

# MAINE STATE LEGISLATURE

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**Legislative Record**  
**House of Representatives**  
**One Hundred and Twenty-First Legislature**  
**State of Maine**

**Volume I**

**First Regular Session**

December 4, 2002 – May 23, 2003

Pages 1-776

ONE HUNDRED AND TWENTY-FIRST LEGISLATURE  
FIRST REGULAR SESSION  
50th Legislative Day  
Tuesday, May 13, 2003

S/Rep. William J. Smith  
House Chair  
**READ and ORDERED PLACED ON FILE.**

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

Prayer by Father Coleman P. O'Toole, St. Patrick's Church, Portland.

National Anthem by Monmouth Middle School 4th Grade Chorus.

Pledge of Allegiance.

Doctor of the day, Dervilla McCann, M.D., Auburn.

The Journal of yesterday was read and approved.

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**COMMUNICATIONS**

The Following Communication: (H.C. 207)

**STATE OF MAINE**

**ONE HUNDRED AND TWENTY-FIRST LEGISLATURE  
COMMITTEE ON TAXATION**

May 8, 2003

Honorable Beverly C. Daggett, President of the Senate

Honorable Patrick Colwell, Speaker of the House

121st Maine Legislature

State House

Augusta, Maine 04333

Dear President Daggett and Speaker Colwell:

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 bill out "Ought Not to Pass":

L.D. 1044 An Act Regarding Taxation inside the Passamaquoddy Indian Territory

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

Sincerely,

S/Sen. Stephen Stanley

Senate Chair

S/Rep. David G. Lemoine

House Chair

**READ and ORDERED PLACED ON FILE.**

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The Following Communication: (H.C. 209)

**STATE OF MAINE**

**ONE HUNDRED AND TWENTY-FIRST LEGISLATURE  
COMMITTEE ON LABOR**

May 8, 2003

Honorable Beverly C. Daggett, President of the Senate

Honorable Patrick Colwell, Speaker of the House

121st Maine Legislature

State House

Augusta, Maine 04333

Dear President Daggett and Speaker Colwell:

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

L.D. 589 An Act To Create a Woods-related Bargaining Council

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

Sincerely,

S/Sen. Betheda G. Edmonds

Senate Chair

The Following Communication: (S.P. 564)

**STATE OF MAINE**

**121ST MAINE LEGISLATURE**

May 9, 2003

Sen. John L. Martin

Senate Chair, Joint Standing Committee on Natural Resources

Rep. Theodore Koffman

House Chair, Joint Standing Committee on Natural Resources

121st Legislature

Augusta, ME 04333

Dear Senator Martin and Representative Koffman:

Please be advised that Governor John E. Baldacci has nominated Matthew Scott of Belgrade and Andrew Cadot of Freeport for appointment to the Board of Environmental Protection.

Pursuant to Title 38, M.R.S.A. §341-C, these nominations will require review by the Joint Standing Committee on Natural Resources and confirmation by the Senate.

Sincerely,

S/Beverly C. Daggett

President of the Senate

S/Patrick Colwell

Speaker of the House

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

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

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The Following Communication: (S.P. 565)

**STATE OF MAINE**

**121ST MAINE LEGISLATURE**

May 9, 2003

Sen. Neria R. Douglass

Senate Chair, Joint Standing Committee on

Education and Cultural Affairs

Rep. Glenn A. Cummings

House Chair, Joint Standing Committee on

Education and Cultural Affairs

121st Legislature

Augusta, ME 04333

Dear Senator Douglass and Representative Cummings:

Please be advised that Governor John E. Baldacci has nominated James Carignan of Harpswell for appointment to the State Board of Education.

Pursuant to Title 20-A M.R.S.A. §401, this nomination will require review by the Joint Standing Committee on Education and Cultural Affairs and confirmation by the Senate.

Governor Baldacci has also nominated Charles D. Fisher of Brewer for appointment to the Maine Community College System Board of Trustees.

Pursuant to Title 20-A, M.R.S.A. §12705, this nomination will require review by the Joint Standing Committee on Education and Cultural Affairs and confirmation by the Senate.

Sincerely,

S/Beverly C. Daggett

President of the Senate

S/Patrick Colwell

Speaker of the House

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

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

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The Following Communication: (S.P. 566)

**STATE OF MAINE  
121ST MAINE LEGISLATURE**

May 9, 2003

Sen. Dennis S. Damon

Senate Chair, Joint Standing Committee on  
Marine Resources

Rep. Thomas D. Bull

House Chair, Joint Standing Committee on  
Marine Resources

121st Legislature

Augusta, ME 04333

Dear Senator Damon and Representative Bull:

Please be advised that Governor John E. Baldacci has nominated Rod Browne Mitchell of Peaks Island, William Sutter of Wiscasset, Anton West of Milbridge, and Dana Earle Temple of Cape Elizabeth for appointment to the Marine Resources Advisory Council.

Pursuant to Title 12, M.R.S.A. §6024, these nominations will require review by the Joint Standing Committee on Marine Resources and confirmation by the Senate.

Sincerely,

S/Beverly C. Daggett

President of the Senate

S/Patrick Colwell

Speaker of the House

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

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

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The Following Communication: (S.C. 233)

**MAINE SENATE  
121ST LEGISLATURE  
OFFICE OF THE SECRETARY  
3 STATE HOUSE STATION  
AUGUSTA, ME 04333-0003**

May 9, 2003

Honorable Patrick Colwell

Speaker of the House

2 State House Station

Augusta, ME 04333

Dear Speaker Colwell:

In accordance with Joint Rule 506 of the 121st Maine Legislature, please be advised that the Senate today confirmed the following nomination:

Upon the recommendation of the Joint Standing Committee on Business, Research and Economic Development, the nomination of Elmer Harmon of Dennysville for appointment to the Washington County Development Authority.

Sincerely,

S/Joy J. O'Brien

Secretary of the Senate

**READ** and **ORDERED PLACED ON FILE**.

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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:

(S.P. 522) (L.D. 1553) Bill "An Act To Permit Special Purpose Reinsurance Vehicles" Committee on **INSURANCE AND FINANCIAL SERVICES** reporting **Ought to Pass**

(S.P. 348) (L.D. 1004) Bill "An Act To Clarify the Status of Regulated Water Utility Plumbing Permits" Committee on **BUSINESS, RESEARCH AND ECONOMIC DEVELOPMENT** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-128)**

(S.P. 511) (L.D. 1523) Bill "An Act To Change the Tax Laws as They Apply to Combat Troops" Committee on **TAXATION** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-127)**

(H.P. 629) (L.D. 852) Bill "An Act To Promote Alternatives in Group Self-insurance" Committee on **INSURANCE AND FINANCIAL SERVICES** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-338)**

(H.P. 739) (L.D. 1018) Bill "An Act To Clarify and Update the Laws Concerning the Types of Transportation Vehicle Used To Transport Children" Committee on **TRANSPORTATION** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-333)**

(H.P. 1043) (L.D. 1424) Bill "An Act Relating to the Award of Attorneys' Fees and Damages under the Maine Human Rights Act" Committee on **JUDICIARY** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-332)**

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

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

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**BILLS IN THE SECOND READING**

**Senate as Amended**

Bill "An Act to Prevent Abuse of Elephants"

(S.P. 109) (L.D. 327)

(S. "A" S-120 to C. "A" S-85)

Bill "An Act To Provide for the Expedited Eviction of Violent Tenants"

(S.P. 353) (L.D. 1022)

(C. "A" S-123)

Bill "An Act To Regulate the Landlord-tenant Relationship"

(S.P. 451) (L.D. 1381)

(C. "A" S-122)

**House as Amended**

Bill "An Act To Protect Public Safety Using DNA Data of Juvenile Violent Offenders"

(H.P. 300) (L.D. 380)

(C. "A" H-313)

Bill "An Act To Ensure Proper Funding of the Public Utilities Commission"

(H.P. 759) (L.D. 1042)

(C. "A" H-319)

Bill "An Act Concerning Municipal Firearms Discharge Ordinances"

(H.P. 781) (L.D. 1063)

(C. "A" H-321)

Bill "An Act To Authorize Water and Wastewater Districts To Lease Their Assets"

(H.P. 926) (L.D. 1252)  
(C. "A" H-316)

Reported by the Committee on **Bills in the Second Reading**, read the second time, the Senate Papers were **PASSED TO BE ENGROSSED AS AMENDED** in concurrence and the House Papers were **PASSED TO BE ENGROSSED AS AMENDED** and sent for concurrence.

**ENACTORS  
Acts**

An Act To Amend the Waste Management Laws Regarding the Spreading of Sludge on Land

(H.P. 147) (L.D. 188)  
(C. "A" H-259)

An Act To List Agriculture as a Designated Use in Water Quality Standards

(S.P. 162) (L.D. 443)  
(C. "A" S-106)

An Act To Allow the Transfer of Spirits within Existing Businesses

(H.P. 342) (L.D. 450)  
(C. "A" H-229)

An Act Concerning the Issuance of a Temporary Liquor License

(H.P. 358) (L.D. 466)  
(C. "A" H-268)

An Act To Amend the Laws Governing the Qualification of Candidates

(S.P. 321) (L.D. 980)  
(C. "A" S-108)

An Act To Establish Consistent Requirements for High School Course Credits and Diploma Eligibility

(S.P. 328) (L.D. 987)

An Act To Amend the Motor Vehicle Laws

(H.P. 907) (L.D. 1233)  
(C. "A" H-256)

An Act to Strengthen the Governmental Ethics Laws

(H.P. 981) (L.D. 1336)  
(C. "A" H-267)

An Act To Decriminalize Unlicensed Shellfish Digging

(H.P. 1038) (L.D. 1415)  
(C. "A" H-264)

An Act To Raise the Fee Cap for Dentists

(H.P. 1074) (L.D. 1469)  
(C. "A" H-263)

An Act To Expedite the Removal of Overboard Discharge Workplace Deaths and Serious Injuries

(S.P. 519) (L.D. 1544)

An Act To Codify the County Commissioner Districts as Apportioned by Public Law 2003, Chapter 43

(H.P. 1183) (L.D. 1609)

An Act To Codify the House Legislative Districts As Apportioned by Public Law 2003, chapter 44

(H.P. 1184) (L.D. 1610)

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

**Resolves**

Resolve, to Authorize Michelle Booker to Sue the State  
(H.P. 231) (L.D. 288)  
(C. "A" H-270)

Resolve, Directing the Bureau of Veterans' Services To Provide Assistance To Obtain Information Regarding Maine Members of the United States Armed Forces Presumed Lost or Deceased

(H.P. 786) (L.D. 1068)  
(C. "A" H-269)

Resolve, To Update Water Quality Criteria  
(S.P. 491) (L.D. 1485)  
(C. "A" S-107)

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

An Act To Provide Leadership in Addressing the Threat of Climate Change

(H.P. 622) (L.D. 845)  
(C. "A" H-262)

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

On motion of Representative JOY of Crystal, 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. 94**

YEA - Adams, Ash, Barstow, Bennett, Blanchette, Bliss, Bowen, Brannigan, Breault, Bull, Bunker, Canavan, Craven, Cummings, Daigle, Davis, Dugay, Dunlap, Duplessie, Duprey G, Earle, Eder, Faircloth, Finch, Fischer, Gagne-Friel, Gerzofsky, Grose, Hatch, Hutton, Jackson, Jennings, Kaelin, Kane, Ketterer, Koffman, Laverriere-Boucher, Ledwin, Lemoine, Lessard, Lundeen, Mailhot, Makas, Marley, Marraché, McGlocklin, McGowan, McKee, McLaughlin, McNeil, Mills J, Mills S, Murphy, Norbert, Norton, O'Brien L, O'Neil, Paradis, Patrick, Pellon, Percy, Perry A, Perry J, Pineau, Pingree, Piotti, Rector, Richardson J, Rines, Rosen, Sampson, Saviello, Simpson, Smith N, Smith W, Sullivan, Suslovic, Thomas, Thompson, Twomey, Usher, Walcott, Watson, Wheeler, Woodbury, Mr. Speaker.

NAY - Andrews, Annis, Austin, Berry, Berube, Bierman, Bowles, Brown R, Browne W, Bruno, Bryant-Deschenes, Campbell, Carr, Churchill E, Churchill J, Clark, Clough, Collins, Courtney, Cressey, Crosthwaite, Curley, Duprey B, Fletcher, Glynn, Greeley, Heidrich, Honey, Jacobsen, Jodrey, Joy, Landry, Lewin, Maietta, McCormick, McKenney, Millett, Moody, Moore, Muse, Nutting, O'Brien J, Peavey-Haskell, Richardson E, Richardson M, Rogers, Sherman, Shields, Snowe-Mello, Stone, Sukeforth, Sykes, Tardy, Tobin D, Tobin J, Trahan, Treadwell, Vaughan, Wotton, Young.

ABSENT - Cowger, Dudley, Goodwin, Hotham, Lerman.  
Yes, 86; No, 60; Absent, 5; Excused, 0.

86 having voted in the affirmative and 60 voted in the negative, with 5 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**.

**REPORTS OF COMMITTEE**

**Divided Report**

Majority Report of the Committee on **LEGAL AND VETERANS AFFAIRS** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-116)** on Bill "An Act To Reimburse Philip Wolley for Litigation Expenses Incurred in Connection with His Termination and Reinstatement as a State Employee"

(S.P. 94) (L.D. 260)

Signed:

Senators:

LEMONT of York  
MAYO of Sagadahoc  
GAGNON of Kennebec

Representatives:

CLARK of Millinocket  
HOTHAM of Dixfield  
BROWN of South Berwick  
MOORE of Standish  
PATRICK of Rumford  
BLANCHETTE of Bangor  
CANAVAN of Waterville  
JENNINGS of Leeds

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

Signed:

Representatives:

GLYNN of South Portland  
LANDRY of Sanford

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-116)**.

**READ.**

Representative CLARK of Millinocket 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 and I urge the body to move on to the Minority Ought Not to Pass Report. This bill would allow and authorize Philip Wolley to sue the State of Maine for roughly \$28,000. For those of you who have served in the Legislature prior to this term, this bill may sound familiar to you. I had no idea how familiar it was until this year serving on the Legal and Veterans Affairs Committee. This is the ninth time this issue has been before the Legislature.

This issue deals with a state employee who had been discharged. After the employee had been discharged, the employee sued, received award for back pay and was reinstated as a Maine state employee. There have been repeated attempts to get reimbursed for legal expenses by this Legislature and they have been turned down each session. I don't believe any award is justified. The grievance process, through the collective bargaining, was the sole remedy for those costs and they have been made by the state. Awarding attorney's fees to criminal defendants not convicted would really start an alarming precedent by this Legislature.

Lastly, I would like to remind everyone that sovereign immunity is something that I believe should be protected wherever possible by this Legislature. These hard earned tax dollars that we are considering allowing to be paid to Mr. Wolley through the authorization of this suit, there are a number of uses for them in the state, especially in light of the fact that we have considered this being the ninth time and considering that other remedies have been sought and this employee was reinstated.

Mr. Speaker, when the vote is taken, I 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 Bangor, Representative Blanchette.

Representative **BLANCHETTE**: Mr. Speaker, Ladies and Gentlemen of the House. Now I would like to give you the other side of the story. This is a former state employee who has since retired from the Bureau of Lottery. He was wrongfully terminated without cause. After this appeal, he was reinstated and I am willing to concede to the good Representative Glynn that, in fact, he was paid back pay. During that termination and his legal appeal, he accrued the amount of \$24,000 in legal fees to defend him in front of a grand jury that he was indicted to appear before. This wrongful termination would not have occurred if he had not been unjustly terminated. He wouldn't have accrued these legal fees. To further point out, in fact, it is a fact that this bill has been before this Legislature nine times. When we have done a study of bills and what the actual cost is for us to print a bill, bring it through committee, take it through the different bodies, how many times it is referred is the cost of \$10,000. I can tell you right now that over nine years that the Legislature has, in fact, spent \$90,000 to get rid of \$24,000. Dimes make dollars and pennies make common sense. Let's settle this. This was a mistake on the part of the state. We are not infallible. We do make mistakes and we admitted that. Should this man and his wife have to take \$24,000 of their retirement money to defend somebody who was, in fact, innocent? I think it is time that we put this one to bed and save the state some money. You are always going to find a Representative that will bring this bill forth in one form or another for the next 30 years, multiply that out by \$10,000. Let's take this home and admit we were wrong and give this man back his \$24,000 so that he can, in fact, retire and maybe pay his fuel bill this year. Thank you Mr. Speaker.

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

Representative **HONEY**: Mr. Speaker, Women and Men of the House. I grew up with Phil Wolley. Our wives appeared in each other's wedding. Phil Wolley was wronged many years ago and I urge the people of the House to support 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. 95**

YEA - Adams, Andrews, Annis, Ash, Barstow, Bennett, Berry, Bierman, Blanchette, Bliss, Brannigan, Breault, Brown R, Bruno, Bull, Bunker, Canavan, Carr, Churchill E, Churchill J, Clark, Collins, Cowger, Craven, Cummings, Daigle, Davis, Dudley, Duplessie, Duprey G, Earle, Eder, Faircloth, Finch, Fischer, Gagne-Friel, Gerzofsky, Greeley, Grose, Hatch, Heidrich, Honey, Hotham, Hutton, Jackson, Jacobsen, Jennings, Kane, Ketterer, Koffman, Laverriere-Boucher, Ledwin, Lemoine, Lerman,

Lessard, Lewin, Lundeen, Mailhot, Makas, Marley, Marraché, McGlocklin, McGowan, McKee, McKenney, McLaughlin, McNeil, Moody, Moore, Murphy, Norton, Nutting, O'Brien J, O'Brien L, O'Neil, Paradis, Patrick, Pellon, Percy, Perry A, Pineau, Pingree, Piotti, Rector, Richardson J, Sampson, Saviello, Sherman, Shields, Simpson, Smith N, Smith W, Snowe-Mello, Sullivan, Suslovic, Tardy, Thomas, Thompson, Tobin J, Trahan, Twomey, Usher, Walcott, Watson, Wheeler, Wotton, Mr. Speaker.

**NAY** - Austin, Berube, Bowen, Bowles, Browne W, Bryant-Deschenes, Campbell, Clough, Courtney, Cressey, Crosthwaite, Curley, Dunlap, Duprey B, Fletcher, Glynn, Jodrey, Joy, Kaelin, Landry, Maietta, McCormick, Millett, Mills J, Mills S, Muse, Norbert, Peavey-Haskell, Richardson E, Richardson M, Rines, Rogers, Rosen, Stone, Sukeforth, Sykes, Tobin D, Treadwell, Vaughan, Woodbury, Young.

**ABSENT** - Dugay, Goodwin, Perry J.

Yes, 107; No, 41; Absent, 3; Excused, 0.

107 having voted in the affirmative and 41 voted in the negative, with 3 being absent, and accordingly the Majority **Ought to Pass as Amended** Report was **ACCEPTED**.

The Bill was **READ ONCE**. **Committee Amendment "A" (S-116)** was **READ** by the Clerk and **ADOPTED**. The Bill was assigned for **SECOND READING** Wednesday, May 14, 2003.

Majority Report of the Committee on **EDUCATION AND CULTURAL AFFAIRS** reporting **Ought Not to Pass** on Bill "An Act to Eliminate Discrimination Against Parents Who Want to Send Their Children to Religious Private Schools"

(H.P. 141) (L.D. 182)

Signed:

Senators:

DOUGLASS of Androscoggin

BRENNAN of Cumberland

MITCHELL of Penobscot

Representatives:

CUMMINGS of Portland

GAGNE-FRIEL of Buckfield

FINCH of Fairfield

LEDWIN of Holden

NORTON of Bangor

THOMAS of Orono

FISCHER of Presque Isle

DAVIS of Falmouth

Minority Report of the same Committee reporting **Ought to Pass as Amended by Committee Amendment "A" (H-324)** on same Bill.

Signed:

Representatives:

MURPHY of Kennebunk

ANDREWS of York

**READ.**

Representative FISCHER of Presque Isle moved that the House **ACCEPT** the Majority **Ought Not to Pass** Report.

The same Representative moved that the Bill be **TABLED** until later in today's session pending his motion to **ACCEPT** the Majority **Ought Not to Pass** Report.

Subsequently, the same Representative **WITHDREW** his motion to **TABLE**.

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 support of this bill and against the motion of **Ought Not to Pass** on this bill. This bill is a step toward ending

discrimination against parents who want to send their children to religious or private schools.

This bill was collaborative of a number of parents as well as the Roman Catholic Diocese. Maine has a school voucher program that allows parents in towns without their own schools to use up to \$6,000 in public funds to send their children to any public school or a non-religious private school. Several years ago parents were able to use the money to send their children to religious schools, but that changed in 1981. The Maine Legislature enacted a law banning the use of public funds for religious schools. Maine's ban saying that parents cannot choose to have their children be taught by people in a religious school is discrimination. Our public policy is a discriminatory one as if the state enacted a ban to prohibit children from being taught by people with a different color or a different gender. In this case we are saying that people can't be taught by someone of another faith.

Discrimination is wrong no matter how it is labeled, no matter how it is colored and how it is sold. This ban is clearly unconstitutional and it will be struck down. Because the Maine Legislature has not dealt with this issue equitably, parents have been forced to file lawsuits against this ban in court. One lawsuit was filed in state court by six families from Minot, Durham and Raymond. Another suit has been filed in federal court by two families from Minot. Both suits charge that the prohibition policy by Maine amounts to religious discrimination.

Ladies and gentlemen of the House, public policy should not be set by the court system. It should be set by the Maine State Legislature. If the education community does nothing to address this discrimination, we will, in fact, be mandated to implement these changes perhaps in a consent decree very similar to the one that was used to implement reform and changes in Maine's mental health clients a few short years ago. Additionally in a time with a projected \$1.2 billion shortfall that we have been dealing with, Maine will be spending between \$100,000 to \$300,000 in legal fees and judgments should we continue to discriminate against Maine people's religious choices.

Do we really wish to continue this discrimination against people of faith? If your answer is the same as mine, no you don't, then I urge you to defeat the Majority **Ought Not to Pass** Report and move on to striking down this discriminatory practice. Thank you Mr. Speaker. When the vote is taken, Mr. Speaker, I request the yeas and nays.

Representative **GLYNN** of South Portland **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 Chair recognizes the Representative from Presque Isle, Representative Fischer.

Representative **FISCHER**: Mr. Speaker, Ladies and Gentlemen of the House. I rise today in sincere opposition to LD 182, "An Act to Eliminate Discrimination Against Parents Who Want to Send their Children to Private Religious Schools." While the title of this bill might sound appealing, its effects, whether intended or unintended, would have dire consequences for the citizens of the State of Maine.

Mr. Speaker, I submit to you and to this body that there are a number of reasons why this bill should be rejected. These reasons are compelling and have at their root the sovereign prerogative of the people of the State of Maine regarding how public funds can and should be used in supporting public education for the children of this state.

At the outset, it is important to clarify the meaning of the recent Supreme Court decision that the proponents of this bill rely

upon. That case, *Zelman v. Simmons-Harris*, decided what a state may do regarding public funding of religious schools. It did not decide what Maine must do.

In no way did that decision limit the sovereign power of the people of the State of Maine, through their duly elected representatives, to decide whether to fund religious schools. Publicly funding education for our children is one of the most important and vital functions of our state and it is this body's responsibility to carefully exercise discretion over our education system.

Mr. Speaker, I submit it is fundamentally wrong for us to fund discrimination, but that is exactly what this bill calls for. Private religious schools freely admit that they do not hire individuals whose beliefs are not consistent with the school's religious teachings. Yet the Maine Human Rights Act and the US Civil Right Act both clearly state the following, "It is unlawful employment discrimination for any employer to refuse to hire any applicant because of the race, sex, physical or mental disability, religion, age, ancestry or national origin of the applicant."

This would lead the casual observer to the conclusion that the private religious schools are currently in violation of the Maine Human Rights Act and the US Civil Rights Act. The casual observer, Mr. Speaker, would be wrong.

The reason for this is due to an exclusion in both acts for private religious entities. As we all know, the Constitution protects religious freedom, so both acts include the following exclusion. "It shall not be unlawful employment discrimination for a religious school to hire employees of a particular religion if such a school is in whole or a substantial part owned or supported by a particular religion." Therefore, it's currently legal for private religious schools to discriminate in hiring against individuals of other religions.

That, however, is only the current situation. LD 182 would allow for public money to go to private religious schools. That begs the question, what happens when the school is no longer "in whole or substantial part owned or supported by a particular religion" but rather it is subsidized by the taxpayers of the State of Maine?

Ladies and gentlemen of the House, I ask you to consider this question, can private religious schools discriminate against citizens of the State of Maine, including even members of this body, because of their religious beliefs? Yes, they can. Is it right for them to do this with our tax money? No, it is not.

Ladies and gentlemen of the House, do you want to take our preciously limited resources and promote discrimination?

Mr. Speaker, that is exactly what LD 182 asks for this body to condone, discrimination. When the Governor asked me to raise my right hand and to swear to uphold the Constitution of the United States of America and the State of Maine, I promised I would. The Maine Human Rights Act and the US Civil Rights Act both state quite clearly that freedom from discrimination in employment is a civil right. As the State Representative from Presque Isle, it's my duty to defend these laws, to oppose discrimination and to protect the civil rights of my constituents.

Mr. Speaker, these responsibilities are the same for every member of this chamber. Public money should never be used to subsidize discrimination against the citizens, against the taxpayers, of the State of Maine. I urge you to support the Majority Report, LD 182, Ought Not to Pass. Thank you Mr. Speaker.

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

Representative DAIGLE: Mr. Speaker, Ladies and Gentlemen of the House. This is a very, very said day in the history of this body when I hear the Catholic Church being

accused of being a discriminatory agency. Perhaps if I stay around here long enough, I might hear worse, but it is unlikely.

I encourage you to look at this bill in a different manner. I actually wish you would vote against the pending motion, Ought Not to Pass, and go on to pass this bill. First, let me emphasize that this bill would only relate to communities that are tuitioning their students outside their school district. If you live in a town that has a school that already serves your students and parents which to send their kids to parochial school, this would not apply.

Let me give you an example in Arundel, the town where I live and represent, obviously, why this would be a very attractive option for Arundel. We currently tuition our students to area high schools, paying \$6,000 per student per year. The parent wants to send their child to Chevrus High School, so what. It would still be \$6,000 as opposed to going to Kennebunk High School, Thornton Academy or Biddeford High School. Right now we are in the position of having to expand our middle school. We are going to have to send our sixth, seventh and eighth graders to Thornton Academy. It will cost us \$6,000 per year, per child to send all of our sixth, seventh and eighth graders to Thornton Academy. St. James School in Biddeford offers an excellent education for parishioners for the cost of \$1,800 per year. For non-parishioners it is \$3,000 per year.

Referring back to the early comment about discrimination, the parochial school system does not discriminate on religion on hiring teachers. It does not discriminate on religion of students enrolled in that school. In fact, if you check the facts in this matter, there are many teachers who are not Roman Catholics and there are far, far many students who are not Roman Catholics. People want to work for the school system because it is a good employer with an excellent environment. Parents want to send their school children to the school because they get an excellent education. If this law were to pass, for every student in Arundel that goes to St. James instead of Thornton Academy, the Town of Arundel and the school funding formula would save \$4,200 per student per year for a parishioner and at least \$3,000 per student per year for non-parishioners. There is nothing else this body has done in the time I have been up here to reduce the cost of education ever. We have always said we don't fund enough for education ever. If we were to pass this bill, to the extent that parents would go to an option they prefer, St. James, we would be returning many thousands of thousands of dollars and reducing the costs of education.

I encourage you to think of that, if for no other reason, as being one thing we could do to tell our towns that this year we didn't give you enough money, but we gave you the ability to run your schools less expensive than you are running them today. Thank you.

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

Representative MURPHY: Mr. Speaker, Men and Women of the House. This bill was like a time travel experience, because sometimes you see the after affects of mischief. I had gone on the Education Committee in 1981. In 1979 or 80 there had been a court case on this type of issue. We went through a recodification in 1981 or early 1982 and in those days, and I assume today that you couldn't do mischief in a recodification. You couldn't drop little nuggets in there that shouldn't have been there. What happened in that recodification, either a staff member or a committee chair had put this language in banning those districts that do not have a secondary school of being able to have that option of a youngster being able to go to a parochial school. That was only discovered much later.

We are not sure whose fingerprints were on that change or the violation of the recodification process, but it was there and it



is in there as law. The law swings like a pendulum in terms of court cases. In 1979-80, the courts were ruling such bans on public monies and state monies moving towards private schools or parochial schools. The pendulum has swung the other way now. The courts are saying, yes, that those monies going to the parents and then they have the choice as to where their child wants to go. This involves only a handful of communities. As the Representative from Arundel, Representative Daigle, had indicated, this is the practice in Arundel. Up until 1982, because they don't have a middle school, it is real important for you to understand, this only applies to communities that do not have a secondary school, either a high school or a middle school. The parents then have a choice. The town gives them the money and they can go to a neighboring public school or they can go to North Yarmouth Academy or Berwick Academy or out of state to a private school if they want to. Up until the court law changed and then someone snuck this into the law in 1982, parents had that option.

Many parents in Arundel, which is just on the other side of the river from me, and I can look across and see the houses, and up until 1982, their children, many of them had the option of going to Chevrus or Catherine McCauley. The courts decided against that. Someone slipped that into the law and now the pendulum has moved the other way, but we still have this little treasure, this little hidden nugget that remains in the statute. This is what this is all about. The courts have definitely begun to rule against this in Cleveland and other communities. The two positions that are before you is one that just says, no, the door slammed shut and remained shut for the next two years. The other one says, let's follow what is happening in the court. Let's take a closer look at it and be ready for when the court decisions come in. This only involves a handful of communities in the State of Maine and it is parent choice, student choice. What we are looking to do is reaffirm what existed up to 1982 so that those students have a choice.

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

Representative CUMMINGS: Mr. Speaker, Men and Women of the House. There are three good and simple reasons why you should stand behind the overwhelming Majority Report. It says that this is the wrong policy move for the State of Maine at this time. Let me start with the most basic one. You can't afford it. I share the sympathies and the positions of Representative Glynn from South Portland. Representative Glynn is concerned about money. Let me remind you that in GPA next year, for the first time in over 12 years, we will be facing smaller amounts than we presently have. The resources yesterday to drain off from public schools to make this happen will be an endangerment to the quality of our public schools and that is a serious consideration.

Secondly, we have for a long time held in the State of Maine a position that the courts are not the best place to make public policy, but you, sent here by your constituents, are the best place to make public policy. Do not give up that right today by allocating to the courts a decision that ought to be within our own jurisdiction to make. Why should we make that decision? There is no clear firewall in the US Constitution, there is clearly a delineation within the US Constitution that our state and our private religious sector should be separate. That entanglement is a serious entanglement, one that releases you from accountability or releases entities from accountability of quality.

I want to go back to the Zelman case quickly. In the Zelman case overwhelming evidence of failure in the Cleveland public schools allowed, under some conditions, for vouchers to be an option. Let me tell you it would be hard to say with a straight face that Maine teachers have failed you in the quality of their public

education. If you vote for this, you are implicitly saying that the Zelman case allows you, under conditions of inadequate, inappropriate and unworthy public education to support the use of vouchers. It is not clear how the US courts will decide in this case. What is clear is that the policy decisions that are before you today.

Let me make my third point. If we were to move in the direction of religious vouchers at this time in our history, we would effectively be giving up the rights for the education of our children to entities whose overwhelming mission is religious. You do not have to be opposed to religious entities having that kind of control. In our decision today, we have to believe that children are better supported by the public schools with public money. If you choose to do otherwise, then let it be with private money. Thank you.

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

Representative SULLIVAN: Mr. Speaker, Men and Women of the House. It seems nothing is new under the sun. We have debated this issue since I have been here. I am sure to those prior.

First of all, I want to address some things that were said by the Representative from Arundel, Representative Daigle. Indeed they do have a right for children there going to high school to go to Thornton Academy, a system in which I work, Biddeford, a system in which I live, and Kennebunk, Kennebunkport. However, they also provide transportation. Are we going to provide transportation to Chevrus? That is a right also, transportation to schools.

We also have a school program within each community that we represent that depends on enrollment as part of the way they figure what you have coming to you from GPA. Everybody puts into a fire department. We all hope we never have to use that fire department in the municipality. You can put in sprinklers in your building and in your own home if you want, but you have the right to the fire department. That is part of what community in government provides. Public school is what is provided. If we are going to start looking at this, we are going to say that once you have your aged children out of school, then you no longer have to provide tax money to your education system. It doesn't work that way. Communities provide for both ends of the spectrum. Communities have an educational center.

We have forgotten about America. We have agreed to uphold the Constitution, a separation of church and state. To send to religious schools at taxpayers' expense takes away that very principle. I also question the \$6,000. The school systems are reimbursed at what the average rate of school is. Thornton Academy is a semi-private school and they are actually allowed to charge 10 percent more. Having had good friends who live in Arundel, they have often wondered why Arundel continues to offer Thornton Academy as a choice. They pay extra money than if you go to Biddeford or Kennebunk, public schools. Private schools or semi-private schools are allowed to charge 10 percent more than the average tuition. This is about dollars and cents and it is about the very fabric of the community that you represent, your public schools.

Public schools are what have made the cornerstone of this country. Education, free to all children, to age 18 and in some cases longer. We need to honor that. We need to set policy and say that we support our public schools with taxpayer's money. We don't support private schools, parochial private schools. It is not right. I ask you to go with the Majority Ought Not to Pass Report. Thank you.

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

Representative **RICHARDSON**: Mr. Speaker, Ladies and Gentlemen of the House. This debate amazes me. The people want to be able to send their children, when they don't have the opportunity, to get educated. We are not sending these children to the pied piper. We are sending them to a school to get educated. It also amazes me that we are so concerned with the separation of church and state, but every morning we have a minister giving a prayer over this body. I might add it sounds like it is needed.

The SPEAKER: The Chair recognizes the Representative from Farmington, Representative Mills.

Representative **MILLS**: Mr. Speaker, Women and Men of the House. I rise in response to some of the issues that have been raised in this debate so far. It has been said that we need to provide vouchers for sectarian schools, to change our current law and do so because it is constitutionally required. I strenuously oppose that position and suggest that there is no basis in law to take that position. In fact, our current statute, as pointed out by the Representative from Kennebunk, has not been changed for 22 or 23 years. Our current statute has been upheld in the courts of Maine. I would refer the gentleman to Strout versus Albanese in 1999, US First Circuit Court of Appeals case, dealing with our current system and finding it constitutional, in addition to the Bagley versus Raymond case in 1999, Maine Supreme Judicial Court case, which also found our current system constitutional. It is not constitutionally required that we change our current system. It has been said several times there are a finite number of resources available to us. I think we all know that. We don't have to serve on Appropriations or Education to understand how GPA is being severely curtailed year by year. We unfortunately can only look forward to additional cuts. I don't see how, as a policy matter, it is possible to give non-secular schools or religious based schools dollars without taking those same dollars away from secular schools and public schools.

It has been said that the Zelman case requires us to change our law. That simply is not so. The Zelman case, as has been pointed out by other speakers, dealt with a very narrow fact situation in the Cleveland School System. It was a 5 to 4 decision. It merely said that in the desperate circumstances in which the Cleveland School System found itself, under court order because of the disastrous circumstances of its schools, under federal court order, it needed to find alternatives to the public school system. It found that those narrow alternatives pass constitutional muster weighing in the balance as the court always does - it is a fine line between the Establishment Clause and the Free Exercise Clause - whether or not giving private non-secular education was the establishment of religion or the promoting of religion and whether or not any other system impaired the exercise of religion. In the narrow circumstances of that case, the US Supreme Court found the Cleveland School System passed constitutional muster. It in no way determined or indicated or hinted in the remotest sense that other school systems in other states would be required to change their system to make our system, for instance, similar to that of Cleveland.

Let me just quote you a few facts quoting from the Zelman opinion. It stated and noted and relied upon the fact that "for more than a generation, Cleveland's public schools have been among the worst performing public schools in the nation. In 1995, a federal district court declared a crisis of magnitude and placed the entire Cleveland School District under state control. The Cleveland Public Schools were in the midst of a crisis, perhaps unprecedented in the history of American education.

The district court had failed to meet any of the 18 state standards for minimal acceptable performance. More than two-thirds of high school students in Cleveland either dropped out or failed out before graduation. The students who managed to reach their senior year, out of those students, one out of every four failed to graduate. Of those who did graduate, very few could read, write or compute at levels comparable to their counterparts in other cities." Those facts are cited in the Zelman opinion and on which that narrow opinion is based. It is a very, I think, fact based decision. It is a 5 to 4 decision with very strong concurring and dissenting opinions that narrow the focus of the court's opinion even further.

Compared to the Cleveland situation, a desperate one indeed, by any definition, we, in Maine can be very proud of our public education system. In 1999 our system was rated the highest performing K-12 educational system in the nation by the National Education Goals Panel, an independent bipartisan agency. Maine was one of only 11 states to exceed the national average in all subjects measured by the national assessment of education progress. We have the highest rate of school completion graduation in the nation, 95.4 percent, compared to the national average of 86 percent. Our AP classes, 83 percent of public high schools offer AP courses and our students do very well in AP standings and in standardized tests, both statewide and nationwide.

We have a fairly low student teacher ratio. We have a school system over which we can be very proud indeed. We are not about to fall under any federal court order placing us under jurisdiction or custody of the state or some other agency because of poor school performance. I encourage you and urge you to vote Ought Not to Pass on the bill for the reasons stated.

Our system is not constitutionally broke as it currently stands and it is not necessary to fix something that is not broken. Thank you.

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

Representative **DAVIS**: Mr. Speaker, Ladies and Gentlemen of the House. I urge you to vote the majority on LD 182. In the Majority Report there are both Republicans and Democrats on that report. I would urge you in Portland, Maine, alone, if we open this voucher thing up, think down the line. There are Sunni Muslims in the Portland School System and there are Shiite Muslims in the Portland School System. There are Protestants and Catholics and Jewish children. There are Buddhists and Hindus. I had some of them in my own class. If you open this up, be prepared to open it up thoroughly, because some of those groups, I am sure, will be forming their own schools. Thank you very much.

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

Representative **GLYNN**: Mr. Speaker, Men and Women of the House. I believe that the debate has gotten just a tad off topic. I think that if folks weren't looking at the bill in front of them and were listening solely to the debate, then you would believe that we are debating a school voucher program here in the Legislature and that simply is not the case. Maine has a school voucher program right now for school districts which do not have either a high school or a middle school and Maine law allows for use up to \$6,000 for these school district to use public funds to send their children to any private school that is non-religious or to a public school. If you are concerned that voting for a bill will siphon governmental funds for the use in private schools, your concerns are misplaced because that is already state statute. The condition that we are speaking to is a very narrow one dealing with a very small handful of school districts. This is the

case of a school district, which has no high school or has no middle school currently giving \$6,000 in voucher money to a maximum to a set of parents to send their children to any private school or public school of their choice. However, in the State of Maine we have a prohibition on these parents that they cannot send their children to a secular school, be it Catholic, Jewish, Protestant or any of the other religions. That, my friends in the Legislature, is why I believe that we have a discriminatory practice in Maine. The fact that we have a school voucher program is a public policy debate that was decided in a previous day. School vouchers are here in the State of Maine. The fact that we have a law on the books that says that you can send your children to a private school, but if they are going to be taught by a bunch of Catholics, then that is a problem. That is unconstitutional and that is where our law has gone astray. That is why I believe that the lawsuits that are currently pending in our court systems, both in the federal court and in the state court systems by these parents are actually pointing out a clear discriminatory ban that we have in our state. Why would we not want to empower the children and empower the parents so that the parents can choose the most appropriate educational setting for their children to learn in?

I disagree with the points made by previous speakers that support of our public schools and support of these parents and their decision to send the children to a religious school as well as a non-religious private school in some way are mutually exclusive. They are not. We can and we should have it all here in the State of Maine and we should support these parents. I urge you to join with me and defeat the Majority Ought Not to Pass Report. 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 represent one of these districts, the Town of Minot, where we have parents who have decided to sue the state. This came out of where they asked the superintendent to please have their child sent to St. Doms. They are very unhappy in their beliefs that the school in Poland did not meet their needs. They are very unhappy with the policies set in certain areas. They believed with all their heart that St. Doms would be a much more appropriate school for their child to attend. They went through everything they needed to do, the proper channels. They went to the superintendent and asked them for a superintendent's agreement, because that is our school choice agreement. Our superintendent denied the child to go to that school. I think it was not appropriate at all.

I am very concerned with the statement that was brought up that our private schools cannot do as good a job at teaching our young people as our private schools or religious private schools. Many of our religious schools do an excellent job as teaching our young people. I really was appalled by that statement.

The point I need to make is that I had put in a bill to the Judiciary Committee to ask the state to supply an attorney, free of charge, to help the Town of Minot to help pay for that lawsuit. That is why I think this bill is so incredibly important. It will cut down on those costs. It will help to save tax dollars. It will give aide to our local schools. I really believe that parents and children have the right to go to the school they feel is going to teach their children in the way they believe is appropriate. Thank you.

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

Representative **O'NEIL**: Mr. Speaker, Colleagues of the House. I am a little confused and conflicted on this. I apologize in advance for speaking on a bill that didn't come out of my

committee. I apologize for speaking on a bill that only has two members on the Minority Report. I will work through this while I am on my feet if I could. I have a bit of an interesting perspective here. I have two kids in Catholic School. I am a product of a Catholic School. I am pretty proud of that fact and, in fact, when I went to go to college that helped me a whole lot more than anything else I had done. The fact of the matter is the Representative from Arundel, Representative Daigle, made a couple of points that aroused my interest.

My two kids, Maggie and Max in eighth and fifth grades respectively, are at St. James School in Biddeford. For nine years I have paid property taxes in Saco and sent my kids over to St. James willingly and knowingly. Every time a school voucher or school choice or so called choice vote has come before this body, I have opposed it because I oppose that traditional siphoning of public funds off to private, not necessarily religious, but private institutions for the sake of supporting that bedrock of our democracy, which is the public school system.

That said, I also represent the Town of Dayton, which has undertaken a very divisive and contentious debate over what to do with their middle school kids. They have outgrown their middle school. You might know that Dayton is Maine's fastest growing town in the '90s. They have outgrown their middle school and they have traditionally sent their seventh and eighth graders to the Saco Middle School. They paid tuition. Arundel is in a similar situation in which they currently receive a voucher to send the kids to a number of different schools. Dayton is in negotiations with Thornton Academy, which is currently a high school to provide a junior high or a middle school service for the Town of Dayton for a cost.

There is the background that tells you what has laid my feet into a quandary. I have heard about the traditional argument about taking money away from the public schools and why that is a bad thing. I agree and I continue to agree. I always have. As I understand it, the applicability of this Minority Report is to schools where they now do get a voucher and that the prohibition is simply on schools that have a religious bend to them. I think that is the crux of the matter right there. If we are okay with the vouchers being granted to go to Thornton Academy, Biddeford or Kennebunk High School from Arundel, are we not okay with it going to a religious school. I think that is the nub right there, whether or not religious schools should get the public funds.

Given my constituency, given my background, but especially given my constituency and given the fact that this applies only to municipalities that now get vouchers because they have no public schools, I just need to be convinced, especially given the fact that these religious schools must have to be licensed and accredited, I need to be convinced as to why I shouldn't support the Minority Report. That argument hasn't been clearly made yet. Thank you.

The SPEAKER: The Chair recognizes the Representative from Presque Isle, Representative Fischer.

Representative **FISCHER**: Mr. Speaker, Men and Women of the House. I want to respond to the good Representative from Saco's concerns. I think there are two things that we should remember as we go to vote on this bill. The first one the good Representative from Portland brought to us, it was about entanglement. He said there is no strict firewall between church and state other than the fact it says in the Constitution and that means a lot to me. Entanglement would mean that if we were to give money to private religious schools, we would have a responsibility to them, to make them accountable in some way. How are we going to make private religious schools who teach religion in the classroom accountable to standards in the State of Maine that do not include any sort of religion in them? How do

we reconcile that? There is no answer for that. You can't reconcile. Our public schools are not allowed to teach religion. Private religious schools can. You can't get from one to the other. That is the first thing, entanglement.

The second one is something that I am sure there are members of this body who would be very concerned about. It is about hiring policies. My father, for instance, is a professor. He has his doctorate. He has taught for 40 years now. He cannot get a job at St. Doms Academy. You know why? He is not a Christian. That is fine, but I am telling you if you can discriminate against people on that basis, what does that say. If you receive public money, you are going to be accountable to public laws. I am a Christian. I could get a job at St. Doms. Go figure. The point is you are going to have a firewall there, as the good Representative from Portland said. You are suddenly going to have to open yourself up to the laws of the State of Maine if you receive public money. I don't think from the testimony that we received from directors of Christian schools across the State of Maine that that is something that they are willing to accept. They said that they hire based on whether a person's beliefs are the same as ours. That is a direct quote. You ask any member of the Education Committee, even folks on the Minority Report. They will tell you that that is the truth.

How do you explain to my father that he is a professor and he is the most qualified person for a job that you are not going to hire him because he is not a Christian? That is not what we believe in in this state. We had a big discussion yesterday, if you remember, about our terms of employment. Our terms of employment in this state are at will. We are a state that believes and we say every single day when you get a job that we don't discriminate on the basis of, and you put the list right through. That is our state. It is in our Human Rights Act. It is in the US Civil Rights Act. If someone can explain to me how we aren't going to make private religious schools accountable for their hiring practices, then I will vote against this bill too.

I would pose a question to the chair, if someone can answer that question, then I will vote against this bill. Thank you Mr. Speaker.

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

Representative DAIGLE: Mr. Speaker, Ladies and Gentlemen of the House. I have not actually had the research at my fingertips to completely answer your question. I can assure you of one thing I know to be true. There are many teachers at Chevrus High School, which are not members of the Roman Catholic Church. There are many teachers in the Portland Parochial School System, which are not members of the Catholic Church. That is fine. There are a great number of students at Chevrus High Schools and in the Parochial School System of Portland that I am sure of who are not Roman Catholics.

I go on further to respond to the questions about entanglement. I understand the concerns about that. Certainly if a parochial school system is receiving a large amount of funding from public sources, then they probably would be subject to other types of issues, such as hiring practices based upon things supported by public money. I think that is a decision for the school system to make.

I would further add that we talk about accountability, within the parochial school system they all use, without exception, certified teachers. They go through the same credentials as any teacher in the school to include fingerprinting and they follow an accredited program, which is approved by the Department of Education. What they do, because they are so darn clever at it,

is provide a better education on every subject that we ask to teach our students and concurrently find a good time to give them a religious understanding and a morality based training of how to become good citizens. For anybody who has had direct contact with that school system, you would clearly understand that to be true.

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

Representative MURPHY: Mr. Speaker, Men and Women of the House. Even though many issues come around in various cycles, 99 percent of the time I will stay in the chamber and listen to the debate. What you begin to hear is issues begin to be shaped. I think what the Representative from Saco went through on his comments just a couple minutes ago is he worked his way through this bill. He got beyond some of the rhetoric that has been on this floor. He identified that it is just a handful of communities. They don't have the school so parents and students in that community have a choice and their community gives them that money and they can travel in state and out of state and that they have full control of that money, except they are denied the right that they had prior to 1982. It was important to listen to what he said. This isn't a voucher bill. Every community within the state is only limited in its application. I think as we go though and look at this, there is a feeling in this chamber that it is either or. If you have looked at both reports, you begin to understand that if we defeat this report and accept the Minority Report, then during this summer and fall while the court is going to make its decision and the pendulum is swinging in such a direction that it will make a decision, I believe, that will invalidate this law.

On POINT OF ORDER, Representative FISCHER of Presque Isle asked the Chair if the remarks of Representative MURPHY of Kennebunk were germane to the pending question.

The Chair thought Representative MURPHY of Kennebunk was debating the pending question and allowed the Representative to continue.

Representative MURPHY: Thank you very much Mr. Speaker, the Representative from Saco did make reference to that. I was responding to the Representative's comments.

Many of us would like to have the opportunity to be able to take the summer and the fall, wait and look at the court decision and be able to get all the parties together, public and private, the municipalities that are involved and begin to discuss this issue. Basically what we are facing is something put into the law without proper process, without public hearing that got dropped in as a nugget in the dark of the night. As the times have changed and court decisions have changed, it is still there. There is nothing wrong with people having an opportunity to discuss an issue and take time and listen to each other.

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

Representative CUMMINGS: Mr. Speaker, Ladies and Gentlemen of the House. There have been several issues raised that I want to bring back to the attention of those here. The issue of what is best for children is, in fact, a parent's decision. From a public policy position, we must believe that a religiously neutral classroom is the best if funded by public dollars. It is the foundation of our religious agreements to expect diversity in a situation. If you are asking the question about money, it is not an insignificant amount, the DOE has said that the number could be as many as 2,000 students eligible for vouchers. That doesn't mean they would all take them, but what if they did. When we make a statement that we want to support our public schools, it is not because we have a knee jerk reaction for supporting those, but a constitutional policy demand that we create a neutral

playing surface for all religions. Our purpose here today is as policy makers we provide an opportunity for the people of Maine to continue their religious avocations and their religious pursuits, but not with public money for the many reasons you have heard today. Yes, in fact, there is, of course, discrimination in religious institutions. I defend their right to do so, but not with my dollar.

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

Representative O'NEIL: Mr. Speaker, Ladies and Gentlemen of the House. I thank each and every one of you for indulging my queries. I apologize again for pushing into lunchtime, but this really did kind of peak my interest. The good Representative from Presque Isle mentioned entanglement and that is a concept in which I took some interest. I understand that firewall that we have affirmatively decided to place to keep the church and the schools separate. This is in the form of a question that I will put out there. As I understand it if that is the law of the land now, I think it is also the law of the land for us to allow voluntary school prayer. I see that parallel to allowing students to affirmatively choose to take the voucher that we are giving them and go to the school that is accredited of their choice, whether it is religious or it is not.

As to whether we had a philosophical or an ideological divide over whether religion ought to be in the schools, I submit to you that probably the most informative class I took in college was the foundations of western civilization and it had a huge religion component to it.

A friend of mine who has children at the school where my kids go came in as an atheist/agnostic at best and liked the looks of the school. The City of Biddeford helps with finances for transportation and for books at that religious school. She said after the first year that she was pleased with the bonus that she got that her kids got to take this religion course that they had never been exposed to at home. She saw that as a pre-western civilization course with them. She was thrilled with it. The school gave her the option not to take that.

The last point is in trying to get me to support the Majority Report is if this is indeed as many as 2,000 students, why would we object? If we use the Representative from Arundel's math, that is a savings of \$6 million. I am still kind of stuck here.

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

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

The SPEAKER: The Representative may pose his question.

Representative CROSTHWAITE: Mr. Speaker, Men and Women of the House. My question is I am looking in the Constitution of the United States and of the State of Maine and I am answering anyone who would care to answer where I could find the separation of church and state in either of those Constitutions. Twice I have heard that said this morning that separation of church and state is part of the Constitution. I can't find the article, nor the section. I need some help. Thank you Mr. Speaker.

The SPEAKER: The Representative from Ellsworth, Representative Crosthwaite has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Durham, Representative Vaughan.

Representative VAUGHAN: Mr. Speaker, Ladies and Gentlemen of the House. I would have to concur that I couldn't find the separation of church and state in either the US Constitution or the Maine State Constitution. In fact, the Maine Constitution mentions that we would like to acknowledge with grateful hearts the goodness of the Sovereign Ruler of the universe in affording us an opportunity, so favorable to the

design; and, imploring God's aide and direction and its accomplishment, do agree to form ourselves into a free independent state. That is in the preamble, in Section 3 it goes on to talk of the right of religion referring to worship All Mighty God.

I will submit to you that the separation of church and state was a statute introduced in 1954 in the US Congress by a Representative from Texas, which will deny the continuation of tax-free status if they engage in political activity. Thank you Mr. Speaker.

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

Representative SNOWE-MELLO: Mr. Speaker, May I pose a question through the Chair?

The SPEAKER: The Representative may pose her question.

Representative SNOWE-MELLO: Mr. Speaker, Ladies and Gentlemen of the House. Representative Murphy alluded to the fact that Maine in 1981 law was not passed by the usual process of a bill in the Legislature. Could someone inform me or explain to me how this prohibition came into being?

The SPEAKER: The Representative from Poland, Representative Snowe-Mello has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Kennebunk, Representative Murphy.

Representative MURPHY: Mr. Speaker, Men and Women of the House. If during the time that you served during the Legislature you haven't had the good fortune to go through a recodification, you should. As it is restructured and the language is redone, it is purposely set up that no meanings or laws change. Usually a recodification is to put it into more modern language or if after two or three decades things appear with five other titles, then you bring them together or you cross reference them. You try to get rid of the hodge podge. Whenever you go through a recodification there are always reassurances that nothing is being done here other than technical. In that particular case, in the recodification as a committee member of education, we were told repeatedly that there are no changes. They are only technical. It is a clean recodification. After the fact, after it appeared, it was clear that someone had slipped that issue in, which was a policy issue without a hearing and without a vote of the Legislature. It is there as law now.

The SPEAKER: The Chair recognizes the Representative from Buckfield, Representative Gagne-Friel.

Representative GAGNE-FRIEL: Mr. Speaker, Ladies and Gentlemen of the House. I urge you to support the Ought Not to Pass report. Irrespective and irregardless of all of the discussion that you have about private or religious schools, it will open up the voucher system, regardless of what this bill says, to others to challenge it. We can't afford it. The bottom line is, what are we going to do here? We have so much GPA money and we are going to have to pass it out somewhere. The schools are in existence. We take in the children. If you want to send your child to a different kind of school, then you are going to have to take it upon yourself to pay for it. You have to. We can't afford to do that, 2,000 or 22,000. Part of that is because the schools are open. The operating costs do not change. Hiring teachers, running the buses, opening up the building, all of that has to be paid for and it comes from your GPA money, it comes from the taxes that you pay within your town.

Yes, it would be nice if all of us had vouchers. We could send our kid wherever we wanted them to go, but we can't afford it. That is what the bottom line is. That is why we always vote the way we do and we will have to do it again. Thank you Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Waterford, Representative Millett.

Representative MILLETT: Mr. Speaker, Ladies and Gentlemen of the House. I would like to respond to the question initially posed by the Representative from Poland and further amplified on by the Representative from Kennebunk. The opinion that was the source of the language in Title 20A came about as a result of an Attorney General opinion requested by then Howard Petrosky of Bangor in the early part of the 1980 session. He had queried the Attorney General as to whether it was appropriate for local dollars, supplemented by state aide in the towns of Veazie and Glenburn to support the payment of tuition payments to John Bapts High School, which was then a sectarian high school. The opinion of the Attorney General was that it was definitely unconstitutional. This caused a change in both the school tuition formula and subsequently in 1981 a change in the recodification of Title 20A. I happened to work on that process. I can assure the good Representative from Kennebunk that it was done in strict concurrence with the Attorney General's recommendations.

I believe that subsequent to that opinion and the recodification several of the sectarian secondary schools changed their constitution and bylaws so as to permit their continued receipt of public monies. I would concur with the Representative from Farmington that the current state of the law in Maine has been upheld over the years and I see no reason to change the law. I would urge your support of the Majority Report. 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. 96**

YEA - Adams, Annis, Ash, Barstow, Bennett, Bierman, Blanchette, Bliss, Brannigan, Breault, Browne W, Bruno, Bull, Bunker, Canavan, Carr, Clark, Cowger, Craven, Cummings, Davis, Dudley, Dunlap, Duprey G, Earle, Eder, Faircloth, Finch, Fischer, Gagne-Friel, Gerzofsky, Grose, Hatch, Jodrey, Kaelin, Kane, Koffman, Laverriere-Boucher, Ledwin, Lemoine, Lerman, Lessard, Lundeen, Mailhot, Makas, Marley, Marraché, McCormick, McGlocklin, McGowan, McKee, McLaughlin, Millett, Mills J, Mills S, Moore, Norbert, Norton, O'Brien J, O'Brien L, O'Neil, Paradis, Patrick, Pellon, Percy, Perry A, Pingree, Piotti, Richardson J, Rines, Rosen, Sampson, Saviello, Simpson, Smith N, Sullivan, Suslovic, Sykes, Thomas, Thompson, Tobin D, Trahan, Twomey, Usher, Walcott, Wheeler, Woodbury, Young, Mr. Speaker.

NAY - Andrews, Austin, Berry, Berube, Bowen, Bowles, Brown R, Bryant-Deschenes, Campbell, Churchill E, Churchill J, Clough, Collins, Courtney, Cressey, Crosthwaite, Curley, Daigle, Dugay, Duplessie, Duprey B, Fletcher, Glynn, Greeley, Heidrich, Honey, Hotham, Jackson, Jacobsen, Jennings, Joy, Landry, Lewin, Maietta, McKenney, McNeil, Moody, Murphy, Muse, Nutting, Peavey-Haskell, Pineau, Rector, Richardson M, Rogers, Sherman, Shields, Smith W, Snowe-Mello, Stone, Sukeforth, Tardy, Tobin J, Treadwell, Vaughan, Wotton.

ABSENT - Goodwin, Hutton, Ketterer, Perry J, Richardson E, Watson.

Yes, 89; No, 56; Absent, 6; Excused, 0.

89 having voted in the affirmative and 56 voted in the negative, with 6 being absent, and accordingly the Majority Ought Not to Pass Report was ACCEPTED 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:

**SENATE PAPERS**

Resolve, Authorizing Germaine Bell To Sue the State (S.P. 567) (L.D. 1613)

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

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

**REPORTS OF COMMITTEE**

**Divided Report**

Majority Report of the Committee on INSURANCE AND FINANCIAL SERVICES reporting Ought to Pass as Amended by Committee Amendment "A" (H-336) on Bill "An Act To Encourage Agricultural Cooperative Associations To Provide Group Health Plans" (EMERGENCY)

(H.P. 381) (L.D. 492)

Signed:

Senators:

LaFOUNTAIN of York

MAYO of Sagadahoc

Representatives:

VAUGHAN of Durham

BREAULT of Buxton

WOODBURY of Yarmouth

O'NEIL of Saco

GLYNN of South Portland

SNOWE-MELLO of Poland

YOUNG of Limestone

PERRY of Bangor

Minority Report of the same Committee reporting Ought to Pass as Amended by Committee Amendment "B" (H-337) on same Bill.

Signed:

Senator:

DOUGLASS of Androscoggin

Representatives:

PERRY of Calais

CANAVAN of Waterville

**READ.**

On motion of Representative O'NEIL of Saco, the Majority Ought to Pass as Amended Report was ACCEPTED.

The Bill was READ ONCE. Committee Amendment "A" (H-336) was READ by the Clerk and ADOPTED. The Bill was assigned for SECOND READING Wednesday, May 14, 2003.

**Divided Report**

Majority Report of the Committee on INSURANCE AND FINANCIAL SERVICES reporting Ought to Pass as Amended by Committee Amendment "A" (H-334) on Bill "An Act To Extend Public Record Requirements of Nongroup Health Insurance Rate Filings to All Health Insurance Rate Filings"

(H.P. 776) (L.D. 1058)

Signed:

Senators:

LaFOUNTAIN of York

DOUGLASS of Androscoggin

MAYO of Sagadahoc  
Representatives:  
VAUGHAN of Durham  
PERRY of Calais  
BREAULT of Buxton  
CANAVAN of Waterville  
WOODBURY of Yarmouth  
GLYNN of South Portland  
SNOWE-MELLO of Poland  
YOUNG of Limestone  
PERRY of Bangor

Minority Report of the same Committee reporting **Ought to Pass as Amended by Committee Amendment "B" (H-335)** on same Bill.

Signed:

Representative:

O'NEIL of Saco

**READ.**

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

The Bill was **READ ONCE**. **Committee Amendment "A" (H-334)** was **READ** by the Clerk and **ADOPTED**. The Bill was assigned for **SECOND READING** Wednesday, May 14, 2003.

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#### Divided Report

Majority Report of the Committee on **JUDICIARY** reporting **Ought to Pass** on Bill "An Act Concerning Representation of the State in Disclosure Hearings" (EMERGENCY)

(H.P. 1031) (L.D. 1404)

Signed:

Senators:

PENDLETON of Cumberland  
CATHCART of Penobscot  
WOODCOCK of Franklin

Representatives:

NORBERT of Portland  
BULL of Freeport  
SIMPSON of Auburn  
RICHARDSON of Brunswick  
BENNETT of Caribou  
CARR of Lincoln  
BRYANT-DESCHENES of Turner

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

Signed:

Representatives:

MILLS of Farmington  
SHERMAN of Hodgdon

Representative LORING of the Penobscot Nation - of the House - supports the Majority **Ought to Pass** Report.

**READ.**

On motion of Representative NORBERT of Portland, the Majority **Ought to Pass** Report was **ACCEPTED**.

The Bill was **READ ONCE** and was assigned for **SECOND READING** Wednesday, May 14, 2003.

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#### ORDERS

On motion of Representative GERZOFKY of Brunswick, the following Joint Resolution: (H.P. 1191) (Cosponsored by Senator TREAT of Kennebec and Representatives: BRUNO of Raymond, Speaker COLWELL of Gardiner, DUPLESSIE of Westbrook, KOFFMAN of Bar Harbor, RICHARDSON of Brunswick,

Senators: President DAGGETT of Kennebec, DAVIS of Piscataquis, EDMONDS of Cumberland) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 214)

#### JOINT RESOLUTION MEMORIALIZING CONGRESS TO CONTINUE

#### AMERICORPS FUNDING FOR THE STATE OF MAINE

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

WHEREAS, AmeriCorps is the domestic version of the internationally respected Peace Corps. It consists of 70,000 volunteers who serve either full-time or less than full-time in local schools and nonprofit agencies. AmeriCorps members perform volunteer service that meets a community need and recruit citizens to work alongside them; and

WHEREAS, over 1,500 Maine people have served full-time and part-time in Maine communities through the federally funded AmeriCorps program during the past 9 years; and

WHEREAS, during 2003, nearly 200 AmeriCorps volunteers are scheduled to serve in Maine communities to help local nonprofit, educational and municipal organizations address critical health, environmental, educational, housing, public safety and homeland security issues; and

WHEREAS, Maine AmeriCorps members are catalysts, building stronger communities by engaging, on average, 32 local citizens per AmeriCorps member in volunteer service that solves local problems and meets critical local needs. In 2003, AmeriCorps members can be expected to meet or exceed their 2002 success of 9,000 citizens recruited and placed in service to communities; and

WHEREAS, in just the last 4 years, AmeriCorps service has qualified Maine citizens for over \$2,100,000 in federal financial aid for higher education or payment of student loans; now, therefore, be it

RESOLVED: That We, your Memorialists, respectfully urge and request that the Congress of the United States recognize the valuable role AmeriCorps plays in Maine communities. We request that AmeriCorps be funded as needed in these times of budget cutting across the Nation in the fiscal year 2003 supplemental budget so that Maine communities are able to receive help from AmeriCorps volunteers and meet the critical needs of our citizens; and be it further

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

**READ and ADOPTED.**

Sent for concurrence.

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

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

#### 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 Establish the Lincoln and Sagadahoc Multicounty Jail Authority (EMERGENCY) (MANDATE)

(S.P. 405) (L.D. 1199)  
(C. "A" S-103)

TABLED - May 12, 2003 (Till Later Today) by Representative McLAUGHLIN of Cape Elizabeth.

PENDING - **PASSAGE TO BE ENACTED.**

Was reported by the Committee on **Engrossed Bills** as truly and strictly engrossed. In accordance with the provisions of Section 21 of Article IX of the Constitution, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 144 voted in favor of the same and 0 against, and accordingly the Mandate was **PASSED TO BE ENACTED**, signed by the Speaker and sent to the Senate. **ORDERED SENT FORTHWITH.**

HOUSE DIVIDED REPORT - Majority (8) **Ought Not to Pass** - Minority (5) **Ought to Pass as Amended by Committee Amendment "A" (H-314)** - Committee on **CRIMINAL JUSTICE AND PUBLIC SAFETY** on Bill "An Act to Create a Crime of Refusing an Alcohol Test in Operating-under-the-influence Cases"

(H.P. 267) (L.D. 324)

TABLED - May 12, 2003 (Till Later Today) by Representative BUNKER of Kossuth Township.

PENDING - Motion of same Representative to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report.

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

Representative **CARR**: Mr. Speaker, Women and Men of the House. Several years ago I had an opportunity to work with a person that I have grown to have a great respect for in his pursuit of getting people who are operating under the influence of the Road, Chris Almy. He is presently District Attorney in Penobscot County. Last summer District Attorney Almy came to me and requested that I put a bill in for him, which is the bill that is before you now.

I want to take just a moment to walk you though what would be the way that this would work out. A person stopped for operating under the influence and after sobriety tests are taken and arrests made, there are certain things that that person has to comply with, which is part of the implied consent and that is read from a form.

This bill would require the person in that form, what we call the implied consent form, to comply with taking a test and if they did not take that test, they would then be able to be charged with another crime, which would be refusing to take the test. Some of the reasons that the District Attorney wanted this bill to be put in was that according to his statistics that he had compiled, not very well, but within his head. He said that a person who is arrested for OUI and submits to a test is much more apt to be convicted of that crime. It is a most important piece of evidence that can be collected in the crime of operating under the influence. If a person goes to trial and has taken the test, over 90 percent of the time they would be convicted. If they did not, that percentage drops off dramatically.

I am not going to take much time with this, but I do want to lay out some of the things that I think are important. Number one, the policy in the last 10 to 15 years has been that driving under the influence of alcohol is not socially acceptable. People today look at driving under the influence as something that is against society rules, in addition to be against the law. I believe that by adding this new requirement, by law requiring a person to submit,

will better enable District Attorneys to prosecute cases and come out with an acceptable finding.

I have to admit that this is not a bill that I would have brought forth myself. After talking to the District Attorney and listening to his side and also the testimony that he gave at the public hearing, I believe that this is a proper policy for the Legislature to follow. Mr. Speaker, when the vote is taken, I request the yeas and nays.

Representative **CARR** of Lincoln **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 Chair recognizes the Representative from Bangor, Representative Blanchette.

Representative **BLANCHETTE**: Mr. Speaker, Ladies and Gentlemen of the House. I stand today and ask you to oppose the Majority Ought Not to Pass Report. I feel that this bill is just another legal tool that the District Attorneys in all of our counties and the police departments and the Sheriff's Department and the State Police can all use this bill to take people off the road that, in full fairness, should not be there. I think we all have been touched in one way or another in our lifetime by the devastating affects of someone having too much to drink and getting behind the wheel of their car and driving and saying that they are not affected. How would you like to be the police officer that had to go to the door and say, I have to tell you that so and so was killed in an accident involved with a drunken driver. This shouldn't be happening. The biggest sin of all is that these people shouldn't be walking away from us because they could not be convicted because they chose not to participate in having a breathalyzer, urine test or a blood test done. It is a day late and a dollar short to draw blood, do a breathalyzer or a urine test on someone 18 hours after the accident.

These tests are very portable, very compact and any trained law enforcement officer can do them on site if they have to. I would encourage you to vote against the Majority Ought Not to Pass Report and join us with the Minority Ought to Pass as Amended Report and let's do something so that you never have to be in the position to open the door and have a police officer standing there saying I am sorry. It could happen and it does happen every day.

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

Representative **LESSARD**: Mr. Speaker, Ladies and Gentlemen of the House. Being on the Minority Report, I feel I should speak out. I think those that have testified before me had some very good points. I am not going to repeat those. There are some safeguards involved in this bill and that the probable cause for stopping a vehicle is in place. That could be a defense in the future for any trial that may come up. Bear in mind that the warning has got to be in place. In other words, a motorist is stopped on probable cause, there is something wrong with the operation. He also must warn the individual that a blood test or an alcohol test or breath test should be made. Refusing that could be the same as a guilty finding for drunk driving. I believe this will discourage people. People will know that once you take that one drink and you follow through with several others, you are at risk on the highway and you are at risk for some jail time and losing your license. I would encourage you to vote for the Minority Report. Thank you.

The SPEAKER: The Chair recognizes the Representative from Washburn, Representative Churchill.

Representative **CHURCHILL**: Mr. Speaker, Ladies and Gentlemen of the House. I rise in support of the Ought Not to Pass. I have studied the State Police statistics for last year.



There were 1,777 OUIs arrested from Kittery to Fort Kent. Out of those, 105 refused a blood alcohol test. This is less than 6 percent. Out of those 6 percent, 3 percent pled guilty. We are dealing with a 97 percent compliance rate, which I submit is about as good as it gets. Although we have not won the war on drunk driving, we have won the war on enforcement. This is in no way an enforcement tool. This takes place only when you are sitting in court. I submit to you, would you want to sit in court, have a person found not guilty of OUI and then sentenced to a hefty fine and time in jail? Is this what we want to do? So many times we hear in court when a lawyer is against the wall he uses what was the intent of the Legislature? I ask you to show a clear intent that we do not want to send innocent people to jail under any circumstances. Thank you.

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

Representative GERZOFSKY: Mr. Speaker, Ladies and Gentlemen of the House. I rise today on the majority side of this report. Usually I am on the minority side. This is another great case of giving the prosecuting attorneys more tools for their bag. I keep hearing that in committee. I hear it in here. How many tools do we give them? This tool we give them takes away our rights not to testify against ourselves. The Constitution has that. Maine has that. We don't have anything in this state that says you have to testify against yourself, but the prosecuting attorneys would like us to. We debated this in committee quite a bit. We have law enforcement on one side, civil libertarians on the other side and just plan old legislators on the third side.

I am just a furniture maker. That is what I have done all my life. I do know that when we give up our rights, we lose something very precious. It took a long time to get them. It took a lot of hard work by a lot of fine people to decide what our rights were, not what our privileges were. When you see me stand up in this House this year, I stood up to talk about rights. I will be darned if I want to vote to give up a right that I got in the Constitution of the State of Maine and the Constitution of America. I hope that everyone else will vote that way in this room because that is standing up for Maine citizens and their right to not have to testify against themselves. You have heard from a state trooper here, retired. They don't need this law. We don't need this law. This isn't going to do a darn thing except get some District Attorney up to 100 percent instead of 95 percent conviction rate. I don't think giving up any of my rights are worth that. Thank you very much.

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

Representative LESSARD: Mr. Speaker, Ladies and Gentlemen of the House. The good Representative from Brunswick and I happen to disagree on these matters. We don't want to forget that obtaining a driver's license is a privilege. For the public good there are certain standards that are put in place. The Legislature and the Secretary of State puts all these in place. If we think back as to what we went through to get a driver's license and what we do give up are the small things for the public good. I am referring to a crime of driving under the influence. That is a most despicable crime that you can think of. As far as I am concerned, with 42 years of experience in law enforcement, anything that we can do to enforce the drunken driving law, I am all for it. That is why I am on the Minority Report to pass this. 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 want to start off by thanking the good Representative from Lincoln, Representative Carr, for his

presentation and his honesty when he was speaking in front of the committee. I also want to thank the committee of jurisdiction for looking at this bill in such a balanced way. We don't have a lot of divided reports out of our committee this year, which is a great thing. I applaud our committee members for that. This one came forward and there was a little slight division of agreement here and that is why we are standing here on the floor speaking at this moment. I don't want anybody to get confused with a conversation that we are not tough on OUIs or we are not tough on driving under the influence or whatever.

I was part of the Criminal Justice Committee when we had the Secretary of State's study that came back and we started those very, very tough laws in 1995. We should applaud each and every one of the legislators, past and current, for the hard work we had in turning around the horrendous numbers that we had just a short while ago. The good Representative Churchill reflected on some of the outstanding abilities and the training and the money we dedicated to our law enforcement folks and special details to allow them to have a 97 percent track record. When they do stop and see the signs of an illegal act, being able to get it all the way through into court, I think that is just simply amazing. I think that is due to a great part by this Legislature. In our tools, as the good Representative Gerzofsky mentions all the time, we have already given them. Not to be confused if you are in the car and you refuse a test during one of these situations, there is a document read to you and the Secretary of State, as many people have mentioned, it is a privilege to drive on our highway. That is done through an issuance of a license. Our Secretary of State has a full tool kit, Representative Gerzofsky, of alternative penalties, enhanced penalties. If you refuse to take a test, you don't just get a 90 day license suspension like you would get in court, you get a six month license suspension from the Secretary of State without any court involvements. You are off the road. Anybody here who thinks this is going to take more people off the road, that is already happening through our administrative process.

The other thing is simply, as the good Representative indicated, this additional crime, I cannot imagine anybody in this room standing in front of a judge being found not guilty of a criminal offense of operating under the influence and then the judge says, but you refused to take the test so you are guilty and you are going to jail with the same class crime and the same penalty as if you had done the crime just because you invoked your Fifth Amendment rights and said I didn't want to self-incriminate myself if there happened to be something to be self-incriminating about.

I think the bottom line here is that there are adequate mechanisms within the administrative side, the Secretary of State's side. There has been a great amount of improvement in this side of our enforcement to the point that I think I agree that much more improvement would be very difficult to have. I do enjoy District Attorney, Chris Almy, when he comes down from Bangor. That man is really dedicated in this area and he wants 100 percent. Ninety-seven percent isn't good enough for him. I applaud him for that, but 97 percent in this world of the Fifth Amendment rights is great. What he failed to realize in his statements is he does get 100 percent. Those other 6 percent or 3 percent that were noted earlier are being dealt with by the Secretary of State in a proper format with a longer license suspension if a refusal occurs.

There is nothing broke here, ladies and gentlemen. It was single District Attorney that was asking for this to happen. The only state in the country is Alaska that currently has this. I think we should follow the well maintained and codification in laws and procedures we currently have on the books and encourage our

folks to continue the good work they are going out on the road today. Thank you.

The **SPEAKER**: The Chair recognizes the Representative from Cornville, Representative Mills.

Representative **MILLS**: Mr. Speaker, Men and Women of the House. I just think that the last point made by the good Representative from Kossuth Township is the one that needs to be emphasized. If you refuse a test now, under current law, you lose your license for six months administratively. That is the price you pay for saying no to the officer. It is automatic. It is administrative. It doesn't make you a criminal, but you lose your license for six months and if you are convicted of OUI, then that goes on top of it. It is already there. There is already a sanction built into current law for your refusal.

My problem with the Minority Report is if you just refuse the test, you go to jail if you are convicted of that. You go to jail for two days automatically. You pay a fine that is automatic, minimum mandatory. It is just exactly the same thing as being convicted of OUI. I don't think they are equivalent, nor should they be made so. I think we do need to take reassurance from the fact that there is already a significant administrative penalty for saying no to that test request, a six-month suspension of your privilege to operate on the roads of Maine.

For that reason, I think it is fair to say the committee did careful work. We should join with the majority and vote yes on the pending motion. 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. There has certainly been great testimony today on support or against this bill. The reason why I was on the Minority Ought to Pass Report were for a few reasons. I believe that this gives the DA the ability to have reliable evidence when prosecuting OUIs.

When you have a neighbor who has lost their life to someone who has abused alcohol, maybe this would hit home with you. I will tell you that I have a family that lives right around the corner from me that lost a son who was hit by a car by a person who was under the influence of alcohol.

I also believe that this bill, the Minority Report, allows for most chemical tests, which are the most reliable information that we can possibly get. Refusal of the test means loss of that evidence and the state will have a much more difficult time in proving a case behind the reasonable doubt.

I guess that is why I went on that report. I understand all the other reasons why not to support this bill, but I am just really not tolerant of those who get in a car and have had too much to drink. That is why I ask you to please support the Minority Ought to Pass Report. Also, Alaska also criminalizes the refusal to submit to a test as a separate crime. This has been done in other states. Thank you.

The **SPEAKER**: The Chair recognizes the Representative from Washburn, Representative Churchill.

Representative **CHURCHILL**: Mr. Speaker, Ladies and Gentlemen of the House. I will be brief. At the present time there are no statutes in the State of Maine that impose criminal sanctions for exerting one's right not to provide evidence against one's self. That is what this bill would do. It would be the first bill to do that. I urge you to give a 95 percent green light on this. Thank you.

The **SPEAKER**: The Chair recognizes the Representative from Farmington, Representative Mills.

Representative **MILLS**: Mr. Speaker, Women and Men of the House. I was proud to be part of the effort that resulted in the 1980 law in Maine, one of the first in the nation, to enact a per

say OUI blood alcohol level, which allowed strict liability OUI offenses to go to the jury without having to prove that operation. We have had that law and we have improved that law for the last 23 years. In the meantime we have also toughened up jail sentences and toughened up fines for OUIs and toughened up the requirements for counseling, the so-called DEEP Program before someone can obtain their license back after an OUI conviction. We have tightened up the evidentiary requirements for OUIs to make it easier for District Attorneys to prove these cases. The statistics, consequently, are down substantially. The number of OUI arrests, the number of OUI offenses has come down from, I believe, 10,000 plus a couple of years ago to 6,200 a year or so ago. Ten or 15 years ago it was around 17,000 a year. We have made significant progress with the laws and the tools that we have. I was pleased to work for 15 years with competent, other DAs and other prosecutors and with very competent police officers, some of whom serve with me in this House. I don't recall any instance where I had an OUI case to prosecute that I didn't have the evidence to prosecute it, with or without the test. I don't recall any case that warranted prosecution where there was operation or an accident and no test that I couldn't otherwise prosecute.

When an officer has probable cause to arrest, there are many tools, including the field sobriety test, the observations of operation and observations of the individual in question, the driver. All of which are admissible, including the horizontal gaze of nystagmus that can be used to convict a person of OUI without a test.

I don't think that this short cut is necessary. As the previous speaker pointed out, it will be the first time in this state, that I can think of as well, that we would have enacted a strict liability based on evidentiary matter. The whole impetus behind the blood alcohol test is to provide evidence of OUI, not to be a crime in and of itself to refuse a test. In an analogist situation I would ask the people who would support this bill whether they would make it crime not to confess to some offense, but a person is under suspicion for. It is a similar situation. The blood alcohol test is an evidentiary thing. The courts have ruled under *Smirmer versus United States* that extracting blood for evidentiary purposes may pass Fourth Amendment constitutional muster. They have never said it would be constitutional to make it a crime not to give evidence against yourself. I think that is an important distinction.

It should also be noted, as I think the previous speaker did, that in an accident case, even without probable cause or without suspicion of OUI, a blood test or breath test is automatically taken without consent. That test can be offered into evidence as well in an accident with serious bodily injury or a fatality. I think we have plenty of tools on the books. We are making great progress on OUIs. Nobody is in favor of drunk driving or operating under the influence. We have the tools for competent District Attorneys and police officers to use now. We are obtaining the convictions in court. Thank you.

The **SPEAKER**: The Chair recognizes the Representative from Durham, Representative Vaughan.

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

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

Representative **VAUGHAN**: Mr. Speaker, Ladies and Gentlemen of the House. The question I have is, is there not precedent set for helping us to determine the answer to this question. Is there not legislation or laws on the books, either at the federal or state level, which would require you to submit to fingerprinting or DNA testing and what would be the consequences of refusing to either one of those tests? Thank you.

The SPEAKER: The Representative from Durham, Representative Vaughn has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Farmington, Representative Mills.

Representative MILLS: Mr. Speaker, Ladies and Gentlemen of the House. In response to the gentleman's question, fingerprinting is a matter of booking. It is not used as evidence against an individual. It is used to track the progress through the courts and through the system. DNA evidence, according to the laws we have passed and some federal laws, can be taken after a criminal conviction and is not used as evidence. It is again used for data bank purposes. It is upon conviction of a serious crime in our laws, not for use as evidence against a person in the current crime.

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. 97**

YEA - Adams, Andrews, Ash, Austin, Barstow, Bennett, Berry, Berube, Bierman, Bliss, Bowen, Brannigan, Brown R, Browne W, Bruno, Bryant-Deschenes, Bull, Bunker, Campbell, Canavan, Churchill E, Churchill J, Collins, Courtney, Cowger, Craven, Cressey, Crosthwaite, Cummings, Curley, Daigle, Davis, Dudley, Dugay, Dunlap, Duplessie, Duprey G, Eder, Faircloth, Finch, Fischer, Fletcher, Gagne-Friel, Gerzofsky, Glynn, Grose, Hatch, Heidrich, Honey, Hotham, Hutton, Jackson, Jacobsen, Jodrey, Joy, Kaelin, Kane, Ketterer, Koffman, Landry, Laverriere-Boucher, Ledwin, Lemoine, Lerman, Lewin, Lundeen, Maietta, Mailhot, Makas, Marley, McCormick, McGlocklin, McKee, McKenney, McLaughlin, McNeil, Mills J, Mills S, Moody, Moore, Murphy, Muse, Norbert, Norton, Nutting, O'Brien J, O'Brien L, O'Neil, Paradis, Patrick, Peavey-Haskell, Pellon, Percy, Perry A, Perry J, Pineau, Pingree, Piotti, Rector, Richardson E, Richardson J, Rines, Rogers, Rosen, Sampson, Saviello, Sherman, Shields, Simpson, Smith N, Smith W, Stone, Sullivan, Tardy, Thomas, Thompson, Tobin D, Tobin J, Trahan, Treadwell, Twomey, Usher, Vaughan, Walcott, Watson, Wheeler, Woodbury, Wotton, Young, Mr. Speaker.

NAY - Annis, Blanchette, Bowles, Breault, Carr, Clark, Clough, Duprey B, Earle, Greeley, Lessard, Millett, Richardson M, Snowe-Mello, Sukeforth, Suslovic, Sykes.

ABSENT - Goodwin, Jennings, Marraché, McGowan.

Yes, 130; No, 17; Absent, 4; Excused, 0.

130 having voted in the affirmative and 17 voted in the negative, with 4 being absent, and accordingly the Majority **Ought Not to Pass** Report was **ACCEPTED** and sent for concurrence.

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

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The House recessed until 1:30 p.m.

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(After Recess)

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The House was called to order by the Speaker.

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

**REPORTS OF COMMITTEE**

**Divided Report**

Majority Report of the Committee on **INLAND FISHERIES AND WILDLIFE** reporting **Ought Not to Pass** on Bill "An Act to Prohibit Personal Watercraft on Rocky Pond in Orland"

(H.P. 107) (L.D. 98)

Signed:

Senators:

BRYANT of Oxford  
CARPENTER of York  
KNEELAND of Aroostook

Representatives:

DUNLAP of Old Town  
RICHARDSON of Greenville  
TOBIN of Dexter  
HONEY of Boothbay  
McGLOCKLIN of Embden  
WHEELER of Kittery  
WOTTON of Littleton  
WATSON of Bath  
PINEAU of Jay

Minority Report of the same Committee reporting **Ought to Pass as Amended by Committee Amendment "A" (H-340)** on same Bill.

Signed:

Representative:

TRAHAN of Waldoboro

**READ.**

On motion of Representative DUNLAP of Old Town, the Majority **Ought Not to Pass** Report was **ACCEPTED** and sent for concurrence. **ORDERED SENT FORTHWITH.**

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**Divided Report**

Majority Report of the Committee on **INLAND FISHERIES AND WILDLIFE** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-341)** on Bill "An Act To Allow Smelt Fishing in Long Lake in Aroostook County"

(H.P. 637) (L.D. 860)

Signed:

Senators:

BRYANT of Oxford  
CARPENTER of York

Representatives:

DUNLAP of Old Town  
WHEELER of Kittery  
WOTTON of Littleton  
WATSON of Bath  
PINEAU of Jay  
McGLOCKLIN of Embden

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

Signed:

Senator:

KNEELAND of Aroostook

Representatives:

RICHARDSON of Greenville  
TOBIN of Dexter  
HONEY of Boothbay  
TRAHAN of Waldoboro

**READ.**

Representative DUNLAP of Old Town moved that the House **ACCEPT** the Majority **Ought to Pass as Amended** Report.

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

Representative **TRAHAN**: Mr. Speaker, Ladies and Gentlemen of the House. I will be giving you just a brief description of this bill and why I opposed it. When this bill was presented to our committee, it was originally a unanimous committee report, Ought Not to Pass. There was an amendment that came in later to reconsider this bill and allow smelting on this lake. Both times that that occurred the department came in and said no to this change. When I was first appointed to the advisory council of Inland Fisheries and Wildlife, long before I was elected, I set a policy in my mind and that was when biologists from the department came in and gave us data and information that said no to a change, I would never allow politics to come into my decisions. I keep that policy today. That is why I ask you to defeat this motion. Thank you.

Representative **TRAHAN** of Waldoboro **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 Old Town, Representative Dunlap.

Representative **DUNLAP**: Mr. Speaker, Ladies and Gentlemen of the House. This is one of those issues. If you have ever dealt with one of those issues, you are about to now. This is a piece of legislation that was brought to us to address something of an inequity. The inequity simply was a certain lack of justice, if you will. Long Lake in northern Maine is a hot bed of the rainbow smelt. It is so prolific that it is difficult to catch large game fish there because, why should they take your ugly bait when they have all these pretty smelts to eat. The landlocked salmon in that lake are trophy sized. There is absolutely no question about that. The department utilizes the smelt population in Long Lake to seed eggs in other tributaries around Aroostook County to help bolster their smelt populations. When this practice was put in place as policy to prohibit the taking of smelt in Long Lake, it said that it was going to be for a time. We are going to try to do this just to bolster the populations in other areas and we are going to protect this population of smelt. Some day, you will be able to go back out to those brooks and take smelts during the run with your dip nets. Now they are saying that it is utterly impossible, you cannot do that.

The problem really is not your next-door neighbor going down and taking a couple quarts of smelts. The problem really has been, and I don't want to cast anything on the trade, but the bait dealers have been screaming for years about a lack of bait for them to sell. This is a huge economic issue in rural Maine. It is worth tens of millions of dollars, especially during the ice fishing season and later in the spring fishing season. The concern was if you open it up to smelting, the bait dealers are going to come in and they are going to do what they have done in other bodies of water, and clean it out.

The Representative from Waterboro, Representative Trahan, was right. We looked at this bill early on and said that we don't really need to go there. We got sort of talking about that particular area and those particular people who are being sort of left out of this recreational practice. We came up with a little bit of a plan, which we kind of hoped would make a unanimous report. Once again, I was wrong, but we gave it a shot. The idea was to open up a few routes only within Township 17 or 14, one of those townships. It is just the extreme southeast corner of Long Lake and it would just truly minimize the impact of opening up that fishery to smelting. Furthermore, if the problem and the

concern is the dealers, then suspend a 1,000 pound weight over their head and if they go in there, drop it on them. If you are a commercial bait dealer and you violate this provision of law, to go into these tributaries and go smelting, you are going to look at a Class D crime and a \$1,000 fine. I would consider that a positive disincentive from violation of this law. The idea is to open it up for the recreational people only so they can go down to get themselves a couple of quarts of smelts.

Finally, if all this fails in this Majority Report, which I hope you will accept, it is sunset after two years. If this turns out to be a nightmare in terms of resource management, it goes away in two years. I think it is a very reasonable compromise and I would urge the body to accept it.

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

Representative **SMITH**: Mr. Speaker, Ladies and Gentlemen of the House. I do want to thank the Representative from Old Town for his kind explanation of this bill. This bill was brought by me upon the request of many, many of my constituents who could not understand why they were not allowed to dip smelts from Township 17, Range 3, when the brooks were prolific with smelt, so prolific that the Fish and Game Department would come and take the smelt eggs to spread around to other areas in the state. We attempted to craft a bill here, which does not impose any great burden upon the smelt fishery. It is only two quarts per person. It doesn't open it up to commercial smelting. All it does is give these local people a chance to continue enjoying doing the kind of sporting practice that they enjoyed for many, many years. When dipping for smelts were stopped in the early 1980s, the rationale given was it would help the salmon fishing or whatever. This was only going to be for a few years. That didn't prove true. The salmon fishing didn't improve, however, the dipping was never restored. I am asking you to give something back to these local people that the state has taken away. Give them a chance to do a limited dipping of smelts that they have enjoyed for so many years. Thank you.

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

Representative **TRAHAN**: Mr. Speaker, Ladies and Gentlemen of the House. I spoke earlier of my time on the advisory council. That was a great experience for me. During that time, many fishermen petitioners came in before that committee and wanted to change biological policy. We rejected that consistently for one reason. Sometimes when fishermen, whether it be smelters or salmon fishermen or hunters want to take an animal, it has an impact to the population of that animal. We have to take that into consideration, but above all else, we have to take into consideration the advise that we get from biologists that we put out in our environment every day to give us advise on managing our resources. In this case I believe a petition is not enough reason to impact a smelt population on one of the best salmon fisheries in the state.

To give you an example of how poor biology can affect a fishery, I only have to point you to Moosehead Lake when the togue was introduced and it decimated the smelt population, thus decimating the salmon population, thus impacting the economy in the Moosehead Lake region.

There are far reaching impacts when you change policy and you don't have good data to back it up. This is one of those times. That is why I stand here a second time to ask you to defeat this motion. 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. 98**

YEA - Adams, Ash, Barstow, Bennett, Bierman, Blanchette, Bliss, Brannigan, Breault, Brown R, Bull, Bunker, Canavan, Churchill E, Churchill J, Clark, Craven, Cummings, Daigle, Dudley, Dunlap, Duplessie, Duprey G, Earle, Faircloth, Finch, Fischer, Gagne-Friel, Gerzofsky, Grose, Hatch, Hotham, Hutton, Ketterer, Landry, Laverriere-Boucher, Lemoine, Lerman, Lessard, Lundeen, Mailhot, Makas, Marley, McGlocklin, McKee, McLaughlin, Mills J, Moody, Norbert, Norton, O'Brien L, O'Neil, Paradis, Patrick, Pellon, Percy, Perry A, Pineau, Pingree, Piotti, Richardson J, Rines, Sampson, Saviello, Sherman, Simpson, Smith N, Smith W, Sullivan, Suslovic, Thomas, Thompson, Twomey, Usher, Walcott, Watson, Wheeler, Wotton, Mr. Speaker.

NAY - Andrews, Annis, Austin, Berry, Berube, Bowles, Browne W, Bruno, Campbell, Carr, Clough, Collins, Courtney, Cressey, Crosthwaite, Curley, Davis, Duprey B, Eder, Fletcher, Glynn, Greeley, Heidrich, Honey, Jacobsen, Jodrey, Joy, Kaelin, Ledwin, Lewin, Maietta, McCormick, McGowan, McKenney, McNeil, Millett, Mills S, Moore, Murphy, Muse, Nutting, O'Brien J, Peavey-Haskell, Rector, Richardson E, Richardson M, Rogers, Rosen, Shields, Snowe-Mello, Stone, Sukeforth, Sykes, Tardy, Tobin D, Tobin J, Trahan, Treadwell, Vaughan, Woodbury, Young.

ABSENT - Bowen, Bryant-Deschenes, Cowger, Dugay, Goodwin, Jackson, Jennings, Kane, Koffman, Marraché, Perry J. Yes, 79; No, 61; Absent, 11; Excused, 0.

79 having voted in the affirmative and 61 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-341)** was **READ** by the Clerk and **ADOPTED**. The Bill was assigned for **SECOND READING** Wednesday, May 14, 2003.

**Divided Report**

Majority Report of the Committee on **BUSINESS, RESEARCH AND ECONOMIC DEVELOPMENT** reporting **Ought Not to Pass** on Bill "An Act To Require Continuing Education in the Cosmetology, Barbering, Aesthetics and Manicuring Fields"

(H.P. 771) (L.D. 1054)

Signed:

Senator:

BROMLEY of Cumberland

Representatives:

SULLIVAN of Biddeford

O'BRIEN of Lewiston

DUPREY of Medway

PELLON of Machias

SMITH of Monmouth

AUSTIN of Gray

BERUBE of Lisbon

JACOBSEN of Waterboro

RECTOR of Thomaston

ROGERS of Brewer

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

Signed:

Senators:

HALL of Lincoln

SHOREY of Washington

**READ.**

Representative SULLIVAN of Biddeford moved that the House **ACCEPT** the Majority **Ought Not to Pass** Report.

Representative BLISS of South Portland **REQUESTED** a roll call on the motion to **ACCEPT** the Majority **Ought Not to Pass** Report.

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

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

**ROLL CALL NO. 99**

YEA - Adams, Andrews, Annis, Ash, Austin, Barstow, Bennett, Berry, Berube, Bierman, Blanchette, Bowen, Bowles, Brannigan, Breault, Brown R, Browne W, Bruno, Bull, Bunker, Campbell, Canavan, Churchill E, Churchill J, Clark, Clough, Collins, Courtney, Craven, Cressey, Crosthwaite, Cummings, Daigle, Davis, Dunlap, Duplessie, Duprey B, Duprey G, Earle, Faircloth, Finch, Fischer, Fletcher, Gagne-Friel, Gerzofsky, Glynn, Greeley, Grose, Hatch, Heidrich, Honey, Hotham, Jacobsen, Jodrey, Joy, Kaelin, Kane, Ketterer, Landry, Laverriere-Boucher, Ledwin, Lemoine, Lerman, Lessard, Lewin, Maietta, Makas, Marley, McCormick, McGlocklin, McGowan, McKee, McKenney, McLaughlin, McNeil, Millett, Mills J, Mills S, Moody, Murphy, Muse, Norbert, Norton, Nutting, O'Brien J, O'Brien L, Paradis, Patrick, Peavey-Haskell, Pellon, Percy, Perry A, Pineau, Pingree, Piotti, Rector, Richardson E, Richardson J, Rogers, Rosen, Sampson, Sherman, Shields, Simpson, Smith W, Snowe-Mello, Stone, Sukeforth, Sullivan, Suslovic, Sykes, Tardy, Thomas, Tobin D, Trahan, Treadwell, Usher, Vaughan, Walcott, Watson, Wheeler, Woodbury, Wotton, Young, Mr. Speaker.

NAY - Bliss, Carr, Curley, Dudley, Eder, Hutton, Lundeen, Moore, Richardson M, Rines, Saviello, Smith N, Thompson, Twomey.

ABSENT - Bryant-Deschenes, Cowger, Dugay, Goodwin, Jackson, Jennings, Koffman, Mailhot, Marraché, O'Neil, Perry J, Tobin J.

Yes, 125; No, 14; Absent, 12; Excused, 0.

125 having voted in the affirmative and 14 voted in the negative, with 12 being absent, and accordingly the Majority **Ought Not to Pass** Report was **ACCEPTED** and sent for concurrence. **ORDERED SENT FORTHWITH.**

**Divided Report**

Majority Report of the Committee on **BUSINESS, RESEARCH AND ECONOMIC DEVELOPMENT** reporting **Ought to Pass** on Bill "An Act To Conform the Voting Members of Certain State Entities"

(H.P. 1029) (L.D. 1402)

Signed:

Senators:

BROMLEY of Cumberland

HALL of Lincoln

Representatives:

SULLIVAN of Biddeford

O'BRIEN of Lewiston

DUPREY of Medway

PELLON of Machias

SMITH of Monmouth

AUSTIN of Gray

RECTOR of Thomaston

ROGERS of Brewer

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

Signed:  
 Senator:  
 SHOREY of Washington  
 Representatives:  
 BERUBE of Lisbon  
 JACOBSEN of Waterboro

**READ.**

On motion of Representative SULLIVAN of Biddeford, the Majority **Ought to Pass** Report was **ACCEPTED**.

The Bill was **READ ONCE** and was assigned for **SECOND READING** Wednesday, May 14, 2003.

**Divided Report**

Majority Report of the Committee on **UTILITIES AND ENERGY** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-342)** on Bill "An Act To Improve the Ability of the Public Utilities Commission To Enforce State Laws, Rules and Requirements"

(H.P. 1088) (L.D. 1483)

Signed:  
 Senators:  
 HALL of Lincoln  
 YOUNGBLOOD of Penobscot  
 Representatives:  
 LUNDEEN of Mars Hill  
 MOODY of Manchester  
 ADAMS of Portland  
 BERRY of Belmont  
 BLISS of South Portland

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

Signed:  
 Representatives:  
 RINES of Wiscasset  
 FLETCHER of Winslow  
 RICHARDSON of Skowhegan  
 CRESSEY of Baldwin

**READ.**

On motion of Representative BLISS of South Portland, the Majority **Ought to Pass as Amended** Report was **ACCEPTED**.

The Bill was **READ ONCE**. **Committee Amendment "A" (H-342)** was **READ** by the Clerk and **ADOPTED**. The Bill was assigned for **SECOND READING** Wednesday, May 14, 2003.

**CONSENT CALENDAR  
 First Day**

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

(S.P. 160) (L.D. 441) Bill "An Act To Encourage the Development and Use of Domestically Produced Renewable Motor Vehicle Fuels" Committee on **TRANSPORTATION** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-135)**

(S.P. 208) (L.D. 599) Bill "An Act To Implement the Recommendations of the Task Force on Rail Transportation" Committee on **TRANSPORTATION** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-136)**

(S.P. 236) (L.D. 672) Bill "An Act To Allow Certain Employees of the Maine Technical College System To Amend Their Retirement System Election" Committee on **LABOR**

reporting **Ought to Pass as Amended by Committee Amendment "A" (S-138)**

(S.P. 322) (L.D. 981) Bill "An Act To Ensure Segregation of Spoiled Ballots" Committee on **LEGAL AND VETERANS AFFAIRS** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-129)**

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

There being no objection, the Senate Papers were **PASSED TO BE ENGROSSED as Amended** in concurrence. **ORDERED SENT FORTHWITH.**

**REPORTS OF COMMITTEE**

**Divided Report**

Majority Report of the Committee on **AGRICULTURE, CONSERVATION AND FORESTRY** reporting **Ought to Pass** on Bill "An Act To Clarify the Timber Harvesting Notification Requirements"

(S.P. 463) (L.D. 1407)

Signed:  
 Senators:  
 BRYANT of Oxford  
 KNEELAND of Aroostook  
 YOUNGBLOOD of Penobscot

Representatives:  
 McKEE of Wayne  
 LUNDEEN of Mars Hill  
 PINEAU of Jay  
 PIOTTI of Unity  
 SMITH of Monmouth  
 HONEY of Boothbay  
 CHURCHILL of Orland  
 FLETCHER of Winslow  
 EDER of Portland

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

Signed:  
 Representative:  
 CARR of Lincoln

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

**READ.**

Representative McKEE of Wayne moved that the House **ACCEPT** the Majority **Ought to Pass** Report.

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

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

The SPEAKER: The Representative may pose his question.

Representative **TRAHAN**: Thank you Mr. Speaker. Would the chair of the committee please describe this bill and a brief explanation of what it does?

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

Representative **MCKEE**: Mr. Speaker, Men and Women of the House. What this bill does is it repeals the exemptions for the trip ticket. The Forest Service has asked for this. Repealing these exemptions would simplify the notification process and would close the loophole that we have seen some individuals exploit. It would make it also easier for the people receiving the

wood to be able to track it. It would also be a more efficient process allowing the forest rangers to determine quickly whether a violation exists. It would bring closure to complaints and it would improve the chances that a ranger can intervene on a harvest in progress to prevent a violation from occurring. This should, in turn, allow forest rangers to concentrate on more serious complaints and issues and should streamline the enforcement process.

To the good Representative's question, if you look at the bill, you will see that we maintain the exemptions for a person who is harvesting for his own use and not selling it or offering it for sale and also for a pre-commercial silva cultural forestry activities.

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

Representative **TRAHAN**: Mr. Speaker, Ladies and Gentlemen of the House. This bill had nothing to do with, at least in my opinion unless there is an amendment that I don't see on the board, with trip tickets. It has to do with landowner notification. I believe the exemption in law allowed anyone with five acres of land, harvesting on their own land, to not be required to fill out the landowner notification form. If this bill takes away that exemption, then I would like a verification of that? Thank you.

On motion of Representative RICHARDSON of Brunswick, **TABLED** pending the motion of Representative McKEE of Wayne to **ACCEPT** the Majority **Ought to Pass** Report and later today assigned.

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**Divided Report**

Majority Report of the Committee on **AGRICULTURE, CONSERVATION AND FORESTRY** reporting **Ought to Pass** on Bill "An Act To Modify the Exemption for Compost under the Nutrient Management Law and the Nutrient Management Review Board's Authority To Hear Appeals"

(S.P. 517) (L.D. 1543)

Signed:

Senators:

BRYANT of Oxford  
KNEELAND of Aroostook  
YOUNGBLOOD of Penobscot

Representatives:

McKEE of Wayne  
LUNDEEN of Mars Hill  
PINEAU of Jay  
PIOTTI of Unity  
SMITH of Monmouth  
CARR of Lincoln  
CHURCHILL of Orland  
HONEY of Boothbay  
FLETCHER of Winslow

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

Signed:

Representative:

EDER of Portland

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

**READ**.

On motion of Representative RICHARDSON of Brunswick, the Majority **Ought to Pass** Report was **ACCEPTED**.

The Bill was **READ ONCE** and was assigned for **SECOND READING** Wednesday, May 14, 2003.

**Divided Report**

Majority Report of the Committee on **UTILITIES AND ENERGY** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-133)** on Bill "An Act To Create a Sustainable Energy Trust Fund"

(S.P. 284) (L.D. 805)

Signed:

Senators:

HALL of Lincoln  
YOUNGBLOOD of Penobscot

Representatives:

RINES of Wiscasset  
FLETCHER of Winslow  
LUNDEEN of Mars Hill  
MOODY of Manchester  
ADAMS of Portland  
BERRY of Belmont  
BLISS of South Portland  
RICHARDSON of Skowhegan

Minority Report of the same Committee reporting **Ought to Pass as Amended by Committee Amendment "B" (S-134)** on same Bill.

Signed:

Representative:

GOODWIN of Pembroke

Came from the Senate with the Majority **UGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-133)**.  
**READ**.

On motion of Representative BLISS of South Portland, the Majority **Ought to Pass as Amended** Report was **ACCEPTED**.

The Bill was **READ ONCE**. **Committee Amendment "A" (S-133)** was **READ** by the Clerk and **ADOPTED**. The Bill was assigned for **SECOND READING** Wednesday, May 14, 2003.

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**Divided Report**

Majority Report of the Committee on **UTILITIES AND ENERGY** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-132)** on Resolve, To Encourage Use of Alternative Energy Sources

(S.P. 388) (L.D. 1184)

Signed:

Senators:

HALL of Lincoln  
YOUNGBLOOD of Penobscot

Representatives:

RINES of Wiscasset  
FLETCHER of Winslow  
LUNDEEN of Mars Hill  
MOODY of Manchester  
ADAMS of Portland  
BERRY of Belmont  
BLISS of South Portland  
RICHARDSON of Skowhegan

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

Signed:

Representatives:

GOODWIN of Pembroke  
CRESSEY of Baldwin

Came from the Senate with the Majority **UGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Resolve

**PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-132).**

**READ.**

On motion of Representative BLISS of South Portland, the Majority **Ought to Pass as Amended** Report was **ACCEPTED**.

The Resolve was **READ ONCE**. **Committee Amendment "A" (H-132)** was **READ** by the Clerk and **ADOPTED**. The Resolve was assigned for **SECOND READING** Wednesday, May 14, 2003.

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**CONSENT CALENDAR**

**First Day**

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

(H.P. 1027) (L.D. 1400) Bill "An Act To Amend the Maine Pesticide Control Act of 1975 To Increase the Pesticide Product Registration Fee" Committee on **AGRICULTURE, CONSERVATION AND FORESTRY** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-339)**

(H.P. 1035) (L.D. 1413) Bill "An Act To Clarify Maine Law Relating to Viatical Settlements" Committee on **INSURANCE AND FINANCIAL SERVICES** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-347)**

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. **ORDERED SENT FORTHWITH.**

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The House recessed until the Sound of the Bell.

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(After Recess)

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The House was called to order by the Speaker.

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

**REPORTS OF COMMITTEE**

**Divided Report**

Majority Report of the Committee on **LEGAL AND VETERANS AFFAIRS** reporting **Ought Not to Pass** on Bill "An Act To Amend the Laws Governing Raffles Conducted in Connection with a 'Beano' Game"

(H.P. 593) (L.D. 816)

Signed:

Senators:

GAGNON of Kennebec

MAYO of Sagadahoc

LEMONT of York

Representatives:

CLARK of Millinocket

GLYNN of South Portland

HOTHAM of Dixfield

BROWN of South Berwick

MOORE of Standish

PATRICK of Rumford

BLANCHETTE of Bangor

CANAVAN of Waterville

JENNINGS of Leeds

Minority Report of the same Committee reporting **Ought to**

**Pass as Amended by Committee Amendment "A" (H-345)** on same Bill.

Signed:

Representative:

LANDRY of Sanford

**READ.**

On motion of Representative CLARK of Millinocket, the Majority **Ought Not to Pass** Report was **ACCEPTED** and sent for concurrence. **ORDERED SENT FORTHWITH.**

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**Divided Report**

Majority Report of the Committee on **INSURANCE AND FINANCIAL SERVICES** reporting **Ought Not to Pass** on Bill "An Act To Provide Continued Access to Health Insurance for Small Business Employees"

(H.P. 760) (L.D. 1043)

Signed:

Senators:

LaFOUNTAIN of York

MAYO of Sagadahoc

Representatives:

VAUGHAN of Durham

PERRY of Calais

CANAVAN of Waterville

WOODBURY of Yarmouth

O'NEIL of Saco

GLYNN of South Portland

SNOWE-MELLO of Poland

YOUNG of Limestone

PERRY of Bangor

Minority Report of the same Committee reporting **Ought to Pass as Amended by Committee Amendment "A" (H-346)** on same Bill.

Signed:

Senator:

DOUGLASS of Androscoggin

Representative:

BREAULT of Buxton

**READ.**

On motion of Representative CANAVAN of Waterville, the Majority **Ought Not to Pass** Report was **ACCEPTED** and sent for concurrence. **ORDERED SENT FORTHWITH.**

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

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

**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 (8) **Ought to Pass as Amended by Committee Amendment "A" (H-57)** - Minority (5) **Ought Not to Pass** - Committee on **LABOR** on Bill "An Act To Improve the Operation of the Workers' Compensation Board"

(H.P. 488) (L.D. 658)

TABLED - March 31, 2003 (Till Later Today) by Representative SMITH of Van Buren.



PENDING - Motion of same Representative 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. The bill before us is here again for, I think, the third time since I have been in the Legislature. I would just like to give a little bit of history why the confirmation process for the Workers' Comp Board members is directed to the State and Local Government Committee.

Back in 1992 when the Reform Act of 1992 was passed by the Legislature there were a lot of compromises. I wouldn't say several. There were a lot of compromises that were put into that act. One of the compromises was to get the confirmation process for members of the Workers' Comp Board away from the partisan issues that exist in the Labor Committee. The decision was made to put the confirmation process with the State and Local Government Committee where it has been ever since then. I personally feel that the members that are being recommended for Workers' Comp Board get a much fairer confirmation hearing and the process is working very well as it is now. I think that if we tinker with it and bring it back to the Labor Committee all we are going to do is introduce problems with this confirmation process. I would urge that we vote against the pending motion. Mr. Speaker, 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 Van Buren, Representative Smith.

Representative **SMITH**: Mr. Speaker, Ladies and Gentlemen of the House. This bill will do nothing more than bring before for legislative review, the nomination of members to the Workers' Compensation Board before the Labor Committee rather than State and Local Government. Since 1992, that review has been with State and Local Government. However, this does not mean that there has not been partisanship or conflicts and disputes. As a matter of fact, the last appointment review that took place, I believe, last summer was one that was rather contentious. Right now all other matters relating to the Workers' Compensation Board are before the Labor Committee. We regularly see the board members appearing before us. We ask you to simply put the rest of the package in front of us. It is not going to make anything any more expensive for anyone and it certainly is not going to change the current level of contentiousness. We know that there is going to be contentiousness anyway.

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. 100

YEA - Adams, Ash, Barstow, Bennett, Blanchette, Bliss, Brannigan, Breault, Bull, Canavan, Churchill E, Clark, Craven, Cummings, Dudley, Dugay, Dunlap, Duplessie, Duprey G, Earle, Eder, Faircloth, Finch, Fischer, Gagne-Friel, Gerzofsky, Goodwin, Grose, Hatch, Hutton, Jackson, Kane, Ketterer, Landry, Laverriere-Boucher, Lemoine, Lerman, Lessard, Lundeen, Mailhot, Makas, Marley, McGlocklin, McKee, McLaughlin, Mills J, Norbert, Norton, O'Brien L, O'Neil, Paradis, Patrick, Pellon, Percy, Perry A, Perry J, Pineau, Pingree, Piotti, Richardson J, Rines, Sampson, Saviello, Simpson, Smith N, Smith W, Sullivan,

Suslovic, Thomas, Thompson, Twomey, Usher, Walcott, Watson, Wheeler, Woodbury, Wotton, Mr. Speaker.

NAY - Andrews, Annis, Austin, Berry, Berube, Bierman, Bowen, Bowles, Brown R, Browne W, Bruno, Campbell, Carr, Churchill J, Clough, Collins, Courtney, Cressey, Crosthwaite, Curley, Daigle, Davis, Duprey B, Fletcher, Glynn, Greeley, Heidrich, Honey, Hotham, Jacobsen, Jodrey, Joy, Kaelin, Ledwin, Lewin, Maietta, McCormick, McGowan, McKenney, McNeil, Millett, Mills S, Moody, Moore, Murphy, Muse, Nutting, O'Brien J, Peavey-Haskell, Rector, Richardson E, Richardson M, Rogers, Rosen, Sherman, Snowe-Mello, Stone, Sukeforth, Sykes, Tardy, Tobin D, Tobin J, Trahan, Treadwell, Vaughan, Young.

ABSENT - Bryant-Deschenes, Bunker, Cowger, Jennings, Koffman, Marraché, Shields.

Yes, 78; No, 66; Absent, 7; Excused, 0.

78 having voted in the affirmative and 66 voted in the negative, with 7 being absent, and accordingly the Majority **Ought to Pass as Amended** Report was **ACCEPTED**.

The Bill was **READ ONCE**. **Committee Amendment "A" (H-57)** was **READ** by the Clerk and **ADOPTED**. The Bill was assigned for **SECOND READING** Wednesday, May 14, 2003.

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

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HOUSE DIVIDED REPORT - Majority (8) **Ought to Pass as Amended by Committee Amendment "A" (H-191)** - Minority (5) **Ought to Pass as Amended by Committee Amendment "B" (H-192)** - Committee on **LABOR** on Bill "An Act To Require the Workers' Compensation Board To Adopt Rules To Require Electronic Filing"

(H.P. 268) (L.D. 339)

TABLED - April 30, 2003 (Till Later Today) by Representative HATCH of Skowhegan.

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

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

Representative **TREADWELL**: Mr. Speaker, Ladies and Gentlemen of the House. This bill has good intentions, I think. Electronic filing is certainly something that we should all be looking forward to. The Majority Report will require the Workers' Comp Board to immediately start the process of developing rules for electronic filing to be implemented and to come back to the Legislature to approve those rules at some point in the future. It also adds an analyst and exactly in the year '03-'04, \$72,000 to the assessment on the Comp Board and in the year, '04-'05, it will add \$195,365 for the expenses for the Comp Board.

The insurance community, the employers, the self-insureds in the State of Maine are concerned about the bill as it is set to go into effect right now because we don't have a software program that has been proven to be effective to take on the additional electronic data that would be coming into the system. It hasn't been tried. It hasn't been proven and I think it is premature to be putting this demand on the insurers, the self-insureds and those people at this time.

If you defeat this bill, there is a Minority Report that will try to solve the problem in a different way. I would urge you to vote against the pending motion and 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 PRO TEM: The Chair recognizes the Representative from Van Buren, Representative Smith.

Representative SMITH: Mr. Speaker, Ladies and Gentlemen of the House. This bill came before the Labor Committee at the request of a unanimous Workers' Compensation Board. Four board members, four labor members all got together and unanimously wanted us to give them this legislation so they could proceed towards rulemaking for electronic filing. We all know that electronic communication or e-mail is today. It is not tomorrow. It is happening today and that is the way that any progressive business handles communications. The major insurer in the State of Maine for workers' compensation, MEMIC, they do 51 percent of the business in Maine, they file their reports electronically with the Workers' Compensation Board. This bill is not going to rush anything. All it does is authorizes them to start preparing the rules. The rules come back to the Legislature as major substantive for review. We are not even talking if anything can be implemented this year. It won't be until next year. This legislation is overdue. We need to do something to bring efficiencies into the Workers' Compensation Board. It is time to eliminate paying people just to handle paperwork, but to get it into a system where we can collect the data and do it more cheaply and more efficiently. I ask you to pass this bill.

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

Representative TREADWELL: Mr. Speaker, Ladies and Gentlemen of the House. Very briefly, we would expect with electronic filing to have efficiencies built into this system. It appears that that is not the case. We have a fiscal note that goes all the way out to the next six years, all the way out to 2007. We have increased costs to the Workers' Comp Board all the way until then. I agree that we need electronic filing. We need electronic data inputs in order to make the board more efficient and to record this data. I don't see the efficiency in this bill when we have additional costs that go all the way out to 2007.

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

Representative SMITH: Mr. Speaker, Men and Women of the House. The fiscal note addresses the cost of a programmer. It does not address the anticipated cost of reducing the clerical staff needed when we no longer are tied into the paper forms. I would suggest to you that as a common sense principle and anybody operating a business knows you need to make an investment into a business to be able to make it efficient. This is that kind of investment. The Workers' Compensation Board has considered it. They have asked for it. I think this is the time to give them what they need to become more efficient.

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

**ROLL CALL NO. 101**

YEA - Adams, Ash, Barstow, Bennett, Blanchette, Bliss, Brannigan, Breault, Bull, Canavan, Clark, Cowger, Craven, Cummings, Dudley, Dugay, Dunlap, Duplessie, Duprey G, Earle, Eder, Faircloth, Finch, Fischer, Gagne-Friel, Gerzofsky, Goodwin, Grose, Hatch, Hutton, Jackson, Kane, Ketterer, Landry, Laverriere-Boucher, Lemoine, Lerman, Lessard, Lundeen, Mailhot, Makas, Marley, McGlocklin, McKee, McLaughlin, Mills J, Moody, Norbert, Norton, O'Neil, Paradis, Patrick, Pellon, Percy, Perry A, Perry J, Pineau, Pingree, Piotti, Richardson J, Rines, Sampson, Saviello, Simpson, Smith N, Smith W, Sullivan,

Suslovic, Thomas, Thompson, Twomey, Usher, Walcott, Watson, Wheeler, Woodbury, Wotton, Mr. Speaker.

NAY - Andrews, Annis, Austin, Berry, Berube, Bierman, Bowen, Bowles, Brown R, Browne W, Bruno, Campbell, Carr, Churchill E, Churchill J, Clough, Collins, Courtney, Cressey, Crosthwaite, Curley, Daigle, Davis, Duprey B, Fletcher, Glynn, Greeley, Heidrich, Honey, Hotham, Jacobsen, Jodrey, Joy, Kaelin, Ledwin, Maietta, McCormick, McGowan, McKenney, McNeil, Millett, Mills S, Moore, Murphy, Muse, Nutting, O'Brien J, Peavey-Haskell, Rector, Richardson E, Richardson M, Rogers, Rosen, Sherman, Snowe-Mello, Stone, Sukeforth, Sykes, Tardy, Tobin D, Tobin J, Trahan, Treadwell, Vaughan, Young.

ABSENT - Bryant-Deschenes, Bunker, Jennings, Koffman, Lewin, Marraché, O'Brien L, Shields.

Yes, 78; No, 65; Absent, 8; Excused, 0.

78 having voted in the affirmative and 65 voted in the negative, with 8 being absent, and accordingly the Majority Ought to Pass as Amended Report was ACCEPTED.

The Bill was READ ONCE. Committee Amendment "A" (H-191) was READ by the Clerk and ADOPTED. The Bill was assigned for SECOND READING Wednesday, May 14, 2003.

HOUSE DIVIDED REPORT - Majority (8) Ought to Pass as Amended by Committee Amendment "A" (H-96) - Minority (5) Ought Not to Pass - Committee on LABOR on Bill "An Act To Protect Maine Families When Workplace Fatalities Occur"

(H.P. 368) (L.D. 476)

TABLED - April 8, 2003 (Till Later Today) by Representative SMITH of Van Buren.

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

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

Representative TREADWELL: Mr. Speaker, Ladies and Gentlemen of the House. This bill was brought to us to help a widow whose husband had died on the job and it was an attempt to provide six months of health insurance for her. The bill that we have before us now, as amended, does nothing to help this lady with her health insurance. It has been changed now to a death benefit bill. It was opposed by the Administration in its original form. It adds cost to the Workers' Comp System and I don't think it is the right direction for us to be taking at this time. I would request a roll call Mr. Speaker.

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 PRO TEM: The Chair recognizes the Representative from Bath, Representative Watson.

Representative WATSON: Mr. Speaker, Ladies and Gentlemen of the House. The Representative from Carmel, Representative Treadwell, is correct. This bill did come to us initially as a health insurance bill, brought on behalf of the widow whose husband died in a workplace accident. It was very quickly determined that because of the federal pre-exemption, ERISA, primarily, there was no way in the world that we could order an employer to continue health insurance beyond the employee's death. However, the discussion about a widow's benefit generally turns to what can be done.

The bill before you is a very simple and inexpensive solution. As it stands right now, as you may or may not know, when an employee is killed on the job, the financially dependent spouse, widow or widower or financially dependent children, are paid 500

weeks for compensation. It is not as a lump sum, but as a weekly amount. The compensation rate, as you know, is supposed to be, by statute, 80 percent of after tax wages. That works out to \$300 or \$400 a week on average. The state maximum right now is \$491 a week. Four hundred ninety-one dollars is the maximum amount the widow can collect for 500 weeks. As just a sideline, if the injured employee lingered and takes four weeks to die, those four weeks are subtracted from the widow's 500 weeks. That is the status of the widow's benefit under the Workers' Compensation Act right now.

When this widow came to us and asked for health insurance, we looked at another provision of the Workers' Compensation Act that allows certain high paid employees, employees that are receiving fringe benefits, health insurance, pension benefits or any fringe benefit that is currently paid by the employer, the value of those fringe benefits, again, on a weekly basis, can be added into the weekly wage to increase the compensation rate, subject to a restriction. That restriction is the fringe benefits are not counted and the injured worker's weekly compensation if it results in a compensation rate that is higher than two-thirds of the state average weekly wage. That is a trade off over fringe benefits when the '92 law was negotiated. Right now two-thirds of the state average weekly wage is \$336.92. The widow of an injured employee, injured on the floor of the mill who has fringe benefits, who has been provided health insurance and other fringe benefits, those stop upon his death.

Under the law as it stands right now, the weekly value of those fringe benefits, could be added in to his compensation rate as long as the compensation rate did not exceed \$336.92. In reality, ladies and gentlemen, in practical terms, that restriction pretty much does away with the fringe benefit computation. If an employee is working a job, being paid those kinds of fringe benefits, his average weekly wage is already too high. He is already going to bust the maximum and thus be restricted. His fringe benefits won't count.

What this bill is doing is lifting that two-thirds state average weekly wage restriction from widow's cases. If a family of a deceased employee is entitled with the passage of this bill to having the value of the deceased employee's fringe benefits cranked into his average weekly wage, the only limitation on that has been the two-thirds state average weekly wage, the \$336.00 limitation. That is limited by this bill. The widow's benefit is still subject to state maximum. This bill doesn't touch that. The most a widow can be paid, the widow or the widower of the highest paid employee in the state is still \$491.00 a week. This only affects widows whose husbands receive fringe benefits, but have weekly wages that wouldn't exceed that compensation rate. Okay?

How much is this going to cost the system? Last year we had 31 workplace fatalities. Thirty, not including Mr. Kotch, who I think you all remember. Fourteen of which were migrant workers loaded in a van who ran off a bridge, if you remember that. On average, we might have 20 workplace fatalities a year in the state. How many of those widows would have received fringe benefits, I don't know, maybe a half at most. We are talking maybe 10 cases a year that this would affect.

This is not going to drive up the cost of workers' compensation. This is not going to require NCCI to come in next year and demand a rate increase, believe me. This is a very minor technical change to the widow's benefit. This is known among the sponsors and among the people who worked this bill as the widow's bill. If your finger is poised over the red button, keep that in mind. I encourage you to accept the Majority Ought to Pass Report and allow this small change to take place in the

compact and help out, perhaps, a dozen or so widows or bereaved families over the next year or two. Thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Sanford, Representative Bowles.

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

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

Representative BOWLES: Mr. Speaker, Ladies and Gentlemen of the House. Do the benefits in this case cease if the surviving spouse remarries?

The SPEAKER PRO TEM: The Representative from Sanford, Representative Bowles has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Bath, Representative Watson.

Representative WATSON: Mr. Speaker, Ladies and Gentlemen of the House. Yes. I should have mentioned that. Whether this act is passed or not, the widow's benefit ceases when the widow remarries or the children reach age 18 and no longer are financially dependent and that is whether the 500 weeks are done or not. Yes, it does stop at that point.

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

#### ROLL CALL NO. 102

YEA - Adams, Ash, Barstow, Bennett, Blanchette, Bliss, Bowles, Brannigan, Breault, Brown R, Bull, Campbell, Canavan, Carr, Churchill E, Clark, Cowger, Craven, Cummings, Dudley, Dugay, Dunlap, Duplessie, Duprey G, Earle, Eder, Faircloth, Finch, Fischer, Gagne-Friel, Gerzofsky, Goodwin, Greeley, Grose, Hatch, Hotham, Hutton, Jackson, Kane, Ketterer, Laverriere-Boucher, Lemoine, Lerman, Lessard, Lundeen, Mailhot, Makas, Marley, McGlocklin, McKee, McLaughlin, Mills J, Moody, Moore, Norbert, Norton, O'Brien L, O'Neil, Paradis, Patrick, Pellon, Percy, Perry A, Perry J, Pineau, Pingree, Piotti, Richardson J, Rines, Rosen, Sampson, Saviello, Simpson, Smith N, Smith W, Sullivan, Suslovic, Thomas, Thompson, Twomey, Usher, Walcott, Watson, Wheeler, Wotton, Mr. Speaker.

NAY - Andrews, Annis, Austin, Berry, Berube, Bierman, Bowen, Browne W, Bruno, Churchill J, Clough, Collins, Courtney, Cressey, Crosthwaite, Curley, Daigle, Davis, Duprey B, Fletcher, Glynn, Heidrich, Honey, Jacobsen, Jodrey, Joy, Kaelin, Ledwin, Lewin, Maietta, McCormick, McGowan, McKenney, McNeil, Millett, Mills S, Murphy, Muse, Nutting, O'Brien J, Rector, Richardson E, Richardson M, Rogers, Sherman, Snowe-Mello, Stone, Sukeforth, Sykes, Tardy, Tobin D, Tobin J, Trahan, Treadwell, Vaughan, Woodbury, Young.

ABSENT - Bryant-Deschenes, Bunker, Jennings, Koffman, Landry, Marraché, Peavey-Haskell, Shields.

Yes, 86; No, 57; Absent, 8; Excused, 0.

86 having voted in the affirmative and 57 voted in the negative, with 8 being absent, and accordingly the Majority Ought to Pass as Amended Report was ACCEPTED.

The Bill was READ ONCE. Committee Amendment "A" (H-96) was READ by the Clerk and ADOPTED. The Bill was assigned for SECOND READING Wednesday, May 14, 2003.

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

**REPORTS OF COMMITTEE**  
**Divided Report**

Majority Report of the Committee on **MARINE RESOURCES** reporting **Ought Not to Pass** on Bill "An Act to Amend the Eligibility Requirements for a Lobster and Crab Fishing License" (H.P. 220) (L.D. 277)

Signed:

Senators:

DAMON of Hancock  
PENDLETON of Cumberland  
BENNETT of Oxford

Representatives:

BULL of Freeport  
SULLIVAN of Biddeford  
PERCY of Phippsburg  
McNEIL of Rockland  
KAELIN of Winterport

Minority Report of the same Committee reporting **Ought to Pass as Amended by Committee Amendment "A" (H-331)** on same Bill.

Signed:

Representatives:

ASH of Belfast  
DUGAY of Cherryfield  
MUSE of Fryeburg  
BIERMAN of Sorrento  
BOWEN of Rockport

Representative MOORE of the Passamaquoddy Tribe - of the House - supports the Majority **Ought Not to Pass** Report.

**READ.**

Representative BULL of Freeport moved that the House **ACCEPT** the Majority **Ought Not to Pass** Report.

Representative DUGAY of Cherryfield **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: The Chair recognizes the Representative from Belfast, Representative Ash.

Representative **ASH**: Mr. Speaker, Men and Women of the House. I would like to oppose this motion. This is a bill that I call a greed bill. I feel that the fox has a key to the hen house on this bill. It is an entry bill to let people into the lobster industry that is falling through the cracks. It is a very unfair bill to a lot of people who are falling through the cracks. We have to fix this. There are some real horror stories out there on this. Some of them being, we have lobster fishermen, for one reason or another, did not get their license back in 1994 or 1995 for medical reasons. We had one that was in the military and couldn't get it. We have people out there that was on the committee that voted in favor of the fishermen. There are 1,200 licensed fishermen in the different zones. There are 5,500 licensed fishermen in all. It is a small part of the fishing community that is telling the majority what to do. It is totally wrong. We need to correct this. Thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Machias, Representative Pellon.

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

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

Representative **PELLON**: Mr. Speaker, Ladies and Gentlemen of the House. I have asked the commissioner's office if they can tell me how many traps are actually being fished? I have asked people on the committee. At this point nobody can tell me. They can only tell me how many tags have been purchased. Can somebody tell me how many traps are actually being fished?

The SPEAKER PRO TEM: The Chair recognizes the Representative from Sorrento, Representative Bierman.

Representative **BIERMAN**: Mr. Speaker, Ladies and Gentlemen of the House. This has been a very contentious bill from the beginning due to the fact that we have a group of people who have an industry that is doing very well at the moment. In the past, before we had limited entry, this fishery regulated itself. People came in and people came out. When we decided to bring this limited entry into being, there were a group of people who managed to fall through the cracks. If we don't agree with that, then we say state government doesn't make mistakes. We know that is not the case. There are a small group of people who have fallen through the cracks. Every session in past these people have been heard, but nothing has been done. Nothing has addressed helping these people out. We have an industry that has been around for hundreds of years. Some of these people fished their whole lives and for some reason or another left the industry with full intention on returning to the industry and for some reason or another, managed to miss that closing time, the date when limited entry was enacted. I also feel that by defeating this we can address some other issues that potentially will come to the floor. I hope and I encourage that this body will defeat this motion. I thank you.

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

Representative **KAELIN**: Mr. Speaker, Ladies and Gentlemen of the House. I rise to attempt to answer the good Representative from Machias' question about whether or not the state manages the number of lobster traps in the ocean. In fact, they don't do that. Every licensed lobster fisherman is entitled to up to 800 traps. This was after 1995. Prior to that time people could have an unlimited number. Some fishermen had 2,000 traps and had to cut back to 800 traps around 1995. This is part of the argument that the lobster industry has made in favor of the Majority Ought Not to Pass Report here. The lobster fishery is managed, not only here in Maine, but through something called the Atlantic States Marine Fisheries Commission, which is a compact of interested states in the case of lobsters, stretches from Maine to Connecticut. One of the effort limitations that the Atlantic States Marine Fisheries Commission uses in managing lobsters is not the number of traps, but the number of licenses. That was one of the reasons why the lobster industry was opposed to adding new licenses. I think that answers the question.

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

Representative **MUSE**: Mr. Speaker, Ladies and Gentlemen of the House. This bill before you, as it stands, has good points and has bad points. At this point it makes no sense to speak at any great length to any of those points. The reason is, the bill is incomplete. This bill fell victim to a timeframe that just precluded discussion. We hustled this through committee. We had no time to reflect on it and, therefore, it does not adequately show the real concerns of the committee.

Last term I had a seatmate, some of you may recall the former Representative from South Portland, a Democrat, who took great delight in chiding me about things that I did wrong. One of the things that he shared with me was that I tended to go

too fast. Coming from a business world, I tend to move things through quickly and work in real time. He explained to me that, in fact, on the hill I had to get used to the fact that we had a process. It was a slow process, doggedly slow. It is doggedly slow by design. It is a plan that has been in place for 200 years. The reason that it is slow is so that we don't hurt people. I think about that often. In this particular case with this particular bill, we have a very good chance to hurt people because we violated that process. If we pass this bill as it stands now, we will have violated that process. I urge you to defeat the motion as it stands and to move on to the Ought to Pass report that we might look at the subsequent bill and its amendments and give this a chance to work through in the fashion that I think is best for the people in the State of Maine. Thank you Mr. Speaker.

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

Representative BULL: Mr. Speaker, Men and Women of the House. I rise in strong support of the pending motion. This certainly has been a contentious issue in our committee. We had a lot of bills on this, relative to this issue. We had a seven-hour public hearing at the Civic Center back in the beginning of April.

I am not going to stand here and tell you that the current system is perfect or that there are no problems with the current system. The proposals in front of us, either in the Minority Report or even with any other additions trying to come forth are still not, in my mind, addressing the issues at hand here and are trying to correct this problem with much too broad of a brush.

A little bit of history that Representative Bierman started talking about, is how this whole limited entry program came into being. About 10 years ago members from the department and the industry got together and worked out a compromise on a mechanism in order to protect and preserve the longevity and the health of their lobster fishery here in Maine. There were some steps that were taken during this process that are not entirely popular. Some people didn't get what they want. Unfortunately that is a compromise. As we have heard many times in this very body, nobody left the room whistling.

The people that had a license when this program went into place had ample opportunity to rededicate themselves to the fishery, three years worth of moving deadlines for people to declare themselves active in the fishery. If that was not good enough, an appeals process was established. If you met the certain criteria and you appealed, you could get back into the picture, a substantial illness of yourself or a family member, a death in the family or military service up to six years. That is current law that exists today.

I would argue that there are no cracks that people fell through on this. People had ample warning. They made a conscious decision and if they didn't, we have an appeal process, a safety net, in place for them to help them back in. What I am asking you to do here today is respect the hard work that has gone into creating this system that we have in place today, the very hard work put in by many people in the industry, lobstermen and women, and members of the department that struggled for many years to find a way to preserve this resource so that it is there for future utilization and to support future economic activities.

During the public hearing we heard overwhelming testimony in opposition to this bill. It was easily two to one. The lobstermen and women in our state coming in and asking us please don't change the system, leave it alone. They are recognizing it is the system that we have and it is working as best as we can at this time. This system, in its complete form that it is in now, has really only been in play for three years. I would argue that this is a little bit too early to be undoing this very carefully constructed program. There may be some problems with the Apprenticeship

Program and there are probably some problems with the appeal process. Let's work on that specifically and individually and not by undoing this whole process that we have in place.

Hopefully it hasn't already hit your recycling bin, but I did distribute a letter from the Commissioner of the Department of Marine Resources, George Lapointe, committing himself to working with the Committee on Marine Resources to get some answers and to work through some of the issues surrounding the Apprenticeship Program, the appeals process. Commissioner Lapointe and Deputy Commissioner, David Etnier, a former member of this body, are committed to working with us on the committee, the members of the fishing industry to make this system work. We need to give them the time to do that. Certainly there are some people that feel they have been slighted by the current system. I am sympathetic to that, but I think we can work through it in a less broad reaching, I consider over reaching, method.

The Department of Marine Resources is adamantly opposed to this bill in any form and even with the amendment coming from the committee, I have still heard from a number of lobster fishermen here in the State of Maine who are still opposed to any changes in the system. There is a reference to the Lobster Zone Council. Yes, they are a small number of people who are speaking for the zones, but like us in this body the Lobster Zone Councils are a representative democracy. They are elected by their peers to speak for them on these issues. Every zone council, except for one, came in and testified against changing the limited entry program in any way, shape or form.

There is also reference made about rushing this bill. With all due respect, I would say that we have had plenty of time to work on this bill. Almost a month to the day of the public hearing we had the final work session on this bill. While I am sympathetic to those that feel they want some changes in the current system, I am hearing again, loud and clear, from the lobsterwomen and men of the state that they don't want any changes. They are asking us to please leave it alone. They made multiple trips up here to Augusta, took time off from being on their boats to make some money. I want to let them go back to work.

We have people right now going through the system that are following the rules, playing the game as it has been laid out for them. As a simple issue of fairness, we should not undercut that and allow people to bypass any of the apprenticeship programs and require anybody to follow the same rules and play the same game. I truly feel that the long-term health of this industry, of the fishery, is at stake with this bill. I ask you again to please respect the hard work that has gone into this by the men and women in this industry, the opposition from the Department of Marine Resources and the bipartisan, eight members of the committee who feel that we should leave the system as it is. Thank you very much Mr. Speaker.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Belfast, Representative Ash.

Representative ASH: Mr. Speaker, Ladies and Gentlemen of the House. On the issue of letting a few people in, it is totally ridiculous to ask somebody who was born and brought up in Jonesport, Maine, Beals Island or one of the down east communities that has spent his whole life on a lobster boat to have to go stern man to relearn the lobster industry. It is totally ridiculous. As far as letting more people in, it is not going to let anymore in. There is a list. All we are asking for is these people to be put on this list of the apprenticeship. We are not asking to do away with the apprenticeship. It is a good program. The only thing that I really find wrong with the program is the Legislature created this program, but they created no means for anybody to take the program. We have horror stories down east where

people are charging people to go on their boat so that they can get into the program. We have stories where you buy me a couple hundred lobster traps and I will take you stern man for a couple of years. That isn't right. We created the program. We ought to be letting people in it somehow. Other than that, all we are asking for is these people to be put on this list, we don't want them to go ahead or go back. Anybody in the Apprentice Program now, they will not go in front of that person. They will have to go in back of that person. It isn't affecting anybody who is in the program at the present time. In the zone that I am, it is five out and one in. You take a man 55 years old or same as myself 58 years old, go two years apprenticeship and I have to wait until five licenses retire before I can get in that program. No way would someone at 58 years old ever be able to have a lobster license in the State of Maine. That is just one aspect of it. It is really unfair. I have heard some stories about the disease that is happening down south of us. I used to do a little lobster fishing and back in 1958 we had that same disease, shell rot. It is nothing new. It is something that has always been here. When they say it coming this way, it has always been here. It has been here since back then. That isn't an issue. It is a small number of people. That is why I said it is the fox in the hen house type of thing. It is a small number of people that are saying no to a bunch of people that are born and brought up in these different counties down east that need to get back to work. It is a work issue. What else is there to do down there? You have to go fishing. Get them working. Get them on the list. That is all we are asking, to be put on the list. Your name doesn't go ahead of anybody. I wish somebody could explain to me how we would be putting more people into the industry. All you are doing is getting on the list. Thank you.

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

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

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

Representative DUGAY: Mr. Speaker, Ladies and Gentlemen of the House. I would like to know how many fishermen showed up to the Marine Resources Committee meeting when we had the subcommittee to write the legislation that we are trying to present to you in a different fashion? I was just wondering if the chairman of the committee could tell us how many people showed up there at that particular meeting? Thank you Mr. Speaker.

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

Representative MUSE: Mr. Speaker, Ladies and Gentlemen of the House. In response to my good friend, Representative Bull, who made some very good points, let me say that the overwhelming testimony that we heard was, in fact, only from those who have a vested interest in the industry and would, in fact, like to preclude anyone else from coming in. I would expect that they would be there in overwhelming support.

Number two, the good Representative mentions that we, in fact, have an appeals process in place at the moment. We do. I would like to thank him for bringing forth the testimony or the memo from George Lapointe. I think that the very existence of this piece of paper is proof that we do, in fact, have an appeals process that doesn't work. Our responsibility is to step and correct that if we can. Further, if we are able to get by this stumbling block and move on to the proposed legislation, we are not talking about the long-term health of this particular industry being at stake. We are only talking about the short-term need of

a handful of people. I hope we will have a chance to present that to you. Thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Rockport, Representative Bowen.

Representative BOWEN: Mr. Speaker, Men and Women of the House. I also want to respond to a couple of things that my chair, Representative Bull, said. He left the impression that we were doing some severe damage to this entire process with what we were thinking about proposing here. The situation we have, as it was expressed to us, is that you have a small, small group of people who are looking to get back into the fishery. You have a situation where if you want to be a lobsterman, you either have to go through a student process or you have to become an apprentice and serve as an apprentice for a couple of years to show that you know what you are doing and then you can go.

What we had was a group of guys who were experienced fishermen and who felt that it was some kind of an indignity for them to have to go and be stern men on a boat for a couple of years to prove that they knew what they were doing. These are guys, as my friend in the back, Representative Ash, said who have been doing this for years and for whatever reason got out of the fishery.

They didn't come to us wanting a free pass back into the fishery, well some of them did, but what they were looking for was a chance to have their day in court, a chance to say, this is the situation that presented itself that I wasn't able to get back into the fishery. Representative Bull was right. We have a program in place, an appeals process that takes into consideration medical issues and military service. We all know that there are other issues in life, financial issues, personal issues, family issues that also intrude and make it hard to get the mail or to answer mail from the Department of Marine Resources. I understand the department doesn't want to put more traps in the water. They have a fishery to protect. I understand that the lobstermen who are already in the business don't want more guys in the business and they are the gatekeepers and they are doing what they can to sort of hold the line. The question here is not throwing open the doors of the fishery to everybody who wants to come in. All we are asking for, all we are proposing is setting up a system whereby these few people, for whatever reason, got on the wrong side of that door when it closed, have a chance to tell their story.

We had lots of guys who came to us and said, I fished for years. Those lobsters we enjoy are fat and juicy because of all the bait I fed them for year after year after year and now I am out. All that we are asking is for a system to be put into place, a system that Representative Bull said is broken, so that these guys have their day in court. That is really all that we are asking for. If we can defeat this motion, we can move onto the Minority Report and the amendments to put a system into place to do just that. Thank you Mr. Speaker.

The SPEAKER PRO TEM: The Chair recognizes the Representative from North Haven, Representative Pingree.

Representative PINGREE: Mr. Speaker, Men and Women of the House. I rise in opposition to LD 277 and to support the Majority Ought Not to Pass Report. I represent 11 towns in coastal Maine including Vinalhaven, North Haven, Stonington, Isle au Haut, Frenchboro, Bass Harbor and Swans Island. It is some of the most rich and important lobster fishing grounds in this state. Virtually every town I represent has an economy based on a carefully managed fishery. I had the pleasure of attending the fishermen's forum this winter with many of my legislative colleagues. I have always been impressed with the fishermen and women that I grew up with. Their business is not an easy one. It requires strength, intelligence and real skill. This

year I was more impressed than ever with their democratic process. The organizations run by the industry, the zone councils and the fishermen themselves, are incredibly impressive and working well. The message my fishermen tell me is that we have set up our own rules, our own governing process. We would be all right if the Legislature would stay out of it. I do feel for those who want to get in the business and find it difficult, but the Apprenticeship Program is fair and is working. The stern men and women I grew up with are able to make a very good living and usually move on to getting their own license and boat in a few years. Kids I grew up with and senior citizens in my communities make \$25,000 to \$60,000 a season as stern men and women, which is part of the Apprenticeship Program. To be part of the Apprenticeship Program can mean a real living. I have real respect for my legislative colleagues on the other side who talk about some of the issues up in Washington County with what sounds like are extreme abuses of the Apprenticeship Program. I think that is the issue we should be dealing with.

This is an issue that we, as a Legislature, need to stay out of. Let the Zone Council process work; respect the opinions of the majority of lobstermen and women. They live on the water. I know they will recommend what is best for the fishery and their fellow fishermen and women. Again, I urge you to support the committee's opinion, Ought Not to Pass. Thank you.

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

Representative DUGAY: Mr. Speaker, Ladies and Gentlemen of the House. I would just remind you that the appeal's process that is currently out there is kind of a flawed process. We have a gentleman who is in the Navy on a submarine for over 20 years. He missed one year of sending in for his lobster license during Desert Storm in 1991. Now that he is retired, he has gone through the appeal's process and he cannot get his lobster license even though he fished prior to going into the Navy. One year while he was in Desert Storm, under water in a submarine, now he is not able to fish in the lobster fishery in the State of Maine.

I feel that the fishermen who came down to the hearing that the good chair of our committee missed are disenfranchised fishermen. Those guys, when you think about culture and heritage of the down east fishermen, those are the guys that have great grandfathers and grandfathers and mothers and aunts and uncles that are out there lobster fishing. I think we have to take that into consideration. I would ask you please to not support the Majority Ought Not to Pass Report, but to accept the Minority Report so that we can perhaps talk about an appeal's process that works. We have a lobster fisherman in down east Maine that fished for lobster for 28 years. He stopped fishing for three years to build lobster boats. That fourth year he went back to go lobster fishing and he cannot lobster fish in the State of Maine. The appeal's process is flawed. We are willing to take a look at that appeal's process and let more people into the fishery. I think we really need to look at the veterans that are serving this country. It is easier to say that you had fished four years prior to going into the military, when you come back to the State of Maine and you want to go back lobster fishing, as a veteran who fought for this country, I believe that you should be able to go lobster fishing off the coast of Maine just as well as anybody else who is out there fishing. Thank you Mr. Speaker.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Machias, Representative Pellon.

Representative PELLON: Mr. Speaker, Ladies and Gentlemen of the House. I am kind of amazed about all the lobstermen who called some of these people in the other areas. I did not have one call from lobstermen in Zone A or in my area of

133 in Lubec and those areas opposing allowing people back in. The calls I did receive and the e-mails I received was hoping that we could do something with this bill. This is a compromise. I really was amazed because I had numerous calls from all over the state and e-mails about the automobile franchises and the bottle bill, but not one on the lobster industry, except wanting to see people back in to go to work. It is just amazing that people from my area called Representatives from other areas.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Phippsburg, Representative Percy.

Representative PERCY: Mr. Speaker, Ladies and Gentlemen of the House. I rise in opposition to LD 277 and urge you to follow the Majority Ought Not to Pass Report. Three points I would like to bring to your attention, number one, at the end of February we had the fishermen's forum in Rockland, which is the biggest industry meeting gathering in the state. At that forum the Department of Marine Resources announced the appointment of a new deputy commissioner, former Representative David Etnier. The industry applauded this quite enthusiastically. The reason being is they were thrilled that the somebody would be working with the Department of Marine Resources who knew about fishing and who also knew about how the Legislature worked and also knows how the department works. They believe that he would be a good spokesman for them. He came to all our hearings. He agrees with the Majority Ought Not to Pass Report. He also heard the stories of abuse in Washington County and promised that he would get right on it. For those of you who know former Representative Etnier, you know he will do just that.

My second point, the Apprenticeship Program is set up so that anybody who wants to fish, you can go for it if you go through the Apprenticeship Program. For the gentleman on the submarine, he can go through the program. When we were at the public hearing at the Civic Center numerous young people came and testified who are in Apprenticeship Programs, we are desperately trying to make this fishery stable so that our young people who want to continue with the traditional marine based industry can do it. They came to the hearing opposing this bill because they said, we are playing by all your rules. Why are you going to open up this process? They were against it. The other piece is that the industry itself came forward and nobody disputes that the military has done a wonderful job serving our country. They dispute the fact that they have all played by the rules already by taking cuts in the traps of more than 400 traps because of the limit. They have all played by the rules. All we are asking is that the department and the industry take responsibility for reshaping the appeals process rather than having the Legislature be involved. Thank you Mr. Speaker.

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

Representative DUGAY: Mr. Speaker, Men and Women of the House. I want you to keep in mind the little submarine story too as you think about voting today. If you look at the memo that we received from the Commissioner Lapointe, at the hearing two or three different times I asked the commissioner and the deputy commissioner, could you provide the committee with historical data on the appeal's process? I want to see the trends. A lot of military people coming in and they are being denied their license. If people leave the fishery for two or three years, were they denied their license? I just want to know, what are the trends? What can the committee look at for limiting criteria to let some people back into the fishery? Guess what? All the appeal's process that has been taking place in the last four or five years, they have really never compiled any data. They weren't able to tell us. I thought that was kind of strange. We had a meeting with some of the members of our committee and the members of

that committee were trying to get some of the rest of us to go ahead for a unanimous committee report. If we would go for a unanimous committee report, this document was presented to us at a breakfast, then from this day forward they would start collecting that data and letting us know what the appeal's process was all about and what the criteria is and what the trends are.

Ladies and gentlemen, this information hasn't even been tabulated or taken care of in the past. There is no way to tell what is going on. When we had people standing in front of that committee telling us about their service in the military, you could go back to the commissioner's office and they couldn't even tell if they had met with a person or they haven't met with a person. You want to talk about a bureaucratic nightmare. When you have 400 or 500 lobster traps sitting in your dooryard and you want to go lobster fishing and you have to come down to Augusta to try to fight to see if you can get your license back to go fishing, that is a bureaucratic nightmare. All I am asking is, let's take a look at a new appeal's process. Let's look at some of these cases one on one. If you come in for this appeal's process and you state your case after 20 minutes and the commissioner and that committee decides not to allow you your lobster license and Representative Dugay and other members of the committee agree, that's it. It is over. You have had your day in court because these people are disenfranchised. They are not getting their due process. They are not getting their day in court. That is all I am asking is to give them the right for due process. Give them their day in court. They are not getting it through the current appeal's process and that is all we are asking to do. Give them a shot. Ladies and gentlemen of the House, Mr. Speaker, thank you and don't forget today is my birthday.

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

Representative **MUSE**: Mr. Speaker, Ladies and Gentlemen of the House. One last point in response to the remarks by my good friend, the Representative from Phippsburg, Representative Percy. She mentioned that the Deputy Commissioner David Etnier had promised us that he was very anxious to get right on it. I would remind her that if we are able to move on and establish this board, the Deputy Commissioner would, in fact, have a seat on that board and he will be able to get right on it.

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

Representative **BULL**: Mr. Speaker, Men and Women of the House. I just want to very briefly touch on a lot of the statements here that the current appeal's process is broken. I may have been misunderstood or misspoke. The current appeal's process is not broken. There are some issues and some problems to be worked out, but you also need to remember that only three years ago this entire system came on line and this appeal's process was the last piece of that. It is a little bit hard for us to say in just a short amount of time, in three years that this thing has been up and running that the system is a failure. There may be some problems, but we have a solid commitment from the Department of Marine Resources to work on this issue. The industry is going to work on this issue. I think we need to let this process work and let them make the assessment of whether or not there needs to be some changes to this. Just because somebody does not get back into the fishery does not mean the system is broken. It means that they do not have a legitimate appeal. We need to make that distinction very carefully here, ladies and gentlemen. Lack of success in the appeal's process does not make it a failure. Thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Cherryfield, Representative Dugay. Having spoken twice now requests unanimous consent to address the

House a third time. Is there objection? Chair hears no objection, the Representative may proceed.

Representative **DUGAY**: Mr. Speaker, Ladies and Gentlemen of the House. Can you imagine lobster fishing in the State of Maine for three or four years as a young man and entering the military and the Navy and you end up on a submarine and you can't send in for your license for one year and you retire back in the State of Maine and you can't go lobster fishing? Do you really think that the process is working, that the process isn't broken? There is a lack of due process here. I don't care if it happened in the last three years, last two years or the last one year. I think that guy deserves to go lobster fishing in the State of Maine. I think the appeal's process is broken. I think we can fix it. If we could get on to that particular procedure, I think we could take care of it. Thank you Mr. Speaker. Thank you ladies and gentlemen of the House.

The SPEAKER PRO TEM: The Chair recognizes the Representative from North Haven, Representative Pingree.

Representative **PINGREE**: Mr. Speaker, Men and Women of the House. I am compelled and I am interested by the example of the man on the submarine that my good colleague has made a number of times. I just want to make sure that you all know that there are plenty of people out there who have served in the military. I have a lot of friends on the island who went into the Marines. They even went in for 10 or 15 years and they came back and they went fishing with their uncle, their brother or a friend for a few years. They saved the money to buy themselves a boat, get themselves a license and then they got into the system. They can come back and they can still go fishing. Being a stern man or a stern woman is still a good living. We are not making it impossible for them to be on a boat and make a living off the ocean. We are just making this process fair. We are going about it in a way that the zone councils, the industry, the fishermen and the men and women who sent us here believe that we should. Thank you.

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

Representative **KAELIN**: Mr. Speaker, Ladies and Gentlemen of the House. I am a veteran myself. I have to rise to speak after Representative Dugay's comment. The reason why the career serviceman cannot get back into the fishery after an appeal has nothing to do with the effectiveness of the appeal's process. It, in fact, has to do with statute that this body enacted. I would like to refer to that for just a moment, 12MRSA, Subsection 6310. This describes when licenses can be issued to individuals on appeal. It provides that you may receive a license on appeal after service in the United States Armed Forces or the United States Coast Guard if it precluded that person from participating in the lobster fishery and meeting the eligibility requirements for a license during those critical periods when limited entry was established in the State of Maine. It goes on to say that a person may not have served more than six consecutive years since the most recent year in which the person held a license and the person must have been honorably discharged from the service. In other words, there is a statutory limitation on anybody who served more than six years and did not maintain their license during those critical limited entry period from coming back into the fishery. That statutory change keeps the lifer from the fishery. It is not the effectiveness of the appeal's process. Thank you Mr. Speaker.

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. 103**

YEA - Adams, Andrews, Barstow, Bennett, Berry, Bliss, Brannigan, Breault, Brown R, Bull, Canavan, Churchill E, Clark, Clough, Collins, Cowger, Cummings, Davis, Dudley, Dugay, Dunlap, Duprey G, Earle, Eder, Faircloth, Finch, Fischer, Gagne-Friel, Grose, Honey, Hutton, Kaelin, Kane, Laverriere-Boucher, Ledwin, Lemoine, Lerman, Lessard, Lewin, Lundeen, Mailhot, Makas, McKenney, McLaughlin, McNeil, Mills J, Mills S, Murphy, Norbert, Norton, O'Brien L, O'Neil, Paradis, Patrick, Percy, Perry J, Pingree, Piotti, Rector, Richardson J, Rogers, Rosen, Sampson, Saviello, Simpson, Smith N, Smith W, Sullivan, Suslovic, Thompson, Trahan, Twomey, Usher, Walcott, Watson, Woodbury, Wotton, Mr. Speaker.

NAY - Annis, Ash, Austin, Berube, Bierman, Blanchette, Bowen, Bowles, Browne W, Bruno, Bunker, Campbell, Carr, Churchill J, Courtney, Cressey, Crosthwaite, Curley, Daigle, Duplessie, Duprey B, Fletcher, Glynn, Goodwin, Greeley, Hatch, Heidrich, Hotham, Jacobsen, Jodrey, Joy, Ketterer, Maietta, McCormick, McGlocklin, McGowan, Millett, Moody, Moore, Muse, Nutting, O'Brien J, Pellon, Perry A, Pineau, Richardson E, Richardson M, Rines, Sherman, Snowe-Mello, Stone, Sukeforth, Sykes, Tardy, Thomas, Tobin D, Tobin J, Treadwell, Vaughan, Wheeler, Young.

ABSENT - Bryant-Deschenes, Craven, Gerzofsky, Jackson, Jennings, Koffman, Landry, Marley, Marraché, McKee, Peavey-Haskell, Shields.

Yes, 78; No, 61; Absent, 12; Excused, 0.

78 having voted in the affirmative and 61 voted in the negative, with 12 being absent, and accordingly the Majority **Ought Not to Pass** Report was **ACCEPTED** and sent for concurrence. **ORDERED SENT FORTHWITH.**

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The Speaker resumed the Chair.

The House was called to order by the Speaker.

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On motion of Representative O'BRIEN of Augusta, the House adjourned at 5:01 p.m., until 9:00 a.m., Wednesday, May 14, 2003.