Clerk Mayo:

Please be advised the Senate today Adhered to its previous action whereby the Majority Ought Not To Pass Report from the Committee on Criminal Justice on Bill "An Act to Modify the Laws on Negotiating a Worthless Instrument," (H.P. 888) (L.D. 1245), was accepted.

Sincerely,

S/Joy J. O'Brien

Secretary of the Senate

READ and ORDERED PLACED ON FILE.

The Following Communication: (S.C. 309)

SENATE OF MAINE

May 26, 1999

The Honorable Joseph W. Mayo

Clerk of the House

State House Station 2

Augusta, ME 04333

Dear Clerk Mayo:

Please be advised the Senate today Adhered to its previous action whereby the Minority Ought Not To Pass Report from the Committee on Labor on Bill "An Act to Restore State Funding for Mediation Services Provided by the Maine Labor Relations Board" (H.P. 564) (L.D. 785) was accepted.

Sincerely,

S/Joy J. O'Brien

Secretary of the Senate

READ and ORDERED PLACED ON FILE.

**PETITIONS, BILLS AND RESOLVES REQUIRING
REFERENCE**

Bill "An Act to Adopt the Model Revised Article 9 Secured Transactions"

(H.P. 1601) (L.D. 2245)

Presented by Representative THOMPSON of Naples.

Cosponsored by Senator LONGLEY of Waldo.

Submitted by the Secretary of State pursuant to Joint Rule 204.

REFERRED to the Committee on **JUDICIARY** and ordered printed.

Sent for concurrence.

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

SPECIAL SENTIMENT CALENDAR

In accordance with House Rule 519 and Joint Rule 213, the following items:

Recognizing:

Lewis Vafiades, Esq., of Hampden, on being presented the Maine Bar Foundation's Howard H. Dana, Jr. Award. The Dana Award is given each year to honor an individual lawyer who has made significant contributions to ensure justice for all and to enhance access to civil legal services for the poor, serving as a model and inspiration to both colleagues and fellow citizens. We extend our congratulations to him on receiving this outstanding recognition;

(HLS 462)

Presented by Representative PLOWMAN of Hampden.

Cosponsored by Senator MITCHELL of Penobscot, Representative NORBERT of Portland, Representative THOMPSON of Naples, Representative SAXL of Bangor, Senator MURRAY of Penobscot, Representative CAMPBELL of Holden, Representative SCHNEIDER of Durham, Representative MADORE of Augusta, Representative BRAGDON of Bangor.

On **OBJECTION** of Representative PLOWMAN of Hampden, was **REMOVED** from the Special Sentiment Calendar.

READ.

The **SPEAKER**: The Chair recognizes the Representative from Hampden, Representative Plowman.

Representative **PLOWMAN**: Mr. Speaker, Men and Women of the House. Mr. Vafiades has just last week been recognized for serving 48 years as an attorney in the State of

Maine and in his 48th year he was finally recognized for his outstanding service on behalf of providing legal services for the poor. Mr. Vafiades lives in my district and he calls me often to make sure that I stay on top of this. He is one of the sweetest men. Several weeks ago and I will not repeat all the accolades that I put on the record then, but I do want to say that after 48 years I am glad they came up with an award for someone like Mr. Vafiades. For those of you who don't know some of the other distinguished people who have received this award, the Representative from Naples, Representative Thompson, received the award last year. It must a very distinguished award. Thank you Mr. Speaker.

PASSED and sent for concurrence.

Recognizing:

John T. Jenkins, of Lewiston, for his service in the 118th Legislature. As we recognize Maine's role in the history of the Underground Railroad, we also recognize Mr. Jenkins as one of only two African-American citizens to be elected and serve as a member of the Maine Legislature. We send our best wishes to Mr. Jenkins on this occasion;

(HLS 464)

Presented by Representative CAMPBELL of Holden.
Cosponsored by Senator BERUBE of Androscoggin, President LAWRENCE of York, Speaker ROWE of Portland, Senator DOUGLASS of Androscoggin, Representative BOUFFARD of Lewiston.

On **OBJECTION** of Representative CAMPBELL of Holden, was **REMOVED** from the Special Sentiment Calendar.

READ and **PASSED** and sent for concurrence.

Recognizing:

Gerald Talbot, of Portland, for his years of service as a member of the House of Representatives during the 106th, 107th and 108th Legislatures. As we recognize Maine's role in the history of the Underground Railroad, we also recognize Mr. Talbot as the first African-American to be elected and serve as a member of the Maine Legislature;

(HLS 465)

Presented by Representative CAMPBELL of Holden.
Cosponsored by Senator ABROMSON of Cumberland, President LAWRENCE of York, Speaker ROWE of Portland, Senator RAND of Cumberland.

On **OBJECTION** of Representative CAMPBELL of Holden, was **REMOVED** from the Special Sentiment Calendar.

READ and **PASSED** and sent for concurrence.

Recognizing:

Harriet Price, of Portland, author, historian and cofounder of the Maine Underground Railroad Association. We send Ms. Price our best wishes and extend our appreciation to her for her work as a researcher and writer regarding Maine's historical role in the underground railroad;

(HLS 466)

Presented by Representative CAMPBELL of Holden.
Cosponsored by Senator ABROMSON of Cumberland, Representative BRENNAN of Portland, President LAWRENCE of York, Speaker ROWE of Portland.

On **OBJECTION** of Representative CAMPBELL of Holden, was **REMOVED** from the Special Sentiment Calendar.
READ and **PASSED** and sent for concurrence.

Recognizing:

June McKenzie, of Portland, a direct descendant of Charles Eastman, a very active Underground Railroad agent and a major supporter of the Abyssinian. We send our best wishes to Ms. McKenzie and recognize her family's role in the history of the Underground Railroad on the occasion of Maine's Underground Railroad Day;

(HLS 467)

Presented by Representative CAMPBELL of Holden.
Cosponsored by Senator RAND of Cumberland, Representative DUDLEY of Portland, President LAWRENCE of York, Speaker ROWE of Portland.

On **OBJECTION** of Representative CAMPBELL of Holden, was **REMOVED** from the Special Sentiment Calendar.

READ and **PASSED** and sent for concurrence.

Recognizing:

Lottie Kemp, of Leeds, who celebrated her 105th birthday on December 7, 1998. Ms. Kemp is the granddaughter of George Washington Kemp, a slave who fled his master's plantation and enlisted in the Union Army under the command of General O.O. Howard. After 3 years of service under the general, Mr. Kemp came to Maine to take charge of General Howard's farm in Leeds. We send our best wishes to Ms. Kemp and recognize her family's role in the history of the Underground Railroad on the occasion of Maine's Underground Railroad Day;

(HLS 468)

Presented by Representative CAMPBELL of Holden.
Cosponsored by President LAWRENCE of York, Speaker ROWE of Portland, Representative BERRY of Livermore, Senator NUTTING of Androscoggin.

On **OBJECTION** of Representative CAMPBELL of Holden, was **REMOVED** from the Special Sentiment Calendar.

READ and **PASSED** and sent for concurrence.

Recognizing:

the Committee to Restore the Abyssinian, of Portland, and its president, James Ford, in appreciation of its work to restore the Abyssinian Meeting House built in 1828, the 3rd oldest standing African-American Meeting House in the United States. We send our gratitude and best wishes to Mr. Ford and the members of the committee on the occasion of Maine Underground Railroad Day;

(HLS 469)

Presented by Representative CAMPBELL of Holden.
Cosponsored by Senator ABROMSON of Cumberland, Senator RAND of Cumberland, President LAWRENCE of York, Speaker ROWE of Portland.

On **OBJECTION** of Representative CAMPBELL of Holden, was **REMOVED** from the Special Sentiment Calendar.

READ and **PASSED** and sent for concurrence.

Recognizing:

Brian Higgins, of Brewer, historian, President of the Brewer Historical Society and cofounder of the Maine Underground Railroad Association. We send our best wishes to Mr. Higgins and extend our appreciation to him for his efforts to promote awareness of Maine's role in the history of the Civil War and the Underground Railroad;

(HLS 470)

Presented by Representative CAMPBELL of Holden.
Cosponsored by Senator RUHLIN of Penobscot, Representative FISHER of Brewer, President LAWRENCE of York, Speaker ROWE of Portland.

On **OBJECTION** of Representative CAMPBELL of Holden, was **REMOVED** from the Special Sentiment Calendar.

READ.

The **SPEAKER**: The Chair recognizes the Representative from Holden, Representative Campbell.

Representative **CAMPBELL**: Mr. Speaker, Men and Women of the House. I humbly rise this morning in support of the special sentiments, which have been read into the record earlier. In the month of February we proclaimed that month, February, the Chief Executive has proclaimed May 27 as Underground Railroad Day. Maine's role in the slaves role in the slave's voyage to freedom was much more significant than most of us know. Many towns and cities have been involved, but because of it being oral tradition, we are unaware of documents of the sites on the Underground Railroad. Today, in the rotunda we have made displays, many of which are affiliated with a special sentiment.

In Brewer, I grew up looking at what is known as the Christmas House on the corner of State Street and North Main Street and found one day as I looked at it that it was to be torn down. It was a red brick house, red brick being built of a Brewer brick, an international standard of brick, was to be torn down and of no significant historical value. After that was torn down, the contractor came to the Brewer Historical Society with a slave shirt found in the northeast corner of this building where old traditions stated slaves were kept until the cover of darkness to move on their way to Canada to freedom. The building was gone and a new bridge was going in. The slope of the hill was shaped by the contractors starting from the bottom and moving to the top and stopped midway. It came from the top down to the bottom and within four hours of the last shaping of the hillside we found a shaft. The shaft as we knew it growing up was a tunnel that went from the cellar of the summer kitchen to the riverbank. Oral tradition stated slaves would flow through that tunnel and with the help of the Penobscot Indians, Penobscot River and many of the local citizens, they would continue their trek to freedom. The location now is known as Chamberlain Freedom Park. Many of you have seen the park. Several events occurred there, both through the family, John Holeyoke Family, whose wife was from Virginia and was known to have been an early abolitionist. The Holeyokes owned a pier called Freedom Pier, where most piers were named after the owners. This one was called the Freedom Pier.

It is now at a stage where the Chamberlain Freedom Park is entering into its third phase, a phase that we feel extremely proud of. We hope to erect one of a very handful of statues to African Americans. A handful throughout the United States, one of which will be in Brewer. I hope you visit the displays in the Rotunda to see that statue. As you are visiting the displays, we would be happy if you would take a look at the map. If you know

of any Underground Railroad sites in your region fill this form out and get it back to us so we can document those as well.

Today I am extremely honored and proud along with the Speaker of the House to bring this to you. Thank you.

The **SPEAKER**: The Chair recognizes the Representative from Portland, Representative Saxl.

Representative **SAXL**: Mr. Speaker, Men and Women of the House. First I want I want to thank my friend across the aisle, the Representative from Holden for bringing forward these sentiments today. Even though we are in the last dog days of this legislative session and people are worried about the minutia of budgets and of legislation. I think it is critical that we pause to remember the great part the State of Maine had in the Underground Railroad and in the fight for abolition and the love of freedom that we cherish here today. I especially want to draw attention to a few people in the gallery whom I have some history with. My friend Harriet Price whose son Nathan and I grew up together and who came to Portland recently a transplant from Pretty Marsh who brings her enthusiasm and love of life to reviving and reminding us of our historical heritage. It informs us today a little bit about where we should be going today, never forgetting what bondage means, never forgetting what slavery means, cherishing those freedoms we have here in the State of Maine and in our country. I would certainly be remiss if I didn't draw attention to my friend June McKenzie who is, I believe, a resident of my district. If not, she certainly has often made her interests in the public policy of our day known to me and also has been so critical to talking about the Abyssinian Church, which lays on Newbury Street on the very far eastern part of my district.

Freedom is something that we fight for and we talk about often in this chamber. I think it is critical that when we think about it, that we don't think about just the little steps we take here everyday, but the grand nature and the scope of freedom and what was fought for and what was risked in our country and in our state by brave people like the descendents of June McKenzie and Edith Love. I think one of the great tragedies of the Underground Railroad here in Maine and in modern times is the fact that we have been cavalier in our remembering in some regard. My old town is Queen City in Bangor connecting the bridge to Brewer that they tore down, it was one of the first and most important sites of the Underground Railroad in the State of Maine in the name of progress. I don't think it was progress. As we go forward, I think that we should embrace our past and remember the lessons taught about the good fight, the struggle for freedom and the struggle for liberty and not desecrate that memory. Thank you.

The **SPEAKER**: The Chair recognizes the Representative from Portland, Representative Brennan.

Representative **BRENNAN**: Mr. Speaker, Men and Women of the House. I want to join with my good colleague from Portland, Representative Saxl, in thanking and expressing my gratitude and appreciation to the Representative from Holden, Representative Campbell, for bringing these sentiments forward. I think they are very timely, appropriate and I am glad that I am fortunate enough to be able to speak on these issues on the floor of the House. Earlier this month Speaker Rowe and I participated in a race in Portland. It was called the Race Against Racism. It is a 3.1 mile race through Portland starting at the Abyssinian Church and ending there. It covered the route through Portland of the Underground Railroad. In all the time that I have lived in Portland, I think I know Portland well, I never

knew that there were that many different sites of the Underground Railroad in the city itself. In the last 20 years I have run in over 100 different road races and there was nothing more exciting than running in this race knowing that we were tracing a route that had that history to it. Again, given what I know about Portland I was able to see Portland from a totally different perspective and with a new set of eyes of the different landmarks and tradition in Portland that I never realized. That was a particularly gratifying even to participate in.

The other thing that was equally important at the end of the race, it started at the Abyssinian Church and ended there, we had an opportunity to get a little more information about the background of the church. What I found out, you will see in the sentiment, that it was the third oldest standing church in the United States, but also what is not noted here that between 1828 and into the 1860s it was one of only five schools in the country that taught freed African American children. It was one of only five in the country. I think that is a very rich and a very proud tradition of education in this state that we are not often aware of or that we pay tribute to. As a member of the Education Committee, I was especially proud of the fact of being able to participate in that race and also to understand that educational tradition that we have in this state that we are trying to preserve and extend today. Thank you very much Representative Campbell. In particular, I would also like to express special appreciation to Gerry Talbot who is mentioned in one of these special sentiments. Gerry Talbot when he served in this Legislature fought for the right things, stood for the right thing and he has been an ongoing example for all of us in the Legislature. Thank you.

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

Representative **DUNLAP**: Mr. Speaker, Men and Women of the House. I don't want to take up a lot of your time, but I would like to expand on some of the very appropriate remarks from my colleagues today. I think it is important for us to realize that what freedom means is not necessarily a day off from work, a flag on the porch and a parade. Sometimes we forget how easy it is for us. I think that is what our ancestors really were hoping that we would enjoy that sort of freedom from fear, want and oppression. I think that we have to remember that although we enjoy the fruits of those labors there are many around us in the world today that do not. The struggle for freedom should never really end. My great-great grandmother was a conductor on the railroad in Illinois. I think this brings a lot of family stories back to my mind to hear some of the stories that have been told today. I think it is very appropriate that we remember what our forbearers have gone through, whether they were African American or white and the fruits of those struggles and to remember what we must strive for in the future. Thank you.

The SPEAKER: The Chair recognizes the Representative from Portland, Representative Dudley.

Representative **DUDLEY**: Mr. Speaker, Men and Women of the House. I rise briefly to congratulate and thank the Maine Underground Railroad Association and the Committee to Restore the Abyssinian for keeping the memory of slavery and oppression alive. Since it is by remembering that we protect ourselves from repeating the mistakes of the past. It is by remembering these mistakes that we recognize and may act to end injustice and inequality in our state, nation and in light of recent events, in the whole world. Thank you Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Portland, Representative McDonough.

Representative **MCDONOUGH**: Mr. Speaker, Men and Women of the House. I also rise this morning to congratulate all those folks that have taken part in putting this process together. Having played a small role when I was on the Portland City Council and doing some work and some funding by turning the Abyssinian over to the program that is presently in place. It is a very worthwhile historic moment and I just think it is a great opportunity for a lot of people, diverse in the community of Portland and around the State of Maine, to participate in this effort. I would like to congratulate everyone that has been associated with it. Thank you.

The SPEAKER: The Chair recognizes the Representative from Madison, Representative Richard.

Representative **RICHARD**: Mr. Speaker, Men and Women of the House. I rise too to thank the people who brought the sentiments before us and to bring this piece of history to us. I also rise especially to speak about Gerry Talbot who was the first African American to serve in this body, but after he left this body he served on the State Board of Education. Gerry probably did more for the children of Maine than most people realize. I served on the state board with Gerry and got to know him very well at that time. He always made sure that whenever we made any policies that we remembered that not all of the children from Maine were from prosperous or even middle-income families. He insisted that every policy that we made would be applicable to all children. We owe him a great deal of gratitude for that. I hope his is up there. I can't tell who is up there, but I hope he is up there in the balcony because I gained a great deal of admiration for both Gerry, his wife and his family. Thank you.

The SPEAKER: The Chair recognizes the Representative from Brewer, Representative Fisher.

Representative **FISHER**: Mr. Speaker, Men and Women of the House. It is always nice to look up at the board and see the name of one of your former students, Brian Higgins, he was one of my boys. He has overcome the burden of having to sit in my class for a year and listen to my foolishness about history. Brian has done a great deal for the Brewer community, the Underground Railroad and any number of other things. Brian, nice to have you recognized.

PASSED and sent for concurrence.

Recognizing:

Robert P. Cammack, of Augusta, for his nearly 30 years of service to the State of Maine as the only official State House Tour Guide. Mr. Cammack, who has been the tour guide since 1969, retired once but came back part-time to relay the history of the State House to the almost 14,000 annual visitors to the capitol building and grounds. The Maine State Museum is attempting to preserve some of the vast knowledge, memory and charm of Robert Cammack by videotaping the tour for the benefit of future guides and to use to introduce the State House to students in the schools of the State. We gratefully acknowledge the dedication Robert P. Cammack has brought to his position and extend our warm appreciation to him for being the human link between the State House and the citizens and guests of the State of Maine;

(HLS 474)

Presented by Representative STEVENS of Orono.

Cosponsored by Senator DAGGETT of Kennebec, Representative MADORE of Augusta, Representative O'BRIEN of Augusta, Representative MITCHELL of Vassalboro, Senator LONGLEY of Waldo.

On **OBJECTION** of Representative STEVENS of Orono, was **REMOVED** from the Special Sentiment Calendar.

READ.

On motion of the same Representative, **TABLED** pending **PASSAGE** and later today assigned.

Recognizing:

Conrad and Mathilda Janelle, on the very special occasion of their 65th Wedding Anniversary, May 19, 1999 and in extending our congratulations and warmest wishes to them;

(HLS 476)

Presented by Representative FRECHETTE of Biddeford.

Cosponsored by Senator LaFOUNTAIN of York, Representative SULLIVAN of Biddeford, Representative TWOMEY of Biddeford.

On **OBJECTION** of Representative FRECHETTE of Biddeford, was **REMOVED** from the Special Sentiment Calendar.

READ.

The **SPEAKER**: The Chair recognizes the Representative from Biddeford, Representative Frechette.

Representative **FRECHETTE**: Mr. Speaker, Ladies and Gentlemen of the House. I am pleased to stand and present this legislative sentiment today. The wonderful couple is not able to join us at 87 and 88 years old. They are not able to travel as much as they probably would like to. This couple is very special to me. It is very hard for me to just stand here and just briefly talk on them, because I have known them for my entire life. This is just a wonderful, wonderful thing. In this day's society there is not too many couples that stay married for a long period of time and 65 years is unheard of. It is my pleasure to have brought this legislative sentiment forward for this couple. They are my grandparents and they have shaped my life throughout the years. I am pleased just to be able to do this. It is a little tribute to them for their hard work, the support they have given my mother, which is their only child, and my sisters. This is just a special tribute. I would be remiss if I hadn't stood and said a few words on them. I am just trying to keep it brief. Thank you very much.

PASSED and 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 **LABOR** reporting **Ought to Pass as Amended by Committee Amendment "A"** (**S-280**) on Bill "An Act to Increase the Minimum Wage"

(S.P. 669) (L.D. 1891)

Signed:

Senators:

DOUGLASS of Androscoggin

LaFOUNTAIN of York

MILLS of Somerset

Representatives:

HATCH of Skowhegan

MUSE of South Portland

GOODWIN of Pembroke

MATTHEWS of Winslow

SAMSON of Jay

Minority Report of the same Committee reporting **Ought to Pass as Amended by Committee Amendment "B"** (**S-281**) on same Bill.

Signed:

Representatives:

DAVIS of Falmouth

MacDOUGALL of North Berwick

MACK of Standish

TREADWELL of Carmel

Came from the Senate with the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A"** (**S-280**).

READ.

Representative HATCH of Skowhegan moved that the House **ACCEPT** the Majority **Ought to Pass as Amended** Report.

On further motion of the same Representative, **TABLED** pending her motion to **ACCEPT** the Majority **Ought to Pass as Amended** Report and later today assigned.

Representative BERRY of Livermore assumed the Chair. The House was called to order by the Speaker Pro Tem.

Under suspension of the rules, members were allowed to remove their jackets.

Majority Report of the Committee on **JUDICIARY** reporting **Ought to Pass as Amended by Committee Amendment "A"** (**S-352**) on Bill "An Act to Provide Fairness to Victims of Medical Malpractice"

(S.P. 450) (L.D. 1325)

Signed:

Senators:

LONGLEY of Waldo

TREAT of Kennebec

Representatives:

THOMPSON of Naples

BULL of Freeport

LaVERDIERE of Wilton

JACOBS of Turner

MITCHELL of Vassalboro

NORBERT of Portland

SCHNEIDER of Durham

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

Signed:

Senator:

BENOIT of Franklin

Representatives:

PLOWMAN of Hampden

MADORE of Augusta

WATERHOUSE of Bridgton

Came from the Senate with the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill

PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-352).**READ.**

Representative THOMPSON of Naples moved that the House **ACCEPT the Majority Ought to Pass as Amended Report.**

The SPEAKER PRO TEM: The Chair recognizes the Representative from Naples, Representative Thompson.

Representative THOMPSON: Mr. Speaker, Men and Women of the House. The bill before you is contained entirely in the Committee Amendment. The report before you is entirely in the Committee Amendment, not in the original bill itself. The Committee Amendment is substantially different than the bill, which was presented to the committee.

I would like to give you a little bit of background on medical malpractice screening panels and some of how they work and what we believe some of the problems are and what we are proposing to do to correct those problems. The panels were created in 1986 by the Legislature in response to what was, at that time, a crisis situation regarding doctors having difficulty obtaining malpractice insurance. The panel process was amended once in 1989 regarding the burden of proof. The panels continue to this day. The panels consist of three people who hear the case and then vote on the merits of the case, which has been presented and the finding of the panel often can be admitted into court if you have a unanimous vote of the panel in either direction. It is something that can be introduced before the court.

Now, the problems that have come from the panel is that the panel uses the same burden of proof at the panel level that you also have to use at the trial level. That is, you have to prove your case by a preponderance of the evidence. You have to prove it is more likely than not that you are correct. You have proven negligence and causation. As a result of that the screening panel process has become, in effect, a trial that you have to go through before you can go to trial. The concept of screening, which these are called Pre-litigation Screening Panels, has grown to the point where these, in fact, are full trials before the three member panel. A person who is injured and believes that they have been the victim of malpractice and wants to pursue their case, they have to go through a two-step trial process. The affect of this is that the cost associated with going before the medical malpractice screening panels are extremely high. The claimant has to present their case much like a trial. They present their witnesses before the panel. They often have depositions before the panel process starts. They go through all of the same type of discovery that you would go through for a trial. Then, after the panel if the case doesn't settle, they have to go through another full trial at court. This is a problem. What you are looking at with these screening panels is the ability to screen not try the case twice.

In an effort to change this, the Majority Report makes three basic changes in the panel process. It indicates that at the panel level depositions, which are very costly to take are limited to taking the deposition of the parties, that is the person who is injured and the doctor or the person who is injured and the hospital if it happens to be a claim against the hospital and the experts that each has designated. However, in a case where it is necessary to take additional depositions, the chair of the panel has the authority to authorize further depositions.

The second change that the committee report recommends is to deal with an issue that is inconsistent with, we believe, the

ideas of fairness that we would like to adhere to in Maine law and that is the issue of the confidentiality of the panel. Under the current law the entire panel hearing is confidential and, in fact, the tape is destroyed after 30 days. The committee thinks that the panel process should still remain confidential, but that in one certain case, actually two certain cases, the confidentiality should not be able to be relied upon. Those two instances are when someone testifies under oath at the panel level or gives a deposition under oath at the panel level. In a subsequent trial testifies differently then the prior testimony under oath can be used for impeachment. That is to remedy the situation where a witness might make one statement under oath at the panel level and the parties go to trial and expect the witness to say the same thing at the trial and the witness changes their story. Under current law, the prior proceeding is totally confidential and you cannot introduce the fact that the person may be mistaken in their testimony.

The second area, at the panel level, that would be allowed to be used is if the person who gave the testimony or the deposition waives the right of confidentiality and says, yes, you can use my testimony for as much as it can be admitted. That, of course, is up to the rules of evidence and the trial judge whether that could in fact be admitted.

The third area of change in the Committee Amendment is to the standard of proof of the panel. This clearly is the major change that has been discussed in the hallways and in a lot of correspondence that has been sent around. The standard of proof is, as I had previously indicated, the same today as the standard of proof used in trial, which we believe results in effect having two trials. The intent of the people with the Majority Report is to use a lesser standard than the current standard so that the panel process is used to screen out cases that do not have merit, cases that a jury should decide who wins or loses, not the panel members. In doing that we looked at a number of standards from a number of other states and chose as the basis for this finding the standard of proof, which is, in effect, in Massachusetts. We were not, however, fully satisfied by the Massachusetts standard so, this is referring to Section 5 of the Committee Report, we added a sentence at the end regarding the evidence presented to the panel and how they would use that evidence.

In Massachusetts it had been established that you would use it much as a summary judgment standard and you would have to consider the evidence most favorable light to the claimant when you make your determination how to screen the case. We thought that that went too far so we added the fact that in making its finding, the panel may consider the reliability, relevance, credibility and weight of the evidence presented. What that does is give the panel the ability to weigh the evidence before them and determine which of that evidence should be given the most weight regardless of who presents the evidence. We believe that is a fairer way to do it than the way that Massachusetts does it. It is a tighter standard than they are currently using.

You will be hearing, I am sure, a lot of testimony on this issue. You will be told that the panels are working and don't change them. We received testimony from a couple of people that came before us and told their stories of how the panel process had let them down by having to spend thousands and thousands of dollars on out of pocket expenses just to get to the panel and through the panel process and thousands more just to get on to the trial stage. There is other evidence out there. It is

interesting that the Maine Medical Association relies on a report, a study that was done in 1987 to justify that the panels were working. While there is some evidence in those reports that indicate that the panel process is working to a certain level. Some cases are moving along quicker and the cases are not taking as long. However, there are other factors involved.

I agree that the panel process has something to do with that. To make it clear, we are not advocating doing away with the panels. What the findings of that study also showed was that there were 24 percent of the cases before the panel process that received a judgment or a settlement. After the panel process only 15 percent of the cases were receiving a judgment or a settlement. The most notable area using that study statistics were the fact that claims in the lower dollar amounts have become almost nonexistent. Someone with a, in relative terms, a minor injury or minor damages of less than \$50,000, is not recovering as they were before the panel. That is a direct reflection on the complexities of the panel and the amount of money it takes to go through the panel process. If you are going to have a potential recovery of \$20,000 or \$25,000, are you going to be able to find a lawyer who is going to be willing to take that case on a contingent fee and try it twice? Secondly, are you willing to put up \$5,000 out of your pocket for the potential of recovering \$20,000? This is complicated by the fact that many times people who are injured need to go out of state to get their expert witnesses. It is difficult to get doctors in the State of Maine to testify against other doctors from the State of Maine, as big as Maine is, it is still a small community in many ways. The cost of obtaining an expert witness can be very costly.

We hope with the changes that we are doing here, the panel process will become less costly and will move these cases through the panel process quicker. As a result of this process, yes, there will be fewer cases screened out of by the panel. You are also giving more people an opportunity to pursue what is a valid claim. We ask that you adopt these changes to keep the panel as a screening panel rather than a two-tier trial system. There are citizens in the State of Maine who have valid claims that are not able to pursue those claims under the present system. I ask that you join in supporting the Ought to Pass as Amended Report to help these people of the State of Maine to go forward and to pursue their claims. I will tell you that when you have been injured and you find that there have been these obstacles placed and you even have the opportunity to get to court, it can be all consuming in your life at that time. It can be a terrible experience for people in the State of Maine if they don't have access to the courts in a timely and cost-effective manner. I ask you to support the Ought to Pass as Amended Report. Thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Bangor, Representative Saxl.

Representative **SAXL**: Mr. Speaker, Men and Women of the House. I hate to disagree with my good friend from Naples and I rarely do, but this bill has become a perennial that the Maine Trial Lawyers introduces each year in attempt to change the screening panels.

Let me take you back to the mid-1980s when we were very concerned that there would be no obstetricians in the State of Maine and we were worried about the spiraling cost of physician care because malpractice suits had increased so much that they were either forcing physicians to leave the practice or that they were having trouble paying their malpractice insurance. So, the screening panels were born as a way to reduce malpractice

costs. You know what? They have been very successful over the years, because we don't think about that today. I ask you not to interfere and not to change a system that works well. Thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Hampden, Representative Plowman.

Representative **PLOWMAN**: Mr. Speaker, Men and Women of the House. I stand as a member of the Judiciary Committee to oppose the pending motion. The committee report goes too far. It tips the balance of the scales in favor of the plaintiff from the very beginning of the screening process. It takes the screening process and puts a hole in it big enough to fly a plane through. If we have problems with people being represented in the state, we need to pass some kind of law that says attorneys have to take small cases or that attorneys couldn't turn people away like we do in the hospitals. If we have to go out of state to get doctors to testify against other doctors, I am not surprised. We can't get lawyers to show up to testify against judges in the Judiciary Committee. It is not something that is a strange element. Maine is a small state. When you pick a standard of proof from another state and put a couple of commas and add a few words in order to make it feel better and the standard of proof says that everything that comes before this committee, three person committee, which by the way is made of a doctor, a lawyer and another lawyer, and the standard says you have to consider everything in the light most favorable to the plaintiff unless, of course, you think otherwise. What does that mean? It is a whole new standard, one we thought up just for Maine. It seems a little strange that we have something that is working and if you are saying it is not working for the small claims, this bill is the long way to get at the problem and the wrong way to get at the problem. I would ask you to leave it alone just as the good Representative from Bangor said earlier. Leave it alone. If you want to make minor changes as some of those were discussed, then that is something we can do. At this point, this is not the way to do it. I urge you to vote red on this motion. Thank you.

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

Representative **ETNIER**: Mr. Speaker, Men and Women of the House. Two years ago I had the pleasure and honor to serve on the Judiciary Committee under the now current chair, the Representative from Naples, Representative Thompson, and we dealt with this very same issue then. I felt a good percentage of the committee felt was compelling testimony for people who felt that the current pre-litigation screening panel system did not work perfectly, which is nothing too surprising. I was compelled by the testimony that it had become a two trial process and had become too much of a burden for folks who were wishing to press suits in the lower dollar level and it was no longer worth it for them to pursue those things given the heavy burden of proof that was upon them given the current setup of the pre-litigation screening panels. Hence myself and the Representative from Auburn, Representative Mailhot, were among the two at that time who chose not to go with the report that attempted to make what we felt were changes that were too broad to the pre-litigation screening panels. It was something that I felt at the time the language was too broad. It was something that I was not comfortable going with. I thought the changes that were recommended by the committee went too far and hence I couldn't go with him two years ago.

I listened today to the good Representative from Naples and to the good Representative from Hampden and I have the Committee Amendment here and various other literature that has come across my desk. I feel that the committee has made a very good effort this time and has actually addressed the concerns that they heard last time from the members of the public and from the members of the committee who didn't want them to go too far and from the members of the public who wanted them to do something. We see this report saying don't change anything. This is a successful program and don't change a single bit of punctuation in the way the current program works. As I said two years ago when I refused to go along with the changes, I knew that was always going to be the case probably by the same groups that signed the letter. The way I phrased it in is the same way I will phrase it now. These medical organizations who I have a great deal of respect for and the other ones on the list, they have the lamb bone in their teeth because the litigation screening panels are weighted, I believe, in their favor. There is no way they are ever going to go along with any changes to it no matter how reasonable and how well thought out. I never expected them too, no matter what happened and I think that is where we are today. I don't blame them. If I was in there position, I wouldn't give up that lamb bone either. It is a nice juicy one and I would want to hang on to it for all it is worth and fight for it as they are. That is good. I don't blame them. I think the Majority Report, it is a bipartisan report, which makes my heart all warm. Thankfully I think they have addressed the concerns that they have heard from the public. I urge you to support the Majority Ought to Pass Report. Thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Freeport, Representative Bull.

Representative BULL: Mr. Speaker, Men and Women of the House. As a member of the Majority bipartisan Report in Judiciary, I rise today in support of the pending motion. When this bill, even before it came before our committee about a month ago, I was receiving phone calls from both sides of this issue in my district urging me to vote one way or the other on this bill. I went into the public hearing on this with eyes wide open without any preconceived notions about what was right or wrong. After sitting through the public hearing and having at least a dozen work sessions on this bill, I am convinced that the panel does need some changing. As the good Representative from Harpswell, Representative Etnier, does work great for the doctors, because it does protect them very well from lawsuits. What we need though is a balance between the needs of the doctors to protect themselves from frivolous lawsuits and the needs of consumers of this state to get justice through the court system. Unfortunately, I do not see the present system being adequately bounced between those two competing needs.

The testimony on this bill was long and at times very emotional. In particular we had one woman come before our committee who documented her experience with the panel and how she had to spend over \$11,000 and spend close to four years of her life just to get through the panel. I ask you, ladies and gentlemen, does this seem to be working? Does this seem to be fair? We heard various other testimony that there have been numerous other incidences from people throughout the state who have had problems with this panel and have had extreme financial burdens placed upon them. Again, as the Representative from Naples mentioned, yes, the number of lawsuits has gone down, but there was no determination made between those that have been thrown out because they were

frivolous and those that have not gone forward because of the financial burden on the individual.

I am certain that members of this body have started to receive the faxes, E-mails, phone calls and letters from the doctors in the community on this issue. I bet I can just about quote to you word for word what those letters say. We urge you to oppose LD 1325. This is going to eliminate the malpractice screening panel. This is going to roll us back to the dark days of litigation and open the floodgates to frivolous lawsuits. The reason I know that word for word is because I have been receiving those letters by the stack full. The problem with those letters though is it really ignores the tremendous hard work that the committee has done on this issue. Again, please do not look at the original bill. Throw LD 1325 right in the wastebasket where it does not have any relevance on this bill anymore. You need to look at the Senate Amendment on this bill, (S-352). That is what we are talking about now. I would call the doctors in my district on this issue. I would relay the story about the woman who spent \$11,000 to go through the panel. I would relay the concerns that I had about the panel and that how I feel the changes as very well documented by the good Representative from Naples, Representative Thompson, that the changes here I feel truly are incremental and minor. After talking to these doctors to a tee, every single one of them said that sounds reasonable. When presented with the facts as they truly are before the committee, what we are doing with this bill, the doctors are truly comfortable with it. Unfortunately, the message they are getting from the lobby up here in Augusta is that the Judiciary Committee is trying to do away with the panel and it has opened the floodgates of litigation.

The Committee Amendment does not do that. It was a very carefully constructed, thought out amendment. I am very, very comfortable to stand up here today and urge your support of it. Maine is in the distinct minority of even having a medical malpractice-screening panel. If I counted properly, there are only 13 other states that have mandatory panels. We recently had a confirmation hearing for Judge Mead on the Superior Court, a reconfirmation hearing. During that hearing it came up that he had been involved in some of these screening panels in the past. The question was posed to him about his interpretation of the panel and how he felt it was working. I thought it was very, very important to note that Judge Mead who has been intimately involved in these panels in the past did note a need for some changes. These panels are not perfect. There is a need for some incremental changes. Nothing is perfect in its raw form. Over time things need to be changed, altered or work out the kinks. That is what I see us doing here today, not eliminating the panel, just simply giving it a fine tune to make sure it is going to continue to work. Again, I urge your support for the pending motion and I feel very strongly that this is the right thing to do for the consumers of the state. We cannot deny people's access to the court system in this state because we lack the financial means to do so.

The original bill was a very low standard and the current law is a very high standard. What we have here is a fair compromise between those. I urge you for the consumers of the state to support the pending motion. When the vote is taken, I request the yeas and nays.

Representative BULL of Freeport REQUESTED a roll call on the motion to ACCEPT the Majority Ought to Pass as Amended Report.

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

The SPEAKER PRO TEM: The Chair recognizes the Representative from Bridgton, Representative Waterhouse.

Representative WATERHOUSE: Mr. Speaker, Ladies and Gentlemen of the House. Just one brief comment about the comment from the Representative from Freeport making the analogy that because only 13 other states have this form of screening panel that it is not necessarily a good idea. I might remind the good Representative from Freeport that we have a number of laws in the State of Maine that other states don't even have, which I dare say would not be a good law. One of them being severance pay for displaced workers, so much for that argument.

The good Representative from Bangor made some real good points. As she said, back in the '70s and '80s we had a real crisis in medical malpractice with rapidly escalating rates driving physicians out of practice. At that time it was a great difficulty in obtaining obstetrical care because of the cost of physicians for medical liability insurance. These panels were set up by an agreement from the parties at the time and all these provisions were put into the law. There have been some changes. It seems perennially we have one party coming back and wanting to make changes. There was an independent panel that looked into the functioning of the pre-litigation screening panels. It was done by MRI Risk Consultant Incorporated. I think it was in 1997. There was an independent objective assessment and they found the panel was working and that non-meritorious claims are dropped or received damage payments in a timely manner.

The proposed change to the screening panel's burden of proof would greatly alter that balance rather than improving compensation and speeding up the process, but apt to bring more claims to trial that would not meet a preponderance of evidence standard of proof. The change of the standard of proof of this bill is much lower than the one in present as the previous speakers have said. They will result in a larger number of cases going to trial. I looked at the caseload in Massachusetts standard and as the good Representative from Naples said, they added a sentence at the end. I am not sure how much that changes the legality of the proceeding under this standard of proof. I will quote from the case law in the Massachusetts standard of proof, which covers most of which is in our standard of proof except for the last sentence. "Any proceeding before a medical malpractice tribunal the evidence presented or the offer of proof is viewed by a standard comparable to a motion of a directed verdict." That is in a light most favorable to the plaintiff. It does say in the addendum of Massachusetts standard of proof, "In making its findings the panel may consider the reliability, relevance, credibility and weight of the evidence presented." This "may" is troubling to me, which means they may not have to look at that. Whether this would still proceed as a directed verdict favoring the plaintiff, I don't know.

I showed the language to a very good attorney in the hall the other day and he verified that, yes, it would have the effect of being a directed verdict, heavily waited in favor of the plaintiff. There may be some problems in the pre-litigation screening panel. There may be some tweaking that we can do, but I have a great discomfort with doing it without the parties that originally came to the agreement because of the problem getting together and working out those problems if they exist or even have the study commission that did the study in '97 on the effectiveness of

the panels. Address those issues to see if there really is a problem. There are some cases. Ladies and gentlemen, you have heard it a million times up here from all sides and from all individuals that bad cases make bad laws. Please do not respond to the debate today on emotion and look at the consequences of changing these panels. We don't want to go back to the days when our health insurance policies were being affected by increased costs. I urge you to vote against the pending motion. Thank you.

The Speaker resumed the Chair.

The House was called to order by the Speaker.

On motion of Representative THOMPSON of Naples, **TABLED** pending his motion to **ACCEPT** the Majority **Ought to Pass as Amended Report** and later today assigned. (Roll Call Ordered)

The Chair laid before the House the following item which was **TABLED** earlier in today's session:

Expression of Legislative Sentiment recognizing Robert P. Cammack, of Augusta.

(HLS 474)

Which was tabled by Representative STEVENS of Orono pending **PASSAGE**.

The SPEAKER: The Chair recognizes the Representative from Augusta, Representative Madore.

Representative MADORE: Mr. Speaker, Ladies and Gentlemen of the House. I rise today to recognize Bob Cammack's 30 years of service to the people of Maine. I believe it was Henry Clay who once said, "Of all the properties which belong to honorable men, not one is so highly prized of that of character." Bob is a true gentleman who possesses such great love and respect for this building and institution, which it houses. He also has a great talent to taking textbook accounts of history and bringing them to life. Almost every morning I encounter Bob sitting on a bench or looking out the window waiting for his next tour and without fail I am always welcomed by him with a smile and a warm greeting. His dedication and loyalty, in my mind, are reflective of what makes him such a wonderful person. Thank you for all your hard work Bob and congratulations on this incredible milestone.

The SPEAKER: The Chair recognizes the Representative from Augusta, Representative O'Brien.

Representative O'BRIEN: Mr. Speaker, Men and Women of the House. I, too, must rise and thank Bob for his many, many years. I have to say, it may date me, but I believe I was on a tour that Bob gave many, many years ago. I have known him all these years. It amazes me that as much as I love children, it amazes me that he can still get excited about doing the same thing everyday. He explains the history and the wonder of this building to children again and again, but he does it. I also want Bob to know to express, my mother as many of you know, spent 30 something years in the Senate and she wanted to make sure that I gave her sincere thanks and appreciation for all that he has done for the people of the State of Maine. Thank you and congratulations Bob.

The SPEAKER: The Chair recognizes the Representative from Kennebunk, Representative Murphy.

Representative MURPHY: Mr. Speaker, Men and Women of the House. Bob has been Shepard to thousands of kids from Kennebunk. All of our fifth graders come up. He has been their tour guide. He has shown them the character, the human side of the building, as well as the beauty all around us. I think the thing I appreciate the most is that my father came to visit Maine for the first time and we had a Legislative Council meeting, I think it was in 1986 or 1987 and he had asked me if he could travel to the State House. It was the first time he had ever been here. We had a long, long Legislative Council meeting. Bob said that he would take care of my father. He spent three hours with my father walking every hall and looking at every portrait and giving my father, for the first time, a feel for this state and why it holds such magic for every one of us that lives here. He made this State House come alive. It was the year before my father died. I think Bob conveyed to my father how much all of us serve here love this place. I will always be eternally grateful for what you did for my father and what you did for me. Thank you Bob.

The SPEAKER: The Chair recognizes the Representative from Bowdoinham, Representative Shiah.

Representative SHIAH: Mr. Speaker, Men and Women of the House. I, too, want to send my congratulations and thanks to Bob. Just a quick story. About a year or so ago I was trying to give some people a tour of the State House, I did the best I could and they said that they had had a tour up here years ago by someone who really knew what was going on. He was a real nice man and where is he? I said that he was not here today and I am doing the best I can. They said that he did such a great job. Bob, I just want to say thank you very much.

The SPEAKER: The Chair recognizes the Representative from Winslow, Representative Matthews.

Representative MATTHEWS: Mr. Speaker, Men and Women of the House. Bob Cammack for all the reasons that have been stated deserves our strong support and applause. Ladies and gentlemen, when I decided not to run in 1992 and stood on the floor of the other body and tears were in my eyes because of the people that I would be leaving, the friendships on both sides of the aisle, and members of both Houses. Also, very much at the top of the list was the work of Bob Cammack and state employees and people that served this institution and the state so well. Bob epitomizes that to the highest degree. Thank you Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Scarborough, Representative Lovett.

Representative LOVETT: Mr. Speaker, Ladies and Gentlemen of the House. I go back to the early '60s with Bob. I have a lot of fond memories, but one of them I want to share with you is that he gave me an appreciation of this building and he did it in such a way that I will never forget. He does it to the children and it has a lasting impression. One of the things that he explained to me fully was the museum downstairs, we call it the Moose Room now. He was telling me how Clair Veck went about this museum and how put the different pieces together. Someday I hope you will ask him, because it is really outstanding the way that this was formulated. Thank you.

The SPEAKER: The Chair recognizes the Representative from Orono, Representative Stevens.

Representative STEVENS: Mr. Speaker, Men and Women of the House. As we know here in Augusta we all get so busy and we have so much to worry about, but when we have little children who come to the State House to take a tour and spend the day here, that is one less thing we have to worry about when

we know that they will be working with Bob or taking a tour with Bob. He helps make our job better and easier. They say that he is the best kept secret here in the State House, but I think today is the day that he finally knows to us he is no secret.

Subsequently, the Sentiment was **PASSED** and sent for concurrence.

The Chair laid before the House the following item which was **TABLED** earlier in today's session:

HOUSE DIVIDED REPORT - Majority (9) Ought to Pass as Amended by Committee Amendment "A" (S-352) - Minority (4) Ought Not to Pass - Committee on JUDICIARY on Bill "An Act to Provide Fairness to Victims of Medical Malpractice"

(S.P. 450) (L.D. 1325)

Which was **TABLED** by Representative THOMPSON of Naples pending his motion to **ACCEPT** the Majority **Ought to Pass as Amended** Report. (Roll Call Ordered)

The SPEAKER: The Chair recognizes the Representative from Bridgton, Representative Waterhouse.

Representative WATERHOUSE: Mr. Speaker, Ladies and Gentlemen of the House. Seems how we did take a brief break from the debate, I would like to revisit one part of the debate. That has to do with the standard of proof that is in this piece of legislation as opposed to what exists now in the statute on these screening panels. I will repeat a little bit of what I said before and then address again an issue that I don't think I covered sufficiently. I hope it clarifies the matter a little better. The proposed change to the screening panel's burden of proof would greatly alter the balance, rather than proving compensation as speeding up the process that would bring many more claims to trial that do not meet the preponderance of evidence standard of proof. The change in the standard of proof in this bill is lower one than in present law and will result in a much larger number of cases going to trial. I mentioned before in the Massachusetts standard of proof that was adopted originally in the bill in committee and then a sentence was added to it. The Massachusetts standard of proof on the case law in Massachusetts has the following language. "Any proceeding before a medical malpractice tribunal the evidence presented or the offer of proof is viewed by a standard comparable to a motion of a directed verdict." That is a direct verdict. That is in a light most favorable to the plaintiff. The good chair of the Judiciary Committee, the Representative from Naples has referred to adding a sentence to bring the standard up a little higher than Massachusetts. By adding a sentence at the end and making its findings, the panel may consider the reliability, relevance, credibility and weight of the evidence presented.

I would offer to you that my analysis of that language in talking to some legal people around is that it adds nothing to the standard of proof. That is in practice in a rule today. Any tribunal must use this standard in reviewing evidence or testimony. This is still under this standard of proof, in this bill, will result in a directed verdict weighted heavily towards the plaintiff. I understand there is a term that lawyers enjoy hearing, it is called surplusage. That is what this language is. It adds nothing to the standard of proof. What has happened in Massachusetts under this directed verdict is 80 percent of the cases in Massachusetts go through their panel process to trial. That is 80 percent. That is a double process and that is very expensive. Maine, under its present standard of proof, with our panels 15 percent go to trial. That is a huge gap. Ladies and

gentlemen, notwithstanding the anecdotal evidence, I don't think we want to go down that road. We heard talk earlier from previous speakers that this bill is a good bill for the citizens of Maine. I would submit to you that a huge increase in litigation, health insurance with the resulting cost to the people and the citizens of Maine, is not worth going in this direction. I urge you to vote against the pending motion. Thank you.

The SPEAKER: The Chair recognizes the Representative from Auburn, Representative Shields.

Representative SHIELDS: Mr. Speaker, Men and Women of the House. I have an anecdote. I have served on the panels and they worked well. Many cases were settled from the panel's experience because of the discovery of one side from another and didn't have to go to court for that long drawn out period of expensive activity. Lowering the standards of the panel will inevitably lead to a lot more court cases, which are expensive and time consuming. Also, with more court cases it will create an atmosphere of defensive medicine, which is costly and inconvenient to the patients. The medical malpractice situation can weigh on physicians very badly. If I were a physician, I wouldn't want to go back to the \$1,000 a week malpractice premium that we would have to pay.

The other thing is when people have to invest a lot of money, as we have heard this morning for it to get to the panel, they don't tell you what they are asking for and \$11,000 isn't a lot when you compare it to the \$2 million that they are looking for. I urge you to vote against the pending motion.

The SPEAKER: The Chair recognizes the Representative from Brunswick, Representative Richardson.

Representative RICHARDSON: Mr. Speaker, Men and Women of the House. I rise today, reluctantly, in opposition to the Majority Report. While there are certain warts that I think need fixing on this particular bill, this is not the way to do it. It reminds me of my late grandfather telling me when I would over react to a certain situation. He would say to me that you are using a hammer to kill a fly. I think in this case that is exactly what we are doing, with all due respect to the chair and to other fellow members that I do respect quite a lot that are on the committee. I understand it is a 9 to 4 report, but I want this body to understand that whatever we do here today and however you vote, you will not alter a person's right to proceed to trial after the pre-screening panel has ruled on the matter, whether it is for or against the patient or whether it is for or against the doctor. That right is there. What really is at the heart of this issue is that question of whether or not a label will be placed around the doctor or around the patient from the pre-screening panel. That ruling, if unanimous, can be used in court. Maybe that is not a good idea, because we have jury that ultimately decides that issue and for some extent we are tainting that jury with the notion that in fact we have already come to a conclusion. Maybe that needs fixing.

The good Representative from Freeport talked about the cost of \$11,000 to go through the pre-screening process. The truth is the changes, which are suggested here, will not substantially reduce that cost. You still have to put on your case. A prudent attorney will still pursue the matter and take the positions and will still look for an expert to prove its case. The cost of the expert witness will not change with this legislation. The process simply will not be less costly. The good chair was right when he stated that fewer cases will be screened out and that more cases will be placed on an overburdened court system. We now are confronted with a confusing standard. A

standard which is different than that which is used in court. If I were going to a pre-screening process, I would want to use the same standard that is used in court. I would want to know where I stood before I went further.

As a matter a fact, this very Legislature, in 1988, thought the same when under an emergency enactment they changed the standard of proof similar to the standard of proof, which is before you today to the standard of proof, which we now have. In there and in the preamble they stated, "Allowing claimants to prevail before the panel with a lesser standard of proof than will be required of them if they proceed to court after the panels decision is inconsistent with the purpose of the panels, which is to expedite the settlement of meritorious claims and to terminate cases without merit." That is what was said 10 years ago and that is what ought to be said today. Two years ago this bill was looked at and it came back to the body and was defeated. The truth is I have not read a thing in the paper, nor have I heard anything compelling, which should give us the right to change the standard of proof, which we now have before us. I am probably one of the few people in the body that have had the opportunity to be on both sides of these cases, for the defense and for the plaintiffs.

It is a tough system. It ought to be tough to sue a doctor and it ought to be tough to prevail and that is as it should be in any case. I look at this proposal and say this is truly a solution desperately in search of a problem. Doctors are not in favor of this bill. They are not in favor of the bill because as was described to me in a recent letter and takes some people back to the '80s we had a crisis in medical malpractice that rapidly escalated the rates and drove physicians from the practice. That is why the burden of proof was changed to the same burden of proof that we now have and enjoy today. The costs of pursuing a doctor are high. Expert witnesses are costly. Nothing in this bill will change that practice. I have heard of no public outcry for this bill. I have seen nothing in the press requiring or mandating a change. There are many against this bill. There are many entities that are very much against the proposal that is before you. I would ask you to think about this. Doctors can be sued, but HMOs cannot be. If a doctor is involved in a process and he does what an HMO tells him to do, the HMO is not held responsible for their conduct, but the doctor is. The doctor is, in essence, the deep pocket. To make it easier to open the floodgates as occurs in Massachusetts with 80 percent of the cases going to court will simply drive up costs that we need to pay. We pay it in our health care costs because doctors pay it in their medical malpractice costs. Rates have stabilized and in some cases gone down as a result of the legislation in 1988.

I ask you if you have heard anything today, which is so compelling as to make you change your mind here. I submit the answer is no. I would ask you therefore to oppose the Majority Ought to Pass Report. Thank you.

The SPEAKER: The Chair recognizes the Representative from Durham, Representative Schneider.

Representative SCHNEIDER: Mr. Speaker, Ladies and Gentlemen of the House. The compelling reason to vote for this bill is that the system as it stands right now keeps people with small injuries from gaining justice. Someone who has a small injury who has been damaged by malpractice cannot get to trial under the system as it stands right now. They system as it stands right now requires a person bringing a malpractice claim to bring it first to the screening panel. The screening panel has the same standard of proof, as does the eventual trial.

I had a professor in law school who used to tell us that you need to think through the process to be able to tell what is going to happen at the end of the process. In thinking through this process you can see that if the screening panel has the same standard of proof as does the eventual trial, that you are going to be required to put on a second trial for the screening panel. It would be malpractice for a plaintiff's attorney to do less. A plaintiff's attorney has to put on a complete case at the screening panel in order to prove that the case is meritorious in order to move forward to the next stage. Our goal in evaluating this legislation is to see that the process works and to see that it is fairly balanced. This bill would apply some balance to the process. What it does is it adjusts the standard for the screening panel to be a standard slightly below the standard for the trial, but slightly above what we call a summary judgment standard, which is the standard the judge uses to throw out a non-meritorious case. This would let the screening panels do their actual job and screen out non-meritorious cases. It would even screen out non-meritorious cases. It would even screen out cases that the judge couldn't screen out at a summary judgment phase, but it would not require putting on a whole second trial at the screening panel phase.

Ladies and gentlemen, this is important to somebody with a small case because as it stands now a person can't afford to pay \$10,000 to \$15,000 out of their own pocket to get through a screening panel and then pay another \$10,000 to \$15,000 out of their own pocket to go through the trial if their injury is only \$30,000 or \$35,000. They just economically can't afford to do it. That blocks people with legitimate injuries caused by malpractice from getting the justice that is due them. This bill will hope to address that and it addresses it in a wise way. I urge you to vote for the Majority Report.

The SPEAKER: The Chair recognizes the Representative from Westbrook, Representative Duplessie.

Representative **DUPLESSIE**: Mr. Speaker, Ladies and Gentlemen of the House. I rise in support of this pending motion. I have been personally affected by this process. It is somewhat emotional for me. I keep hearing about the system is working properly now. It has reduced costs. Yes, for who? The medical community. How about the poor patients sometimes that deserves fair justice? That is what it is about. This is not opening up the floodgates. It is a little bit about fair justice. Now the way the system is currently set up it is somewhat like the fox in the hen house.

I spent hundreds of dollars of my own money just to get my own medical records three years ago. I will not go into all the details, but I had been in the hospital for a basic operation and became infected within 12 hours, with the flesh eating disease. Within seven days I was operated on four times. They could not stop the spread of the infection with every antibiotic known to man. We had to go back to the old fashioned method of cutting parts of the body out and draining the infection. The infection set up and went to the medical journals and other materials because something went wrong in the operating room. I went to some of the most prominent attorneys in this state that handle medical malpractice and there are not many of them. There are only 10 or 12 that really handle medical malpractice, because of the cost and the time involved just to get a case to the screening panel, step one. The attorneys told me what I would need and I did get my medical records, as I mentioned, at a great expense. Next step was to get out of state medical experts to file for the case.

Most of the attorneys told me that I was looking at \$10,000 to \$20,000 out of my pocket to get the case started, not that it wasn't a good case, but I am still alive. I thank the Lord for that I am still here today. That was part of the problem. If I had passed away, it would have been a very great case for my wife to take because I have photos of what happened. If I showed anyone in this House, you would be shocked. I would have loved to have gotten my case to a jury, step three of the process.

If the screening panel okays it, a judge okays the case and then to the trial. There is not many things you do in life when you have to go through two or three trials. It is like reverse of double jeopardy. I would like to tell you there are very many cases in this state that ever get to full trial, because the system is very convoluted. We are only looking at trying to correct a piece of this ill-conceived law that was passed in the late '80s. There is more to it that is not even here today. I won't get off too far on that, but it is the statute of limitations. It is one of the most restrictive in this country. It is a three-year time limit and often times things turn up many years later. In other types of cases, people can still go to the justice system, but not with a medical case. Three years, not seven like other thing that happen in the justice system. They talk about malpractice premiums, the cost. To my knowledge when I have talked to people in this field, close to three-quarters of the medical community pay their premiums into a mutual fund pool, so to say. If they sit on the screening panel where is the interest, on the mutual fund pool where they buy their insurance or for the patient that they are supposed to be judging on that panel. I ask you to please consider passing this motion. Thank you.

The SPEAKER: The Chair recognizes the Representative from Waterville, Representative Jabar.

Representative **JABAR**: Mr. Speaker, Ladies and Gentlemen of the House. In the last session I was in the Judiciary Committee and worked very hard in trying to come up with some compromise in what really has become a problem area. I wasn't going to speak this session since I am on another committee, but on my way to the Legislature today I received a phone call from a local doctor for whom I know and has known my family for a long time. He said, "Joe, your name is really being taken in vain among all the doctor's meetings and at the hospital saying that you are out to get the doctors because you want to do away with the malpractice screening panels." I really don't appreciate the message that goes out here, the sound bites and the lobbyists saying that we are trying to get rid of the screening panels. It is a gross overstatement if not an outright deception. When I explain to the doctor what we are talking about and what the adjustment is, he says, oh is that what it is all about. The calls we are getting from Augusta sounds like you people are trying to do away with the malpractice screening panels.

Let me give you just a little bit of background about my bias. I am an attorney so therefore everybody thinks I have an interest in this case. I have a brother who is a doctor. I have a nephew and a niece who are doctors. I have numerous other family members who are in the medical profession and nurses. By no means am I out to get doctors by supporting this bill. In the last seven and a half years I think I have represented three cases and one of them I am going to tell you about. It is a small case and I want to talk to you about it. In my whole career of 20 years I have never recovered one cent against any doctor in any malpractice case. This is not a matter of me trying to protect my own interest and protect my own cases because that is the type

of work I do. I don't do this type of work. Two of the three cases I have had involve family and friends and is not something I make a practice of. Secondly, I have served as a chair on a lot of these malpractice-screening panels. I have served on many more cases as chair than I have as a litigant. I have seen how these cases operate and what they turn into. I have also seen the change over the years from what was once a screening process into a judicial process. There are two judicial processes that people have to go through to get their case heard. The people who lose are the people who have claims that aren't million dollar cases, because it is impossible to get a case heard without putting a lot of money out on the line even though you want to have your case reviewed by the panel.

The case I want to tell you about and it is really ironic because the case was recently tried and the jury verdict came back in favor of my client on the very day that the Judiciary Committee was holding a public hearing on this very bill. This case that I want to tell you about started seven and half years ago. I won't go into all the details, but it dealt with a misdiagnosis of VD involving a couple that were happily married with two children. Because of the mistake, problems arose in the marriage and the marriage broke up. They have both since remarried. When this happened they went to another local doctor, a specialist, who told them what happened was wrong. It shouldn't have happened to you. They all but told him they should see somebody about it and do something about it and they did. One of the problems you have with malpractice cases is local doctors will not testify or standup when they believe something is wrong. That very doctor that led them into the lawyers office and steered them in that direction, when the time came, would not testify to what the doctor had said about the misdiagnosis by the other doctor.

This couple started down the road believing that they would have this other doctor supporting them and then once the case started there was no more support. They were on their own. Now you have to go out of state to get an expert and that costs money. It costs \$1,500 for this couple to get a report, just a report, from an expert that could be used in front of the screening panel. The case goes in front of the screening panel and we hear all about alternative dispute resolution, ADR. Cases will be settled at the screening panel. They were never offered one cent before the screening panel. In front of the screening panel it was 2 to 1 in favor of my client. The one who voted against them was a doctor. This was not a big case. My clients were not looking for a lot of money. They did not receive a lot of money in the end, seven and a half years later, in front of a jury. If they had gotten \$1 they would have been satisfied. It was that type of case. Now they have \$4,000 invested when they go in front of the screening panel. I said to them, me without a lot of experience in these cases, if you go in front of the screening panel and you get a 2 to 1, maybe they will settle after that and you will get some satisfaction and at least get your expenses paid. The very same company who wouldn't even settle comes before the Judiciary Committee and says that cases get settled at the panel level. After the panel decision of 2 to 1, they still wouldn't offer my client one cent to settle their case and give them some acknowledgement that what happened may have been wrong.

What do these people do? They have two and a half years into this case. They have \$4,000 and this is out of pocket expenses. These aren't attorney's fees. We are not talking about lawyer's fees. We are talking about cost for depositions,

costs of filing fees and costs of the expert. What choice do they have? They have a 2 to 1 decision. Do they go home and say they tried? I spent \$4,000 for nothing. I have two people on this panel to agree with me. What choice do they have? They continue on with the process with more money, more expert fees and more depositions. Seven and a half years later after this happened they finally got their day in court. Maybe they will settle on the courthouse steps. No, nothing, absolutely zero and they have gone this far and they are discouraged. They don't want to go through with it at this point in time. They have remarried. They have gone on with their lives, but they also don't want to pay \$9,000 out of their pocket to get where they are seven years later. They had their day in court. The jury finds in their favor and they recover \$17,500. They are going to get almost as much in interest as they are in their recovery. They were happy because they got their day in court. That is what a lot of people want. They want an opportunity to tell their story and for somebody to make a decision.

The case is still not over yet. We are still fighting motions. There is probably still going to be an appeal. It is a great myth out there to say that the panels act ADR, alternative dispute resolution, for settlement of cases. They don't. They create obstacles against my client and maybe they figure they wouldn't go through all this expense because the case wasn't worth it. The other problem is doctors aren't going to testify against other doctors. Another myth out there is that screening panels are efficient and they are quick and expeditious. They are not quick and they are not expeditious and they do not result in settlements. They do not result in settlements. Another myth is that this will take us back to the '70s and to the '80s. We heard that in the last session and we are going to hear it again. We hear it anytime somebody wants to make a change in a law, that is what you hear. We cannot go back. Once the pendulum swings one way there is no way of swinging it back. I don't believe that. Many times it is necessary to make adjustments and this law when it was passed was not by agreement. I have heard this before.

There was no agreement between the attorneys and the insurance industry when these reforms went through. These reforms went through over the objections of the attorneys, especially as it was to the standards. What they felt was going to be a problem has become a serious problem, because people have to go through the case twice. If my clients knew then what they know now, they never would have pursued their case even though seven and a half years later a jury found in their favor. They would not go through what they have gone through for the last seven years, if they knew what they know now. People come to see me now and I turn them away. I say that unless you want to go through this, forget it.

In the 1970s and 1980s the Dow Jones was at 3,000. It is now over 10,000. Unemployment was up. Things change and times change. The insurance companies that are complaining about operating in Maine, they are selling insurance in New Hampshire and Vermont and they don't have panels in Vermont and New Hampshire. How do you explain that? Is Maine really that much different than New Hampshire and Vermont? Something else, another myth, the worry about runaway juries. Right now if you have a case that you want to go into court. It is the insurance industry and the defense that want the jury trials. Plaintiffs will request a judge trial more often than they will a jury trial and you check with attorneys right now and it is the defense and the insurance industry that are requesting jury trials,

because Maine juries are conservative. You look at the jury verdicts on all types of cases from malpractice, to slips and falls, to people being rear ended in automobile accidents and Maine juries are finding for the defendants. I will show you right now five cases that I read about this last year that will convince you that Maine juries are not these runaway juries that you read about in Alabama, California or wherever. The people who are being denied are the people with small claims. The people with a million dollar cases who want to proceed against the insurance industry or proceed against doctors or a hospital for malpractice; this screening panel is a hurdle. They will spend the money, but in my practice I represent the small people. We are not talking about the big cases who want their day in court and are not getting it. They are not getting their day in court.

In conclusion, I just want you to read the language that is in here. I read the language to the doctor who had questions this morning. Whether the evidence presented if properly substantiated is sufficient to raise a legitimate question of liability appropriate for judicial inquiry. A doctor is going to be on that panel. There is a chairperson on that panel and there is lawyer on that panel. That is another myth. The lawyer on the panel is there to represent the interest of the claimant and the doctor is there to represent the interest of the doctor. That is not true. The three people are going to be impartial. The doctor is supposed to be impartial. The attorney is supposed to be impartial. After all, there is an attorney for the doctor and there is an attorney for the plaintiff. Don't get the mistaken idea that there is a doctor on one side and a lawyer on the other therefore it is a defense on one side and a plaintiff on the other. That is not the case. Those people, the chairman, the attorney and the doctor, do you really believe in reading this language that frivolous cases, cases that shouldn't go to court, are going to get through. Personally, I don't think this reform goes far enough. I think attorneys are still going to have to present a pretty strong case in front of the panel given this standard. It is a step in the right direction.

There are a lot of other good parts of this bill about eliminating the number of depositions, the confidentiality provision that you should consider that will help the process and help people. Right now it is working for the insurance industry and it is working for the doctor. It is not working for your neighbor, the person that has problems that want their day in court. I ask you strongly before you vote to read the language and tell me that after reading this language you can honestly say that you are getting rid of screening panels by putting in this language. Thank you.

The SPEAKER: The Chair recognizes the Representative from Hampden, Representative Plowman.

Representative **PLOWMAN**: Mr. Speaker, Men and Women of the House. The panel must be impartial, you just heard. If you pass this bill, it starts off with a tilt. It is the tilt in favor of the plaintiff. If you pass this bill, it will not decrease filing fees in court. It will not decrease the cost of your witnesses. It will not encourage doctors to testify against one another. It will not cut the cost of putting on a trial. It will not make attorneys accept small cases. It will not say that you cannot file a motion to continue, the most frequently typed and filed motion in any court in the State of Maine. It will not say you may not reschedule depositions. It may not say that you can be placed on a trailing docket list and wait for your trial to have its turn in the jury system. It doesn't change any of those things. The process will still be long. The process will still be expensive.

Attorneys will still have conflicts of time. Doctors will still have to perform emergency surgeries and not be able to do depositions. You will still have to pay your filing fee to go to court. None of this is going to change.

The only thing that is going to change is how much weight the three people are supposed to give to the evidence presented by the plaintiff. The words that were added to appease and to calm persons concerns is surplusage, extra words to make you feel good, but have no basis in law. The people who quoted this legislation to doctors did not bother to read the case law that interprets this standard of evidence. The case law says when you use this standard of evidence. The evidence presented must be received by the people listening in the light most favorable to the attorney. I am quite sure that case law was not read to any doctor who suddenly this morning felt like things were okay. It is not okay. All of the ills that you just heard about are certainly ill with the way we have our civil trials and justice system. This bill doesn't affect any of them, so please don't get caught up in that. Stick with the proof, the standard of proof. Do you want to go to what is now an impartial panel and take that impartial panel and tell them, by the way while you are listening impartially, make sure you hear everything that is favorable to the plaintiff? If you hear something that might not be at least taken in the best light possible for the plaintiff, if that is not taking away impartiality, then please explain to me what it is. I urge you to defeat this report.

The SPEAKER: The Chair recognizes the Representative from Bridgton, Representative Waterhouse. Having spoken twice now requests unanimous consent to address the House a third time. Is there objection? Chair hears no objection, the Representative may proceed.

Representative **WATERHOUSE**: Mr. Speaker, Men and Women of the House. The good Representative from Hampden is entirely correct. We should stay focused on that standard of proof and the case law that went with it. I do agree with here that if you explain the legalities of the case law in Massachusetts and the addendum language that is in this bill to any doctor, he would not think it is good thing for them. It is not a good thing for us. It is not a good thing for society to increase health care costs by going this route.

I want to refer back to what the good Representative from Brunswick said, this is exactly the feeling I have with trying to correct some perceived ills in the panel. It is using a hammer to kill a fly. One more comment. I wasn't going to bring this up, but the good Representative from Waterville did and I will say right up in front that I have great respect for him and I consider him a friend, really. I was in the work session when he was talking about his case. I still use that expression that we often hear up here and that is bad cases make bad laws. How many cases like that come up? I don't know, but I have asked around to the different people involved in this arena and they say they only know of that one, but there may be more, but they are certainly not numerous. I asked the good Representative from Waterville in the work session what the problem was that was slowing down the process. You talked about the long extended period of time. He told me it wasn't the discovery. Correct me if I am wrong in that area, but he said it was the filing of motions. Ladies and gentlemen, this bill is not going to stop anybody from filing motions. You would still have that time frame that would be involved in continuing a case. I think I heard the good Representative say that some motions are still pending. This is not going to shorten that time period up in the areas that have to

deal with that. I urge you to vote and stick with the request to vote against the Majority Ought to Pass Report. Thank you.

The SPEAKER: The Chair recognizes the Representative from Bangor, Representative Saxl.

Representative SAXL: Mr. Speaker, Men and Women of the House. I want to bring to your attention the fact that Alessandro Iuppa, the Superintendent of Insurance, testified against this bill. In his testimony he indicated that in 1997 as required by Legislative Resolve 76. The Bureau of Insurance presented to the committee a report titled *Analysis of the Effectiveness of Medical Professional Liability Prescreening Panel*. The report was prepared by the Independent Actuarial Consulting Firm, AMI Risk Consultants. The study and review was requested by the Legislature to measure the pre-litigation screening panel process. The first consideration was the promotion of early recovery for those injured by professional negligence. The second was promote early withdrawal dismissal of non-meritorious claims. Third, reduce the value of recovery or impair access to recovery for meritorious cases and impact of the cost of health care on our medical liability insurance.

After completing a review of claim information from the Maine Health Security Act and Quartz Data Basis, the consultants included that the panels promote quicker recovery for those who receive awards, promote earlier dismissal of claims that conclude with no awards and do not reduce the overall average size of the awards and reduce the proportion of claimants receiving awards. AMI also concluded that there has been a downward improvement trend in the length of time needed to settle claims that conclude with no award. They did not observe a trend in the settlement period for claims with awards. In addition, they were not able to conclude what net impact the pre-screening panels have on the cost of health care medical liability insurance.

LD 1325 would alter the panel review process by changing the standards to evaluate claims. Under the current law the panel must base its findings on whether the acts of omission constitute a deviation from the applicable standard of care, whether the acts or omissions approximately caused the injury. If the negligence is found, whether negligence by the patient is equal to or greater than the provider or practitioner. The standard of proof is the preponderance of evidence. The plaintiff must prove negligence and approximate cause. The defendant must prove comparative negligence. This bill would require that the panels define whether the evidence from its reasonable inference that there was deviation from the applicable standard of care and that the acts or omissions approximately caused the injury and if there is a reasonable inference of negligence whether the evidence from it that the negligence by the patient was equal to or greater than that of the practitioner or provider. The new standard of proof would be whether in viewing the evidence all reasonable inferences from the evidence any reasonable basis exists upon which a jury could find for the plaintiff on the issues of negligence and causation.

I believe that these new standards would force more cases to go to court and delay resolution. They could also lead to increased costs of liability insurance and health costs would likely result in more litigated cases ending up with no award for the plaintiff. I have concerns for the panel hearing proceedings prohibiting discovery and believe the panel chairs should retain the latitude and current law. In some there is independent and conclusive evidence that the current statute is achieving its purpose. Changes to the essential parts of the prescreening

panel process contained in this bill would be contrary to public policy goals of a panel process that is to encourage the resolution of claims prior to the commencement of litigation. We are concerned that this bill could reverse this result. We therefore recommend that the bill be voted Ought Not to Pass. I ask you to bear with some independent source. It is very tempting to be moved by an emotional plea of an individual case and there are many that are out there. It is very easy to be influenced by someone who is able to present evidence in a very convincing manner. We have heard that today. I ask you to take the opinion of factual, actuarial information and vote Ought Not to Pass. Thank you.

The SPEAKER: The Chair recognizes the Representative from Wilton, Representative Laverdiere.

Representative LAVERDIERE: Mr. Speaker, Men and Women of the House. Over the past several months I have paid close attention to a number of debates on a number of topics. I have listened to many of you as you have given sometimes very emotional and moving speeches on the floor. You have not seen me rise very often. I am going to ask that you give me the courtesy of listening very closely to what I am about to tell you. I want to start off first by telling you that I have to make two disclaimers. As many of you know, I am an attorney. I am sorry, but I am. I do not, however, engage in litigation. I am a transactional attorney. Whether or not this bill passes means nothing to me financially or in any other way. The second disclosure I have to make is that for the past 10 years I have been on a board of a local hospital and I have served for several years as chairman of that board. I have an acute understanding of the needs and the wants of the medical community. I am not going to get into the technical details of this bill and how it works. You have heard enough of that and I don't want to bore you anymore.

I do want to take a minute and ask you to think about the bigger picture. Many of our forefathers fought and died. Many of you who are veterans and served in our military worked hard to preserve a simple principle. That simple principle is that under our Constitution if someone does something to you that they should not have done and they have injured you. You have the right of redress. You have the right to go to court and seek redress. That is a core function of our Constitution. If someone deprives you of your sight, someone maims or kills your spouse, someone deprives your child of the opportunity to walk, you have the right to go to court.

On the other side of this issue there are people in our society who take advantage of that. They file lawsuits over nothing at all. Lord, do we hear about those in the newspaper. People taking advantage of the system. So, we need to find a way to prevent those cases from coming into our court system. The panel process that we are talking about is a way to strike a balance. It is to strike a balance between those cases that we want to give people the right to have their day in court, but still protect the system from those people who would file frivolous lawsuits.

You know the great American political scientist, William White; he wrote many textbooks that he used in colleges and political science. He is one of my all-time heroes. He started every book with a simple phrase. It says this, "In politics as in life, where you sit is where you stand." It is all a matter of perception. If I am a physician and I don't want to be sued, the law as it sits right now works very well. Many of you have heard from your physicians saying that this law works very well and

don't change it. It does work very well for the physicians. I don't have any ill will towards any of the physicians, but I have to tell you that the system is really not geared and not about physicians. It is really in large part about defense attorneys.

I want to ask you a simple question and I want you to think about it. Put yourself in the shoes of a defense attorney. As a defense attorney you are going to be making a substantial amount per hour, \$150 an hour. You are going to be paid for every hour that you work. Isn't it in your best interest to have two trials in every matter? Isn't it in your best interest to drag this thing out for as many years as you possibly can. Hey, it is a college tuition plan for your kids. It works very well. The fact of the matter is they are getting paid, win or lose. They have an incentive to drag this case out as long as possible. If you are a physician and you sit in the position of an individual who has been harmed or whose spouse has been harmed or if it is your grandchild or your child that has been harmed, from your position this system does not work well at all. It is all a matter of perception. What we need to find is what is fair? Where the middle ground is? Where can people find that middle ground that says that people with good cases have the right to go to court and people with frivolous claims don't? That is what this is all about.

I would suggest to you that where the break point is now is not fair. That is why I support LD 1325 and changing where that demarcation line is between the cases that can go to court and those cases that are held out, because too many good cases are being held out. I hear people say the system is working. It is keeping all of these cases out. Yes, we could make the system perfect and keep all of the cases out. That is called immunity. We don't do that. Why? We recognize that there are legitimate cases and people, your constituents and you, have the right to have your day in court. That is what we are talking about. Insuring that your constituents have the right to have their day in court, not all of them, not those that have frivolous cases, but those that have legitimate cases. I would submit to you that the bill that we are submitting here is one that will do that.

Finally, the last thing I want to say is this. That is that many of you have received and continued to receive letters, faxes and phone calls from physicians. Many of whom you respect and many of whom I respect, I have received probably more than most of you since I am on the Judiciary Committee. You know, invariably, every single time I have gotten a phone call from a physician, they said the same thing. It is the message that is being handed out by the lobby. You are trying to destroy the panel process. You are going to open the floodgates. You are going to make this terrible for all of us. I will sit down and begin to talk with the physician and say that we threw out the bill and we have an amendment. This is what it does. This is how it works. You know what, every single physician that I have talked to has said the same thing to me. I have talked with many of them. They have said, is that all you are doing? That doesn't sound like a big deal. We thought it was a lot worse. I submit to you to take the messages that you are receiving with somewhat of a grain of salt. I think your physicians are acting in good faith. I think that they are doing what they believe to be true. I think that some of them may have been misinformed. I will tell you that this bill is a good bill and I urge you to please support LD 1325. Thank you very much for your attention.

The SPEAKER: The Chair recognizes the Representative from Buxton, Representative Savage.

Representative **SAVAGE**: Mr. Speaker, Men and Women of the House. I will give the same disclaimer. I am an attorney, but I, like most of you, would have no clue what to do with a medical malpractice case, which is why I have a couple of instances that I want to tell you about. They are instances that do not appear in any actuarial table. They are people who called me up and said I had this happen to me, what do I do? Because I know nothing about medical malpractice cases, I tell them I will refer them to someone who does. Both of those cases the people came back to me months later and said that the attorney told me I had a great case, but there is not enough money in the case to try the case twice. Those cases never appear in any actuarial table, because they never enter the system. Those people could be your constituents. Thank you.

The SPEAKER: The Chair recognizes the Representative from Bridgton, Representative Waterhouse. Having spoken three times now requests unanimous consent to address the House a fourth time. Is there objection? Chair hears no objection, the Representative may proceed.

Representative **WATERHOUSE**: Mr. Speaker, Ladies and Gentlemen of the House. Thank you for your indulgence. I promise I will not get up and speak on this issue again. I felt compelled to reply to the good Representative from Wilton. A seatmate of mine in Judiciary who I also have high regard for and I agree with him in a lot of issues I think, much to both of our surprise. I do agree with him that we do want our constituents to have legitimate cases to have their day in court. In fact, I think the good Representative and I were on a Minority Report to promote jury trial. I think it was Representative Savage's bill. I am not sure. Be that as it may, the problem I have with approaching this issue at this point is if there is a problem, a serious problem, with our constituents, citizens in the state, from getting redress from good cases through the screening panel process, I do not see an independent evaluation saying that.

As I said earlier, we had an independent evaluation of how the panel process was working according to how the Legislature set it up back when we started this process and then came out with a number of findings. There was no findings one way or the other deciding whether good cases were not making it through the system. What I am saying here is instead of taking this huge step hearing from one side of the table, actually two sides, but we should have another independent study to look at that issue. If we get the study back today, yes, there is a problem. There are some good cases, documented cases, that probably should have made it to the process, but for whatever reason, expense or whatever, did not make it, then maybe we should make this change. I stand here telling you, ladies and gentlemen, if I get a report from an independent board like the one that did the study three years later said that, I will be more than willing to change the standard of proof.

Again, I will suggest to you that the good Representative from Wilton as I did to the Representative from Waterville, that maybe when they talked to their doctors, I am not sure, maybe they can correct me if I am wrong, when they explained the change in the standard of proof that they mentioned that it was a directed verdict standard of proof that weighted heavily toward the plaintiff. That is the analysis that I got from it from talking to other lawyers. I might say that not from the medical profession that said that. This is a directed verdict weighted heavily toward the plaintiff. If any doctors signed off on that, God bless them, I don't think they would. Again, I can't stress to you enough if

there is a problem, let's do it the right way. Let's take a look at with a study and then proceed from there. Thank you.

The SPEAKER: The Chair recognizes the Representative from Naples, Representative Thompson.

Representative THOMPSON: Mr. Speaker, Men and Women of the House. I have listened to a lot of testimony here today and all of you have very patiently. I feel compelled having started this out to comment on some of the things that have happened since I stood up. I would like to thank the Representative from Bangor for presenting us with the opportunity to delve into this little independent report we are talking about and talk about what the findings actually were. There were some positive findings. It did promote quicker recovery for those who receive awards. We agree. I am going to tell you there are some other facts involved. Back in 1986 it took six years to get a civil case to trial in the court system of this state. That has been cut in half now. It is not a considered issue. That is all right. It will promote earlier dismissal of claims that conclude with no award. It did not reduce the overall average size of award. The money issues are about the same on the size of the awards average, but then it makes one more finding that nobody ever talks about when they are talking about how good of a report this was for the industry. Reduce the proportion of claimants receiving awards. They start out with the definition that a meritorious claim is anyone who receives an award. Before the panels 21 percent of the claims were meritorious. That is the same independent report. After the panels only 15 percent of the claims are meritorious. What is happening with those other 9 percent of those claims? All of a sudden they are not meritorious. If you believe that, then you have to believe that the insurance company paid out all of those non-meritorious claims in the past. I don't believe that. I believe the panel is successfully screening out meritorious claims.

There were also statements made that 80 percent of the cases in Massachusetts go through the panels and go on to courts. That is not true. About 80 percent of them get through the screening process, but they don't go to court. Some of them settle before they go to court. Just as a number of cases that go through our screening panel, some of them settle before they go to court. The underlying thing here is the cost of health insurance coverage and medical malpractice insurance coverage. There hasn't been an overall raise in malpractice premiums for 10 years. Has your insurance stayed stable for 10 years? We had a doctor testify that he hasn't had an increase for 10 years in front of our committee. It is a medical mutual insurance company and it is the biggest insurer in the State of Maine and it is owned by the doctors. That is great. It has done a good job. If there is excess money, it goes back to the doctors. They haven't had any increase in premiums and they are paying dividends. Let's not get smoke screened at the cost of malpractice insurance here.

One of the key factors driving medical malpractice lawsuits, it is a very understandable one, is that doctors hate to settle malpractice cases because they get a black mark against them. There is a registry that does that. They keep track of doctors that settle or have a malpractice claim against them. It is bad for the doctors. I understand that, but what it also does is say I would rather spend \$20,000 fighting this case, than to pay a \$20,000 settlement. The bottom result is it may have cost \$20,000 to defend the case, but I don't have the mark against me that I committed the malpractice. I understand that, but that is part of the driving force behind cases not getting settled also.

What we are talking about here is a balancing test about people. We had people come to us. We had several other letters sent to us about people who have had horrendous experiences before the panel. There is a problem there. If you get anybody one on one, I don't care what side of the issue they are on, do you think there are some problems here? I would venture that they are going to say, yes, there are some problems here. They can never agree on what the solution will be. They will never give you a solution. This committee went on its own and said that we will have to work the solution. We set the public policy. We have to balance the rights of the doctors and the patients. We are the ones responsible for doing that as a committee and now it is your responsibility. Balance the rights of the people who are not getting their day in court who are going through a horrendously expensive process that is tilted against them now. This bill is sent to try to make it a more equal process and that is what we are asking you to consider and to vote for. I hope you will please support the Majority Ought 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. I want first to thank the good Representative from Wilton to bring up Judge White's name. I did not know him as WW, but rather I believe he is talking about a person I would refer to as Wizer White. It is coincidental that at the top of the sheet I have the word justice, because in many of his writings, that is what he talked about, justice, equal justice. Justice, if you look it up, it certainly means favorable to being just. I am also reminded of one of the greatest tennis players in the world. A lady that is getting ready to retire and she said the moment of victory is much too short to live for that alone and nothing else. This particular bill, certainly in its infancy, evidentially was working well. Like anything else, it doesn't work well forever and it must be changed. In the old fashioned language titivated. This particular bill is trying to do nothing else, but to give everyone protection in the justice system. I am not a lawyer, but I have had many studies made in education and anyone would be foolish if you want to prove a point that you don't pick out some of these experts who are doing the work for it to show favorably on your side. Don't say you can't find them, because you can.

Opponents speaking have said that a large percent of the cases have been adjudicated or settled at a lower level with settlements. I say to you, are they equal? Are they equal at this point? If you have got to have two trials, just think of that, although one is stated to be just a screening. Times have changed and another speaker spoke about going back to 1980. We didn't have that type of an atmosphere in the '30s, '40s and '50s. It changed. We had it in the 1980s and hopefully it will change in the '90s and going into the next century.

I remember one night getting into an automobile with my best friend and we went for a ride and on the way back he wanted to see how fast it would go. The last time I looked at the speedometer it was 105. We went off the road. I had many injuries and scars, which I still have. I remember vividly when I got a little healthy and my dad wanted to speak to me about it, he said, you know, people are wondering why I don't sue the boy and his parents who own the car. He said that I want you to know that will not happen because you were told not to ride in that car before. I won't tell you what era that was in. I feel strongly about this and there are many things, which I cannot say

at this time. Yes, it may be working, but it isn't working for a lot of people. I do think that this bill is changed just enough so that more people will be able to not only get a settlement, but to get a fair settlement. There is a great difference. I hope that it isn't too often that I vote against those in my caucus that have voted the other way on this bill. This is not a case of Ds and Rs. It is a case of what is right. I plan to vote on the side of the Majority Ought to Pass as Amended.

The SPEAKER: A roll call has been ordered. The pending question before the House is acceptance of the Majority Ought to Pass as Amended Report. All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 315

YEA - Baker, Berry RL, Bolduc, Bouffard, Brennan, Bryant, Bull, Cameron, Chick, Clark, Cowger, Davidson, Davis, Desmond, Dudley, Dunlap, Duplessie, Etnier, Fuller, Gagne, Goodwin, Green, Hatch, Jabar, Jacobs, Kane, Labrecque, LaVerdiere, Lemoine, Martin, McAlevey, McDonough, McGlocklin, McKee, Mitchell, Murphy E, Norbert, O'Neal, O'Neil, Perry, Powers, Quint, Richard, Rines, Samson, Savage W, Saxl MV, Schneider, Sherman, Shiah, Sirois, Skoglund, Stanley, Stevens, Sullivan, Thompson, Townsend, Tracy, Tripp, True, Twomey, Usher, Volenik, Watson, Wheeler GJ, Williams, Mr. Speaker.

NAY - Ahearne, Andrews, Bagley, Belanger, Berry DP, Bowles, Bragdon, Brooks, Bruno, Buck, Bumps, Campbell, Carr, Chizmar, Cianchette, Clough, Collins, Colwell, Cote, Cross, Daigle, Dugay, Duncan, Fisher, Foster, Frechette, Gagnon, Gerry, Gillis, Glynn, Gooley, Heidrich, Honey, Jodrey, Jones, Joy, Kasprzak, Kneeland, Lemont, Lindahl, Lovett, MacDougall, Mack, Madore, Mailhot, Marvin, Matthews, Mayo, McKenney, McNeil, Mendros, Murphy T, Nass, Nutting, O'Brien JA, O'Brien LL, Peavey, Perkins, Pieh, Pinkham, Plowman, Povich, Richardson E, Richardson J, Rosen, Sanborn, Savage C, Saxl JW, Shields, Shorey, Snowe-Mello, Stanwood, Stedman, Tessier, Tobin D, Tobin J, Trahan, Treadwell, Waterhouse, Weston, Wheeler EM, Winsor.

ABSENT - Muse, Tuttle.

Yes, 67; No, 82; Absent, 2; Excused, 0.

67 having voted in the affirmative and 82 voted in the negative, with 2 being absent, the Majority Ought to Pass as Amended Report was **NOT ACCEPTED**.

Subsequently, the Majority Ought Not to Pass Report was **ACCEPTED** in **NON-CONCURRENCE** and sent for concurrence.

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

The Chair laid before the House the following item which was **TABLED** earlier in today's session:

HOUSE DIVIDED REPORT - Majority (8) **Ought to Pass as Amended by Committee Amendment "A" (S-280)** - Minority (4) **Ought to Pass as Amended by Committee Amendment "B" (S-281)** - Committee on **LABOR** on Bill "An Act to Increase the Minimum Wage"

(S.P. 669) (L.D. 1891)

Which was **TABLED** by Representative **HATCH** of Skowhegan pending her motion to **ACCEPT** the Majority Ought to Pass as Amended Report.

Representative **SAXL** of Portland **REQUESTED** a roll call on the motion to **ACCEPT** the Majority Ought to Pass as Amended Report.

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 Falmouth, Representative **Davis**.

Representative **DAVIS**: Mr. Speaker, Men and Women of the House. This is the minimum wage bill, which I think divides a lot of Americans. I have a brother that asked me how I could possibly vote against the minimum wage bill? About three or four weeks ago I had Friday and Saturday off so I went around Falmouth and asked businessmen. I asked every small businessman I could reach in a two-day period. Every one of them said to not vote for the minimum wage. I asked them why and also how much are you paying your workers? They all paid more than the minimum wage. I asked them if they were hiring teenagers and they said, no, they do not hire teenagers because they like people to work their way up. They don't know if they are worth it at this point. It causes teenage unemployment. My little survey is unscientific, I realize, but I reached all the businesses I could in a two-day period. There is an editorial in the *Wall Street Journal* today saying that teenage unemployment would be caused by an increase in the minimum wage and it has several other points. I ask you to really look at this and small business certainly does not want a raise in the minimum wage. I would ask you to look at the whole idea of this. It sounds good. It feels good, but is it good for the American economy? Is it good for the Maine economy? Thank you very much.

The **SPEAKER**: A roll call has been ordered. The pending question before the House is acceptance of the Majority Ought to Pass as Amended Report. All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 316

YEA - Ahearne, Bagley, Baker, Berry RL, Bolduc, Bouffard, Brennan, Brooks, Bryant, Bull, Chick, Chizmar, Clark, Colwell, Cote, Cowger, Davidson, Desmond, Dudley, Dugay, Dunlap, Duplessie, Etnier, Fisher, Frechette, Fuller, Gagne, Gagnon, Gerry, Goodwin, Green, Hatch, Jabar, Jacobs, Kane, LaVerdiere, Lemoine, Mailhot, Martin, Matthews, McDonough, McGlocklin, McKee, Mendros, Mitchell, Muse, Norbert, O'Brien LL, O'Neil, Perry, Pieh, Povich, Powers, Quint, Richard, Richardson J, Rines, Samson, Sanborn, Savage W, Saxl JW, Shiah, Sirois, Skoglund, Stanley, Stevens, Sullivan, Tessier, Thompson, Townsend, Tracy, Tripp, Twomey, Usher, Volenik, Watson, Wheeler GJ, Williams, Mr. Speaker.

NAY - Andrews, Belanger, Berry DP, Bowles, Bragdon, Bruno, Buck, Bumps, Cameron, Campbell, Carr, Cianchette, Clough, Collins, Cross, Daigle, Davis, Duncan, Foster, Gillis, Glynn, Gooley, Heidrich, Honey, Jodrey, Jones, Joy, Kasprzak, Kneeland, Labrecque, Lemont, Lindahl, Lovett, MacDougall, Mack, Madore, Marvin, Mayo, McAlevey, McKenney, McNeil, Murphy E, Murphy T, Nass, Nutting, O'Brien JA, O'Neal, Peavey, Perkins, Pinkham, Plowman, Richardson E, Rosen, Savage C, Schneider, Sherman, Shields, Shorey, Snowe-Mello, Stanwood, Stedman, Tobin D, Tobin J, Trahan, Treadwell, True, Waterhouse, Weston, Wheeler EM, Winsor.

ABSENT - Tuttle.

Yes, 80; No, 70; Absent, 1; Excused, 0.

80 having voted in the affirmative and 70 voted in the negative, with 1 being absent, the Majority Ought to Pass as Amended Report was **ACCEPTED**.

The Bill was **READ ONCE**. **Committee Amendment "A" (S-280)** was **READ** by the Clerk and **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-280)** in concurrence. **ORDERED SENT FORTHWITH**.

Representative ETNIER of Harpswell assumed the Chair.
The House was called to order by the Speaker Pro Tem.

The following items were taken up out of order by unanimous consent:

SENATE PAPERS

Bill "An Act to Fund the Collective Bargaining Agreements and Benefits of Employees Covered by Collective Bargaining and for Certain Employees Excluded from Collective Bargaining" (EMERGENCY)

(S.P. 847) (L.D. 2247)

Bill "An Act to Fund the Collective Bargaining Agreements and Benefits of Employees Covered by Collective Bargaining and for Certain Employees Excepted from Collective Bargaining for the Judicial Branch" (EMERGENCY)

(S.P. 848) (L.D. 2248)

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.

The following Joint Resolution: (S.P. 838)

JOINT RESOLUTION PROCLAIMING JUNE TO BE "IT'S MY FIGHT, TOO" MONTH TO FIGHT AGAINST BREAST CANCER

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

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

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

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

RESOLVED: That We, the Members of the One Hundred and Nineteenth Legislature, now assembled in the First Regular Session, take this occasion to recognize the importance of involving the whole family in the struggle against breast cancer and that we designate June 1999 as "It's My Fight, Too" month in Maine; and be it further

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

Northeast Health Care Quality Foundation and the American Cancer Society, Maine Division, Inc.

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

The following Joint Resolution: (S.P. 842)

JOINT RESOLUTION RECOGNIZING THE 35TH ANNIVERSARY OF MAINE'S COMMUNITY ACTION PROGRAM AGENCIES

WHEREAS, the 11 community action agencies and their affiliates in the State, commonly referred to as "CAPs," community action programs, carry on a tradition of community service that started in 1964 when Governor John Reed created the State Office of Economic Opportunity based upon the United States Economic Opportunity Act of 1964 inspired by President Kennedy; and

WHEREAS, the principles of community action involve the cooperative control of CAPs by low-income people, public officials and representatives of the private sector in developing comprehensive approaches toward addressing the causes and consequences of poverty with the purpose of focusing local, state and federal resources to enable disadvantaged citizens and their families to become self-sufficient; and

WHEREAS, the CAPs originated from their early activities in the State involving advocacy for and community organizing of low-income people to become, in the 1990s, a well-established network for social and economic development in Maine; and

WHEREAS, Maine CAPs now offer a wide variety of services to help low-income people become self-sufficient, including housing repair, child care, nutrition counseling, energy conservation, transportation, job training and microenterprise development; and

WHEREAS, through the use of funds from the federal Community Service Block Grant and state, local and private sources, and in partnership with the Department of Human Services, the CAPs in Maine provide a model of cooperative community multi-service delivery of which the State can be proud; now, therefore, be it

RESOLVED: That We, the Members of the One Hundred and Nineteenth Legislature now assembled in the First Regular Session, take this occasion to recognize the 35th anniversary of community action in Maine and the 11 CAPs now providing services in the State; and be it further

RESOLVED: That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to the Commissioner of Human Services and the President of the Maine Community Action Association.

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

COMMUNICATIONS

The Following Communication: (S.C. 308)

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

May 26, 1999

The Honorable Joseph W. Mayo
Clerk of the House
State House Station 2

Augusta, ME 04333

Dear Clerk Mayo:

Please be advised the Senate today Adhered to its previous action whereby the Minority Ought Not To Pass Report from the Committee on Labor on Bill "An Act to Exclude Claims for Intentional Criminal Acts from the Application of the Workers' Compensation Act of 1992" (S.P. 47) (L.D. 118) was accepted.

Sincerely,

S/Joy J. O'Brien

Secretary of the Senate

KONTOS of Cumberland

MacKINNON of York

Representatives:

O'NEAL of Limestone

SIROIS of Caribou

TRIPP of Topsham

BOLDUC of Auburn

BOWLES of Sanford

CLOUGH of Scarborough

SHOREY of Calais

USHER of Westbrook

Minority Report of the same Committee reporting **Ought to Pass as Amended by Committee Amendment "B" (S-357)** on same Bill.

Signed:

Representatives:

MARVIN of Cape Elizabeth

MENDROS of Lewiston

Came from the Senate with the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-356)**.

READ.

On motion of Representative O'NEAL of Limestone, the Majority **Ought to Pass as Amended** Report was **ACCEPTED**.

The Bill was **READ ONCE**. **Committee Amendment "A" (S-356)** was **READ** by the Clerk and **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-356)** in concurrence.

REPORTS OF COMMITTEE

Ought to Pass Pursuant to Public Law

Report of the Committee on **AGRICULTURE, CONSERVATION AND FORESTRY** on Bill "An Act to Amend the Nutrient Management Laws" (EMERGENCY)

(S.P. 846) (L.D. 2246)

Reporting **Ought to Pass** pursuant to Public Law 1997, chapter 642, section 8, subsection 3.

Came from the Senate with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED**.

The Committee Report was **READ** and **ACCEPTED**.

The Bill was **READ ONCE**.

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** in concurrence.

SENATE PAPERS

Non-Concurrent Matter

Bill "An Act to Promote the Sale of Traditional Passamaquoddy Crafts"

(H.P. 986) (L.D. 1384)

Majority (10) **OUGHT TO PASS AS AMENDED** Report of the Committee on **TAXATION** **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-696)** in the House on May 26, 1999.

Came from the Senate with the Minority (3) **OUGHT NOT TO PASS** Report of the Committee on **TAXATION** **READ** and **ACCEPTED** in **NON-CONCURRENCE**.

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

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

SENATE PAPERS

The following Joint Order: (S.P. 849)

ORDERED, the House concurring, that Bill, "An Act to Revise Certain Provisions of the Fish and Wildlife Laws," S.P. 738, L.D. 2088, and all its accompanying papers, be recalled from the Governor's desk to the Senate.

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

READ and **PASSED** in concurrence.

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

The Speaker resumed the Chair.

The House was called to order by the Speaker.

REPORTS OF COMMITTEE

Divided Report

Majority Report of the Committee on **BUSINESS AND ECONOMIC DEVELOPMENT** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-356)** on Bill "An Act Relating to the Kennebec Regional Development Authority" (EMERGENCY)

(S.P. 807) (L.D. 2219)

Signed:

Senators:

CONSENT CALENDAR

First Day

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

(H.P. 1276) (L.D. 1837) Bill "An Act to Amend the Harness Racing Laws" Committee on **LEGAL AND VETERANS AFFAIRS** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-703)**

On motion of Representative MARTIN of Eagle Lake, was **REMOVED** from the First Day Consent Calendar.

The Committee Report was **READ** and **ACCEPTED**. The Bill was **READ ONCE**. Committee Amendment "A" (H-703) was **READ** by the Clerk.

The same Representative **PRESENTED** House Amendment "A" (H-706) to Committee Amendment "A" (H-703), which was **READ** by the Clerk.

The **SPEAKER**: The Chair recognizes the Representative from Eagle Lake, Representative Martin.

Representative **MARTIN**: Mr. Speaker, Members of the House. Every so often you decide you are going to read something you know nothing about. If you have in front of you the Committee Amendment, which is under filing number (H-703), I would ask you to pick it up. When I picked it up, I found something in here, which from my point of view, was most interesting. It was binding arbitration. It was something which myself, and my party, had supported for years. We have been unwilling to giving binding arbitration for police officers in the line of duty for firemen and for teachers. Guess what we are going to do in this bill? We are going to give binding arbitration for horse racing. I thought that was kind of interesting. We can't give it for human beings, but we can give it for horses. That didn't make much sense to me, so I have offered an amendment under House Amendment "A," which takes out binding arb. I would ask all the member of the House to vote for adoption of House Amendment "A."

The **SPEAKER**: The Chair recognizes the Representative from Lisbon, Representative Chizmar.

Representative **CHIZMAR**: Mr. Speaker, Men and Women of the House. For your information the committee supports this amendment.

House Amendment "A" (H-706) to Committee Amendment "A" (H-703) was **ADOPTED**.

Committee Amendment "A" (H-703) as Amended by House Amendment "A" (H-706) thereto 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" (H-703) as Amended by House Amendment "A" (H-706) thereto and sent for concurrence. **ORDERED SENT FORTHWITH**.

STANLEY of Medway
LEMOINE of Old Orchard Beach
MURPHY of Berwick
BUCK of Yarmouth
CIANCHETTE of South Portland

Minority Report of the same Committee reporting **Ought to Pass as Amended by Committee Amendment "A" (H-704)** on same Bill.

Signed:

Representative:
LEMONT of Kittery

READ.

Representative GAGNON of Waterville moved that the House **ACCEPT** the Majority **Ought Not to Pass** Report.

The **SPEAKER**: The Chair recognizes the Representative from Lebanon, Representative Chick.

Representative **CHICK**: Mr. Speaker, Ladies and Gentlemen of the House. This item for you is here for the matter of how a person in the State of Maine was treated in the matter of income tax. First off, when it came to my attention it is quite different from what I had seen in my life with regard to coming to this city and this place for help. The attitude had changed considerably. Not to talk all afternoon about this, but I can assure you that it was a very intimidating situation for the person involved. Consequently, I submitted a bill. I presented the bill and after I presented it I left. I didn't hear the people that testified, however, I did go back on the same afternoon to listen to the work session. During the work session the discussion that I heard and understood what the people were saying was in opposition to the experience of the taxpayer. I can assure you it was far different. The testimony was that all of the safeguards, the notices and the opportunity to appeal was all explained. As I sat there and listened it would appear that it was a foregone conclusion all these things that happened during the taxpayers experience. However, I would have to listen to the taxpayer that explained telephone calls and letters over a period of time and it was far different. I really believe that many times committees, and I don't single out anyone, I believe in this method of getting information by committees, but many times things are assumed that maybe didn't happen.

Another item that we talk about quite often is the appeal process and we are allowed to retain legal council, but in this case I won't mention the figure, but the expense, I consider, was very high. I am sure that the attorney had to spend a lot of time and there wasn't much progress made by the taxpayer. I would ask you people when you stand up as the good Representative did from this committee motion Ought Not to Pass. I would like to leave you with the thought that maybe there is a little voice here that somebody isn't listening to. I am sure there are other people that are involved with questions about their payment of taxes. We are all aware of what the people in the IRS in the federal government have been through. It bears out in part as this person experience at the state level. I noticed on the amendment and I suppose most of you have one, they talk about expense because of increased workloads, but I believe that this document if it could be put into the statutes would be a deterrent to the need for these cases because the people that look at the taxpayer's reports would be more selective of their statements to the taxpayer and the judgments they make, I believe, would be more carefully crafted.

Without taking up any more time, I believe it is as necessary as I would about any matter for you folks to know, in

REPORTS OF COMMITTEE

Divided Report

Majority Report of the Committee on **TAXATION** reporting **Ought Not to Pass** on Bill "An Act to Strengthen the Maine Taxpayer Bill of Rights"

(H.P. 1565) (L.D. 2216)

Signed:

Senators:

RUHLIN of Penobscot
MILLS of Somerset
DAGGETT of Kennebec

Representatives:

GAGNON of Waterville
GREEN of Monmouth
DAVIDSON of Brunswick
COLWELL of Gardiner

part, what people face when they come to the various agencies here at the capitol. I would ask, sincerely, that you would keep in mind about maybe it won't happen today, but I really believe that this matter will be addressed in the future. Thank you.

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

Representative LEMONT: Mr. Speaker, Ladies and Gentlemen of the House. On a 12 to 1 report I felt obligated to get up and explain to you my position. I believe the legislation the good Representative from Lebanon has brought forward is a reasonable proposal and it enhances in two areas the Maine Taxpayers Bill of Rights. The first area is if a taxpayer files a complaint, within 30 days the director of the Maine State Revenue Service shall investigate the complaint and inform the taxpayer, in writing, of his results. The second area of enhancement is, if you appeal a case or final decision of the agency to the Superior Court and is found in favor of the taxpayer, the bureau must pay the taxpayer's cost including attorney's fees. I believe the legislation does exactly what it was intended to do. It strengthens the Maine Taxpayer's Bill of Rights. Thank you.

The SPEAKER: The Chair recognizes the Representative from Dexter, Representative Tobin.

Representative TOBIN: Mr. Speaker, Ladies and Gentlemen of the House. I, too, would like to add to the comments that I have just heard from the previous two Representatives. In the last three years I have personally acted as a go-between between the Bureau of Taxation and constituents in my particular district. They are absolutely correct. The last thing that they will tell a constituent in your district is if they owe taxes or if there has been a miscalculation or they haven't received their right sum is you can take them to the Maine State Supreme Court. This is often very expensive for our residents in the state. They feel very intimidated, ladies and gentlemen, by the Bureau of Taxation. The Bureau of Taxation works for the people of the State of Maine. I personally have visited the public tax advocate on several occasions in the past three years and tried to be an advocate for citizens in my district. I agree with the good Representative Chick that this will become a matter in the future. If this bill doesn't pass, I hope some of you examine your own consciences and look at some of the experiences you have had with taxpayer situations in your own district and your own experience and give this matter some serious thought. Thank you Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Waterville, Representative Gagnon.

Representative GAGNON: Mr. Speaker, Men and Women of the House. You will notice this is a 12 to 1 report. I do thank the Representative from Lebanon for bringing this issue to us, because one of the things that we have not done on the Taxation Committee while we have spent quite a bit of time with the various divisions within the Bureau of Revenue Services, Sales Tax Division, Income Tax Division and Property Tax Division. We haven't spent a great deal of time with the taxpayer advocate for the Appellate Division within the bureau. We will be doing that. It was a commitment that we made during work session to the good Representative and we will be doing that probably at the beginning of next session. Much of what was in this bill is already in line. There was a revamping of the taxpayer advocate's position, a new person was hired fairly recently. We felt they were doing a very good job. I was very explicit with the people who testified in asking them whether or not they felt on

the phone or in person or even the things in writing if they were treated rudely or unprofessionally in any way. Everyone I asked that said that was not the case. What it came down to in this case and the constituents for the good Representative was that they were not pleased with the answers they were getting. There was no rudeness and no unprofessionalism. Unfortunately sitting in the Taxation Committee there are confidentiality laws. Have we heard the whole story from the person who felt like they got a wrong decision? We, of course, could not hear the other side of the issue, because everything that the bureau has is confidential, as all of your tax records are confidential. We are not a court of law sitting in the Taxation Committee. What I tried to get at during our conversation was whether or not there seemed to be something inherently wrong with what is going on within the bureau now and so did the new director of the bureau wanted to know if there was anything wrong. We found that there was nothing particularly wrong that was going on. We were happy with the legislation the way it is now, but it would be time to look at those two divisions and that is what the committee chose to do and that is why we have that style report. Thank you Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Auburn, Representative Shields.

Representative SHIELDS: Mr. Speaker, May I pose a question through the Chair?

The SPEAKER: The Representative may pose his question.

Representative SHIELDS: Mr. Speaker, Men and Women of the House. The bill, as I read it, deals with the coercive and abusive practices of the Taxation Bureau. My question is, what is the remedy for that or is there something else that I am not seeing in this bill?

The SPEAKER: The Representative from Auburn, Representative Shields has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Gardiner, Representative Colwell.

Representative COLWELL: Mr. Speaker, Men and Women of the House. I would be happy to try to answer that question. I think the answer goes back to the particular incident that the good Representative from Lebanon brought this bill forward about. At the time that that incidence occurred there was no taxpayer advocate in the Bureau of Revenue Services. I would say there was a less than consumer friendly attitude in the Bureau of Revenue Services. Since that time the research and the testimony that the committee considered in looking into the matter to some degree, we have found that since the inception of the taxpayer advocate acting as an advocate for these consumers that the approval rating and the success rating has risen considerably. The answer is a continued commitment to the position of a taxpayer advocate and perhaps even expansion of the number and a much more enlightened attitude on the department's part. We felt that we were on the right road.

The SPEAKER: The Chair recognizes the Representative from Lebanon, Representative Chick.

Representative CHICK: Mr. Speaker, Ladies and Gentlemen of the House. There is an item here that I found in discussing this matter with people from the Taxation Division. I wouldn't believe I did the right thing if I didn't stand here and tell you that with the present chief I had a very good discussion. What he had to say to me and what he believed would take place in the future was encouraging to me. If I didn't say that, I would be less than truthful with you folks. Like many things in

history over time, whether it is here in Maine or in the country, it is almost impossible to undo the damage that can be done to try and correct the situation that exists. The amount of money that is spent in this case, of course, will never be recovered. I want to leave you with a thought that I hold no ill thoughts about the committee that heard this bill. Also, remember in my estimation some very intimidating questions and transactions took place over time with this tax person. Thank you.

The SPEAKER: The Chair recognizes the Representative from Scarborough, Representative Clough.

Representative CLOUGH: Mr. Speaker, Ladies and Gentlemen of the House. I believe this is a very straightforward piece of legislation that solves a real problem. I would ask you to join me in supporting this bill and voting against the Majority Ought Not to Pass.

The SPEAKER: The Chair recognizes the Representative from Old Orchard Beach, Representative Lemoine.

Representative LEMOINE: Mr. Speaker, Men and Women of the House. I am part of the strongly bipartisan report on this. I want to also join in thanking the good Representative from Lebanon in bringing the matter forward. It was instructive to me as a member of the Taxation Committee to listen to his testimony and that of his constituent. It was even more instructive to have discussions later with the bureau. I am convinced that the bureau is now extraordinarily sensitive to this type of situation. Actions have been taken to remedy the process, which the Representative's constituent found herself in. For those reasons, I join the majority in suggesting that this measure not pass at this time. I would encourage the rest of the body to support the process of advocacy that we have already built into the laws, which appears now to be working. Thank you.

Representative LOVETT of Scarborough REQUESTED a roll call on the motion to ACCEPT the Majority Ought Not to Pass Report.

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

The SPEAKER: A roll call has been ordered. The pending question before the House is acceptance of the Majority Ought Not to Pass Report. All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 317

YEA - Ahearne, Bagley, Baker, Belanger, Berry DP, Berry RL, Bolduc, Bouffard, Brennan, Brooks, Bryant, Buck, Bull, Cameron, Chizmar, Cianchette, Clark, Colwell, Cote, Cowger, Daigle, Davidson, Desmond, Dudley, Dugay, Dunlap, Duplessie, Etnier, Fisher, Frechette, Fuller, Gagne, Gagnon, Goodwin, Gooley, Green, Hatch, Jabar, LaVerdiere, Lemoine, Lindahl, Madore, Mailhot, Martin, Marvin, Matthews, Mayo, McAlevey, McDonough, McGlocklin, McKee, McNeil, Mitchell, Murphy E, Murphy T, Muse, Norbert, Nutting, O'Brien JA, O'Brien LL, O'Neal, O'Neil, Peavey, Pieh, Povich, Powers, Quint, Richard, Richardson E, Richardson J, Rines, Samson, Sanborn, Savage W, Saxl JW, Saxl MV, Shiah, Shorey, Sirois, Skoglund, Stanley, Stevens, Sullivan, Tessier, Thompson, Tobin D, Townsend, Tripp, Twomey, Usher, Watson, Williams, Winsor, Mr. Speaker.

NAY - Andrews, Bowles, Bragdon, Bruno, Bumps, Campbell, Carr, Chick, Clough, Collins, Cross, Davis, Duncan, Foster, Gerry, Gillis, Glynn, Heidrich, Honey, Jacobs, Jodrey, Jones, Joy, Kasprzak, Kneeland, Lemont, Lovett, MacDougall, Mack, McKenney, Mendros, Nass, Perkins, Perry, Pinkham, Plowman, Rosen, Savage C, Schneider, Sherman, Shields,

Snowe-Mello, Stanwood, Stedman, Tobin J, Tracy, Trahan, Treadwell, True, Waterhouse, Weston, Wheeler EM, Wheeler GJ.

ABSENT - Kane, Labrecque, Tuttle, Volenik.

Yes, 94; No, 53; Absent, 4; Excused, 0.

94 having voted in the affirmative and 53 voted in the negative, with 4 being absent, the Majority Ought Not to Pass Report was ACCEPTED and sent for concurrence. ORDERED SENT FORTHWITH.

ENACTORS

Emergency Measure

An Act Concerning Technical Changes to the Tax Laws

(S.P. 440) (L.D. 1277)

(H. "A" H-684 to C. "A" S-329)

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. 119 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.

Confirmation Process

An Act to Promote Research and Development Activities in Maine

(H.P. 1598) (L.D. 2243)

Reported by the Committee on Engrossed Bills as truly and strictly engrossed. In accordance with the provision of Section 8 of Article V, Part one of the Constitution, a two-thirds vote of the House being necessary, a total was taken. 122 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.

Acts

An Act to Make Minor Substantive Changes in the Tax Laws

(H.P. 131) (L.D. 162)

(C. "A" H-695)

An Act to Require the State Planning Office to Report to the Committee on State and Local Government and the Committee on Natural Resources

(H.P. 619) (L.D. 859)

(H. "B" H-614; H. "C" H-686)

An Act to Encourage Support of Passamaquoddy Tribal Government Through On-reservation Business Activities

(H.P. 739) (L.D. 1029)

(C. "A" H-694)

An Act to Create a Sales Tax Exemption for Child Abuse and Neglect Councils, Child Advocacy Organizations and Community Action Agencies

(H.P. 976) (L.D. 1374)

(S. "A" S-336)

An Act to Expand the Uniform 1998 Special Retirement Plan to Include Baxter State Park Authority Rangers, Fire Marshals and Certain Additional Correctional Employees

(H.P. 978) (L.D. 1376)

(C. "A" H-687)

An Act to Require an Assessment Evaluation of Juveniles Entering the Juvenile Justice System

(H.P. 1130) (L.D. 1589)
(C. "A" H-689)

An Act to Provide Access to Information Services in All Communities of the State

(S.P. 665) (L.D. 1887)
(S. "A" S-321 to C. "A" S-300; H. "A" H-683)

An Act Concerning the Regulation and Treatment of Time-shares

(H.P. 1333) (L.D. 1916)
(C. "A" H-690)

An Act to Fund Training Programs for Water Pollution Control Facility Operators

(S.P. 845) (L.D. 2244)

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.

Resolves

Resolve, Establishing a Commission to Study the Needs and Opportunities Associated with the Production of Salmonid Sport Fish in Maine

(S.P. 332) (L.D. 986)
(H. "A" H-641 and H. "B" H-685 to C. "A" S-296)

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

An Act to Require a Person Who is Suspected of Being the Underlying Cause of a Liquor Violation to Provide Identification to a Law Enforcement Officer

(H.P. 274) (L.D. 382)
(S. "A" S-333)

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

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

The same Representative **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.

The **SPEAKER**: The Chair recognizes the Representative from Lewiston, Representative Mendros.

Representative **MENDROS**: Mr. Speaker, Ladies and Gentlemen of the House. You will remember we dealt with this bill before. I think I want to thank the committee and everyone who worked on it putting these changes in. The amendment to it, it certainly is a much better bill than it was before. I still don't feel comfortable, because it still presumes one is guilty just because they want to maintain their identity. I will be voting against it, but I am not nearly as uncomfortable with it as I was before.

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.

ROLL CALL NO. 318

YEA - Ahearne, Andrews, Bagley, Baker, Belanger, Berry DP, Bouffard, Bowles, Bragdon, Brennan, Bruno, Bull, Bumps, Cameron, Campbell, Carr, Chick, Chizmar, Cianchette,

Clark, Clough, Collins, Colwell, Cote, Cross, Daigle, Davidson, Davis, Desmond, Dugay, Duncan, Dunlap, Duplessie, Etnier, Fisher, Foster, Frechette, Fuller, Gagne, Gagnon, Gillis, Glynn, Goodwin, Gooley, Green, Hatch, Heidrich, Honey, Jacobs, Jodrey, Jones, Joy, Kane, Kasprzak, Kneeland, Labrecque, LaVerdiere, Lemoine, Lemont, Lindahl, Lovett, Madore, Mailhot, Martin, Marvin, Matthews, Mayo, McAlevey, McDonough, McGlocklin, McKee, McKenney, McNeil, Murphy E, Murphy T, Muse, Nass, Nutting, O'Brien JA, O'Brien LL, O'Neal, O'Neil, Peavey, Perkins, Perry, Pieh, Povich, Powers, Richard, Richardson E, Rosen, Samson, Sanborn, Savage C, Saxl MV, Schneider, Shiah, Shields, Shorey, Sirois, Stanley, Stanwood, Stedman, Sullivan, Tessier, Thompson, Tobin D, Tobin J, Townsend, Tripp, Usher, Watson, Weston, Wheeler EM, Wheeler GJ, Williams, Winsor, Mr. Speaker.

NAY - Berry RL, Bolduc, Brooks, Bryant, Buck, Cowger, Dudley, Gerry, MacDougall, Mack, Mendros, Mitchell, Norbert, Pinkham, Plowman, Quint, Richardson J, Rines, Savage W, Saxl JW, Sherman, Skoglund, Snowe-Mello, Stevens, Tracy, Trahan, Treadwell, Twomey, Volenik, Waterhouse.

ABSENT - Jabar, True, Tuttle.

Yes, 118; No, 30; Absent, 3; Excused, 0.

118 having voted in the affirmative and 30 voted in the negative, with 3 being absent, the Bill was **PASSED TO BE ENACTED**, signed by the Speaker and sent to the Senate.

An Act to Increase the Maximum Benefit Levels Provided for Injured Workers

(H.P. 1314) (L.D. 1897)
(C. "A" H-548)

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

On motion of Representative TREADWELL of Carmel, was **SET ASIDE**.

The same Representative **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.

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.

ROLL CALL NO. 319

YEA - Ahearne, Baker, Berry RL, Bolduc, Bouffard, Brennan, Brooks, Bryant, Bull, Cameron, Carr, Chick, Chizmar, Clark, Colwell, Cote, Cowger, Davidson, Desmond, Dudley, Dugay, Dunlap, Duplessie, Etnier, Fisher, Frechette, Fuller, Gagne, Gagnon, Gerry, Goodwin, Green, Hatch, Jabar, Jacobs, Kane, LaVerdiere, Lemoine, Lemont, Lindahl, Mailhot, Martin, Matthews, McAlevey, McDonough, McGlocklin, McKee, Mitchell, Muse, Norbert, O'Neal, O'Neil, Perry, Pieh, Povich, Powers, Quint, Richard, Richardson J, Rines, Samson, Sanborn, Savage W, Saxl JW, Saxl MV, Shiah, Sirois, Skoglund, Stanley, Stevens, Sullivan, Tessier, Thompson, Townsend, Tracy, Treadwell, Tripp, Twomey, Usher, Volenik, Watson, Wheeler GJ, Williams, Mr. Speaker.

NAY - Andrews, Belanger, Bowles, Bragdon, Bruno, Buck, Bumps, Campbell, Cianchette, Clough, Collins, Cross, Daigle, Davis, Foster, Gillis, Glynn, Gooley, Heidrich, Honey, Jodrey, Jones, Joy, Kasprzak, Kneeland, Labrecque, Lovett, MacDougall, Mack, Madore, Marvin, Mayo, McKenney, McNeil, Mendros, Murphy E, Murphy T, Nass, Nutting, O'Brien JA,

Peavey, Perkins, Richardson E, Rosen, Savage C, Schneider, Sherman, Shields, Shorey, Snowe-Mello, Stanwood, Stedman, Tobin D, Tobin J, Trahan, Waterhouse, Weston, Wheeler EM, Winsor.

ABSENT - Bagley, Berry DP, Duncan, O'Brien LL, Pinkham, Plowman, True, Tuttle.

Yes, 84; No, 59; Absent, 8; Excused, 0.

84 having voted in the affirmative and 59 voted in the negative, with 8 being absent, the Bill was **PASSED TO BE ENACTED** and signed by the Speaker.

On motion of Representative TREADWELL of Carmel, the House **RECONSIDERED** its action whereby the Bill was **PASSED TO BE ENACTED**.

The SPEAKER: The Chair recognizes the Representative from Carmel, Representative Treadwell.

Representative TREADWELL: Mr. Speaker, Ladies and Gentlemen of the House. The bill before us now is to increase the maximum weekly benefits under the Workers' Comp System. We have had two increases in the benefits for the Comp System within the past year. In 1998 the lifetime benefit body impairment was reduced from 15 percent to 11.8 percent and earlier this year the duration of that benefit was extended from five years to six years. We are now asking to increase the amount payable, the weekly benefit amount payable, by about 11 percent from the 90 percent of the state average weekly wage to 100 percent of the state average weekly wage. I would request that you vote against the pending motion.

Representative TREADWELL of Carmel **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.

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.

ROLL CALL NO. 320

YEA - Ahearne, Bagley, Baker, Berry RL, Bolduc, Bouffard, Brennan, Brooks, Bryant, Bull, Carr, Chick, Chizmar, Clark, Colwell, Cote, Cowger, Davidson, Desmond, Dudley, Dugay, Dunlap, Duplessie, Etnier, Fisher, Frechette, Fuller, Gagne, Gagnon, Gerry, Goodwin, Green, Hatch, Jabar, Jacobs, Kane, LaVerdiere, Lemoine, Lemont, Mailhot, Martin, Matthews, McAlevey, McDonough, McGlocklin, McKee, Mitchell, Muse, Norbert, O'Brien LL, O'Neal, O'Neil, Perry, Pieh, Povich, Powers, Quint, Richard, Richardson J, Rines, Samson, Sanborn, Savage W, Saxl JW, Saxl MV, Shiah, Sirois, Skoglund, Stanley, Stevens, Sullivan, Tessier, Thompson, Townsend, Tracy, Tripp, Twomey, Usher, Volenik, Watson, Wheeler GJ, Williams, Mr. Speaker.

NAY - Andrews, Belanger, Bowles, Bragdon, Bruno, Buck, Bumps, Cameron, Campbell, Cianchette, Clough, Collins, Cross, Daigle, Davis, Foster, Gillis, Glynn, Gooley, Heidrich, Honey, Jodrey, Jones, Joy, Kasprzak, Kneeland, Labrecque, Lindahl, Lovett, MacDougall, Mack, Madore, Marvin, Mayo, McKenney, McNeil, Mendros, Murphy E, Murphy T, Nass, Nutting, O'Brien JA, Peavey, Perkins, Plowman, Richardson E, Rosen, Savage C, Schneider, Sherman, Shields, Shorey, Snowe-Mello, Stanwood, Stedman, Tobin D, Tobin J, Trahan, Treadwell, Waterhouse, Weston, Wheeler EM, Winsor.

ABSENT - Berry DP, Duncan, Pinkham, True, Tuttle.

Yes, 83; No, 63; Absent, 5; Excused, 0.

83 having voted in the affirmative and 63 voted in the negative, with 5 being absent, the Bill was **PASSED TO BE ENACTED**, signed by the Speaker and sent to the Senate.

An Act to Address the Solvency of the Unemployment Compensation Fund

(H.P. 1372) (L.D. 1970)

(C. "A" H-681)

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

On motion of Representative POVICH of Ellsworth, was **SET ASIDE**.

On further motion of the same Representative, the House **RECONSIDERED** its action whereby the Bill was **PASSED TO BE ENGROSSED**.

The same Representative **PRESENTED House Amendment "B" (H-701)** which was **READ** by the Clerk.

The SPEAKER: The Chair recognizes the Representative from Ellsworth, Representative Povich.

Representative POVICH: Mr. Speaker, Men and Women of the House. This amendment has no net physical impact to the level of contributions to the Unemployment Compensation Trust Fund that are included in LD 1970. It does not change what the bill is supposed to do. After listening to the debate on the Unemployment Compensation Fund solvency problem, my mind kind of ran amuck. This body had just agreed to raise the unemployment taxes on an innumerable number of Maine businesses. I did as three people of the committee and I asked the commissioner to provide me with material as to the number of businesses that would see their taxes change, either positive or negative. I did not receive that so I will use the number innumerable. I would alert you incidentally that to be ready for a raft of angry telephone calls commencing in December when businesses receive their premium notices. In this legislative business, there is the well-known law of unintended consequences. Whenever we do something in this body, something unintended invariably happens. I think this holds true right now. When we change the taxable wage base from \$7,000 to \$12,000 we virtually made obsolete every Maine business's payroll software. In order to calculate the payroll for the upcoming year each company, including my own, my company reposes in this laptop computer these days, will have to get new payroll software to accommodate the recalculation. This amendment, I think, will help businesses a little bit by retaining the \$7,000 taxable wage base and changing the flexible character, that the contribution rate. The revenue remains the same, but this year's software can be used next year. I just thought you would like to know that. Please support the pending motion. It doesn't hurt the bill and it won't obsolete my software. Thank you very much.

Representative CAMPBELL of Holden **REQUESTED** a roll call on the motion to **ADOPT House Amendment "B" (H-701)**.

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 Skowhegan, Representative Hatch.

Representative HATCH: Mr. Speaker, Ladies and Gentlemen of the House. I want you to know that I sympathize with the good Representative from Ellsworth. I want you to know that this is not an issue that I take lightly. I know how much work has gone into this issue and at no time were we approached on

the committee level when we were dealing with this issue in regards to this specific complaint. As far as running the numbers, I know the department had some numbers for us while we were working the bill. They said they were still working on numbers and I am sure you couldn't get them in a 12 or 14 hour period from when they were requested, mainly because I didn't talk to the department since then. I have been here for most of the time and I slept for about six hours last night. That has nothing to do with the bill. I do want you to know that all these issues were addressed by the Labor Department. They heard from businesses throughout the state during the course of the last year. I would ask that this amendment be Indefinitely Postponed. Thank you.

Representative HATCH of Skowhegan moved that **House Amendment "B" (H-701) be INDEFINITELY POSTPONED.**

Representative JOY of Crystal **REQUESTED** a roll call on the motion to **INDEFINITELY POSTPONE House Amendment "B" (H-701).**

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

The **SPEAKER:** A roll call has been ordered. The pending question before the House is Indefinite Postponement of House Amendment "B" (H-701). All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 321

YEA - Ahearne, Bagley, Baker, Belanger, Berry RL, Bolduc, Bouffard, Bragdon, Brennan, Bryant, Bull, Bumps, Carr, Chick, Chizmar, Clark, Clough, Colwell, Cote, Cowger, Cross, Daigle, Davidson, Desmond, Dudley, Duncan, Dunlap, Duplessie, Etnier, Fisher, Frechette, Fuller, Gagne, Gagnon, Gillis, Goodwin, Gooley, Green, Hatch, Honey, Jabar, Jacobs, Kane, Kasprzak, Kneeland, Labrecque, LaVerdiere, Lemoine, Lovett, MacDougall, Mack, Mailhot, Martin, Marvin, Matthews, Mayo, McAlevey, McDonough, McGlocklin, McKee, Mitchell, Murphy E, Murphy T, Muse, Nass, Norbert, O'Brien JA, O'Brien LL, O'Neal, O'Neil, Pieh, Powers, Quint, Richard, Richardson J, Rines, Samson, Savage C, Savage W, Saxl JW, Saxl MV, Shiah, Shields, Sirois, Skoglund, Snowe-Mello, Stanley, Stevens, Sullivan, Tessier, Thompson, Tobin J, Townsend, Tracy, Trahan, Treadwell, Tripp, Twomey, Usher, Volenik, Waterhouse, Watson, Williams, Mr. Speaker.

NAY - Andrews, Bowles, Brooks, Bruno, Buck, Cameron, Campbell, Cianchette, Collins, Davis, Dugay, Foster, Gerry, Glynn, Heidrich, Jodrey, Jones, Joy, Lemont, Lindahl, Madore, McKenney, McNeil, Mendros, Nutting, Peavey, Perkins, Perry, Plowman, Povich, Richardson E, Rosen, Sanborn, Schneider, Sherman, Shorey, Stanwood, Stedman, Tobin D, True, Weston, Wheeler EM, Wheeler GJ, Winsor.

ABSENT - Berry DP, Pinkham, Tuttle.

Yes, 104; No, 44; Absent, 3; Excused, 0.

104 having voted in the affirmative and 44 voted in the negative, with 3 being absent, **House Amendment "B" (H-701) was INDEFINITELY POSTPONED.**

Representative MacDOUGALL of North Berwick **PRESENTED House Amendment "A" (H-699) which was READ** by the Clerk.

The **SPEAKER:** The Chair recognizes the Representative from North Berwick, Representative MacDougall.

Representative **MACDOUGALL:** Mr. Speaker, Men and Women of the House. As I mentioned yesterday in my comments when we debated the bill where we do have the highest employment level in state history, the highest level of job

growth in the nation and we are the ninth highest taxed unemployment insurance tax in the nation, which will probably go lower. The duration, the average time spent on unemployment, is above the national average and the exhaustion rate is the highest in the nation, which is the number of people using the total benefit time. For all those reasons, I felt that part of the solvency issue had to involve getting tough on fraud. So what I present to you this afternoon, early evening, what it would do is it would put an 18 percent interest rate instead of the 12 percent for fraud so it increased that interest rate. It put a 200 percent penalty on fraud instead of the 50 or 75 percent. Fifty percent the first time you are convicted of fraud and 75 percent the second time and 100 percent the third time. It makes it very tough. Again, remember that this is not for someone who made an error simply in filling out a form, this is purposeful fraud trying to cheat the system, which impacts those who are honest. Also, this amendment would put in random audits for both employers and employees. We feel that is very important and in the amendment it may say that is a very small percentage, but I would say to you that is reported cases. Businesses during the hearing that DOL had in preparation for the bill and many businesses complained that there is a lot more fraud. This might go a long way to hopefully prevent some of that. They have a good penalty in there. Also through this, this would decrease the dependency allowance by 20 percent for dependent children. I think that is also very important. I would urge your support this evening. Mr. Speaker, when the vote is taken, I request the yeas and nays.

Representative MacDOUGALL **REQUESTED** a roll call on his motion to **ADOPT House Amendment "A" (H-699).**

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

Representative HATCH of Skowhegan moved that the **House Amendment "A" (H-699) be INDEFINITELY POSTPONED.**

The **SPEAKER:** The Chair recognizes the Representative from Skowhegan, Representative Hatch.

Representative **HATCH:** Mr. Speaker, Ladies and Gentlemen of the House. This is yet another attempt to amend the bill that has been a long time in the making. There was every attempt to make sure that all members of the committee were on the report and that they had input into it. I would request that you would follow my lead and Indefinitely Postpone this amendment. Thank you.

The **SPEAKER:** The Chair recognizes the Representative from Standish, Representative Mack.

Representative **MACK:** Mr. Speaker, Right Honorable Men and Women of the House. What this amendment does is simply to get tough on crime, get tough on the few bad apples who misuse the Unemployment Insurance System. This amendment does nothing to affect the unemployed workers who are legitimately using the Unemployment Insurance System and, in fact, it will help those workers. What it does is it gets tough and puts tougher penalties on those who intentionally commit fraud to misuse the fund. Those funds will then be used that we save on fraud. The short-term funds are used to increase the dependency allowance by 20 percent. What that is is an allowance given to unemployed workers who have dependent children. Maine is one of the few states with a dependency allowance. What we are proposing to do is to increase that dependency allowance by 20 percent getting the money from the bad apples for intentionally misusing the system. Not only is

getting tough on the bad apples a good idea because we don't want anyone committing fraud, but it gives the system a better name. The system has a bad name in some respect because those people are cheating. We will get tougher on them. Also, it puts in random audits, both on the employees and the employers to make sure that both sides are being honest with the system. It is a good amendment. It gets more money to the kids. It gets tougher on fraud and also in the long run it is going to have a good affect because people know that if they try to commit fraud, there are tougher penalties and there will be random audits so they could be caught. Right now under the Majority Report if you are caught intentionally defrauding the system all you have to pay back is 50 percent of what you defrauded the system. If you defraud the system, you have to pay back half of what we caught you cheating. There is an incentive in the system now to lie and commit fraud because you only have pay half of it back. On the second offense it is 75 percent and after the third time if we catch you committing fraud, you just have to pay it back. Under this plan you have pay back double the fraud we caught you doing. All this is is cracking down on the people who intentionally commit fraud. This isn't oops, I made a mistake and put the wrong number here, a small fraud. This is when we intentionally prove fraud. It is a small step, but I think it is a good thing for the system. The money we will save will go to help the unemployed families with kids. Thank you and I urge you to vote against Indefinite Postponement.

The SPEAKER: The Chair recognizes the Representative from Winslow, Representative Matthews.

Representative **MATTHEWS**: Mr. Speaker, Men and Women of the House. As we discussed this issue with the Minority Report the other day, yesterday, I urge your strong support of the Indefinite Postponement and to follow the light of the good chair from Skowhegan. Ladies and gentlemen, this reminds me of the carrot stick. This isn't even a stick, it is a clever. I am glad that the good Representative from Standish at least mentioned what the clever is or maybe it is an anvil. It is a 200 percent penalty. Two years of work by the folks at the Unemployment Insurance Fund talking with everybody affected and coming up with a compromise on an 11 to 2 report and a good vote. Let's not make some real drastic quick changes here that really go to the heard of a compromise and a balance. Let's let the department, under the good bill that we have put together have the authority to make the kinds of corrections when benefits are mistakenly taken. Let's leave the bill as it is, which has protections in there, but let's not go to this push them off the cliff amendment. Thank you Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Yarmouth, Representative Buck.

Representative **BUCK**: Mr. Speaker, Ladies and Gentlemen of the House. I would just like to respond to the last speaker in terms of describing the penalty here as being some sort of a clever. I am approaching this from a different point of view. I am one of those employers who pays that fee every month. Maybe it is every week that I work I know those folks who come into my business. They are abusing the system and it really irritates me. What irritates me more is to find out that the penalty is only half of what they have stolen. It seems to me if we want to solve the issue of fraud, there has to be some sort of penalty there to deter people from doing it. If you make the penalty strong enough perhaps we will have more money in the fund and we will not have to keep increasing this tax every five or six years. Thank you.

The SPEAKER: The Chair recognizes the Representative from Jay, Representative Samson.

Representative **SAMSON**: Mr. Speaker, Men and Women of the House. I want to correct one thing. If someone is collecting unemployment and receives too much money, 100 percent of that money is returned. All of it is returned back to the unemployment, not 50 percent, all of it. Another problem with this amendment is charging interest on overpayment and it is not just those that intentionally got unemployment benefits, but those that were mistakenly given overpayment. It could have been an honest mistake made by the department. I don't believe they should be charged interest for receiving an overpayment on a fault that was not their own. I urge you to vote against this amendment.

The SPEAKER: The Chair recognizes the Representative from Standish, Representative Mack.

Representative **MACK**: Mr. Speaker, Right Honorable Men and Women of the House. I would like to clarify a couple of statements made from my good friend from Jay. He may have confused a couple different parts in the bill. There is one part that we deal with if someone is mistakenly overpaid by the department, how much money can the state collect back of what we mistakenly overpaid on each unemployment check? If we are supposed to give you \$100 and we give you \$150, there are some criteria over how we collect that extra \$50 and what percent you can collect on each check. This amendment does not touch that at all. What this amendment is doing is just the penalty if you intentionally defraud. The penalty in the bill is 50 percent and you have to pay back half of what you stole for the first time 75 percent for the second time and 100 percent for the third time. I would also like to point out what the good Representative said about the interest rates. There are two different interest rates. There is an interest rate done for overpayments. If you were mistakenly overpaid like I had just described, you get one year free to pay the state back for that money you were mistakenly overpaid. There is no interest for that first year. After that there is a 12 percent interest. That is in the Majority Report and that was also in the Minority Report. What this amendment does is it says if you intentionally defraud the state and were caught, we are going to raise that to 18 percent interest and interest starts accruing immediately. If you have honestly used the system and were mistakenly overpaid, the interest you still get the year free. It doesn't touch it. This only changes if you were caught intentionally defrauding the system, which is very tough to prove and there is a higher interest rate on that. Thank you.

The Chair ordered a division on the motion to **INDEFINITELY POSTPONE House Amendment "A" (H-699)**.

Representative **MACK** of Standish **REQUESTED** a roll call on the motion to **INDEFINITELY POSTPONE House Amendment "A" (H-699)**.

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

The SPEAKER: A roll call has been ordered. The pending question before the House is Indefinite Postponement of House Amendment "A" (H-699). All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 322

YEA - Ahearne, Bagley, Baker, Berry RL, Bolduc, Bouffard, Bragdon, Brennan, Brooks, Bryant, Bull, Chick, Chizmar, Clark, Colwell, Cote, Cowger, Davidson, Desmond, Dudley, Dunlap, Duplessie, Etnier, Fisher, Frechette, Fuller, Gagne, Gagnon,

Gerry, Goodwin, Green, Hatch, Jabar, Jacobs, Kane, LaVerdiere, Lemoine, Mailhot, Martin, Matthews, McDonough, McGlocklin, McKee, Mendros, Mitchell, Muse, Norbert, O'Brien LL, O'Neal, O'Neil, Perry, Pieh, Povich, Powers, Quint, Richard, Richardson E, Richardson J, Rines, Rosen, Samson, Sanborn, Savage W, Saxl JW, Saxl MV, Shiah, Sirois, Skoglund, Stanley, Stevens, Sullivan, Tessier, Thompson, Tobin D, Townsend, Tracy, Tripp, Twomey, Usher, Volenik, Watson, Weston, Wheeler GJ, Williams, Mr. Speaker.

NAY - Andrews, Belanger, Bowles, Bruno, Buck, Bumps, Cameron, Campbell, Carr, Cianchette, Clough, Collins, Cross, Daigle, Davis, Dugay, Duncan, Foster, Gillis, Glynn, Gooley, Heidrich, Honey, Jodrey, Jones, Joy, Kasprzak, Kneeland, Labrecque, Lemont, Lindahl, Lovett, MacDougall, Mack, Madore, Marvin, Mayo, McAlevey, McKenney, McNeil, Murphy E, Murphy T, Nass, Nutting, O'Brien JA, Peavey, Perkins, Pinkham, Plowman, Savage C, Schneider, Sherman, Shields, Shorey, Snowe-Mello, Stanwood, Stedman, Tobin J, Trahan, Treadwell, True, Waterhouse, Wheeler EM, Winsor.

ABSENT - Berry DP, Tuttle.

Yes, 85; No, 64; Absent, 2; Excused, 0.

85 having voted in the affirmative and 64 voted in the negative, with 2 being absent, **House Amendment "A" (H-699) was INDEFINITELY POSTPONED.**

On motion of Representative GLYNN of South Portland, the House **RECONSIDERED** its action whereby **Committee Amendment "A" (H-681) was ADOPTED.**

The same Representative presented **House Amendment "A" (H-698) to Committee Amendment "A" (H-681)** which was **READ** by the Clerk.

The SPEAKER: The Chair recognizes the Representative from South Portland, Representative Glynn.

Representative GLYNN: Mr. Speaker, Ladies and Gentlemen of the House. Before you is an amendment, which does one very simple thing and that is to put a cap on the amount of money that is going to be in this fund. During the debate I was very disturbed when I found out that we were raising the taxes by about 12 percent on these employers in order to create a fund that would be 12 months and then realized that if we over collect our taxes, we go beyond those 12 months of cushion in this fund that we are going to keep right on collecting the funds. We had a number of statistics that were presented to us that, in fact, this fund is going to generate a huge surplus. In essence, we are going to be taxing for no reason. When I inquired the reasons for this, the assumptions for this, basically the answer that I received from those on the Majority Report was that, yes, that is correct. It is going to generate a surplus. Later on the committee is going to be looking down the road at putting a cap on this fund. In essence, we are talking about a fund that the Majority Report had stated those in support of it would like to have a surplus fund reserve of about 12 months to cover unemployment, which makes sense to me to create the solvency. We are raising the taxes. We are going to generate a surplus that is going to create a lot more than that. It is going to create the undesired affect of having many, many months in this fund and not having the tax rate lowered down.

In enacting this, I do know one thing about government having watched it, if we want it capped at 12 months, we had better cap it at 12 months. If we don't we are going to come back and we are going to find that we are going to have a different problem and an unintended consequence. This amendment adds a fund stabilizer, which is a cap to the

Unemployment Insurance Fund. The goal for the solvency of the plan is to ensure that the fund has 12 months of benefits, just what the Majority Report recommends. It requires that the Department of Labor on October 31 of the previous year to determine what the tax rate would be needed to keep the fund at 12 months of benefits and then adjust the tax fund accordingly. If the economy is not doing as well for the rest of 1999, then the rate would be 1.1 percent, the same as what is contained in the Majority Report. If the economy stays healthy or improves, which many indicated that it is in fact going to, the tax rate would be lowered while still keeping the 12 months in the reserves. I think this is a very responsible action. Those in the majority had stated that they intend on going back and putting a cap on later down the road. If our intent is, in fact, 12 months, let's put the cap at 12 months today. If that doesn't work out, down the road when they look at readdressing it, they can change that figure. I urge very much your support of this amendment. I thank you all for your indulgence.

Representative HATCH of Skowhegan moved that **House Amendment "A" (H-698) to Committee Amendment "A" (H-681) be INDEFINITELY POSTPONED.**

The same Representative **REQUESTED** a roll call on her motion to **INDEFINITELY POSTPONE House Amendment "A" (H-698) to Committee Amendment "A" (H-681).**

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 Skowhegan, Representative Hatch.

Representative HATCH: Mr. Speaker, Ladies and Gentlemen of the House. The bill already has a cap suggested in it. The department will be back in January. At that time we will revisit the issue and we will report out legislation with the cap intact. Currently this legislation will not go into affect until 90 days after we adjourn. There is no emergency preamble on this. Therefore, it will be somewhere down the road. We currently have 12 and a half months in the reserve fund. It is going to take us quite a while to get to the 12 months. We should be in good shape. The department assures us we can get a cap mechanism. I don't think it is something that we want to do in one day. After looking at this bill one time mainly because the department says it is going to take a while to adjust the cap to look at the way they need to set it into place. It is a formula, folks. You have to take and get the formula right for the first time. I would suggest that we Indefinitely Postpone this amendment. I know it is with good intentions that it was put forth. I do agree that maybe we were a little vague yesterday on some of the testimony, but at least look at it this way. This is an issue that has been worked on for a long time. Talking to the good Representative from Winslow, it was around in 1991. We finally got on the ball and said we need to do something about this issue. For right now, this bill is what we need. We will be looking at the issue in January. I guarantee you the department will be back and we should have legislation out early in January that will adjust the cap at that time. Just saying this doesn't make a formula appear out of nowhere. You have to look at all the issues that are involved in this and how the revenues are coming in and how they are being paid out. I would love to have a fund that had 18 months, but 12 months is good. Twelve months is the compromise of the committee and with the Department of Labor. It is something that we need to do. I thank you for your time and I ask that you support the Indefinite Postponement. Thank you.

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

Representative **TRAHAN**: Mr. Speaker, May I pose a question through the Chair?

The SPEAKER: The Representative may pose his question.

Representative **TRAHAN**: Mr. Speaker, Men and Women of the House. As I understand it there is no cap in place now. What happens if the committee doesn't like the language next year and could the cap language on the amendment be changed next year?

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 Skowhegan, Representative Hatch.

Representative **HATCH**: Mr. Speaker, Ladies and Gentlemen of the House. I would suggest to you that the committee has looked at this and we came to an agreement that this is something that we feel very strongly about and know the formula when it comes in will be what the department gives to us to adjust it at 12 months. I don't see that changing. It is on the record if you would like to check it in January. That is what we are looking at is 12 months.

The SPEAKER: A roll call has been ordered. The pending question before the House is Indefinite Postponement of House Amendment "A" (H-698) to Committee Amendment "A" (H-681). All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 323

YEA - Ahearne, Bagley, Baker, Berry RL, Bolduc, Bouffard, Brennan, Brooks, Bruno, Bryant, Bull, Cameron, Chick, Chizmar, Clark, Colwell, Cote, Cowger, Davidson, Desmond, Dudley, Dunlap, Duplessie, Etnier, Fisher, Frechette, Fuller, Gagne, Gagnon, Goodwin, Green, Hatch, Jabar, Jacobs, Kane, LaVerdiere, Lemoine, Mailhot, Martin, Matthews, Mayo, McDonough, McGlocklin, McKee, Mitchell, Murphy E, Muse, Norbert, O'Brien LL, O'Neal, O'Neil, Perkins, Perry, Pih, Povich, Powers, Quint, Richard, Richardson J, Rines, Samson, Sanborn, Savage W, Saxl JW, Saxl MV, Shiah, Sirois, Skoglund, Stanley, Stevens, Sullivan, Tessier, Thompson, Townsend, Tracy, Tripp, Twomey, Usher, Volenik, Watson, Wheeler GJ, Williams, Mr. Speaker.

NAY - Andrews, Belanger, Bowles, Bragdon, Buck, Bumps, Campbell, Carr, Cianchette, Clough, Collins, Cross, Daigle, Davis, Dugay, Duncan, Foster, Gerry, Gillis, Glynn, Gooley, Heidrich, Honey, Jodrey, Jones, Joy, Kasprzak, Kneeland, Labrecque, Lemont, Lindahl, Lovett, MacDougall, Mack, Madore, Marvin, McAlevey, McKenney, McNeil, Mendros, Murphy T, Nass, Nutting, O'Brien JA, Peavey, Pinkham, Plowman, Richardson E, Rosen, Savage C, Schneider, Sherman, Shields, Shorey, Snowe-Mello, Stanwood, Stedman, Tobin D, Tobin J, Trahan, Treadwell, True, Waterhouse, Weston, Wheeler EM, Winsor.

ABSENT - Berry DP, Tuttle.

Yes, 83; No, 66; Absent, 2; Excused, 0.

83 having voted in the affirmative and 66 voted in the negative, with 2 being absent, **House Amendment "A" (H-698) to Committee Amendment "A" (H-681) was INDEFINITELY POSTPONED.**

Representative **SHOREY** of Calais **PRESENTED House Amendment "B" (H-700) to Committee Amendment "A" (H-681)**, which was **READ** by the Clerk.

The SPEAKER: The Chair recognizes the Representative from Calais, Representative Shorey.

Representative **SHOREY**: Mr. Speaker, Ladies and Gentlemen of the House. This amendment will help small businesses, startup businesses and new businesses. It would allow them to pay 85 percent of the predetermined yield or 1 percent, whichever is greater. This would go over a period of two years. This would provide the much needed capital during the startup periods of a small business when they are really struggling. It would also allow the businesses to establish a track record for the chargeable benefits. This would give the people an opportunity to show what they are like as an employer. I urge you to pass this amendment.

Representative **HATCH** of Skowhegan moved that **House Amendment "B" (H-700) to Committee Amendment "A" (H-681) be INDEFINITELY POSTPONED.**

The same Representative **REQUESTED** a roll call on her motion to **INDEFINITELY POSTPONE House Amendment "B" (H-700) to Committee Amendment "A" (H-681).**

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 Skowhegan, Representative Hatch.

Representative **HATCH**: Mr. Speaker, Ladies and Gentlemen of the House. With this bill we are talking about a solvency issue with the Unemployment Fund and now we have an amendment that would extend benefits to small startup businesses. It doesn't make sense to me, but maybe someone here can tell me how this relates to this bill. This is an issue that we have worked on for a long time and I just can't understand why we would want to be tapping into something that we are trying to fix so it won't go broke. I hope you will follow my light and thank you very much.

The SPEAKER: The Chair recognizes the Representative from Calais, Representative Shorey.

Representative **SHOREY**: Mr. Speaker, Ladies and Gentlemen of the House. According to the fiscal note, it says it would affect the fund by approximately \$1 million for calendar year 2000. The impact of the change in future years cannot be determined at this time. With small businesses, the first two years are the most critical years. That is when they need to have the opportunity to have cash flow. I believe that over the period of time that enough businesses will survive that it will overcome this deficit.

The SPEAKER: The Chair recognizes the Representative from Standish, Representative Mack.

Representative **MACK**: Mr. Speaker, May I pose a question through the Chair?

The SPEAKER: The Representative may pose his question.

Representative **MACK**: Mr. Speaker, Right Honorable Men and Women of the House. If someone could tell me if my understanding of my amendment is correct, currently new businesses would pay the average rate for unemployment insurance. What the good Representative from Calais's amendment would do is say new employers would be paying 85 percent of the average rate to give them an extra incentive to become a new employer? Could somebody please tell me if my understanding is correct that that is the change and they would not be drawing any benefits from the fund?

The SPEAKER: The Representative from Standish, Representative Mack has posed a question through the Chair to

anyone who may care to respond. The Chair recognizes the Representative from Calais, Representative Shorey.

Representative **SHOREY**: Mr. Speaker, Men and Women of the House. That is correct. Thank you.

The **SPEAKER**: A roll call has been ordered. The pending question before the House is Indefinite Postponement of House Amendment "B" (H-700) to Committee Amendment "A" (H-681). All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 324

YEA - Ahearne, Bagley, Baker, Belanger, Berry RL, Bolduc, Bouffard, Brennan, Brooks, Bryant, Bull, Chick, Chizmar, Clark, Colwell, Cote, Cowger, Davidson, Desmond, Dudley, Dunlap, Duplessie, Etnier, Fisher, Frechette, Fuller, Gagne, Gagnon, Gooley, Green, Hatch, Honey, Jabar, Jacobs, Kane, LaVerdiere, Lemoine, Mailhot, Martin, Matthews, Mayo, McDonough, McGlocklin, McKee, Mitchell, Muse, Norbert, O'Brien LL, O'Neal, O'Neil, Perkins, Perry, Pieh, Povich, Powers, Quint, Richard, Richardson J, Rines, Samson, Sanborn, Savage W, Saxl JW, Saxl MV, Shiah, Sirois, Skoglund, Stanley, Stevens, Sullivan, Tessier, Thompson, Townsend, Tracy, Tripp, Twomey, Usher, Volenik, Watson, Williams, Mr. Speaker.

NAY - Andrews, Bowles, Bragdon, Bruno, Buck, Bumps, Cameron, Campbell, Carr, Cianchette, Clough, Collins, Cross, Daigle, Davis, Dugay, Duncan, Foster, Gerry, Gillis, Glynn, Goodwin, Heidrich, Jodrey, Jones, Joy, Kasprzak, Kneeland, Labrecque, Lemont, Lindahl, Lovett, MacDougall, Mack, Madore, Marvin, McAlevey, McKenney, McNeil, Mendros, Murphy E, Nass, Nutting, O'Brien JA, Peavey, Pinkham, Plowman, Richardson E, Rosen, Savage C, Schneider, Sherman, Shields, Shorey, Snowe-Mello, Stanwood, Stedman, Tobin D, Tobin J, Trahan, Treadwell, True, Waterhouse, Weston, Wheeler EM, Wheeler GJ, Winsor.

ABSENT - Berry DP, Murphy T, Tuttle.

Yes, 81; No, 67; Absent, 3; Excused, 0.

81 having voted in the affirmative and 67 voted in the negative, with 3 being absent, **House Amendment "B" (H-700) to Committee Amendment "A" (H-681) was INDEFINITELY POSTPONED.**

Subsequently, **Committee Amendment "A" (H-681) was ADOPTED.**

The Bill was **PASSED TO BE ENGROSSED as Amended by Committee Amendment "A" (H-681) in concurrence.**

Representative **MACK** of Standish **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.

The **SPEAKER**: The Chair recognizes the Representative from Standish, Representative Mack.

Representative **MACK**: Mr. Speaker, Right Honorable Men and Women of the House. I urge you to vote against the pending motion. Just to quickly remind you of what this bill does, this is for the Unemployment Insurance Fund. What it would do is address the solvency and the alleged solvency problem in the Unemployment Insurance Fund. It would have a 12.25 percent tax hike for businesses in the State of Maine. If the fund is allegedly insolvent and we need to raise taxes drastically, why are we raising benefits by 8 percent? Benefits are going up by 8 percent for the majority of people applying for unemployment insurance. If we are broke, why would we raise the benefits?

Also, I wanted to remind you that the assumptions that this report is based on are very suspect. It has unemployment going to about 9 percent in 2003. The numbers used for these

numbers are not very accurate. There were two sets of assumptions used in the Majority Report. One set of assumptions were what is going to happen to the average weekly wage, which is important when you calculate the benefits. The set of numbers given to me by the Department of Labor and prepared by the State Planning Office to determine the average weekly wage has an unemployment rate of about half that for the set of assumptions used in the scenario set for the tax rate. Their own numbers disprove themselves. If we look at the State Planning Office numbers, insured unemployment will be about half of what it is for the numbers in the Department of Labor's assumption, which is based on the three worst years in the last 20 happening again. No one has been able to come up with any good predictions that that would actually happen. I would also remind you that both plans fix the unemployment system, both plans have the higher wage base and the array system and many other things that technically change the system to fix it. The big question you have to ask yourself is do you think the economy is going to bottom out so badly that unemployment will about double or more than double that we need a 12.25 percent tax hike. I don't think that is likely to happen and I don't think we need the tax hike. I urge you to vote against the pending motion. Thank you.

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.

ROLL CALL NO. 325

YEA - Ahearne, Bagley, Baker, Belanger, Berry RL, Bolduc, Bouffard, Bragdon, Brennan, Brooks, Bruno, Bryant, Bull, Cameron, Carr, Chick, Chizmar, Cianchette, Clark, Colwell, Cote, Davidson, Davis, Desmond, Dudley, Duncan, Dunlap, Duplessie, Etnier, Fisher, Frechette, Fuller, Gagne, Gagnon, Goodwin, Gooley, Green, Hatch, Honey, Jabar, Jacobs, Kane, LaVerdiere, Lemoine, Lindahl, Mailhot, Martin, Matthews, Mayo, McAlevey, McDonough, McGlocklin, McKee, Mitchell, Murphy E, Murphy T, Muse, Norbert, O'Brien JA, O'Brien LL, O'Neal, O'Neil, Perkins, Perry, Pieh, Powers, Quint, Richard, Richardson J, Rines, Samson, Savage C, Savage W, Saxl JW, Saxl MV, Schneider, Shiah, Sirois, Skoglund, Stanley, Stevens, Sullivan, Tessier, Thompson, Townsend, Tracy, Treadwell, Tripp, Twomey, Usher, Volenik, Watson, Weston, Wheeler EM, Wheeler GJ, Williams, Mr. Speaker.

NAY - Andrews, Bowles, Buck, Bumps, Campbell, Clough, Collins, Cowger, Cross, Daigle, Dugay, Foster, Gerry, Gillis, Glynn, Heidrich, Jodrey, Jones, Joy, Kasprzak, Kneeland, Labrecque, Lemont, Lovett, MacDougall, Mack, Madore, Marvin, McKenney, McNeil, Mendros, Nass, Nutting, Peavey, Pinkham, Plowman, Povich, Richardson E, Rosen, Sanborn, Sherman, Shields, Shorey, Snowe-Mello, Stanwood, Stedman, Tobin D, Tobin J, Trahan, True, Waterhouse, Winsor.

ABSENT - Berry DP, Tuttle.

Yes, 97; No, 52; Absent, 2; Excused, 0.

97 having voted in the affirmative and 52 voted in the negative, with 2 being absent, 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.**

REPORTS OF COMMITTEE

Divided Report

Majority Report of the Committee on **HEALTH AND HUMAN SERVICES** reporting **Ought to Pass as Amended by Committee Amendment "C" (H-705)** on Bill "An Act to Amend the Law Governing the Confidentiality of Health Care Information"

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

Signed:

Senators:

PARADIS of Aroostook
BERUBE of Androscoggin
MITCHELL of Penobscot

Representatives:

KANE of Saco
FULLER of Manchester
QUINT of Portland
DUGAY of Cherryfield
WILLIAMS of Orono
LOVETT of Scarborough
BRAGDON of Bangor
SNOWE-MELLO of Poland
SHIELDS of Auburn

Minority Report of the same Committee reporting **Ought to Pass as Amended by Committee Amendment "B" (H-281)** on same Bill.

Signed:

Representative:

BROOKS of Winterport

READ.

Representative KANE of Saco moved that the House **ACCEPT** the Majority **Ought to Pass as Amended** Report.

The **SPEAKER**: The Chair recognizes the Representative from Saco, Representative Kane.

Representative **KANE**: Mr. Speaker, Men and Women of the House. The proposed legislation on confidentiality of health care information is both a complex document and a complex issue. Most of us cannot expect to have a very high comfort level associated with a complete understanding of either the issue or the document and I realize that. In the 118th session the Health and Human Services Committee presented a unanimous **Ought to Pass** report that incorporated extremely high standards on managing the communication of medical information unfortunately to our chagrin and frustration. The new law precipitated an outcry from our constituents as a result of persons who could not get information on a family member in the hospital and the inability of clergy to get information on their parishioners and even flower delivery persons unable to deliver best wishes flowers to patients in the hospital. What we have discovered was that these extremely high standards were also extremely high barriers to necessary and normal communications. After action to delay implementation of the new act, the Health and Human Services Committee was charged by this body with the responsibility to develop a comprehensive, but workable, confidentiality bill. We believe, men and women of the House, that we have fulfilled that charge and present to you tonight LD 1653 with House Amendment (H-705), which has passed our committee with a 12 to 1 vote.

In developing a high quality, but pragmatic document, we were conscience of attempting to achieve maximum protection of medical information on behalf of patients while at the same time not risking unintended, but harmful consequences as we did in the previous bill. What you have before you, therefore, is a very

good policy framework that covers all areas of our health care system to which health care information normally flows. It assures that patients entering a hospital have the opportunity to provide informed consent in releasing or withholding the health care information. Secondly, it assures that those who deliberately violate the laws of protection are liable for negligence. Finally, it retains the current protections in the law for HIV information. Most importantly it puts into place a comprehensive and systematic set of rules to govern the disclosure of health care information with or without explicit consent and a set of rules where none now exist. I hope you have had a chance to read some of the material that we have distributed that explains exactly what the bill does. The individual and professional ethical rules that govern each professional group are currently the major source for protection of confidentiality of health care information.

While there are critically important and will remain in place, these are not enough. The comprehensive and systematic set of rules prescribed in LD 1653 will provide the necessary framework upon which to continue building an ever improving and expanding system of guidelines, rules and regulations to govern the protection of health care information as our health care system moves into the new century. So many people that I have talked with about this bill have shared with me their discomfort with it. I can only tell you that the complexity of the issue and the bill has been compounded by false and misleading information that can only serve to raise your level of discomfort. In the end, ladies and gentlemen of the House, your vote will be guided more by your valued judgment and trust level than by a thorough understanding of the details of the bill, which are so complex, the bill that is before you.

As we worked on this bill, we were very conscience of your expectations and the need for confidence in the final product. We were also very conscience of what you did not want, a repeat of the disastrous debacle that occurred in January. We are mindful that a perfectly airtight document could lead again to many unintended consequences as has happened in January. We are prepared to answer your questions as best we can. The issues raised by the other side are either too vague to answer or they will be rebutted by my colleagues. The best argument that the other side can advance is that this document does not go far enough and should be put aside until a more perfect proposal can be developed. I submit, ladies and gentlemen, that good public policy is seldom perfect. Good public policy is sound in laying a foundation, which can be built upon, expanded, refined and modified with changing times. This is an opportunity for us to do the right thing in the right way and at the right time. I urge your support for the Majority **Ought to Pass** Report. Thank you Mr. Speaker.

The **SPEAKER**: The Chair recognizes the Representative from Manchester, Representative Fuller.

Representative **FULLER**: Mr. Speaker, Ladies and Gentlemen of the House. Why do we need this law? Of primary importance, patients must feel sure that information will be kept confidential, or they may withhold information, and treating professionals must also be assured of those protections when they enter important treatment information in a clinical record, or they may not record such information. Medical confidentiality lies at the heart of the "healing relationship." This bill enhances, not undermines, protections of confidential health and medical information.

With electronic data systems, the transfer of information is too easy. Databases have been commercially sold for marketing purposes. Some insurance companies are requesting the whole record these days, or an excess of information before granting prior authorizations for certain treatments or procedures. There is a concern about employers obtaining information that could be used against employees. This bill does not create any expansion of access to medical records, and clearly there is no access to medical records by employers without the authorization of the individual if this bill passes.

This bill establishes for the first time in Maine statute that a person's health care information is confidential and sets some ground rules under which information may be released, not must be released. Health professionals can impose a higher standard, and, in fact, this bill includes a provision that any disclosures of health care information are subject to the professional judgment of the health care practitioner.

Opponents to LD 1653 claim that current common law protections for medical information are better than this law. I strongly disagree. While the existing ethical canons and licensing laws for physicians and hospitals might be considered adequate, there are really no laws protecting your medical information when it is in the hand of other health facilities and providers.

The study that was conducted between sessions of the 118th Legislature found that there was no uniformity of ethics or law regarding the practices of allied health practitioners, such as acupuncturists and physical therapists, or any of the other 20 or more categories of health care practitioners and little protection for prescription information.

LD 1653 creates a system where consumers are protected with a minimum set of standards for all practitioners and providers under which health care information that directly identifies the individual may, not must, be disclosed.

The bill prohibits, for the first time in Maine law, the disclosure of personal health care information based on a blanket release form signed by a patient or their authorized representative. Calling your attention to page 5 of the Committee Amendment (H-705), not that every release form must now contain eight different elements designed to inform patients of their rights, including the right to revoke the release and their right to refuse to release any information.

These provisions provide important new protections for patients who are frequently asked to sign very broad releases. This type of broad release has been strongly objected to by mental health patients and LD 1653 gives the provider, and thus the patient, grounds upon which to object to the broad release. The release now must describe the purpose of the disclosure and the types of persons who will have access to it.

I also want to call your attention to (H-705), subsection 10 on page 13 of the amendment, entitled, "Requirements for Disclosures," which gives further strength to the requirements for the authorization form. This, in my view, may be the most important provision in the bill. Section 10.B prohibits a health care practitioner or facility from disclosing information in excess of the information reasonably required for the purpose for which it is disclosed.

This section was added for the express purpose of giving physicians and other providers the opportunity to contest, on behalf of their patients, a request for information that is broader than necessary. For instance, if one of the behavioral health management companies, which "manage" mental health costs

for HMO's, sends in a request signed by a patient at the time of enrollment requesting all records, including psychotherapy notes, the psychiatrist or other providers in nothing that the purpose stated in the form is to authorize 2 more 15 minute visits, may well choose to not release all of the record, relying on section 10.B to give him or her that authority.

To deal with some of the problems that occurred with the previous law, LD 1653 as amended permits oral authorization when written authorization cannot be obtained, for whatever reason, and also permits certain 3rd parties to authorize disclosure when the individual is unable to do so. Language is included dealing with the safety of individuals when there are any indicators, suspicion or substantiation of abuse, both for 3rd party authorization for release of information and for access to the patient's record. The 3rd parties who may authorize disclosure follow the provisions in other statutes relating to uniform health care decisions. The amended version of LD 1653 also permits the health care practitioner to share information with a family or household member according to the practitioner's professional judgment of the situation, unless expressly prohibited by the individual or a third party acting in the person's behalf.

This law sets standards for authorization forms, limits the authorization to 30 months and provides that the authorization may be revoked at any time, provisions that do not exist today.

Disclosure without written authorization is permitted to share information with another health care practitioner or facility for diagnoses, treatment or care, with exceptions requiring a specific authorization for HIV or mental health information, except in emergencies. Release of HIV information remains the same as currently exists, and as included in the Minority Report.

LD 1653 provides for disclosures without written authorization for lawful purposes such as billing, quality assurance, risk management, utilization review and peer review, to governmental authorities pursuant to statute, court order or subpoena issued on behalf of a governmental entity for an investigation or prosecution; for approved scientific research; for fraud investigations; for regulation, licensure, certification or accreditation reviews for reviews under insurance and workers' compensation laws; for payment activities; immunization information to certain parties; and certain other limited situations that make our health care system work in our behalf. These releases of information have been ongoing for years, whether you were aware of it or not. In fact, this law tightens the requirements for subpoenas; they must now be court-ordered or issued by a government entity. But, remember, now the law would limit any of these releases only to the information reasonably required for the purpose for which disclosed. This bill does not permit release of information to employers.

Other changes, information may be released regarding appointments or to make arrangements for health care; to obtain medications or supplies in behalf of another person. Health care facilities may provide information to clergy, including religion and place of residence, unless expressly prohibited; brief confirmation to the media of general health status when asked by name, unless expressly prohibited and to a member of the public, such as a visitor, when asking about an individual by name, including room number and brief general health status, unless expressly prohibited.

The bill will require that the admission forms of health care facilities will include a statement informing individuals of their right to remove their names from the directory listing, along with

a statement that such removal may result in inability to direct visitors, when asking about an individual by name, including room number and brief general health status, unless expressly prohibited.

The bill will require that the admission forms of health care facilities will include a statement informing individuals of their right to remove their names from a directory listing, along with a statement that such removal may result in inability to direct visitors, clergy and telephone calls to the individual.

LD 1653 requires all health care practitioners and facilities to have policies, standards and procedures to protect the confidentiality of health care information. An important point, information that can be disclosed is restricted to only the information reasonably required for the stated purpose. The bill requires written or oral authorization for the purposes of marketing or sales, a protection that does not exist today. It restricts to minors authorizations regarding health care consented to by the minor, in accordance with statutes. It provides immunity for disclosures made in accordance with the law. The bill provides for enforcement through actions brought by the Attorney General or private actions with fines up to \$5,000 for intentional violations, and higher fines if violations are general business practices. It also clarifies that this bill does not prohibit a person from pursuing all available remedies under common law, including an action for negligence.

This bill creates a floor of protection, while specifically allowing health professionals and facilities to establish and adhere to higher ethical or professional standards; it deals with the issues that caused so much furor last year.

I know that some do not like to hear about what may happen at a federal level. However, if Congress does not deal with confidentiality by this fall, it will fall to the Department of Health and Human Services to develop regulations. There is no assurance that a federal law will pass later this year. If a law is not passed, HCFA is to develop rules, a process that can take years. In the meantime, confidential health care information would not be protected from some abuses that have already taken place.

Recommendations made by the Secretary of Health and Human Services Shalala propose to abolish informed consent and replace it with a system of open access for nearly all commercial users who want access. Further, she recommends preserving state statutory law, but pre-empting common law. This makes it even more urgent that we pass this legislation.

Lastly, a sunset clause has been added to this bill for March 1, 2002 so we can revisit how it is working. This is an important piece of legislation to protect all of us as consumers. It is not designed to protect health care providers, but to protect each and every one of us, regardless of circumstances, while giving us greater control over our personally identified health information. This bill goes further than any other law in the country to protect your personal, identified medical information, not the opposite as alleged in some of the information you have received.

If these amendments are not enacted modifying the law passed last session, either the new law will stand or, if the Minority Report is adopted, the law will be repealed and will have no privacy laws to protect consumers. Let Maine be a leader again. I urge your support on the majority Ought to Pass motion. Thank you. Mr. Speaker, I request a roll call.

Representative FULLER of Manchester REQUESTED a roll call on the motion to ACCEPT the Majority Ought to Pass as Amended Report.

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 Winterport, Representative Brooks.

Representative BROOKS: Mr. Speaker, Ladies and Gentlemen of the House. Let me first start of by saying I can't tell you how glad I am that this moment has finally come. I am sure that you all are too. Running the gauntlet out there is difficult enough without having this kind of an issue facing us. We are now at a point, I hope, where we can make some decisions on confidentiality. I also want to apologize that it is an evening I realize and this may take a couple of minutes. I usually, as some of my friends know, try to keep my comments brief. Tonight it might take a little bit longer.

Although the bill before us here seems very complex and has caused much debate, both within the committee and certainly out in the corridors, the issue itself is really quite simple. It comes down to one thing, individual autonomy. Do individuals have the right to control their most private, most intimate and most revealing information about themselves, information that can significantly impact on all their lives, their jobs, their insurance, their credit and even their children's ability to obtain insurance. If you answered in your minds, yes, to that question, then the only position that you should take on this bill is to reject the Majority Report and let us get to the Minority Report. Should the people who have the most to gain financially from maintaining control and access to this very valuable and marketable information make decisions about access often without knowledge or consent of an individual? Should these same people who might be found in violation of this law be setting the conditions for these violations? Frankly, these are precisely the issues I have been fighting against in the committee. When the vote is called for, I hope you will join with me in rejecting the Majority Report and support the Minority Report.

As we consider this bill it might be worth reflecting on the process that this legislation has gone through. It has been a process that has been controlled by the doctors and the hospitals. It is a process that has excluded health care consumers. The amended Majority Report was not a compromise worked out with consumers. It was another amendment offered by the same people who put together the bill in the first place. It was done in an effort to put off opposition to the bill, not to allow any real consumer concerns to be entered in. We have come from a process that once excluded consumers last year and now we have a bill that does a great disservice to the very people it intends to protect, the patient.

Is it any wonder that 12 consumer groups still stand not in favor of LD 1653? These groups include: The Maine Coalition Against Sexual Assault, the Maine AIDS Alliance, the Disability Rights Center of Maine, the Maine AFL-CIO, the Maine Commission on Domestic Abuse, the Maine Lesbian/Gay Political Alliance, the National Coalition for Patient Rights, the Maine Coalition to End Domestic Violence, the Maine Women's Lobby, the Maine Civil Liberties Union, the Maine HIV Advisory Committee and the Dirigo Prevention Coalition. Some may follow me and say that this is an old list. These groups have been confirmed and reconfirmed. The most recent change comes from the Maine AIDS Alliance. Some have indicated that

that group has withdrawn its support of the Minority Report. I would like to read you just a couple of comments from a letter I received. It says that the board will not oppose the amendments that you see in the Majority Report, but here is the key, however, it prefers the Minority Report with its greater overall protections. These are 12 consumer groups, some of whom were involved last year. Rarely were they involved in the process this year.

Once again I urge you to take a stand for the individual, the little guy, against big business and against big brother at it very worst. Reject the Majority Report and support the Minority Report, which repeals the law that was passed last year and maintains the protection for HIV test status and gives each individual the ability to maintain full and complete control over their most personal and private information.

I would be remiss if I didn't spend a few minutes just briefly discussing some of my specific objections to this bill. As many of you know we have been struggling for some time about including negligence as a cause of action. The committee did find a compromise; at least 12 members of the committee found a compromise. I don't see it as a compromise and I would like to have all of you take an opportunity some time to read the negligence sections. What bothers me greatly is that there is another section in there that says that the facility under this proposed legislation sets its own standards. I think you heard the good Representative from Manchester say that just a minute ago. I seriously doubt that any hospital council would recommend any standards for any health care facility that would leave that facility in jeopardy. While we are looking at a facility that we hope will safeguard information, we are saying to set our own standards. I am not sure that I can buy even that premise. This is only one objection to the many I have on LD 1653.

I recognize and for that matter I compliment all the work that has gone into this bill with all the groups that have done it, in particular, the Representative from Manchester, Representative Fuller, who has worked very, very hard on this for three years. She does deserve a lot of credit, as does the Health and Human Services Committee. Ladies and gentlemen of the House, the job is not finished. Let's not rush to completion a bill that is not nearly ready. When we convene next January, before that, given a chance, I will work on a volunteer level with the 12 consumer groups that I mentioned before in an effort to resolve all of their concerns and turn this bill around. Representatives of these groups feel that they were not given a seat at the table this year, only provider groups, the Maine Hospital Association, the Maine Medical Association, the Maine Dental Association and the Maine Osteopathic Association were at the table and they were all providers. None of the patient groups were there this year. When the time comes for you to cast your vote remember this dilemma can be resolved easily if we simply turn the basic question around.

Instead of beginning with a premise that hospital records can be released unless the patient says not, let's pass a bill that gives total ownership and total control of all health care records to the people who really own them, the patient. Let's begin with a new premise that all hospital records are totally confidential until the patient says, through their own initiative, that those records can be released. When the debate is finally over and the speaker turns to the tote board, I am not going ask you one more time to vote against this report, but if you are like me and you are still in doubt, I frankly can't put this bill on the books.

Everyday I think in at least our committee we hear an awful lot about bills that we passed that have unintended consequences. Ladies and gentlemen of the House, as you have heard admitted by many members of this committee we are not sure this bill is finished. It is a work in progress. There are problems. If there were no problems, why do we have a sunset on it. If there were no problems, why have people continued to comment that this work in progress can be fixed in January? I don't think we are going to be facing unintended consequences in January; we are going to be facing intended consequences. This bill isn't ready for us to vote on and put on the books. Again, I pledge to you the support and the cooperation of those organizations out there that are consumer and advocacy groups to work on this bill. Before you are ready to vote, I know this is out of context, I know that some of the folks who support this legislation are not going to like what I am about to do, but I want you to look at the summary at the end. I want you to read some of the paragraphs. I don't need to repeat them or read them to you, but why don't you begin at the letter F, that says, "allows disclosure without authorization." You can go to letter G, that says, "allows disclosure without authorization." If that is the premise that we are working on here, then ladies and gentlemen, I think we are off the mark.

I want to see this bill turned around. I want to see us take credit for all the work we have done. I don't want to see us put bad law on the books. We keep talking about how you don't want to watch how a law is made anymore than you want to see how a sausage is made. Sometimes the guy at the meat processing plant will tell you we turn out lousy sausage. We don't need to be responsible for the second year in a row of turning out lousy law. I, frankly, don't want to go through any of what I went through last fall and winter from consumers. Some of that was taken care of from consumers. Some of that has been taken care of as you have heard testified to before, the florist, the clergy, the funeral director, the doctor and the pharmacist all of whom called all of us and complained. Some of that has been opened up. I think we have gone too far, but, again, the basic premise of this legislation needs to be who owns the hospital records. The health care records are owned by the patient. We need to recognize that and write that into the law. Thank you Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Scarborough, Representative Lovett.

Representative LOVETT: Mr. Speaker, Ladies and Gentlemen of the House. You know without enacting this legislation this is very comprehensive legislation that states very simply that your health care information is confidential. Many consumers will continue to be without protection when persons or companies seek your personal medical information. While many of the health care professionals have ethical provisions and licensing standards governing confidentiality. While hospitals have licensing and accreditation standards that address confidentiality, there are a great many other settings in which the information is relatively unprotected. This would include when the information is in the hands of many of the so-called alternative health care providers, as well as when it is in the hands of corporations, which in and of themselves, have no ethical requirements. I ask you tonight to put your trust in this committee who, yes, we have had some differences on a few of the items, but I think that we have generally covered everything to protect you and your constituents. If we haven't, it is very minor. I am sure you should have the faith in this committee that

we can handle anything that should come up. We need something on the books now to protect you and your consumers. I hope you will follow our light.

The **SPEAKER**: The Chair recognizes the Representative from Portland, Representative Quint.

Representative **QUINT**: Mr. Speaker, Men and Women of the House. I would rise in support of the pending motion and I would like to tell you why. First I would like to talk a little bit about the process. We have spent over two years of dealing with how medical information and patient information is going to be shared with those people who need to have it in order to continue to provide high-quality care to the people in the State of Maine. There has been an accusation that people were not included at the table. While all of you who do committee work are very aware that our work sessions are open to the public. They are advertised and all of those groups have representatives that we see in the hall every single day. Many of them have been here for years and are very familiar with the process or how to affect the process affectively and meaningfully in a way that helps the members that they represent. I also want to share with you because I know many of those people who represent those groups. Many of them were absent at all of the work sessions when we dealt with this bill. It is not because we did not know about it, but they had an opportunity to participate with everybody else that was interested and at those meetings. They were not there.

Two things that we agree upon is that medical information is information that is very personal to all of us and very important. We also agree that it is very private and it is something that we need to protect. How we move forward with how we do that is where we begin to disagree. The difficulty that we are faced with is in order to insure that people get the best quality health care in the State of Maine is that information is shared appropriately and privately and to those people that need to know. What you all know from January's incident is that the initial law that we passed was very restrictive and restricted people's access to that information. It truly required that the patient, every single time, participate in that process and who gets it. What were the consequences? Family members were not able to know if their loved ones were in the hospitals and clergy were not able to visit the hospitals. It really was something that we didn't realize was going to happen. It is not an easy process. As you all know as we develop comprehensive public policy whether it is environmental practices, public health issues like public smoking or prescription drugs for the elderly. Although many of us would like to get to the end result and have it be exactly what we want to be, we can't always do that. Does that mean we are not going to continue to strive for the citizens of the State of Maine so that their medical information continues to be protected and used appropriately? I certainly think so. Does that mean that it can be absolutely perfect and it may continue to need work? Certainly, but what I need to remind you in my closing remarks is what the Minority Report is suggesting is that we go back to common law, which is exactly what started this debate. That is what we were existing on and that is what was in existence.

I would suggest to you for any of you that have had personal experiences with misuse of medical information or any of your constituents that are concerned or have had bad experiences with medical information and their ability to have recourse was simply because of what we are being asked to go back to with common law. For me, I don't think that that is in the

best interest of the people that I represent. I think certainly with the importance of medical information that it is imperative that we make a statement that we move forward on a very comprehensive issue and we support the Majority 12 to 2 Report. Thank you.

Representative LEMONT of Kittery assumed the Chair.
The House was called to order by the Speaker Pro Tem.

The **SPEAKER PRO TEM**: The Chair recognizes the Representative from Westbrook, Representative Duplessie.

Representative **DUPLESSIE**: Mr. Speaker, Ladies and Gentlemen of the House. I rise in opposition to the pending motion. First off, I do want to thank the committee. I feel they have done a great deal of work on this piece of legislation, but I have various concerns that it is not a good piece of legislation. We heard about it from the fine Representative from Manchester that this bill establishes for the first time in Maine statute that a person's health care information is confidential and cannot be disclosed without the patient's authorization or unless the disclosure is subject to one of the exceptions set forth in the bill. I guess that is where some of my concerns come in. The good Representative Brooks asked you to read the summary, well, if you get bored with reading some of the summary, I would ask that you turn to page 7 through page 12 where it talks about disclosure without authorization. It is a very extensive section. Common law, yes, I would rather go back to the common law, because of the American Medical Association Code of Ethics. Let me quote Section 5.05. "Confidentiality, the information disclosed to a physician during the course of the relationship between physician and patient is confidential to the greatest possible degree. The patient should feel free to make a full disclosure of information to the physician in order that the physician may most effectively provide needed services. The patient should be able to make this disclosure with the knowledge that the physician will respect the confidential nature of the communication. The physician should not reveal confidential communications for information without the express consent of the patient unless required to do so by law. I feel that all of these exceptions in here from page 7 to 12 we are opening that up, because now, by law, we are going to give the right to do it. Now we have the protections. I feel that we need to seriously look at this because currently all information is assumed to be confidential, because of that code of ethics. Now with these proposed changes unless you sign the written prohibition it is assumed that it can be released. Thank you.

The **SPEAKER PRO TEM**: The Chair recognizes the Representative from Buxton, Representative Savage.

Representative **SAVAGE**: Mr. Speaker, Men and Women of the House. Deciding what to do with this bill has been kind of a nightmare for me because I have had some concerns about the process by which it was derived. I have had some problems with a lot of different things. In the end we have 20 pages worth of document here and about 18 pages worth of law that we have decide to what do with regardless of what the process was and how it came to be. I am very concerned that if we don't do something the federal government will do it for us. I hate that with a passion. I have been labeled and told that I am just a paranoid libertarian. I know that may seem hard to gather, but when I read the bill the first time I thought the exceptions to the

rule swallow the rule. The part about disclosure without authorization to disclose swallows everything else in this rule.

I want to go to Section 10B and I want to talk about what I consider to be a hospital's dream. "May not disclose information in excess of the information reasonably required for the purpose for which it is disclosed." That is a circular definition. You can't disclose it except for the purpose for which it is disclosed. I can't imagine what wouldn't be disclosed for the purpose for which it is disclosed. Actually I can, but I won't even go there. I thought that this was a hospital protection plan. You will notice under Section 6, F1 that information may be disclosed without consent as directed by subpoena issued on behalf of a governmental entity for the purpose of an investigation or prosecution. My first thought was the hospitals are sick and tired of paying to quash subpoenas. You will remember we had this issue in the OUI medical records bill. That was my first thought, because I thought this was a hospital protection plan. It is worse than that folks. I found out where that really came from. That came from law enforcement. That came from the Attorney General's Office. I was standing out here in the hall talking to some members of the health care lobby and I was very upset. I asked what are you trying to put over here? They had said that they didn't want in the bill. That was put in over our objections. If I am a paranoid libertarian folks, I guess I will have to plead guilty to that, because it is worse than I thought it was.

I look at this thing and it is 18 pages of very complex legalese, terms of art, words that I don't practice this kind of law and I don't understand. I have read it many, many times and I don't understand some of this stuff. I see a little nugget like this for the Attorney General and I wonder what else is in this 20 pages that we haven't even picked up. I know other people are going to stand up and they are going to speak about this and they are going to talk about the things they found. I want to point out in Subsection L under Section 6 that payment activities, in other words the billing that we have been told is so benign, include, but not limited to activities necessary to determine responsibility for coverage. I don't deny that is necessary, but that goes far further than a bill for \$200. That is going to require the health insurance company to have the file. If that is not enough, than Subsection 3, under L, it says, "The information may be disclosed without consent for quality assessment and utilization review activities." I see that as going beyond the files folks. That may be the way things go today and that may be right or wrong, I am not saying one way or the other, but that is more than just sending a bill for \$200 or \$1,000 or whatever it is going to be. If we think we are saving ourselves from the insurance companies, we have done nothing of the sort.

Next, I want to address the issue of professional responsibility. Nothing, except for federal law trumps a state law and that includes responsibility rules. Any ethical responsibility that a doctor is under in this state under some rule is trumped by statute. There has been a lot of discussion about opting in and opting out and whether you should be able to be told that you have the right not to disclose the information versus having them ask you if it is okay to disclose the information. People are going to talk about that. I think it is really important for us to look at all these disclosures without consent and ask yourself is there anything in that list that you wouldn't like to be told before you do it that that stuff is going out to a member of media without consent? Is there any reason in the world why you shouldn't be able to have that be with consent?

I do have serious concerns about not doing something, but I have more serious concerns about doing something that we don't even understand and that has these little nuggets in it for people who we didn't even realize were in the game. I can't sleep tonight if I vote for this. Thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Southwest Harbor, Representative Stanwood.

Representative **STANWOOD**: Mr. Speaker, Men and Women of the House. Many of us in both bodies submitted bills regarding confidentiality in the fiasco that was adopted here last year. We withdrew those and waited for this committee to do their work. I have followed it very closely and, in fact, I probably have made a nuisance at times of myself asking where this bill was, could I see it and could I have some input as to what was happening. I attended some of the hearings and some of the work sessions and then followed it very closely and have read every version to date. This is so far better than what will go back into law on October 1 if we don't do something. I think the committee should be commended for their hard work. I know it has been very difficult to get everybody on board and I appreciate that. I just think that we need to give this thing time to work. There probably are some bugs in it. It is a vast document full of legalese as somebody indicated already and it is probably not anything but a work in progress. If we don't accept this or the Minority Report, October 1, you know what you got and that is why we are here tonight discussing this. It is because of the fiasco that was adopted last year. I would urge you to accept the Majority Ought to Pass Report. If we need to work on this further, then let's do it. Thank you very much.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Auburn, Representative Shields.

Representative **SHIELDS**: Mr. Speaker, Ladies and Gentlemen of the House. I am on the majority group of the committee. I wish to commend the good explanations that have been given by the good Representative from Manchester and from Saco. When you work on a bill like this, you can't please everyone. It is just impossible, because what this committee tried to do and did do is to put in writing all the things that have commonly accepted before and were never in writing before. That is a tough task. We used to ask a consultant to come and see a patient and nobody ever put it in writing that you did or did not have to have permission to do that. You talked with the patient and said you need to have this consult and Dr. So and So is going to come and see you and they said fine. The insurance company won't pay your bill unless you put some sort of diagnosis on the form. The utilization review committee has been going over a patient's chart for 20 or 30 years and that has been going on forever. When you come in the hospital, that is just part of the deal. There are special testings that need to be done and when you send a patient to special testing, they have to know something about your condition. This bill is workable and it spells out a lot of things that have never been talked to before. It deals with emergency situations. Patients can't get permission because of their condition. You have to go talk to somebody in order to get permission for treatment you have to tell them what is wrong with them. I think that this is a good bill and I urge you to pass it.

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

Representative **PIEH**: Mr. Speaker, Men and Women of the House. I am rising in support of the Majority Ought to Pass

as Amended Report. Two years ago I was a member of the Health and Human Services Committee when we began this process. I watched industry, consumers, legislators and department all get together and work incredibly hard over many months to come up with what we ended up implementing last year that had some serious problems with it. They didn't quit then. They went back and did it again. I have to commend every member of that committee including 13 members of that committee for the hard work and perseverance they showed to try to put something together that hasn't been written before. They tried to codify what is actual policy. Hospitals aren't going to become unethical if there are some mistakes in this bill that might give them more freedom than they know they need. My husband is a ER doc and he doesn't tell me if my next door neighbor was in to see him. It is against the confidentiality rules and I get in trouble because they think he probably told me. They wonder why I don't ask them if they are better. Hospitals have extremely tight restrictions on who they tell about what. This bill is making an effort to take something complicated and codify it. They are putting it into statute to protect people. Technology, the exchanges happening with the insurance companies and we are running amuck. These groups got together and said that yes there is a problem. Let's fix it. We worked very hard and had some major problems with what they came up with and went back again and I was on the two when it was 11 to 2. I changed over when I saw them go back, yet again, take it back to the committee and say let's look at this. It came back a 12 to 1. I support it wholeheartedly. Don't you think I don't think it is not going to come back here for changes in growth and development and to fix it? There will be problems and it will be something like last year that nobody imagined will be the problem. It will be something that comes up. There will be things. On Marine Resources it may sound flip next to the seriousness of confidentiality, but when we tried to put elver fishery management into a statute, my goodness, every single year we are back with emergency legislation to try to fix it. It is going to have to keep being fixed for a while until it gets sorted out. I encourage you to support this. It is way, way better than what we have right now, which is nothing. It is a good effort. It probably doesn't make anybody completely happy and to me that is a sign that it is probably a pretty good effort. Thank you very much.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Rumford, Representative Cameron.

Representative CAMERON: Mr. Speaker, May I pose a question through the Chair?

The SPEAKER PRO TEM: The Representative may pose his question.

Representative CAMERON: Mr. Speaker, Men and Women of the House. To anybody that can answer it, I have heard a comment that if we don't vote for these we are going to go back to what we had before in October. I need to know how we avoid that. I don't like what we are doing, but I don't like the October thing either. Can somebody tell me how we get to the point where we don't end up with what we had before or this?

The SPEAKER PRO TEM: The Representative from Rumford, Representative Cameron has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Winterport, Representative Brooks.

Representative BROOKS: Mr. Speaker, Ladies and Gentlemen of the House. In response to the question I will let

someone else answer the question about the Majority Report, because that is a little bit more complicated than the Minority Report. The Minority Report and I was going to get up in a minute and say this anyway in response to the good Representative from Southwest Harbor, Representative Stanwood. The Minority Report repeals last year's bill completely. What it does is it leaves us right where we are today, common law, where the ethical practices of the medical profession, can still be in play and we won't have to trumping anything and we won't have last years law which caused us a lot of problems. It gives us that opportunity to fix this bill and bring it back to the next regular session of this Legislature.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Rumford, Representative Cameron.

Representative CAMERON: Mr. Speaker, Ladies and Gentlemen of the House. I thank the good Representative from Winterport. I thought that was the case, but I needed to hear that. I cannot vote for this, either of these reports. I am not taking any chance of going home with the mess that we went to last year. There is no chance. This is another solution looking for a problem as far as I am concerned. I never had a single call from a doctor, nor a single call from a patient that said that my privacy is being invaded and all of my information is being used all over the country, nothing. My small hospital is in danger of closing because of excessive costs. That is all I see in this. Full employment for attorneys, more costs for the hospitals and the small rural communities losing their hospitals and having to drive 50 or 100 miles to get medical care. If we don't understand it, an attorney spoke earlier this evening and he doesn't understand it, how do we expect the folks back home to understand this. If they don't understand it, they are going to do something wrong and then there is going to be suits and there is going to more costs and more insurance. I just can't support this.

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

Representative DUNLAP: Mr. Speaker, Men and Women of the House. I have really thought long and hard about this bill. I voted for this in the 118th Legislature and it was sort of under a promise, trust us, this will be all right. We are going to work on this. I did. I had a lot of complaints and phone calls when this went into affect. Some of them were really rather substantial. There were not petty complaints of people asking did you guys do that. It was people trying to track down children who had been hurt in an accident at school and they couldn't get information on them. An adult son that had been in a psychological unit for some time without the family's knowledge. He was a financial dependent of theirs and they were suddenly wondering why they got a \$20,000 medical care bill and they couldn't get the information. I came down here hoping that we would really address the problems that were brought forward in the 118th Legislature. It is my understanding that it was. At the time we had some problems with abuse by insurance companies either denying people coverage or charging them exorbitant premiums based on information that they were not authorized to have. This was going to be some sort of vehicle to address those problems. Of course, we have continued to have this debate about what this bill should do. We have suspended the implementation of it and now we have this Majority Report before us. I don't understand why if we have some simple problems with the law, why we are creating a new body of law, essentially is what this does. Some of it is rather open ended and vague as my good friend from Buxton, Representative Savage has pointed

out. The definitions just escape me and I have some great concerns about it.

I understand that this is a work in progress and we want to enact this and come back and keep fixing it. I have a little experience with that kind of project. I have cooked for many years. We had a banquet one time for about 1,000 people and we were trying to make dessert, strawberry shortcake, and we needed a whole pile of whip cream. I took one of the cooks and said here is 12 gallons of heavy cream, make some whipped cream. He let it whip a little too long and it kind of turned to butter. A gallon of heavy cream costs a lot of money. He had 12 gallons in a 160 quart mixer. He thought what was he going to do. I don't want Dunlap to find out. He just kept adding cream hoping to thin it down. He would add the cream in and it was all kind of watery so he would whip it some more and then he would over whip. He finally got it just right and he forgot to put in more sugar. He had to add the sugar and whip that in too and then it turned to butter again. By the time he got done with the 26 gallons of heavy cream we had to shove it down the garbage disposal and start all over again. I guess the point is, if it is broken, a bad idea, and adding good ideas to it isn't going to make it a good idea. It is still a bad idea. I am very uncomfortable with this legislation and I can't see myself voting for it and I understand the work the committee has done and I have agonized over it. I am going to be supporting the Minority Report. Thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Saco, Representative Kane.

Representative **KANE**: Mr. Speaker, Men and Women of the House. With all due respect to my good colleague from Old Town, we weren't exactly making strawberry shortcake. I hope we haven't laid on that much lard in this effort. Seriously, I do want to point out in reference to insurance that there is a whole body of law regarding the management of medical information with insurance companies that is in a totally different chapter in statutes. Our committee's assignment was in no way designed to deal with insurance information specifically. There is some reference to it in our document, but it isn't specifically that. It is important to keep in mind that as I said in the outset, when we talk about improving or fixing or adding a few more gallons of crème, much of our good public policy as Representative Pieh alluded to, develops incrementally as we test out legislation. It does happen. What we are dealing with is a very complicated set of rules. Several speakers have alluded to the facts that remember we go back to nothing, zero. There is no protection other than whatever protections may exist in terms of confidentiality among individual professionals. There is a substantial amount of very sound public health policy in the document before you, notwithstanding many of the criticisms that have been laid as specifics. It is a good solid document and I continue to urge your support. Thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Gardiner, Representative Colwell.

Representative **COLWELL**: Mr. Speaker, Men and Women of the House. I rise in support of the Majority Report. I am clearly not an expert in health care or anything like that. I do have the empathy of dealing with an extremely complicated bill in working on Utilities in the previous session. I know what these folks have been going through here. I commend the committee on their fine work and their willingness to try to work out compromise. This is a bipartisan compromise. It is a 12 to 1 report. This dialog has been going on for three years. I guess to

suggest that somehow if we go back to the common law and go through another three years of dialog that everything is going to become perfect, in my mind is a spacious argument at best. I don't think that will happen. I do think what will happen if we return to the common law there will be a number of guarantees. Number one, the disclosure of personal identifying information in regards to prescription drugs will be able to be dispensed commercially and sold to marketers as was happening prior to the institution of the change in the law. Those marketers will be able to utilize your personal information about what drugs you are taking for whatever purposes they like, marketing or whatever, and selling that information. That was going on under the common law.

Personal health care information will not be confidential. It is not now really. We are covered under common law. We are covered under ethical conduct. One of the previous speakers mentioned that they felt this bill was a full employment act for attorneys. I would suggest that there is nothing fuller in the employment of attorneys than this common law because there is no code there. There is no statute there. It is all up to whatever the lawyers make out of it. This spells out very specific information and specific rules on the disclosure of the information to the insurance companies. It is very specific to the necessity of how that company has to do its billing and how it has to manage those policies. I guess I think that is a red herring.

I would just like to remind folks that I got a lot of calls last year about that bill that we passed too. I would like to remind people that that bill was passed with the tightly wrapped confidentiality of a number of the participants that are dissatisfied with this bill. The problems with that bill were that it was too tight. We couldn't get at the information. Your funeral director couldn't get at the information. Your visiting volunteers couldn't get at the information and that is why 90 percent of the people in the State of Maine were upset with it. I guess I would just like to leave you with that thought and urge you to support the Majority Ought to Pass Report.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Bangor, Representative Bragdon.

Representative **BRAGDON**: Mr. Speaker, Ladies and Gentlemen of the House. I know it is late in the evening and I would just like to take a moment of your time to recap why we are here today in regard to this bill. Before three years ago, we had two different standards for health care information. We had the common law standard for all medical information and then we had a very high standard for HIV information. We had situations occur such as Representative Colwell talked about where pharmaceutical marketing companies who got access to what prescriptions you took, what diagnosis you had and would call you up and tell you that we know you have such and such diagnosis, have you ever considered our drug? We had situations such as insurance companies where you go for a routine procedure and they ask the doctor if you want us to pay this claim, you will have to send us the entire record. We had very significant problems because we had a very low standard for medical information.

This was brought to us by providers who were tired of being put in the position of releasing more than what they knew was necessary. It was brought to us by consumers through the Maine Civil Liberties Union who were tired of being taken advantage of and having their medical information improperly treated. Both bills came together and we got the laws that went into affect in January. That law sought to bring medical

information, all medical information, whether it is mental health or just regular medical information up to the same standard as HIV information. I would say as a member of the Health and Human Services Committee in the last Legislature and a member in this Legislature that we brought that standard up too high and we didn't take into consideration very routine practices. Practices such as I am ill. Can I have an antibiotic? I don't want to go to the pharmacy to get my prescription. I don't feel well. I would like to send my girlfriend. She goes to the pharmacy and she can't get my prescription under the current law because I haven't specifically told the pharmacy that they can give that information to her. I haven't specifically said what they can or cannot do. A florist goes to the hospital and they can't know what room I am to deliver flowers because I haven't specifically said that florists can know what room I am in.

This bill takes into account very routine occurrences, but it also provides patients with a protection to say no. I am in a domestic abuse situation. I don't want to put on a registry. I don't want anyone to know I am in the hospital. I don't want anyone to even get very basic information. That wasn't there before. You may have a hospital that had a very high practice policy, that said very limited medical information was released and you may have another health care entity that really just said that our providers or employees should just use their own standard. We have all sorts of different standards out there. What this bill does is provides a very high base to protect the confidentiality of information then individual providers and consumers can require that that base be even higher.

Ladies and gentlemen, this is a very good piece of legislation. It is good for individuals who will have for the first time their medical information kept confidential. Confidential from other entities, relatives, insurance companies and marketing companies in ways that they never have before. It is also good for providers because it requires them to have a very high standard. I strongly urge you to vote for the Majority Ought to Pass Report. Thank you.

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

Representative **CROSS**: Mr. Speaker, Ladies and Gentlemen of the House. I have been listening to this debate and I am not anybody that knows about the insurance or have taken the time to study it or see where we are. One fact stands out above all. You have had a very dedicated committee with the capable chairmen who have come up with a 12 to 1 decision that this is the bill that we ought to have. I have faith enough in that committee to say good. I will agree with you and I hope everybody else does. Thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Poland, Representative Snowe-Mello.

Representative **SNOWE-MELLO**: Mr. Speaker, Ladies and Gentlemen of the House. Like the good Representative Brooks said, wow, we are finally here. I was a member, as you probably know, of the 118th Legislature and I was a member of the Health and Human Services Committee. At that time when the confidentiality bill came out, I was not happy with it. I had a lot of doubts. As a matter of fact I went on the Minority Ought Not to Pass Report, actually the amended version. This year when it came back with all the problems I thought, oh boy, I should have known. I want to tell you what this process was like and what we went through. This committee worked diligently. We didn't put a band aide on this confidentiality bill. It was not a band aide. It was not a simple fix. We took item by item by item and worked

long and hard. We debated. We talked. We did everything we could possibly do to get this product that we knew would come out of this committee. We all had a few concerns, but we are all very dedicated that if any other issues that come up we will be right there to address those issues. I have full confidence in this committee. I think this is an excellent report. I think it is an excellent bill. I commend Representative Fuller because she has put her heart and soul into this. I commend my committee chair, Representative Kane, and my fellow members of the committee for their hard work. This is a difficult situation. I know there is an amount of fear in passing this because we all hated what happened to that other bill. I honestly believe within my heart that this is a good piece of legislation. Let's give it a chance. Thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Winterport, Representative Brooks. Having spoken twice now requests unanimous consent to address the House a third time. Is there objection? Chair hears no objection, the Representative may proceed.

Representative **BROOKS**: Mr. Speaker, Men and Women of the House. I will be very, very brief. I just want to point out a couple of things that were talked about before. One of them is HIV testing. It is absolutely correct that that was one of the things that I was very concerned about last year. The problem with this piece of legislation is that I believe that it does lower the bar. Those folks once the diagnosis phase is over, then they become just another patient. Their information can be released. Domestic abuse, when you are in the hospital because of domestic abuse, if the doctor refers to this legislation, there is a likelihood that among the lists of people who could or would be notified is the spouse. That is why the Maine Domestic Abuse Association is opposed to this bill. I think we need to think about these points as we vote. Thank you Mr. Speaker.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Manchester, Representative Fuller.

Representative **FULLER**: Mr. Speaker, Ladies and Gentlemen of the House. The debate has been an interesting one and I appreciate the comments from both sides of the issue, but particularly those who support it. I just need to clarify a statement that was just made. This bill has all the protections in it for HIV information that exists today in current law. We have put those back in in order to address the concerns of the HIV community and all of the protections that are in current law are in this bill that we are talking about. I would also add that there is information in this bill, provisions for sexual abuse and domestic violence. I understand that one of the things they are still upset about, because I have talked to these people and I am on the board of the Domestic Violence Project, they want us to go back to the previous language about releasing information to families that said you could only release general information and because we would not go back to that language that caused so many problems with the previous bill, they are saying they are not supporting the bill. There is language in there about recognizing a suspicion of abuse and having to be considered when other people are requesting or authorizing information. Thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Buxton, Representative Savage.

Representative **SAVAGE**: Mr. Speaker, Men and Women of the House. I will be brief. I understand this is a 12 to 1 report. That weighs heavily on my mind. The one thing that I forgot to discuss when I was up the last time is I wanted to explain to you

what a subpoena is. It is not a warrant. It doesn't require a judge to intervene. It requires an officer of the court to send it out. It is all it takes. This 12 to 1 report says that a governmental entity, i.e. a prosecutor, can send out a subpoena and get your medical records and you don't have to be told. That is just probably the tip of the iceberg. Thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Scarborough, Representative Clough.

Representative CLOUGH: Mr. Speaker, May I pose a question through the Chair?

The SPEAKER PRO TEM: The Representative may pose his question.

Representative CLOUGH: Mr. Speaker, Ladies and Gentlemen of the House. On page 6 of the amendment, which becomes the bill, under 3B, there is a provision for persons who may authorize disclosure. It starts out with the spouse and there are six categories ending with an adult who has exhibited special concern for the individual and was familiar with the individual's personal values. My question is, A being the spouse, if there is a spouse, does it stop there or can they keep going down through F to find somebody that is willing to authorize disclosure?

The SPEAKER PRO TEM: The Representative from Scarborough, Representative Clough has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Manchester, Representative Fuller.

Representative FULLER: Mr. Speaker, Men and Women of the House. Items A through F in that list is the language taken out of the Uniform Health Care Decision Act. However, it does not have to be done in that order. If the spouse of the individual is not available or is incompetent or suffering from dementia, they can go down to other people in the list. It is not a priority list, but it is people that can act on behalf of a person who is unable to act on their own behalf. Thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Buxton, Representative Savage. Having spoken twice now requests unanimous consent to address the House a third time. Is there objection? Chair hears no objection, the Representative may proceed.

Representative SAVAGE: Mr. Speaker, Men and Women of the House. I would like to just address that question. If you read Section 3B, Subsection A, B, C, D, and F, you will notice that after E there is a semi-colon and then it says and. That means that all of those people from A through F. When it says and it means A plus B plus C plus D plus E plus F can get that information. That is a lot of folks. Thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Lebanon, Representative Chick.

Representative CHICK: Mr. Speaker, Ladies and Gentlemen of the House. I have been listening to this discussion here this evening. With the experience that I have had in the past few months, I have serious doubts about my ability to have information withheld with the document that is being described and discussed here this evening. Under this proposal I don't hear any provision for simply telling the administration at the main desk, yes or no, on if they should give out information about myself or some member of my family that I would have interest in. For that reason, unless someone can stand up and assure me that under this document that it is still possible to disallow the florist or whoever if you have not made arrangements for them, then I can't support this document. Thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Bangor, Representative Bragdon.

Representative BRAGDON: Mr. Speaker, Men and Women of the House. In response to the good Representative's question, it is possible to disallow basic health care information such as if you were even at the hospital to be released to the florist, clergy and, in fact, when you are admitted to the hospital at the time of the admission the general release forms and the person going over those release forms specifically have to tell you that you have the right to not be included on those registries, the florist registry, the clergy registry and other such provisions as well as you can notify them at that time who you would not like information released to. That protection is there.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Winterport, Representative Brooks.

Representative BROOKS: Mr. Speaker, Ladies and Gentlemen of the House. This also is in response to the question, I think the Representative from Lebanon, Representative Chick, has hit upon the crux of this bill. You would have to take an action to stop that from happening. The Minority Report would not do that. It would block the information.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Durham, Representative Schneider.

Representative SCHNEIDER: Mr. Speaker, Men and Women of the House. As I read this bill anyone concerned with their privacy should not vote for the Majority Report. I have identified 15 different categories of people or facilities to whom your health information will be able to be released even over your objections. Most of the categories in paragraph 6 of this bill say that disclosure may be made without authorization. That means that disclosure may be made over your objection. If you are in the hospital bed asking to have your information withheld, the hospital can still release it to 15 categories of people including another health care practitioner for diagnosis, treatment or care of individuals. Not your treatment, but treatment of other individuals. Also including a person when necessary to conduct scientific research so your health care information could be released to a person to conduct scientific research. Another example is to attorneys for the health care practitioner or facility that is disclosing the health care information or to a person as required in the context of legal proceedings or in disclosure to a court or governmental entity as determined by the practitioner or facility to be required for the practitioners or facilities own legal representation. It leaves it up to the facility or practitioner to decide whether to release your information for their own benefit.

Ladies and gentlemen, we are now living under the confidentiality law that if you pass the Minority Report will take affect. I have not received any complaints or any comments or any problems about the current system that is in effect right now and will take affect again if we pass the Minority Report since January when it was taken out of affect. Ladies and gentlemen, I urge you to defeat this Majority Report and vote for the Minority Report. Thank you.

The SPEAKER PRO TEM: A roll call has been ordered. The pending question before the House is acceptance of the Majority Ought to Pass as Amended Report. All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 326

YEA - Berry RL, Bolduc, Bowles, Bragdon, Bruno, Bumps, Campbell, Carr, Chizmar, Cianchette, Colwell, Cross, Daigle, Davidson, Desmond, Dudley, Dugay, Etnier, Fisher, Frechette, Fuller, Gagne, Gagnon, Gillis, Glynn, Gooley, Green, Hatch,

Honey, Jacobs, Jones, Kane, Kneeland, LaVerdiere, Lemoine, Lemont, Lindahl, Lovett, Mack, Mailhot, Marvin, Matthews, Mayo, McDonough, McGlocklin, McKee, McNeil, Murphy T, Muse, Nass, Norbert, Nutting, O'Brien JA, O'Brien LL, O'Neil, Pieh, Plowman, Powers, Quint, Sanborn, Saxl MV, Sherman, Shields, Shorey, Sirois, Skoglund, Snowe-Mello, Stanwood, Stevens, Sullivan, Tessier, Thompson, Tobin D, Townsend, Trahan, Tripp, True, Twomey, Watson, Williams, Mr. Speaker.

NAY - Ahearne, Andrews, Bagley, Baker, Belanger, Bouffard, Brennan, Brooks, Bryant, Buck, Bull, Cameron, Chick, Clark, Clough, Collins, Cote, Cowger, Davis, Duncan, Dunlap, Duplessie, Foster, Gerry, Goodwin, Heidrich, Jabar, Jodrey, Joy, Kasprzak, Labrecque, MacDougall, Madore, Martin, McAlevey, McKenney, Mendros, Mitchell, Murphy E, O'Neal, Peavey, Perkins, Perry, Richard, Richardson E, Richardson J, Rines, Rosen, Samson, Savage C, Savage W, Schneider, Shiah, Stanley, Stedman, Tobin J, Tracy, Treadwell, Usher, Volenik, Waterhouse, Weston, Wheeler EM, Wheeler GJ, Winsor.

ABSENT - Berry DP, Pinkham, Povich, Saxl JW, Tuttle.

Yes, 81; No, 65; Absent, 5; Excused, 0.

81 having voted in the affirmative and 65 voted in the negative, with 5 being absent, the Majority Ought to Pass as Amended Report was **ACCEPTED**.

The Bill was **READ ONCE**. **Committee Amendment "C" (H-705)** was **READ** by the Clerk.

Representative **SAVAGE** of Buxton **PRESENTED** House Amendment "A" (H-708) to Committee Amendment "C" (H-705), which was **READ** by the Clerk.

The **SPEAKER PRO TEM**: The Chair recognizes the Representative from Buxton, Representative Savage.

Representative **SAVAGE**: Mr. Speaker, Men and Women of the House. The amendment that I proposed removes the ability of a prosecutor from simply issuing a subpoena to get your medical records. I have said before it is the tip of the ice burg on this bill, but I have no idea why it is even there. I hope that you will adopt this amendment. Thank you.

Representative **LOVETT** of Scarborough moved that House Amendment "A" (H-708) to Committee Amendment "C" (H-705) be **INDEFINITELY POSTPONED**.

Representative **TRACY** of Rome **REQUESTED** a roll call on the motion to **INDEFINITELY POSTPONE** House Amendment "A" (H-708) to Committee Amendment "C" (H-705).

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

The **SPEAKER PRO TEM**: The Chair recognizes the Representative from Bangor, Representative Bragdon.

Representative **BRAGDON**: Mr. Speaker, May I pose a question through the Chair?

The **SPEAKER PRO TEM**: The Representative may pose his question.

Representative **BRAGDON**: Mr. Speaker, Men and Women of the House. To the person who introduced this amendment, two quick questions. First, currently under common law is somebody able to issue a subpoena and receive somebody's medical records? Secondly, has that been a problem?

The **SPEAKER PRO TEM**: The Representative from Bangor, Representative Bragdon has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Buxton, Representative Savage.

Representative **SAVAGE**: Mr. Speaker, Men and Women of the House. Yes, currently a prosecutor can send out a subpoena and currently it is the practice of hospitals and other providers to move to quash the subpoena. Quash means basically to prevent to subpoena from having its legal affect, which would be to force them to provide the medical record. I want to talk a little bit more about subpoenas. You may remember that when we were dealing with the OUI medical records bill. There were 119 of us that agreed that that is a problem. Under the current practice if a prosecutor sends a subpoena for those records and the hospital moves to quash, then a judge has to make the decision. Under this statute, that doesn't need to happen. A hospital might decide to move to quash. They might, but they don't have to because the statute says they may disclose pursuant to the subpoena without consent. If you were a hospital and you were trying to cut costs, would you spend anytime or any money trying to quash a subpoena that you don't have to quash because the statute says you don't have to quash it? That is the problem with that provision in the statute. Thank you.

The **SPEAKER PRO TEM**: The Chair recognizes the Representative from Naples, Representative Thompson.

Representative **THOMPSON**: Mr. Speaker, Men and Women of the House. I voted for this bill, but I have to say that I agree with this particular amendment. I think it will help one issue here. The problem here is the way it is set up. The hospital may release the information if they receive the subpoena. I find that to be a real problem. It is saying that they can assume that they can bypass the issue of getting your consent. That is always the legal hurdle that the state has to clear. There is a balance of the confidentiality versus the state's right to the information. This under at least one interpretation of it takes away that confidentiality part and says that they may without being wrong they could produce the information just based on getting the subpoena. The Hospital Association will tell you that they will continue to follow their own regulations, meaning they will continue to fight the subpoena. I believe that under this law, the way it is written on this particular aspect, they don't have to. If a hospital chooses not to fight a subpoena, then they can then turn those records over when the law enforcement people are not entitled to them, I believe, and then still be immune from any action from the individual because they are protected by the fact that they don't need your consent. On this one issue, I have to join with the good Representative from Buxton, Representative Savage, and urge you to make this amendment to the bill.

The **SPEAKER PRO TEM**: The Chair recognizes the Representative from Saco, Representative Kane.

Representative **KANE**: Mr. Speaker, Men and Women of the House. I have less problem with the substance of the amendment in terms of whether or not it can improve the bill, than the timing of it. If we have just passed a bill and we have passed it on the basis of continuing to improve as we experience it, then let this bill see the light of day and practice. Let us experience whether and how the hospitals deal with the subpoenas. If it is necessary, and if hospitals as a result of the language change, reduce the protection in terms of affecting any significant change from what exists, then maybe indeed we will come back and recommend it. For goodness sakes let us not begin adding amendments before the bill itself has had a chance to work. I urge the support for Indefinite Postponement. Thank you Mr. Speaker.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Buxton, Representative Savage.

Representative **SAVAGE**: Mr. Speaker, Men and Women of the House. Do you want to spend the summer watching this play out? Do you want to spend the summer waiting to find out whether the hospitals are going to move to quash or are they just going to mail these things out wholesale? I don't want to spend the summer worrying about that. Thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Winterport, Representative Brooks.

Representative **BROOKS**: Mr. Speaker, Men and Women of the House. I will be very, very brief. I will not say I told you so, but it didn't take very long for the ink to dry before we started with our first amendment. I fear that is where we are headed ladies and gentlemen. We will be not only amending this now, but forever in the next year. I encourage you to go ahead and take the first piece of this bill and amend it so that we can at least begin to fix what we have done. Thank you Mr. Speaker.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Freeport, Representative Bull.

Representative **BULL**: Mr. Speaker, May I pose a question through the Chair?

The SPEAKER PRO TEM: The Representative may pose his question.

Representative **BULL**: Mr. Speaker, Men and Women of the House. Previously I think I heard correctly the Representative from Buxton, Representative Savage, stated that he asked specifically about this provision of the bill to the health care community and they claimed that they do not support this. I was wondering if a member of the committee could explain why this provision is in the bill?

The SPEAKER PRO TEM: The Representative from Freeport, Representative Bull has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Manchester, Representative Fuller.

Representative **FULLER**: Mr. Speaker, Men and Women of the House. In response to the question from the good Representative from Freeport, this is in the bill in order to provide access to records for people conducting broad investigations, licensure board investigations and a number of other things that are already required by statute. We have tightened up the subpoena language from what was originally being proposed. We said the subpoena must come either from a court or a governmental entity. A governmental entity being licensure boards for fraud investigation and that type of thing. That is why it is there. I feel it is an important part of the bill and I urge you to support the pending motion to Indefinitely Postpone. Thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Bangor, Representative Bragdon.

Representative **BRAGDON**: Mr. Speaker, Ladies and Gentlemen of the House. I would just like to draw your attention to another provision in the bill. I talked about how health care information had a very low standard and we were trying to bring it up. I think the good Representative from Buxton gave a perfect example. Right now an entity, a lawyer if you will, can issue a subpoena to a provider and say I would like health care information. That is the current common law practice. In Section 10 of the bill it provides for requirements of disclosure. We tightened up as the Representative from Manchester indicated this provision in the bill. Under Section 10 Part B, it says, "A health care practitioner or facility that discloses health care

information pursuant to Subsection 6 may not disclose information in excess of the information reasonably required for the purpose for which it is disclosed." That requires the hospital or whatever entity to use their professional judgment that wasn't there before. Also in Part D of this same section it requires that the health care practitioner or facility who discloses the information that that disclosure, the subpoena, if you will, must expressly indicate that information disclosed. The individual with a subpoena specifically has to say what information they would like to get and the entity cannot disclose more than is necessary to respond to the request. I dare say to any of you who are familiar with a practice of providers that they are very protecting of their health care information. If they have to disclose any information to any entity, you will see health care records that are photocopied with extensive sections blacked out and no more than is absolutely necessary. That is common practice right now and under the bill we just passed, it is the law.

The SPEAKER PRO TEM: The Chair recognizes the Representative from South Portland, Representative Glynn.

Representative **GLYNN**: Mr. Speaker, May I pose a question through the Chair?

The SPEAKER PRO TEM: The Representative may pose his question.

Representative **GLYNN**: Mr. Speaker, Men and Women of the House. This question would be directed to anyone in the House that could answer. I understand that with regard to mental health records we also have some additional statutes regarding the commissioner and that periodically the commissioner will ask to see mental health records for a variety of reasons. In my reading of this amendment it means that the commissioner would now have to have a subpoena issued in order to obtain the records. I wish to ask if that is correct or if this will not apply to the commissioner?

The SPEAKER PRO TEM: The Representative from South Portland, Representative Glynn has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Buxton, Representative Savage.

Representative **SAVAGE**: Mr. Speaker, Men and Women of the House. The answer to the question is Section F1 states, "Information may be disclosed without consent as directed by order of a court or as authorized or required by statute." That would still be in there after the amendment. I think that is what the Representative from South Portland is getting at. If there is a required disclosure by statute, it would still be part of this statute. Thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Lewiston, Representative Mendros.

Representative **MENDROS**: Mr. Speaker, Ladies and Gentlemen of the House. I voted against the bill and this was a major reason why. What we are forgetting is this is our information. It is about us. Some people have no problem with parts of it being released. They have nothing to hide or they don't care. That is fine. Some people want it confidential and I think the bill does a good job of letting you check that off. I have a big problem with this part of the law. I support the amendment. The problem I have with this is no one should have a right to get it without your consent, without you knowing. We have protections for everything else. Why should the government be able to come in and get your records, any part of your records without your consent and your protection? That is why we are

here to protect our citizens. I urge you to vote against the pending motion.

The SPEAKER PRO TEM: A roll call has been ordered. The pending question before the House is Indefinite Postponement of House Amendment "A" (H-708) to Committee Amendment "C" (H-705). All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 327

YEA - Andrews, Belanger, Bolduc, Bragdon, Bruno, Bumps, Campbell, Carr, Chizmar, Cianchette, Colwell, Cross, Daigle, Desmond, Dugay, Etnier, Fuller, Gagne, Gagnon, Gillis, Gooley, Green, Hatch, Honey, Jacobs, Jones, Kane, Kneeland, Lemoine, Lindahl, Lovett, Mailhot, Martin, Mayo, McAlevey, McDonough, McGlocklin, Murphy T, Nass, Nutting, O'Brien JA, Pieh, Quint, Rosen, Sanborn, Schneider, Shields, Shorey, Snowe-Mello, Stanwood, Sullivan, Tessier, Tobin D, Tobin J, Townsend, Tripp, Watson, Weston, Williams, Mr. Speaker.

NAY - Ahearne, Bagley, Baker, Berry RL, Bouffard, Bowles, Brennan, Brooks, Bryant, Buck, Bull, Cameron, Chick, Clark, Clough, Collins, Cote, Cowger, Davidson, Davis, Dudley, Duncan, Dunlap, Duplessie, Fisher, Foster, Frechette, Gerry, Glynn, Heidrich, Jabar, Jodrey, Joy, Kasprzak, Labrecque, LaVerdiere, Lemont, MacDougall, Mack, Madore, Marvin, Matthews, McKee, McKenney, McNeil, Mendros, Mitchell, Murphy E, Muse, Norbert, O'Brien LL, O'Neal, O'Neil, Peavey, Perkins, Perry, Plowman, Powers, Richard, Richardson E, Richardson J, Rines, Samson, Savage C, Savage W, Saxl JW, Saxl MV, Sherman, Shiah, Sirois, Skoglund, Stanley, Stedman, Stevens, Thompson, Tracy, Trahan, Treadwell, Twomey, Usher, Volenik, Waterhouse, Wheeler EM, Wheeler GJ, Winsor.

ABSENT - Berry DP, Goodwin, Pinkham, Povich, True, Tuttle.

Yes, 60; No, 85; Absent, 6; Excused, 0.

60 having voted in the affirmative and 85 voted in the negative, with 6 being absent, the motion to **INDEFINITELY POSTPONE House Amendment "A" (H-708) to Committee Amendment "C" (H-705) FAILED.**

Subsequently, **House Amendment "A" (H-708) to Committee Amendment "C" (H-705) was ADOPTED.**

Committee Amendment "C" (H-705) as Amended by House Amendment "A" (H-708) thereto 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 "C" (H-705) as Amended by House Amendment "A" (H-708) thereto and sent for concurrence. ORDERED SENT FORTHWITH.**

The Speaker resumed the Chair.
The House was called to order by the Speaker.

CONSENT CALENDAR

First Day

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

(S.P. 77) (L.D. 180) Bill "An Act to Improve Access to Electronic Filing for Businesses" Committee on **STATE AND**

LOCAL GOVERNMENT reporting Ought to Pass as Amended by Committee Amendment "A" (S-337)

Under suspension of the rules, Second Day Consent Calendar notification was given.

There being no objection, the Senate Paper was **PASSED TO BE ENGROSSED AS AMENDED** in concurrence. **ORDERED SENT FORTHWITH.**

REPORTS OF COMMITTEE

Divided Report

Majority Report of the Committee on **LEGAL AND VETERANS AFFAIRS** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-262)** on Bill "An Act to Extend Term Limits for Elected Officials and Constitutional Officers"

(S.P. 377) (L.D. 1078)

Signed:

Senators:

DAGGETT of Kennebec
CAREY of Kennebec
FERGUSON of Oxford

Representatives:

TUTTLE of Sanford
CHIZMAR of Lisbon
FISHER of Brewer
GAGNE of Buckfield
LABRECQUE of Gorham
MAYO of Bath
HEIDRICH of Oxford
McKENNEY of Cumberland
O'BRIEN of Lewiston

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

Signed:

Representative:

PERKINS of Penobscot

Came from the Senate with the Minority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED. READ.**

Representative CHIZMAR of Lisbon moved that the House **ACCEPT** the Majority **Ought to Pass as Amended** Report.

Representative GERRY of Auburn moved that the Bill and all accompanying papers be **INDEFINITELY POSTPONED.**

The same Representative **REQUESTED** a roll call on her motion to **INDEFINITELY POSTPONE** the Bill and all accompanying papers.

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 Auburn, Representative Gerry.

Representative **GERRY**: Mr. Speaker, Ladies and Gentlemen of the House. As you can see I don't make this motion very lightly. I have considered all the reasons for why to do this. I do not feel that this bill is needed at this time. The people of Maine decided through an initiative, our current terms. The only people that seem to support changing how long we stay here are us. The pages are distributing a survey that was done by the independent concerned. As you can tell when you get the paper that one of the questions that was asked was, which would you prefer for State Legislature? Term limits of eight years or term limits of 12 years. Fifty-nine point six percent said eight

years. Thirty point nine percent said 12 years. Nine point six percent were not sure. If you look at the whole paper you will note that among term limit supporters this was a question that this group did here in Maine. If you read the note it says, among term limit supporters, 81 support eight years, 17 percent for 12 years. The majority of support for 12 years comes from those that oppose terms limits. I, myself, had done a survey, a questionnaire, maybe three weeks ago. Out of 472 responses I got back out of 3,500 that I mailed out, 286 supported our current term limit law. Thirty-eight people responded and supported the 12-year limit. Seventy-one people responded when I asked them what they thought about cutting our terms even less to six years. Seventy-nine responded get rid of term limits. I respectfully request that you vote for this pending motion.

The SPEAKER: The Chair recognizes the Representative from Lisbon, Representative Chizmar.

Representative **CHIZMAR**: Mr. Speaker, Men and Women of the House. A statement was just made from the Representative from Auburn that this bill was not needed at this time. I have had phone calls at my house from disgruntled constituents wanting to have a second chance for voting for term limits. At this point in time they realized that they already had term limits in effect. If they didn't want you in office, they did not elect you. I am going to ask you to vote against the Indefinite Postponement and in relation to figures that were just quoted, figures, I believe can be determined any way you want them. Thank you.

The SPEAKER: The Chair recognizes the Representative from Eagle Lake, Representative Martin.

Representative **MARTIN**: Mr. Speaker, Members of the House. As some of you are obviously aware, I have been asked that question as to whether or not I was going to support the legislation to limit, extend or repeal term limits. As some of you may know, I was the term limit baby in the bulletins that were distributed around the state for six months during the campaign. There are some who even suggested that I was responsible for the passage of term limits. I thought that was really impressive because in so many states I must have tremendous power across this country. I think it is a lot more than that. It was basically citizens who were frustrated with the process and frustrated with what was going on and basically they took it out on legislators and they took it out on us. I was one of those along with a couple of others who basically fell. I was one of those who did not file a lawsuit, but instead thought that the process allows for write in through the regular process and therefore if I didn't appear, as you know the law says, the Secretary of State cannot put me on the ballot. I was the only person and got more votes and I can't remember the number of votes in a write-in in the Democratic Primary. My name, obviously because of the law, was not carried on the ballot in November. I still believed at that point that it was possible to run a write in campaign. I proceeded on that basis, at least my supporters did, and when it was all over, two weeks before the election itself in November, the courts ruled that even if a write is won, it was not possible for that person to be seated. Even knowing that, I was able to carry by write in a number of the communities within my legislative district. For that, I was thankful. I was appreciative of the voters of my district.

Regardless of whether or not I had been able to continue the campaign and substantially win, I was convinced that I could have, but it was not to be. I want to tell you tonight that I will be voting for Indefinite Postponement of this bill. I want to tell you

why. One thing that I am very concerned about is the basis upon which the question will be going to the voters. You see the voters basically put a prohibition of eight years on legislative terms. What we are now attempting to go out to the voters with is basically 12 years. It will be perceived as simply a way of extending term limits as simply just a process we are using to extend the terms. I am convinced that if we are going to the voters it should be a straighter up and down vote on whether or not term limits is repealed, not whether or not we want to extend what they have said they wanted. That is point number one. Point number two, I believe the time is not right. I believe it is not right because it has now come around to where people who implemented it now must face term limits. I believe that those people must face the same faith I faced and be out for two years. If they want to run again, they have every right to run again. The voters have the right to elect them. To do otherwise is to fly in the face of what the voters of Maine said. Not that I agree with what they did. I fought term limits from the beginning because of a substantial investment that was made by one individual, ironically a person who supported me financially in my own campaign, but chose to give, as you know, close to \$1 million in the campaign. The voters responded in a very low voter turnout as you know and gave affirmative vote to the passage of term limits.

My concern is not whether or not it ought to go because in my opinion term limits ought to go, because every citizen has the right to terminate us at any time every two years through this process. I am not for term limits, but I am concerned about what we are doing and how we are doing it. I have firmly believed that if we want to go out with term limits, we go out in June and in November. I would even be willing to wait two years beyond that. Obviously people can choose and will choose tonight to vote for what it is they believe. I am firmly convinced that we have one shot at eliminating term limits. If we waste that shot, it will be there for a long, long time. I believe the time has not yet arrived, not that I want term limits and not that I want it to stay. To me, it is the wrong thing for the citizens of this country and this state to have. So, I wanted everyone to know what I was going to do tonight and there would be no question about it as to why I am doing it. I think between the Representative from the Berwicks, Rep Murphy and myself. We are the two that faced that issue. We returned because we put our names on the ballot. I think we ought not to change that at this time.

The SPEAKER: The Chair recognizes the Representative from Orono, Representative Stevens.

Representative **STEVENS**: Mr. Speaker, Men and Women of the House. Please vote against the pending motion of Indefinite Postponement of this bill. Please vote to allow Maine voters a chance to register their opinions of the present term limits law on the November ballot. A question on the ballot would pose a question of term limits collectively to the whole State of Maine not to one district and not to another, but to all. When term limits were first passed the belief was that the State of Maine would be a laboratory for the matter of term limits. People interested in imposing term limits at the federal level thought let's let Maine be the experiment. Maine will be the laboratory. Let's try it at the state level they said. Well, term limits have been applied to the state level here in Maine and we are forced to consider their affect. Have term limits been affective? Have term limits given legislators tools to be better legislators? Have term limits improved the process? Are the people of Maine better served because of term limits? To all questions, I think

not. Term limits on legislators prohibit the development of expertise. That is painfully obvious to us every day. Term limits prohibit the development of experience and term limits diminish legislative effectiveness by preventing the creation and continuation of the institutional memory of the legislative body and of the argument of the law that we hear here everyday.

The legislative process is a complex one. We all know that. During my first term senior legislators would sometimes stand up and I would listen and they would say that this bill is an old chestnut. We killed this bill 10 years ago. It was a bad bill then and it is a bad bill now. This chestnut is bad. Let's kill it now. With term limits what you will hear is this bill is an old chestnut, we killed it last term. Let's kill it now. Senior legislators assist new legislators as they learn about the legislative process so that new legislators do not have to rely on other sources of information that might not be as appropriate. New members deserve and need the knowledge gained by experience. As you know each legislator brings to the job a very unique experience and occupation. Those among us are teachers, lawyers, farmers, fishermen and more. We must vote on complex issues that range from banking and insurance, to tax law, to marine resources and all of a sudden the teacher, the student, the lawyer are forced to decide on critical and complex issues.

New legislators must depend on people in the body who have a storehouse of knowledge that is greater than one's own. Just how thin can that storehouse of knowledge be? There are different approaches to information here at the Legislature. There are those who see the practical consequences of an issue, a commissioner, a department head. There are those who see the financial consequences of an issue such as a lobbyist. Of course, the press sees a very political consequence of all issues here. The statewide issues of the consequences resulting from an issue is the duty of a legislator. Legislators must combine all elements of a problem, analyze all consequences of a decision and come to arrive at what is best for the State of Maine. The balance of all these elements comes from the legislative memory and works really best to serve the State of Maine. That old chestnut will only be three terms old with no legislative institutional memory with term limits as they stand. Term limits was an experiment. During the experiment the state has been blessed with a very, very strong economy and very, very good times. We have had extra money coming in and we have been able to grow strong. In the past, however, the times were not always so good. Legislators with no experience would not envy the task of those who experienced the dark days of shortfalls and cutbacks. Fresh ideas are sometimes good, but sometimes experience brings the experience to know which chestnuts are rotten.

The Maine House turns over very much on its own. My first term it turned over one-third. That was the year before term limits were imposed. There will always be fresh ideas here. Many of us have an abiding respect for the public referendum process. When the public voted for term limits the public had a sincere view that term limits would promote good government that better served the people of Maine. Perhaps term limits did clean the House a little bit. The question now, however, is whether the cleaning is necessary or effective? Does the inflexible expulsion of experienced legislators serve the public's good? I think not. Please vote to send the question to our constituents to allow them to decide if term limits at four terms, as it presently stands, is best or if it should be extended to six? Thank you Mr. Speaker.

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

Representative **ETNIER**: Mr. Speaker, Men and Women of the House. That is a hard act to follow, the good Representative from Orono, Representative Stevens. Maybe it is because she has served more terms that I have here. She did a good job and it is going to be hard to follow. This is my term here and in the short three terms that I have been here, which commenced with the passage of term limits back in 1994, I have seen already the disastrous affects that term limits have. I think the worst place that have affected us as a state and as a governing body as a Legislature is in the shift of the balance of power in an unequal basis towards what I would say the Executive Branch. They hold all the cards these days, ladies and gentlemen, it is because of term limits and it is thanks to term limits that is the case. In the three terms that I have been here I have served under three different speakers. The three terms I have served here now, I have served only under one Executive. Who do you think calls the shots when that is the case? It is largely the person who has been here for the greatest amount of time. When your leader only has been here for one term and can only serve for one term as a leader of this body, he or she doesn't stand much of a chance against someone who is going to be here for a full eight years. That is what has been the direct outfall of term limits. If you don't believe it, the record shows that that is clearly the case. It takes a while to rise through the leadership in both this body and in the other body for good reason. It takes a while to gain the experience you need and by the time you have gained that experience, you are knocking on the door to leave. That is a severe weakening of the power of the Legislative Branch of this government. That is thanks to term limits.

I think this is a very reasonable proposal that is before us tonight, not the Indefinite Postponement, but the actual proposal to send this out to a referendum question this fall. To go from 8 to 12 years is an extremely reasonable proposal. I would not support a referendum question even going out as has been suggested by the good Representative from Eagle Lake, Representative Martin, to eliminate term limits. That, I do believe, is premature and is disrespectful of the vote taken by the state a few years ago. To affect the changes that is proposed here and to ask our constituents to consider this change, that is extremely reasonable. I think it is a good change going from 8 to 12. I think even at that level probably term limits is something the state can live with at 12 years and will not have the disastrous affect that 8 years have had. The other shift that I have seen has been the shift to the power of the lobbyist within this building. They are the ones now who rightly or wrongly claim to have the institutional memory and often times they do. They have it with their own individual slant. I think they are increasingly influencing the decisions that are made around here because they have been here for sometimes decades. I think that is weakening the Legislative Branch of this government.

I cannot fathom what the opponents who are sending this out are afraid of. What is the harm in allowing the state to have a straight up or down vote on this this fall? What is the harm in that? Let them choose in November of this year that this is either something they want or do not want. That is an easy thing for us to do. Let them make that choice. That is their right. I think it is entirely appropriate. I cannot see what anybody would be afraid of in having them do so. Let the voters decide whether to go from 8 to 12 years. I may be a little slow and plenty of you will concur with me on that, but it has taken me my full five years

here now, first three terms, to feel somewhat comfortable in my abilities to understand the process. You first termers here now, you realize how complex and difficult it is to understand the process. It has taken me this long, in full honesty, to understand enough of it so I feel like I can effectively advocate for my constituents back in my district. It has taken me this long to do so. Again, I may be a little slow and some of you picked up on it a lot quicker than I have and forgive me for that. I don't think I am that unique in that respect. So, on that note I would again ask you to oppose the Indefinite Postponement of this bill. Please recognize the damage that eight year term limits have done and the shift of power to the Executive Branch and consider whether you think that is a healthy thing for the state as a whole. Please oppose the Indefinite Postponement and send this out to the voters and let them have a chance to speak on it. Thank you.

The SPEAKER: The Chair recognizes the Representative from Topsham, Representative Tripp.

Representative TRIPP: Mr. Speaker, Men and Women of the House. I put in a bill this year along with Representative Hatch and Senator Mills to allow term limits to be reconsidered by the people of the State of Maine. The only difference is we are considering tonight the Senator's bill, which would extend it to four years. Representative Hatch and I felt very strongly that we should send out the same information that the people voted for in 1993. I tried to relay that to the Legal and Veterans Committee several times, but they chose to send out the extension to four years. My feeling is, at this point, that I would support that, although my preference would be for an up or down vote on term limits. Eighteen states are now considering term limit elimination. They, along with us, back in the early '90s were frustrated with the process and decided that term limits were a good thing. Term limits in some states included Congressional Representatives. In our state it never got to that point. I feel that if any term limits should be imposed, it should be imposed on them also. Since it isn't and we are only dealing with our own situation and the Constitutional Officers, I feel that we have a responsibility knowing that we have lost experience here and knowing how valuable experience is to send this back out to the people of the State of Maine.

When I made my presentation to Legal and Veterans Affairs, I went back and I looked at how many years of experience will disappear from this Legislature after the next turn as far as people in this Legislature that will be leaving. Four hundred and fifty-five years of experience have left this Legislature since 1995. I think that is a shame. One or two have come back. It is great that they were able to do that. The argument is that you can run for the Senate. I don't think so. I think that a lot of us, not only do we love the House, but it costs so much money to run a Senate campaign and others that we probably would never come back to this situation. I would urge you to vote against the Indefinite Postponement and at least let the people have an opportunity to reconsider their actions even if it is on a limited basis in the upcoming years. Thank you.

The SPEAKER: The Chair recognizes the Representative from Falmouth, Representative Davis.

Representative DAVIS: Mr. Speaker, Men and Women of the House. I urge you to vote for Indefinite Postponement. I have only been here six months, but it seems to me that the bureaucracy has a lot of power and the lobbyists have a lot of power, an inordinate amount of power. At one time I thought that term limits were a good idea, but being here for six months, I do

not think they are a good idea. I would urge you to vote against this. Thank you.

The SPEAKER: The Chair recognizes the Representative from Rome, Representative Tracy.

Representative TRACY: Mr. Speaker, Ladies and Gentlemen of the House. I never believed in term limits. I never supported term limits, but I will be voting for the Indefinite Postponement of this bill and its accompanying papers. I am a recycled Representative. I spent four two-year terms in District 58. I came out of the Town of Rome, which was the second smallest town in District 58 and worked twice. The second time I beat the incumbent from Livermore Falls. I was down here for four years and then I lost my primary to the Representative from Norridgewock, Representative Meres, when she was a Democrat and she ran against me in the Democratic Primary. After that, I ran again in the General Election and lost. Yes, I ran against last fall and I am here again. Getting back to the concept, I do not believe in term limits. Every individual who goes into that voting booth has a right to term the individual out. Ladies and gentlemen, I am proof of that. I will be voting for the Indefinite Postponement of this bill because the people of the State of Maine have spoken very clearly.

I will get back to the good Representative from Bangor, Representative Stevens' comments about the history of bills and stuff. You will recall during some of these bills that are debated on, especially the container bill, the good Representative that used to sit next to me, Representative Danny Warren from Scarborough, him and I worked together to kill that bill and I was surprised to see it back. It is just like the pick up truck bill. That bill had been around for years and years and years. Losing that historical perspective is absolutely right. You can do what you want to do, but I am going to vote for the Indefinite Postponement of this bill. Thank you.

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

Representative PERKINS: Mr. Speaker, Men and Women of the House. This is a 12 to 1 again and I am the 1 again. I want to explain why. I still have ambivalent feelings about term limits. The entrenched power is definitely not a good thing. The three previous speakers who support this bill made strong arguments for term limits. The memory, the inordinate power of the Executive now and the lobbyists. Those are all good arguments. The reason I voted against this in the committee, I have to admit that I didn't really have any lofty reasons like some of the other speakers. I kind of wish I did. It is just more practical. Back home when I go around talking with people and even though they are saying you are doing a good job, then they usually say how many more terms you got? I can run one more if I decide to. I kind of wait and hope they are going to say, that darn term limits, I wish you could get rid them, but they never have so far. They just haven't done that. When it came time for this in the committee, I had to look back at my folks back home and I couldn't think of one of them that ever said they wish we could get rid of that so you could run again. I am not sure a 12 year old chestnut is any better than an 8 year old chestnut. Thank you.

The SPEAKER: The Chair recognizes the Representative from Lewiston, Representative Mendros.

Representative MENDROS: Mr. Speaker, Ladies and Gentlemen of the House. First of all, do we need term limits to get rid of people or to get in here as an advantage? I think I am living proof that you can run and win. Anybody can run and win.

The odds are there running against an incumbent. The odds are against you. You work hard and you can get in. You don't need term limits to do that.

However, there are a few points that I would like to make about the balance of power going to the Executive Branch. I have seen a lot of department bills and things come from the department. I have seen a lot of 11 to 2 reports come out and 12 to 1 reports come out and a lot of challenging to these department bills. I have noticed my name on many of these. I have noticed the good Representative from South Portland, Representative Glynn's name on many of these and the Representative behind me, Representative Trahan as well. They are all newcomers here. They are all ones challenging the Executive Branch. They are here as freshman. I don't see how bringing new people in, brings more power to the Executive Branch. I have challenged many times here on the floor of this House when we are giving up more power to the Executive Branch. I don't think it is right that that power should be going to Legislative Branch. I have seen many others of the people here in their first term doing the same thing. As far as the institutional memory, there is a lot of institutional memory. There are experts in areas that talk about bills. A good place to find institutional memory is right downstairs in the Law Library where they can dig up just about anything you want to know about any bill. I have done research down there and I encourage any of you, no matter how many terms you have been here, to go down and use that. It has all the institutional memory you want. Another argument to the institutional memory is when our Constitution was written by Thomas Jefferson, he didn't have a whole lot of institutional memory, but he wrote our Constitution for our country.

Where does the real knowledge come from? The real knowledge comes from the people. That is why we have a Citizen Legislature to get more citizen people in here. That is what we should be looking at. What harm will it do to send this out? The people of this state wanted term limits. They went out and they signed a petition and they brought it forward. If the people of this state are sick of term limits, the people can go get signatures and overturn it. There has been no effort to that. It has come from us to get rid of it. The harm is we are not listening to the people and that is what the people are going to think. They may be right thinking that because that is certainly the message we are sending. I hear term limits are bad on principle. You know, I might agree with that. Term limits, on principle, are a bad thing. What I really think on principle is a bad thing is to overturn the will of the people and that is what we will be doing. The people have voted and went out and got signatures and voted for it. If the will of the people changes, the people will go out and get signatures and overturn this. You have the survey in front of you, as well, that shows you what the people want. I urge you not to vote against what the people of this state want. Thank you.

The SPEAKER: The Chair recognizes the Representative from Skowhegan, Representative Hatch.

Representative HATCH: Mr. Speaker, Ladies and Gentlemen of the House. I thought I was done for a while. I had put in one of those bills that we are all discussing tonight. Mine looked like let's end the term limits. Let's send it out to referendum and let's get rid of them. Unlike the good Representative from Penobscot, Representative Perkins, I have heard from a lot of my constituents that they did not vote for term limits. As a matter a fact, they didn't vote and they would like to vote on it, because they don't think it is right or fair. I have had

them tell me to my face on several occasions in the grocery store and as I went door to door. There are a lot of people out there folks who did not vote to give us term limits who would like a second chance to turn out. That is in my district. Maybe we are a little more feely in my district as far as telling people what our true intentions are.

Having arrived here in 1993, much like the group of freshman did this year, it was an exciting time. I have served under four speakers. I have seen them mature and grow. The first speaker had matured before I ever got here. It is exciting. We did a lot more one on one. We had senior legislators who took us under their wing and actually walked us through the process. I know that a lot of freshmen here did not have that experience of working and being able to be with a senior legislator on a day to day basis because a lot of us that are senior legislators are now chairing committees and don't have a chance to do as much one on one as we would like.

I want you to know something folks. We have lost a lot. I think if we are going to do this then we are going to have to work on it. I would suggest that we start small and say that this is an idea that we have that we would like to put this out and we work on it for the next four months and it will become a reality. If we put this out there at this time and we all sit back and wait for the voters to arrive at the polls in November and make another decision, then we are probably going to do it wrong. This is one legislator who is willing to go out there and work on the people in my area to get them out to the polls. For every one of you who decide to sit back when your term comes to be term limited out, you too will leave this institution. I think we are just on a short string here in this body anyway. Every two years if we don't do our jobs, guess what, we can be gone. Sometimes we are gone if we don't pay attention and people run nasty campaigns. That is a reality in this body. I can honestly tell you in my heart of hearts with all good intentions when my legislation was put in, that I intended to work as hard as I could from whatever time this went on the ballot to let people know what is happening to this institution.

This year has been the worst. This has been the absolute worst for lobbyists in this body that I have ever seen. They have been here on every issue. I have watched them pressure the new people. They know exactly who you are. They have been in your face. They have been doing what they have to do. There has been a lot more of them. I think if you check around, there have been a lot more lobbyists this year from the big companies here. That is a reality. The departments have had a lot more say. Yes, they have because we have demanded more of them because we have had to over the last eight years. No longer do we have those groups of people, those 30 or 40 people, who have served multiple terms here. We have a handful, a very small handful of people here who actually have historical perspective.

I would ask you tonight to vote against this Indefinite Postponement if you really mean it to put this out to the voters and to go out there and work. The reason I say that is we have term limits every two years. You know that and I know that. We have it every two years. We go to that ballot box and if we haven't done our homework, guess what. If we have done our homework, I can't think of any corporation out there that hires you to be a manager and says in eight years you are gone because we term limit everybody out. If you do your job and you do it correctly and you do it to the best of your ability and you serve the people in your district, they will vote you back in.

Otherwise, you don't belong here either and neither do I. I ask you to vote against this Indefinite Postponement. I think it is time. I think it going to take a lot of work and every one of us is going to have to get out there and we are going to have to sell this idea. Believe me there are a lot of lobbyists upstairs hoping we can't sell this idea or none upstairs because they all have gone home and we are sitting here on a Thursday night after 10:00. For whatever reason, there will be forces out there working against you, but there won't be a million dollar campaign out there this time. I ask for your support of the Indefinite Postponement and let's move on. Let's put this bill out there and let's see what we can do. Thank you.

The SPEAKER: The Chair recognizes the Representative from Brunswick, Representative Davidson.

Representative **DAVIDSON**: Mr. Speaker, Men and Women of the House. I stopped the Representative from Eagle Lake out in the hall. The Representative from Topsham did his calculations; I realized that the Representative from Eagle Lake actually accounts for 400 of those 455 years that were lost. I want to talk about this issue from maybe a slightly different tact. I think that the issue of term limits and whether they are good or not for this body is not the question before us tonight. The question before us tonight is really what does four extra years get you. The second part is why do we need to send it to the voters? Why don't we take care of it here? One of the things that I think most of us have tried to do in our different ways is to try and run this place, the Legislature, like a business. One of the things that I have been surprised about over the past couple of years is as I have stayed here now going into my sixth year, my third term, is the enormity of the administration in this place. This year is my first year serving as a committee chair. I have been amazed at how the complexities of public hearings and the Legislative Council. This is a place that is run by us. It is run by members of leadership from both corners in both bodies.

The Representative from Harpswell and the Representative from Portland, the Speaker, will probably tell you that my first couple of years I used to sit in the cars and we would carpool up and I would talk about how easy a job I thought this was to be mediocre at. It is easy to come here and you flip your switch and you return constituent calls. Over the course of time I realized that the flip side of that is that this is almost an impossible job to be great at. Everyday we are faced with different issues. We are doing moose permits one day and we are doing choice bills the next day and we are doing utility deregulation the next day and we are doing transportation issues. It is an impossible job to be great at. It is a nearly impossible job to be very good at. One of the things that I have found is that as I have been here longer, I have realized that in my first year and my first term, I thought I was the best legislator in here. I now think that I am somewhere well below the middle of the pack and I am trying to inch myself up daily, because it is a tough, tough job this job.

Over the last year, a year ago, I started a business with a couple of other guys. Everyday that I walk into this business these guys have a collective experience in what I do in investment banking of probably 100 years. Every day I walk in I thank the good Lord that there is that experience behind me. Most of the time I don't have a clue what I am doing. I think about the fact that if I applied the same rules, if you take this as a business that we are doing here and in many ways it is a business. This is a huge institution that we are running here with employees and pensions and retirement systems. Everything is run by us. It is run by the good Speaker, the Representative

from Kennebunk, Representative from Bowdoinham and it is run by us. I think that if in my business or probably your business if you thought about taking out your best and your brightest and tossing them out after eight years and putting in a whole new crop, if you take it from that angle, it is kind of an interesting way to start thinking about this. So, not to argue the term limits approach, whether it is good or not, but just what four years gets you, I think from my personal experience and we can only talk from our personal experience, but of also watching my friends who I have grown up here and their growth, we talk about it all the time about how much I feel like they have grown and how much I have been impressed with their development and how much they have to learn. How much we all have to learn and how everyday I ride home with my good friend, in fact we talked about it last night, the Representative from Harpswell, how I didn't feel good about some of the things I had done that day and some of the issues I had taken stands on. If I had the day to do over again, I would do it differently and I would try not to make the same mistakes twice.

The final issue, I am sorry to belabor the point, is why do we send this to the voters. I have heard people talk tonight about why are subverting the will of the people by doing this. Are we? I would argue that this issue is in an entirely different class than tire dump bond issue cleanups, clear-cutting referendums, bond issues or clean election campaigns because if you ever sit in this chair and you take yourself out of the technicalities, the laws, the statutes, the amendments and the things that come across our desk everyday and you think about who you are. You are 8,000 or 9,000 plus people. I kind of get chills when I think about that sometimes because I think that is lost on me what an important responsibility that is. The ability to send issues like this back and say, I don't have any problem doing that, this is the most important decision you will make on your ballot at anytime, who you send up here. You know why, you are at home working and you are at home with your kids and I am your voice. I am you. I am the only one up here speaking for you. The idea that we would send this back and let the people decide if I want to have Tom Davidson be that much better, that much more learned.

I gotta tell you, from my perspective, I really don't want to stay doing this for a long time. I love this job and I want to go do different things. I just think that this opportunity that we have today to really not talk about any of the issues that we face here day to day with people learning the rules and learning how to make motions on the floor of the House. I have just been amazed by my realization of how much everyday I have to learn in this job and how much eight years is really doing to cut that short. I encourage you to vote against the Indefinite Postponement of this bill and really do something that I think is in the best interest of the people of Maine. Give them a chance to shout about what kind of people they want up here and what kind of job performance they want up here. I thank you for your time on this.

The SPEAKER: The Chair recognizes the Representative from Waterboro, Representative McAlevey.

Representative **MC ALEVEY**: Mr. Speaker, Ladies and Gentlemen of the House. As a member of the freshman class of term limits I think it gives some of us a unique perspective. I used to kid that I didn't believe in term limits until I came here. We have seen the effects of what term limits are doing. The public doesn't perceive that yet. It hasn't been time enough for them to get that percolated down to them. We see it because we

live it every day. I do agree with the Representative from Eagle Lake that if we are going to go back to the people, we need to make sure that we are going back on an up and down situation, not extending it four more years. Perception is reality. We go back to the public and say we need four more years after having been eight to do it. The argument is if you didn't do it in eight, what makes you think you are going to do it in 12? Look around the chamber and you look around the chamber in the other end of this building. This is the proving ground. This is where our Governors come from. This is where our AGs come from. This is where our Treasurers come from. Eight years is not enough time in public service in this institution to get a good grasp on what is going on. I think two or four years from now we are going to have a better sell to the public because I think by that time it is going to peculate down to them through the press and through other means that term limits are not doing what they expected it to do. Thank you.

The SPEAKER: The Chair recognizes the Representative from Bridgton, Representative Waterhouse.

Representative **WATERHOUSE**: Mr. Speaker, Ladies and Gentlemen of the House. We are now approaching 25 minutes of 11. All this talk is very interesting, but I think all of us know where we are on this issue. As an old comrade of ours said in the previous Legislature, Representative DiPietro, I think it is time to move on. I suggest everybody reads all of Supplement 13 to realize where we are with this issue. Thank you.

The SPEAKER: The Chair recognizes the Representative from China, Representative Bumps.

Representative **BUMPS**: Mr. Speaker, Ladies and Gentlemen of the House. I will be brief because I do recognize that the hour is late, but I would like an opportunity to respond to, at least in part, to a couple of comments that have been made and to explain why I will be voting for the pending motion. I think once you hear my comments, you might decide that that vote is not consistent.

I want to suggest to you this evening that as a member of the State and Local Government Committee we had a bill brought to us by Representative Cameron. It was LD 1001. It was similar in some ways to this bill in that it would have repealed term limits outright. I did something the day of that public hearing that I have not done since I came to the Legislature. I chose to spontaneously testify on the bill. It is something that I was a bit uncomfortable with and probably some of my committee members would tell me something I ought not to do again. I have to tell you what compelled me to do that.

In 1995, just one year after the voters of Maine had enacted term limits, I wrote a 125 page thesis about what I suspected would be the effects of term limits in Maine. I contemplated photocopying it and sending it around for your reading tonight, but I suspect you will all thank me for not having done that. In that thesis I drew some conclusions. Some of which I am happy to tell you were, in my opinion, correct and others, which I think were wrong. The conclusions that I would draw bring me back to the comments made by one of the first speakers, the Representative from Eagle Lake. Personally I believe that term limits have affected the historical memory that makes this institution work in the way it should. I think that it has enhanced in some ways the power of the lobby, although I think we overestimate that. I think it is enhanced in lots of ways. Perhaps in some that we underestimate, the power of the Executive Branch. I will tell you tonight that if we are going to send this issue to the voters, we need to have the courage to do

it all or to do nothing. Don't inch our way there. Don't be afraid to send out the question of term limits by inching it up two terms or four years.

Representative Martin is right. You are going to have one chance to do this. If you, like the majority of the Committee on Legal and Veterans Affairs feels that term limits are not the right thing for this institution, then you need to send this out and you need to do it all. You can't do part of it. You darn well better be sure the timing is right. The time isn't right. The very last speaker suggested that it hasn't filtered down. The public doesn't see what you and I and others see here every single day and that is absolutely true. Representative Hatch has suggested that we need to go and sell it. I am afraid that between now and November there is not enough time to sell the enormity of the problem. Give this a few more years. Give it an opportunity for it to settle in, exactly what has been done with the implementation of term limits and then send it all out. Send out the entire package and allow the voters, as I suspect they will, to repeal them. I ask that tonight you vote for the Indefinite Postponement so that in a subsequent Legislature we can do the right thing. Thank you.

The SPEAKER: The Chair recognizes the Representative from Portland, Representative Brennan.

Representative **BRENNAN**: Mr. Speaker, Men and Women of the House. I think it is unfortunate that we are here tonight at this time talking about this issue. Not only because it is late, but because it is the end of the session and this is an incredibly important issue, because this strikes to the future of this body, this institution, and to how we run state government, whether or not we have term limits or we don't have term limits. Again, it is unfortunate that we are here tonight, at this late date, dealing with such an important issue.

I was first here when we talked about having term limits. People at that time talked about going ahead and passing the bill because we would be able to then, by statute, amend term limits. That would have been wrong. We need to send that out to the voters and let the voters decide what they wanted to do. I reject the notion that we have to wait several more years to decide whether or not this experiment has been a failure. Some people have good crystal balls, better than others about the political future. Mine is not that good. I think that what we know about term limits at this point is that it hasn't worked. It has been a bad experiment. I don't think we should wait. I think we should send this out to the voters this fall. I am term limited out. Regardless of the effect of this bill or the outcome in November, I don't intend to run again. This particular bill is not going to affect me personally. I do believe that we need to send this back to the voters and have another debate about this experiment and about the way we run this government. I urge you to vote against Indefinite Postponement.

The SPEAKER: The Chair recognizes the Representative from Waterville, Representative Gagnon.

Representative **GAGNON**: Mr. Speaker, Men and Women of the House. I guess I have a little different perspective on this bill and the idea of sending this out to referendum. I remember spending a lot of time in my undergraduate years talking about distribution of power, separation of powers between the three branches of government as we have in this state. I have noticed that in this state we have a Citizen Legislature and we have essentially a professional Executive. We have an Executive that comes to office with term limits at a total of eight years. I am assuming that the original intent for our term limits of eight years

was because the Executive was set that way. There are certain advantages that the Executive has. He certainly has a full staff and he has himself. He only has to argue with himself. He only has to get along with himself and maybe more recently with his wife also.

We have to learn to get along with everyone else. We have to take a little time to do that. We have to learn the ropes. People have said in your first term in the Legislature you spend all your time trying to figure out where the bathrooms are. In your second term you don't have time to go. It is basic training your first term. We are citizens and we have other jobs. I like this bill. I have no apologies for voting for this bill. I happen to like term limits. I think there is a time when there needs to be a change every so often. I think the term limits for the Executive is proper, two terms, eight years. I think there is an imbalance when the Citizen Legislature, which doesn't have the advantage of a huge staff and having the advantage of just arguing with yourself. It doesn't have the disadvantage that we have of having other jobs at home. I thought that four years was the appropriate balance in my mind, two years for the basic training and two years because we have other full-time jobs.

I have no apologies for this bill. People are talking as if there should be term limits or not term limits. I support term limits. I didn't when I came to the Legislature, but I do know. I don't think the balance is proper with the separation of powers that we have. Mr. Speaker, I would not support the Indefinite Postponement. Thank you.

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

Representative **TRAHAN**: Mr. Speaker, Honorable Members of the House. I will not apologize for getting up. I think this is a very important issue and I would like to make one good point. I will be brief. I am a direct result of term limits. The man I replaced was out on term limits. The reason why I think term limits are important is, and I will tell you a little story. When I was playing high school football we had this one kid on the team, his name was David Walker. He was big and he was strong and he was a hustler, but he wasn't a very good ball handler and he wasn't a very good football player. When the team would get slow and lazy, sitting around doing nothing, the coach would put this player in. He would hit everybody in sight. He would hustle on every play. He made everyone around him better because the hustled and he worked hard. That is why I think bringing new people into the Legislature is important. Sure, we want to bring the right people here, but we also have to have one little check and balance in there to keep everybody on their toes and keep everybody sharp. You get new people in here and you have all seen it. They come in hustling. They work hard and they want to better themselves and they want to better their communities. That cannot hurt this body. Thank you.

The SPEAKER: The Chair recognizes the Representative from Rumford, Representative Cameron.

Representative **CAMERON**: Mr. Speaker, Ladies and Gentlemen of the House. I make no promise about being brief. I apologize up front. New people are not the issue. We have always had new people in this Legislature and we always will have. We didn't need term limits to accomplish that. I voted for term limits. It is the worst vote I have ever made in my life. I stand before you and I stand before anybody else and tell you it was the worst vote I have ever made in my life. I am one of those people you heard about tonight that disrespects the public. My bill just abandoned them. It got rid of them. Face the tiger

and get it over with. I said I wouldn't run again, whether my bill passed or not. Guess what, guys let me off the hook. They killed my bill and they want to take this route. This is the only route left. This is the only route left that we have to address the issue. The most important issue about term limits that I have not heard anybody mention here tonight and if you have and I missed it, we are denying the public the right of choice. It is not up to me to vote for term limits and deny the people of Bangor, the people of Portland or the people of Fort Kent or anybody else to choose who they want to represent them. Whether I like that person or not is irrelevant. Whether the people in Bangor like me is irrelevant. The people of my district chose to send me here.

Term limits, to me, is about denying the public the right of choice. You have heard that this is disrespectful to send this back to the public because this is what they voted for. This is what they will have an opportunity to vote for again. I ask you not to forget what happened with the Maine Turnpike. A special interest group or a group of people got together and got some money and created a campaign and they stopped the widening of the turnpike. Does anybody recall how the widening of the turnpike is now coming about? It started right here. It didn't go through another citizen referendum. It started here. If we think it is wrong, if we think the people need another choice or opportunity, it needs to start here.

The people of the United States are watching what is happening here. When I put my bill in to abandon term limits, whether it was disrespectful or not, I felt we needed to face the tiger. I knew in my heart that I would be called everything, but a good guy from every corner of the State of Maine. Guess what, I got one phone call. That is it. It was saying something other than a good guy I was. It was pretty explicit. It was pretty clear, but it was only one. We have heard about surveys. Surveys are a joke, ladies and gentlemen. You can get any answer you want in a survey. Having said that, I happen to have a survey that I did in my district and 68 percent of the people said get rid of term limits. That is not why I am doing this. I did the survey after I put the bill in. Every place I have gone since I put this in and there was an opportunity to talk about it, I have talked about term limits. People said to get rid of them. Nobody has jumped on me. Nobody has said I was disrespectful and nobody said I was nuts, but that is another issue.

The people, I believe, need another opportunity. It is not going to happen unless we make it happen here. You heard the good Representative from Eagle Lake make a comment about the money that was involved. There was probably a million plus dollars spent on this issue by an individual. Is that what democracy is about ladies and gentlemen? One of our greatest criticisms that we hear, unfounded I might add, from the public is the influence of money on this body. What do you think a million dollar campaign to create something by an individual citizen is if that isn't money impacting? All of the people in this room, I know, didn't spend a million dollars on campaigns. We have heard about lobbyists. Nobody said tonight if you talk to lobbyists privately they hate term limits. They hate them because instead of spending time serving the purpose that they are supposed to be serving they are spending time to help educate us. They are trying to figure out who these new people are and where they are philosophically and where they are geographically and all the other things they do. They hate term limits.

I don't know who is benefiting. We have heard tonight that the people benefited, the lobbyist benefits and the Executive benefited. I don't know who has benefited. I don't know any law that was passed since term limits went into effect that couldn't have been passed before. I don't know of any law that has been rejected that couldn't have been rejected before. While I agree that I would like to have seen a straight up or down vote, this is all we have.

I said people of the United States are watching what is happening here. I had an article done about my bill in the *Christian Science Monitor*. I have been called by the *USA Today* to talk about this issue. I had an article done on an interview with a newspaper in Sacramento, California. People are watching what is going on here tonight. People are very interested in term limits. They may not have made up their mind, but they want to re-examine it. They are not going to have their chance unless we give them that chance. This supposed ground swell support for term limits, I haven't found it and I have been looking for it. I have been looking and I cannot find it. I may be looking in the wrong place and I will admit that. Eight years, I heard that somebody assumed it was because of the Governor. I believe that was an arbitrary number picked out of the sky that happened to be two years less than 10 where we qualified for retirement. I really believe that is what that is about. I may be wrong, but I am sure if I am somebody will tell me. I believe that is where eight years came from. Is that what we want to base our decisions on? Arbitrary things like that. I don't think so. The good Representative from Brunswick talked about one thing that I want to emphasize.

If anyone of you was a CEO of a fortune 500 company and we talk about nearly a \$9 billion budget in this state, including the things we don't have control of. If you were the CEO of that corporation, would you fire your best people because they have been here eight years? I think not. That would defy logic. It would absolutely defy logic. The people of Maine deserve a chance to vote for whomever they want. If they choose to turn us out, so be it. That is what a Citizen Legislature is about. Sometimes it seems like we forget that we are also citizens. I hear about the Citizen Legislature and the great thing it will create. We are all citizens, folks and that is why we are here. We have a Citizen Legislature and 8 years, 10 years or 20 years doesn't make any difference. We are all still citizens regardless of what we do at home. That won't change. I implore you. Please vote against this Indefinite Postponement. Give the people of Maine another chance to decide and stop denying them the right of choice of their representation. Thank you.

The SPEAKER: The Chair recognizes the Representative from Wayne, Representative McKee.

Representative MCKEE: Mr. Speaker, Men and Women of the House. Just to make a point. The good Representative Cameron brought up democracy. This about participatory democracy also. I voted for term limits and certainly after I got here I discovered the same things that you discovered. I also saw some wonderful things too. I see people who are only in their second terms who are on Appropriations and in spots that people coveted for years and years and years before they got there. I see a woman who has been here for seven years and is not the Chairman of the Appropriation Committee and doing a wonderful job. If all of us left today, 151 of us, and went back into our communities 151 people out of a quarter million people would be able to come back here and find out what this is all about. They would have run like crazy like we did to figure it out,

read, study on our own, not rely on the lobbyist out there, if you allow them to, they will educate you, but you have a responsibility just like I do to educate yourself. I don't see it as a bad thing. You have been to Washington and you have walked behind the suits. You have seen the glazed over look and you have said, come home and see what it is like at home. We will send you back after you have been home a while. I sit on a committee where a man has been out for two years and has come back. His district has brought him back here. He has new energy. He has given life to this place again. He was out for two years. We don't lose by ending our term at two years. We can go home and serve in equally important places where we once served or if we didn't serve ever there before we got there, it is time to go back home and be a part of that. We can still come back. I will sign that citizen initiated referendum for open term limits when the citizens themselves say it is time or I begin to read in the papers from editors across the state, let's get rid of term limits. We need to keep these people here a long time. When that happens, I will be ready. I don't think the public is ready. I would be fearful that if we go out to referendum, we will fail and then that would be far worse. Thank you.

The SPEAKER: The Chair recognizes the Representative from Auburn, Representative Gerry.

Representative GERRY: Mr. Speaker, Ladies and Gentlemen of the House. I am a supporter of term limits. I have made no bones about hiding that. As you look on the walls as we leave the chamber, you will notice the pictures on the wall. Most of the Speakers on the wall only served for a term or two. There was only one Speaker that lasted longer and that was the good Representative from Eagle Lake. If it wasn't for the fact of term limits, I doubt very much and I kind of wish he wasn't standing up front, that our present Speaker would have been elected or the past Speaker from last term or even the term before that. I know there is some form of term limits on Speakership, but because of the way the political process is made, I don't think the present Speaker this term or last would have been given their fair chance to be the Speaker of the House.

Term limits for me does not give the power to the Executive Branch. It is only power we lose if we, ourselves, choose to let it go. When I first ran for this seat that I am in, I had said to my constituents that I will only serve three terms. I have said that every time I have run. This is my last term. I feel other residents in my town should have the right to run for office. The longer a person stays in office, the less likely there will be a candidate to go against him or her in the primary or against him or her in the general. We have seen that in past elections. It is very hard to beat an incumbent and to raise the money. It is not a sure thing. We have seen legislators this term that have beat incumbents. I take great pride in being a legislator, but I come here with not a whole lot of education. It did not take me that long to get caught up on the system. It is true that once I learned where the bathrooms were, that was one of the bigger steps. The process was not that hard. Being a new person here and wanting to keep on top of things made me look for the information myself. I don't rely on the lobby. Lobbyists seem to avoid me very much because they know I will take their information and I will weigh it against whatever else I might hear.

I think it is one of the best things about having new members here. It gives the lobbyists something that they have to work on, how to get into a new person's head. They have to work even harder. One of the biggest lobbyist groups that I have

seen up here yet was from Scarborough Downs. I don't think there have been that many from the other agencies. If there was, they all handled different issues. It wasn't all on one particular issue. The part about term limits I like is it gets people to take a break to recharge their batteries as it has been previously stated.

It has also been stated that when current members get termed out we lose institutional memory. I disagree with that. Like what has already been said, old members come back and they share the information. When a member is new, within their first or second term, they seem more aggressive and they seek the information themselves like the good Representative from Lewiston, Representative Mendros. He has been down in the library I don't know how many times I have passed by there looking at my local paper and seeing him in there chasing down information. He is aggressive. He is hardworking. He does his research. I have seen a lot of other new members doing that to trying to keep up on speed. I don't see a lot of the older members. That is the thing. The longer we are here the less likely we are searching and seeking the information for ourselves. We rely more on a committee clerk and our analyst and sometimes even the lobbyist.

As I have mentioned, this will be my last term. I will be proud when that ends. Not that I regret being a legislator because it has been one of the most rewarding experiences. When I do leave, I will go home and I will share with my constituents my rewarding experiences or things good or bad. I never intended to be a career politician. I think by me going back home and sharing what I have learned here will encourage others into more public service. I am willing to help any party run for office.

It was a very hard decision to make this motion to Indefinitely Postpone the bill. It is something that I did not make very lightly. At that I will close.

The SPEAKER: The Chair recognizes the Representative from Lisbon, Representative Chizmar.

Representative CHIZMAR: Mr. Speaker, Men and Women of the House. Unlike the Representative from Auburn, I did not support or vote for term limits. My Town of Lisbon did not support term limits. I do believe it is an issue that the public should be able to look at again. Putting this issue to referendum is the way this should be resolved.

The SPEAKER: The Chair recognizes the Representative from Yarmouth, Representative Buck.

Representative BUCK: Mr. Speaker, Ladies and Gentlemen of the House. This debate has gone on long enough and I think we should perhaps put it into some historical perspective. I am reminded of almost two centuries ago when Benjamin Disralle was leader in the House of Commons. A new member of the House came up to him and inquired how often should I speak on an issue. Disralle replied, "It is much better that the House should wonder why you do not speak, than why you do."

The SPEAKER: A roll call has been ordered. The pending question before the House is Indefinite Postponement of the Bill and all Accompanying Papers. All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 328

YEA - Andrews, Belanger, Berry DP, Bouffard, Bowles, Bragdon, Bruno, Buck, Bumps, Campbell, Carr, Chick, Cianchette, Clark, Clough, Collins, Cote, Daigle, Desmond, Dugay, Duncan, Foster, Gerry, Gillis, Glynn, Gooley, Honey,

Jodrey, Jones, Joy, Kasprzak, Kneeland, Lemoine, Lindahl, Lovett, MacDougall, Mack, Madore, Mailhot, Martin, Marvin, McAlevey, McDonough, McKee, McKenney, McNeil, Mendros, Mitchell, Murphy T, Nass, Norbert, Nutting, O'Brien JA, Peavey, Perkins, Plowman, Richardson E, Richardson J, Rines, Savage C, Schneider, Shields, Shorey, Sirois, Skoglund, Snowe-Mello, Stanley, Stanwood, Stedman, Stevens, Tobin D, Tobin J, Tracy, Trahan, Treadwell, Usher, Volenik, Waterhouse, Weston, Wheeler GJ, Winsor.

NAY - Ahearne, Bagley, Baker, Berry RL, Bolduc, Brennan, Brooks, Bryant, Bull, Cameron, Chizmar, Colwell, Cowger, Cross, Davidson, Davis, Dudley, Dunlap, Duplessie, Ethier, Fisher, Frechette, Fuller, Gagne, Gagnon, Green, Hatch, Heidrich, Jabar, Jacobs, Kane, Labrecque, LaVerdiere, Lemont, Matthews, Mayo, McGlocklin, Murphy E, Muse, O'Brien LL, O'Neal, O'Neil, Perry, Pieh, Powers, Quint, Richard, Rosen, Samson, Sanborn, Savage W, Saxl JW, Saxl MV, Shiah, Sullivan, Tessier, Thompson, Townsend, Tripp, Twomey, Watson, Wheeler EM, Williams, Mr. Speaker.

ABSENT - Goodwin, Pinkham, Povich, Sherman, True, Tuttle.

Yes, 81; No, 64; Absent, 6; Excused, 0.

81 having voted in the affirmative and 64 voted in the negative, with 6 being absent, the Bill and all accompanying papers were **INDEFINITELY POSTPONED** in concurrence.

SENATE PAPERS

Non-Concurrent Matter

An Act to Require a Written Record of the Subject Matters Discussed in Executive Sessions (MANDATE)

(H.P. 143) (L.D. 205)

(C. "A" H-635)

PASSED TO BE ENACTED in the House on May 25, 1999.

Came from the Senate **FAILING** of **PASSAGE TO BE ENACTED** in **NON-CONCURRENCE**.

Representative GLYNN of South Portland moved that the House **INSIST** and ask for a **COMMITTEE OF CONFERENCE**.

Representative RINES of Wiscasset moved that the House **RECEDE AND CONCUR**.

Representative MENDROS of Lewiston **REQUESTED** a roll call on the motion to **RECEDE AND CONCUR**.

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

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

ROLL CALL NO. 329

YEA - Andrews, Bagley, Belanger, Berry DP, Bragdon, Brooks, Bruno, Bull, Bumps, Cameron, Carr, Chick, Cianchette, Colwell, Daigle, Desmond, Dudley, Dugay, Duncan, Dunlap, Fisher, Fuller, Gagne, Gooley, Hatch, Heidrich, Honey, Jabar, Jodrey, Joy, Labrecque, Lemont, Lindahl, Lovett, Martin, Matthews, Mayo, McAlevey, McDonough, McGlocklin, McKenney, Murphy E, Muse, Nutting, O'Brien JA, Peavey, Pieh, Powers, Quint, Richard, Richardson E, Richardson J, Rines, Rosen, Sanborn, Savage C, Saxl JW, Saxl MV, Shiah, Sirois, Skoglund, Stanley, Stanwood, Stedman, Sullivan, Tobin J, Tracy, Treadwell, Usher, Weston, Wheeler EM, Wheeler GJ, Williams, Winsor.

NAY - Ahearne, Baker, Berry RL, Bouffard, Bowles, Brennan, Bryant, Buck, Campbell, Chizmar, Clark, Clough,

Collins, Cote, Cowger, Davidson, Davis, Duplessie, Etnier, Foster, Frechette, Gagnon, Gerry, Gillis, Glynn, Green, Jacobs, Jones, Kane, Kasprzak, Kneeland, LaVerdiere, Lemoine, MacDougall, Mack, Madore, Mailhot, Marvin, McKee, McNeil, Mendros, Mitchell, Murphy T, Nass, Norbert, O'Brien LL, O'Neal, O'Neil, Perkins, Plowman, Samson, Savage W, Schneider, Shields, Shorey, Snowe-Mello, Stevens, Tessier, Thompson, Tobin D, Townsend, Trahan, Tripp, Twomey, Volenik, Waterhouse, Watson, Mr. Speaker.

ABSENT - Bolduc, Cross, Goodwin, Perry, Pinkham, Povich, Sherman, True, Tuttle.

Yes, 74; No, 68; Absent, 9; Excused, 0.

74 having voted in the affirmative and 68 voted in the negative, with 9 being absent, the House voted to **RECEDE AND CONCUR**.

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

On motion of Representative PERRY of Bangor, the House adjourned at 11:15 p.m., until 9:00 a.m., Friday, May 28, 1999.