

MAINE STATE LEGISLATURE

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

Volume II

First Regular Session

May 18, 2001 – June 22, 2001

Second Regular Session

January 2, 2002 – March 6, 2002

Pages 890-1770

ONE HUNDRED AND TWENTIETH LEGISLATURE
FIRST REGULAR SESSION
58th Legislative Day
Tuesday, May 29, 2001

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

Prayer by Reverend Lee Bowden Pastor of Christian Ridge Ministries, Ellsworth.

National Anthem by Vikettes and Viking Voices, Oxford Hills Comprehensive High School, South Paris.

Pledge of Allegiance.

Doctor of the day, Lisa Letourneau, M.D., Scarborough.

The Journal of Friday, May 25, 2001 was read and approved.

SENATE PAPERS

Non-Concurrent Matter

Bill "An Act Concerning Managed Care Provider Agreements" (H.P. 336) (L.D. 426)

Majority (9) **OUGHT TO PASS AS AMENDED** Report of the Committee on **BANKING AND INSURANCE READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-588)** in the House on May 24, 2001.

Came from the Senate with the Minority (4) **OUGHT TO PASS AS AMENDED** Report of the Committee on **BANKING AND INSURANCE READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "B" (H-589)** in **NON-CONCURRENCE**.

On motion of Representative O'NEIL of Saco, the House voted to **ADHERE**.

Non-Concurrent Matter

Bill "An Act to Permit Foster Parents to Purchase Group Health Insurance" (H.P. 275) (L.D. 353)

PASSED TO BE ENGROSSED in the House on May 24, 2001.

Came from the Senate **PASSED TO BE ENGROSSED AS AMENDED BY SENATE AMENDMENT "A" (S-264)** in **NON-CONCURRENCE**.

On motion of Representative O'NEIL of Saco, **TABLED** pending **FURTHER CONSIDERATION** and later today assigned.

Non-Concurrent Matter

JOINT ORDER - Relative to printing of history and final disposition of each Bill and Resolve

(H.P. 4)

House **ADHERED** to **PASSAGE** on April 12, 2001.

Came from the Senate **PASSED AS AMENDED BY SENATE AMENDMENT "B" (S-263)** in **NON-CONCURRENCE**.

On motion of Representative COLWELL of Gardiner, **TABLED** pending **FURTHER CONSIDERATION** and later today assigned.

COMMUNICATIONS

The Following Communication: (H.C. 281)

**STATE OF MAINE
ONE HUNDRED AND TWENTIETH LEGISLATURE**

COMMITTEE ON AGRICULTURE, CONSERVATION AND FORESTRY

May 23, 2001

Honorable Michael H. Michaud, President of the Senate

Honorable Michael V. Saxl, Speaker of the House

120th Maine Legislature

State House

Augusta, Maine 04333

Dear President Michaud and Speaker Saxl:

Pursuant to Joint Rule 310, we are writing to notify you that the Joint Standing Committee on Agriculture, Conservation and Forestry has voted unanimously to report the following bill out "Ought Not to Pass":

L.D. 1013 An Act to Require Committee Approval for Certain Purchases Proposed by the Land for Maine's Future Board

We have also notified the sponsor and cosponsors of each bill listed of the Committee's action.

Sincerely,

S/Sen. Richard Kneeland

Senate Chair

S/Rep. Linda Rogers McKee

House Chair

READ and ORDERED PLACED ON FILE.

The Following Communication: (H.C. 282)

STATE OF MAINE

**ONE HUNDRED AND TWENTIETH LEGISLATURE
COMMITTEE ON APPROPRIATIONS AND FINANCIAL AFFAIRS**

May 23, 2001

Honorable Michael H. Michaud, President of the Senate

Honorable Michael V. Saxl, Speaker of the House

120th Maine Legislature

State House

Augusta, Maine 04333

Dear President Michaud and Speaker Saxl:

Pursuant to Joint Rule 310, we are writing to notify you that the Joint Standing Committee on Appropriations and Financial Affairs has voted unanimously to report the following bill out "Ought Not to Pass":

L.D. 694 An Act to Fund the Pulp and Paper Technology Program at Kennebec Valley Technical College

We have also notified the sponsor and cosponsors of each bill listed of the Committee's action.

Sincerely,

S/Sen. Jill M. Goldthwait

Senate Chair

S/Rep. Randall L. Berry

House Chair

READ and ORDERED PLACED ON FILE.

The Following Communication: (H.C. 283)

STATE OF MAINE

**ONE HUNDRED AND TWENTIETH LEGISLATURE
COMMITTEE ON BUSINESS AND ECONOMIC DEVELOPMENT**

May 23, 2001

Honorable Michael H. Michaud, President of the Senate

Honorable Michael V. Saxl, Speaker of the House

120th Maine Legislature

State House

Augusta, Maine 04333

Dear President Michaud and Speaker Saxl:

Pursuant to Joint Rule 310, we are writing to notify you that the Joint Standing Committee on Business and Economic Development has voted unanimously to report the following bill out "Ought Not to Pass":

L.D. 322 An Act to Amend the Motor Vehicle Franchise Laws

We have also notified the sponsor and cosponsors of each bill listed of the Committee's action.

Sincerely,

S/Sen. Kevin L. Shorey

Senate Chair

S/Rep. John G. Richardson

House Chair

READ and ORDERED PLACED ON FILE.

The Following Communication: (H.C. 284)

STATE OF MAINE

**ONE HUNDRED AND TWENTIETH LEGISLATURE
COMMITTEE ON CRIMINAL JUSTICE**

May 23, 2001

Honorable Michael H. Michaud, President of the Senate

Honorable Michael V. Saxl, Speaker of the House

120th Maine Legislature

State House

Augusta, Maine 04333

Dear President Michaud and Speaker Saxl:

Pursuant to Joint Rule 310, we are writing to notify you that the Joint Standing Committee on Criminal Justice has voted unanimously to report the following bill out "Ought Not to Pass":

L.D. 233 An Act to Criminalize the Possession of Theft Tools

We have also notified the sponsor and cosponsors of each bill listed of the Committee's action.

Sincerely,

S/Sen. Michael J. McAlevey

Senate Chair

S/Rep. Edward J. Povich

House Chair

READ and ORDERED PLACED ON FILE.

The Following Communication: (H.C. 285)

STATE OF MAINE

**ONE HUNDRED AND TWENTIETH LEGISLATURE
COMMITTEE ON EDUCATION AND CULTURAL AFFAIRS**

May 23, 2001

Honorable Michael H. Michaud, President of the Senate

Honorable Michael V. Saxl, Speaker of the House

120th Maine Legislature

State House

Augusta, Maine 04333

Dear President Michaud and Speaker Saxl:

Pursuant to Joint Rule 310, we are writing to notify you that the Joint Standing Committee on Education and Cultural Affairs has voted unanimously to report the following bills out "Ought Not to Pass":

L.D. 334 An Act to Provide Incentives to Families Who Save for College

L.D. 659 Resolve, to Promote the Blueberry Industry

We have also notified the sponsors and cosponsors of each bill listed of the Committee's action.

Sincerely,

S/Sen. Betty Lou Mitchell

Senate Chair

S/Rep. Shirley K. Richard

House Chair

READ and ORDERED PLACED ON FILE.

The Following Communication: (H.C. 286)

STATE OF MAINE

**ONE HUNDRED AND TWENTIETH LEGISLATURE
COMMITTEE ON HEALTH AND HUMAN SERVICES**

May 23, 2001

Honorable Michael H. Michaud, President of the Senate

Honorable Michael V. Saxl, Speaker of the House

120th Maine Legislature

State House

Augusta, Maine 04333

Dear President Michaud and Speaker Saxl:

Pursuant to Joint Rule 310, we are writing to notify you that the Joint Standing Committee on Health and Human Services has voted unanimously to report the following bills out "Ought Not to Pass":

H.P. 1139 Joint Study Order Relative to the Joint Select Commission to Review Compensation in the Office of Disability Determination Services

H.P. 1141 Joint Study Order Relative to the Joint Select Committee to Study the Most Appropriate Means of Amending Existing Laws and Regulations to Facilitate Consumer Choice and the Ability to Age in Place

We have also notified the sponsors and cosponsors of each bill listed of the Committee's action.

Sincerely,

S/Sen. Susan W. Longley

Senate Chair

S/Rep. Thomas J. Kane

House Chair

READ and ORDERED PLACED ON FILE.

The Following Communication: (H.C. 287)

STATE OF MAINE

**ONE HUNDRED AND TWENTIETH LEGISLATURE
COMMITTEE ON LEGAL AND VETERANS AFFAIRS**

May 23, 2001

Honorable Michael H. Michaud, President of the Senate

Honorable Michael V. Saxl, Speaker of the House

120th Maine Legislature

State House

Augusta, Maine 04333

Dear President Michaud and Speaker Saxl:

Pursuant to Joint Rule 310, we are writing to notify you that the Joint Standing Committee on Legal and Veterans Affairs has voted unanimously to report the following bills out "Ought Not to Pass":

L.D. 1619 Resolve, to Establish a Commission to Study Maine's Election Procedures and Voting Laws

L.D. 1686 An Act to Amend the Laws Governing Elections

We have also notified the sponsors and cosponsors of each bill listed of the Committee's action.

Sincerely,

S/Sen. Neria R. Douglass

Senate Chair

S/Rep. John L. Tuttle, Jr.
House Chair

READ and ORDERED PLACED ON FILE.

The Following Communication: (H.C. 288)

**STATE OF MAINE
ONE HUNDRED AND TWENTIETH LEGISLATURE
COMMITTEE ON NATURAL RESOURCES**

May 23, 2001

Honorable Michael H. Michaud, President of the Senate
Honorable Michael V. Saxl, Speaker of the House
120th Maine Legislature
State House
Augusta, Maine 04333

Dear President Michaud and Speaker Saxl:

Pursuant to Joint Rule 310, we are writing to notify you that the Joint Standing Committee on Natural Resources has voted unanimously to report the following bill out "Ought Not to Pass":
L.D. 1045 An Act to Ban the Permitting or Expansion of Existing Sewage Outfalls into the Ocean

We have also notified the sponsor and cosponsors of each bill listed of the Committee's action.

Sincerely,

S/Sen. John L. Martin
Senate Chair
S/Rep. Scott W. Cowger
House Chair

READ and ORDERED PLACED ON FILE.

The Following Communication: (H.C. 289)

**STATE OF MAINE
ONE HUNDRED AND TWENTIETH LEGISLATURE
COMMITTEE ON TAXATION**

May 23, 2001

Honorable Michael H. Michaud, President of the Senate
Honorable Michael V. Saxl, Speaker of the House
120th Maine Legislature
State House
Augusta, Maine 04333

Dear President Michaud and Speaker Saxl:

Pursuant to Joint Rule 310, we are writing to notify you that the Joint Standing Committee on Taxation has voted unanimously to report the following bills out "Ought Not to Pass":

- L.D. 1375 An Act to Establish Minimum Standards of Eligibility for the Property Tax Exemption for Charitable Institutions
- L.D. 1497 An Act to Clarify the Definition of Commercial Agricultural Production
- L.D. 1780 An Act to Support Businesses that Reduce Pollution
- L.D. 1801 Resolve, to Modify the State Valuation for the HoltraChem Property in the Town of Orrington

We have also notified the sponsors and cosponsors of each bill listed of the Committee's action.

Sincerely,

S/Sen. Kenneth T. Gagnon
Senate Chair
S/Rep. Bonnie Green
House Chair

READ and ORDERED PLACED ON FILE.

REPORTS OF COMMITTEE

Ought to Pass Pursuant to Joint Order

Report of the Committee on **NATURAL RESOURCES** on Bill "An Act to Prevent Infestation of Invasive Aquatic Plants and to Control Other Invasive Species" (EMERGENCY)

(S.P. 630) (L.D. 1812)

Reporting **Ought to Pass** pursuant to Joint Order (S.P. 599).

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

Report was **READ.**

On motion of Representative COWGER of Hallowell, **TABLED** pending **ACCEPTANCE** of the Committee Report and later today assigned.

Divided Report

Majority Report of the Committee on **HEALTH AND HUMAN SERVICES** reporting **Ought Not to Pass** on Bill "An Act to Ensure Patient Access to Medicines"

(S.P. 572) (L.D. 1744)

Signed:

Senators:

LONGLEY of Waldo
TURNER of Cumberland

Representatives:

FULLER of Manchester
BROOKS of Winterport
DUDLEY of Portland
LAVERRIERE-BOUCHER of Biddeford
DUGAY of Cherryfield
KANE of Saco
LOVETT of Scarborough
O'BRIEN of Augusta
SHIELDS of Auburn
NUTTING of Oakland

Minority Report of the same Committee reporting **Ought to Pass as Amended by Committee Amendment "A" (S-255)** on same Bill.

Signed:

Senator:

MARTIN of Aroostook

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

READ.

On motion of Representative KANE of Saco, the Majority **Ought Not to Pass** Report was **ACCEPTED** in concurrence.

Majority Report of the Committee on **LABOR** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-257)** on Bill "An Act to Change the Retirement Eligibility Requirement for Game Wardens"

(S.P. 495) (L.D. 1584)

Signed:

Senators:

EDMONDS of Cumberland
TURNER of Cumberland
SAWYER of Penobscot

Representatives:

MATTHEWS of Winslow
DAVIS of Falmouth
TREADWELL of Carmel
BUNKER of Kossuth Township
HUTTON of Bowdoinham
NORTON of Bangor

SMITH of Van Buren
TARAZEWICH of Waterboro

Minority Report of the same Committee reporting **Ought to Pass as Amended by Committee Amendment "B" (S-258)** on same Bill.

Signed:

Representatives:

CRESSEY of Baldwin
MacDOUGALL of North Berwick

Came from the Senate with the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-257)**.

READ.

On motion of Representative BUNKER of Kossuth Township, the Majority **Ought to Pass as Amended** Report was **ACCEPTED**.

The Bill was **READ ONCE**. **Committee Amendment "A" (S-257)** was **READ** by the Clerk and **ADOPTED**.

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

Under further suspension of the rules the Bill was **PASSED TO BE ENGROSSED as Amended by Committee Amendment "A" (S-257)** in concurrence.

Majority Report of the Committee on **STATE AND LOCAL GOVERNMENT** reporting **Ought Not to Pass** on Bill "An Act to Clarify Rights of Retainage in Public Construction Contracts"

(S.P. 514) (L.D. 1633)

Signed:

Senators:

PENDLETON of Cumberland
YOUNGBLOOD of Penobscot
ROTUNDO of Androscoggin

Representatives:

BAGLEY of Machias
McDONOUGH of Portland
HATCH of Skowhegan
LESSARD of Topsham
MURPHY of Berwick
CHASE of Levant
HASKELL of Milford

Minority Report of the same Committee reporting **Ought to Pass as Amended by Committee Amendment "A" (S-245)** on same Bill.

Signed:

Representatives:

McLAUGHLIN of Cape Elizabeth
KASPRZAK of Newport
CRESSEY of Baldwin

Came from the Senate with the Minority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-245) AS AMENDED BY SENATE AMENDMENT "A" (S-267)** thereto.

READ.

On motion of Representative McDONOUGH of Portland, **TABLED** pending **ACCEPTANCE** of either Report and later today assigned.

Majority Report of the Committee on **EDUCATION AND CULTURAL AFFAIRS** reporting **Ought to Pass as Amended by Committee Amendment "B" (H-614)** on Bill "An Act to Change the Truancy Laws"

(H.P. 560) (L.D. 715)

Signed:

Senator:

NUTTING of Androscoggin

Representatives:

RICHARD of Madison
DESMOND of Mapleton
ESTES of Kittery
CUMMINGS of Portland
STEDMAN of Hartland
ANDREWS of York
WESTON of Montville
LEDWIN of Holden

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

Signed:

Senators:

MITCHELL of Penobscot
ROTUNDO of Androscoggin

Representative:

WATSON of Farmingdale

READ.

On motion of Representative COLWELL of Gardiner, **TABLED** pending **ACCEPTANCE** of either Report and later today assigned.

Majority Report of the Committee on **LABOR** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-615)** on Bill "An Act Regarding the Length of Service for Retirement Benefits and Limits on Earnable Compensation for Certain State Employees"

(H.P. 1333) (L.D. 1789)

Signed:

Senators:

EDMONDS of Cumberland
TURNER of Cumberland
SAWYER of Penobscot

Representatives:

BUNKER of Kossuth Township
MATTHEWS of Winslow
TREADWELL of Carmel
DAVIS of Falmouth
MacDOUGALL of North Berwick
HUTTON of Bowdoinham
NORTON of Bangor
SMITH of Van Buren
TARAZEWICH of Waterboro

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

Signed:

Representative:

CRESSEY of Baldwin

READ.

On motion of Representative BUNKER of Kossuth Township, the Majority **Ought to Pass as Amended** Report was **ACCEPTED**.

The Bill was **READ ONCE**. **Committee Amendment "A" (H-615)** was **READ** by the Clerk and **ADOPTED**.

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

Under further suspension of the rules the Bill was **PASSED TO BE ENGROSSED as Amended by Committee Amendment "A" (H-615)** and sent for concurrence.

CONSENT CALENDAR

First Day

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

(H.P. 765) (L.D. 984) Bill "An Act to Protect Nongroup and Small Group Insureds" Committee on **BANKING AND INSURANCE** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-617)**

(H.P. 1260) (L.D. 1695) Bill "An Act to Clarify, Enhance and Strengthen the Animal Welfare Laws of Maine" Committee on **AGRICULTURE, CONSERVATION AND FORESTRY** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-613)**

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

There being no objection, the House Papers were **PASSED TO BE ENGROSSED as Amended** and sent for concurrence.

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

ENACTORS

Emergency Measure

An Act to Amend the Motor Vehicle Laws

(H.P. 512) (L.D. 652)
(C. "A" H-555)

Reported by the Committee on **Engrossed Bills** as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 118 voted in favor of the same and 3 against, and accordingly the Bill was **PASSED TO BE ENACTED**, signed by the Speaker and sent to the Senate.

Acts

An Act Relating to Taxation of Agriculture

(H.P. 13) (L.D. 13)
(C. "A" H-571)

An Act to Clarify that Polluters Who Violate the Environmental Laws on Private Land are Liable for Their Actions

(H.P. 236) (L.D. 273)
(C. "A" H-560)

An Act to Promote Dam Safety

(H.P. 379) (L.D. 481)
(C. "A" H-559)

An Act to Ensure Quality Home Care Coordination Services and Improve Long-term Care Services

(H.P. 601) (L.D. 756)
(C. "A" H-580)

An Act to Provide Transportation Vouchers to Persons with Disabilities to Improve their Independence and Opportunity to Work

(H.P. 712) (L.D. 927)
(C. "A" H-581)

An Act Relating to Discovery Procedures under the Maine Unfair Trade Practices Act

(H.P. 733) (L.D. 953)
(C. "A" H-335)

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

An Act to Strengthen the Maine Rx Program

(H.P. 376) (L.D. 478)
(C. "A" H-249)

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

On motion of Representative KASPRZAK of Newport, was **SET ASIDE**.

The same Representative **REQUESTED** a roll call on **PASSAGE TO BE ENACTED**.

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

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

ROLL CALL NO. 266

YEA - Annis, Ash, Baker, Belanger, Berry RL, Blanchette, Bliss, Bouffard, Brannigan, Brooks, Bryant, Bull, Bunker, Canavan, Carr, Chick, Chizmar, Clark, Collins, Colwell, Cowger, Cummings, Davis, Dorr, Dudley, Dunlap, Duplessie, Estes, Etnier, Fisher, Fuller, Gagne, Gerzofsky, Goodwin, Green, Hall, Hatch, Hawes, Hutton, Jacobs, Jones, Kane, Koffman, Landry, LaVerdiere, Laverriere-Boucher, Lemoine, Lessard, Lundeen, Madore, Mailhot, Marley, Marrache, Mayo, McDonough, McGlocklin, McGowan, McKee, McLaughlin, Michaud, Mitchell, Murphy E, Murphy T, Muse K, Norbert, Norton, O'Brien LL, O'Neil, Paradis, Patrick, Perkins, Pineau, Povich, Rines, Savage, Simpson, Smith, Stanley, Sullivan, Tarazewich, Tessier, Thomas, Tobin J, Tracy, Tuttle, Twomey, Usher, Volenik, Watson, Wheeler EM, Wheeler GJ, Mr. Speaker.

NAY - Berry DP, Bowles, Bruno, Buck, Chase, Clough, Crabtree, Cressey, Daigle, Duncan, Duprey, Foster, Glynn, Gooley, Heidrich, Honey, Jodrey, Kasprzak, Labrecque, Ledwin, MacDougall, McKenney, McNeil, Morrison, Nass, Nutting, O'Brien JA, Peavey, Pinkham, Rosen, Schneider, Sherman, Shields, Snowe-Mello, Tobin D, Trahan, Treadwell, Waterhouse, Weston, Winsor, Young.

ABSENT - Andrews, Bagley, Bumps, Cote, Desmond, Dugay, Haskell, Lovett, Matthews, Mendros, Michael, Muse C, Perry, Quint, Richard, Richardson, Skoglund, Stedman.

Yes, 92; No, 41; Absent, 18; Excused, 0.

92 having voted in the affirmative and 41 voted in the negative, with 18 being absent, and accordingly the Bill was **PASSED TO BE ENACTED**, signed by the Speaker and sent to the Senate.

An Act Concerning Lifetime Licenses and Complimentary Licenses for Residents over 70 Years of Age

(H.P. 579) (L.D. 734)
(C. "A" H-565)

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

On motion of Representative GLYNN of South Portland, was **SET ASIDE**.

The same Representative **REQUESTED** a roll call on **PASSAGE TO BE ENACTED**.

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

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

ROLL CALL NO. 267

YEA - Ash, Baker, Belanger, Berry RL, Blanchette, Bliss, Bouffard, Bowles, Brannigan, Brooks, Bryant, Buck, Bunker, Canavan, Chick, Chizmar, Clark, Clough, Collins, Colwell, Cowger, Crabtree, Cummings, Daigle, Davis, Dorr, Dudley, Duncan, Dunlap, Duplessie, Estes, Etnier, Foster, Gagne, Gerzofsky, Goodwin, Green, Hall, Hatch, Hawes, Honey, Hutton, Jacobs, Jones, Kane, Koffman, Landry, LaVerdiere, Laverriere-Boucher, Ledwin, Lemoine, Lessard, Lundeen, MacDougall, Madore, Mailhot, Marley, Marrache, Mayo, McDonough, McGowan, McKee, McKenney, McLaughlin, McNeil, Michaud, Mitchell, Murphy E, Murphy T, Muse K, Nass, Norbert, Norton, Nutting, O'Brien JA, O'Brien LL, O'Neil, Paradis, Patrick, Perkins, Pineau, Povich, Rines, Savage, Schneider, Simpson, Skoglund, Smith, Snowe-Mello, Stanley, Sullivan, Tarazewich, Tessier, Thomas, Tracy, Trahan, Tuttle, Twomey, Usher, Volenik, Waterhouse, Watson, Weston, Wheeler EM, Wheeler GJ, Winsor, Young, Mr. Speaker.

NAY - Annis, Berry DP, Bruno, Bull, Carr, Chase, Cressey, Duprey, Glynn, Gooley, Heidrich, Jodrey, Kasprzak, Labrecque, McGlocklin, Morrison, Peavey, Pinkham, Rosen, Sherman, Shields, Tobin D, Tobin J, Treadwell.

ABSENT - Andrews, Bagley, Bumps, Cote, Desmond, Dugay, Fisher, Fuller, Haskell, Lovett, Matthews, Mendros, Michael, Muse C, Perry, Quint, Richard, Richardson, Stedman.

Yes, 108; No, 24; Absent, 19; Excused, 0.

108 having voted in the affirmative and 24 voted in the negative, with 19 being absent, and accordingly the Bill was **PASSED TO BE ENACTED**, signed by the Speaker and sent to the Senate.

An Act to Require the Destruction of Certain Confiscated and Forfeited Handguns

(S.P. 209) (L.D. 774)

(C. "A" S-96; H. "A" H-486 to S. "A" S-149)

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

On motion of Representative KASPRZAK of Newport, was **SET ASIDE**.

The same Representative **REQUESTED** a roll call on **PASSAGE TO BE ENACTED**.

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

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

Representative **MURPHY**: Mr. Speaker, Men and Women of the House. This was an amended bill that we had very strong support for last week. It was a narrowly drawn compromise in support of the survivors. We heard speeches on the part of many members last week that they could come to this very small common ground. Over the last few weeks we had met a mother and if I can relay how important this is to the survivors, her son was murdered five years and one month ago. The family is still facing probably another year or year and a half before this runs its full course through the courts. That means a six to seven year period for that family. If we enact this amended version, they won't have to worry about that gun. They won't have to worry about going to the court with a court order that would allow

the families, this very small group of families, to have closure. I would urge your support for this bill today.

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

ROLL CALL NO. 268

YEA - Annis, Ash, Baker, Berry DP, Berry RL, Blanchette, Bliss, Bouffard, Bowles, Brannigan, Bruno, Bull, Canavan, Chick, Chizmar, Collins, Colwell, Cowger, Crabtree, Cummings, Daigle, Davis, Dorr, Dudley, Duplessie, Duprey, Estes, Etnier, Fisher, Fuller, Gagne, Gerzofsky, Gooley, Green, Hall, Heidrich, Hutton, Jacobs, Jones, Kane, Koffman, LaVerdiere, Laverriere-Boucher, Ledwin, Lemoine, Lessard, Madore, Mailhot, Marley, Marrache, Matthews, Mayo, McDonough, McKee, McKenney, McLaughlin, McNeil, Mitchell, Murphy E, Murphy T, Nass, Norbert, Norton, O'Brien JA, O'Brien LL, O'Neil, Paradis, Peavey, Rines, Simpson, Smith, Sullivan, Tarazewich, Tessier, Thomas, Trahan, Twomey, Usher, Volenik, Watson, Weston, Wheeler EM, Winsor, Mr. Speaker.

NAY - Belanger, Brooks, Bryant, Buck, Carr, Chase, Clark, Clough, Cressey, Duncan, Dunlap, Foster, Glynn, Goodwin, Hatch, Hawes, Honey, Jodrey, Kasprzak, Labrecque, Landry, Lundeen, MacDougall, McGlocklin, McGowan, Michael, Michaud, Morrison, Muse K, Nutting, Patrick, Perkins, Pineau, Pinkham, Povich, Rosen, Savage, Schneider, Sherman, Shields, Skoglund, Snowe-Mello, Stanley, Tobin D, Tobin J, Tracy, Treadwell, Tuttle, Waterhouse, Wheeler GJ, Young.

ABSENT - Andrews, Bagley, Bumps, Bunker, Cote, Desmond, Dugay, Haskell, Lovett, Mendros, Muse C, Perry, Quint, Richard, Richardson, Stedman.

Yes, 84; No, 51; Absent, 16; Excused, 0.

84 having voted in the affirmative and 51 voted in the negative, with 16 being absent, and accordingly the Bill was **PASSED TO BE ENACTED**, signed by the Speaker and sent to the Senate.

An Act to Classify Employer-provided Medical Treatment as a Payment under the Maine Workers' Compensation Act of 1992

(H.P. 644) (L.D. 844)

(C. "A" H-244)

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

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

The same Representative **REQUESTED** a roll call on **PASSAGE TO BE ENACTED**.

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

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

ROLL CALL NO. 269

YEA - Ash, Baker, Berry RL, Blanchette, Bliss, Bouffard, Brannigan, Brooks, Bryant, Bull, Canavan, Chick, Chizmar, Clark, Colwell, Cowger, Cummings, Dorr, Dudley, Dunlap, Duplessie, Estes, Etnier, Fisher, Fuller, Gagne, Gerzofsky, Goodwin, Green, Hall, Hatch, Hawes, Hutton, Jacobs, Jones, Kane, Koffman, LaVerdiere, Laverriere-Boucher, Lemoine, Lessard, Lundeen, Mailhot, Marley, Marrache, Matthews, McDonough, McGlocklin, McKee, McLaughlin, Michaud, Mitchell, Murphy E, Norbert, Norton, O'Brien LL, O'Neil, Paradis, Patrick, Perkins, Pineau, Povich, Rines, Savage, Sherman, Simpson, Skoglund, Smith, Stanley, Sullivan, Tarazewich, Tessier,

Thomas, Tracy, Tuttle, Twomey, Usher, Volenik, Watson, Weston, Wheeler GJ, Mr. Speaker.

NAY - Annis, Belanger, Berry DP, Bowles, Bruno, Buck, Carr, Chase, Clough, Collins, Crabtree, Cressey, Daigle, Davis, Dugay, Duncan, Duprey, Foster, Glynn, Gooley, Heidrich, Honey, Jodrey, Kasprzak, Labrecque, Landry, Ledwin, MacDougall, Madore, Mayo, McGowan, McKenney, McNeil, Morrison, Murphy T, Muse K, Nass, Nutting, O'Brien JA, Peavey, Pinkham, Rosen, Schneider, Shields, Snowe-Mello, Tobin D, Tobin J, Trahan, Treadwell, Waterhouse, Wheeler EM, Winsor, Young.

ABSENT - Andrews, Bagley, Bumps, Bunker, Cote, Desmond, Haskell, Lovett, Mendros, Michael, Muse C, Perry, Quint, Richard, Richardson, Stedman.

Yes, 82; No, 53; Absent, 16; Excused, 0.

82 having voted in the affirmative and 53 voted in the negative, with 16 being absent, and accordingly the Bill was **PASSED TO BE ENACTED**, signed by the Speaker and sent to the Senate.

An Act to Regulate Push Polling

(S.P. 308) (L.D. 1055)
(H. "D" H-545)

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

On motion of Representative TUTTLE of Sanford, was **SET ASIDE**.

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

An Act to Alleviate the Shortage of Pediatric Dentists in Maine

(H.P. 902) (L.D. 1194)
(C. "A" H-579)

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

On motion of Representative COLWELL of Gardiner, was **SET ASIDE**.

The same Representative **REQUESTED** a roll call on **PASSAGE TO BE ENACTED**.

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

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

ROLL CALL NO. 270

YEA - Annis, Ash, Baker, Belanger, Berry DP, Berry RL, Blanchette, Bliss, Bouffard, Bowles, Brannigan, Brooks, Bruno, Bryant, Buck, Bull, Canavan, Carr, Chase, Chick, Chizmar, Clark, Clough, Collins, Colwell, Cowger, Crabtree, Cressey, Cummings, Daigle, Davis, Dorr, Dudley, Dugay, Duncan, Dunlap, Duplessie, Duprey, Estes, Etnier, Fisher, Foster, Fuller, Gagne, Gerzofsky, Glynn, Goodwin, Gooley, Green, Hall, Hatch, Hawes, Heidrich, Honey, Hutton, Jacobs, Jodrey, Jones, Kane, Koffman, Landry, LaVerdiere, Laverriere-Boucher, Ledwin, Lemoine, Lessard, Lundeen, MacDougall, Madore, Mailhot, Marley, Marrache, Matthews, Mayo, McDonough, McGlocklin, McGowan, McKee, McKenney, McLaughlin, McNeil, Michael, Michaud, Mitchell, Morrison, Murphy E, Murphy T, Muse K, Nass, Norbert, Norton, Nutting, O'Brien JA, O'Brien LL, O'Neil, Paradis, Patrick, Peavey, Perkins, Pineau, Pinkham, Povich, Rines, Rosen, Savage, Schneider, Sherman, Shields, Simpson, Skoglund, Smith, Snowe-Mello, Stanley, Sullivan, Tarazewich, Tessier, Thomas, Tobin D, Tobin J, Tracy, Trahan, Treadwell, Tuttle, Twomey,

Usher, Volenik, Watson, Weston, Wheeler EM, Wheeler GJ, Winsor, Young, Mr. Speaker.

NAY - Kasprzak, Labrecque, Waterhouse.

ABSENT - Andrews, Bagley, Bumps, Bunker, Cote, Desmond, Haskell, Lovett, Mendros, Muse C, Perry, Quint, Richard, Richardson, Stedman.

Yes, 133; No, 3; Absent, 15; Excused, 0.

133 having voted in the affirmative and 3 voted in the negative, with 15 being absent, and accordingly the Bill was **PASSED TO BE ENACTED**, signed by the Speaker and sent to the Senate.

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

UNFINISHED BUSINESS

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

An Act to Revise Certain Provisions of Maine's Fish and Wildlife Laws (EMERGENCY)

(S.P. 546) (L.D. 1692)
(C. "A" S-187)

TABLED - May 21, 2001 (Till Later Today) by Representative DUNLAP of Old Town.

PENDING - PASSAGE TO BE ENACTED.

On motion of Representative DUNLAP of Old Town, the rules were **SUSPENDED** for the purpose of **RECONSIDERATION**.

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

The same Representative **PRESENTED House Amendment "A" (H-611)** which was **READ** by the Clerk.

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

Representative **DUNLAP**: Mr. Speaker, Men and Women of the House. This is a housekeeping amendment to clarify some inconsistencies in our fish and wildlife statutes clarifying that members of the White Water Guide Board serve staggered terms. Certain violations are, in fact, civil violations as intended by the committee, not criminal violations and also that a snowmobile franchise law comes under Title 10 and not Title 12. If there are any specific questions, I would be happy to entertain them from the body.

House Amendment "A" (H-611) was **ADOPTED**.

The Bill was **PASSED TO BE ENGROSSED as Amended by Committee Amendment "A" (S-187)** and **House Amendment "A" (H-611)** in **NON-CONCURRENCE** and sent for concurrence.

Bill "An Act to Repeal the Presidential Preference Primary Elections"

(H.P. 960) (L.D. 1273)

TABLED - May 24, 2001 (Till Later Today) by Representative BROOKS of Winterport.

PENDING - PASSAGE TO BE ENGROSSED.

Subsequently, the Bill was **PASSED TO BE ENGROSSED** and sent for concurrence.

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

HOUSE DIVIDED REPORT – Majority (9) **Ought to Pass as Amended by Committee Amendment "A" (H-605)** – Minority (4) **Ought Not to Pass** – Committee on **JUDICIARY** on Bill "An Act to Exclude Credit Balances Between Business Associations from Unclaimed Property"

(H.P. 1088) (L.D. 1457)

TABLED – May 25, 2001 (Till Later Today) by Representative LaVERDIERE of Wilton.

PENDING – Motion of same Representative to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report.

Subsequently, the Majority **Ought to Pass as Amended** Report was **ACCEPTED**.

The Bill was **READ ONCE**. **Committee Amendment "A" (H-605)** was **READ** by the Clerk and **ADOPTED**.

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

Under further suspension of the rules the Bill was **PASSED TO BE ENGROSSED as Amended by Committee Amendment "A" (H-605)** and sent for concurrence.

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

The House recessed until the Sound of the Bell.

(After Recess)

The House was called to order by the Speaker.

UNFINISHED BUSINESS

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

An Act to Provide Funding for the Office of the State Fire Marshal and to Increase Certain Fire Inspection Fees (EMERGENCY)

(S.P. 418) (L.D. 1362)

(C. "A" S-241)

TABLED – May 24, 2001 (Till Later Today) by Representative COLWELL of Gardiner.

PENDING – **PASSAGE TO BE ENACTED**. (Roll Call Ordered)

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

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

ROLL CALL NO. 271

YEA - Annis, Ash, Baker, Berry DP, Berry RL, Blanchette, Bliss, Bouffard, Bowles, Brannigan, Brooks, Bruno, Bryant, Buck, Bull, Bunker, Canavan, Chase, Chizmar, Clark, Collins, Colwell, Cote, Cowger, Cummings, Daigle, Davis, Dudley, Dugay, Duncan, Dunlap, Duplessie, Estes, Etnier, Fisher, Fuller, Gagne, Gerzofsky, Green, Hall, Hatch, Hawes, Heidrich, Hutton, Jacobs, Jodrey, Jones, Kane, Koffman, Landry, LaVerdiere, Laverriere-

Boucher, Lemoine, Lessard, Lundeen, Madore, Mailhot, Marley, Marrache, Matthews, Mayo, McDonough, McGlocklin, McGowan, McKee, McLaughlin, Michaud, Morrison, Murphy E, Muse K, Norbert, Norton, O'Brien LL, O'Neil, Paradis, Patrick, Peavey, Perry, Pineau, Povich, Richard, Richardson, Rines, Savage, Schneider, Shields, Simpson, Skoglund, Smith, Stanley, Tarazewich, Tessier, Tobin D, Tracy, Tuttle, Twomey, Usher, Volenik, Watson, Wheeler GJ, Young, Mr. Speaker.

NAY - Andrews, Belanger, Chick, Clough, Crabtree, Cressey, Duprey, Foster, Glynn, Gooley, Honey, Kasprzak, Labrecque, Ledwin, MacDougall, McKenney, Mendros, Michael, Murphy T, Nass, Nutting, Pinkham, Rosen, Snowe-Mello, Tobin J, Trahan, Treadwell, Waterhouse, Weston, Wheeler EM, Winsor.

ABSENT - Bagley, Bumps, Carr, Desmond, Dorr, Goodwin, Haskell, Lovett, McNeil, Mitchell, Muse C, O'Brien JA, Perkins, Quint, Sherman, Stedman, Sullivan, Thomas.

Yes, 102; No, 31; Absent, 18; Excused, 0.

102 having voted in the affirmative and 31 voted in the negative, with 18 being absent, and accordingly the Bill was **PASSED TO BE ENACTED**, signed by the Speaker and sent to the Senate.

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

REPORTS OF COMMITTEE Divided Report

Majority Report of the Committee on **LABOR** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-616)** on Bill "An Act to Ensure that the Annual Inflation Adjustment for Partial Compensation for Injuries occurring Prior to November 20, 1987 is Fully Recognized and Paid"

(H.P. 723) (L.D. 943)

Signed:

Senator:

EDMONDS of Cumberland

Representatives:

BUNKER of Kossuth Township

MATTHEWS of Winslow

HUTTON of Bowdoinham

NORTON of Bangor

SMITH of Van Buren

TARAZEWICH of Waterboro

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

Signed:

Senators:

TURNER of Cumberland

SAWYER of Penobscot

Representatives:

TREADWELL of Carmel

CRESSEY of Baldwin

DAVIS of Falmouth

MacDOUGALL of North Berwick

READ.

Representative BUNKER of Kossuth Township moved that the House **ACCEPT** the Majority **Ought to Pass as Amended** Report.

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

Representative **TREADWELL**: Mr. Speaker, Ladies and Gentlemen of the House. This bill has a pretty significant impact on the cost to the comp system to the overall comp community. I have heard stories from several of the insurers. One of them mentioned that there were 14 employees that would be affected

by this bill and the cost is somewhere in the neighborhood of \$4 million to pay for those costs. I think that the thing that we are doing here is trying to overturn a law court decision, whether we like it or not. I think the fact that we are trying to do that is going to hurt the comp system. I know we are going to hear discussion about the fact that those funds were already paid at the times the premiums were paid, but that is not a fact. Those monies have never been collected. They will be collected if this bill passes. I would also question whether or not this is a mandate. It will apply to all municipalities. It will affect their comp, the people who were injured prior to 1987, and I would ask for a ruling of whether or not this is a mandate.

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

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

The same Representative asked the Chair to **RULE** if this Bill was a Mandate.

The **SPEAKER**: The chair would answer to the Representative from Carmel, Representative Treadwell's question, after referring to Article 9, Section 21 of the Maine Constitution regarding state mandates, I find that this legislation after reviewing also this legislation, I find this legislation is not, in fact, a state mandate.

Subsequently, the Chair **RULED** that the Bill was not a Mandate.

The **SPEAKER**: The Chair recognizes the Representative from Waterboro, Representative Tarazewich.

Representative **TARAZEWICH**: Mr. Speaker, Men and Women of the House. LD 943 is, An Act to Ensure that Cost-of-Living Adjustments are Provided for Injuries which Occurred Prior to November 20, 1987. This legislation is necessary to correct a decision made in January 2001 that a Maine Supreme Court in a case called Bernard versus Mead Paper Company. In that case the court changed the way cost-of-living adjustments for employees receiving partial compensation are calculated. The change amounts to a very dramatic reduction for many employees and an elimination of any benefits for others. What LD 943 does is make clear that the cost-of-living adjustment must be taken into account and the initial determination of entitlement to partial disability benefits by adjusting the old average weekly wage up to current dollars so that an accurate comparison can be made between earning capacity now and earning capacity at the time of injury, otherwise the simple fact that wages have gone up due to inflation would make it appear as though an injured worker is losing no money or very little money when in reality because of the changed value of the dollar, the employee is losing a great deal of money.

This bill requires that the average weekly range at the time of the injury be adjusted to account for the inflation factors in the interim before the calculation of benefits due is made. This is the way things have always been done under the Workers' Compensation System in interpreting this provision, through the use of the Arnold Formula, until the law court decision was rendered in January 2001. This legislation corrects the error made by the law court and requires the accurate and proper calculation of cost-of-living adjustments for partial compensation benefits for injuries which occurred prior to November 20, 1987.

The majority of the court in Bernard challenged the Legislature to fix the language. The minority said you didn't need to, but you do now that the majority has ruled. It is critical that the Legislature act to protect the hundreds and thousands of Maine workers who thought that the 1987 and the 1991 and the 1992 laws were, as the Legislature promised, not going to be

retroactively applied to reduce their benefits. Now we get a decision in 2001, which does retroactively affect their benefits by misinterpreting the law of 1987. The Legislature must clarify this and keep faith with the people of Maine. Thank you.

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

Representative **MACDOUGALL**: Mr. Speaker, Ladies and Gentlemen of the House. In terms of the Workers' Comp System one must remember that the benefits are determined by the law in place at the time of injury, in other words, you have to be governed by the law in effect at the time of that injury. This particular bill, if it were to pass, changes all that.

There is an assessment in the workers' comp premium that employers pay. It is about 6.2 percent in their premiums that pay for this. The pre-1987 claims are not in that 6.2 percent, which means there will be a major increase to the workers' comp premium to our employers in the State of Maine. The settlement expectations in the years 1983 to 1987 was set by the Bureau of Insurance and those rates were woefully inadequate. At that time, ladies and gentlemen, you may remember that insurance companies were fleeing the State of Maine. What this bill is attempting to do is not currently in the funding mechanism. This bill is really a back door benefit increase. It will impact employers of the State of Maine, which, in turn, will impact their cost of business, which will impact their ability to compete, pay wages and benefits for Maine working families. I urge you vote against the current motion. Thank you.

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

Representative **MATTHEWS**: Mr. Speaker, Men and Women of the House. It is interesting when we get into the debate of workers' compensation that some of the old rallying cries don't get mentioned. It is interesting. We have a bill before us, which basically through Legislative Action corrects; I think, an injustice done by the court in a 4 to 3 decision taking away a benefit that individuals since 1987 have been getting on partial impairment. It is really putting in effect, in my estimation, the status quo of bringing it back. We heard for years, don't fix the system. The chamber, business and industry, everybody, the rallying cry for years was don't tinker with it. Don't fix it. This particular law attempts to do exactly that. Let's get back to the decision that we, as a Legislature, made, not to undermine, which the court has done. Any time we attempt to stand up for injured workers here, there is always a battle. I was here in 1987 and I was here in 1992 and I remember those debates. I have to mention that I was in another body in 1992, but over on the other end I remember the discussion about draconian measures. Some of us, as Democrats, felt at that time that the workers' comp reforms were draconian. They really hurt the weakest among us, the injured workers. Through that debate in 1992 and 1987, there was a commitment by the Legislature not to tinker with pre-1987 cases. These folks will continue to get their cost of living. We will look at their wage level. We are not attempting to change these cases. It is the Legislature that legislates, not the court.

There are times that the Legislature has to bring the court back to its bearings. This is one of them. I believe it has judicially strayed from its calling. We have every authority and right to do that. I would remind you that the minority of the court is begging the Legislature to step into the arena and clarify this language, which we have done with this bill.

If you look at the Title 39A, you will see that existing '87 cases were not supposed to be changed when comp was reformed. I am not going to read it to you, but when you have a moment take a look at the statute. Many people that are getting

their compensation that are pre-'87 cases found their lives radically changed by the law court in January.

I think this issue should be bipartisan. Let's stay with the law that we had and let's be fair to these folks that have been already injured and hurt. Do we have, as a system, to now inflict greater injury? There was an agreement, ladies and gentlemen, of the Legislature and the Executive not to do this. Let's bring it back to where we were. Thank you Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Van Buren, Representative Smith.

Representative **SMITH**: Mr. Speaker, Ladies and Gentlemen of the House. This bill does apply only to injuries that occurred before November 1987. What this bill does do is reinstate the method of calculating cost-of-living adjustments that was in effect from the 1980s right up until January of this year. The effect the bill will have is to continue to employee's benefits on the same kind of compensation they had previously and according to the same way premiums were calculated for the employers. We are, however, eliminating what became a windfall to employers. The windfall should not be allowed at the expense of the people in the state who rely on benefits the way they were first given to them and the way they have continued throughout the years. One thing to keep in mind is that if this bill does not pass, if the law court decision is not reversed by us, there is going to be a flood of case litigation before the Workers' Compensation Board. Every insurance company is going to bring these old cases back again looking to recompute the amount of benefits and cut off these employees. They are sitting there hoping that we don't do anything so that they can cut off a lot employees. That is what this is all about. We are looking to protect existing employees with existing benefits to keep it the way it has always been. This bill should be passed. Thank you.

The SPEAKER: The Chair recognizes the Representative from Kossuth Township, Representative Bunker.

Representative **BUNKER**: Mr. Speaker, Men and Women of the House. You have heard pretty good accounts of what this bill does. You have a yellow sheet on your desks here and I take exception to quite a few of the bullets on that. I do have to stand to rebut some of that. What is really important is the first bullet basically says that this is the way it has always been, the law has always been ruled on in this way and that is not really accurate. What this bullet is trying to say is that in 2001 the law court has decided that for the last 13 or 14 years the formula in computation that was used and agreed on by all parties is suddenly not the way everybody understood it. That first bullet is really misleading. It basically goes on to say that this is a back door benefit increase. Ladies and gentlemen, this is a 2001 Supreme Court decision. These people have been receiving benefits since 1987 and now suddenly somebody is going to go back and take all those benefits away prospectively from now on. Can you imagine, ladies and gentlemen, your father, your grandfather, your neighbor, the airplane pilot that is on a comp case from 1987, he or she goes home and now has got to work at McDonalds for \$5 an hour, but they give them a little bit of difference between their current ability to work and what they used to earn so their family can continue to live and have a living wage. They are now going to go back and say whatever wage you got in 1987, we are just going to say that if you make \$400 a week now, it is the same as \$400 a week that it was 15 or 20 years ago. Give me a break. It just isn't fair. The cost-of-living increases were part of the law back then. They were interpreted by all parties and it was only the Supreme Court in a very narrow decision that overturned this. It is not a back door benefit. It is benefit that has continued on right through the present until, as the good Representative Smith indicated, the flood of hearings are going to come into the comp system.

The Labor Committee, Ladies and gentlemen, has taken a lot of time to make sure that we add no additional costs onto the comp system. I know you have some scary titles coming up in front of you in the next few days. I want you to be assured that this committee has taken the controversial things out and tried to move forward in owning up to our promises. Our promise has always been when we tinkered with the comp system, we would not go back and try to take benefits away from the people prior to that change. This is an honor thing. This is a Legislature that should live up to its promises and that is what the good Representative Matthews was speaking about.

I have a comment on that one employer that said they had 14 people. That is IP, folks. That is our friends out there that are shutting down the mills. That is our friends that put people out on strikes and then rehire people from out of state. These are the people that came in front and said this may cost us \$2 million for these 14 employees from 13 years ago that they haven't settled on. These are legitimate claims and legitimate injuries that they haven't settled on for over 14 years and now because of a law court decision that they are going to go back and take all of their benefits away from now on. Can you imagine? It is just not fair. I think the Legislature has to own up to its promises and I would ask you to vote in favor of the Ought to Pass report. Thank you.

The SPEAKER: The Chair recognizes the Representative from Caribou, Representative Belanger.

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

The SPEAKER: The Representative may pose his question.

Representative **BELANGER**: Mr. Speaker, Men and Women of the House. Will passage of this LD result in an increase in the cost of insurance for municipalities that are self-insured from what they might otherwise be without passage of this bill?

The SPEAKER: The Representative from Caribou, Representative Belanger has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Kossuth Township, Representative Bunker.

Representative **BUNKER**: Mr. Speaker, Men and Women of the House. The best answer I can give you is that as of January of this year every municipality, every business, every IP outfit out there was geared up and had projected these costs that they have been paying for the 13 years well into the future. This is nothing new to them. The law court is a sudden change, which would allow them to have a windfall in the other direction. Additional costs, I wouldn't say that this is going to cause additional costs. It is going to maintain the status quo that has been that way for the last 13 or 14 years.

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

Representative **MACDOUGALL**: Mr. Speaker, Ladies and Gentlemen of the House. I think there is some disagreement on some of the statements that have just been made. If you look at the summary in the amendment, currently the Workers' Compensation Board audits the insurers to ensure compliance in requiring that annual adjustment of benefits for injuries prior to November 1987. The Workers' Compensation Board is comprised of four management and four labor representatives, by the way. What this amendment does is it changes that in regard to the computation of the cost-of-living adjusts for the partial incapacity benefits for injuries prior. There is a change and it overturns the decision that the court came up with. In terms of the good Representative Belanger's question, I would submit that there will be some cost increases. Thank you.

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

Representative TREADWELL: Mr. Speaker, Ladies and Gentlemen of the House. I would just like to make a couple of quick points, not to extend the debate any more than we have to. This case did not arrive at the state Supreme Court on its own. It was the result of an appeal from the people who were paying these additional cost-of-living costs to the injured employees. It took a considerable amount of time for that case to work its way through the Supreme Court. It didn't just happen on its own. It happened because people were protesting the decisions of the hearing officers, which the people who are on the Comp Board, the hearing officers, were inappropriately interpreting the law. That is why we got that decision from the Supreme Court and that is why it appeared there to begin with.

I would like to remind everybody in the House of one other thing. Comp costs went down from 1993 until about two years ago. They have started to go back up again now and they will be going up at an ever increasing rate if we continue passing this legislation through this body.

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

Representative RICHARDSON: Mr. Speaker, Men and Women of the House. I have read the decision upon which the Maine law court decided this case. It is very interesting what the dissent says. It says it respectfully dissents. So do I with respect to the comments that have been made by the other side of the aisle. It says, "The court considers itself a prisoner of a prior decision." It produces a decision that makes no sense. Those are from two very esteemed colleagues of the Maine law court. Hardly liberal would I would call Justice Dana.

I think Maine business has broken its promise to Maine people. I recall, just as the good Representative from Winslow, the promise of business to not affect pre-1987 injuries. They said that they would take care of those people and we would never do anything to take benefits away from them. Fourteen years later, I guess they forgot the promise. To me, it is a breach of that promise that requires me to accept the Majority Ought to Pass Report.

My feeling is that in 1993 workers' compensation costs were, in fact, leveled off. That is a good thing for Maine people. It was a good thing for Maine businesses, but how can we expect that those numbers will remain constant? All of us know that we have inflation. Workers' compensation is no different. As I see the calculations here, we have someone who is receiving \$510 is now going to receive \$310. If you, ladies and gentlemen of this body, were earning \$500 a week and had \$200 stripped from you, could you live? Could you meet your obligations?

When we go to vote on this, let's balance the interest of business and of those people who are going to lose \$200 a week. I know what side I am going with. It is the Maine people who lose \$200 a week in benefits because business wants to save a dime. I am all for business and I am all for business saving money, but not on the backs of employees and not on the backs of injured employees. Thank you very much.

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

ROLL CALL NO. 272

YEA - Ash, Baker, Berry RL, Blanchette, Bliss, Bouffard, Brannigan, Brooks, Bryant, Bull, Bunker, Canavan, Chizmar, Clark, Colwell, Cote, Cowger, Cummings, Dorr, Dudley, Dunlap, Duplessie, Estes, Etnier, Fisher, Fuller, Gagne, Gerzofsky, Goodwin, Green, Hall, Hatch, Hawes, Hutton, Jacobs, Jones,

Kane, Koffman, LaVerdiere, Laverriere-Boucher, Lemoine, Lessard, Mailhot, Marley, Marrache, Matthews, McDonough, McGlocklin, McKee, McLaughlin, Michael, Michaud, Mitchell, Muse C, Norbert, Norton, O'Brien LL, O'Neil, Paradis, Patrick, Perry, Pineau, Povich, Quint, Richard, Richardson, Rines, Savage, Simpson, Skoglund, Smith, Stanley, Tarazewich, Tessier, Thomas, Tracy, Tuttle, Twomey, Usher, Volenik, Watson, Wheeler GJ, Mr. Speaker.

NAY - Andrews, Annis, Belanger, Bowles, Bruno, Buck, Carr, Chase, Clough, Collins, Crabtree, Cressey, Daigle, Davis, Duncan, Duprey, Foster, Glynn, Gooley, Heidrich, Honey, Jodrey, Kasprzak, Labrecque, Landry, Ledwin, Lundeen, MacDougall, Madore, Mayo, McKenney, McNeil, Mendros, Morrison, Murphy E, Murphy T, Muse K, Nass, Nutting, Peavey, Perkins, Pinkham, Rosen, Schneider, Sherman, Shields, Snowe-Mello, Tobin D, Tobin J, Trahan, Treadwell, Waterhouse, Weston, Wheeler EM, Winsor, Young.

ABSENT - Bagley, Berry DP, Bumps, Chick, Desmond, Dugay, Haskell, Lovett, McGowan, O'Brien JA, Stedman, Sullivan.

Yes, 83; No, 56; Absent, 12; Excused, 0.

83 having voted in the affirmative and 56 voted in the negative, with 12 being absent, and accordingly the Majority Ought to Pass as Amended Report was **ACCEPTED**.

The Bill was **READ ONCE**. **Committee Amendment "A" (H-616)** was **READ** by the Clerk and **ADOPTED**.

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

Under further suspension of the rules the Bill was **PASSED TO BE ENGROSSED as Amended by Committee Amendment "A" (H-616)** and sent for concurrence.

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

Committee of Conference

Report of the Committee of Conference on the disagreeing action of the two branches of the Legislature on Bill "An Act to Legalize Hemp for Agricultural Purposes"

(H.P. 882) (L.D. 1174)

has had the same under consideration, and asks leave to report:

That they are **UNABLE TO AGREE**.

Signed:

Representatives:

BULL of Freeport
HAWES of Standish
CHICK of Lebanon

Senators:

KNEELAND of Aroostook
NUTTING of Androscoggin
KILKELLY of Lincoln

The Committee of Conference Report was **READ** and **ACCEPTED** and sent for concurrence.

Divided Report

Majority Report of the Committee on **LABOR** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-619)** on Bill "An Act to Improve Pension Benefits for Employees in the Department of Environmental Protection, Division of Oil and Hazardous Waste Facilities Regulation"

(H.P. 1166) (L.D. 1566)

Signed:

Senators:

EDMONDS of Cumberland
TURNER of Cumberland
SAWYER of Penobscot

Representatives:

BUNKER of Kossuth Township
MATTHEWS of Winslow
DAVIS of Falmouth
HUTTON of Bowdoinham
NORTON of Bangor
TARAZEWICH of Waterboro

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

Signed:

Representatives:

TREADWELL of Carmel
CRESSEY of Baldwin
MacDOUGALL of North Berwick

READ.

Representative BUNKER of Kossuth Township moved that the House **ACCEPT** the Majority **Ought to Pass as Amended** Report.

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

Representative **TREADWELL**: Mr. Speaker, Ladies and Gentlemen of the House. Very briefly, the reason I am opposed to this bill is because it was the only time that I am aware of that a group of employees in state government came to the Labor Committee and asked for a special retirement plan and told us at that time that they could fund it from a fund that was held within the Department of Environmental Protection. I think this is a very bad precedent for a group of employees of the state to fund their own retirement from the monies that are collected from surcharges and taxes on goods that are imported into the State of Maine. Therefore, I would urge that you reject the motion and to on to pass the Ought Not to Pass report.

The Chair ordered a division on the motion to **ACCEPT** the Majority **Ought to Pass as Amended** Report.

Representative MacDOUGALL of North Berwick **REQUESTED** a roll call on the motion to **ACCEPT** the Majority **Ought to Pass as Amended** Report.

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

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

Representative **DUPLESSIE**: Mr. Speaker, Ladies and Gentlemen of the House. I encourage you to vote for the Majority Ought to Pass Report. As you just heard from the Representative from Carmel, Representative Treadwell, the employees did come and testify on this bill, but the funding mechanism is something that I looked at long before this bill was put in. The industry where the funds will come out of is in agreement with this. The industry does not have a problem with the funding of this additional retirement for them. This is a group of employees that is under the DEP, Hazardous Materials Response Division. It is a very small group of employees. I encourage you to vote for the Majority Ought to Pass Report. Thank you.

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

Representative **MACDOUGALL**: Mr. Speaker, Ladies and Gentlemen of the House. In lieu of what the good gentleman just said, it is my understanding from the public hearing that the

Maine Petroleum Association was opposed to this bill, chiefly because of the funding mechanism. Thank you.

The SPEAKER: The Chair recognizes the Representative from Sanford, Representative Tuttle.

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

The SPEAKER: The Representative may pose his question.

Representative **TUTTLE**: Mr. Speaker, Ladies and Gentlemen of the House. My question is, what benefits would the employees get under this bill that they are not getting already?

The SPEAKER: The Representative from Sanford, Representative Tuttle has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Westbrook, Representative Duplessie.

Representative **DUPLESSIE**: Mr. Speaker, Ladies and Gentlemen of the House. This would change the current pension plan from a minimum of 25 years and age 62 to 25 years and 55.

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

ROLL CALL NO. 273

YEA - Annis, Ash, Baker, Berry RL, Blanchette, Bliss, Bouffard, Brannigan, Brooks, Bryant, Bull, Bunker, Canavan, Carr, Chick, Chizmar, Colwell, Cote, Cowger, Cummings, Daigle, Davis, Dorr, Dudley, Dunlap, Duplessie, Estes, Etnier, Fisher, Fuller, Gerzofsky, Green, Hall, Hatch, Honey, Hutton, Jacobs, Jones, Kane, Koffman, Landry, LaVerdiere, Laverriere-Boucher, Lemoine, Lessard, Lundeen, Marley, Marrache, Matthews, Mayo, McDonough, McGlocklin, McKee, McLaughlin, Michaud, Mitchell, Muse C, Norbert, Norton, O'Brien LL, O'Neil, Paradis, Patrick, Perry, Pineau, Povich, Richard, Richardson, Rines, Savage, Simpson, Skoglund, Smith, Stanley, Tarazewich, Thomas, Tracy, Twomey, Usher, Volenik, Mr. Speaker.

NAY - Andrews, Belanger, Bowles, Bruno, Buck, Chase, Clark, Clough, Collins, Crabtree, Cressey, Duncan, Duprey, Foster, Gagne, Glynn, Goodwin, Gooley, Hawes, Heidrich, Jodrey, Kasprzak, Labrecque, Ledwin, MacDougall, Madore, Mailhot, McKenney, McNeil, Mendros, Michael, Morrison, Murphy E, Murphy T, Muse K, Nass, Nutting, Peavey, Perkins, Pinkham, Rosen, Schneider, Shields, Snowe-Mello, Tessier, Tobin D, Tobin J, Trahan, Treadwell, Tuttle, Waterhouse, Weston, Wheeler EM, Wheeler GJ, Winsor, Young.

ABSENT - Bagley, Berry DP, Bumps, Desmond, Dugay, Haskell, Lovett, McGowan, O'Brien JA, Quint, Sherman, Stedman, Sullivan, Watson.

Yes, 81; No, 56; Absent, 14; Excused, 0.

81 having voted in the affirmative and 56 voted in the negative, with 14 being absent, and accordingly the Majority **Ought to Pass as Amended** Report was **ACCEPTED**.

The Bill was **READ ONCE**. **Committee Amendment "A" (H-619)** was **READ** by the Clerk and **ADOPTED**.

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

Under further suspension of the rules the Bill was **PASSED TO BE ENGROSSED as Amended by Committee Amendment "A" (H-619)** and sent for concurrence.

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

Divided Report

Majority Report of the Committee on **CRIMINAL JUSTICE** reporting **Ought Not to Pass** on Joint Study Order - The Joint Select Committee to Find a Sustainable Source of Funding for Gun Safety Classes

(H.P. 1245)

Signed:

Senator:

O'GARA of Cumberland

Representatives:

POVICH of Ellsworth

O'BRIEN of Lewiston

BLANCHETTE of Bangor

TOBIN of Dexter

PEAVEY of Woolwich

SNOWE-MELLO of Poland

GERZOFISKY of Brunswick

MITCHELL of Vassalboro

WHEELER of Bridgewater

Minority Report of the same Committee reporting **Ought to Pass** on same Bill.

Signed:

Representative:

QUINT of Portland

READ.

On motion of Representative COLWELL of Gardiner, **TABLED** pending **ACCEPTANCE** of either Report and later today assigned.

SENATE PAPERS

The following Joint Resolution: (S.P. 634)

JOINT RESOLUTION HONORING THE CITY OF CALAIS ON THE OCCASION OF ITS 150TH ANNIVERSARY

WHEREAS, under Private and Special Law, 1850, chapter 389, the 30th Maine Legislature approved "An Act to Incorporate the City of Calais," with the city's first sitting council and mayor meeting on April 14, 1851; and

WHEREAS, as early as 1760, it was reported that a small group of men paddled up the St. Croix River to the head of its tidewater to fish. Later, upon hearing news of the abundance of pine timber, fish and game in the area and reports that the river was navigable for large vessels, the first permanent settler, Daniel Hill, built a cabin. Soon Mr. Hill was followed by other settlers, establishing a settlement upon land in the area of Ferry Point; and

WHEREAS, officially recognized as Township No. 5 upon being granted by the Commonwealth of Massachusetts to Waterman Thomas in 1789, incorporated as a town in 1809 and incorporated as a city in 1850, Calais is located at the extreme eastern end of Washington County, in the heart of the St. Croix River Valley; and

WHEREAS, the name of the French city, Calais, was likely borrowed for this city in Maine, since it lies opposite Dover Hill in New Brunswick. The St. Croix River forms the national boundary between Maine and New Brunswick; and

WHEREAS, the City of Calais is the 5th busiest port of entry to the United States on the Canadian border; and

WHEREAS, the City of Calais has become a cosmopolitan community and an ideal location for a "Two-Nation Vacation." The warm relationship that exists between Calais and its border neighbors is recognized each year with an International Festival held during August; and

WHEREAS, the city and citizens of Calais support a large public recreation program, offering year-round activities to participants of all ages and abilities; and

WHEREAS, the city is the site of the St. Croix Island International Historic Site. The site, maintained by the National Park Service in cooperation with the Canadian Government, provides boat access to the St. Croix River; and

WHEREAS, the Federal Government also maintains the Moosehorn National Wildlife Refuge in Calais. The refuge consists of more than 23,000 acres and is a breeding ground for migratory birds and other wildlife; now therefore, be it

RESOLVED: That We, the Members of the One Hundred and Twentieth Legislature now assembled in the First Regular Session, extend our best wishes to the good citizens of the City of Calais as they observe the city's sesquicentennial year; and be it further;

RESOLVED: That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to the Mayor of the City of Calais on behalf of the citizens of that community.

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

READ and **ADOPTED** in concurrence. **ORDERED SENT FORTHWITH.**

UNFINISHED BUSINESS

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

HOUSE DIVIDED REPORT – Majority (7) **Ought to Pass as Amended by Committee Amendment "A" (H-567)** – Minority (6) **Ought Not to Pass** – Committee on **LABOR** on Bill "An Act to Prohibit the Use of State Funds by Health Care Providers to Influence Union Organizing"

(H.P. 1037) (L.D. 1394)

TABLED – May 24, 2001 (Till Later Today) by Representative COLWELL of Gardiner.

PENDING – Motion of Representative BUNKER of Kossuth Township to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report.

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

Representative **TREADWELL**: Mr. Speaker, Ladies and Gentlemen of the House. This bill effectively will cause the hospitals, the medical facilities, in the State of Maine to not be able to communicate with their employees during an organizing drive by the unions. Those hospitals and medical facilities right now when they bring their employees in for informational meetings, it is not a problem. If there is an organizing drive going on within that facility, the union organizers will have the ability with this law to challenge any meeting that they may have in that facility during working hours. It is really not a good bill.

The current law, under the Medicare, Medicaid Programs, addresses this subject very adequately, I think. It specifies what monies, what activities can be carried out during these periods of times. It is very clear. What we would be doing is overturning those laws that are in the Medicaid, Medicare manuals at this time.

The National Labor Relations Act very specifically describes what can and what cannot be done by both management and labor organizations during these times. Again, we are tinkering with the National Labor Relations Act. There may be a preemptive question here as well. I would urge you to vote

against the Ought to Pass motion and let's go on and pass the Ought Not to Pass report.

The **SPEAKER**: The Chair recognizes the Representative from Bowdoinham, Representative Hutton.

Representative HUTTON: Mr. Speaker, Men and Women of the House. This bill is a bill to extend the state's ability to take our taxpayer dollars back when a nursing home or a hospital uses those funds and tax dollars for anti-union organizing. It is not changing the National Labor Relations Act. It is simply going that step further. We already in this state are allowed to take back Medicare and Medicaid dollars from hospitals and nursing homes on a percentage basis that uses them for anti-union organizing. It is not just for captive audience meetings or informational meetings. It is also when you hire huge law firms to do work for you. We want to make sure that our state's tax dollars aren't going to pay those lawyers and aren't going to pay for the people who run the captive audience meetings. Remember, we already do this for Medicaid and Medicare. It is simply just extending that to state tax dollars.

I urge you to vote Ought to Pass as amended. Thank you.

Representative KASPRZAK of Newport **REQUESTED** that the Clerk **READ** the Committee Report.

The Clerk **READ** the Committee Report in its entirety.

The **SPEAKER**: The Chair recognizes the Representative from Bath, Representative Mayo.

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

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

Representative MAYO: Mr. Speaker, Ladies and Gentlemen of the House. To anyone who would care to answer, is the information as to the amount of money expended by Maine Medical Center on their recent union dispute that may have been some state funds? Is that information available?

The **SPEAKER**: The Representative from Bath, Representative Mayo has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from North Berwick, Representative MacDougall.

Representative MACDOUGALL: Mr. Speaker, Ladies and Gentlemen of the House. The Department of Labor at the public hearing presented in testimony a case that went in front of the United States Supreme Court. During the union organizing campaigns, the First Amendment protects the employer's right to communicate to the employees of any of its general views about unionism and any of its specific views about a particular union so long as the communications do not constitute a threat of reprisal or forced promise of benefits. If they were to do so, that would constitute unlawful interference. The National Labor Relations Law strikes a balance.

Many years ago I was involved with an employee at a company that a union was attempting to come in. We had 40 or 45 employees. Many of the employees truly didn't know whether they wanted the union or didn't want a union. One of the things that were very beneficial before the vote was taken, over a period of time, was to hear both sides, what the union had to offer if we were to vote them in and what the views and pluses and minuses were from the employer's standpoint. I believe the federal law, which we are going to circumvent if we pass this bill, has stood the test of time and provides First Amendment rights for both sides of the issue to know the facts before they make an intelligent vote. I urge you to vote against the pending motion. Thank you. I would request a roll call.

Representative MacDOUGALL of North Berwick **REQUESTED** a roll call on the motion to **ACCEPT** the Majority **Ought to Pass as Amended** Report.

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

The **SPEAKER**: The Chair recognizes the Representative from Bangor, Representative Norton.

Representative NORTON: Mr. Speaker, Ladies and Gentlemen of the House. You still have the right to hear both sides if you are an employee. This doesn't say you can't listen to both sides. It simply says public money can't be used by the employer. I don't know about you, but I know that when I pay my bill at the hospital, it is not public funds. All of the money that the hospital receives from people like us who do pay bills, it is up to them how they use it. I don't think public funds should be used for this purpose. I urge you to vote with the Majority Ought to Pass Report. Thank you.

The **SPEAKER**: The Chair recognizes the Representative from Bowdoinham, Representative Hutton.

Representative HUTTON: Mr. Speaker, Men and Women of the House. I understand that the answer to the good Representative from Bath's question was \$1 million. What I also wanted to say was that this is not taking away an employer's right to hold an informational meeting or a captive audience meeting, as some people call it. This is just simply saying that our tax dollars, the citizens of Maine tax dollars, cannot be used against them. It is simple. The way this amendment was drafted was in a meeting with the Department of Labor, the Department of Health and Human Services, myself, an administrator from one of the hospitals, one of the members of MSEA and we discussed how it could be done. There is already a formula that the Department of Health and Human Services uses to do this with Medicaid and Medicare dollars. They asked for a little advice from the Department of Labor and were reassured that they could get advice as to what constitutes this type of activity. They were assured by the Department of Labor that they would be granted such advice. They were willing to take on the task. Again, I urge you to save some taxpayer dollars for our citizens of the State of Maine and vote Ought to Pass.

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

Representative TREADWELL: Mr. Speaker, Ladies and Gentlemen of the House. I would submit to you that this bill, if passed, would make it virtually impossible for the administration of a hospital to be able to communicate with their employees without being second guessed and have to account for every minute and every item that was discussed and how much money was spent during those meetings. It would make it so cumbersome, the administrative burden here alone, would be enough to vote against the bill. I think that we are getting involved in legislation that is going to tinker with law that is already in effect. Let's assume for a minute that the administration of the hospital is having a meeting of their employees to discuss patient care, which has nothing to do with unionizing activities. They are going to have to justify the fact that they held that meeting and record everything that was discussed at that meeting and it is just going to put a very large burden on the administration in order to comply with this legislation.

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

Representative MATTHEWS: Mr. Speaker, Men and Women of the House. I know a little bit about hospitals. My father was a physician. My mother was a nurse. My wife was a nurse. I can tell you one thing that hospitals and health care facilities, nurses, doctors and administrators do very well, is document. In fact, they document everything. Any meeting that you have in a hospital, it is always documented. That is not really a problem. When it comes to public funds, ladies and gentlemen of the

House, that is the issue here. That is really the rub. We insist that our health care providers are non-profit hospitals, the federal government and state funds for health insurance, comply with the laws all the time. We ask them to make sure that they don't turn away the underinsured and the poor. We ask that they provide basic, decent health care. What we are asking for today is that the public's money, the public's money, not be spent for anti-union busting methods in the hospital. Use it for health care. Use it to treat the sick, pay the staff and the workers in the hospital. Do the things that they are charged to do. Ladies and gentlemen, let me tell you, the sky is not going to fall. I don't know how many times I have been here as a member of the Legislature in the past when the public decided through the Legislature to get involved with health care issues because we want to protect the public's right and good, the hospitals beat the doors down to tell us the sky is going to fall. I had to basically run the gauntlet to get into the House because there were so many individuals lobbying for the hospital out in the third floor. I felt like I was going through the maze to get here.

I am reminded of my father's statements about attempts to collectively bargain in the hospitals. He was one of those physicians who supported them. He was persona non grata, but a great doctor. They couldn't keep him out of the hospital because he was such a good doctor and a Democrat. He told me the hospital's ways to defeat union activity and collective bargaining will never change. We have had testimony here provided in our packets in the committee of all of the wonderful meetings that were done. Salaries are going to increase. The unionizing is just gonna bring the health care facility to a stand still. It isn't going to happen. We have to make sure that the public's money is well spent. When it comes to those scarcity of dollars that go to health care, we have to make sure that they truly do go to the sick and the injured, not to a firm. The sky is not going to fall tomorrow morning. The same folks are probably going to be out in the hall. We will go on our business and we will protect the public's good. Thank you.

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

Representative **MACDOUGALL**: Mr. Speaker, Ladies and Gentlemen of the House. Part of the reason for my opposition to the current legislation before us is what the previous speaker, the good Representative from Winslow, Representative Matthews, was talking from his point of view. It is almost as if the health care facilities are presumed guilty and you have to prove their innocence. I have a real problem with that. The labor law in place, federally and in the state, protects both sides so that both sides can move forward and do the very thing that everyone seems to be concerned about, which we all are, that is good health care for the people of Maine. Public money, if this bill should pass, will end up being expended with the hospitals trying to defend themselves because anyone can file a complaint against an institution regarding the use of public money. That is going to lead to automatic investigation and, even worse than that, will upset an equilibrium, a teamwork that must exist in the hospital setting. Thank you.

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

ROLL CALL NO. 274

YEA - Ash, Baker, Berry RL, Blanchette, Bliss, Bouffard, Brannigan, Brooks, Bryant, Bull, Bunker, Canavan, Chick, Chizmar, Clark, Colwell, Cote, Cowger, Cummings, Davis, Dorr, Dudley, Dunlap, Duplessie, Estes, Etnier, Fisher, Gagne, Gerzofsky, Goodwin, Green, Hall, Hatch, Hawes, Hutton, Jacobs, Jones, Koffman, Landry, LaVerdiere, Laverriere-Boucher,

Lessard, Lundeen, Mailhot, Marley, Matthews, Mayo, McDonough, McGlocklin, McKee, McLaughlin, Michael, Michaud, Mitchell, Norbert, Norton, O'Brien LL, O'Neil, Paradis, Patrick, Perry, Pineau, Povich, Richard, Richardson, Rines, Savage, Simpson, Skoglund, Smith, Stanley, Sullivan, Tarazewich, Thomas, Tracy, Tuttle, Twomey, Usher, Volenik, Wheeler GJ, Mr. Speaker.

NAY - Andrews, Annis, Belanger, Bowles, Bruno, Buck, Carr, Chase, Clough, Collins, Crabtree, Cressey, Daigle, Duncan, Duprey, Foster, Fuller, Glynn, Gooley, Heidrich, Honey, Jodrey, Kane, Kasprzak, Labrecque, Ledwin, Lemoine, MacDougall, Madore, Marrache, McKenney, McNeil, Mendros, Morrison, Murphy E, Murphy T, Muse K, Nass, Nutting, O'Brien JA, Peavey, Perkins, Pinkham, Rosen, Schneider, Sherman, Shields, Snowe-Mello, Tessier, Tobin D, Tobin J, Trahan, Treadwell, Waterhouse, Weston, Wheeler EM, Winsor, Young.

ABSENT - Bagley, Berry DP, Bumps, Desmond, Dugay, Haskell, Lovett, McGowan, Muse C, Quint, Stedman, Watson.

Yes, 81; No, 58; Absent, 12; Excused, 0.

81 having voted in the affirmative and 58 voted in the negative, with 12 being absent, and accordingly the Majority **Ought to Pass as Amended Report was ACCEPTED.**

The Bill was **READ ONCE. Committee Amendment "A" (H-567) was READ** by the Clerk and **ADOPTED.**

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

Under further suspension of the rules the Bill was **PASSED TO BE ENGROSSED as Amended by Committee Amendment "A" (H-567)** and sent for concurrence.

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

The following item was taken up out of order by unanimous consent:

**REPORTS OF COMMITTEE
Divided Report**

Majority Report of the Committee on **LABOR** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-266)** on Bill "An Act to Allow the Workers' Compensation Board to Maintain its Current Level of Services"

(S.P. 77) (L.D. 297)

Signed:

Senators:

EDMONDS of Cumberland
TURNER of Cumberland
SAWYER of Penobscot

Representatives:

BUNKER of Kossuth Township
MATTHEWS of Winslow
DAVIS of Falmouth
MacDOUGALL of North Berwick
TREADWELL of Carmel
HUTTON of Bowdoinham
NORTON of Bangor
SMITH of Van Buren
TARAZEWICH of Waterboro

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

Signed:

Representative:

CRESSEY of Baldwin

Came from the Senate with the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-266)**.

READ.

On motion of Representative **BUNKER** of Kossuth Township, the Majority **Ought to Pass as Amended** Report was **ACCEPTED**.

The Bill was **READ ONCE**. **Committee Amendment "A" (S-266)** was **READ** by the Clerk and **ADOPTED**.

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

Under further suspension of the rules the Bill was **PASSED TO BE ENGROSSED as Amended by Committee Amendment "A" (S-266)** in concurrence.

UNFINISHED BUSINESS

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

HOUSE DIVIDED REPORT – Majority (9) **Ought to Pass as Amended by Committee Amendment "A" (H-547)** – Minority (4) **Ought Not to Pass** – Committee on **LABOR** on Bill "An Act to Ensure That State Employees Receiving Workers' Compensation and Filling a Limited Period Position Remain in Their Respective Bargaining Units"

(H.P. 592) (L.D. 747)

TABLED – May 24, 2001 (Till Later Today) by Representative **BUNKER** of Kossuth Township.

PENDING – Motion of same Representative to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report.

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

Representative **MACDOUGALL**: Mr. Speaker, Ladies and Gentlemen of the House. This particular LD, LD 747, would make former employees of the state who are receiving workers' comp benefits or are placed in so-called return to work positions members of the bargaining unit of which they were a member prior to the injury. This placement in bargaining units would also be retroactive to 1997 when the return to work policy was enacted.

This particular LD, those of us on the Ought Not to Pass side believe it would seriously hinder the state's good faith effort to return that injured worker to their former position because it would severely limit the flexibility needed to by the coordinator of the return to work program to move that injured worker from one position to the another relative to the capability physically. In other words, the amount of hours that worker can work, how many days a week needs to be flexible for each individual so that employee can work and work in a meaningful way and hopefully get back to that original position. This LD could lead to the state being in a position to arbitrate issues such as what the employee's work capacity is and would actually bypass the Workers' Compensation Board in the process and cover in law the Workers' Compensation Board would have the oversight in that area.

The retroactivity provision in this particular LD would place former employees in bargaining units retroactive to June 1997 and this could lead to significant costs for those retroactive benefits, monetary benefits, in terms of time and money. LD 747 has also been inconsistent with the state law and the federal

labor law principles because it would give bargaining rights to person employed in temporary positions. That is excluded under the State Employees Labor Relations Act. In addition, it would place these persons in inappropriate bargaining units since these person's interests are vastly different than those of the members of the bargaining unit of which these persons were originally a member. I would like to return to the concept of flexibility as well. It is a term that permeates the workers' comp system and I think in a very positive way. The coordinator that signs for this injured worker works very closely to offer other skills training if it is pertinent and appropriate and is in constant communication with any medical personnel that the injured worker is seeing so that all the proper information is present and in a good game plan that is good for the employee is put in place. I would suggest that that flexibility is more of a benefit to the employee than even to the department because the worker gets that opportunity, first of all, to do something that is fruitful, that gets rid of any stigma. They feel that they are getting something done in a day and they are moving towards a goal of hopefully returning to their original position. The particular law that was passed in June 1997 was a good one. I would highly recommend that you vote against the pending motion. Thank you.

The **SPEAKER**: The Chair recognizes the Representative from Bowdoinham, Representative **Hutton**.

Representative **HUTTON**: Mr. Speaker, Men and Women of the House. This is sort of a catch 22 for a state injured worker. When you are injured and you are a state worker and you can return to work at a limited capacity, the state creates in some cases when there is money available limited period positions. They are not temporary. They are called limited period positions. Due to some miscommunication somewhere along the line, these people have been denied their right to have someone represent them when they have a problem within the limited period positions. What we have simply done is the bill puts in that a person in a limited period position can be considered part of the same bargaining unit of which that person was a member prior to the injury that resulted in payment under the workers' comp. It doesn't take them out of the workers' comp. The workers' comp still has oversight on them. It just says that if something happens to them while they are working in this limited period position, they can call on their union rep to help them. It is as simple as that. If we don't allow that to happen, what we have done is give them double jeopardy. We have said that you are injured. You can have this job, but that is it. We are not going to let you have your union representation. You are now not considered part of the bargaining unit, which to me is a slap in the face to the state workers. I really urge you to do the Ought to Pass as Amended and vote yes. Thank you.

The **SPEAKER**: The Chair recognizes the Representative from Kossuth Township, Representative **Bunker**.

Representative **BUNKER**: Mr. Speaker, Men and Women of the House. I rise to add a few words of importance, I think. You can see by the committee report that we have bipartisan support for this bill in this body. I ask you to support that. There are some good reasons for that. Imagine one of your neighbors or one of your friends at work for state government here and many of the folks in this body have worked for state government in the past, worked 15 or 20 years, and now you are injured because of an injury that occurred at work in the state. It is a wonderful thing that we did back in 1997 about allowing these temporary work positions. It is a wonderful thing. The problem is it was stuck in the budget bill at a late hour and the Labor Committee never had a chance to review the fine points. That is kind of how this piece got missing, the language that allows you to have representation. The state government and the Executive has interpreted the lack of language to mean that when we put somebody in a temporary

position they are like a brand new employee. We put them in that temporary position and they just started that first day. They have a right to bump back into their old position within a certain time frame if their health allows them to do that. The down side of this is, there is great flexibility in the current law, but the down side is that if you take a 15 year employee, a wonderful employee for the state that no longer can be a game warden or whatever, you send him or her over into the office and they are taking the life skills that they have learned out in the field. They bring it into the office in more of a clerical way to help Inland Fisheries. When a position opens in that office that meets their work skills, they can apply for that job. They have to compete just like somebody coming in off the street. Can you imagine placing a state worker that has gone through the work and is injured here in a situation where they have to go out and compete as a brand new person and they have no bumping rights into other jobs that meet their requirements and their skills? Please support the Ought to Pass report. It is an oversight in the budget bill of 1997 and I think this will clarify the law to allow what we thought should have happened to continue to happen, meaning tenured state employees have a right to have some representation to help them move in the direction that is best for them and best for the State of Maine. Thank you.

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

Representative **TREADWELL**: Mr. Speaker, Ladies and Gentlemen of the House. The state's return to work program has been referred to here that came into being in 1997 is an attempt by the state to return these injured workers back to work. Their job is protected for a full year. If they recuperate during that year, their job is guaranteed that they can return. After a year if they are not able to, the state creates these limited positions to try to continue the rehabilitation process. They go out of their way to make sure that that injured worker is not cast off, thrown away, or whatever other words you may want to use for it. The fact that they are not in their original bargaining unit is brought about by the fact it would be inappropriate in many cases for them to be part of their original bargaining unit because they are in a different job setting if they are in one of these limited positions. Mr. Speaker, when the vote is taken, I request a roll call.

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

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

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

Representative **DAVIS**: Mr. Speaker, Ladies and Gentlemen of the House. I think there is some misunderstanding of this. I think that both sides are trying to get at the truth, but the truth, as I see it, is that if you are injured, it is a matter of fairness to stay in the same union, which you have been represented. Most Maine people want to remain to work. While they are in that interim period, I think they should be represented by the people who have represented them all along. I urge you to pass this. Thank you.

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

ROLL CALL NO. 275

YEA - Andrews, Annis, Ash, Baker, Belanger, Berry RL, Blanchette, Bliss, Bouffard, Bowles, Brannigan, Brooks, Bryant, Bull, Bunker, Canavan, Carr, Chase, Chick, Chizmar, Clark, Colwell, Cote, Cowger, Cressey, Cummings, Davis, Dorr,

Dudley, Dunlap, Duplessie, Estes, Etnier, Fisher, Fuller, Gagne, Gerzofsky, Goodwin, Green, Hall, Hatch, Hawes, Honey, Hutton, Jacobs, Jones, Kane, Koffman, Landry, LaVerdiere, Laverriere-Boucher, Lemoine, Lessard, Lundeen, Madore, Mailhot, Marley, Matthews, Mayo, McDonough, McGlocklin, McKee, McKenney, McLaughlin, Mendros, Michael, Michaud, Mitchell, Murphy E, Murphy T, Muse C, Norbert, Norton, O'Brien JA, O'Brien LL, O'Neil, Paradis, Patrick, Perry, Pineau, Povich, Richard, Richardson, Rines, Savage, Sherman, Simpson, Skoglund, Smith, Snowe-Mello, Stanley, Sullivan, Tarazewich, Tessier, Thomas, Tobin D, Tracy, Trahan, Tuttle, Twomey, Usher, Volenik, Watson, Wheeler GJ, Mr. Speaker.

NAY - Bruno, Buck, Clough, Collins, Crabtree, Daigle, Duncan, Duprey, Foster, Glynn, Gooley, Heidrich, Jodrey, Kasprzak, Labrecque, Ledwin, MacDougall, McNeil, Morrison, Muse K, Nass, Nutting, Peavey, Perkins, Pinkham, Rosen, Schneider, Shields, Tobin J, Treadwell, Waterhouse, Weston, Wheeler EM, Winsor, Young.

ABSENT - Bagley, Berry DP, Bumps, Desmond, Dugay, Haskell, Lovett, Marrache, McGowan, Quint, Stedman.

Yes, 105; No, 35; Absent, 11; Excused, 0.

105 having voted in the affirmative and 35 voted in the negative, with 11 being absent, and accordingly the Majority **Ought to Pass as Amended** Report was **ACCEPTED**.

The Bill was **READ ONCE**. **Committee Amendment "A" (H-547)** was **READ** by the Clerk and **ADOPTED**.

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

Under further suspension of the rules the Bill was **PASSED TO BE ENGROSSED as Amended by Committee Amendment "A" (H-547)** and sent for concurrence.

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

SENATE DIVIDED REPORT – Majority (7) **Ought to Pass as Amended by Committee Amendment "A" (S-226)** – Minority (6) **Ought Not to Pass** – Committee on **LABOR** on Bill "An Act to Increase Access to Unemployment Compensation for School Bus Drivers"

(S.P. 473) (L.D. 1537)

- In Senate, Minority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED**.

TABLED – May 25, 2001 (Till Later Today) by Representative **BUNKER** of Kossuth Township.

PENDING – **ACCEPTANCE OF EITHER REPORT**.

On motion of Representative **BUNKER** of Kossuth Township, the Minority **Ought Not to Pass** Report was **ACCEPTED** in concurrence. **ORDERED SENT FORTHWITH**.

SENATE REPORT – **Ought to Pass as Amended by Committee Amendment "A" (S-259)** – Committee on **LABOR** on Bill "An Act Regarding the Treatment of American Indian Tribes Under the Federal Unemployment Tax Act"

(S.P. 575) (L.D. 1753)

TABLED – May 25, 2001 (Till Later Today) by Representative **COLWELL** of Gardiner.

PENDING – **ACCEPTANCE OF COMMITTEE REPORT**.

The SPEAKER: The Chair recognizes the Representative from the Penobscot Nation, Representative Loring.

Representative **LORING**: Mr. Speaker, Men and Women of the House. The Penobscot Nation is in favor of this bill. This bill is necessary. It allows the tribes to benefit by having the same choices that are enjoyed by state and local governments across the country. The federal government clearly intended to give us that choice and the State of Maine has drafted legislation in order to comply with the federal law. I hope that you will vote to pass this bill. Thank you.

Subsequently, the unanimous Committee Report was **ACCEPTED**.

The Bill was **READ ONCE**. **Committee Amendment "A" (S-259)** was **READ** by the Clerk and **ADOPTED**.

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

Under further suspension of the rules the Bill was **PASSED TO BE ENGROSSED as Amended by Committee Amendment "A" (S-259)** in concurrence.

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

HOUSE DIVIDED REPORT – Majority (7) Ought to Pass as Amended by Committee Amendment "A" (H-365) – Minority (6) Ought Not to Pass – Committee on LABOR on Bill "An Act to Require that Benefits for Total Disability be Continued During a Period of Vocational Rehabilitation under the Workers' Compensation Act"

(H.P. 883) (L.D. 1175)

TABLED – May 25, 2001 (Till Later Today) by Representative **BUNKER** of Kossuth Township.

PENDING – Motion of same Representative to ACCEPT the Majority OUGHT TO PASS AS AMENDED Report.

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

Representative **MACDOUGALL**: Mr. Speaker, Ladies and Gentlemen of the House. Currently when an employee is injured and unable to perform work for which he has previous training or experience, that employee is entitled to employment rehabilitation services, which would include retraining, job placement and those are considered necessary to restore that employee to suitable employment. However, to be eligible to continue to receive benefits, the employee must not be able to perform full time work in the ordinary competitive statewide labor market. That is the current law. Additionally current law requires that if an employer receives a reasonable offer of employment and the employee refuses that employment, the employers considered to voluntarily withdraw from the workforce and therefore is no longer entitled to benefits during the period of refusal. If the job offered provides an average weekly wage that is less than that which the employer received before his injury, the employee is entitled to continue to receive benefits equal to 80 percent of the difference.

This LD, LD 1175, that we have before us proposes that that employee can continue to accept rehabilitation. The employee is entitled to continue to receive benefits even if employment is available. He can turn down that employment opportunity. The purpose of the employment rehabilitation is to get that injured worker back to full employment when full time employment isn't available. The employee should be required to return to work or

face the loss of benefits. Benefits should not be allowed to continue when full time work is available and there is provision to continue benefits for replacement of any wage loss.

Maine Employers Mutual Insurance Company, MEMIC for short, in their testimony before the committee discussed the vocational rehabilitation piece of workers' compensation. MEMIC approved 163 programs, all of which were offered voluntarily and without the Workers' Compensation Board having to issue an order. That sounds to me like a good working situation. What is important to remember as you decide on this issue is that each of those plans was unique to the needs of the individual worker. Some take longer to complete than others, sometimes for a few weeks to a couple of years of school. The problem with the bill is that it is a one size fits all approach and we lose that flexibility. The status quo right now for the 163 programs last year, I think it is important to consider, and that flexibility is what allows the injured worker to get restored, which is what we are all after.

The current law allowing for that flexibility, I believe, is a key component to the workers' compensation principles to encourage the injured worker to return to work and yet have a game plan in the event that his injury will prevent him from returning to what he originally did. I think it is important for his self-esteem and for reengaging into the marketplace.

Bills like this jeopardize that underlying principle. I would urge you to vote against the pending motion. Mr. Speaker, when the vote is taken, I would ask for a roll call.

Representative **MacDOUGALL** of North Berwick **REQUESTED** a roll call on the motion to **ACCEPT** the Majority **Ought to Pass as Amended Report**.

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

The SPEAKER: The Chair recognizes the Representative from Van Buren, Representative Smith.

Representative **SMITH**: Mr. Speaker, Ladies and Gentlemen of the House. We think so highly of employee rehabilitation in the Workers' Compensation Act that our law requires that an injured worker can lose his benefits if he refuses a rehabilitation plan. At the same time, however, an injured worker on partial incapacity benefits who needs both earnings and benefits to survive and he needs a full time rehabilitation program, can't be rehabilitated because he and his family will starve if he stops working. This bill gives an injured employee an opportunity for rehabilitation. It will not allow an injured worker to work and still collect compensation because then the law provides it will be reduced. It will allow the injured worker to have a real chance at rehabilitation. This is a short-term benefit we are talking about. Our law allows for rehabilitation for one year, at the most for two years, by special order of the Workers' Compensation Board. I believe the effect of the amendment will be to reduce the number of workers receiving benefits. The rehabilitation program, if it works, will allow people to regain their earning capacity and get off the system. The program will have a chance to do what it is supposed to do, help workers regain earning capacity and leave the workers' compensation system behind. I urge you to vote in favor of the Majority Report and give a partially injured worker a chance at rehabilitation and a chance to get off the system.

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

ROLL CALL NO. 276

YEA - Ash, Baker, Berry RL, Blanchette, Bliss, Bouffard, Brannigan, Brooks, Bryant, Bull, Bunker, Canavan, Chick, Chizmar, Clark, Colwell, Cote, Cowger, Cummings, Dorr, Dudley, Dunlap, Duplessie, Estes, Etnier, Fisher, Fuller, Gagne, Gerzofsky, Goodwin, Green, Hall, Hatch, Hawes, Hutton, Jacobs,

Jones, Kane, Koffman, Landry, LaVerdiere, Laverriere-Boucher, Lemoine, Lessard, Mailhot, Marley, Matthews, McDonough, McGlocklin, McKee, McLaughlin, Michael, Michaud, Mitchell, Muse C, Norbert, Norton, O'Brien LL, O'Neil, Paradis, Patrick, Perry, Pineau, Povich, Richard, Richardson, Rines, Savage, Simpson, Skoglund, Smith, Stanley, Sullivan, Tarazewich, Tessier, Thomas, Tracy, Tuttle, Twomey, Usher, Volenik, Watson, Wheeler GJ, Mr. Speaker.

NAY - Andrews, Annis, Belanger, Bowles, Bruno, Buck, Bumps, Carr, Chase, Clough, Collins, Crabtree, Cressey, Daigle, Davis, Duncan, Duprey, Foster, Glynn, Gooley, Heidrich, Honey, Jodrey, Kasprzak, Labrecque, Ledwin, Lundeen, MacDougall, Madore, Mayo, McKenney, McNeil, Mendros, Morrison, Murphy T, Muse K, Nass, Nutting, O'Brien JA, Peavey, Perkins, Pinkham, Rosen, Schneider, Sherman, Shields, Snowe-Mello, Tobin D, Tobin J, Trahan, Treadwell, Waterhouse, Weston, Wheeler EM, Winsor, Young.

ABSENT - Bagley, Berry DP, Desmond, Dugay, Haskell, Lovett, Marrache, McGowan, Murphy E, Quint, Stedman.

Yes, 84; No, 56; Absent, 11; Excused, 0.

84 having voted in the affirmative and 56 voted in the negative, with 11 being absent, and accordingly the Majority **Ought to Pass as Amended Report** was **ACCEPTED**.

The Bill was **READ ONCE**. **Committee Amendment "A" (H-365)** was **READ** by the Clerk and **ADOPTED**.

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

Under further suspension of the rules the Bill was **PASSED TO BE ENGROSSED as Amended by Committee Amendment "A" (H-365)** and sent for concurrence.

HOUSE DIVIDED REPORT – Majority (7) Ought to Pass as Amended by Committee Amendment "A" (H-488) – Minority (6) Ought Not to Pass – Committee on LABOR on Bill "An Act to Speed Up the Decision Process on Workers' Compensation Claims"

(H.P. 921) (L.D. 1235)

TABLED – May 22, 2001 (Till Later Today) by Representative **MATTHEWS** of Winslow.

PENDING – ACCEPTANCE OF EITHER REPORT.

Representative **BUNKER** of Kossuth Township moved that the House **ACCEPT** the Majority **Ought to Pass as Amended Report**.

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

Representative **MACDOUGALL**: Mr. Speaker, Ladies and Gentlemen of the House. The initial bill dealt with a section of workers' compensation law that dealt with Chapter 7 procedures for board proceedings and dealt with several subsections for the idea of speeding up the workers' comp process by various means. At the public hearing that bill was amended to a different section of workers' comp law, Chapter 5, compensation and service, in Subsection 207.

In the summary of the amendment, which basically replaces the bill, it provides that an employer may not require an injured employee to undergo more than one second opinion examination unless the additional examination is approved by the employee or hearing officer. It provides that the hearing officer may approve the additional examination only if it is needed to provide information on an issue that was not addressed in the first examination and could not have been addressed in that examination. During the public hearing we heard several comments and those people came prepared for the initial bill and

we weren't quite prepared for the amendment that was put forth. In the work session they were better prepared to share with the committee some of their concerns. In the current law of the two exams under the 207 provision, without permission of a hearing officer, is a reasonable check and balance in the system. That is the current status quo. That is a very important item to have. An injured worker could be under the impression that a condition is one thing and the employer would have the opportunity to have that second exam because it was a different doctor and that particular instance could either be proven or put at ease. For example, a place where I worked there was a young lady who thought she needed surgery on her wrist and wasn't satisfied with the original doctor's prognosis and because the second 207 existed, she was put at ease and the surgery was not needed.

These 207 exams are not always due to litigation or because of a legal problem. Reducing to one exam would be counterproductive, I would submit to you, ladies and gentlemen. Sometimes the 207 exam is employed until further info can be gathered. That is good sometimes for the employer or for the employee, but the point is you get to the truth of the matter. The resolution of medical questions that can satisfy both sides at this point is very vital to reduce costs and to get workers on a program back to work.

I believe there is a hand out that is either being handed out now or already has been and you will see on that the number of organizations throughout the State of Maine that support keeping the status quo in workers' compensation law. I would urge you to take a good look at that and when you go to vote that you would vote opposed to the pending motion. Mr. Speaker, I would request a roll call.

Representative **MACDOUGALL** of North Berwick **REQUESTED** a roll call on the motion to **ACCEPT** the Majority **Ought to Pass as Amended Report**.

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

The **SPEAKER**: The Chair recognizes the Representative from Biddeford, Representative Laverriere-Boucher.

Representative **LAVERRIERE-BOUCHER**: Mr. Speaker, Men and Women of the House. LD 1235 as amended by the Labor Committee is an effort to reduce doctor shopping by insurance companies. This bill allows insurance companies to send injured workers to their doctor of choice for an evaluation, but does not allow them to send employees to a second, third or fourth doctor until they get an opinion they like. It allows use of more than one insurance doctor only if a workers' comp hearing officer orders an additional exam to address medical issues that were not considered in the first exam. This is fair and will reduce delays and speed up the resolution of workers' comp claims. I ask you to vote in favor of this bill. Thank you.

The **SPEAKER**: The Chair recognizes the Representative from Kossuth Township, Representative Bunker.

Representative **BUNKER**: Mr. Speaker, Men and Women of the House. I think the good Representative explained it fairly well. This is about doctor shopping and trying to make sure the playing field is level. The most important thing is, it is funny, we heard from a previous speaker, look at all the folks that are supporting and don't touch the comp system, but, ladies and gentlemen, what do you think drives the cost of the comp system? A very small percentage of the workers' comp dollar actually gets to the injured worker. Where is the rest of the money being spent? The rest of the money is being spent in litigation, overhead, offices, insurance companies and guess who gets to pay that? The employer. If we can eliminate all this wrangling in between and three and four and five different medical exams until somebody gets the result that they are looking for, I think it would make it much simpler. It would be

less costly to the system and all of those costs that are being driven in this system, all the lawyers and medical providers and all those offices are the ones that are driving the cost of workers' comp up and up and up. I think if we can eliminate that, our committee is trying to work within the system without doing as these business folks are suggesting, tinkering with the system to increase costs. We have been trying to reduce costs in looking at how can we make it more efficient and less costly to everyone? As you well know, the only winners are the insurance companies. The employee and the employer are not winners of this system. The system could use tinkering, but only in the area of reducing costs. Thank you.

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

Representative **TREADWELL**: Mr. Speaker, Ladies and Gentlemen of the House. Representative Bunker makes some points that the lawyers are driving up the costs of the comp system, not the employees or the employers. We, on this side of the aisle, are trying to maintain the status quo, which is not fair, which is the analogy that I would use for what his comments were. I would submit to you that exactly the opposite is true. All of these bills that I have seen on five years on the Labor Committee, I have seen just about every one of these bills at least once. This is a new bill, but it attempts to change the comp system again to the benefit of those who would like it to be hamstrung. What is going to happen, the end result of this bill, if it passes, it will require the employers, the insurance companies, to contest the claim and force it into the formal hearing stage in order to get an independent medical exam. Right now the employer can request a 207 exam to determine any unanswered questions on a medical exam that may have already been conducted.

This bill will prevent any second or third exam from ever occurring. The only option then that the employer has is to controvert the claim and force it to the formal hearing stage. It is going to slow down the process and it is going to cost more money. I would submit to you that this bill will do exactly the opposite from what the good Representative from Kossuth Township was advocating. It is not a good bill. If a roll call hasn't been requested, Mr. Speaker, I would request one.

The SPEAKER: The Chair recognizes the Representative from Newport, Representative Kasprzak.

Representative **KASPRZAK**: Mr. Speaker, Men and Women of the House. I don't usually stand on labor issues for a lot of reasons, but this one I have to say that if we really are concerned about the injured employee, then certainly you would think that you would want more than one opinion and that you would want the opinion of a doctor who really does understand occupational health and occupational injury.

I will just tell you briefly a short story about a member of my family recently who in January was told because of her severe diabetes and other complications, that she was going to have to have her feet removed. They would be amputated within two weeks. There was no other choice. That is the way it was. The doctor she saw said that. She determined that she didn't want that opinion and that that was unacceptable. She would rather keep her feet. I don't blame her at all. I would rather she keeps her feet as well. As it turns out after she saw three doctors, she found that she indeed did not have to have her feet amputated. Today, she still has her feet. She has one in a cast and she toddles about with that cast on, but she still has her feet. I would say today that if we really are concerned about injured employees, that we would be certain that they got the best health care possible in allowing for another opinion, a second opinion. This sometimes is the best thing for a person. I would ask you to consider that as you vote for this bill. Thank you.

The SPEAKER: The Chair recognizes the Representative from Biddeford, Representative Laverriere-Boucher.

Representative **LAVERRIERE-BOUCHER**: Mr. Speaker, Men and Women of the House. If we are going to tell stories, then I guess I have to tell you mine. The reason why I brought this bill forward, I didn't just do it because I felt like doing a bill on workers' comp. I did it because one of my constituents working in one of the mills that closed down, reopened, closed down, reopened, he could not be here for the hearing. Unfortunately, it would have been wonderful if he could have because he could have told his story to the committee and they would have understood that these businesses on that handout that we were given is one side of the story, but there is always another side and he represents that other side. He has had disability for several years now. He can no longer work. He is quite maimed. Doctors are very angry right now with a lot of the decisions made by the employee because he is not getting proper care. This man, I met him, and he is a very hard worker and he feels terrible right now because he cannot work. He is also feeling horrible because they are not paying his bills. He is getting some service because the doctors are doing it for nothing. I feel like that is a terrible thing to be happening in Maine right now. People work hard all of their lives and they become maimed at work and they are left with nothing. I really urge you to vote for this bill. Thank you.

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

Representative **MATTHEWS**: Mr. Speaker, Men and Women of the House. I want to read into the Legislative Record the letter from the commissioner on this particular bill. The position of the Department of Labor was neither nor against. "In various ways, LD 1235 attempts to improve the process by which Workers' Compensation Board administers the claims of injured workers. The administration shares these concerns. The board and its senior management team have made substantial improvements to the workers' comp system in the past decade, but there remains room for improvement."

The purpose of the workers' comp act is to give certain and speedy relief to those suffering injury. I want to share one story, if I may. When I was working last year at Bath Iron Works at the dry dock facility, I had a friend of mine, a member of the carpenter's union, standing about 20 feet from me. He was cutting forms with a saw. Someone downwind of him yelled to him and distracted him for moment. He turned and he took the saw and cut his arm with the saw. The blood was billowing profusely everywhere. We managed to stop the bleeding. The safety person on site that I had questions about, but that will remain for another day, took care of the wound. It was a bad wound. He was sent to the hospital. This guy had a severe cut in his arm from a saw. Two days passed and he was back at work. I stood there and I was talking to the gentleman who worked very, very hard. I said to him, what are you doing back to work? You nearly cut your arm off. He said that it still hurt. I could still see the blood going through the bandages. This man shouldn't have been back to work. He should have been home or in a doctor's office or in the hospital. I asked him why are you here? He said that it hurts me to be here. I am in pain. I have taken more medication so that I can get through the day, but I can't afford to make it on workers' compensation to take care of my family while I am trying to be rehabilitated. That is the system we have today. People don't want to get hurt. They are afraid if they get hurt, they are going to be thrown to the wolves. That is the system we have today. This man should have been home getting rehabilitated, but because we have changed the system to the detriment of workers in Maine, he was at work. He worked with one arm. They gave him plenty of rest breaks,

ladies and gentlemen, because the pain was so doggone severe that he could barely stand up. There are plenty of stories. That one is from the heart.

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

Representative TREADWELL: Mr. Speaker, Ladies and Gentlemen of the House. The good Representative from Winslow, Representative Matthews, read from a letter from the Commissioner of Labor. The only problem is he didn't read far enough. I would like to complete the reading at this time. The letter says, "Rather than continuing to approach these issues from a piecemeal perspective, the administration has proposed that it is time to conduct a more comprehensive evaluation on how the structure of the Workers' Comp Board may affect optimum delivery of services. The administration has proposed an independent feasibility study to focus on efficiencies that could be gained in the board's operational structure and process and opportunities to build capacity through a better alignment with other agencies in state government."

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

ROLL CALL NO. 277

YEA - Ash, Baker, Berry RL, Blanchette, Bliss, Bouffard, Brannigan, Brooks, Bryant, Bull, Bunker, Canavan, Chick, Chizmar, Clark, Colwell, Cote, Cowger, Cummings, Dorr, Dudley, Dunlap, Duplessie, Estes, Etnier, Fisher, Fuller, Gagne, Gerzofsky, Goodwin, Green, Hatch, Hawes, Hutton, Jacobs, Jones, Kane, Koffman, Landry, LaVerdiere, Laverriere-Boucher, Lemoine, Lessard, Lundeen, Mailhot, Marley, Matthews, McDonough, McGlocklin, McKee, McLaughlin, Michael, Michaud, Mitchell, Muse C, Norbert, Norton, O'Brien LL, Paradis, Patrick, Perry, Pineau, Richard, Richardson, Rines, Sherman, Simpson, Skoglund, Smith, Stanley, Sullivan, Tarazewich, Tessier, Thomas, Tracy, Tuttle, Twomey, Usher, Volenik, Watson, Wheeler GJ, Mr. Speaker.

NAY - Andrews, Annis, Belanger, Bowles, Bruno, Buck, Bumps, Carr, Chase, Clough, Collins, Crabtree, Cressey, Daigle, Davis, Duncan, Duprey, Foster, Glynn, Gooley, Heidrich, Honey, Jodrey, Kasprzak, Labrecque, Ledwin, MacDougall, Madore, Mayo, McKenney, McNeil, Mendros, Morrison, Murphy T, Muse K, Nass, Nutting, O'Brien JA, O'Neil, Peavey, Perkins, Pinkham, Povich, Rosen, Savage, Schneider, Shields, Snowe-Mello, Tobin D, Tobin J, Trahan, Treadwell, Waterhouse, Weston, Wheeler EM, Winsor, Young.

ABSENT - Bagley, Berry DP, Desmond, Dugay, Hall, Haskell, Lovett, Marrache, McGowan, Murphy E, Quint, Stedman.

Yes, 82; No, 57; Absent, 12; Excused, 0.

82 having voted in the affirmative and 57 voted in the negative, with 12 being absent, and accordingly the Majority **Ought to Pass as Amended** Report was **ACCEPTED**.

The Bill was **READ ONCE**. **Committee Amendment "A" (H-488)** was **READ** by the Clerk and **ADOPTED**.

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

Under further suspension of the rules the Bill was **PASSED TO BE ENGROSSED as Amended by Committee Amendment "A" (H-488)** and sent for concurrence.

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

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

HOUSE DIVIDED REPORT - Majority (10) **Ought Not to Pass** - Minority (1) **Ought to Pass** - Committee on **CRIMINAL JUSTICE** on Joint Study Order - The Joint Select Committee to Find a Sustainable Source of Funding for Gun Safety Classes (H.P. 1245)

Which was **TABLED** by Representative COLWELL of Gardiner pending **ACCEPTANCE** of either Report.

On motion of Representative POVICH of Ellsworth, the Majority **Ought Not to Pass** Report was **ACCEPTED** and sent for concurrence.

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

CONSENT CALENDAR

First Day

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

(H.P. 500) (L.D. 640) Resolve, to Ensure Consumer Access to Home Care Services Committee on **HEALTH AND HUMAN SERVICES** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-621)**

(H.P. 853) (L.D. 1125) Resolve, Directing the Department of Human Services to Adjust the Cap on Direct-care Staff Costs for Residential Care Facilities Committee on **HEALTH AND HUMAN SERVICES** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-622)**

(H.P. 980) (L.D. 1304) Bill "An Act to Create the Maine Health Data Processing Center" Committee on **HEALTH AND HUMAN SERVICES** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-620)**

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

There being no objection, the House Papers were **PASSED TO BE ENGROSSED as Amended** and sent for concurrence.

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

REPORTS OF COMMITTEE

Ought to Pass Pursuant to Joint Order

Report of the Committee on **CRIMINAL JUSTICE** on Bill "An Act Regarding the Training Requirements for Certain Employees of the Department of Public Safety"

(S.P. 635) (L.D. 1815)

Reporting **Ought to Pass** pursuant to Joint Order (S.P. 604).

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

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

The Bill **READ ONCE**.

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

Under further suspension of the rules the Bill was **PASSED TO BE ENGROSSED** in concurrence.

Ought to Pass in New Draft under New Title

Report of the Committee on **HEALTH AND HUMAN SERVICES** on Bill "An Act to Preserve Maine Pharmacies"

(S.P. 528) (L.D. 1651)

Reporting **Ought to Pass in New Draft under New Title** Resolve, Regarding Pharmacists and Pharmaceutical Benefits

(S.P. 636) (L.D. 1816)

Came from the Senate with the Report **READ** and **ACCEPTED** and the **NEW DRAFT under NEW TITLE PASSED TO BE ENGROSSED**.

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

The **NEW DRAFT under NEW TITLE READ ONCE**.

Under suspension of the rules the **NEW DRAFT under NEW TITLE** was given its **SECOND READING** without **REFERENCE** to the Committee on **Bills in the Second Reading**.

Under further suspension of the rules the **NEW DRAFT under NEW TITLE** was **PASSED TO BE ENGROSSED** in concurrence.

CONSENT CALENDAR

First Day

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

(S.P. 379) (L.D. 1217) Bill "An Act to Create Uniform Underwriting Standards for Determining Eligibility for Certain Group Policies" Committee on **BANKING AND INSURANCE** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-270)**

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

There being no objection, the Senate Paper was **PASSED TO BE ENGROSSED as Amended** in concurrence.

(S.P. 547) (L.D. 1693) Bill "An Act to Amend the Comprehensive Planning and Land Use Regulation Laws" Committee on **NATURAL RESOURCES** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-265)**

On motion of Representative KASPRZAK of Newport, was **REMOVED** from the First Day Consent Calendar.

The Committee Report was **READ**.

The same Representative **REQUESTED** a roll call on the motion to **ACCEPT** the Committee Report.

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

On motion of Representative COLWELL of Gardiner, **TABLED** pending **ACCEPTANCE** of the Committee Report and later today assigned. (Roll Call Ordered)

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

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

HOUSE DIVIDED REPORT - Majority (10) Ought Not to Pass - Minority (3) Ought to Pass as Amended by Committee Amendment "A" (S-245) - Committee on STATE AND LOCAL GOVERNMENT on Bill "An Act to Clarify Rights of Retainage in Public Construction Contracts"

(S.P. 514) (L.D. 1633)

Which was **TABLED** by Representative McDONOUGH of Portland pending **ACCEPTANCE** of either Report.

Representative McDONOUGH of Portland moved that the House **ACCEPT** the Majority **Ought Not to Pass** Report.

The **SPEAKER PRO TEM**: The Chair recognizes the Representative from Newport, Representative Kasprzak.

Representative **KASPRZAK**: Mr. Speaker, Men and Women of the House. I apologize for my late rising. I wasn't sure exactly what kind of motions were being made here. I believe it is Ought Not to Pass, Majority Report. I would be on the dissenting report on this bill because I believe this is a good bill. It is a good responsibility bill. It is a good bill for accountability of school construction funds and a bill that we have discussed much in the past. This bill is a substantial improvement over the previous retainage proposal as acknowledged by the superintendents that attended the public hearing.

It allows for retainage to be released at substantial completion of the projects, the point at which the owner can occupy the building. Thirdly, if there are incomplete or unacceptable items, such as the paint hasn't been finished or door locks that don't work, they are identified on the punch list and money is withheld from the contractor until they are taken care of. Fourthly, this is a standard accepted practice in virtually every form of commercial construction in the country. They do it at the federal level. The owner is not required to release retainage unless he or she is satisfied that the building is substantially complete. Money withheld on punch list items should be more than enough to get contractors back to complete unfinished or unacceptable work such as those little unpainted areas and such.

Owners of public schools have a tendency, as we heard in testimony, on many an occasion to withhold retainage for things they think are going to go wrong and well beyond the final acceptance with no penalty and no recourse for the contractor. If something does go wrong after the contractor's work is finished, warranties are already in place up to a year after the completed installation. This is a fair and reasonable approach to solving a problem and I believe that we should support this bill wholeheartedly. Thank you.

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

Representative **MCDONOUGH**: Mr. Speaker, Men and Women of the House. I didn't think that I would really have to stand up here this afternoon and talk about this bill, but in all deference to my good committee member, this is a bad, bad, bad bill. It is a bill that has been before us many times. One that we have plowed ground, thought that we had buried it and with a little seasoning, it pops out of the ground every session. I say this is a bad bill because it affects our communities, every one of us. Our school system and we have seen it time and time again across the state where construction programs have fallen short of the expectation that put the contracts out. I can look at my own communities and see it. I have seen it in other communities and it is just something that we don't like to think can happen, but it does. I think if you want to go against the Majority Report and support the Ought to Pass report and you can go back to your communities and talk to your school boards, your superintendents and the people in your communities then I guess that is your decision to do. This is a matter of conscience. You vote the way you need to do, but our recommendation is that this bill ought not to pass and we will put it back under ground and wait to the 121st Legislature to see it again. Thank you Mr. Speaker.

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

Representative MUSE: Mr. Speaker, Men and Women of the House. I rise today to speak against the pending motion because I do not believe this is a bad, bad, bad bill. Quite the contrary, I do not believe this is a bad bill. I believe this is a very good, good, good bill. Several years ago when I first saw this bill, I didn't have a clue what this bill was about. I imagine there are probably some members here today that don't have a clue what this bill is about.

The good Representative from Portland made a comment that this affects our communities and he is absolutely right, it does. This bill affects business owners in our communities and let's look for example at a painting contractor who is hired to go and do the work at a public school that is being built. Better yet, somebody who perhaps goes and pours the concrete for a foundation for a school. The first thing to be done is that individual isn't going to get paid until the job is signed off on by the community. To go back to the painting contractor, I have a very good friend who is a very reputable painting contractor throughout the State of Maine, does work on many school projects, but this bill is one of the reasons why he hesitates to even bid on school projects. While he is waiting to be paid, sometimes two, three or more years, he has to pay his employees who went and did the job, but a year goes by, two years or three years, this is factual, there are communities who haven't paid these contractors because they are speculating that something may go wrong. This bill has been amended and changed and altered every year that it has been brought back. It has been brought back many years. We have sat and negotiated. We have stood in the hallways and it has been whittled down and changed and fine tuned to the point now where it is actually weaker than the federal law, which did change to benefit contractors and workers. It was whittled down and changed enough so that our colleagues at the other end of the hall have, in fact, passed the bill and now it lying in our court. I would suggest that we do the same. Thank you Mr. Speaker.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Cumberland, Representative McKenney.

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

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

Representative MCKENNEY: Mr. Speaker, Ladies and Gentlemen of the House. Let's say for the sake of argument we are talking about a person who puts the foundation in the school building. He is the first person into that job site. He lays the foundation and let's say for the sake of argument that that foundation is perfect. It couldn't have been any better. Does this person have to wait until everybody is paid and every mistake is found in this building before he gets paid?

The SPEAKER PRO TEM: The Representative from Cumberland, Representative McKenney has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Portland, Representative McDonough.

Representative MCDONOUGH: Mr. Speaker, Ladies and Gentlemen of the House. The answer to the good Representative from Cumberland's question, the school board or the superintendent or the clerk of the works has the right to go through a punch list and pay those off. General contractor is the one really that is responsible for it. If he has concerns, then he doesn't pay it. Those are the issue, those hidden things; it is not the paint on the wall so much as the structural condition of the new building that often occurs a year or a year and a half after

the fact where they found that there has been some substandard work done and if they didn't have the retainage, then the community has no recourse, but to go back to that particular contractor. So, I hope that answers your question.

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

Representative KASPRZAK of Newport **REQUESTED** a roll call on the motion to **ACCEPT** the Majority **Ought Not to Pass** Report.

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

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

ROLL CALL NO. 278

YEA - Baker, Belanger, Berry RL, Blanchette, Bouffard, Brannigan, Brooks, Bryant, Bull, Bunker, Canavan, Chase, Chick, Chizmar, Clark, Colwell, Cote, Cowger, Cummings, Dudley, Dugay, Duniap, Duplessie, Estes, Etnier, Fisher, Fuller, Gagne, Gerzofsky, Gooley, Green, Hatch, Hawes, Honey, Hutton, Jodrey, Jones, Kane, Koffman, Labrecque, Landry, LaVerdiere, Laverriere-Boucher, Ledwin, Lemoine, Lessard, Lundeen, Mailhot, Marley, Matthews, Mayo, McDonough, McGlocklin, McGowan, McKee, Michaud, Mitchell, Morrison, Norbert, Norton, O'Brien LL, O'Neil, Paradis, Patrick, Perkins, Perry, Pineau, Povich, Richard, Richardson, Rines, Savage, Sherman, Skoglund, Smith, Stanley, Sullivan, Tarazewich, Tessier, Thomas, Tobin D, Tracy, Treadwell, Tuttle, Twomey, Usher, Volenik, Watson, Weston, Wheeler EM, Wheeler GJ, Young, Mr. Speaker.

NAY - Andrews, Annis, Bliss, Bowles, Bruno, Buck, Bumps, Carr, Clough, Collins, Crabtree, Cressey, Daigle, Davis, Dorr, Duncan, Duprey, Foster, Glynn, Goodwin, Heidrich, Jacobs, Kasprzak, MacDougall, Madore, McKenney, McLaughlin, McNeil, Mendros, Michael, Murphy T, Muse C, Muse K, Nass, Nutting, O'Brien JA, Peavey, Pinkham, Rosen, Schneider, Shields, Snowe-Mello, Tobin J, Trahan, Waterhouse, Winsor.

ABSENT - Ash, Bagley, Berry DP, Desmond, Hall, Haskell, Lovett, Marrache, Murphy E, Quint, Simpson, Stedman.

Yes, 93; No, 46; Absent, 12; Excused, 0.

93 having voted in the affirmative and 46 voted in the negative, with 12 being absent, and accordingly the Majority **Ought Not to Pass** Report was **ACCEPTED** in **NON-CONCURRENCE** and sent for concurrence.

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

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

CONSENT CALENDAR

First Day

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

(H.P. 375) (L.D. 477) Bill "An Act Directing the Department of Human Services to Annually Adjust Dental Reimbursement Rates Under the Medicaid Program" Committee on **HEALTH AND HUMAN SERVICES** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-625)**

(H.P. 561) (L.D. 716) Bill "An Act to Convert Hospital Administrative District No. 1 to a Nonprofit, Nonstock Private Corporation" Committee on **HEALTH AND HUMAN SERVICES**

reporting **Ought to Pass as Amended by Committee Amendment "A" (H-624)**

(H.P. 1249) (L.D. 1697) Bill "An Act to Enhance the Safety and Health of Students in Public School Facilities" Committee on **LABOR** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-626)**

(H.P. 1311) (L.D. 1774) Resolve, Regarding Legislative Review of Chapter 299: Highway Driveway and Entrance Rules, Parts A and B, a Major Substantive Rule of the Department of Transportation (EMERGENCY) Committee on **TRANSPORTATION** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-627)**

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

There being no objection, the House Papers were **PASSED TO BE ENGROSSED as Amended** and sent for concurrence.

(H.P. 977) (L.D. 1301) Bill "An Act to Implement Changes in Cost-sharing Agreements in School Districts" Committee on **EDUCATION AND CULTURAL AFFAIRS** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-628)**

On motion of Representative NORBERT of Portland, was **REMOVED** from the First Day Consent Calendar.

The Committee Report was **READ**.

On further motion of the same Representative, **TABLED** pending **ACCEPTANCE** of the Committee Report and later today assigned.

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

**ENACTORS
Emergency Measure**

An Act to Establish the Maine Military Authority

(S.P. 441) (L.D. 1495)
(C. "A" S-246)

Reported by the Committee on **Engrossed Bills** as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 112 voted in favor of the same and 4 against, and accordingly the Bill was **PASSED TO BE ENACTED**, signed by the Speaker Pro Tem and sent to the Senate.

Emergency Measure

An Act to Allow County Corrections Personnel to Participate in the Same Retirement Plan as Other Corrections Personnel

(H.P. 963) (L.D. 1276)
(C. "A" H-568)

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

On motion of Representative COLWELL of Gardiner, **TABLED** pending **PASSAGE TO BE ENACTED** and later today assigned.

Emergency Measure

Resolve, Regarding Legislative Review of Chapter 60: New School Siting Approval, a Major Substantive Rule of the Department of Education

(H.P. 1322) (L.D. 1783)

Reported by the Committee on **Engrossed Bills** as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 109 voted in favor of the same and 4 against, and accordingly the Resolve was **FINALLY PASSED**, signed by the Speaker Pro Tem and sent to the Senate.

**ENACTORS
Emergency Measure**

Resolve, Regarding Legislative Review of Chapter 115, Part I, Section 8.5: Targeted Need Certificate, a Major Substantive Rule of the State Board of Education

(H.P. 1345) (L.D. 1802)

Reported by the Committee on **Engrossed Bills** as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 107 voted in favor of the same and 4 against, and accordingly the Resolve was **FINALLY PASSED**, signed by the Speaker Pro Tem and sent to the Senate.

**Resolve Pursuant to the Constitution
Public Land**

Resolve, Authorizing Certain Land Transactions by the Bureau of Parks and Lands

(S.P. 612) (L.D. 1792)
(C. "A" S-244)

Reported by the Committee on **Engrossed Bills** as truly and strictly engrossed. In accordance with the provision of Section 23 of Article IX of the Constitution, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 102 voted in favor of the same and 13 against, and accordingly the Resolve was **FINALLY PASSED**, signed by the Speaker Pro Tem and sent to the Senate.

Acts

An Act Authorizing Patients to Designate Visitors

(H.P. 1160) (L.D. 1560)
(C. "A" H-578)

An Act to Amend the Charter of Bates College

(S.P. 623) (L.D. 1805)

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

The Speaker resumed the Chair.

The House was called to order by the Speaker.

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

**REPORTS OF COMMITTEE
Divided Report**

Majority Report of the Committee on **EDUCATION AND CULTURAL AFFAIRS** reporting **Ought Not to Pass** on Bill "An Act to Guarantee Girls Equal Access to Sports Teams"

(H.P. 1281) (L.D. 1741)

Signed:
Senators:

MITCHELL of Penobscot
 NUTTING of Androscoggin
 ROTUNDO of Androscoggin

Representatives:

RICHARD of Madison
 SKOGLUND of St. George
 ESTES of Kittery
 ANDREWS of York
 WESTON of Montville
 LEDWIN of Holden
 STEDMAN of Hartland

Minority Report of the same Committee reporting **Ought to Pass as Amended by Committee Amendment "A" (H-623)** on same Bill.

Signed:

Representatives:

DESMOND of Mapleton
 WATSON of Farmingdale
 CUMMINGS of Portland

READ.

Representative RICHARD of Madison moved that the House **ACCEPT** the Majority **Ought Not to Pass** Report.

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

Representative **RICHARD**: Mr. Speaker, Ladies and Gentlemen of the House. This particular bill would guarantee equal access to sports, meaning that girls could play on boys' sports teams, specifically baseball, basketball, football, hockey, soccer and wrestling. The majority of the committee felt that this was not a good idea. There is some coverage of this in federal law in Title 9, that if a school does not have a girls' sport at the same time that they have a boys' sport, then the girl is eligible to play on the team. I don't have any problem with the baseball, soccer or even basketball. I think when we think of the contact sports and a teenage girls' body that we should think twice, but on top of that, I am sorry the sponsor of the bill is not in the room right now, the amendment to the bill. The amendment bothers me as much as the bill does because the amendment says these guidelines must allow female student athletes to try out for the top baseball, basketball teams.

I have a little problem, having played in a lot of those sports when I was younger, saying that the boys' teams are the top teams. When I was in college, I captained a college team and one year we had one loss. That particular year the men had seven losses, which was the top team. When I was coaching, my final year of coaching, my girls' team was undefeated, but the boys lost five games. Which was the top team? I know you all have specific opinions on this and obviously you will vote however you feel, but I do hope that when you vote, you will think that a teenager is just maturing and a girl to be playing in a contact sport can do harm to her body that will last the rest of her life. Thank you Mr. Speaker.

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

Representative **MICHAEL**: Mr. Speaker, Ladies and Gentlemen of the House. This bill ensures that all young women sports participants in the State of Maine, secondary public schools, will be given the opportunity to try out for the top varsity sports teams in their schools. We were very open to any other phrase other than the top teams, but we wanted to give the Department of Education most leeway in order to create freedom for the young women of the State of Maine in terms of being able to excel in their sports. It would remove the remaining vestiges of any discrimination or sexism that currently stops Maine girls from achieving their highest athletic dreams and ambitions. It

will allow the Department of Education to create guidelines that allow girls to try out for the top teams at a school. The sports involved and listed in the bill are baseball, basketball, football, hockey, soccer and wrestling. This will let the girls that are skilled enough in a particular sport to play at the highest level possible at that school. There are not that many girls who want to play for the varsity team, but those who do, we should allow them to.

Many Maine schools already allow the girls to play for what I call the top teams. You could call it something else if you want to amend this. Roughly, I would say, a third of the schools already allow the girls to play with the boys' teams. Some schools do not allow the girls to play, some do, some don't. We need to remedy that.

Here are a few quick examples. Lewiston, Portland and Auburn allow the girls to play on any boys' team. That is the largest cities. We just went down the list alphabetically and researched a few towns. Bangor High School the girls cannot play on the boys' teams, but they do have a girls' softball and a girls' basketball team. Boothbay High School, no, the girls can't play with the boys. Brewer High School, the girls can play on the teams which are not offered separately, such as football. Brunswick, the girls need to play softball instead of baseball. They can't play football, but they are allowed in Brunswick to play on the boys' hockey team because the boys' hockey team is a club team. Buckfield, a call back and left a message on the machine said that the girls can play on the softball team, but not the baseball team. I hope you get the picture. There is a lot of discrimination and there is a lot of variation from town to town.

Federal law covers sexual discrimination, but only for college teams, so it doesn't cover the high schools and it doesn't apply to us here in Maine. The Maine Human Rights Commission rules prohibit discrimination, but they only guarantee that there be an equivalent sport available to the girls to play on, such softball in lieu of baseball, field hockey in lieu of ice hockey. This bill will guarantee that no Maine girl is purposefully held back from excelling because of archaic traditions, policy, rules, laws, bigotries, biases or anything else.

I remember as a boy my hero was Satchel Page. Satchel Page may have been the greatest baseball player in history, but when sports fans talk about baseball players, great pitchers, they don't talk about Satchel Page. They talk about Whitey Ford, Sandy Kofax, Roger Clemons and Nolan Ryan, people like that. They don't remember Satchel Page for the most part. He was not allowed to play in the major leagues until 1948. That was 22 years after he pitched his first professional baseball game. They had equal rights in those days. They didn't discriminate, just like some people here believe there is no discrimination today. Back then they had the major leagues for white players and they had the Negro leagues for black players. They didn't discriminate. There was plenty of opportunity. The legendary Jackie Robinson and Satchel Page were relegated to those Negro leagues for most of their careers until Jackie Robinson broke through to the major leagues and then Satchel Page followed on about a year later. Satchel Page pitched in the World Series the year that Kansas City won and pitched his last game against the Red Sox at the age of 60 when he pitched three innings of no hit baseball against the Red Sox. Some of the best players in baseball history will never be known because society had excuses for holding them back from the top teams. The reasons back then were racist. The reasons today are rationalized in other terms. Holding back talented girls today is just as wrong as limiting blacks to the Negro leagues of the past. This is a civil rights bill. It needs to be passed.

A few years ago we had a talented girl in Lewiston named Katie LaChapelle. She played hockey for the Lewiston High

School Hockey Team. It was the state championship team. She played hockey with the boys and she played with the best of them. She is legendary back in my area. She is now coaching at Union College in New York. I would like to read to you part of her testimony. She says, "When I was five years old I started playing ice hockey with the boys and continued playing through high school at Lewiston. I was on the 1995 state championship team there. Being able to continue playing ice hockey with the boys enabled me to compete at the highest level that I could to prepare me for college. This enabled me to achieve a partial ice hockey and field hockey scholarship to attend Providence College. Without being allowed to play at the top level throughout high school, men's high school hockey, it would have been difficult for me to have continued to develop into an NCAA Division I women's ice hockey player playing for one of the best teams in the nation. Playing sports and being part of a team has taught me, along with many other things, team work, commitment, loyalty, perseverance and most importantly it has given me the confidence to do anything I put my mind to." Listen to those words of this young woman, the confidence to do anything she wanted to. She is in favor of the bill that would allow girls to play for the top team if they qualify. The only way that the best of the best can continue to improve is by competing against other athletes at their level. We should encourage females to play at the best level they can so as not to take those opportunities away. Some people would have denied Katie LaChapelle that opportunity. We would never have known Katie LaChapelle if she had had the bad fortune to have lived in a town that didn't allow the girls to play hockey.

There was another young woman from Auburn named April Gerry who testified at the hearing who has played baseball with the boys for several years on the Little League team. She is the niece of former Representative Belinda Gerry. Here are a few of her comments. She says, "I am 13 years old and have been playing baseball with the boys for five years as part of the Auburn Suburban Little League. First I played in the minor league and this year I will be playing in the junior league for 13 and 14 year olds. I played catcher and play every game. I usually am the starting catcher. I enjoy playing baseball and am a pretty good hitter, sometimes getting doubles and triples. Last year I am pretty sure I would have made the All Stars, but at the beginning of the season I broke my arm playing baseball. I have always been comfortable playing with the boys and can hold my own with any of them. I have four brothers and they all like that I play with the boys. I hope that I will always be allowed to try out for the boys' teams, which I think is only fair. I think it would be too bad if a girl is good enough she shouldn't be kept back just because she is a girl."

I hope you will pass this bill so that all girls in Maine will be able to play to the highest level that they have earned.

We went to see April play a couple of days ago and she is playing with the 14 year olds, she is 13. You wouldn't know that she was playing with the older boys. While I watched her, she hit a successful sacrifice bunt and moved the runner to third base. She hit a base hit. She got on base and later on she scored. She also made a great stop. She was playing second base that day. Can you imagine in this day, in this day and age if this All Star player moved to another town and we would have to explain to her that she can't play with the guys, she has to be relegated to some apartheid team? Can you imagine that in this day and age? I can't imagine that here in Maine or here in the Legislature.

We also had a woman named Mallory Nutting who testified at the hearing. Her and her mom came. She plays hockey for the Gardiner High School. I didn't get a copy of her testimony. Only one person testified in opposition of the bill. That was the

representative from the State Principal Association. Mallory, the hockey player from Gardiner, told me after the hearing, referring to that principal that had testified against the bill, she said, "that guy there, his school is one of the schools that doesn't let the girls play, but my team played his team. Every time there was a free puck, I made sure I beat his guys to the puck every time." Can you dig it? That is what we are up against.

This bill will make sure that no Maine girl is ever prevented from being all that she can be simply because she lived in an era where society permitted some school districts to promote biases, superstitions and other outdated excuses to justify and rationalize a system of discrimination, at best, and apartheid, at worst, for young women of the State of Maine.

One of the excuses given for denying Maine girls equal sports rights is that the issue should be left up to the local school districts. Imagine someone today suggesting that we would leave up to the local school districts the question of whether or not to allow black people to play on the varsity teams. We wouldn't put up with that for a second. We will leave that up to the local districts. It is a local control matter. Some districts may not be ready to have minorities on their teams. They just might get hurt. They are not the same as white people. Even more bizarre, imagine if the local legislative districts determined district by district whether we could let women run for the Legislature. It is a bit bizarre. We don't discriminate. We don't let women run for the Legislature in our district, but we let them run for city council and county commissioner. We have women's intramural politics that are available to them. We don't discriminate. We shouldn't allow them to run for the Legislature, they might get hurt. No, setting the young women of Maine free is not a local issue. It is a state civil rights issue and it is not all right for us to hide behind a ridiculous argument.

One other concern is there was some concern voiced about having the boys' play for the girls' team. It was a concern that the boys would overrun the girls' team, the field hockey team. In fact, this bill does not cause the boys to be playing for the field hockey teams. That is another issue that we would have to take up on another bill at some other time. It is perfectly legal in 1999, Maine Superior Court Decision, very consistent with other court decisions around the country, already said it is all right for schools to ban boys from the field hockey teams because the boys tended to take over those teams, thereby causing other field hockey teams to be under pressure to recruit boys just to compete. That is already perfectly legal. It is not a legitimate concern to say that the boys are now going to run over the girls if we pass this bill. This is an equal rights bill, a women's rights bill, a civil rights bill, an anti-glass ceiling bill and a 21st Century bill. We need to bring this state into the 21st Century and out of the dark ages. This bill stops discrimination, guarantees women's rights and civil rights and removes the glass ceiling so that the young women of Maine can fly. Let them fly. Let them fly as high as they want.

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

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

The SPEAKER: The Representative may pose his question.

Representative CLARK: Mr. Speaker, Ladies and Gentlemen of the House. For anyone that might answer, if this bill is just for high school women or young ladies and they want to play at the top rank, for women that attend college in the State of Maine, just take the University of Maine at Orono, the hockey program for women is a club, but the highest rank is the men's hockey team. Does this pertain to them?

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

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

The SPEAKER: The Representative from Millinocket, Representative Clark has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Farmingdale, Representative Watson.

Representative **WATSON**: Mr. Speaker, Men and Women of the House. You will notice on your your calendar today that I am on the Minority Report and I very gladly supported Representative Michael's initiative to create equality within the sports field in high school. He is right this is an equal rights issue. This is an anti-discrimination issue. All that he has said, I support as factual. In this state in this day and age, we do have schools that do not honor opportunities for all students in athletics. It is unfortunate, but true.

The one opponent to this legislation that spoke to the committee from the School Principal's Association, one of the arguments he was using why this was unnecessary legislation for us to pass, was that in the State of Maine we have an avenue for redress for those female athletes that are denied opportunities at a higher level to participate. He wanted us to know that that avenue of redress was the Maine Human Rights Commission. They could just take themselves to the Maine Human Rights Commission and the Maine Human Rights Commission would take care of the issue. I questioned him in regards to the Maine Human Rights Commission, because I have had a student in one of my districts who has actually had to go that route to be able to play in a specific sport. I won't go into the details, but for that student and that student's family, it was not just picking up a telephone, making an appointment, going in and having your grievance heard and going home with a result that was favorable.

To go before the Maine Human Rights Commission, for any of you that have never been through that process, it is a deliberative body that is very thorough in its investigations and they do not take any complaints before them lightly. I think an issue has to rise to a certain level of prominence and importance for them to even take it up in the first place. This family went through the process with the Human Rights Commission. It took the entire athletic season that this student wanted to participate in to get a ruling from the Human Rights Commission that said, in fact, that student could participate in the sport. Well, the student was out one season in the sport. Luckily, the next year was coming up. The student was still enrolled. The student could play. It wasn't as easy a process as the superintendent's representative would have led the committee to believe. I think this legislation is timely. I think there is a disparity statewide. I represent school districts that have no problem with admitting young women into male sports if there is not an equivalency in the female sport's arena. I have bragging rights too. One of my students actually in male ice hockey went on to a full four-year scholarship at Middlebury University. She would not have been offered that opportunity if the school district that she wanted to play ice hockey in would not even let her try out for the sport. That is what is happening in some of the schools in this state. They are not even allowed to try out. Never mind that they might have been cut or made the grade. They can't even lace up a pair of skates and go out there on the ice to show their stuff.

I ask you, members of the House, in this day and age, is that right? Obviously I don't think so. I would ask people that when they vote tonight that they think about the young women in their districts who may be aspiring to some athletic endeavor. Are you going to allow, again, local control, I know the issue is there, obviously, the majority of the committee wants to uphold local control, but is this an issue that is bigger than just the local level?

I think so and I appreciate anybody's support tonight for Representative John Michael's initiative. Thank you.

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

Representative **O'BRIEN**: Mr. Speaker, Men and Women of the House. The part of this bill that I would object to is "An Act to Guarantee Girls Equal Access to Sports Teams." I think we all know that not every city and town has every single one of the sports in their total agenda at the high schools. I think that they should be allowed to make the decisions on what they can comfortably support for sports teams. We are talking, really when you think about it, a sport for life, not a sport for short term when, in fact, you may or may not injure your body.

The other thing I would say is I have waited until May 29, 2001 at 7:30 in the evening to tell you about the wonderful athletics that I have been involved in in my lifetime. I earned by L at Lewiston High School across from Auburn. I also earned my letters in college. I was one of the four girls to earn a jacket, which I have outgrown many years ago. I also was fortunate enough to have a daughter who swam in the Georgia Athletic Association and did very well. Today I have a granddaughter who is one of the top 10 women hockey players in the State of New York and is going to the US girls' Olympic tryouts this summer at Lake Placid. I still believe we have to look at sports for life. If within the school that the girl is attending, there is an opportunity for her to play on the boys' hockey team or soccer team, fine. I think it does need to stay within the local government. I also have served seven years on the Lewiston School Board and I am aware of the wonderful confidence of many of the girls in the Lewiston area. What we have to really see is what are we here to pass or not to pass, let's not do this so that we are pushing on the local authorities who, in fact, I believe, have the best interests of the girls and boys in mind when they are setting up what they are going to have for sports in their locality. Remember, we are looking at quite a few people who are on the Ought Not to Pass. Let's respect their opinions. They heard the same people that Representative Michael heard. They can make, I think, a good opinion. Once in a while, I think we should try to respect the people who worked so hard on the committees and say that they heard all the testimony and we are here tonight, kind of going over and over our opinions, but, in fact, this is a bill that came from Education and Cultural Services, let's respect that they are there to do a good job in the best interests of all the students of the State of Maine and let's not overrule their opinion. Thank you.

The SPEAKER: The Chair recognizes the Representative from Caribou, Representative Belanger.

Representative **BELANGER**: Mr. Speaker, Men and Women of the House. What is it that we have to fear? Why don't we want to allow women, high school girls, to try out for any team? I think if we look at the history, it is kind of a checkered history. I can recall when I had a daughter that played basketball, they tried to move the tournament, the Eastern Maine Tournament, to another site. It was clearly discriminatory. I can tell you from the experiences as a father of two daughters that were both interested in athletics that discrimination does exist. Female teams are considered lower than the JVs. Look how your high schools schedules their games. Who gets the prime time? Who gets the band? I think this is not a local issue. I think this is a state issue. This bill does not ask you to put any girls on any team that they are not able to compete on. It only asks for the opportunity to compete. I would say to you that it is un-American not to allow them to compete. What are we afraid of? I have a great deal of respect for the Education Committee and I am very disheartened by their committee report. Separate is not equal. That has been established in this country time and time and time

again. All we are asking for is the opportunity to compete. Thank you.

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

Representative **MENDROS**: Mr. Speaker, Ladies and Gentlemen of the House. To answer a couple points, first, as far as college athletics, I am certain that the NCAA sets standards that we can't, as a state, change. I know this bill doesn't deal with college level athletics. It only deals with the high school level, which we do have influence over. As far as school districts that don't offer these particular types of sports, in my reading the bill, I don't think it would affect those school districts. It would only affect it if the sport is offered, then women should have the right to try out for those teams.

I remember when I was a kid, there was a lot of talk about discrimination. I was naïve, as all kids should be, and I didn't understand why we needed anti-discrimination laws. It just seemed stupid to me that if somebody was the most qualified for a job, not to give it to them because of their color, their sex or some other thing. As an employer, a coach or anyone, you would want the most qualified person. What do you care what color they are or what sex they are or anything else about them. Unfortunately there is an inherent evil that promotes discrimination. Like most evils, you hide from them. You don't want to believe they are there. You ignore them. You say you can call it local control or whatever. It is still there. We have a responsibility as policymakers to do something about it.

It was alluded to earlier in Brown versus the Board of Education, the Supreme Court ruled that separate but equal is not equal. That is a race, but why is it any different if it is a sex argument? If these girls are qualified to be on the team, why not let them? I can tell you that the University of Maine Women's Basketball Team is one of the best basketball teams in the country. Many of those women that play on that team, I spoke with, I was a student here, played on the boys' teams in high school. That is where they competed against the higher-level competition to make them the best that they could be. That is what makes you good, higher level of competition.

We are setting them back, not just in their minds as Representative Michael talked about, but we are setting them back for their entire future by not letting them be up against the toughest competition. I don't think that is a local control issue. I think that is sacrificing the future of the girls of the State of Maine.

The SPEAKER: The Chair recognizes the Representative from Frenchville, Representative Paradis.

Representative **PARADIS**: Mr. Speaker, Ladies and Gentlemen of the House. It seems that I have taken a knack of supporting the Minority Report from the Education Committee, but I will continue. Some years ago I would have supported the Majority Report until in Madawaska a girl tried out and made the boys' wrestling team. She was quite successful. Some of the boys were embarrassed when they lost to her, but she could do it and I support my good friend, Representative Belanger, and others. Thank you.

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

Representative **SNOWE-MELLO**: Mr. Speaker, Ladies and Gentlemen of the House. I have a little tale to tell you. Representative Michael asked me to cosponsor this bill and the attitude I had of old fashioned biased and I was really stuck in the mode that girls can't do this. They shouldn't be able to do this. There is no way I am going to sign that bill. He must have asked me 10 times. Each time I said that I am not going to cosponsor that bill. I have done a lot of thinking since I rejected that opportunity 10 times. I finally said, why not? What am I

afraid of? My goodness, I think this is the same thing as our ladies that are in some of our plants, like in General Electric, where they are doing heavy work. They are doing the same type of physical activity that our men are doing. Why can't we allow our women to have equal access to our sports and get on a team? It only allows them to try out. If they make it, great. If they don't make it, that is meant to be. The same thing is with a lady working. If she can do the job, she keeps her job. If she can't do it, she doesn't keep her job. For goodness sake, let's let our girls have equal access to our sports team. I think the time is now. I think the state would be doing a great favor for our kids out there. Thank you.

The SPEAKER: The Chair recognizes the Representative from Arundel, Representative Daigle.

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

The SPEAKER: The Representative may pose his question.

Representative **DAIGLE**: Mr. Speaker, Men and Women of the House. To anyone who may answer, as I am reading the Committee Amendment, the Minority Report, I am thinking of a scenario where a freshman boy coming into high school who wants to play football has to try out for the junior varsity team and if he is good enough he works his way up through several years of high school to play in the varsity. As I read this amendment, it suggests to me that if a freshman girl wanting to play football gets to bypass that entire development structure and try out for the varsity football team. I am wondering if I interpret this correctly? Thank you.

The SPEAKER: The Representative from Arundel, Representative Daigle has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Auburn, Representative Michael.

Representative **MICHAEL**: Mr. Speaker, Men and Women of the House. You could say that the girls according to how far we have gone with this so far would miss the opportunity to practice and increase their likelihood of making the high school team. Technically that would be accurate. We left the amendment to address only high school because the State Principal's Association has jurisdiction over high schools and that was a very logistically workable way of moving this bill forward. Maybe another time we could look at the junior high school.

The other thing is the older the girls get, the more likely they are to be discriminated against. The younger girls often times co-mingle on the lower age sports teams, but as they get older, that is when they run into trouble. Where they will need the most protection is in high school.

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

Representative **BOUFFARD**: Mr. Speaker, Men and Women of the House. I am going to vote against this bill and I am going to tell you why. This is not an equal rights bill because I do recall the incident of the young man who wanted to play field hockey and was not permitted to because it was a girls' game. Until this bill gets amended to say that male athletes will be able to participate in female games, then I will vote for it. Until that time, this, to me, is still a discrimination bill. Thank you Mr. Speaker.

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

Representative **MENDROS**: Mr. Speaker, Ladies and Gentlemen of the House. In answer to the question about the girl trying out her freshman year for the varsity team, under the current rules boys in their freshman year, if they are good enough, can try out for a varsity team. Many have and many play varsity football and hockey. I know of women that I went to high school with that played varsity hockey starting in their freshman year.

One quick little point, I was watching one of those after school specials with my nephew a couple weeks back and it was about a girl who was good enough to play high school football and wasn't allowed to. She wanted to try out for the team, but wasn't allowed to. It was one of those heart-tugging stories you hear about that she had to go through all these legal channels to be allowed to play on the team. My nephew said to me that is wrong. I said that is a stupid story. That doesn't happen in Maine, but it does. He was right that it is wrong. Are we going to fix that? Thank you.

The SPEAKER: The Chair recognizes the Representative from Biddeford, Representative Twomey.

Representative **TWOMEY**: Mr. Speaker, Men and Women of the House. We had the best female goalie at Biddeford High School that you ever saw. She was dynamic. She was terrific and she loved playing hockey. My two sons played hockey and I worry just as much about them breaking their bones. It is a kind of a violent game. If you are willing and you are able, for me the bottom line is, if you come from a background that you can not afford to go to college and you are good enough to play for a sport, that gives you a scholarship to go onto higher education and that is where I think it really hits home. Why should the females be denied the right to earn a scholarship for a free education? I think it should be equal opportunity and if you are willing to try out and you have the spirit and you have the ability, you should not be denied. Thank you.

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

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

The SPEAKER: The Representative may pose his question.

Representative **MACDOUGALL**: Mr. Speaker, Men and Women of the House. To anyone who could answer, if in a given town there is a girls' hockey team and a boys' hockey team, would the girl be allowed to play on the boys' hockey team?

The SPEAKER: The Representative from North Berwick, Representative MacDougall has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Auburn, Representative Michael.

Representative **MICHAEL**: Mr. Speaker, Ladies and Gentlemen of the House. The answer to that question would be that the girl would be allowed to try out for the boys' team assuming that the State Principal's Association declares the boys' team the top team. She may or may not make the team, but there would still be the girls' hockey team as well. I might add, she could play for both teams.

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

Representative **CHICK**: Mr. Speaker, Ladies and Gentlemen of the House. I stand here this evening recalling something that I saw with the boys of summer in 1939. It was on an athletic field in Brewer, Maine. It was a contest for junior legion state champions. I recall very well the afternoon that we went there to play and of seeing a person who was out on the field, if some of you folks have played baseball and seen two teams out there warming up, outfielders are chasing some fly balls. There was a person out there that was not in uniform. She had beautiful red hair, very graceful and could throw better than any of the boys on that Brewer ball club. The first year that I came here to the Legislature and I met Representative Fisher, I asked him if he had any thoughts to who that young lady might have been. He indicated that she had a career in education and coaching and gave me a cutout from a paper of that same time. We have heard it mentioned here this evening, to me, I would observe for the ability of a human being to perform in whatever sport they

might be trying for. In 1939, that young lady didn't have a shot at playing on that ball club for Brewer.

I believe that what we are talking about here is equal rights and the suggestion that some male didn't make some girls' team, I don't think about that kind of a situation. I just believe that if a girl or a boy has the ability to perform and certainly this young lady I saw then probably would never be named as All State or All Star to anything in Maine, but forever she had great ability and I thought I would like to tell you about it tonight. By the way, Brewer didn't win that state championship, Sanford, Maine, did. Thank you.

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

Representative **COTE**: Mr. Speaker, Ladies and Gentlemen of the House. I was going to hold back on rising to testify on behalf of this bill. I, myself, will be voting against this pending motion. I represent Lewiston High School. We have a wonderful football team, wonderful basketball team, wonderful baseball team and we do allow the young ladies to try out for the sport. Yes, some make it and some don't. We give them that opportunity to do so. Believe me, I have seen some of those girls play football. I hate to say it, but a lot of them are better than the boys. My son played two years of travel league. Unfortunately because of his kidney he can't continue playing ball, but when he did, he played against other travel teams who had young ladies that played football. One of them my son went against, he weighed in at 221 pounds. This girl was only 125 pounds. She knocked him on his behind. Don't tell me that a girl cannot adjust to male dominated sports, because they can. Their size doesn't mean a thing. I have cousins that play in male dominated sports, hockey players, football players, basketball players, every sport you can think of. I don't even want to hear that this is a racist or sexist thing because it is not. Women have the right to try out just as well as the males for any sport that they choose to want to play. I urge my fellow colleagues to vote with me against this pending motion and vote Ought to Pass. Thank you.

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

ROLL CALL NO. 279

YEA - Andrews, Berry RL, Blanchette, Bouffard, Bowles, Brannigan, Buck, Bunker, Carr, Chizmar, Clough, Colwell, Daigle, Davis, Dunlap, Estes, Etnier, Fisher, Gooley, Heidrich, Honey, Jacobs, Kane, Kasprzak, Koffman, Labrecque, Landry, LaVerdiere, Ledwin, Lemoine, Lessard, Mailhot, McGowan, Michaud, Morrison, Muse C, Muse K, Nass, Nutting, O'Brien JA, O'Brien LL, O'Neil, Pineau, Pinkham, Richard, Richardson, Rines, Schneider, Shields, Simpson, Skoglund, Stanley, Tarazewich, Tobin D, Trahan, Treadwell, Tuttle, Usher, Waterhouse, Weston.

NAY - Annis, Baker, Belanger, Bliss, Brooks, Bryant, Bull, Bumps, Canavan, Chick, Clark, Collins, Cote, Cowger, Cressey, Cummings, Dudley, Dugay, Duncan, Duplessie, Duprey, Foster, Fuller, Gagne, Gerzofsky, Glynn, Green, Hatch, Hawes, Hutton, Jodrey, Jones, Laverriere-Boucher, Lundeen, MacDougall, Marley, Mayo, McDonough, McGlocklin, McKee, McLaughlin, McNeil, Mendros, Michael, Murphy T, Norbert, Norton, Paradis, Patrick, Peavey, Perkins, Rosen, Savage, Sherman, Smith, Snowe-Mello, Sullivan, Tessier, Thomas, Tracy, Twomey, Volenik, Watson, Winsor, Young.

ABSENT - Ash, Bagley, Berry DP, Bruno, Chase, Crabtree, Desmond, Dorr, Goodwin, Hall, Haskell, Lovett, Madore, Marrache, Matthews, McKenney, Mitchell, Murphy E, Perry,

Povich, Quint, Stedman, Tobin J, Wheeler EM, Wheeler GJ, Mr. Speaker.

Yes, 60; No, 65; Absent, 26; Excused, 0.

60 having voted in the affirmative and 65 voted in the negative, with 26 being absent, and accordingly the Majority **Ought Not to Pass** Report was **NOT ACCEPTED**.

Subsequently, the Minority **Ought to Pass as Amended** Report was **ACCEPTED**.

The Bill was **READ ONCE**. **Committee Amendment "A" (H-623)** was **READ** by the Clerk and **ADOPTED**.

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

Under further suspension of the rules the Bill was **PASSED TO BE ENGROSSED as Amended by Committee Amendment "A" (H-623)** and sent for concurrence.

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

SENATE PAPERS

Non-Concurrent Matter

Bill "An Act to Encourage Greater Acquisition, Deployment and Use of Automated External Defibrillators"

(H.P. 1069) (L.D. 1432)

PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-569) in the House on May 25, 2001.

Came from the Senate **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-569) AS AMENDED BY SENATE AMENDMENT "A" (S-282)** thereto in **NON-CONCURRENCE**.

On motion of Representative COLWELL of Gardiner, the House voted to **INSIST**.

Non-Concurrent Matter

Resolve, to Reduce Unnecessary Controversy in the Workers' Compensation System

(S.P. 198) (L.D. 670)

(C. "A" S-189)

FINALLY PASSED in the House on May 22, 2001.

Came from the Senate **PASSED TO BE ENGROSSED AS AMENDED BY SENATE AMENDMENT "B" (S-262)** in **NON-CONCURRENCE**.

On motion of Representative BUNKER of Kossuth Township, the House voted to **RECEDE AND CONCUR**.

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

Non-Concurrent Matter

Bill "An Act to Revise Certain Provisions of Maine's Fish and Wildlife Laws" (EMERGENCY)

(S.P. 546) (L.D. 1692)

PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-187) AND HOUSE AMENDMENT "A" (H-611) in the House on May 29, 2001.

Came from the Senate **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-187)**,

SENATE AMENDMENT "A" (S-268) AND HOUSE AMENDMENT "A" (H-611) in NON-CONCURRENCE.

On motion of Representative DUNLAP of Old Town, the House voted to **RECEDE AND CONCUR**.

Non-Concurrent Matter

An Act to Provide Funding for the Office of the State Fire Marshal and to Increase Certain Fire Inspection Fees (EMERGENCY)

(S.P. 418) (L.D. 1362)

(C. "A" S-241)

PASSED TO BE ENACTED in the House on May 29, 2001.

Came from the Senate **PASSED TO BE ENGROSSED AS AMENDED BY SENATE AMENDMENT "A" (S-272)** in **NON-CONCURRENCE**.

On motion of Representative COLWELL of Gardiner, **TABLED** pending **FURTHER CONSIDERATION** and later today assigned.

REPORTS OF COMMITTEE

Divided Report

Majority Report of the Committee on **BANKING AND INSURANCE** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-269)** on Bill "An Act Concerning Patient Access to Eye Care Providers"

(S.P. 97) (L.D. 323)

Signed:

Senators:

LaFOUNTAIN of York
DOUGLASS of Androscoggin
ABROMSON of Cumberland

Representatives:

DUDLEY of Portland
MICHAEL of Auburn
SMITH of Van Buren
YOUNG of Limestone
MAYO of Bath
O'NEIL of Saco
SULLIVAN of Biddeford
CANAVAN of Waterville
MARRACHÉ of Waterville

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

Signed:

Representative:

GLYNN of South Portland

Came from the Senate with the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-269)**.

READ.

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

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

Representative **GLYNN**: Mr. Speaker, Ladies and Gentlemen of the House. I rise in opposition to the pending motion. I realize that it is pretty much an impossible task to turn over an 11 to 1 report or a 12 to 1 report by legislative committee. I can tell you that this is not a good piece of legislation for Maine and it is, in fact, going to increase health insurance premiums in Maine. What a mandate is is when the State of Maine government orders something to be covered in

health policies, doesn't pay for it and increases the cost of health insurance for everybody that has a policy.

We have a number of people in our state, because they are unable to afford Cadillac health plans have resorted to having for health insurance managed care contracts. Managed care is not supposed to be the best, most Cadillac, highest choice offering health insurance product on the market, but what it does do is it covers you for most things at a price that you can afford and people, in general, are happy with managed care contracts because without them they wouldn't have health insurance at all. As part of health insurance with a managed care contract you have what is known as a PCP, which is primary care physician. A primary care physician's job is to manage your health and manage the cost of your health. PCPs are paid a monthly amount to look after your care and when necessary will refer you to a specialist if, in fact, you need a specialist.

A lot of folks out there that would like to always go straight directly to a specialist without checking with their PCP, they don't like that. They don't want to be second-guessed. However, they don't want to pay for the kind of health insurance that allows you to go straight to whatever doctor you choose anytime you choose. That is the conflict.

What this bill does is it does away with the gatekeeper concept for the purposes of eye care. It says you don't have to go to your PCP, regardless of what your HMO says in the contract, which is why you got that lower health care cost, by the way. For the first two visits, you can skip right around them and you can go straight to your eye doctor. At first blush, that might sound good to some people, but there is a lot of reasons why you should go to your PCP first. They are responsible for administering all of your health. There are a lot of reasons why people have eye problems. I can think of one. How about diabetes? If you have diabetes, shouldn't you be going to a PCP? Why would you go to your eye doctor first?

The Executive does not weigh in on mandates that are before the Banking and Insurance Committee until after they have had a mandate study to look at their cost impacts. On May 15th, the commissioner testified in front of the Banking and Insurance Committee, I wanted to share with you some of these thoughts because they definitely apply to some of the actions that we are taking here in the Legislature as a notice of warning. She writes in her letter that she read to the committee, "In keeping with established practices, the King Administration has refrained from commenting on proposed insurance mandates pending the submission of required mandated benefit studies by the Bureau of Insurance. Now that the bureau has completed its review of these two bills," by the way our committee supports all of those mandates, "I would like to share with your our policy position on these mandates. Last year the administration indicated its belief that strict scrutiny of mandated proposals in an environment of rising costs and a decreasing number of carriers is not enough and we adopted a presumption against further mandates, which only the most compelling of arguments should overturn. Although these proposals are well intentioned, we do not believe that they overcome this presumption against passage. We have opposed the addition of further mandates and urge the committee to do the same." The commissioner's testimony went on talking about what kind of cost impact this stuff is having. In summary she stated on behalf of the Executive, "Maine is facing a health care insurance crisis as premium rates increase, increases are in the double digits and employers and individuals brace for further cost increases. The cost impact of the proposed increase is nominal on the individual. Any proposal, which would increase health insurance costs or add regulatory burden seems imprudent. In addition, we would ask that the Legislature consider the cumulative impact of mandates on the

baseline costs of insurance." It ends urging that we vote against this bill.

I am very concerned as one legislator. I can tell you that the bills that I have seen come before this body. I can tell you that I have seen bills that are decreasing the cost of health insurance. Each bill cumulatively is adding more and more expense, more and more cost. When we adjourn and we go home to our districts and our constituents and our business leaders and those that are running local governments come up to us and start showing us their health insurance costs, we can look at ourselves and our actions that we, in fact, as the Maine State Legislature, are, in fact, increasing the costs of their health care.

I would like to leave you with one last thought. According to the estimates from the Maine Bureau of Insurance approximately 13 percent of Maine people, that is 130,000 Mainers, currently go without health insurance. Regardless of what source you speak with, be it insurance industry leaders, small businessmen, citizens in your district or the endless studies on the topic, the source of the problem is routinely identified as health insurance premium costs. Mainers who want coverage in the event of a catastrophic health event go without any coverage because of their inability to afford health insurance. Why, then, do we continue to pass regulations that increase debt burden and that cost. Mr. Speaker, when the vote is taken, I respectfully request the yeas and nays.

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

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

The SPEAKER: The Chair recognizes the Representative from Saco, Representative O'Neil.

Representative O'NEIL: Mr. Speaker, Ladies and Gentlemen of the House. Real quickly, yes, indeed this is a mandate. It is one of many that was scrutinized long and hard this session. However, we went further than just the testimony at the public hearing from the commissioner. We went and got our study, which we do quite often on consideration of mandates. It is not anticipated to increase demand. It may increase the use of optometrists and ophthalmologist's office visits will replace less expensive PCP office visits. Alternatively it is possible that going directly to an optometrist or ophthalmologist could result in more expeditious and less costly eye care. If PCPs are reimbursed on a fee for service basis, as they are in more and more managed care plans, the elimination of the PCP visit could be of savings to the managed care plan. We, in fact, are within the margin on this and we think that it might even save money. It is a good 12 to 1 bill.

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

Representative GLYNN: Mr. Speaker, Ladies and Gentlemen of the House. I rise just to make one quick clarification for those that may be confused. The report by the Bureau of Insurance, which evaluated this mandate, was dated May 9. The comments on behalf of the Executive Office by Catherine Longley was dated May 15. The Executive's Office was fully aware of the contents of this report. They had reviewed it. Actually that department, the Bureau of Insurance, had prepared the report and still the recommendation stands the same. This is something more than we can afford. Thank you.

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

ROLL CALL NO. 280

YEA - Annis, Baker, Belanger, Berry RL, Blanchette, Bliss, Brannigan, Brooks, Bryant, Bull, Bumps, Bunker, Canavan, Carr, Chick, Chizmar, Clark, Colwell, Cote, Cowger, Cummings, Daigle, Davis, Dudley, Dugay, Duncan, Dunlap, Duplessie, Estes, Etnier, Fisher, Fuller, Gagne, Gerzofsky, Green, Hatch, Honey, Hutton, Jacobs, Jodrey, Jones, Kane, Koffman, LaVerdiere, Laverriere-Boucher, Ledwin, Lemoine, Lessard, Lundeen, Mailhot, Marley, Mayo, McDonough, McGlocklin, McGowan, McKee, McLaughlin, McNeil, Michael, Michaud, Morrison, Muse C, Muse K, Norbert, Norton, Nutting, O'Brien JA, O'Brien LL, O'Neil, Paradis, Patrick, Peavey, Perkins, Pineau, Pinkham, Richard, Richardson, Rines, Savage, Simpson, Skoglund, Smith, Snowe-Mello, Stanley, Sullivan, Tarazewich, Tessier, Thomas, Tracy, Trahan, Tuttle, Twomey, Usher, Volenik, Watson, Weston, Young, Mr. Speaker.

NAY - Andrews, Bouffard, Bowles, Buck, Clough, Collins, Cressey, Duprey, Foster, Glynn, Gooley, Hawes, Heidrich, Kasprzak, Labrecque, Landry, MacDougall, Mendros, Murphy T, Nass, Rosen, Schneider, Sherman, Shields, Tobin D, Treadwell, Waterhouse, Winsor.

ABSENT - Ash, Bagley, Berry DP, Bruno, Chase, Crabtree, Desmond, Dorr, Goodwin, Hall, Haskell, Lovett, Madore, Marrache, Matthews, McKenney, Mitchell, Murphy E, Perry, Povich, Quint, Stedman, Tobin J, Wheeler EM, Wheeler GJ.

Yes, 98; No, 28; Absent, 25; Excused, 0.

98 having voted in the affirmative and 28 voted in the negative, with 25 being absent, and accordingly the Majority **Ought to Pass as Amended Report was ACCEPTED.**

The Bill was **READ ONCE. Committee Amendment "A" (S-269) was READ** by the Clerk and **ADOPTED.**

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

Under further suspension of the rules the Bill was **PASSED TO BE ENGROSSED as Amended by Committee Amendment "A" (S-269)** in concurrence.

Divided Report

Majority Report of the Committee on **NATURAL RESOURCES** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-278)** on Bill "An Act to Address the Health Effects of Mercury Fillings" (S.P. 429) (L.D. 1409)

Signed:

Senators:

MARTIN of Aroostook
SHOREY of Washington
SAWYER of Penobscot

Representatives:

ANNIS of Dover-Foxcroft
TOBIN of Windham
KOFFMAN of Bar Harbor
COWGER of Hallowell
CLARK of Millinocket
DAIGLE of Arundel
DUPLESSIE of Westbrook
CRABTREE of Hope

Minority Report of the same Committee reporting **Ought to Pass as Amended by Committee Amendment "B" (S-279)** on same Bill.

Signed:

Representatives:

BAKER of Bangor
TWOMEY of Biddeford

Came from the Senate with the Majority **OUGHT TO PASS AS AMENDED Report READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-278).**

READ.

On motion of Representative COWGER of Hallowell, the Majority **Ought to Pass as Amended Report was ACCEPTED.**

The Bill was **READ ONCE. Committee Amendment "A" (S-278) was READ** by the Clerk and **ADOPTED.**

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

Under further suspension of the rules the Bill was **PASSED TO BE ENGROSSED as Amended by Committee Amendment "A" (S-278)** in concurrence.

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

CONSENT CALENDAR

First Day

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

(S.P. 393) (L.D. 1308) Bill "An Act to Implement the Recommendations of the Department of Environmental Protection on Ambient Water Quality Criteria for Mercury" (EMERGENCY) Committee on **NATURAL RESOURCES** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-276)**

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

There being no objection, the Senate Paper was **PASSED TO BE ENGROSSED as Amended** in concurrence.

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

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

An Act to Allow County Corrections Personnel to Participate in the Same Retirement Plan as Other Corrections Personnel (EMERGENCY)

(H.P. 963) (L.D. 1276)
(C. "A" H-568)

Which was **TABLED** by Representative COLWELL of Gardiner pending **PASSAGE TO BE ENACTED.**

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

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

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

Representative **WATERHOUSE:** Mr. Speaker, Men and Women of the House. To anyone who may answer, would this measure add to the unfunded liability?

Representative **WATERHOUSE** of Bridgton moved that the Bill and all accompanying papers be **INDEFINITELY POSTPONED.**

Representative DUNLAP of Old Town **REQUESTED** a division on the motion to **INDEFINITELY POSTPONE** the Bill and all accompanying papers.

The Chair ordered a division on the motion to **INDEFINITELY POSTPONE** the Bill and all accompanying papers.

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

A vote of the House was taken. 28 voted in favor of the same and 83 against, and accordingly the motion to **INDEFINITELY POSTPONE** the Bill and all accompanying papers **FAILED**.

This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 101 voted in favor of the same and 15 against, and accordingly the Bill was **PASSED TO BE ENACTED**, signed by the Speaker and sent to the Senate.

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

HOUSE REPORT - Ought to Pass as Amended by Committee Amendment "A" (S-265) - Committee on NATURAL RESOURCES on Bill "An Act to Amend the Comprehensive Planning and Land Use Regulation Laws"

(S.P. 547) (L.D. 1693)

Which was **TABLED** by Representative COLWELL of Gardiner pending **ACCEPTANCE** of the Committee Report. (Roll Call Ordered)

The **SPEAKER**: The Chair recognizes the Representative from Lincoln, Representative Carr.

Representative **CARR**: Mr. Speaker, Men and Women of the House. I want to draw your attention while I am speaking here to (S-265) on LD 1693. For those of you who don't really know what this is all about, I want to take just a minute to go over a couple of things. Under the summary it authorizes the State Planning Office within the Executive Office to adopt rules. Number two under that, it clarifies that if a town wants to have a shoreland zone larger than the Department of Environmental Protection guidelines, then the shoreland zone ordinance must be based on a comprehensive plan. Part of the problem with that is that the comprehensive plan is approved by the state. If the ordinance is not consistent with the comprehensive plan within 24 months after adoption of the plan, the ordinance will no longer be in effect.

There are several other things under there that I would ask you to take a minute to look at. It is my understanding that under current law ordinances that are not equal to the comprehensive plan will be voided. If that is a problem, I see that as a problem, I would suggest that that change should be made and avoid going through a long debate and a lot of changes in this comprehensive plan.

I know that many of you have heard me speak on these issues before. Once again, I want to bring to your attention that all towns in Maine are not suffering from growth problems. We are suffering from a migration of our people to other areas. In the State of Maine we have two opposing departments. On one hand, we have the Department of Economic and Community Development and there is quite a lot of money that is placed aside each year to help towns to encourage economic development. On the other hand, we have the State Planning Office, through smart growth and many of the issues that they are bringing up, that are trying to hinder growth and economic development. As we vote on this tonight, I would just ask that

you take into consideration that local control is much more effective and is closer to the people than the control that we put on down here in Augusta. It is my personal opinion, having spent 13 or 14 years on a local town council, school board, budget committees and so forth, that most of these small towns are not as sophisticated, but they are very capable of making their own laws, their own rules and running their own town. I would just ask that you take all of these things into consideration before you cast your vote. Thank you Mr. Speaker.

The **SPEAKER**: The Chair recognizes the Representative from Hallowell, Representative Cowger.

Representative **COWGER**: Mr. Speaker, Men and Women of the House. I appreciate the comments from the good Representative from Lincoln. I think our committee worked very hard on this particular bill. I think the amendment reflects a lot of the issues that have been raised. I just want to call your attention to the current law. Right now if we don't do anything, as of January 1, 2003, all municipal land use ordinances that are not consistent with the comprehensive plan will be null and void. Let me repeat, all municipal land use ordinances that are not consistent would be null and void. We thought that that was really reaching very far and the bill that came before us was in part to correct that problem. This fixes this deadline of 2003 that would rule land use ordinances null and void. It would now only rule those sections of three particular parts of a local land use ordinance null and void, only those sections of zoning ordinances where a town has zoning, growth rate ordinances and impact fee ordinances. Only these three particular portions of the towns land use ordinance statute would be ruled null and void by 2003. This is totally supported by the Maine Municipal Association. You will see by the handouts, there is a salmon colored handout and on the bottom of that it is a detailed letter by the Maine Municipal Association and on the bottom it talks about urging your support of this legislation from the Maine Municipal Association.

A couple other elements of the bill, we have heard a couple times debated in this body, that slow growing towns don't need to participate in a great deal of growth management. This bill, in fact, exempts slow growing towns from having to go through the process of designating particular growth areas and developing the comprehensive plan. It is something we have heard time and time again that one size does not fit all and this legislation goes forth and recognizes that.

Further, for those towns that want to participate in growth management and want to get some grants from the state to help them do that, this bill streamlines the state review process from three steps down to two to make funds easier and more accessible, or more easily accessible, to communities. Basically it is designed to cut red tape, the get money flowing from the state to the communities that want it, but in no way imposing upon those communities that don't want to participate in this in any particular requirements. I urge you to support this unanimous committee report. Thank you.

The **SPEAKER**: The Chair recognizes the Representative from Arundel, Representative Daigle.

Representative **DAIGLE**: Mr. Speaker, Ladies and Gentlemen of the House. As a member of Natural Resources, I also urge you to support the pending motion. We worked real hard on this bill. I urge you to look at the Senate Amendment and read the many items. We have 18 items in the summary. Four of those are exemptions, as was mentioned by my good friend, Representative Cowger. We have adjusted a lot of things that are broke already, maybe not broke, but certainly needed improvement as part of this bill. The important point I want to leave with you is this issue about the State Planning Office approval of the comprehensive plan. That is supposed to be a

process review, not a content review. By that I mean that they are looking for there when they approve these plans is that towns have followed the steps involved. They are not supposed to be making judgment calls on whether the outcome of those steps is what they think is appropriate or not. If you want to make a bad decision in your town, fine, but you have to go through the process of how you come across that. I will give you as an example, the issue is banning jet skis, which is run by IF & W. We set up a process, a town has to have a hearing and address these issues. If they go through all that, then they are allowed to bring that forward here to whether or not they are going to ban jet skis. Nobody gets up there from IF & W and says that I think you should or should not ban them. They are just saying that you follow steps. That is what the SPO is doing with the comprehensive plan. Are you following the steps? Your outcome is your outcome. I have asked repeatedly throughout these last couple of years for an example of a case where SPO made a content decision, not a process decision, on a comprehensive plan. I have not found one that has happened yet. I think the system works well and I encourage you to stick with the committee's unanimous report.

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

Representative **BUCK**: Mr. Speaker, Ladies and Gentlemen of the House. Let me attempt to put this bill in its proper perspective. I think all of us when bills come before us go through a mental process of assigning the degree of importance that the particular piece of legislation has. In my case, as a history buff, if a bill is of some significance, I generally like to reference somewhere in my remarks some historical parallel. On the other hand, if the bill, in my mind, is not of great significance and it goes farther down the scale, I sometimes reference my remarks to some form of literature through either classical or contemporary and those remarks generally are made in the same proportion to the significance that I assigned to their particular proposal.

In the case of the one before us, I have searched many literary anthologies and have determined that the only thing that comes anywhere near a comparison is a Doctor Seuss rhyme. If you would bear with me, the Grinch Who Stopped Remodeling. You cannot build it far away. You cannot build it if you stay. You will not build your home here or there. You will not build it anywhere. I do not like change or your home to sprout, but also don't want you moving farther out.

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

Representative **TOBIN**: Mr. Speaker, Men and Women of the House. I know this is a good time for humor, but this is not a very humorous thing for your slow growing towns in the State of Maine. They are required at the present time to have a comprehensive plan, have it consistent with the state goals and to have their ordinances consistent with that comprehensive plan. For instance, my hometown of Windham is now doing its fourth comprehensive plan. The cost of that comprehensive plan this year is \$99,000. I don't know of any small town that wants to pay for that, especially if the small town is not growing. They do not need a comprehensive plan. They do not want a comprehensive plan and this bill exempts them from needing a comprehensive plan. It is immaterial to me, coming from the Town of Windham, whether you people adopt this or do not adopt this, but I would like to be a little speck on the wall when you go back to your municipal officers and tell them that you voted this down. Vote your conscience. Thank you.

The SPEAKER: The Chair recognizes the Representative from Lincoln, Representative Carr.

Representative **CARR**: Mr. Speaker, Men and Women of the House. Just a couple of comments on some of the things that have been said. As I said in my previous testimony, if we have a problem with a deadline looming, I would certainly entertain a change through an amendment. I think that that is certainly something that we should be concerned about. We also should be concerned on how they got there in the first place.

The other thing in relation to MMA's position and how it shifted on this, I am sure that they are much more comfortable with this draft than they were the first draft. I took it upon myself to talk to one of the lobbyists to see who they had talked to see what the big change was here. I don't think anybody was really sure. I took it upon myself to call some of the towns in my area. Three of the towns that I represent, one is Lincoln and it does have a comprehensive plan, but Enfield and Howland do not even have one.

I really don't know who MMA has talked to. I would hope that they did talk to somebody. As we move forward with smart growth, I think that we need to move very cautiously. Once again, I know that there are towns that are suffering from growth and it is growing at a fast rate, but as we move forward, I just ask that you take into consideration those of us who do live in the rural areas that don't have a problem. We have a problem of people leaving towns. We lost 700 in the last census in the Town of Lincoln. We certainly don't have a growth problem. Thank you Mr. Speaker.

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

Representative **CLARK**: Mr. Speaker, Ladies and Gentlemen of the House. I rise tonight to ask for your support of the unanimous committee report. The Representative from Lincoln brought up a good point of people leaving town. Just in my town alone, in Millinocket, back in 1985, we had 10,000 people. Now in 2001, we have just under 5,996. Millinocket does have a comprehensive plan. The others do not. When I was on the committee looking at various ways to do with smart growth, one of the questions that I asked in committee is how are we going to make sure that growth expands north where the growth is needed. We were reassured that growth through the State Planning Office would not be limited. This bill is particularly for the small areas. You do not need a comprehensive plan if you do not need one. Hopefully, I hope that you accept the committee report. We worked long and hard on this. That is all I can say. I hope that you support the committee report.

The SPEAKER: A roll call having been previously ordered. The pending question before the House is acceptance of the Committee Report. All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 281

YEA - Annis, Baker, Belanger, Berry RL, Blanchette, Bliss, Bouffard, Bowles, Brannigan, Brooks, Bryant, Bull, Bumps, Bunker, Canavan, Chick, Chizmar, Clark, Clough, Collins, Colwell, Cote, Cowger, Cummings, Daigle, Davis, Dudley, Duncan, Dunlap, Duplessie, Estes, Etnier, Fisher, Fuller, Gagne, Gerzofsky, Glynn, Gooley, Green, Hatch, Hawes, Heidrich, Honey, Hutton, Jodrey, Jones, Kane, Koffman, Landry, LaVerdiere, Laverriere-Boucher, Ledwin, Lemoine, Lessard, Lundeen, Madore, Mailhot, Marley, Mayo, McDonough, McGlocklin, McKee, McLaughlin, McNeil, Michael, Michaud, Morrison, Murphy T, Nass, Norbert, Norton, Nutting, O'Brien JA, O'Brien LL, O'Neil, Paradis, Patrick, Peavey, Pineau, Richard, Richardson, Rines, Rosen, Savage, Schneider, Sherman, Shields, Simpson, Skoglund, Smith, Sullivan, Tarazewich, Tessier, Thomas, Tobin D, Tracy, Trahan, Tuttle, Twomey, Usher, Volenik, Watson, Weston, Winsor, Young, Mr. Speaker.

NAY - Buck, Carr, Cressey, Dugay, Duprey, Foster, Jacobs, Kasprzak, MacDougall, McGowan, Mendros, Perkins, Pinkham, Snowe-Mello, Stanley, Treadwell, Waterhouse.

ABSENT - Andrews, Ash, Bagley, Berry DP, Bruno, Chase, Crabtree, Desmond, Dorr, Goodwin, Hall, Haskell, Labrecque, Lovett, Marrache, Matthews, McKenney, Mitchell, Murphy E, Muse C, Muse K, Perry, Povich, Quint, Stedman, Tobin J, Wheeler EM, Wheeler GJ.

Yes, 106; No, 17; Absent, 28; Excused, 0.

106 having voted in the affirmative and 17 voted in the negative, with 28 being absent, and accordingly the Committee Report was **ACCEPTED**.

The Bill was **READ ONCE**. **Committee Amendment "A" (S-265)** was **READ** by the Clerk and **ADOPTED**.

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

Under further suspension of the rules, the Bill was **PASSED TO BE ENGROSSED as Amended by Committee Amendment "A" (S-265)** in concurrence.

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

On motion of Representative SMITH of Van Buren, the House adjourned at 8:51 p.m., until 9:00 a.m., Wednesday, May 30, 2001.