

MAINE STATE LEGISLATURE

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One Hundred and Nineteenth Legislature
State of Maine

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STATE OF MAINE
ONE HUNDRED AND NINETEENTH LEGISLATURE
FIRST REGULAR SESSION
JOURNAL OF THE SENATE

In Senate Chamber
Friday
May 14, 1999

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

Prayer by Father Harry Politis of the Greek Orthodox Church of the Holy Trinity in Lewiston.

FATHER POLITIS: Lead us, guide our ways now and forever into the ages of ages, Amen. Let us pray to the Lord.

Master and Lord, You have promised an abundance of fruits to those who follow You. Bless our work and help us to achieve success by Your grace. Lord we commit our work to You and also to work according to Your good pleasures. For our benefit and to benefit our fathers. Fill our hearts with your grace that we may act with faith, honesty, and courage toward our dealings. Guide us that we may abound in every good work to your praise and glory. Amen.

The Grace of our Lord Jesus Christ and the Love of the Father and the Communion of the Holy Spirit be with all of you. Have a great day.

Doctor of the day, Laurel Coleman, M.D., Manchester.

Reading of the Journal of Thursday, May 13, 1999.

PAPERS FROM THE HOUSE

Non-Concurrent Matter

Resolve, Authorizing the Knox County Commissioners to Borrow Not More than \$2,500,000 for Construction or Renovation of a District Court and Office Areas in Knox County (EMERGENCY)
H.P. 703 L.D. 970
(C "A" H-407)

In Senate, May 7, 1999, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-407)**, in concurrence.

Comes from the House, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-407) AS AMENDED BY HOUSE AMENDMENT "A" (H-569)** thereto, in **NON-CONCURRENCE**.

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

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

Senator **AMERO:** Thank you Mr. President. I rise to ask a point of inquiry.

THE PRESIDENT: The Senator may pose her point of parliamentary inquiry.

Senator **AMERO:** I've noticed in the last few legislative days that we have received many non-concurrent matters coming from the House in which the only change that causes these matters to be in non-concurrence is the change of the reporting date for commissions or studies, changing the date by one day. I'm just wondering what the purpose of that is and why we're spending so much money printing amendments to change reporting dates by one day.

THE PRESIDENT: The Senator from Cumberland, Senator Amero poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Kennebec, Senator Treat.

Senator **TREAT:** Thank you Mr. President. I can only speak, men and women of the Senate, about my own Committee which has been guilty in two occasions now of setting a reporting date on a Saturday because it had a nice ring to it, the 15th of February, and I believe that that is the reason why and we're trying to be a little more careful in future reporting dates so we check what day of the week that falls on. I believe that is what's going on with my Committee. I can't speak for any other but it's possible that they're just as negligent.

Non-Concurrent Matter

Bill "An Act Concerning the Review of State Solid Waste Management Policies" (EMERGENCY)

S.P. 391 L.D. 1170
(C "A" S-185)

In Senate, May 5, 1999, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-185)**.

Comes from the House, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-185) AND HOUSE AMENDMENT "A" (H-550)**, in **NON-CONCURRENCE**.

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

Non-Concurrent Matter

Bill "An Act to Amend the Local Highway Laws"

S.P. 418 L.D. 1207
(C "A" S-169)

In Senate, May 5, 1999, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-169).**

Off Record Remarks

Comes from the House, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-169) AND HOUSE AMENDMENT "A" (H-573), in NON-CONCURRENCE.**

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

REPORTS OF COMMITTEES

House

Ought to Pass As Amended

Non-Concurrent Matter

HOUSE REPORTS - from the Committee on **TAXATION** on Bill "An Act to Create a Sales Tax Exemption for Child Abuse and Neglect Councils"

H.P. 976 L.D. 1374

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-395)** (10 members)

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

In House, May 7, 1999, the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-395).**

In Senate, May 11, 1999, the Minority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED**, in **NON-CONCURRENCE.**

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

On motion by Senator **RUHLIN** of Penobscot, the Senate **ADHERED.**

(See action later today.)

Non-Concurrent Matter

Resolve, Regarding the Conveyance of a Right-of-way Across the Elizabeth Levinson Center in Bangor

S.P. 620 L.D. 1785
(C "A" S-160)

In Senate, May 4, 1999, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-160).**

Comes from the House, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-160) AS AMENDED BY HOUSE AMENDMENT "A" (H-556)** thereto, in **NON-CONCURRENCE.**

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

The Committee on **CRIMINAL JUSTICE** on Bill "An Act to Require More Timely Court-ordered Psychological Evaluations" H.P. 1092 L.D. 1539

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (H-534).**

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-534).**

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

READ ONCE.

Committee Amendment "A" (H-534) **READ** and **ADOPTED**, in concurrence.

TOMORROW ASSIGNED FOR SECOND READING.

The Committee on **CRIMINAL JUSTICE** on Bill "An Act to Increase the Penalties for Persons in Possession of Methamphetamine in Conformity with the Penalties for Similarly Dangerous Drugs"

H.P. 1129 L.D. 1588

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (H-535).**

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-535).**

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

READ ONCE.

Committee Amendment "A" (H-535) **READ** and **ADOPTED**, in concurrence.

TOMORROW ASSIGNED FOR SECOND READING.

The Committee on **CRIMINAL JUSTICE** on Bill "An Act to Remove the Statute of Limitations for Unlawful Sexual Contact and Sexual Abuse of Minors"

H.P. 1412 L.D. 2019

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (H-536)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-536)**.

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

READ ONCE.

Committee Amendment "A" (H-536) **READ** and **ADOPTED**, in concurrence.

TOMORROW ASSIGNED FOR SECOND READING.

The Committee on **HEALTH AND HUMAN SERVICES** on Bill "An Act to Strengthen the Child Care Licensing Laws"
H.P. 527 L.D. 734

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (H-533)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-533)**.

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

READ ONCE.

Committee Amendment "A" (H-533) **READ** and **ADOPTED**, in concurrence.

TOMORROW ASSIGNED FOR SECOND READING.

Divided Report

The Majority of the Committee on **AGRICULTURE, CONSERVATION AND FORESTRY** on Bill "An Act to Eliminate the Use of Nongovernmental Entities in Acquiring and Managing Lands"

H.P. 1208 L.D. 1737

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

Signed:

Senators:

KILKELLY of Lincoln
KIEFFER of Aroostook

Representatives:

COWGER of Hallowell
VOLENIK of Brooklin
PIEH of Bremen
WATSON of Farmingdale

GAGNE of Buckfield
CROSS of Dover-Foxcroft

The Minority of the same Committee on the same subject reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-491)**.

Signed:

Senator:

NUTTING of Androscoggin

Representatives:

CARR of Lincoln
GOOLEY of Farmington
FOSTER of Gray
GILLIS of Danforth

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

Reports **READ**.

Senator **NUTTING** of Androscoggin moved the Senate **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED** Report, in **NON-CONCURRENCE**.

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

Divided Report

The Majority of the Committee on **INLAND FISHERIES AND WILDLIFE** on Bill "An Act to Impose Stricter OUI Penalties on Operators of Watercraft, ATVs and Snowmobiles"

H.P. 209 L.D. 287

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-509)**.

Signed:

Senators:

KILKELLY of Lincoln
RUHLIN of Penobscot
KIEFFER of Aroostook

Representatives:

DUNLAP of Old Town
CHICK of Lebanon
HONEY of Boothbay
TRUE of Fryeburg
CLARK of Millinocket

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

Signed:

Representatives:

PERKINS of Penobscot
TRAHAN of Waldoboro
BRYANT of Dixfield
TRACY of Rome

Comes from the House with the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-509)**.

Reports **READ**.

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

READ ONCE.

Committee Amendment "A" (H-509) **READ** and **ADOPTED**, in concurrence.

TOMORROW ASSIGNED FOR SECOND READING.

Divided Report

The Majority of the Committee on **LABOR** on Bill "An Act to Amend the Prevailing Wage Laws"

H.P. 728 L.D. 1018

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

Signed:

Senators:

DOUGLASS of Androscoggin
LaFOUNTAIN of York
MILLS of Somerset

Representatives:

DAVIS of Falmouth
MacDOUGALL of North Berwick
MACK of Standish
TREADWELL of Carmel

The Minority of the same Committee on the same subject reported that the same **Ought to Pass**.

Signed:

Representatives:

HATCH of Skowhegan
GOODWIN of Pembroke
FRECHETTE of Biddeford
MATTHEWS of Winslow
SAMSON of Jay
MUSE of South Portland

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

Reports **READ**.

Senator **LAFOUNTAIN** of York moved the Senate **ACCEPT** the Majority **OUGHT NOT TO PASS** Report, in **NON-CONCURRENCE**.

On further motion by same Senator, **TABLED** until Later in Today's Session, pending motion by same Senator to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report, in **NON-CONCURRENCE**.

Divided Report

The Majority of the Committee on **LABOR** on Bill "An Act to Prohibit the Employment of Professional Strikebreakers"

H.P. 756 L.D. 1046

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-484)**.

Signed:

Senators:

LaFOUNTAIN of York
MILLS of Somerset

Representatives:

HATCH of Skowhegan
MUSE of South Portland
GOODWIN of Pembroke
FRECHETTE of Biddeford
MATTHEWS of Winslow
SAMSON of Jay
DAVIS of Falmouth

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

Signed:

Representatives:

MacDOUGALL of North Berwick
MACK of Standish
TREADWELL of Carmel

Comes from the House with the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-484)**.

Reports **READ**.

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

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

Divided Report

The Majority of the Committee on **NATURAL RESOURCES** on Bill "An Act to Allow Cutting of Trees in the Shoreland Zone Under Certain Conditions"

H.P. 1036 L.D. 1458

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-481)**.

Signed:

Senators:

NUTTING of Androscoggin
LIBBY of York

Representatives:

JOY of Crystal
TOBIN of Windham
ETNIER of Harpswell
MARTIN of Eagle Lake
CLARK of Millinocket
DAIGLE of Arundel
CAMERON of Rumford

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

Signed:

Senator:

TREAT of Kennebec

Representatives:

McKEE of Wayne
DUPLESSIE of Westbrook
COWGER of Hallowell

Comes from the House with the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-481)**.

Reports **READ**.

Senator **TREAT** of Kennebec moved the Senate **ACCEPT** the Minority **OUGHT NOT TO PASS** Report, in **NON-CONCURRENCE**.

On further motion by same Senator, **TABLED** until Later in Today's Session, pending motion by same Senator to **ACCEPT** the Minority **OUGHT NOT TO PASS** Report, in **NON-CONCURRENCE**.

Divided Report

The Majority of the Committee on **STATE AND LOCAL GOVERNMENT** on Resolve, to Establish the State Office Building Location Task Force

H.P. 226 L.D. 304

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-292)**.

Signed:

Senators:

PENDLETON of Cumberland
GOLDTHWAIT of Hancock

Representatives:

AHEARNE of Madawaska
BAGLEY of Machias
RINES of Wiscasset
McDONOUGH of Portland
TWOMEY of Biddeford
BUMPS of China
GERRY of Auburn

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

Signed:

Senator:

DAVIS of Piscataquis

Representatives:

RICHARDSON of Greenville
KASPRZAK of Newport
JODREY of Bethel

Comes from the House with the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Resolve **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-292)**.

Reports **READ**.

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

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

Divided Report

The Majority of the Committee on **STATE AND LOCAL GOVERNMENT** on Bill "An Act to Provide Computers for Use in the Legislature" (EMERGENCY)

H.P. 666 L.D. 922

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-320)**.

Signed:

Senators:

PENDLETON of Cumberland
GOLDTHWAIT of Hancock
DAVIS of Piscataquis

Representatives:

AHEARNE of Madawaska
RINES of Wiscasset
McDONOUGH of Portland
TWOMEY of Biddeford
BUMPS of China
JODREY of Bethel
RICHARDSON of Greenville
GERRY of Auburn

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

Signed:

Representatives:

BAGLEY of Machias
KASPRZAK of Newport

Comes from the House with the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-320)**.

Reports **READ**.

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

The same Senator moved to **TABLED** until Later in Today's Session, pending motion by same Senator to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence. Subsequently, same Senator requested and received leave of the Senate to withdraw her motion to **TABLE**.

On motion by Senator **BENNETT** of Oxford, **TABLED** until Later in Today's Session, pending motion by Senator **PENDLETON** of Cumberland to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence.

Off Record Remarks

ORDERS OF THE DAY

Unfinished Business

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

The Chair laid before the Senate the following Tabled and Later (5/11/99) Assigned matter:

JOINT RESOLUTION - relative to Recognizing May 14, 1999, as University of Maine Cooperative Extension Service Day
S.P. 823

Tabled - May 11, 1999, by Senator **KILKELLY** of Lincoln.

Pending - motion by same Senator to **ADOPT**

(In Senate, May 11, 1999, on motion by Senator **KILKELLY** of Lincoln, **READ**.)

At the request of Senator **KILKELLY** of Lincoln, **READ**.

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

Senator **KILKELLY:** Thank you Mr. President. Men and women of the Senate, it is my great honor and privilege today to present this resolution. I was pleased to discover that this was an anniversary year for the Cooperative Extension. I've had a lot of contact with the Cooperative Extension over the years. I was formally a 4-H member many years ago, not quite 85 I might add. I also was involved in a program, the Northeast Regional Leaders Program, that was sponsored by the Cooperative Extension. When I was at home and doing some gardening and farming when my children were little, I was in contact with the Cooperative Extension on a regular basis to find out how to do those things, and I got wonderful information from the Extension. When I was a Head Start Director, we used to use their services to assist families with home budgeting, child development issues, and problem solving for those families. The Cooperative Extension is an amazing program that takes the learning's from the University and spreads those out over all the counties of this state, to all the people of this state. It's a tremendous job. They are located in every county of the state and have people who can answer questions for your constituents on just about any topic imaginable. If you want to start a small business, if you have a child who wants to go to camp, all these kinds of things are available through the Cooperative Extension.

It's a wonderful opportunity to transfer the knowledge and information that we gather through our traditional, educational programs at the Land Great University to the people of this state. I think it is important that we also look at the fact that this is one of the original partnerships. It's a partnership between local people, County Government, State Government, and the University System, in fact, to take the resources that are available, to use those resources more effectively and more efficiently in spreading the word and getting the information out. So I am very pleased today that we are able to recognize the Extension. I urge all of you to head to the second floor and see some of the demonstrations that are down there and meet some

of the kids that are involved in 4-H, or the people from the Whitter Farm, or some of the other groups that are involved in this transfer of information. I would urge you to do that and also to provide to constituents information about the services that are available. I think that is another partnership that we can enter into. A partnership between this Legislature, as a group of people who have contact with folks all over the state, and the Cooperative Extension which has resources. Working together I think we can do an even better job of getting that information out. So I am pleased they are here today and pleased about this Resolution. Thank you.

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

Senator **CATHCART:** Thank you Mr. President. Mr. President and members of the Senate, I too want to congratulate the members of the Cooperative Extension on their 85th anniversary, and to thank them for the immeasurable contribution that the Extension makes to the people of Maine. As the Senator from Lincoln, Senator Kilkelly has said the Cooperative Extension contributes in many ways that most of us don't think about, everything from home visitation for our young families to cutting edge agricultural research. And for the benefit of the good Senator from Androscoggin, Senator Nutting, I want to mention how especially proud I am that the University of Maine is once again a cow college. I had the opportunity to visit the Woodard Research Farm, and see the young cows and their mom's a couple of weeks ago with Dean Bruce Wiersma. I just think it is just wonderful. I want to thank the members of this Senate for their continuing and increased support in the past few years for our University because that has really made a difference in the contribution that these people visiting today are able to make to our natural resource-based economy. Thank you again Mr. President.

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

Senator **PARADIS:** Thank you Mr. President. Men and women of the Senate, I too want to rise this morning as a former 4-H member. This was the only non-religious organization that was able to penetrate in the most rural, the most isolated areas of this state, and I'm so forever grateful. I've enjoyed speaking with our honorary 4-H members now serving as Pages. But one of the most important things that 4-H does in addition to the very many things that have been listed is the fact that we had a Doctor Johnson, who took it upon himself when he saw the horrendous rates of injury to children in the potato fields, took it upon himself to go to every school and do the training. We were leaving it up to the parents. We were leaving it up to the growers. But only when the Extension started going in, this very young, bright, and dynamic individual, did we start turning the injury rates in our fields. And that is a real quantifiable, wonderful accomplishment among all their other accomplishments.

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

Senator **NUTTING:** Thank you Mr. President. Ladies and gentlemen of the Senate, I think it is a tribute to the Cooperate Extension Service to have the number of speakers that we have had this morning, in this Body, rise to speak. I've been involved

with the Cooperative Extension Service all my life. I know the successes we have had on our own farm I lay greatly at the feet of a former Extension Agent, Glen Wilds. He had the ability to come to your operation and challenge you in a nice way, and to stimulate you, and to suggest to you that you really could do something you really, maybe previously, thought you couldn't. That has made a big difference. I know they've worked with my children. My oldest son, I remember the first time he ever tried to participate in a dairy judging work session with a group of cows. He was nine years old. He did not have a clue what he was doing. In working with Dave Markenkelski, and working with other Extension Agents, and with a college coach his senior year in college, he was sixth in the United States. An All American, and I'm proud of that. Thank you.

On further motion by same Senator, Joint Resolution **ADOPTED.**

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

Divided Report

The Majority of the Committee on **TAXATION** on Bill "An Act to Establish Medical Savings Accounts"

H.P. 937 L.D. 1314

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

Signed:

Senators:

RUHLIN of Penobscot
DAGGETT of Kennebec
MILLS of Somerset

Representatives:

GAGNON of Waterville
GREEN of Monmouth
DAVIDSON of Brunswick
COLWELL of Gardiner
STANLEY of Medway
LEMOINE of Old Orchard Beach
MURPHY of Berwick

The Minority of the same Committee on the same subject reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-494).**

Signed:

Representatives:

BUCK of Yarmouth
CIANCHETTE of South Portland
LEMONT of Kittery

Comes from the House with the Majority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED.**

Reports **READ.**

Senator **RAND** of Cumberland moved the Senate **ACCEPT** the Majority **OUGHT NOT TO PASS** Report, in concurrence.

On further motion by same Senator, **TABLED** until Later in Today's Session, pending motion by same Senator to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report, in concurrence.

Senate

Ought to Pass

Senator **PARADIS** for the Committee on **HEALTH AND HUMAN SERVICES** on Bill "An Act to Promote Community Mental Health Services"

S.P. 829 L.D. 2230

Reported that the same **Ought to Pass**, pursuant to Joint Order S.P. 811.

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

READ ONCE.

TOMORROW ASSIGNED FOR SECOND READING.

SECOND READERS

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

Senate As Amended

Bill "An Act to Amend the Drug Laws Related to Possession of a Firearm"

S.P. 39 L.D. 49
(C "A" S-278)

Bill "An Act to Implement the Recommendations of the 118th Legislative Joint Select Committee to Implement a Program for the Control, Care and Treatment of Sexually Violent Predators"

S.P. 111 L.D. 308
(C "A" S-279)

Bill "An Act Concerning Disposal of Solid Waste from Decommissioning Activities"

S.P. 515 L.D. 1516
(C "A" S-285)

Bill "An Act to Release Juvenile Crime Records to School Personnel"

S.P. 578 L.D. 1658
(C "A" S-277)

Bill "An Act to Increase Accessibility to the Department of Environmental Protection Clean-up Funds for Businesses"

S.P. 641 L.D. 1823
(C "A" S-286)

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

Sent down for concurrence.

ORDERS OF THE DAY

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

Resolve, Regarding the Conveyance of a Right-of-way Across the Elizabeth Levinson Center in Bangor

S.P. 620 L.D. 1785
(C "A" S-160)

Tabled - May 14, 1999, by Senator **RAND** of Cumberland.

Pending -**FURTHER CONSIDERATION**

(In Senate, May 4, 1999, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-160)**.)

(In House, May 13, 1999, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-160) AS AMENDED BY HOUSE AMENDMENT "A" (H-556)** thereto, in **NON-CONCURRENCE**.)

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

The Chair laid before the Senate the following Tabled and Later (5/12/99) Assigned matter:

HOUSE REPORTS - from the Committee on **TRANSPORTATION** on Bill "An Act to Ensure the Continued Operation of an Information Center in Fryeburg"
H.P. 1259 L.D. 1813

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-434)** (10 members)

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

Tabled - May 12, 1999, by Senator **BENNETT** of Oxford.

Pending - motion by Senator **O'GARA** of Cumberland to **INDEFINITELY POSTPONE** Bill and accompanying papers, in concurrence.

(In House, May 11, 1999, Bill and accompanying papers **INDEFINITELY POSTPONED**.)

(In Senate, May 12, 1999, Reports **READ**.)

On motion by Senator **O'GARA** of Cumberland, Bill and accompanying papers **INDEFINITELY POSTPONED**, in concurrence.

Senate at Ease.

Senate called to order by the President.

The Chair laid before the Senate the following Tabled and Later (5/6/99) Assigned matter:

SENATE REPORTS - from the Committee on **LABOR** on Bill "An Act to Ensure Prompt Payment of Unemployment Compensation Benefits to Displaced Workers"

S.P. 638 L.D. 1805

Majority - **Ought to Pass as Amended by Committee Amendment "A" (S-216)** (9 members)

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

Tabled - May 6, 1999, by Senator **DOUGLASS** of Androscoggin.

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

(In Senate, May 6, 1999, Reports **READ**.)

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

READ ONCE.

Committee Amendment "A" (S-216) **READ**.

On motion by Senator **DOUGLASS** of Androscoggin, Senate Amendment "A" (S-267) to Committee Amendment "A"(S-216) **READ** and **ADOPTED**.

Committee Amendment "A" (S-216) as Amended by Senate Amendment "A" (S-267) thereto, **ADOPTED**.

TOMORROW ASSIGNED FOR SECOND READING.

The Chair laid before the Senate the following Tabled and Later (5/12/99) Assigned matter:

SENATE REPORTS - from the Committee on **LABOR** on Bill "An Act to Require That Workers' Compensation Coverage Be Equitably Applied to the Timber Industry"

S.P. 248 L.D. 670

Majority - **Ought to Pass as Amended by Committee Amendment "A" (S-269)** (9 members)

Minority - **Ought to Pass as Amended by Committee Amendment "B" (S-270)** (3 members)

Tabled - May 12, 1999, by Senator **AMERO** of Cumberland.

Pending - motion by Senator **DOUGLASS** of Androscoggin to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-269)** Report

(In Senate, May 12, 1999, Reports **READ**.)

On motion by Senator **DOUGLASS** of Androscoggin, the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-269)** Report **ACCEPTED**.

READ ONCE.

Committee Amendment "A" (S-269) **READ** and **ADOPTED**.

TOMORROW ASSIGNED FOR SECOND READING.

The Chair laid before the Senate the following Tabled and Later (5/13/99) Assigned matter:

HOUSE REPORTS - from the Committee on **LABOR** on Bill "An Act to Clarify Free-lance Labor in an Employer/Employee Relationship"

H.P. 875 L.D. 1232

Report "A" - **Ought to Pass as Amended by Committee Amendment "A" (H-502)** (10 members)

Report "B" - **Ought to Pass as Amended by Committee Amendment "B" (H-503)** (2 members)

Report "C" - **Ought to Pass as Amended by Committee Amendment "C" (H-504)** (1 member)

Tabled - May 13, 1999, by Senator **LAFOUNTAIN** of York.

Pending - **ACCEPTANCE OF ANY REPORT**

(In House, May 12, 1999, Report "A", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-502)** **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-502)**.)

(In Senate, May 13, 1999, Reports **READ**.)

Senator **DOUGLASS** of Androscoggin moved the Senate **ACCEPT** Report "A", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-502)**, in concurrence.

Senator **MILLS** of Somerset requested a Division.

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

Senator **MILLS:** It's not unusual for the Committee on Labor to come out with two Reports. It's highly unusual for there to be three, however. I can't speak to Report "C". I can, I think, explain Reports "A" and "B", what they have in common and what they do not. The purpose in my rising is to ask that you Reject the pending motion concerning Report "A" so that we could

Accept Report "B", which is signed by two members of this Body, myself included and the Senator from York. Both Reports have in common a single element having to do with changing a very technical rule about the status of migrant agricultural workers. It is, to my knowledge, absolutely not controversial and need not concern us in today's discussion. The part that is where we divide has to do with another subject entirely, which is the status of Free Lance Journalists under the Unemployment Compensation Laws. I've had handed out, over my name, a copy of the current law on Unemployment Compensation. Some of you may be genuinely curious, I hope you are, but know under what circumstances it is necessary for an employer, or a person who pays money to another to consider that person an employee under the Unemployment Compensation Laws, and when he is not. It has everything to do with this common notion of who is an independent contractor versus who is an employee subject to the control and direction of the employer. This is an issue that crops up frequently in our society. It has everything to do with whether you have to pay taxes, withhold taxes for income taxes, whether you have to pay social security taxes, or whether you might be responsible for the acts of that person out in the field, and whether you're legally vicariously responsible. It also has to do, in this instance, with whether you owe unemployment compensation contributions to the trust fund, and whether you might, if that person were receiving income from you, whether that person might then be able to claim status as an insured person under the Employment Security Laws of this State that are mandated by Federal law. All of this cropped up due to the issue that came before us in the Labor Committee, which was a rather simple one I think. We had an occasion where apparently there are a number of people in this state who work in their homes as Free Lance Journalists. They pick up \$25 or so for doing a little article about what happen at the School Board meeting in town, and they may live in some small town in the remote part of the county, and they feed it on down to a larger metropolitan newspaper, The Lewiston Sun, Waterville Sentinel, or what have you. And the story gets printed up, they get a check for \$25, and then the next week they may do the Selectmen's meeting. Then they go to some other public event, write it up and get paid a flat fee for doing the story on their own computer, in their own living room, and so forth.

These people, these so called, Free Lance Journalists, I think we would say without any question, are independent contractors. Many of them work for more than one newspaper. Even if they do work for only one newspaper, they certainly aren't under the direction or control of the newspaper. They very clearly fit the test for being a non-employee, or an independent contractor as our law has defined it for many decades. You will find the law before you. It's on a page labeled page 18, in Title 26, Section 1043, subsection E. And then there is a series of three tests, which we sometimes call the ABC test. Not because it's simple, but because it has three parts, and you have to meet all three. You will notice the word and is in the end of the second paragraph. In order to be considered an employee for Unemployment Compensation, you have to be under the control, which is a key element of the test, you have to be under the control and direction of the person paying you for those services, and you must also, meet the criteria in the second and third paragraphs. We had a situation somewhere, I won't give you the geographic details, but I'll give you just an outline of the case, where one of these Free Lance Journalists over the passage of time began to get more direct assignments from the newspaper that was paying him money. It got to a point where he was being

told, or specifically requested, to go to a specific hearing, at a specific time, and the relationship became more exclusive. I can't give you the other details of the case because it's not at my disposal, but in any case, when that person's relationship to the publisher was terminated, as I understand it, he made a claim for Unemployment Compensation, there was a hearing, a somewhat controversial hearing, and the result was adverse to the newspaper. I understand that the facts and the interpretation of those facts were an issue. But in any case, it seemed reasonably clear from the synopsis given to us by the Department of Labor at our Public Hearing that this person, perhaps, gradually and over time, but certainly, in substance at some point crossed the threshold from being an independent contractor under our test to being an employee of that newspaper. At least the evidence would justify that conclusion in that case, whether it was the right decision or the wrong decision it happened. That has precipitated and perhaps, the Bill that lies before you where people who are interested in preserving the independent contractor status of these journalists brought this Bill forward to create kind of a special exception to the Unemployment Compensation Laws to say that Free Lance Journalists should be exempted from this ABC test, which serves to govern all other occurrences or instances in this state. They should be exempted from it, and we should create a special rule for Free Lance Journalists because the general rule somehow, for some reason, isn't good enough. This isn't the first time that this has happened. We have had other people who've been concerned about their status who have come in and been included with some special status under our law. But it doesn't seem to me that this is an appropriate way to draft Legislation. I just don't think that we ought to be putting a special category of, a special trade, a special type of person into the law with a special exception when it seems to me, and I think it seemed to others, that the general rules that we created many decades ago, those general rules that have served so well for so many decades, really do cover the situation quite well, and we shouldn't be drafting special purpose Legislation to suit one portion of our economy, and give them some special status in our law over another. It seems to us that the General law suffices quite well, and that is the reason why the Senator from York and I are proposing to you to Accept the other Report, Report "B", and to vote Against the pending motion on Report "A". Thank you.

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

Senator DOUGLASS: Thank you Mr. President. Women and men of the Senate, the good Senator from Somerset is absolutely right that if you read the ABC test under most scenario's, a few Free Lance Journalists would be considered to be independent. Nevertheless, in applying that law, which was first enacted in the early 30's along with the Unemployment Compensation Laws reasonable minds could differ. That is, a number of different individuals could take a fact pattern and apply the ABC test and come to differing conclusions. And that is problematic for those small Weekly publishers and editors of newspapers, such as, the Penobscot Times, the New Gloucester News, the York Weekly, and a variety of others. In some respects the issue is how much contact does the Free Lancer have with the newspaper. I want to first assure you that this Act does not apply to the situation that existed with the Lewiston Sun Journal that turned into a Court case. I don't know what the disposition of it precisely was, but it's over. However, these other

Weekly newspapers and the entire Maine Press Association are concerned that now they must do the quarterly filings for any Free Lance Journalists that they have because they are in doubt as to whether the ABC test would apply or not. It is important to note that when the Free Lancers call in to say, are there any events that you want to cover, that has been interpreted by the Unemployment Hearing Officers to generally mean that they are then under control of the newspaper. I would argue that the ABC test ought to go the other way, but it has in fact, been applied toward finding them not independent. It's just because of that, that this Legislation is needed. We're in the unusual situation in which I'm on the side with all the House members, including the Republicans, because we think it is important to have some stability in our publishers arena, and that's the reason we bring this forward for your approval. Thank you.

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

Senator **LAFOUNTAIN:** Thank you Mr. President. Men and women of the Senate, I encourage you to Reject the pending Report so we can go on and support Report "B", which myself and the good Senator from Somerset are on. The whole issue here boils down to what sort of direction or control the newspaper has over the specific writer. As prior speakers have indicated this Bill was brought forward as a result of one case, which took place in the City of Lewiston. It's my understanding, as the good Senator from Somerset represented, that the individual over a course of time, that the newspaper became more reliant and dependent upon that individual to provide print to them, and specifically directed him or her to actually go out and write specific articles. In fact, it was my understanding from the Public Hearing that on a daily basis this so called Free Lance Writer would call the newspaper to find out where to go and what to cover. It is interesting that the good Senator from Androscoggin passed out to you one sheet of paper, two-sided, which contains testimony from an individual who spoke before the Committee, who was the President of the Maine Press Association, also I believe the Editor of a newspaper here in Maine. What is interesting about it is that the author indicates to you the type of writers that she uses, and nowhere throughout the course of her document did she indicate that she is having problems with the Department of Labor. I suggest to you that's because she truly does have Free Lance Writers providing information, providing copy to her newspaper. She doesn't direct what they write, although she relies on the same group of individuals. She's at the mercy of whatever these individuals decide to present to her on a weekly basis. The case that's before you was the Lewiston case as I indicated. My understanding is that the hearing officer ruled in favor of the Department of Labor. Also, the Unemployment Compensation Board ruled in favor of the Department of Labor, and finally the Superior Court also ruled on the Department of Labor. The central issue there was direction and control.

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

Senator **MACKINNON:** Thank you Mr. President. Women and men of the Senate, I rise to thank the good Senator from York, Senator LaFountain, for clearing up which Senator from York was in support of this because I wasn't quite sure earlier. Thank you.

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

Senator **BENNETT:** Thank you Mr. President. I request permission to pose a question through the Chair.

THE PRESIDENT: The Senator may pose his question.

Senator **BENNETT:** Thank you Mr. President. To anyone who may be able to respond, I have read the language in Committee Report "A" and I have read the language provided in the current Statute. I'm wondering how the language differs substantively that's being proposed in Section 3 of Report "A" with that which is in the existing Statute. Obviously there are different words, but I'm wondering what the substantive differences might be. And why this is an additive in our Statute? Thank you very much.

THE PRESIDENT: The Senator from Oxford, Senator Bennett poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Somerset, Senator Mills.

Senator **MILLS:** If I may attempt to respond Mr. President. We have this generic Statute passed in the early 30's which contains the ABC test. Following it we have a series of 1 through 42 little specific, I won't call them exemptions, but they are listed in the format of exemptions. They are almost listed as if they were examples of things that are professions and trades that are not to be considered covered under the ABC test. If you pass Report "A", this would be the 43rd such qualifier or exemption for a specific trade or industry or calling. The drafting of paragraph 43 is an effort to describe these Free Lance Writers in a way that would be legally sufficient to encompass who they are. Then at the end, because I think the drafter was sensitive to the idea that you didn't want to create an exemption for those people who actually go to work at a newspaper, sit down at a desk on the fourth floor of the publishers building, work at a computer from 9 a.m. to 5 p.m., and go home. Those people are clearly employees, even though they are writers, and in some respects free to write about what they want. Nevertheless, those people are clearly employed. Once you bring them into the building and start treating them like conventional employees, that's what they are. Now if you stop this paragraph at a certain point, you would be exempting from our ABC test, many thousands, or hundreds at least of people who clearly ought to be included in the Unemployment Compensation System. So at the very end they said, so long as that employment is not subject to Federal Unemployment Tax. I went out into the library yesterday to try and find out what the Federal standard was, to see if I could inform this Body about how it might differ from the ABC test, because what they are really doing here is they are substituting a Federally articulated standard for the State standard with respect to a very special class of people. And I have to say I didn't have enough time to rummage long enough. There is no statutory reference in the drafting. I could not find in the Federal code exactly what test might apply and what is being substituted. I suspect that it is not far different in general substance from the ABC test that we already have. That is a longer more tortured explanation for why I'm against Report "A". Thank you.

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

Senator **CATHCART**: Thank you Mr. President. Mr. President, men and women of the Senate, I'm a Cosponsor of this Bill and I urge you to support Report "A", the Ought To Pass As Amended Majority Report of the Labor Committee. I don't know anything about the case from the City of Lewiston. This Bill was brought because of problems that two, small Weekly newspapers in this state have had with the Maine Department of Labor over whether they are Free Lance, very part-time people, or to be considered employees of their newspapers or not. Those two, and the reason this was brought forward, that I know about were the Penobscot Times in Old Town, and the Lincoln News in the little Town of Lincoln, which is in my district also. I would submit to you that I'm not learned in the law. I never went to Law School, but I do know that our Statutes are sometimes flawed, and if we pass this Report "A", we are not setting any new precedent. Special categories have already been added to this Statute, including contract dance instructors. It is our job as the representatives of the people, when we see a problem in our Statutes, to try to bring it forward and get it remedied. The person I want to tell you about is clearly not an employee of the Lincoln News and yet the Department of Labor is going after the Lincoln News. They started this last summer, and the News ask me to get involved on their behalf. Because they say that Douglas Kneeland should be considered as an employee of the Lincoln News for purposes of paying all of these taxes. Let me tell you a little bit about Doug Kneeland, and why I think he is important and should be allowed to write for the Lincoln News as a Free Lance Journalist, and why we need this Amendment passed. Doug Kneeland is a retired person. He is a native of the town of Lincoln, Maine. A few years ago he retired from writing for the Washington Post, where he had a distinguished career. He followed all kinds of presidential campaigns, he is well known nationally, or even internationally as a Journalist. Doug when he retired decided to return to his little hometown of Lincoln, Maine. And I am so glad he did. There was an article in Downeast Magazine about Doug last year. There was an article in the last month or so in the New York Times about how wonderful it is that this retired, distinguished, royal class Journalist has gone back home to Lincoln and is now contributing still in his older years to the people of his state and his town by writing for this little, small Weekly newspaper. I will tell you, this is a small business issue. These little newspapers are not big time business that make a lot of money. They can't really afford to pay taxes on somebody like Doug Kneeland. But they would like him to write for them. Doug submits a column almost every week. He is not an employee, he has no contract. The owner, publisher, editor of the Lincoln News never tells Doug Kneeland what to write about, or says, Doug do a story this week on such and such. He writes about everything from world events to the Maine Women's Basketball and Hockey games, to the River Drivers supper in Lincoln, Maine. The local people love to read Doug's columns and it's just a benefit to the people of the Penobscot Valley and that whole area to have Doug writing for this newspaper. Okay, so the Department of Labor says to the Lincoln News, Doug can't write for you anymore unless you pay Unemployment tax. Now I ask, is that right? Why not make an exception? I have a copy of this Statute, under Subsection E, Number 3 it says such individual is customarily engaged in an independently established trade, occupation, profession or business. This particular individual I'm talking about is retired, he is not engaged in any other profession or business. He and his wife are retired in Lincoln, and they like to go out to the lake in the summer. But he does like to write a weekly column. For awhile he was giving his

time to be the advisor to the Maine campus newspaper until the last year or so, then he slowed down a little more and wanted to take off time and go to Florida with Barbara. But he is not an employee and yet the Department of Labor is insisting that they pay these taxes. That is not just the Lincoln News, but it includes the Penobscot Times and other small newspapers. I just urge you to vote for this Report "A" so that people like Doug Kneeland can continue to write their columns at will, free of control, from the newspapers they are writing for. And to the benefit of the people of the state of Maine. Thank you Mr. President.

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

Senator **BENNETT**: Thank you Mr. President. Fellow members of the Senate, this is one of those issues that I didn't expect to get involved in, but sitting here doing what passes for my duty here in the Chamber and reading the Amendments, it causes me some concern. I asked a question a little earlier about the substantive differences being proposed. What is currently on the Statute and what Report "A" addresses? And I remain concerned that Report "A" doesn't do anything new. I used to publish a twice monthly newspaper, and we engaged the services of Free Lance Writers. I guess I shouldn't say that, I may have the Unemployment people coming back to haunt me. But, we certainly paid for some of the pieces that they wrote. I don't believe that what is in Report "A" properly addresses the issue. I think Report "A", from what I can read, and from the answers given to my question, it does nothing new from what is already currently in law. I do think, based on my own personal experience and the testimony that has been provided, that there should be some reasonable addressing of the issue. I don't think this Bill, unfortunately does that. I remain concerned and would appreciate input of any member of the Senate to explain to me just exactly what new protection this law affords to newspaper editors, newspaper publishers. And so, I have to add that most of these relationships are not as neatly described as the current Law or the proposed Law suggest. There is a conversation that occurs between the publisher or editor of one of these newspapers and the writers. As the good Senator from Androscoggin, Senator Douglass, suggested people call up and they say, you know I'm going to be going to this meeting or this event. Would you be interested in a piece that results from that? And there is understanding in those sorts of relationships that a piece will be written. I think that clearly suggest some measure of control, and some sort of agreement of prior standing. So I remain concerned that this proposed new Law does not address the issue. And I would hope that someone can suggest to me that it does address the issue in a way that I have not yet heard. Thank you.

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

Senator **DOUGLASS**: In answer to the good Senator from Oxford's question concerning what does Report "A" do that is new as to Free Lance Journalists. I submit that it makes it clear that Free Lance Journalists are not subject to the Unemployment Compensation Act when they perform by submitting items in a manner in which the publisher pays only for those items on a piece by piece basis. The issue is that we could differ on whether, what's called the ABC test and the Law which is Title 26, Section 1043, and Subsection E, under what's called the ABC

test, is Number 1, 2, and 3. Such an individual has been and will continue to be free from control or direction over the performance of such services. That is subject to interpretation. The call between the Free Lance Journalist and the newspaper has been interpreted to be control. If the Free Lance Journalist called up and said would you like me to cover the basketball game at Edward Little High School tonight? And they say yes, that has been interpreted as control. Similarly, because there may be an ongoing relationship that an individual who always attends the basketball games always likes to write a letter, an article on them then submit them, then that has been interpreted by the Maine Department of Labor to be a sort of course of business, which would take that Free Lancer out of the B part of the test, which is Number 2, quoting from the Statute, such services either outside the usual course of business, or outside the place of business. What's more the home of the Free Lance Journalist has sometimes been interpreted to be the place of business of the newspaper. That was the Sun Journal case, in which an individual from Sumner or Hartford, Maine was interpreted to be at work under the control of the Sun Journal when he was at his home writing on his computer because that was interpreted to be the place of business of the employer. And I don't believe that is a proper interpretation of the Statute, but one way to make it clear is, as we have in the past, to say as Report "A" does that a writer who performs for a publisher, perhaps performs is not the word, but who writes for a publisher, who has no control over the writer. And again, control actually may be interpreted differently under this exemption than it is under the ABC test. That is not uncommon in the Law. Although it is unfortunate, and it certainly mixes up our lay people and lawyers as well from time to time. But that is the intent of Report "A". To make it as clear as possible that Free Lance Journalists do not meet the ABC test and therefore are exempted. That is what Report "A" does, is to exempt them from the Unemployment Compensation Law. The Department of Labor claims that there are some true Free Lance Journalists, and that there are others who are not. What this matter seems to come down to is that the individuals that they submit are true Free Lance Journalists determine that they want to write an article about any particular subject matter, and there are a more limited number of them than there are actual Free Lance Journalists. That's the dilemma for the small Weekly's. That the fact that I may have a ongoing relationship with someone has come to mean, under the interpretations, that now they have an employee for the purposes of Unemployment Compensation, as opposed to that person being independent. I urge your Passage of this Report "A".

At the request of Senator **NUTTING** of Androscoggin, Reports **READ**.

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

Senator **NUTTING:** Thank you Mr. President. Ladies and gentlemen of the Senate, I'll be brief. Both Report "A" and Report "B", do an excellent job in addressing the situation we have in Maine that people in the apple industry have been singled out and treated differently than any other agricultural sector using labor from another country. It's obvious to me that the Majority of the Committee and the Majority of the Legislative support is behind Report "A". So to me, I think the best chance we have of helping bring the treatment of the apple industry into

conformance with all the other agricultural industries is to support Report "A", and I urge you to do the same. Thank you.

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

Senator **MURRAY:** Thank you Mr. President. Men and women of the Senate, I hesitate to stand up, I apologize. But I find myself, I guess somewhat confused, as the good Senator from Oxford, Senator Bennett appears to be, as to how this helps, if at all. And I guess the other reason I will disclose why I am rising in part, is because my wife is a Free Lance Writer who writes for more than one publication in this state. After reading both Reports, I'm still not sure where she would fit in. I guess what confuses me is I suspect that there are probably Free Lance Writers who practice in such a way that, by reading the proposed language in Report "A", they would be deemed a Free Lance Writer and therefore, outside the requirements of Unemployment. But, I think that is a very narrow group of Free Lance Writers as I understand the way they write and I know the way my wife engages in her Free Lance Writing. And the vast majority of Free Lance Writers, I think, do have some kind of relationship and they submit some things, or there is a telephone conversation, as I think the Senator of Oxford referred to, where maybe there is all of a sudden now control, and their outside the language of what is being proposed in Report "A". If that is the case, I don't know where they then fall. Would that automatically mean that then those individuals who don't fit neatly under Section 43 would then have to go under the ABC test, or it may have the, perhaps unintended, affect of then being automatically being considered an employee. And the ABC test may not be looked to if somebody sees this exception in the Law, and there is an analysis that they don't really fit under that exception, and therefore, maybe they will be more automatically deemed an employee. I think despite the good efforts of the Majority Report, they're adding more confusion than anything else. For those reasons I think that we are better off sticking to the ABC test that is in place, as opposed to adding some exception language that really doesn't cover very many writers. For those reasons I would be supporting the Report "B", if that opportunity is available to us and Opposing the pending motion.

Senator **MILLS** of Somerset requested a Division.

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

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

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#93)

YEAS: Senators: BENNETT, BENOIT, CASSIDY, CATHCART, DAGGETT, DOUGLASS, FERGUSON, KILKELLY, MACKINNON, MICHAUD, NUTTING, O'GARA, RAND, THE PRESIDENT - MARK W. LAWRENCE

NAYS: Senators: ABROMSON, AMERO, CAREY, DAVIS, GOLDTHWAIT, HARRIMAN, KIEFFER, KONTOS, LAFOUNTAIN, LIBBY, LONGLEY, MILLS, MITCHELL, MURRAY, PARADIS, PENDLETON, SMALL, TREAT

ABSENT: Senators: PINGREE, RUHLIN

EXCUSED: Senator: BERUBE

14 Senators having voted in the affirmative and 18 Senators having voted in the negative, with 2 Senators being absent, and 1 Senator being excused, the motion by Senator DOUGLASS of Androscoggin to **ACCEPT** Report "A", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-502), FAILED.**

On motion by Senator LAFOUNTAIN of York, Report "B", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "B" (H-503) ACCEPTED, in NON-CONCURRENCE.**

READ ONCE.

Committee Amendment "B" (H-503) **READ** and **ADOPTED, in NON-CONCURRENCE.**

TOMORROW ASSIGNED FOR SECOND READING.

Senate at Ease.

Senate called to order by the President.

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

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

Off Record Remarks

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

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

After Recess

Senate called to order by the President.

Off Record Remarks

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

REPORTS OF COMMITTEES

House

Divided Report

The Majority of the Committee on **AGRICULTURE, CONSERVATION AND FORESTRY** on Bill "An Act to Require All Landowners in LURC's Jurisdiction to Be Notified of Regulatory Restrictions"

H.P. 1009 L.D. 1420

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

Signed:

Senators:
NUTTING of Androscoggin
KILKELLY of Lincoln
KIEFFER of Aroostook

Representatives:
COWGER of Hallowell
CARR of Lincoln
GOOLEY of Farmington
VOLENIK of Brooklin
PIEH of Bremen
WATSON of Farmingdale
GAGNE of Buckfield
GILLIS of Danforth

The Minority of the same Committee on the same subject reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-553).**

Signed:

Representatives:
FOSTER of Gray
CROSS of Dover-Foxcroft

Comes from the House with the Majority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED.**

Reports **READ**.

On motion by Senator **NUTTING** of Androscoggin, the Majority **OUGHT NOT TO PASS** Report **ACCEPTED**, in concurrence.

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

REPORTS OF COMMITTEES

House

Divided Report

The Majority of the Committee on **AGRICULTURE, CONSERVATION AND FORESTRY** on Bill "An Act to Preserve Public Access and Job Opportunities in the Maine Woods" H.P. 1309 L.D. 1868

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

Signed:

Senators:

- NUTTING of Androscoggin
- KILKELLY of Lincoln
- KIEFFER of Aroostook

Representatives:

- CARR of Lincoln
- GOOLEY of Farmington
- PIEH of Bremen
- GAGNE of Buckfield
- CROSS of Dover-Foxcroft
- FOSTER of Gray
- GILLIS of Danforth

The Minority of the same Committee on the same subject reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-554)**.

Signed:

Representatives:

- COWGER of Hallowell
- VOLENIK of Brooklin
- WATSON of Farmingdale

Comes from the House with the Majority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED**.

Reports **READ**.

Senator **NUTTING** of Androscoggin moved the Senate **ACCEPT** the Majority **OUGHT NOT TO PASS** Report, in concurrence.

On further motion by same Senator, **TABLED** until Later in Today's Session, pending motion by same Senator to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report, in concurrence.

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

REPORTS OF COMMITTEES

Senate

Ought to Pass As Amended

Senator BERUBE for the Committee on **HEALTH AND HUMAN SERVICES** on Bill "An Act to Increase Access to Basic Needs for Low-income Maine Children and Families" S.P. 657 L.D. 1879

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (S-290)**.

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

READ ONCE.

Committee Amendment "A" (S-290) **READ** and **ADOPTED**.

TOMORROW ASSIGNED FOR SECOND READING.

Senator DAGGETT for the Committee on **LEGAL AND VETERANS AFFAIRS** on Bill "An Act to Recognize Veterans of the Persian Gulf Conflict" S.P. 692 L.D. 1938

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (S-291)**.

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

READ ONCE.

Committee Amendment "A" (S-291) **READ** and **ADOPTED**.

TOMORROW ASSIGNED FOR SECOND READING.

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

REPORTS OF COMMITTEES

House

Divided Report

The Majority of the Committee on **JUDICIARY** on Bill "An Act to Implement Recommendations of the Maine Indian Tribal-State Commission Relating to Tribal Land Use Regulation" H.P. 1423 L.D. 2030

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

Signed:

Senator:
BENOIT of Franklin

Representatives:
THOMPSON of Naples
BULL of Freeport
LaVERDIERE of Wilton
JACOBS of Turner
MITCHELL of Vassalboro
PLOWMAN of Hampden
MADORE of Augusta
WATERHOUSE of Bridgton
SCHNEIDER of Durham

The Minority of the same Committee on the same subject reported that the same **Ought to Pass.**

Signed:

Senators:
LONGLEY of Waldo
TREAT of Kennebec

Representative:
NORBERT of Portland

Comes from the House with the Majority **OUGHT NOT TO PASS Report READ and ACCEPTED.**

Reports READ.

Senator **LONGLEY** of Waldo moved the Senate **ACCEPT** the Minority **OUGHT TO PASS** Report, in **NON-CONCURRENCE.**

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

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

REPORTS OF COMMITTEES

Senate

Ought to Pass As Amended

Senator **KIEFFER** for the Committee on **INLAND FISHERIES AND WILDLIFE** on Bill "An Act to Revise Certain Provisions of the Fish and Wildlife Laws" (EMERGENCY)
S.P. 738 L.D. 2088

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (S-292).**

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

READ ONCE.

Committee Amendment "A" (S-292) **READ** and **ADOPTED.**

TOMORROW ASSIGNED FOR SECOND READING.

ORDERS OF THE DAY

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

HOUSE REPORTS - from the Committee on **TAXATION** on Bill "An Act to Establish Medical Savings Accounts"
H.P. 937 L.D. 1314

Majority - **Ought Not to Pass** (10 members)

Minority - **Ought to Pass as Amended by Committee Amendment "A" (H-494)** (3 members)

Tabled - May 14, 1999, by Senator **RAND** of Cumberland.

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

(In House, May 13, 1999, Majority **OUGHT NOT TO PASS Report READ and ACCEPTED.**)

(In Senate, May 14, 1999, Reports **READ.**)

On motion by Senator **RAND** of Cumberland, the Majority **OUGHT NOT TO PASS Report ACCEPTED,** in concurrence.

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

HOUSE REPORTS - from the Committee on **LABOR** on Bill "An Act to Amend the Prevailing Wage Laws"
H.P. 728 L.D. 1018

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

Minority - **Ought to Pass** (6 members)

Tabled - May 14, 1999, by Senator **LAFOUNTAIN** of York.

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

(In House, May 12, 1999, the Minority **OUGHT TO PASS Report READ and ACCEPTED** and the Bill **PASSED TO BE ENGROSSED.**)

(In Senate, May 14, 1999, Reports **READ.**)

On motion by Senator **LAFOUNTAIN** of York, the Majority **OUGHT NOT TO PASS** Report **ACCEPTED**, in **NON-CONCURRENCE**.

Sent down for concurrence.

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

HOUSE REPORTS - from the Committee on **AGRICULTURE, CONSERVATION AND FORESTRY** on Bill "An Act to Eliminate the Use of Nongovernmental Entities in Acquiring and Managing Lands"

H.P. 1208 L.D. 1737

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

Minority - **Ought to Pass as Amended by Committee Amendment "A" (H-491)** (5 members)

Tabled - May 14, 1999, by Senator **NUTTING** of Androscoggin.

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

(In House, May 12, 1999, Reports **READ** and the Bill and accompanying papers **INDEFINITELY POSTPONED**.)

(In Senate, May 15, 1999, Reports **READ**.)

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

Senator **NUTTING:** Thank you Mr. President. Ladies and gentlemen of the Senate, I rise today to ask the members of the Senate to support the Minority Ought to Pass Committee Report on this particular L.D. 1737. What this Bill calls for is pretty straight forward as to the title of the Bill, an Act to Eliminate the Use of Nongovernmental Entities in Acquiring and Managing Lands. This Bill was brought forth before the Agricultural, Conservation and Forestry Committee in response to a situation that I guess you could say is currently ongoing. When the Agricultural, Conservation and Forestry Committee met with the Appropriations Committee in January in regards to the Department of Conservation's budget there was \$1.7 million for the purchase of Scarborough Beach as part of the budget. Members of both Committees asked the Executive Branch members that were there exactly what had happened that this money had been spent by a out-of-state, non-profit group to purchase this land and how was it that this was before us now to pay the bill. Then after that we met in the Agricultural, Conservation and Forestry Committee and a majority of the Committee sent a letter to the Appropriations Committee and the Executive Branch citing our concerns that this land had been purchased and this money had been spent without prior Legislative or prior voter approval. Then a month or so ago the same exact process was used in the spending of \$5.2 million in the purchase of some land from Plum Creek. Now I've always

supported, when I was in the other Body, the Lands for Maine's Future Board. I will continue to do that. My concern, and why I signed on the Minority Report, is I feel strongly that either we, the Legislature, or the voters should approve the purchase of land by either ourselves or the Lands for Maine's Future Board rather than having it done somewhere else by someone else and we're just presented the bill to pay. I will say that that particular day we worked this Bill in the Agricultural, Conservation and Forestry Committee we worked thirty-one Bills that day. This was next to the last. There's a couple of words in this Bill I would like to change if given an opportunity but I just feel as though we need to send a message that we, the Legislature, are in charge of the spending of about \$8 million that is proposed to be part of the Part II budget to pay back this private land trust for money they've spent on purchasing these two plots of public lands. So for those reasons I urge you to support the pending motion. Thank you.

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

Senator **KIEFFER:** Thank you Mr. President. Ladies and gentlemen of the Senate, it isn't very often that I disagree with my good friend, the Senator from Androscoggin, but on this particular Bill I'm kind of torn between two different issues. While I actually oppose the acquisition of more land by the State, I believe that if we are going to acquire more land we certainly might just as well make use of some private money and some private entities, non-profit private entities, that this Bill would prohibit. It's just about that simple as far as I'm concerned. I would ask you to join me in supporting the Majority Report on this Bill. Thank you Mr. President.

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

Senator **KILKELLY:** Thank you Mr. President. Men and women of the Senate, I'm in an interesting position of agreeing with my Chair in terms of what the problem is and disagreeing on what the solution is. I do that with a great deal of respect. The problem that has been described is one that I think is very real. Where the Legislature is expected to sign a check and all of the decision making, all the discussions that lead up to the need to pay a bill have been done without Legislative involvement. I think that is a real concern and it has been pointed out that the Agriculture, Conservation and Forestry Committee in fact expressed it's concern regarding the Scarborough Beach purchase and within a short period of time the Plum Creek issue came up after we'd already said we have concerns about not being involved in the discussions and not even knowing in advance that things are going on and suddenly we find that there's another purchase that's in place, again without involving members of the Committee. I think it's really important that the Executive Branch have enough freedom to be able to go out and have discussions around these issues of purchase but when a situation presents itself that the Legislature needs to pay the bill after the fact then it's important that we have some participation in the process. That's the problem. And that is a problem and it's a problem that is ongoing. I do not believe that this legislation resolves that problem at all. I think it causes other problems to happen. There are going to be times when a purchase, a particular gem, is available and the fact of the matter is that the Legislature is not in Session all the time. We don't have the ability to make decisions on short notice at any given time. There

may be a situation in which it would make a great deal of sense for a non-profit to in fact participate by making a purchase and then for the Legislature to in fact make a decision in the future about whether or not we wanted to acquire that particular purchase from that non-profit. I think those opportunities ought to be available within the constraints of having discussion with the Legislature.

There's another part of this Bill, and I understand that it may in fact be Amended out if this Bill, to move forward but I think it is one that is critical to be aware of as we vote on this Bill. This would in fact prohibit organizations from assisting in management of pieces that have been acquired by the State and would in fact prevent a partnership. We've talked a lot in the last few years about the best way to stretch our resources is through public-private partnerships and certainly when it comes to land purchases and the limited amount of money that's available in the public sector and the private sector to make these purchases, it does in fact make sense for us to look at those partnerships. It also makes sense to look at partnerships in terms of managing parcels that have been purchased. In my own district, Dodge Point is a purchase that was made that the people locally worked hard on and were able to participate with the State and now it's many of the local people that are doing the maintenance and support for that particular parcel of land. It's one that is very important for the local community and one that we care about a great deal. We need to make sure that those opportunities are there because it's people in local areas that are the ones that are the most involved and the most concerned about protecting their own special places and their own resources. So I think this Bill not only is a solution to the wrong problem or not a solution to the problem that we have at hand but also cuts off, very effectively, opportunities for communities, for groups within communities, to be involved in maintenance and support and the ongoing effort necessary to make sure that when purchases are made that there really is access and availability for the public. So I would urge you to defeat the pending motion and go on to Accept the Majority Ought Not to Pass. Thank you.

Senator **BENNETT** of Oxford moved the Bill and accompanying papers be **INDEFINITELY POSTPONED**, in concurrence. Subsequently the same Senator requested a Roll Call.

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

Senator **MILLS:** Mr. President, I join with the good Senator from Aroostook, Senator Kieffer, and with the Senator from Oxford, Senator Bennett, in asking that the Bill with its accompanying papers be Postponed and I might add I join with Senator Kilkelly from the Coast. I understand that the record is a little bit different than the way it was explained earlier and that is that the Scarborough Beach purchase is actually a contract that has been entered into by a private entity in anticipation that perhaps the State will step in in its wisdom and appropriate funds, \$1.7 million or so, to purchase the land from the intervening non-profit entity. Now if the State chooses not to take that purchase the non-profit entity is prepared to be the owner of that facility and take all of those risks associated with either being the owner or the manager and so forth. So the State is not at risk. Admittedly, the Agriculture, Conservation and Forestry Committee was presented with this deal as a sort of take it or leave it, already structured arrangement in which the price had been set and all the details. But on the other hand it's not up to the State to say

that it has a gun to it's head. We don't have to appropriate that money. We don't have to make the purchase. The private entity that intervened is content to be the owner of the land if that's our decision. The other situation up my way of buying the northern shore of Moosehead Lake, buying certain portions of Moose River and some other very valued properties is a tentative deal negotiated by the Department in all of the necessary details. It is being presented to us on a platter and we're being asked and invited to appropriate and consummate the deal or reject it. If we reject it, the paper companies that own the land will continue to own the land and if we choose to reenter negotiations at a later stage the price may be a different price, that arrangement may be a different arrangement. But there's no gun to our head, we're not compelled to accept the proposal. It's just an opportunity that is presented to the Committee and the Appropriations Committee and to this Chamber and the other Chamber to accept or not. I for one applaud the Executive agencies that have taken the initiative to go out and put these structured arrangements together for us. We, as a legislative and deliberate Body, are in no shape to go out and negotiate our own complex real estate deals for the purchase of these tracks of land and the acquisition of these opportunities. If it were not for the Executive doing it for us, it is something we would never do. So to argue that somehow we should be involved in the nitty gritty of negotiating these potential opportunities for purchase I think misconstrues the appropriate role of this Chamber and the other. We are merely the Board of Directors. We are passive, regrettably, but we are. And it's our job to say yea or nay to things that are put together on our behalf by the Executive arm of government. Whether we agree to make these purchases or not is another issue. I too have reservations about going out and trying to scrounge up all the land in Maine and turn it into a public park. I'm not in favor of that. But when there are these selective opportunities where people have carefully put together structured deals and they present them to us, I have nothing but praise for those who've done all that work. I urge you to vote in favor of the motion pending by the Senator from Oxford to Indefinitely Postpone this Bill and it's papers.

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

Senator **CAREY:** Thank you Mr. President. The Senator from Somerset, Senator Mills, pretty much in his own manner of explaining things, explained the problem that we have here. First of all we put up the money period. That's the only involvement that we have. There is a board that will decide what they buy, how much they pay for it, and what conditions they put on the land when it is transferred from one entity to another. But if we don't do anything with this, we unfortunately, are going to let the Governor ramble on and spend more money, and make deals, nature conservancy, some I don't know how many millions of dollars that deal was, but it's not coming out of his pocket. It is coming out of the taxpayers pockets. We really don't know how much he is buying, what the conditions are, and what have you. I'm going to be voting against the motion, the Indefinite Postponement motion. And I'm going to wait for the Senator from Androscoggin, Senator Nutting's motion to come back up. Unless we put a handle on the Governor, in this case, he will not get the message.

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

Senator **KILKELLY**: Thank you Mr. President. Men and women of the Senate, I want to clarify a couple of my remarks which I'm concerned have been misconstrued. I'm certainly not suggesting that the Legislature needs to be involved in all of the initial negotiations for purchases. But, when reference is made to us being a Board of Directors and having served on many boards, I know that as things are brought to the board, they are not brought as a done deal. They are brought as, this is what's going on, here's an update on what's happening, and there is a progress report that is given. That is what we receive. And when you get ready to make the final decision, you've had an opportunity to raise your questions, to raise your concerns, to have your ideas put into that mix. It's not a matter of it just landing on your desk and saying, now do it. The other question that was raised to me earlier about this issue was, now when you say that you feel boxed in, why do you feel boxed in? What authority is the Executive using in terms of pursuing these purchases? It's not so much authority, as it is the fact that the public perception is that this is over and done with. The public perception when you do a press conference and say we're announcing this deal today, we're announcing that this has been accomplished. The public perception is that it is over, it has been accomplished. It has happened. And that means that there is, in fact, you know that we are, I believe, painted into a corner in terms of supporting these things in the way that has been developed. Not necessarily with an opportunity to discuss how it might be funded, and there are other ways in which they might be funded. So again, I just wanted to clarify, I'm not suggesting that the Legislature is in a position to be involved in negotiating land deals, or any other kind of deal. The Executive certainly needs some freedom to do that. But they need to do that in a way that, in fact, allows members of the Legislature to have some input, to have some discussion into this process, and not just put it out there and say. It's happened, now you need to sign the check. I urge you to support the pending motion.

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

Senator **NUTTING**: Thank you Mr. President. Ladies and gentlemen of the Senate, I had not planned to speak a second time on this issue, but after the good Senator from Somerset, Senator Mills remarks I really feel compelled to shed what I think is a brighter light on this subject. The good Senator said that we were presented an option. That we could reject it or accept it. The press releases were that Scarborough Beach has been purchased. The press conference on Plum Creek was that the Plum Creek deal, that land had been purchased. It was well presented as here's an opportunity Legislature, do you want to pay for it now, or do you want pay with Land for Maine's Future money? It was not presented that way. It was presented as a done deal as the good Senator from Lincoln, Senator Kilkelly, just mentioned. The other thing that concerns me, and why I voted for this Report that admittedly does need to be Amended in the Second Reading if given the opportunity is the precedent. As a fiscal conservative, it really concerns me that if we allow one Department to be spending money without Legislative approval with the use of another organization our other Departments are going to feel that they can do it in the future. Is this same process going to be used next year to spend \$10 million, \$20 million, and announce to the state that this land has been purchased, or this money has been spent? All of a sudden we're

then supposed to go back and say, well really, I guess, I can't say it any better than the good Senator from Lincoln, Senator Kilkelly. We are kind of painted into a corner. So for those following reasons, I urge you to Reject the pending motion. Thank you.

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

Senator **LONGLEY**: Thank you Mr. President. Colleagues of the Senate, I will be really quick. To be honest I'm still trying to decide how I'm going to vote on this, but I do know that when I first came into office and reading things, what I picked up and cut out was the ethics of being a Legislator, and number one was to honor the institution. It sounds like what the Governor has done is to move forward on an issue, I agree and I applaud, but he is stumbling and that he didn't honor the institution. Just the courtesy of including a co-equal branch of government. And that is really unfortunate, and I don't know how to react in terms of this vote. But I know honoring the institution bodes well for all of us in both branches if we just would continue to respect the fact that we are all working together here. Thank you.

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

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#94)

YEAS: Senators: ABROMSON, AMERO, BENNETT, BENOIT, CASSIDY, CATHCART, DAGGETT, DAVIS, DOUGLASS, FERGUSON, GOLDTHWAIT, HARRIMAN, KIEFFER, KILKELLY, KONTOS, LAFOUNTAIN, LIBBY, MACKINNON, MICHAUD, MILLS, MITCHELL, MURRAY, O'GARA, PARADIS, PENDLETON, RAND, SMALL, TREAT, THE PRESIDENT - MARK W. LAWRENCE

NAYS: Senators: CAREY, LONGLEY, NUTTING

ABSENT: Senators: PINGREE, RUHLIN

EXCUSED: Senator: BERUBE

29 Senators having voted in the affirmative and 3 Senators having voted in the negative, with 2 Senators being absent, and 1 Senator being excused, the motion by Senator **BENNETT** of Oxford to **INDEFINITELY POSTPONE** the Bill and accompanying papers, in concurrence, **PREVAILED**.

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

HOUSE REPORTS - from the Committee on **STATE AND LOCAL GOVERNMENT** on Bill "An Act to Provide Computers for Use in the Legislature" (EMERGENCY)

H.P. 666 L.D. 922

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-320)** (11 members)

Minority - **Ought Not to Pass** (2 members)

Tabled - May 14, 1999, by Senator **BENNETT** of Oxford.

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

(In House, May 13, 1999, the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-320)**.)

(In Senate, May 14, 1999, Reports **READ**.)

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

Senator **BENNETT:** Thank you Mr. President. Fellow members of the Senate, there is no one that agrees more in this Chamber than I with the intent of this Legislation, which is to enhance the productivity of Legislators by upgrading the assistant that we're provided by entering the later half of the 20th century. This Bill would do as the title clearly states, which is, it would provide computers for use in the Legislature. I personally have been frustrated by the inability of Senators to use even their own purchased laptops in the Chamber in order to increase our efficiency, and diminish the amount of paper that is required to do our jobs. I have no quarrel with that aspect of this Bill. My concern with this is that it seems that as we increase our productivity, and as we purchase more equipment and use the electronic capabilities which are at our disposal these days, that we seem to be just adding to our cost. When in fact, in my view, it would be completely legitimate to see a reduction in cost in other areas. If for instance, we are able to send E-mail back to each other in the Chamber rather than rely on Pages, perhaps, we could save money with the Chamber staff. I know that is a risky position to take here. But I think it is one that we ought to consider. This Bill specifically doesn't deal with Chamber staff, it deals with adding three positions. One which is a Network Administrator position, and two Desktop Support Assistant positions. The fiscal note is just \$27,500 in the first year, but there is \$441,000 in change in the second year of the biennium, and the estimated ongoing cost of the positions are \$225,000 per year. I do not believe at this time that we should be adding cost to the Legislative Budget as we seek to streamline, and make more efficient the work we do. So I am sort of caught here supporting the concept and the intention of this Bill without supporting some of the important details. Mainly the cost that is contained herein. And therefore, I'm left with a couple of options. One is voting for the Bill as it sits and attempting to Amend it later, or to oppose it in its present form initially. That is the vote that I will be casting. The latter vote originally here today. And if this passes I hope that members of the Senate go along with me

in seeking to find offsetting cost efficiencies that will pay for the cost contained in this Bill. And so I ask for a Division. Thank you.

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

Senator **GOLDTHWAIT:** Thank you Mr. President and ladies and gentlemen of the Senate. Now Mr. President I am inclined to use the line that you sometimes do, which is would all Senators within the sound of my voice please come into the Chamber because I think this is an important issue. And it is one that has perplexed me as it has the good Senator from Oxford, Senator Bennett. And I agree entirely with him that computerization of this Chamber is likely to result in offsetting cost. And I would welcome him to make a similar effort to that which I did to convince the fiscal office that offsetting cost should be counting in fiscal notes. But so far no good. So what we have in front of us today is simply a yes or no decision. Either we are going to computerize the Chambers, or we're not. And if we are going to, we will have to pay for it sometime. Either now through a vehicle such as this, either next year through the Budget process, or through a different Bill, but somehow the money has to be provided. It is estimated that on a five year time-line for computerizing both Chambers, the total cost will be \$2 ½ million. The largest single year expenditure will come in the year 2002, which is beyond the Bill we are looking at, and beyond the Budget we are looking at. But that is the estimated five year cost for this, although, there will certainly be additional cost beyond that, but they have not been estimated beyond the year 2004. There is no doubt that computerization is not a one time cost, it is an ongoing cost, both in terms of hardware and software. Any of you that have business systems that rely on that know that what you thought, or what you hoped was going to be a one time cost, has gone into what is almost an annual upgrading of both hardware and software. So I don't see any way around the expenditures that it will take on an ongoing basis to provide this Legislature with the benefits of computerization. I do agree, however, that there has to be a substantial savings in terms of, for instance, the books we see in front of us on our desk, the amount of manual labor that it takes to slot those 3,000 Bills into 186 notebooks, and it absolutely fascinates me that it's hardly, if ever done incorrectly. And I think the Chamber staff is to be commended for their diligence and meticulousness in providing that service. But certainly computerization would be a big advantage. It's an up or down vote to me. We're going to do it, or we are not going to do it. This is the first vehicle we have had in front of us to pay the cost of doing that. So if we want to move into the 20th century, let alone the 21st. I would urge you to support the pending motion.

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

Senator **TREAT:** Thank you Mr. President. Men and women of the Senate, I'm speaking today in support of the motion by the Senator from Hancock, Senator Goldthwait. I would just like to relate to you some of my personal experience in lack of computerization, which has led to my ineffectiveness, or rather difficulty in serving effectively my district. I just want to give you an example. I had a Bill that was supported by an interesting coalition that included, not only the Natural Resources Council of Maine but also the Maine Chamber of Commerce, the Maine

Municipal Association, various trade organizations for different businesses. And it was opposed by a number of state agencies that didn't want to be put through the hoops to do things differently that would involve the public and the Legislature more effectively in their activities. I found myself negotiating about this Bill. I didn't know about meetings that happened because E-mails went out to everybody, except I never got mine because it showed up in the basement of this building instead of in a laptop that I might be able to take back and forth between my house. Even though I had given out my home E-mail, I never got that information. I found myself trying to borrow from a staff person so I could be not in the basement, but close to where things were happening. It was really a frustrating experience because I felt like I was kind of in this situation where everybody except me, you know the staff around this place, the bureaucrats, bureaucrats head staff. All these people have computers, and we are sort of in the current age, and we are going into the next millennium, and Maine Senators aren't part of the program. I think given the fact that we are a part-time Legislature, given the fact that we are paid at a very low pay scale, given the fact that we have minimal staff, that computers are one way of increasing our productivity and effectiveness. I think ultimately, in a cost effective way, although like many cost savings it does cost up front. That is always the big question. I share the concerns about the fact that the savings are not reflected in this fiscal note. And I would certainly support ways of integrating that into this. But I think this should be one of those items that the Appropriations Committee gets to consider along with all of the other priorities that people are identifying before we finish with the Budget this year. I sat on a Computer Committee for I don't know how long, a year and a half or something, we came out with some report that, I don't know what happened to that report, but I do remember that the Committee was, if not unanimous, a large majority of the Committee was very supportive of computers. We did a lot of work about how those computers could be integrated into the system that we have here, and I think a lot of work has been done to make sure that it will be done appropriately. So I would encourage your support of the Majority Ought to Pass motion. Thanks.

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

Senator **CAREY:** Thank you Mr. President. I understood the good Senator from Hancock, Senator Goldthwait, to say that the system would cost \$2 ½ million. Some of you may remember the purchasing of computers for schools and libraries. That came to a total of \$20 million that the PUC had estimated was going to be needed. Everything that should have been done, having been done, the basics and what have you, and if somebody wants to improve on it they ought to pay for it themselves. There is still \$4 million left in that account. And all that we really would need, and I'll have to check that figure, that was my last glance at what had happened. The PUC ought to be able to give you, readily, an answer to it. It may very well be, by just putting an Amendment into this whole matter that we could transfer that money, but the subject matter is still the same. Thank you Mr. President.

At the request of Senator **BENNETT** of Oxford a Division was had. 23 Senators having voted in the affirmative and 2 Senators having voted in the negative, the motion by Senator **PENDLETON** of Cumberland to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence, **PREVAILED**.

READ ONCE.

Committee Amendment "A" (H-320) **READ**.

Senator **BENNETT** of Oxford moved to **TABLE** until Later in Today's Session, pending **ADOPTION** of Committee Amendment "A" (H-320), in concurrence.

At the request of Senator **RAND** of Cumberland a Division was had. 24 Senators having voted in the affirmative and 1 Senators having voted in the negative, the motion by Senator **BENNETT** of Oxford to **TABLE** until Later in Today's Session, pending **ADOPTION** of Committee Amendment "A" (H-320), in concurrence, **PREVAILED**.

The Chair laid before the Senate the following Tabled and Later (1/19/99) Assigned matter:

HOUSE REPORTS - from the Committee on **STATE AND LOCAL GOVERNMENT** on Resolve, to Establish the State Office Building Location Task Force

H.P. 226 L.D. 304

Majority - Ought to Pass as Amended by Committee Amendment "A" (H-292) (9 members)

Minority - Ought Not to Pass (4 members)

Tabled - May 14, 1999, by Senator **RAND** of Cumberland.

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

(In House, May 13, 1999, Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Resolve **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-292)**.)

(In Senate, May 14, 1999, Reports **READ**.)

At the request of Senator **AMERO** of Cumberland a Division was had. 17 Senators having voted in the affirmative and 8 Senators having voted in the negative, the motion by Senator **PENDLETON** of Cumberland to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence, **PREVAILED**.

READ ONCE.

Committee Amendment "A" (H-292) **READ** and **ADOPTED**, in concurrence.

TOMORROW ASSIGNED FOR SECOND READING.

The Chair laid before the Senate the following Tabled and Later (5/12/99) Assigned matter:

Emergency Resolve

Resolve, Establishing the Commission to Study the Educational Needs of Offenders in the State's Correctional System

H.P. 616 L.D. 856
(C "A" H-299)

Tabled - May 12, 1999, by Senator **MURRAY** of Penobscot.

Pending - motion by Senator **BENNETT** of Oxford to **INDEFINITELY POSTPONE** Resolve and accompanying papers

(In Senate, May 5, 1999, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-299)**, in concurrence.)

(In House, May 12, 1999, **FAILED FINAL PASSAGE.**)

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

Senator **MURRAY:** Thank you Mr. President. Men and women of the Senate, very briefly this resolve was, as you may recall, a unanimous Committee Report from the Committee on Criminal Justice. The issue is basic, although the title might be a bit confusing because the title no longer really reflects what the Bill would do. The Bill is limited to a study request to allow some of the interested parties to look at the issue of education as it is currently being provided within the prison and correctional systems in the state of Maine, as well as, looking at how those resources may be better used in the future and how we may look to improving educational opportunities as they exist within the system of our corrections both now and in the future. I think we all on the Criminal Justice Committee recognize that those individuals that are part of the correctional system that are incarcerated right now, for the most part, are going to come out at one day or another. What we want is to have as best as possible, a prison population that can be rehabilitated, productive, and hopefully not returning to the same institutions that they are leaving from. So the Bill which has a fiscal note of \$4,000, as I recall, requests to study those issues, and I would hope you would Oppose the pending motion to Indefinitely Postpone, so that it can be sent to the Appropriations Table where it will be considered along with the other pending study requests. So I hope you will join with me in supporting the unanimous Committee Report, and vote Against the pending motion.

The Chair ordered a Division. 5 Senators having voted in the affirmative and 20 Senators having voted in the negative, the motion by Senator **BENNETT** of Oxford to **INDEFINITELY POSTPONE** Resolve and accompanying papers, **FAILED**.

On motion by Senator **RAND** of Cumberland, **TABLED** until Later in Today's Session, pending **FINAL PASSAGE**, in **NON-CONCURRENCE**.

Senator **LONGLEY** of Waldo moved the Senate **RECONSIDER** whereby it **ADHERED** on:

Bill "An Act to Create a Sales Tax Exemption for Child Abuse and Neglect Councils"

H.P. 976 L.D. 1374

(In House, May 7, 1999, the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-395).**)

(In Senate, May 11, 1999, the Minority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED**, in **NON-CONCURRENCE.**)

(In House, May 12, 1999, that Body **ADHERED.**)

(In Senate May 14, 1999, on motion by Senator **RUHLIN** of Penobscot, **ADHERED** to **ACCEPTANCE** of the Minority **OUGHT NOT TO PASS** Report.)

On further motion by same Senator, **TABLED** until Later in Today's Session, pending motion by same Senator to **RECONSIDER** whereby the Senate **ADHERED** to **ACCEPTANCE** of the Minority **OUGHT NOT TO PASS** Report.

Senator **BENNETT** of Oxford was granted unanimous consent to address the Senate off the Record.

On motion by Senator **RAND** of Cumberland, **ADJOURNED**, until Monday, May 17, 1999, at 9:00 in the morning.