

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 TWENTIETH LEGISLATURE
FIRST REGULAR SESSION
56th Legislative Day
Wednesday, May 21, 2003

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

Prayer by Father Raymond Lagace, OFM, Catholic Staff Chaplain, Veterans Hospital, Togus.

National Anthem by Thornton Academy Chamber Orchestra, Saco.

Pledge of Allegiance.

Doctor of the day, Stephen Nightingale, M.D., Ellsworth.

The Journal of yesterday was read and approved.

SENATE PAPERS
Non-Concurrent Matter

Bill "An Act to Amend the Membership of the Propane and Natural Gas Board"

(S.P. 49) (L.D. 126)

Minority (5) **OUGHT TO PASS AS AMENDED** Report of the Committee on **BUSINESS, RESEARCH AND ECONOMIC DEVELOPMENT** **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-20) AS AMENDED BY HOUSE AMENDMENT "B" (H-120)** thereto in the House on April 29, 2003.

Came from the Senate with the Reports **READ** and the Bill **SUBSTITUTED** for the Reports and **PASSED TO BE ENGROSSED** in **NON-CONCURRENCE**.

On motion of Representative DUPLESSIE of Westbrook, **TABLED** pending **FURTHER CONSIDERATION** and later today assigned.

COMMUNICATIONS

The Following Communication: (H.C. 222)

STATE OF MAINE

ONE HUNDRED AND TWENTY-FIRST LEGISLATURE
COMMITTEE ON TAXATION

May 20, 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 bills out "Ought Not to Pass":

- L.D. 174 An Act to Restructure the Maine Income Tax Law
- L.D. 179 An Act to Restructure the Tax System and Make the Restructured System Subject to Referendum
- L.D. 382 An Act To Enhance the Maine Residents Property Tax Program
- L.D. 784 RESOLUTION, Proposing an Amendment to the Constitution of Maine To Allow the Legislature To Establish a Different Property Tax Rate for Secondary Residential Property for Purposes of Education Funding and To Protect State Funding of Education

- L.D. 997 An Act Allowing Municipalities To Create Property Tax Circuit Breaker Programs
- L.D. 1333 An Act To Allow Municipalities To Provide Property Tax Relief through a Local Option Sales Tax
- L.D. 1338 An Act To Reform the Tax Laws
- L.D. 1395 An Act for Comprehensive Reform of Maine's Tax Structure
- L.D. 1418 An Act To Make Changes in Maine's Tax Laws
- L.D. 1421 An Act To Reduce Property Taxes
- We have also notified the sponsors and cosponsors of each bill listed 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**.

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

REPORTS OF COMMITTEE

Divided Report

Majority Report of the Committee on **CRIMINAL JUSTICE AND PUBLIC SAFETY** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-211)** on Bill "An Act Regarding the State Police Command Staff"

(S.P. 481) (L.D. 1449)

Signed:

Senators:

STRIMLING of Cumberland

HATCH of Somerset

CARPENTER of York

Representatives:

LESSARD of Topsham

GROSE of Woolwich

GREELEY of Levant

SYKES of Harrison

CHURCHILL of Washburn

BUNKER of Kossuth Township

BLANCHETTE of Bangor

Minority Report of the same Committee reporting **Ought to Pass as Amended by Committee Amendment "B" (S-212)** on same Bill.

Signed:

Representatives:

SNOWE-MELLO of Poland

MAIETTA of South Portland

Came from the Senate with the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-211)**.

READ.

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

The Bill was **READ ONCE**. **Committee Amendment "A" (S-211)** was **READ** by the Clerk and **ADOPTED**. The Bill was assigned for **SECOND READING** Thursday, May 22, 2003.

Majority Report of the Committee on **EDUCATION AND CULTURAL AFFAIRS** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-201)** on Bill "An Act To Amend and Improve the Education Laws"

(S.P. 538) (L.D. 1577)

Signed:

Senators:

DOUGLASS of Androscoggin
BRENNAN of Cumberland
MITCHELL of Penobscot

Representatives:

CUMMINGS of Portland
GAGNE-FRIEL of Buckfield
DAVIS of Falmouth
LEDWIN of Holden
NORTON of Bangor
MURPHY of Kennebunk
ANDREWS of York
THOMAS of Orono
FISCHER of Presque Isle

Minority Report of the same Committee reporting **Ought to Pass as Amended by Committee Amendment "B" (S-202)** on same Bill.

Signed:

Representative:

FINCH of Fairfield

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-201)**.

READ.

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

The Bill was **READ ONCE**. **Committee Amendment "A" (S-201)** was **READ** by the Clerk and **ADOPTED**. The Bill was assigned for **SECOND READING** Thursday, May 22, 2003.

Majority Report of the Committee on **LEGAL AND VETERANS AFFAIRS** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-205)** on Bill "An Act To Clarify the Definition of Independent Expenditures Under the Election Laws"

(S.P. 402) (L.D. 1196)

Signed:

Senators:

LEMONT of York
GAGNON of Kennebec

Representatives:

CLARK of Millinocket
GLYNN of South Portland
HOTHAM of Dixfield
BROWN of South Berwick
MOORE of Standish
LANDRY of Sanford
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 "B" (S-206)** on same Bill.

Signed:

Senator:

MAYO of Sagadahoc

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-205)**.

READ.

Representative CLARK of Millinocket moved 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 very much in support of the pending motion and would like to share some comments with members of the House about a very important issue that was considered by the Legal and Veterans Affairs Committee. During this session there were a plethora of bills, an enormous amount of bills that arrived at Legal and Veterans Affairs Committee dealing with the issues surrounding the last election cycle regarding independent expenditures and those last minute ads that were being placed by third parties on behalf of candidates and a lot of effects that came from that. The committee has worked a number of bills dealing with this subject. Before you represents the compromise position of the Legal and Veterans Affairs Committee on this issue. I think that it really goes to the heart of the problem. This legislation will set a new standard whereby candidates who have ads who are done on their behalf, those independent expenditures are going to count for matching funds for clean election candidates. Additionally, if you are running as a traditional candidate and one of these ads is done on behalf of a clean election candidate, the amount of money that you can spend in your election campaign without triggering matching funds of your opponent also will be raised. This is truly a compromise position by the Legal and a Veterans Affairs Committee. It is one that doesn't favor clean election candidates and it doesn't favor traditionally funded candidates, but what it does favor is a level playing field and I am in hopes that the House will join with all the fellow House members who signed onto the Majority Report and passed this important legislation. Thank you Mr. Speaker.

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

The Bill was **READ ONCE**. **Committee Amendment "A" (S-205)** was **READ** by the Clerk and **ADOPTED**. The Bill was assigned for **SECOND READING** Thursday, May 22, 2003.

Majority Report of the Committee on **UTILITIES AND ENERGY** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-200)** on Bill "An Act To Strengthen the Energy Resources Council"

(S.P. 233) (L.D. 669)

Signed:

Senators:

HALL of Lincoln
YOUNGBLOOD of Penobscot

Representatives:

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

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

Signed:

Representative:

GOODWIN of Pembroke

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-200)**.

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-200)** was **READ** by the Clerk and **ADOPTED**. The Bill was assigned for **SECOND READING** Thursday, May 22, 2003.

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

Majority Report of the Committee on **CRIMINAL JUSTICE AND PUBLIC SAFETY** reporting **Ought Not to Pass** on Bill "An Act Creating an Alternate Concealed Weapons Permit Process" (H.P. 813) (L.D. 1110)

Signed:

Senators:

STRIMLING of Cumberland

HATCH of Somerset

CARPENTER of York

Representatives:

BUNKER of Kossuth Township

MAIETTA of South Portland

SYKES of Harrison

GROSE of Woolwich

GREELEY of Levant

BLANCHETTE of Bangor

GERZOFISKY of Brunswick

CHURCHILL of Washburn

LESSARD of Topsham

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

Signed:

Representative:

SNOWE-MELLO of Poland

READ.

Representative BUNKER of Kossuth Township moved that the House **ACCEPT** the Majority **Ought Not to Pass** Report.

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

Representative **GLYNN**: Mr. Speaker, Ladies and Gentlemen of the House. You have before you a proposed bill which would create an alternative concealed weapons permitting process. Currently in Maine there are a number of municipalities which have a local process whereby you can apply for a concealed weapons permit. The balance of the state predominately uses the State Police. Over the years, I have heard numerous complaints from residents who would like to have the option that if they are denied a concealed weapons permit locally to simply be able to appeal it to the State Police who already issue them for the balance of the state. It seems like a very reasonable thing to do and something very much in support of having law-abiding citizens carrying firearms. With that in mind, I urge you to vote

against the pending motion and move on to the Minority Ought to Pass Report. 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 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 Kossuth Township, Representative Bunker.

Representative **BUNKER**: Mr. Speaker, Men and Women of the House. The town has a process for issuing these. The State Police do some unorganized territory and fills in for towns that choose to give their local control away to the State Police for this process. The State Police are hesitant to say the least to taking over some kind of an appeal process over local control. Local control process is that if your chief of police or their designee refuses you, you can appeal to your board of selectmen or select people or select ladies, as the case may be, and then there is redress in superior court. There is a proper process out there. It is working fine and there is all the avenues of the law to complain if you have been denied. The State Police do not want to be put in a position of being stuck between a town and a judicial body when the select people and the commissioners of a certain county may be the proper place for an appeal.

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. 140

YEA - Adams, Andrews, Ash, Austin, Barstow, Bennett, Berry, Berube, Blanchette, Bliss, Bowen, Bowles, Brannigan, Breault, Brown R, Browne W, Bruno, Bryant-Deschenes, Bull, Bunker, Churchill E, Churchill J, Clark, Courtney, Cowger, Crosthwaite, Cummings, Dudley, Dunlap, Duplessie, Duprey G, Earle, Faircloth, Finch, Fischer, Fletcher, Gagne-Friel, Goodwin, Grose, Hatch, Honey, Hotham, Hutton, Jackson, Jacobsen, Jennings, Kane, Koffman, Landry, Laverriere-Boucher, Ledwin, Lemoine, Lessard, Lewin, Lundeen, Marley, McCormick, McKee, McKenney, McLaughlin, McNeil, Millett, Mills J, Mills S, Moody, Murphy, Norbert, Norton, Nutting, O'Brien J, O'Neil, Paradis, Patrick, Pellon, Percy, Perry A, Pineau, Pingree, Piotti, Rector, Richardson J, Rines, Rosen, Sampson, Saviello, Sherman, Simpson, Smith N, Smith W, Stone, Sukeforth, Sullivan, Suslovic, Sykes, Tardy, Thomas, Thompson, Tobin D, Twomey, Usher, Watson, Wheeler, Woodbury, Wotton, Young, Mr. Speaker.

NAY - Annis, Bierman, Campbell, Carr, Clough, Collins, Curley, Davis, Duprey B, Glynn, Heidrich, Jodrey, Joy, Kaelin, Moore, Muse, Peavey-Haskell, Richardson E, Richardson M, Rogers, Snowe-Mello, Tobin J, Trahan, Treadwell, Vaughan.

ABSENT - Canavan, Craven, Cressey, Daigle, Dugay, Eder, Gerzofsky, Greeley, Ketterer, Lerman, Maietta, Mailhot, Makas, Marraché, McGlocklin, McGowan, O'Brien L, Perry J, Shields, Walcott.

Yes, 106; No, 25; Absent, 20; Excused, 0.

106 having voted in the affirmative and 25 voted in the negative, with 20 being absent, and accordingly the Majority **Ought Not to Pass** Report was **ACCEPTED** and sent for concurrence. **ORDERED SENT FORTHWITH**.

Majority Report of the Committee on **EDUCATION AND CULTURAL AFFAIRS** reporting **Ought Not to Pass** on Bill "An Act To Repeal the Fingerprinting Requirement for Teachers and School Employees"

(H.P. 483) (L.D. 653)

Signed:

Senators:

DOUGLASS of Androscoggin
BRENNAN of Cumberland
MITCHELL of Penobscot

Representatives:

CUMMINGS of Portland
LEDWIN of Holden
MURPHY of Kennebunk
ANDREWS of York
FISCHER of Presque Isle

Minority Report of the same Committee reporting **Ought to Pass as Amended by Committee Amendment "A" (H-481)** on same Bill.

Signed:

Representatives:

GAGNE-FRIEL of Buckfield
DAVIS of Falmouth
FINCH of Fairfield
NORTON of Bangor
THOMAS of Orono

READ.

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

On further motion of the same Representative, **TABLED** pending his motion to **ACCEPT** the Majority **Ought Not to Pass** Report and later today assigned.

Majority Report of the Committee on **JUDICIARY** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-493)** on Bill "An Act To Amend the Laws Relating to Medical Certification of the Cause of Death and the Medical Examiner Act"

(H.P. 885) (L.D. 1211)

Signed:

Senators:

PENDLETON of Cumberland
CATHCART of Penobscot

Representatives:

NORBERT of Portland
BULL of Freeport
SIMPSON of Auburn
RICHARDSON of Brunswick
BENNETT of Caribou
MILLS of Farmington
BRYANT-DESCHENES of Turner

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

Signed:

Senator:

WOODCOCK of Franklin

Representatives:

SHERMAN of Hodgdon
CARR of Lincoln

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

READ.

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

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

Representative **CARR**: Mr. Speaker, Men and Women of the House. I want to take just a minute to run down and to let you know exactly what this does. This bill was submitted and had three major changes to it when we first received it. One was to change the status of those people authorized to sign a death certificate to somebody who is outside of the State of Maine being able to do that. When remains were found that may be human, that established a medical examiner's case and that was supposed to be reported to the medical examiner's office. It also added a new category of death that must be reported to the medical examiner's office, any injury that had been part of the death of an elderly person. I think we all agreed on that, but where my disagreement comes in is that during the work session, the Attorney General's Office came in and decided that they wanted to establish a new committee to review those deaths. I really don't have a problem with that. The problem that I have is that we already have review teams that review other types of death, child death, serious injury review panel, domestic violence homicide review panel. Now they want to establish another panel. Three of those people who presently sit on those other panels are already sitting on that. What I suggested is that we should have one panel that reviews all of those deaths. It would be much easier to handle. It would be much easier for those who administrate it. I think it also would probably save some money along the way, Mr. Speaker. I would ask you to vote against the pending motion and accept the Minority Report.

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

Representative **NORBERT**: Mr. Speaker, Ladies and Gentlemen of the House. The good Representative from Lincoln, Representative Carr, is correct. There is great agreement on this bill and the necessary changes it makes for the Medical Examiner's Office. The one sticking point is the creation of this Maine Elder Death Analysis Review Team within the Office of the Attorney General. We feel, the majority of us, that it is necessary. It is not really a new idea. Last year representatives from the Attorney General's Office and the Bureau of Elder and Adult Services did undertake plans to form this team, which has as its purpose to review deaths in cases of serious bodily injury associated with suspected abuse and neglect of our elders, our vulnerable adults. Sadly, this is something that we are becoming more and more aware of. People are living longer and we certainly are aware of cases where individuals may be falling through the cracks of our system. Although it is another team, it is different from the other teams that the Representative from Lincoln cited. I think it is necessary because not every death, of course, involves an elderly person or vulnerable adult. The composition of the team is made up of appropriate people, different from the other teams that the Representative cited. Some of them do overlap, but a lot of them are different. These are people from police chiefs to sheriffs to representatives from adult and mental health services, adult protective services and the like. We really believe this is necessary. It is going to be housed within the Attorney General's Office. It will only be activated in those rare cases where this is the issue. The Office of the Attorney General has received a small grant from the Victim's of Crime Act from the US Department of Justice to cover administrative costs. Maine is one of four pilot states to have this. We think it is really important. We urge you to support the Majority Report.

The SPEAKER: The Chair recognizes the Representative from Hodgdon, Representative Sherman.

Representative **SHERMAN**: Mr. Speaker, Ladies and Gentlemen of the House. As you may notice, I am on the Minority Report. We don't disagree with the gist of the bill we had. Mr. Speaker, I need a lesson in how legislation is put together and I want pose a question to you if I may?

The SPEAKER: The Representative may proceed.

Representative **SHERMAN**: Thank you Mr. Speaker. The issue when this bill came before us, the title was as you see in our daily calendar and we were amending Title 22. The Majority Report, if you have that in front of you, they struck out some of the language and the new report says essentially the same, but it says, "An Act to Amend the Laws Relating to Medical Certification, the Cause of Death, the Medical Examiner Act." They then added and to create the Maine Elderly Death Analysis and Review Team. That is in Title 5. Probably I should have asked this before, but it seems to me that if we change the content of this bill in dealing with Title 22, that I what it started out being, but we had no one speaking in opposition to this, but now we have gone over and amended Title 5. It seems to me, looking at it, that there should have been public notice on this. I would wait for a response. Thank you.

Representative **CARR** of Lincoln **REQUESTED** a division on the motion to **ACCEPT** the Majority **Ought to Pass as Amended Report**.

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

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

Representative **TOBIN**: Mr. Speaker, Ladies and Gentlemen of the House. I would like to ask a question of the Speaker.

The SPEAKER: The Representative may pose his question.

Representative **TOBIN**: Thank you Mr. Speaker. When I listened to Representative Sherman, I thought he was asking for a ruling of the Chair. Was I wrong?

The SPEAKER: The Speaker did not realize that from the good Representative. Is the Representative requesting a ruling from the Chair?

Representative **SHERMAN**: Yes, Mr. Speaker, I was.

Representative **SHERMAN** of Hodgdon asked the chair to rule if the Bill was properly before the body.

The SPEAKER: The Chair would rule that although it is not unusual for committees to amend other parts of the statutes, other than those immediately affecting their committee of jurisdiction. The Chair would say that a public hearing was held on this piece of legislation. That is the requirement that this body works under. The chair's ruling is that this item is properly before the body.

Subsequently, the Chair **RULED** the Bill was properly before the body.

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

Representative **NORBERT**: Mr. Speaker, Ladies and Gentlemen of the House. I would just point out that this change the Representative from Hodgdon, Representative Sherman, mentions, goes right to the heart of the act. The Medical Examiner's Office is all about the deciding cause of death. This team will help us decide what the cause of death was, whether there were serious issues and failures in the system for our vulnerable elderly adults. I would say that although it is a different title, it is very much germane.

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

Representative **LESSARD**: Mr. Speaker, Ladies and Gentlemen of the House. I realize there is a grant in place for this function. Can anyone tell me what the fiscal note would be after the grant is over?

The SPEAKER: The Representative from Topsham, Representative Lessard has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Portland, Representative Norbert.

Representative **NORBERT**: Mr. Speaker, Ladies and Gentlemen of the House. There is a minor cost increase to the general fund. As I mentioned, there is a one-year grant of \$5,000.

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

Representative **CARR**: Mr. Speaker, Men and Women of the House. I just want to make it clear that our objection is not to the committee to be formed. My concern is that we presently have two committees who review suspicious deaths. It is my belief that by adding people to the present committee from the health care system, that would suffice and it would save from forming another whole committee that would meet on different days, different months of the year and at different times. I just believe that one committee would be able to take care of all of these. There would be a fiscal note at some time in the future. Once this \$5,000 is used up, then we have to go to the general fund. Thank you Mr. Speaker.

Representative **RICHARDSON** of Brunswick **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: 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. 141

YEA - Adams, Ash, Barstow, Bennett, Blanchette, Bliss, Brannigan, Breault, Bull, Bunker, Canavan, Clark, Cowger, Craven, Cummings, Dudley, Dunlap, Duplessie, Duprey G, Earle, Faircloth, Finch, Fischer, Gagne-Friel, Goodwin, Grose, Hatch, Hutton, Jennings, Kane, Koffman, Landry, Laverriere-Boucher, Lemoine, Lundeen, Makas, Marley, McGowan, McKee, McLaughlin, Mills J, Norbert, Norton, O'Brien L, O'Neil, Paradis, Patrick, Pellon, Percy, Perry A, Pineau, Pingree, Piotti, 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, Bryant-Deschenes, Campbell, Carr, Churchill E, Churchill J, Clough, Collins, Courtney, Cressey, Crosthwaite, Curley, Davis, Duprey B, Eder, Fletcher, Glynn, Heidrich, Honey, Hotham, Jackson, Jacobsen, Jodrey, Joy, Ledwin, Lessard, Lewin, McCormick, McKenney, McNeil, Millett, Mills S, Moody, Moore, Murphy, Muse, Nutting, O'Brien J, Peavey-Haskell, Rector, Richardson E, Richardson M, Rogers, Rosen, Sherman, Shields, Snowe-Mello, Stone, Sukeforth, Sykes, Tardy, Tobin D, Tobin J, Trahan, Treadwell, Vaughan, Young.

ABSENT - Daigle, Dugay, Gerzofsky, Greeley, Kaelin, Ketterer, Lerman, Maietta, Mailhot, Marraché, McGlocklin, Perry J, Richardson J.

Yes, 71; No, 67; Absent, 13; Excused, 0.

71 having voted in the affirmative and 67 voted in the negative, with 13 being absent, and accordingly the Majority **Ought to Pass as Amended Report** was **ACCEPTED**.

The Bill was **READ ONCE**. **Committee Amendment "A" (H-493)** was **READ** by the Clerk and **ADOPTED**. The Bill was assigned for **SECOND READING** Thursday, May 22, 2003.

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

Majority Report of the Committee on **JUDICIARY** reporting **Ought Not to Pass** on Resolve, Regarding Searches of Curtilage by Certain State Agencies

(H.P. 920) (L.D. 1246)

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

MILLS of Farmington

Minority Report of the same Committee reporting **Ought to Pass as Amended by Committee Amendment "A" (H-489)** on same Resolve.

Signed:

Representatives:

SHERMAN of Hodgdon

CARR of Lincoln

DUPREY of Hampden

BRYANT-DESCHENES of Turner

Representative LORING of the Penobscot Nation - of the House - supports the Minority **Ought to Pass as Amended by Committee Amendment "A" (H-489)** Report.

READ.

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

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

Representative CARR: Mr. Speaker, Men and Women of the House. Another Judiciary bill that we have minor disagreements on. I just wanted to run through some of the discussion that was had. This was brought to us with concern from certain agencies of the state, including the Department of Conservation, Department of Inland Fisheries and Wildlife, but I think IF & W we have pretty much established that they really wouldn't come under this. DEP probably mostly was the concern. They don't receive the proper training as it relates to search and seizure, their authority to access private property and also accessing the curtilage, which is the area out around the place in which they reside. It could be a garage. It could be a building where you store your tools and things like that. There was a lot of discussion and some of us believe should be at least some training provided for those agencies so that they would know that when they go onto someone's property, there are certain guidelines and certain criteria used in order to access that property. The Majority Report doesn't address that. The Minority Report does address the problem. There was a considerable amount of time spent on the Minority Report trying to bring up an amendment that would be satisfactory. All it would do is provide

training for those people in those departments. Thank you Mr. Speaker.

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

Representative NORBERT: Mr. Speaker, Ladies and Gentlemen of the House. This bill has changed quite a bit from the original version. The original version really came to us as a result of a constituent who dredged his pond in violation of environmental regulations. It turned out the pond wasn't even within the curtilage of the house as the good Representative from Lincoln mentioned. Curtilage as we understand it is really an area around the home where you have an expectation of privacy. It might be the area you mow or fence in. It is not the back 40 where you don't mow, but it is an area where you expect privacy. The Constitution governs there regardless of any written policy, the Fourth Amendment prohibition against unreasonable searches and seizures.

This bill, the majority of us felt is unnecessary because as we learned more about the bill as was originally cited, agencies should follow the State Police written policies. When we investigated, it turned out the State Police didn't have written policies, they obey the Constitution. They are trained at the academy to do so. Some of the agencies that we thought didn't have written policies do have written policies. We did what I think good committees do, that is we brought in the parties and we said, what are the policies and what can you do short of legislation because we are not sure this is necessary. The Attorney General's Office came in and sent us a letter that goes out to all agencies having the power to enter private property for enforcement purposes. It makes clear that the AG's Office if they don't have a written policy now is going to work with them to adopt a written policy to assure conformity with the Constitution. The letter to all these agencies makes clear that enforcement personnel should enter dwelling places, yards or other areas immediately surrounding dwelling places without permission.

As you know, there are times and there have been times when enforcement personnel need to enter private property. Our woods, areas where there might be environmental hazards, that is necessary and that can and should continue. Really this bills to us as a public relations issue more than an actual legal problem. Again, we feel it is unnecessary. Policies exist. They are going to exist if agencies don't have written ones already. Thankfully, we live in a land where the Constitution and the courts have enforced, upheld and interpreted our private property rights. The balance will continue. It should continue. This legislation, which targets a few agencies, really is unnecessary. The majority of us felt very comfortable that policies are going to be adopted if they are not. I urge you to reject this bill.

The SPEAKER: The Chair recognizes the Representative from Turner, Representative Bryant-Deschenes.

Representative BRYANT-DESCHENES: Mr. Speaker, Ladies and Gentlemen of the House. I was present at the committee meetings and this is the first time I have heard any reference to where this bill came from. What my understanding is after having received statutes of all these statutory rights of entry, most of these are wide-open statutes, which, if were challenged, are unconstitutional. These various agencies are given the right to enter any land at any reasonable time and any structures. I think that that obviously violates the Fourth Amendment.

It was in 1967 that the Supreme Court said that the Fourth Amendment does apply to civil searches. I remember very distinctly at the beginning of the committee meetings many members questioned whether the Fourth Amendment applied to civil searches. The Supreme Court in that case said that is surely

inconsistent to say that the individual in his private property are fully protected by the Fourth Amendment only when the individual is suspected of criminal behavior.

I do have a copy from the memorandum from the Attorney General's Office and in that he does outline the fact that these agencies should develop policies and he also reiterates to them that the Fourth Amendment does apply to their searches of dwelling places and areas associated with private use. However, I am very displeased with the paragraph that he has which says if there are circumstances where your department's enforcement staff are unaware of application of these limitations in a particular context before proceeding with an inspection, they should seek legal advice from this office or that of the District Attorney. It seems to me that it makes a lot more sense for us to require that these department who should have had policies since 1967 when this matter was resolved, don't have anything in place. The people are left at the discretion of the person who was in the field. I think that is exactly what the Fourth Amendment says that we are protected against.

All that we are asking with this Resolve is that these departments do what they ought to have been doing for probably 30 years and that is to have policies in place and educate the people who are in the field. We want to have this reported back to us. That is the reason that I submitted this amendment so that we would receive information. When we asked for the policies, there was only one department that I saw a policy from and that was Inland Fisheries and Wildlife. We don't have a problem with them. We don't have a problem with the State Police. I think one of the expressions I heard a lot growing up was a little knowledge is a dangerous thing. I found out a little authority is a dangerous thing. Probably the most dangerous thing of all is a little authority with very little knowledge. I would ask you to support the amendment that has been proposed. Thank you.

The SPEAKER: The Chair recognizes the Representative from Hodgdon, Representative Sherman.

Representative **SHERMAN**: Mr. Speaker, Ladies and Gentlemen of the House. I have little to add to what the good Representative from Turner had to say and the good Representative from Lincoln had to say, except this is very specific and I would second what the Representative from Turner had to say. All we are asking is DEP, Department of Conservation, Inland Fisheries to review their policies. Have them approved by the Attorney General of this state as to their Fourth Amendment search and seizure and then in January please come back to us and tell us you have reviewed those in some fashion so that we have some uniformity and some oversight. I would remind the ladies and gentlemen of this House that we are all committees of oversight and we are trying to do an oversight act here as you all have in your committees. Thank you very much.

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

Representative **DUNLAP**: Mr. Speaker, Ladies and Gentlemen of the House. A couple years ago I sat in this chamber and pretty much got my guts kicked out over the issue of the Fourth Amendment and the Maine Warden's Service. I think what we came up was a pretty reasonable solution to those conflicts, especially those dealing with the issues of carnage. I would like to pose a question to the chair. I am not an attorney, Mr. Speaker, however, I don't find too much vagueness in the wording of the Fourth Amendment. I guess I am a little bit in a fog as to whether or not there is so much nebulosity in the Fourth Amendment that it somehow can be trumped by a written policy of a state agency or even by a statute. Is that the case? I

would like to hear that question answered from anyone who may care to answer.

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

Representative **TRAHAN**: Mr. Speaker, Ladies and Gentlemen of the House. I will answer that question. I have been here for the five years that this issue has been before this chamber. You need know a little history of why this is before you. There are some clauses within the Forestry Practices Act, another natural resource law that allows rangers, people appointed by the state, to enter into private property. That is pretty vague. The right of entry is how it is specifically stated in the laws. That has created a vague ability for people to enter into private property for various enforcement reasons.

Getting back to curtilage, curtilage is defined as the area around your home. That is not the definition of curtilage. Curtilage is the area that an individual feels a reasonable level of privacy. That is defined by the courts. In Supreme Court rulings any area on your property where you feel a certain level of privacy can be defined as curtilage. In some court cases, curtilage can be a little cabin down in the woods where you meet a person to spend an afternoon. Curtilage can be a whole group of different areas. It can be the area around your home. All those areas are protected by the Fourth Amendment, right of search and seizure.

To answer the Representative from Old Town, when law enforcement from sheriffs to deputy sheriffs to State Police, they are all trained with standard operating procedures on the area of curtilage. Absent any policies for the other law enforcement, people can define it for themselves they might say. We really left a vulnerable area for forest rangers or anyone to enter onto private property, and absent a policy, to do what they want to do. Go back to your rights of entry. When you allow officers to enter a 10-acre piece of property by giving them this right of entry, you give them the ability to enter an area that is protected by the Fourth Amendment. You allow them in. Then through their vision, can go in and examine a home and the area around it. That is where the conflict has been. There has been a real problem with private property owners feeling that their curtilage is being infringed upon.

I think that having policies in place, it clears up this long-standing debate on the curtilage around homes. I have to ask this chamber and the Representative from Old Town, what is wrong with having a policy? Why wouldn't we want a policy? Those policies are shaped by constitutional rulings of the past. Those policies are in line with the Fourth Amendment and what our courts have said is okay for search and seizure.

My question to you ladies and gentlemen, those attorneys in this chamber and those who know law, what is wrong with adding these policies? Thank you.

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

Representative **DUNLAP**: Mr. Speaker, Ladies and Gentlemen of the House. I understand the concept of right of entry statutorily. However, my question before the body was, does the statutory right of entry or a written policy trump the Fourth Amendment?

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

Representative **MILLS**: Mr. Speaker, Ladies and Gentlemen of the House. I rise to partially answer the question raised by the gentleman from Old Town, but also to address some other concerns. I am on the Judiciary Committee and we heard very

narrow testimony concerning this bill. The only history that we heard was from a gentleman who dug a pond on his property and who suggested that this pond was quite some distance from his house was within the curtilage and that the DEP, I think it was DEP, who was investigating this pond dredging project had no right to come on his property. I think the gentleman was misinformed about the law and about the Constitution. The Constitution does not protect forest lands, open field and ponds. Ponds are beyond the so-called curtilage. The curtilage is pretty well defined as per the policy we heard from the Attorney General's Office. We read from the chief of the Natural Resources Division, which says to all law enforcement officers, "enforcement personnel should not enter dwelling places, yards or other areas immediately surrounding dwelling places associated with their private use." Such was not the case in the history we heard from the gentleman with the pond. That is essentially what the constitutional doctrine is. That is the curtilage, dwelling places, yards or other areas immediately surrounding the dwelling places associated with their private use. Yes, the Constitution trumps statute, not visa versa. Whatever statutes you believe are on the books in contravention of the Constitution would not be valid if so applied as to contravene the Constitution.

We did hear from a lot of the enforcement people to the effect that they do have policies consistent with the curtilage doctrine that require any enforcement agents, civil or criminal agents, to ask for consent for entry first in private areas, lacking consent if they have probable cause and they go ask for a warrant, subject to approval by a justice of the peace and that kind of thing. They are within the Fourth Amendment rules. They are not subject to the exclusionary rule. That is a difference that we pointed out at the work session. They are subject to possible lawsuit and what not if they invade the privacy of an individual in contravention of the Constitution regardless of what the statute says.

We determined, I think, in work session that this was basically a public relations issue and not a legal one. We were satisfied that the chief enforcement people in this state are familiar enough with the Constitution that they are spreading the word through written and verbal policies and training sessions so as to not allow any unconstitutional invasions of privacy by state law enforcement agents. Thank you.

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

Representative **TRAHAN**: Mr. Speaker, Ladies and Gentlemen of the House. I will try to answer the Representative from Old Town and why the argument that he put forward really doesn't hold water. He is right, the Constitution trumps statute, but let me tell you the process that you need to go through to challenge a right of entry or if an individual feels that their rights have been violated. It would probably cost hundreds of thousands of dollars to take a case to the Supreme Court to have that ruling turned by the Supreme Court.

I will give you an incident that may occur. Let's say a ranger came into a piece of property to look at the forest practices going on. In his travels he came upon a home where someone was outside doing something that the ranger deemed against the law. That person would have to challenge that case all the way to the Supreme Court. How many average citizens could challenge that to the Supreme Court? They don't. What they do is they swallow it. They end up going away. By not having a policy in place, we put those people in the position where there is no policy that we can go back to justify that right of entry. All we have is the ability to go to the Supreme Court. I think very easily we could settle this right here and now and just have these people adopt the same policies that everyone else does.

The Representative from Old Town did not answer my question. Why not? Why not do this? All other law enforcement does it. Is it that we would have a clear and specific policy? In that, they couldn't go into these properties and abuse that privilege. It is a privilege. You see, the rights in our Constitution protect the individual, not those members who would enter onto private property. Ladies and gentlemen of the House, it is always our duty as legislators to protect individuals from the infringement of government. All we are doing here is setting up a reasonable policy to ensure that occurs. 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. Before I really start my testimony, I really need to clarify a few statements that have been made, especially from the good Representative from Portland, Representative Norbert and the Representative from Farmington, Representative Mills. I did not submit this testimony for the gentleman who testified on this bill. He just happened to be there. I was very happy for his support. I submitted this bill for each and every property owner in this state. That is why I put this bill in.

In colonial times the government did not recognize property rights. If land was needed for a road or a building required as barracks for king's soldiers, it was seized. It was this colonial experience that led the inclusion of the Fourth Amendment in the Constitution. This amendment guarantees that our persons and our property would not be subject to unreasonable searches and seizures. As US citizens we share a respect and appreciation for our Constitution. It is the highest law of the land. The document that protects the liberties, such as private property rights that we cherish. Surprisingly the state agencies most involved in landowner issues, the Department of Environmental Protection, Conservation and Inland Fisheries and Wildlife do not have policies and procedures in place ensuring that our Fourth Amendment rights are respected.

I do not stand here before you to suggest that these departments are trampling on the Bill of Rights, but we have all heard stories of concern about visits and inspections from these departments that would give our founding fathers reason to pause.

The Committee Amendment before you requires the Department of Environmental Protection, Conservation and Inland Fisheries and Wildlife to review practices concerning searches of private property and curtilage, which is the area surrounding a residence. The amendment also requires that these departments adopt written policies and procedures approved by the Attorney General, conforming to the Constitution's Fourth Amendment prohibition against unreasonable searches and seizures. The State Planning Office will also be required to include approved written policies and procedures in their training and it provides municipal code enforcement officers. I am told the last time the department conducted a thorough review of their policies concerning the Fourth Amendment was in 1967. In the two generations that have passed there have been countless court decisions and statutory changes that are not reflected in the departments current policies.

As members of the Legislature we swore an oath to support the Constitution of the United States. We honor that oath by ensuring that the state departments conform to the Constitution and to the important rights included therein. I hope that you will join me in supporting this amendment and vote against the Majority Ought Not to Pass Report. Please, do this for all our constituents in this state who own property.

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

Representative **BULL**: Mr. Speaker, Men and Women of the House. Certainly the issues being raised by the proponents of this bill do have some merit, but the important thing to remember here is we heard very little for the importance of this bill. We only had, as far as I can remember, one person to come and testify in favor of this bill. The second thing, most importantly, we already have an agreement from the department involved and from the Attorney General's Office that this is something they are going to be working on and they will come back with some policies. Basically this is a bill directing the department to do something that they are already doing. It is unnecessary.

Representative **SNOWE-MELLO** of Poland **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 Poland, Representative Snowe-Mello.

Representative **SNOWE-MELLO**: Mr. Speaker, Ladies and Gentlemen of the House. This issue I have been working on for a long time. The departments have been well aware of this issue. It has been since 1967 that there hasn't been any written policies in regards to this area. Don't you think it is about time that the departments need to do this? The Committee Amendment puts it in statute. I feel personally if they haven't done it in the past, what is to say they are going to do it in the future. Please, vote against the Majority Ought Not to Pass Report and support the Committee Amendment. Thank you.

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

Representative **LORING**: Mr. Speaker, Men and Women of the House. I rise to ask you to vote against the Majority Ought Not to Pass Report. I agree with the Representative from Snowe-Mello particularly when she said the colonial government did not recognize property rights. It is really not asking much. I am not an attorney, but I do own property. When somebody comes on my property for search and seizure, I really want them to follow the constitution and I would hope that every department under the state would have a set policy to do that. I think it is only fair. I would ask you to vote against the Minority Ought Not to Pass Report.

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

Representative **LESSARD**: Mr. Speaker, Ladies and Gentlemen of the House. The important thing to remember with the Fourth Amendment is unreasonable search and seizure. This is when the court steps in. You have your probable cause, you go to a magistrate and you get your search warrant. Those in law enforcement are trained and grilled on that Fourth Amendment with court cases and past practice as far as what the justices feel is reasonable. There is a wide latitude of what is reasonable and what is unreasonable. Those agencies that do not, as a matter of course, have to go on private property are not well versed in these areas. What is wrong in having, as a resolution, to make sure that policies are in place so that the employees know what they should be doing? Policies have to be updated every year. Law enforcement goes through that through that through the Criminal Justice Academy. I don't see why the policies can't be put into place for the next commissioner and the next commissioner after that so that people will know what the guidelines and what the obligations are for property owners and what their jobs entail. Thank you Mr. Speaker.

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. 142

YEA - Adams, Ash, Barstow, Blanchette, Bliss, Brannigan, Breault, Bull, Bunker, Canavan, Clark, Cowger, Craven, Cummings, Dudley, Dunlap, Duplessie, Duprey G, Earle, Faircloth, Finch, Fischer, Gagne-Friel, Gerzofsky, Grose, Hatch, Hutton, Jennings, Kane, Ketterer, Koffman, Landry, Laverriere-Boucher, Lemoine, Lerman, Lundeen, 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, Saviello, Simpson, Smith N, Smith W, Sullivan, Suslovic, Tardy, Thomas, Thompson, Twomey, Usher, Walcott, Watson, Wheeler, Woodbury, Mr. Speaker.

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

ABSENT - Bennett, Bruno, Dugay, Goodwin, Greeley, Maietta, Mailhot, Marraché, McGowan.

Yes, 73; No, 69; Absent, 9; Excused, 0.

73 having voted in the affirmative and 69 voted in the negative, with 9 being absent, and accordingly the Majority **Ought Not to Pass** Report was **ACCEPTED** and sent for concurrence. **ORDERED SENT FORTHWITH.**

Majority Report of the Committee on **LABOR** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-482)** on Bill "An Act to Ensure that Maine's Unemployment System is Responsive to the Needs of Today's Workforce"

(H.P. 195) (L.D. 240)

Signed:

Senators:

EDMONDS of Cumberland

STANLEY of Penobscot

Representatives:

SMITH of Van Buren

HUTTON of Bowdoinham

HATCH of Skowhegan

PATRICK of Rumford

JACKSON of Fort Kent

WATSON of Bath

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

Signed:

Senator:

BLAIS of Kennebec

Representatives:

TREADWELL of Carmel

CRESSEY of Baldwin

NUTTING of Oakland

HEIDRICH of Oxford

READ.

Representative SMITH of Van Buren moved that the House **ACCEPT** the Majority **Ought to Pass as Amended** Report.

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

Majority Report of the Committee on **NATURAL RESOURCES** reporting **Ought to Pass as Amended** by **Committee Amendment "A" (H-490)** on Bill "An Act To Protect Public Health by Reducing Human Exposure to Arsenic" (H.P. 963) (L.D. 1309)

Signed:

Senators:

MARTIN of Aroostook
EDMONDS of Cumberland
SAWYER of Penobscot

Representatives:

KOFFMAN of Bar Harbor
TWOMEY of Biddeford
HUTTON of Bowdoinham
MAKAS of Lewiston
SAVIELLO of Wilton
THOMPSON of China
TOBIN of Windham
JOY of Crystal
ANNIS of Dover-Foxcroft

Minority Report of the same Committee reporting **Ought to Pass as Amended** by **Committee Amendment "B" (H-491)** on same Bill.

Signed:

Representative:

DAIGLE of Arundel

READ.

Representative KOFFMAN of Bar Harbor moved that the House **ACCEPT** the Majority **Ought to Pass as Amended** Report.

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

Majority Report of the Committee on **TAXATION** reporting **Ought Not to Pass** on Bill "An Act To Require the Net Proceeds from the Sale of a Foreclosed Property To Be Returned to the Former Owner"

(H.P. 694) (L.D. 937)

Signed:

Senators:

STANLEY of Penobscot
STRIMLING of Cumberland
NASS of York

Representatives:

LEMOINE of Old Orchard Beach
McGOWAN of Pittsfield
SUSLOVIC of Portland
TARDY of Newport
McCORMICK of West Gardiner

Minority Report of the same Committee reporting **Ought to Pass as Amended** by **Committee Amendment "B" (H-470)** on same Bill.

Signed:

Representatives:

PERRY of Bangor

CLOUGH of Scarborough

COURTNEY of Sanford

LERMAN of Augusta

SIMPSON of Auburn

READ.

Representative LEMOINE of Old Orchard Beach moved that the House **ACCEPT** the Majority **Ought Not to Pass** Report.

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

Representative CLOUGH: Mr. Speaker, Ladies and Gentlemen of the House. This bill deals with what I see is an issue of fundamental fairness. The question is simple. Should a municipality have the right to acquire property by foreclosure for failure to pay taxes owed, sell the property for a sum in excess of the amount due the municipality and then keep the excess? I think not. Present law allows a municipality to foreclose on a property to collect delinquent taxes, sell the property for an amount considerably higher than the amount owed and then keep all of the excess money.

Opponents of this legislation maintain that although the process allows this practice, it just doesn't happen. I am sure that this is the case in many and maybe even most of our communities where municipal officials do their very best to work with the delinquent property owners to resolve these issues. Even so, we heard from some tax assessors who do follow this practice on a regular basis and that it is justified. They argue that the law should remain as it is to give assessors the extra leverage, a bigger club, so to speak, that the threat of foreclosure and keeping all the proceeds is a necessary tool needed to keep homeowners in line, keep them from taking advantage of the municipality. This bill as amended would apply to owner occupied residential property only and it would provide that a municipality that obtains title to the owner occupied residential real estate occupied by the former owner may, unless selling the property back to the former owner, only sell the real estate through a competitive bidding process and that the municipality shall disperse to the former owner the excess of any funds.

This means that a municipality could recover an amount equal to the taxes owed, any interest that had accrued, court costs and expenses incurred in disposing of the real estate. In addition a penalty of up to 25 percent of the difference between the amount obtained by disposition and the amount that was needed to cover the tax liens. Any remaining money would then be repaid or paid to the delinquent taxpayer. This process provides adequate protection for the municipality, but does not allow for a financial windfall.

Mr. Speaker, I urge you to vote against the pending motion and to go on to pass the Minority Report.

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

Representative TWOMEY: Mr. Speaker, Men and Women of the House. This is my bill. It was brought to me by a constituent in my community. This bill will not be able to affect this constituent or even help this constituent. The reason I decided to go with it was because I was appalled when I found out what the statute did. The statute is not specific about people losing their property and who retains the money. This went to court and the judge said this was something the Legislature had to fix. What happened was this woman owed \$12,000 and they sold her house for \$80,000? I don't believe there is a free lunch here. I think everyone should pay their taxes. I think they should pay legal fees. I guess what I am trying to say is no municipality should lose anything. I don't think they should be able to keep the money when someone is already destitute and they have lost their home and they are out on the street. This is all their equity.

This is something that they paid for all their lives. They have had this home for years and then lose it.

When I started looking into the law and what the statute said, I said this can apply to anyone. I thought maybe this is an isolated case, but another case happened in our community and they did the same thing. My worry is with the budget shortfall that communities will look to this and this would be a way to put money into the general fund. I don't think this is what we should be doing. I introduced this. Everyone I talked to can't believe it. It can't be the law. It can't be right. It must be illegal. How can they keep the money? They can keep the money. It could be you. It could be me next if towns are looking for a way to put money into the general fund. There is an amendment on it, but I don't think I can speak to that right now. Thank you.

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

Representative PERRY: Mr. Speaker, Ladies and Gentlemen of the House. I am also on the Minority Report. As far as my hometown of Bangor goes, I could have gone either way on this bill because in Bangor this has only occurred a couple of times and both times the city took the homes mainly for safety issues, demolish them and put the people who live there into city housing. As far as my hometown goes, it is not a concern. We took a very broad bill and focused it so it is only owner-occupied homes, not abandoned property, commercial properties and all the rest of it. We made it very narrow. It is a home someone is living in.

The reason I decided to go on this report is the average homeowner who has a mortgage on their home and they get to the foreclosure state, the bank will pay the taxes and then deal with the homeowner. If the bank ends up foreclosing on the long run, they get any surpluses back. The bank will step up to the plate because if the town takes the property, the town sells it and the bank is out their money. The people who I think are most vulnerable are elderly people whose mortgages have been paid. There is no bank as a safety net. These things can slip through the cracks. The towns are made whole. They get up to a 25 percent fee out of the net proceeds and the rest should be returned. Thank you.

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

Representative LEMOINE: Mr. Speaker, Men and Women of the House. Throughout the history of Maine and municipalities, municipal officers have been entrusted with a value of reducing the impact of non-payment of fees on the community as a whole. There are three points that the body ought to keep in mind. First, there is nothing this bill does that each town can't do on its own if it perceives there to be a problem. This is a bill where we in Augusta are removing an option that is available to localities. It is, indeed, a state mandate. It is a local control issue. I believe we don't need to tread on this. It can be fixed town-by-town if the people so wish.

Second point, these towns are not banks. This is not how we run our communities. We are not banks for each other. There is an obligation to pay your fair share of the property tax. As onerous as that may be on each of us, that is what we do as part of living in a municipality and a civilized society. It is how we pay our fair share. If you can't pay your fair share, my third point, the process in line already gives great time to the delinquent taxpayer to correct the situation. It takes about 2.5 years from the time that property tax bill is due to the time that lien process matures. All of that time is filled with notices to the individual, the delinquent taxpayer. There is plenty of time to, one, either pay up what is owed or two, sell the property, take all that equity yourself and move to another place that is affordable. Those

things may be unnecessary to go this far for we, here in Augusta, to step on the toes of municipalities. We heard from a great many town councils and managers who asked us not to do this. They feel it is better handled on a case-by-case basis by the selectmen and municipal officers. We heard many cases of how they have cut special deals, special attention to individual taxpayers who may live in beaten down trailers. Personal property or real property, but they make money because those trailers are worth very little. The whole process of going through this lien program would remove somebody from their home at a further cost to the town. Town selectmen are elected officials. They are very sensitive to what is going on in the population. They understand the obligation to raise what is required to make the municipality run, but they are also sensitive to the needs of worthy delinquent taxpayers. It has worked very well for several hundred years here in the state. There is no need to change it today. Thank you.

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

Representative KAELIN: Mr. Speaker, Ladies and Gentlemen of the House. I rise in support of the Majority Ought Not to Pass Report. I have heard from several of my towns in my area, these are small towns where, as the good Representative from Old Orchard Beach said, people are relied upon to pay their fair share. This is a terrific incentive to have people pay their taxes. Without those taxes, these small rural communities, in particular, cannot operate. I see absolutely no reason to change the law here. I support the Majority Ought Not to Pass Report. Thank you Mr. Speaker for your time.

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

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

The SPEAKER: The Representative may pose his question.

Representative MUSE: Thank you Mr. Speaker. To the sponsor of this bill, would it have been impossible for her constituent to put a sign on the front lawn that said, for sale?

The SPEAKER: The Representative from Fryeburg, Representative Muse has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Scarborough, Representative Clough.

Representative CLOUGH: Mr. Speaker, Ladies and Gentlemen of the House. In answer to the question, of course anyone can put a sign on their lawn and sell a home or call a realtor. We are dealing here with probably elderly people in many cases. They don't want to leave their homes. They don't have the finances, but they always think that there is a better day tomorrow. Something is going to happen. I am going to get out of this. They wait until it is too late. The same case with one of your neighbors who has lost a job, their income has been drastically reduced or they have a health problem. They think that there will be a better time tomorrow and that they can make it. They put off selling their home because they really don't want to sell their home. There is an old saying that you don't swat a fly on a friend's head with an ax. I think that is what we are doing with this type of policy. I would still ask you to vote against the pending motion.

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

Representative COURTNEY: Mr. Speaker, Ladies and Gentlemen of the House. I am also on the Minority Report. I would like to address a couple concerns. Our good chairman had mentioned that the bill doesn't do anything that the towns cannot do on their own. One of the things that I have noticed since I have been up here is sometimes we feel like we are more

of an extension of our board of selectmen. I have a different approach to that and I think that many of you will as well. I look at it as I am an extension of the people that I represent. When those things work together with the board of selectmen, then that is fine. They sometimes do not. One of the things that many of our towns do is they have a lobby. They have a lobby that analyses everything that we do. The individuals in my town, the only lobby that they have is me. I take that job very seriously. I think that we need to be looking at all the angles and try to protect many that are most vulnerable. It is right that the towns are not banks. However, when a bank ends up having to foreclose on a home, the bank doesn't get to keep the excess money. If there is money after all the costs, then the money has to be go back to the original owner. I don't understand how the towns can have more access to that property than a bank that can put out more risk in actually financing the property.

I understand the argument that we need the hammer and the process does give a lot of time to make it whole. However, there are in cases instances, for one reason or another, elderly has been mentioned or people somehow ignore it for one reason or another, I think that maybe we don't need to have that hammer. Another thing that hasn't been mentioned is there is an automatic foreclosure process. You get the notice and it happens automatically. It is not like you go before a hearing and say that you are going to lose your home. It happens automatically. In some cases, I am sure you have all seen it with the E-911 address changes. You don't even get your mail. It goes back to the town and you don't see it. I think this bill, unfortunately, is one that has to be put in. I believe it should be passed. It affects very few people. Most municipalities bend over backwards to accommodate people. They go out of their way. They work out payment arrangements. I know that there has been some scare tactics from the other side saying that you don't like the town clerk or you are upset with the town officials. That is not the intent of passing this bill, in my opinion. The intent is to protect the few people that could possibly lose their property because of a few unscrupulous people. I would ask you to defeat the Ought Not to Pass motion and look at the Ought to Pass motion as Amended. Thank you Mr. Speaker.

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

Representative **BLANCHETTE**: Mr. Speaker, Ladies and Gentlemen of the House. I stand here today and urge you to defeat the Majority Ought Not to Pass Report and to move with the Minority Ought to Pass as Amended Report for a number of reasons. Let me give you a brief history. I am one of the fortunate representatives seated in this House that happens to live in a municipality that bends over backwards to help our elderly and disadvantaged people that somehow the world has fallen down around their heads. Through no fault of their own they have lost their job, a child became sick, they didn't have health care, they weren't able to meet their mortgage payments. My municipality, being in a position that it is and financially secure, will at times offer reverse mortgages to these people. It means that we will absorb the cost of their property taxes, but upon sale of that property the city is reimbursed for all of their property taxes, sewer costs and everything associated with being a homeowner. I am lucky. My municipality can and will do that. There is an appeal process through the council, which is a body of nine elected officials that are going to weigh every case individually. Not all small municipalities have that luxury and not all small municipalities have the luxury of having an impartial elected body making this decision. Too many times you hear of a body of elected officials, three people or five people that don't happen to like this individual. Being an elected official is a

powerful responsibility and it also is a powerful office if you are the deciding vote on anything. I don't believe there is any Representative seated in this House today or ever has been seated in this House that wants to take from the people who can least afford it money that is rightfully theirs. This bill will just require that after property taxes are settled and everything is even steven that any net proceeds or profit, I say that this is profit with a capital P, goes back to the original owner and not the municipality. I am the first one to tell you that a municipality has a right to expect their property taxes and upon sale or foreclosure they will receive them. This homeowner that has fallen though the cracks, through no fault of their own, illness, unemployment or any number of reasons deserves to have if there is \$5,000 profit left, it should be in their pocket, not in the municipality. I urge you to overturn this Majority Ought Not to Pass Report and go with the Minority Report and Let's do what is right for the people who sent us here. Thank you Mr. Speaker.

Representative **SIMPSON** of Auburn **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 Biddeford, Representative Twomey.

Representative **TWOMEY**: Mr. Speaker, Ladies and Gentlemen of the House. The basic principle of someone owning a home and then having to have it taken away from them and losing everything they have put into it is unacceptable to me. Whether you are old or young or whatever the reason, I don't think a municipality has the right to keep the proceeds. That is what this is really all about. The amendment on the bill adds an additional 25 percent penalty, which I did not agree on, but I said I would do it in order to get the bill out. I would discourage anyone who just might want to say that I am going to lose my property this way. There is now a penalty. We are not saying, don't pay your taxes. We want you to pay your taxes, but maybe you can't. This isn't for businesses. This is for people who have been in their homes for a long time.

I was on the city council for six years. It is not just one case. This isn't an isolated case, because now there are two more cases that this has happened to in my community. I am starting to worry that the local officials are looking to do this and say, hey, this is how we can get revenue and maybe not be so compassionate, maybe not want to work with that person who is going to lose their home. This particular case where a woman lost her child to heart disease, she has had a lot of problems. I would be the first to say that it is a difficult situation. The bottom line is the statute is not clear on who keeps that money. I think it is your basic principle. I just believe this is wrong. This is stealing. MMA is not in support of this. They lobbied hard. We pay our dues to MMA in our town, \$14,000. The towns want to be able to hold onto this. They want this as an option. I don't think it is an option that we should be considering. Thank you.

Representative **BULL** of Freeport assumed the Chair.
The House was called to order by the Speaker Pro Tem.

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

Representative **GLYNN**: Mr. Speaker, Ladies and Gentlemen of the House. I rise too to urge the body to reject the pending motion and move on to the Minority Ought to Pass Report. I have to share with you that this story that has been told on the

floor by the Representative from Biddeford, Representative Twomey, is not a unique story at all in Maine. It has, in fact, happened on many occasions. I think it is important that whatever rules that we do set are fair and equitable. The good Representative from Fryeburg, Representative Muse, had asked a question, why doesn't someone put a for sale sign on their property? Having dealt with this issue before, I can tell you that the reason why is because they no longer own the property. Once you become delinquent to a certain point in this process what happens is the town will automatically file a lien on your property. It is paperwork that is done in the background. Not everyone understands the legal paperwork that gets filed when a notice is sent on delinquency of taxes. That is filed down at the Registry of Deeds Office. When that lien matures if the taxes aren't paid in full, the property becomes the property of the municipality. You lose your home to the municipality. At that point if you are a citizen that does have the money to pay your taxes or if you are on a payment plan and your payments go beyond the lien maturity date, you no longer own your property.

I first became acquainted with this issue when I was a municipal officer down in the City of South Portland. I remember vividly an older gentleman coming to me stating that essentially his wife had died. He was an older man around 80 years old and he only had one income coming in. He had fallen behind and was making monthly payments on his property taxes that he had fallen delinquent on. The monthly payments he was making was not enough to keep. He was making an amount less than the property taxes that were accruing, plus he had new taxes accruing. Essentially, he had fallen too far behind. When he had decided to visit me was after he had made his visit down to the local municipal office and had asked to make his payment. His payment was rejected. They told him he no longer owned his home and the city had foreclosed on it. That was how I became acquainted with this tax delinquency policy that we have here in the State of Maine.

Lots of other residents find themselves dealing with prolonged illnesses and fall behind for various reasons, dealing with dementia or dealing with other issues such as job loss, can find themselves in that situation. The part of this issue that strikes at the heart of a lot of Mainers is that whatever amount of money that you have invested in your home and that you have paid over your lifetime to accumulate can all be taken away from you because you have the poor misfortune of falling behind on your taxes. I don't believe that anybody intentionally loses their property to tax delinquency anymore than I believe that somebody that takes a mortgage out on their home and pays on it for years who falls behind on a mortgage payment intentionally wants the bank to take their home away from them. I think that the threat of losing your property and having it sold out from under you is more than enough to make you pay your property taxes. It has always been enough to make me pay my mortgage payment. It should be enough to make all of us pay our property taxes and then when that property is sold, that the money, or a good portion of it, over and above the money that is owed the municipality should be returned back to the prior owner.

I had put a bill in this legislative session very similar to Representative Twomey's. It was collapsed into this bill. I think it is a good policy for the State of Maine to have one of a continuity of practice across the state. Having served on Banking and Insurance, I can tell you there are laws against banks and financial institutions doing this practice of keeping more money than is due them. I think it would be good prudent public tax policy for the State of Maine to assist homeowners that find themselves in the precarious position of not having the money to pay their taxes. Thank you Mr. Speaker.

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

Representative BOWEN: Mr. Speaker, Men and Women of the House. I have a couple of examples that I want to share with you and then I have a question that I am going to throw open to the body through the chair if that is okay. If you ever happen to be in Penobscot, the town that I grew up in in Hancock County, you should ask around about Dog Town Road. Dog Town Road is a road that is off the road that I grew up on and, as we say in town, down Dog Town Road, there are lots of very ramshackle homes and falling town buildings put together mostly with tar paper and tyvec and blue tarp and stolen road signs. The people down there are very poor and have trouble paying their taxes. When you look at the town report in Penobscot they list the delinquent taxes in there and these folks are always on that list. I have asked my dad who is a selectman who is over there, why they don't just take the property? His answer is, we don't want it. The cost to the town of taking that property with its collection of destroyed vehicles and rotting corpses of old school buses and things all over the yards would cost so much to clean up that it would actually cost the town more than the value of the property.

In Camden, the town that I now represent and the town that I teach in, the town has recently taken possession through nonpayment of taxes of an old tannery, which is going to cost us somewhere in the neighborhood of a million dollars to clean up. The EPA has been in there poking around. They don't like it. We are trying to get some money out of them. Basically the town has inherited a piece of property through nonpayment of taxes that is going to cost more to deal with than the town can ever collect selling it. In both of these instances, the cost to the towns outweigh whatever can be had through the sale of the property. The towns in both instances don't want this property, but nonetheless they now have it.

I would submit that that is probably the case in most instances. The towns are forced with having to take property that they don't really want. I think we are maybe mischaracterizing towns and town officials as wanting to pad their pockets by throwing people out of their homes and selling their homes and pocketing the difference. I think more realistically the situation is that towns are faced with taking property that they honestly don't want.

My question is, with the Chair's permission, is if it is fair for the towns to take the property and then be forced to pay back the difference after all the expenses are paid, is it not also fair for the towns when they take this property to send the former property owners the bills for what it cost the town to clean up those properties and make them legal properties in excess of what the properties was worth? Thank you Mr. Speaker.

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

Representative COURTNEY: Mr. Speaker, Ladies and Gentlemen of the House. Absolutely. I think if the value isn't there, then this bill wouldn't affect that situation at all. This situation comes into play if there is value left on the table. I think that by not doing this, we are saying that the person who loses the property that has a little bit of value left over after the foreclosure, after the interest, after the penalty, after the legal fees and after the 25 percent penalty, if there is anything left, then we should take that money to pay for the one that we can't do anything about anyway. I guess I contend that we shouldn't do that. In order to address some of those other concerns, maybe we need to work a little bit in reforming the automatic

foreclosure laws in this state at a later time. Thank you ladies and gentlemen of the House.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Jay, Representative Pineau.

Representative **PINEAU**: Mr. Speaker, Men and Women of the House. I am a selectman in the Town of Jay and have dealt with every issue that we have talked about. I will be supporting the Majority Report for the reasons that the House Chair explained. We have foreclosed in my tenure as selectman on a number of buildings. The one thing to remember is we are talking about poor people that have tried to maintain their homes. You remember there are also some poor people that are paying their taxes and supporting the rest of these people that aren't.

Another thing that happens in a community is when you do finally put a lien on a building, it is funny sometimes how the money can show up. One thing that this type of legislation could encourage is people holding back from paying their taxes and increasing the time that the municipal leaders are going to have to deal with this. I ask you please to go with the House Chair on this. His explanations were excellent. Thank you very much Mr. Speaker.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Augusta, Representative Lerman.

Representative **LERMAN**: Mr. Speaker, Men and Women of the House. I rise against the acceptance of the Majority Ought Not to Pass Report in favor of the Minority Report. I just want to take a minute just to clarify a few things. In fact what we are looking at is focusing exclusively on owner occupied residential dwellings. That is one thing to keep in mind. Second, in no way is the intention of this legislation to say anything of a negative sort against municipal officials who administer their duties by enlarge every effectively and very honorably. This is really looking at those rare occasions when for some unusual situation, the individual simply cannot pay the taxes and, in fact, there is some equity in that property. It is saying while it certainly is important to have a lever to make sure that people do pay their taxes, is it fair to be as onerous and as heavy handed as the current practice allows. We believe that the 25 percent penalty in addition to collecting all expenses involved in foreclosure is an appropriate lever to make sure that the incentive is there to make sure people pay their taxes and for those rare occasions when it is unfortunate that people lose their property for unfortunate circumstances that they get some portion back of the equity that they have been able to build up in their property.

One last point is, in any other circumstance, if it were a bank or any other financial institution that had the same kind of opportunity to capture all of the outstanding equity that had been built up in the property, we wouldn't stand for it or many of us would find that just totally unacceptable. For those reasons, I urge you to vote against the motion on the floor. Thank you.

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

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

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

Representative **DUNLAP**: Thank you Mr. Speaker. To anybody who may care to answer, suppose my house has an assessed value of \$100,000. Suppose that I owe \$10,000 in back property taxes and suppose, if you will, if the town forecloses on me and takes my property. Is there anything to prevent me from suing the town for the balance of the assessed value of my property? In the case of a soft real estate market where they are unable to move the property, force the town to

pay me money out of its own general fund in anticipation of the sale of the property?

The SPEAKER PRO TEM: The Representative from Old Town, Representative Dunlap has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Old Orchard Beach, Representative Lemoine.

Representative **LEMOINE**: Mr. Speaker, Men and Women of the House. I will try to chip a little rust off here of my legal training. I believe that the answer to the Representative from Old Town's question is that the owner would have been charged with participating in the lien foreclosure process and for bringing forward any complaints of defenses he or she had at that time and therefore would be precluded from bringing a subsequent action in the same affect.

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

Representative **MILLS**: Mr. Speaker, Men and Women of the House. This is a procedure that has been around since approximately 1820 and I suspect that it goes back well into colonial times. Tax liens and the property tax itself has been at one time the major source of support for both state and county and town governments because property 150 years ago was certainly the major source of recognized wealth.

In my father's law office there is some reports from the Town of Farmington going back to the civil war. I pull them down now and then to look at them and I see where the mil rate in those days was about 17 mils, which is about average for towns today. One of the amusing differences is that the town was obliged to turn over about 4 mils to the State of Maine in order to support the activities of the Legislature. It is quite the reverse of what we are doing today.

Many speakers this morning have drawn parallels between banks and their foreclosure processes and towns and their foreclosure processes under this ancient statute. Let me suggest to you that there are major differences. The most significant distinction is that it takes something on the order of three years from the time when a homeowner or property owner defaults until the town finally gets title to the property and can begin thinking about getting a return on the parcel. If it is a parcel of the sort that was described so capably by Representative Bowen, then there may be nothing in it for the town to follow this procedure. There is nothing in this statute that compensates the selectmen or the town council or the town manager or whoever it is that compensates the town for all the time, investment of time, the process and following it through. There is very little in here for the towns. That is the reason, I think, why there is such a heavy stick at the end of this very, very long and protracted process that has all sorts of notices built into it. Certified mail notice, yes, of course. Publication in the town report, not just one year, but two or three years before the town finally has title to the property. It is a lengthy process. It is an involved process. It is very poorly understood, I might say, by many town officials who are often part-time, semi-volunteer, good spirited public citizens who are just trying to do their best under a complex, somewhat ancient law. To engraft onto this law, a still later process to be executed three and a half or four or five years after the bill first became due and to require town officials to jump through these hoops in order to generate some form of net proceeds after the sale and then find the people to whom that money might go, if it is an estate or joint owners or whoever and then to have to go follow further procedures if they can't find the owner, then they have to go turn the money over to the state and then the state has to pick up the burden of managing that money until the owner might someday come forward.

The whole philosophy of this law for the last 180 years has been that if you can't pay your real estate taxes within three years or so and you let them build up like that, the chances are you don't care much about the real estate and you have abandoned it and the odds are pretty good that the property is very likely to be of the sort that was described by Representative Bowen, property of essentially little value or no value. Alternatively, you have a mortgage on it that outweighs the equity. The bank will step in and either pay the tax or not as their interest might dictate.

We have an ancient statute here that has been amended, yes, over the last couple of centuries, but basically the form of the statute and the way it works has been honored by many, many decades by this institution and by the 494 municipalities in Maine. It seems to me that we should leave it well enough alone and, frankly, I don't think there are many examples that people can come up with where any substantial amount of equity in property has been sacrificed under this statute. I think those are isolated rare cases. All of the cases I have ever heard of in my town and the ones around me are cases of the very sort described by Representative Bowen, cases where property that is of very low value has essentially been abandoned by its owner and the towns are trying to pick up the pieces, sometimes they are picking up title to property that has substantial liabilities against it, waste issues and the like. It just seems to me that the statute is functioning reasonably well and we ought to leave it the way it is, as the majority of the committee recommended.

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

Representative **TARDY**: Mr. Speaker, Men and Women of the House. I rise today in support of the Majority Report. I urge its acceptance. I would concur with the comments made by Chairman Lemoine and the good Representative from Cornville, Representative Mills. I don't believe that municipalities should be in the business of land management. I don't believe that the municipalities should be forced to be in the business of collecting equity on behalf of non-taxpayers. I believe that municipalities and taxpayers just want the non-taxpayers to pay their bill. I have heard from each of my towns and more importantly the people from each of my towns. I represent five towns in western Penobscot County and they have urged that I endorse the Majority Report. You hear the argument that these folks are representing the municipality and they are part of MMA. Where I come from they are the little league coaches, the selectmen, the taxpayers and the residents of the community. In the towns in western Penobscot, they have each endorsed policy where they make it a priority to protect the homeowner. There is an abatement process. I believe this is an unnecessary attempt to legislatively cure a problem that just happens in a few isolated instances. I would urge the members to accept the Majority Report. Thank you.

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

Representative **SIMPSON**: Mr. Speaker, Men and Women of the House. I just wanted to answer a question that was posed earlier in this debate about why homeowners don't put a sign on their lawn and sell their house when it starts to go through this process in order to save their equity. In hearing testimony in Taxation when this bill was before us, we actually have a letter from a real estate agent that was sent to the good Representative from Biddeford's constituent, which said, "It was a pleasure meeting with you to discuss a possibility of listing your property. After having you inform me of the apparent complex set of circumstances surrounding your property, we do not feel that we

could successfully market your property at this time." She was unable to sell her property in order to make those tax payments.

This amendment, the Minority Report, is trying to do something to help those few individuals who fall through the cracks for whatever reason and lose their home. It doesn't take away the municipalities ability to foreclose on the property, take the property and sell the property and get back all those back taxes that they are owed, all the fees and all it has cost them to sell the property. It even gives you a 25 percent penalty. A person who builds up a lifetime of equity should not lose everything because they fall on hard times. I urge you please not to vote with the Majority and pass the Minority Ought to Pass Report. Thank you.

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

Representative **RICHARDSON**: Mr. Speaker, Ladies and Gentlemen of the House. We have had a great debate here, but I think what we get down to is the way this bill is written. No town is going to suffer by having this bill passed. They are going to recover all their costs. They are going to recover all the fees and they are going to recover 25 percent on their investment. That is not a bad return and it doesn't leave the former owners with much money, probably and if there is, there is no reason why they shouldn't have it. Thank you.

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. 143

YEA - Andrews, Bennett, Berry, Berube, Bierman, Bliss, Bowen, Bowles, Brannigan, Breault, Brown R, Browne W, Bruno, Bull, Campbell, Churchill E, Churchill J, Cowger, Cressey, Crosthwaite, Daigle, Davis, Dunlap, Duplessie, Duprey B, Earle, Finch, Fischer, Fletcher, Gagne-Friel, Honey, Hotham, Jacobsen, Jennings, Jodrey, Kaelin, Kane, Ketterer, Koffman, Landry, Ledwin, Lemoine, Lessard, McCormick, McGowan, McKenney, McLaughlin, McNeil, Millett, Mills J, Mills S, Moody, Moore, Muse, Norbert, Nutting, Pineau, Rector, Richardson E, Richardson J, Rosen, Shields, Stone, Sukeforth, Sullivan, Suslovic, Sykes, Tardy, Tobin J, Trahan, Usher, Watson, Woodbury, Young.

NAY - Adams, Annis, Ash, Austin, Barstow, Blanchette, Bryant-Deschenes, Bunker, Canavan, Carr, Clark, Clough, Collins, Courtney, Craven, Cummings, Curley, Dudley, Duprey G, Eder, Faircloth, Gerzofsky, Glynn, Grose, Hatch, Heidrich, Hutton, Jackson, Laverriere-Boucher, Lerman, Lewin, Lundeen, Makas, Marley, McGlocklin, McKee, Murphy, Norton, O'Brien J, O'Brien L, O'Neil, Paradis, Patrick, Peavey-Haskell, Pellon, Percy, Perry A, Perry J, Pingree, Piotti, Richardson M, Rines, Rogers, Sampson, Saviello, Sherman, Simpson, Smith N, Smith W, Snowe-Mello, Thomas, Thompson, Tobin D, Treadwell, Twomey, Vaughan, Walcott, Wheeler, Wotton.

ABSENT - Dugay, Goodwin, Greeley, Joy, Maietta, Mailhot, Marraché, Mr. Speaker.

Yes, 74; No, 69; Absent, 8; Excused, 0.

74 having voted in the affirmative and 69 voted in the negative, with 8 being absent, and accordingly the Majority **Ought Not to Pass** Report was **ACCEPTED** and sent for concurrence. **ORDERED SENT FORTHWITH.**

The Speaker resumed the Chair.

The House was called to order by the Speaker.

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

The House recessed until 2:30 p.m.

(After Recess)

The House was called to order by the Speaker.

The **SPEAKER**: The Chair recognizes the Representative from Lewiston, Representative Makas who wishes to address the House on the record.

Representative **MAKAS**: Mr. Speaker, Men and Women of the House. Had I been present when the vote was taken on (6-5) LD 1110, I would have voted yea.

The **SPEAKER**: The Chair recognizes the Representative from Lewiston, Representative O'Brien who wishes to address the House on the record.

Representative **O'BRIEN**: Mr. Speaker, Men and Women of the House. If I would have been present on (6-5) LD 1110, I would have voted yea.

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

HOUSE DIVIDED REPORT - Majority (12) **Ought to Pass as Amended by Committee Amendment "A" (H-490)** - Minority (1) **Ought to Pass as Amended by Committee Amendment "B" (H-491)** - Committee on **NATURAL RESOURCES** on Bill "An Act To Protect Public Health by Reducing Human Exposure to Arsenic"

(H.P. 963) (L.D. 1309)

Which was **TABLED** by Representative KOFFMAN of Bar Harbor pending his motion to **ACCEPT** the Majority **Ought to Pass as Amended** Report.

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

The Bill was **READ ONCE**. **Committee Amendment "A" (H-490)** was **READ** by the Clerk and **ADOPTED**. The Bill was assigned for **SECOND READING** Thursday, May 22, 2003.

Nine Members of the Committee on **NATURAL RESOURCES** report in Report "A" **Ought to Pass as Amended by Committee Amendment "A" (H-492)** on Bill "An Act To Ensure the Safety of Children Touring Hazardous Facilities"

(H.P. 510) (L.D. 693)

Signed:

Senators:

MARTIN of Aroostook

EDMONDS of Cumberland

Representatives:

KOFFMAN of Bar Harbor

TWOMEY of Biddeford

HUTTON of Bowdoinham

MAKAS of Lewiston

TOBIN of Windham

JOY of Crystal

SAVIELLO of Wilton

Two Members of the same Committee report in Report "B" **Ought Not to Pass** on same Bill.

Signed:

Senator:

SAWYER of Penobscot

Representative:

ANNIS of Dover-Foxcroft

One Member of the same Committee reports in Report "C" **Refer to the Committee on Education and Cultural Affairs** on same Bill.

Signed:

Representative:

DAIGLE of Arundel

READ.

Representative KOFFMAN of Bar Harbor moved that the House **ACCEPT** Report "A" **Ought to Pass as Amended**.

Representative DAIGLE of Arundel **REQUESTED** a roll call on the motion to **ACCEPT** Report "A" **Ought to Pass as Amended**.

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 Arundel, Representative Daigle.

Representative **DAIGLE**: Mr. Speaker, Ladies and Gentlemen of the House. I would like to thank the sponsor of this bill for bringing this to our attention because it was obvious during the public hearing for this particular bill that there was a situation there that many people have a right to be concerned about. This issue is in regards to children who are brought to municipal waste incinerators for the purpose of school tours. These are very intense industrial environments and the question was raised about whether or not their safety is being adequately protected.

The way that the Majority Report has chose to resolve this matter is to require facilities to submit several reports to the schools and then the schools in turn send them to the parents. The issue is one potentially one of informed consent. I think that probably is a wise idea as well. The reason why I object to this bill and I ask you to vote against the pending motion is because I think our committee dealt with this out of context with the way the educational system currently deals with school tours. What quickly happened was we were gravitating into dealing with the overall policy of how do you take children and take them to industrial environments for school tours and be sure that you do so safely. We did not know. The reason why is because we didn't ask. We didn't deal with the Department of Education. Since this bill was passed out of committee we have learned that the Department of Education does in fact have a policy about when school tours are deemed to be appropriate for students. That policy was never reviewed by the committee so we have no idea what it says. What we are dealing with here is interfering with the process by which we take children and teach them about the environment.

We heard from several teachers opposed to this bill saying how they take their children, teach them about the rain forest, teach them about oceanography and teach them about the waste generated in their homes. Included in that a brief 15 or 20 minute peak inside a waste facility so that they are struck by the magnitude of solid waste generated in the household and then further on in school they add to it discussions about recycling, their own impacts in their families and so forth. It is considered a wonderful teaching tool.

Unfortunately the way this bill is now being resolved by the Majority Report, I believe the effect will be that school tours in these facilities will cease. It is impractical for a company to copy

its entire environmental reports records regarding this and send it to the schools and then for the schools to have the cost, this is important for you to understand, the schools will have to pay the costs of reproducing these documents, sending them home with each child for their parents to see out of context with what they mean.

Going back to my earlier point, there is probably an issue here about how this is decided. It may already be resolved by the Department of Education's policy, but other people in the Natural Resources Committee are really appropriate to handle this. I felt that we were totally out of our element in this thing. I ask for your support to defeat the pending motion so that perhaps the appropriate people in this body can deal with the appropriate policy. Thank you.

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

Representative **TOBIN**: Mr. Speaker, Ladies and Gentlemen of the House. People that belong to my caucus know that my good friend from Arundel, Representative Daigle, and I are quite often on different sides of an issue, as we are today. Usually I am right. Unfortunately, I feel like a salmon out of the water. With our best intentions and all the work that we put into this bill, I am afraid that Representative Daigle is now right and I was wrong. I think probably the committee on Education should have been the committee once we found the concerns that the Natural Resources Committee found, that we should have passed it onto the Committee on Education. I think can still do that if you will just join with me and vote against this bill. Thank you Mr. Speaker.

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

Representative **RICHARDSON**: Mr. Speaker, Ladies and Gentlemen of the House. I am glad that I didn't get to speak first because I know a little bit more now than I did before, which is always a good thing. I looked at this bill on the face of it and I couldn't see the logic of this particular bill. It seems to me that this assumed a right to tour the facility. I don't know if there is any such right that the school would have. In addition to that, it seems to me, that if there is a hazard present, they ought not to go. If the bill passes, it seems to me, that there will be no tours allowed because the operators won't want to deal with it. Therefore, it seems to me, that we will clutter up the books with a law that is going to have no effect because nobody is going to be able to use it or will use it. Thank you.

The SPEAKER: The Chair recognizes the Representative from Bar Harbor, Representative Koffman.

Representative **KOFFMAN**: Mr. Speaker, Ladies and Gentlemen of the House. I must say that I am in some agreement with my colleagues who have spoken so far. That is to say that I think the Department of Education should be engaged in issues related to visitation to industrial or other potentially hazardous sites. However, we did have a good deal of testimony from authorities on issues of air toxics. I recall one, who I won't have to name, who is an expert on toxicology, who said that I wouldn't send my children there. We feel it is time to step in with this legislation and at least restrict visits to incinerators where children are exposed to the dust and whatever is in the dust during a visit and limit the visit to 7 and 8, secondary schools and that while the entire record of a facility wouldn't be sent by the superintendent to parents. At least the air violations in the past two years at that facility would be listed so that parents could make their own decisions to whether they felt the facility was a safe place for their children. I think that is pretty minimal action on our part, hopefully coupled by the

Department of Education looking into this issue. Our kids will be safe. I appreciate your attention to it.

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

Representative **HUTTON**: Mr. Speaker, Men and Women of the House. I just wanted to give a parents perspective on this because I think the Natural Resources Committee was the right committee to hear it. We took in not only the toxicologist, but we had the Department of Labor come in to give us a little bit of background on how things were going. We discussed at length how schools would deal with this and how they have been dealing with it in the past. From a parent's perspective, I just want to tell you some of the things that come home with the child when they are going on a field trip. This is considered a field trip. We get information on where they are going and what they are going to be doing, along with a permission slip that you have to sign with your child's name on it to say that you give permission, where you will be at the time, what number you can be reached at. There is a lot of information that comes home. I think that it would be fairly easy for the school if they had the information in front of them to translate that into part of their letter that they sent home outlining what the child is going to be encountering when they go on this field trip.

I don't think it is going to cost thousands of dollars to do this. I think it is a minimal amount. I think what we require on the second page of the amendment was just a list of violations to the parents. If it is a good incinerator, maybe the list is only a paragraph long or less. If it is a bad incinerator and it goes on for a couple of paragraphs it might stop a teacher in her tracks or his tracks and say, wait a minute, if the violations are a page long, maybe we shouldn't be going there. It is our intention to just give forewarning to the teachers and the parents of what the child may be encountering when they go on the field trip. I think it is the least we can do. I hope you vote in favor of it. Thank you.

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

Representative **MAKAS**: Mr. Speaker, Men and Women of the House. I was involved in the writing of this amendment. I would like to clarify a couple of things. One of them is this bill is specific to incinerator facilities. The second thing that is important to remember is it says that children under the age of grade 7 shouldn't be touring facilities. For those children in grade 7 and above, simply a list of violations, air quality violations, needs to be sent to the superintendent of schools and shared with parents.

One of the things that we learned during the testimony that was relevant is that already the standards required that people going to visit these facilities need to wear safety helmets, safety vests and safety glasses. We felt that that might not be an appropriate place for very young children. At least we could let parents know what potential dangers might be there for children that were slightly older. Thank you.

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

ROLL CALL NO. 144

YEA - Adams, Ash, Bennett, Blanchette, Bliss, Brannigan, Breault, Bull, Bunker, Cowger, Craven, Cummings, Davis, Dudley, Dugay, Dunlap, Duplessie, Duprey G, Earle, Eder, Faircloth, Finch, Fischer, Gagne-Friel, Gerzofsky, Grose, Hatch, Hutton, Jennings, Joy, Kane, Ketterer, Koffman, Laverriere-Boucher, Lemoine, Lerman, Lessard, Lundeen, Makas, Marley, McGlocklin, McGowan, McKee, McLaughlin, Mills J, Norbert, Norton, O'Brien L, Paradis, Patrick, Pellon, Percy, Perry A,

Perry J, Pineau, Pingree, Piotti, Richardson J, Rines, Sampson, Simpson, Smith N, Smith W, Suslovic, Thomas, Thompson, Twomey, Walcott, Wheeler, Woodbury, Wotton, Mr. Speaker.

NAY - Andrews, Annis, Austin, Berry, Berube, Bierman, Bowen, Bowles, Brown R, Browne W, Bruno, Bryant-Deschenes, Campbell, Carr, Churchill E, Churchill J, Clark, Clough, Courtney, Cressey, Crosthwaite, Curley, Daigle, Fletcher, Greeley, Heidrich, Honey, Hotham, Jackson, Jacobsen, Jodrey, Kaelin, Landry, Ledwin, Lewin, Marraché, McCormick, McKenney, McNeil, Millett, Mills S, Moody, Moore, Murphy, Muse, Nutting, Peavey-Haskell, Rector, Richardson E, Richardson M, Rosen, Sherman, Shields, Snowe-Mello, Stone, Sukeforth, Sullivan, Sykes, Tobin D, Tobin J, Trahan, Treadwell, Usher, Watson, Young.

ABSENT - Barstow, Canavan, Collins, Duprey B, Glynn, Goodwin, Maietta, Mailhot, O'Brien J, O'Neil, Rogers, Saviello, Tardy, Vaughan.

Yes, 72; No, 65; Absent, 14; Excused, 0.

72 having voted in the affirmative and 65 voted in the negative, with 14 being absent, and accordingly Report "A" **Ought to Pass as Amended** was **ACCEPTED**.

The Bill was **READ ONCE**. **Committee Amendment "A" (H-492)** was **READ** by the Clerk and **ADOPTED**. The Bill was assigned for **SECOND READING** Thursday, May 22, 2003.

Nine Members of the Committee on **NATURAL RESOURCES** report in Report "A" **Ought to Pass as Amended** by **Committee Amendment "A" (H-494)** on Bill "An Act To Fund Municipal Collection of Household Hazardous Waste"

(H.P. 1135) (L.D. 1549)

Signed:

Senators:

MARTIN of Aroostook
EDMONDS of Cumberland
SAWYER of Penobscot

Representatives:

KOFFMAN of Bar Harbor
TWOMEY of Biddeford
HUTTON of Bowdoinham
MAKAS of Lewiston
SAVIELLO of Wilton
THOMPSON of China

Three Members of the same Committee report in Report "B" **Ought to Pass as Amended** by **Committee Amendment "B" (H-495)** on same Bill.

Signed:

Representatives:

DAIGLE of Arundel
JOY of Crystal
ANNIS of Dover-Foxcroft

One Member of the same Committee reports in Report "C" **Ought Not to Pass** on same Bill.

Signed:

Representative:

TOBIN of Windham

READ.

Representative KOFFMAN of Bar Harbor moved that the House **ACCEPT** Report "A" **Ought to Pass as Amended**.

Representative DAIGLE of Arundel **REQUESTED** a roll call on the motion to **ACCEPT** Report "A" **Ought to Pass as Amended**.

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 Arundel, Representative Daigle.

Representative **DAIGLE**: Mr. Speaker, Ladies and Gentlemen of the House. Breaking news in the Natural Resources Committee. We have learned that there is a budget crisis. We have learned that there is a budget shortfall and that many people are saying that we shall not impose new taxes. I got that word. A few other people, the majority of the committee didn't. What we have here is a new tax on paint and pesticides to begin a brand new state program. You will see from the fiscal note that we are dealing with a great deal of money.

I apologize to all the other committee members who saw other things happening this year, important programs, that were curtailed, new programs that they wish to start and couldn't, who thought to themselves that they would start a new tax. Maybe you held back, but here we have proposed just that, another new tax for a brand new program and one that I think is very unwise and one I think that will reflect badly upon this body should it pass for the following reasons. Number one, it is very important for household hazardous waste. There is not crisis. There is nothing broke with household hazardous waste other than the academic issue that we should be collecting it. I wish that too. We should have transportation for mental health programs. We should have more mental personal care attendants and more game wardens. We should collect household hazardous waste. However, there is no crisis because we are not doing so today, which I cannot say is the same for those other points.

When we dealt with tire piles, you could walk up to a tire pile and point to it and say that we need to do something about that now, but that is not the case with this. An important point that I wish you would remember when you decide whether or not you wish to support this new tax is that 80 percent of the revenue raised will be on non-hazardous materials. Go back home and tell your constituents we are going to raise taxes on hazardous waste and that is not true. Latex paint constitutes about 80 percent of the revenue that will be gathered from this particular new tax. You all know that whenever you use latex paint that when you wash the brushes and rollers in pans, you do so in your sink. Why do you do that? There is nothing wrong with latex paint. It is perfectly safe. A lot of people don't understand that. Think about it. You wash your brushes in your sink and that is fine.

When you stand in line at the Home Depot with a can of latex paint in your hand buying a new tax passed by the 121st, you will be collecting money so that perhaps somebody who may have an actual hazardous waste can somewhere back behind you in line will be subsidized by your new program. I really don't think the people of Maine are ready for more taxes. If by any stretch of the imagination they were ready for more taxes, I really can't imagine we would do it for this, not given everything else we have done without this year. We are doing it for this. When people understand that 80 percent of the money comes from a non-hazardous material, they are subsidizing someone else's behavior, I think they will be very angry. To that extent, the roll call is an excellent idea.

The final point I want to leave with you is that the report on this bill does find some money to continue the program. The program will not end on either report on this particular bill. It will continue the one-time collection programs. When you talk about whether or not we have done a good job or not, remember this, we have never asked the people of Maine who are generating household hazardous waste to contribute to their own disposal. Many people have told me their own stories. Well, I have cans in my basement. I will ask you, will you pay a buck to get rid of that can? Most of you would. The second question is, have you ever

been asked to pay a buck for that can? The answer is no. The only brand new government program they ever brought out to me is totally free. Raise taxes on everybody. Raise taxes on non-hazardous material to give totally free service to the person who gets no responsibility for their way because we won't even ask them to pay a dollar. It is really not the right time for this. I encourage you to vote against the pending motion.

The SPEAKER: The Chair recognizes the Representative from Bar Harbor, Representative Koffman.

Representative **KOFFMAN**: Mr. Speaker, Ladies and Gentlemen of the House. My good friend and astute Representative from Arundel makes some interesting points. He used to word tax 30 times in his floor speech and I don't see the word tax in this bill. The fee has three letters and so does the word tax. We have been working on this project for several years, that is to say getting control of the disposal of household hazardous waste, particularly pesticides and herbicides and other chemicals that too often end up poured down a drain or otherwise disposed of improperly and impacting our drinking water and our freshwater systems. It is true that the 20 cents a gallon fee on paint is part of the cost of subsidizing this program as is 20 cents on the purchase of pesticides and herbicides. I think that is a fairly modest fee to pay for supporting municipal disposal systems, which is where the money goes, to the municipalities, not to state government to spend, but to municipalities. The state is a pass through here. Ninety percent of the money goes to municipalities and 20 percent goes to educating both the general public through outreach activities relating a curriculum on how to manage household hazardous waste and that sort of thing that also the Department of Agriculture to again work with folks on proper disposal of pesticides used in agriculture. In any case, I think it is a very prudent measure for the state to take. It is not necessarily bold, it is just, I think, thoughtful. I really urge you to support it. We are going to have to get to this problem sooner or later. We think the time is now. I urge your support.

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

Representative **CARR**: Mr. Speaker, Men and Women of the House. I did not rise to speak as to whether or not we need to collect monies to help pay for the disposal and the proper disposal of hazardous material. What I did rise to speak on is the fact that we have seen these type of bills before where money was collected for a purpose and then not used for the purpose. I would draw your attention to the committee report that replaces the bill in the part in which 90 percent of the fees collected should be returned to the communities to help set up a process of disposing. If you look at the paragraph above that, rather than saying that this money must be sent to the local communities, it says it may be sent to the local communities. I submit to you that as long as the word may is in there this money will never reach the local communities. For those of you who have served on local town councils and local selectmen boards, you remember what has happened in the past on tire piles. We have had bond after bond. We have had money collected at the retail level. None of that money ever reached back to local communities. As a matter of fact, today, in the Town of Lincoln, in which I am chairman of the town council, we still have many tires and we have to dispose of those and we pay for the cost of that disposal.

My opinion on this is that this money will not be spent at the local level. It will be spent at the state level. When you cast your vote for this, I would ask that you keep that in mind.

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

Representative **DAIGLE**: Mr. Speaker, Men and Women of the House. Briefly, to respond to my good friend from Bar

Harbor, Representative Koffman, a fee is what I pay when I get my license renewed. A tax is what I pay when I buy a gallon of gas. A tax is what I will pay when I buy a gallon of paint. The newspapers call it a tax. The Chief Executive calls it a tax and you know the people back home call it a tax. Thank you.

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

ROLL CALL NO. 145

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

NAY - Andrews, Annis, Ash, Austin, Berry, Bierman, Bowen, Bowles, Brown R, Browne W, Bruno, Bryant-Deschenes, Campbell, Carr, Churchill J, Clark, Clough, Courtney, Cressey, Crosthwaite, Curley, Daigle, Fletcher, Glynn, Greeley, Heidrich, Honey, Hotham, Jacobsen, Jennings, Jodrey, Joy, Kaelin, Landry, Ledwin, Lewin, McCormick, McGowan, McKenney, McNeil, Millett, Moore, Murphy, Muse, Nutting, O'Brien J, Peavey-Haskell, Richardson E, Richardson M, Rosen, Sherman, Shields, Snowe-Mello, Stone, Sukeforth, Sykes, Tobin D, Tobin J, Trahan, Treadwell, Vaughan, Wotton, Young.

ABSENT - Barstow, Berube, Churchill E, Collins, Duprey B, Duprey G, Goodwin, Maietta, Mailhot, Patrick, Rogers, Saviello, Tardy.

Yes, 75; No, 63; Absent, 13; Excused, 0.

75 having voted in the affirmative and 63 voted in the negative, with 13 being absent, and accordingly Report "A" Ought to Pass as Amended was **ACCEPTED**.

The Bill was **READ ONCE**. **Committee Amendment "A" (H-494)** was **READ** by the Clerk and **ADOPTED**. The Bill was assigned for **SECOND READING** Thursday, May 22, 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. 96) (L.D. 262) Bill "An Act To Require That Disciplinary, Attendance and Health Records Be Included in the Records That Follow a Student Who Transfers to Another School" Committee on **EDUCATION AND CULTURAL AFFAIRS** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-189)**

(S.P. 111) (L.D. 329) Bill "An Act to Encourage the Use of Generic Drugs" Committee on **HEALTH AND HUMAN SERVICES** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-191)**

(S.P. 151) (L.D. 433) Bill "An Act to Expand Payment Options on Sales of Alcoholic Beverages by Licensees" Committee on **LEGAL AND VETERANS AFFAIRS** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-188)**

(S.P. 193) (L.D. 553) Resolve, To Study the Needs of Deaf and Hard-of-hearing Children and Adolescents (EMERGENCY) Committee on **HEALTH AND HUMAN SERVICES** reporting

Ought to Pass as Amended by Committee Amendment "A" (S-182)

(S.P. 299) (L.D. 903) Resolve, To Amend the 2-year Qualified Medicare Beneficiary Eligibility Rule Relative to Medicare Supplement Insurance Access Committee on **HEALTH AND HUMAN SERVICES** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-199)**

(S.P. 310) (L.D. 969) Bill "An Act To Ensure Equity in Mortgage Volume Fees" Committee on **BUSINESS, RESEARCH AND ECONOMIC DEVELOPMENT** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-186)**

(S.P. 327) (L.D. 986) Bill "An Act To Enact the Uniform Interstate Family Support Act Amendments of 1996 and 2001" Committee on **JUDICIARY** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-207)**

(S.P. 330) (L.D. 989) Bill "An Act To Transfer Speech Pathologist Licensure Functions to the Department of Education" Committee on **BUSINESS, RESEARCH AND ECONOMIC DEVELOPMENT** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-185)**

(S.P. 371) (L.D. 1099) Bill "An Act To Amend the Laws Governing the Maine Developmental Disabilities Council" Committee on **HEALTH AND HUMAN SERVICES** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-183)**

(S.P. 418) (L.D. 1287) Bill "An Act To Amend the Life Safety Requirements for Residential Care Facilities" Committee on **HEALTH AND HUMAN SERVICES** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-192)**

(S.P. 419) (L.D. 1288) Bill "An Act To Increase Public Access to the Prior Authorization Process" Committee on **HEALTH AND HUMAN SERVICES** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-197)**

(S.P. 425) (L.D. 1294) Bill "An Act To Amend the Motor Vehicle Franchise Law" Committee on **BUSINESS, RESEARCH AND ECONOMIC DEVELOPMENT** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-184)**

(S.P. 492) (L.D. 1486) Bill "An Act To Comply with Federal Election Laws Including the Help America Vote Act of 2002" Committee on **LEGAL AND VETERANS AFFAIRS** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-178)**

(S.P. 494) (L.D. 1488) Bill "An Act To Extend Licensing Periods for Agencies Providing Mental Health Services" Committee on **HEALTH AND HUMAN SERVICES** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-198)**

(S.P. 501) (L.D. 1501) Bill "An Act To Amend the Laws Relating to the Maine State Retirement System" Committee on **LABOR** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-179)**

(S.P. 516) (L.D. 1537) Bill "An Act To Clarify that the Maine Military Authority Is Part of the Military Bureau" (EMERGENCY) Committee on **LEGAL AND VETERANS AFFAIRS** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-181)**

(S.P. 532) (L.D. 1573) Bill "An Act To Make Minor Changes to the Required Law Enforcement Policies" Committee on **CRIMINAL JUSTICE AND PUBLIC SAFETY** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-203)**

(S.P. 541) (L.D. 1582) Bill "An Act To Protect Critical Homeland Security Information" Committee on **JUDICIARY** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-190)**

(S.P. 542) (L.D. 1583) Bill "An Act Concerning the Animal Health and Disease Control Laws" Committee on **AGRICULTURE, CONSERVATION AND FORESTRY** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-187)**

(H.P. 1134) (L.D. 1548) Bill "An Act To Amend the Election Laws" Committee on **LEGAL AND VETERANS AFFAIRS** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-496)**

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 and the House Paper was **PASSED TO BE ENGROSSED as Amended** and sent for concurrence.

(S.P. 521) (L.D. 1552) Bill "An Act To Allocate a Portion of the Reed Act Distribution of 2002 To Use for the Administration of the Unemployment Insurance and Employment Services Programs" Committee on **LABOR** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-180)**

On motion of Representative DUNLAP of Old Town, was **REMOVED** from the First Day Consent Calendar.

The Committee Report was **READ**.

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

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

**BILLS IN THE SECOND READING
Senate as Amended**

Bill "An Act Repealing the Charter of the Brewer Water District"

(S.P. 547) (L.D. 1594)
(C. "A" S-176)

House

Bill "An Act to Ensure Patient Access to Medical Records"

(H.P. 283) (L.D. 363)

House as Amended

Bill "An Act to Require Disclosure of Retail Prescription Drug Prices"

(H.P. 111) (L.D. 102)
(C. "B" H-463)

Bill "An Act To Require Full Disclosure of Prescription Drug Marketing Costs"

(H.P. 209) (L.D. 254)
(C. "A" H-465)

Bill "An Act To Change the Time Requirement for Mental Retardation Evaluations"

(H.P. 1085) (L.D. 1480)
(C. "A" H-471)

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

Bill "An Act To Provide Collective Bargaining Rights to Certain Forest Products Workers"

(H.P. 972) (L.D. 1318)
(C. "A" H-440)

Was reported by the Committee on **Bills in the Second Reading** and **READ** the second time.

On motion of Representative BRUNO of Raymond, was **SET ASIDE**.

The same Representative moved that the Bill be **TABLED** pending **PASSAGE TO BE ENGROSSED as Amended** and specially assigned for Thursday, May 22, 2003.

Representative DUNLAP of Old Town **REQUESTED** a division on the motion to **TABLE**.

Subsequently, Representative DUNLAP of Old Town **WITHDREW** his **REQUEST** for a division.

Subsequently, the Bill was **TABLED** pending **PASSAGE TO BE ENGROSSED as Amended** and specially assigned for Thursday, May 22, 2003.

**ENACTORS
Mandate**

An Act to Control County Jail and Correctional Facility Health Care Expenses Incurred outside the Facilities

(H.P. 585) (L.D. 808)
(S. "A" S-167 to C. "A" H-365)

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

On motion of Representative RECTOR of Thomaston, the rules were **SUSPENDED** for the purpose of **RECONSIDERATION**.

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

On further motion of the same Representative, the rules were **SUSPENDED** for the purpose of **FURTHER RECONSIDERATION**.

On further motion of the same Representative, the House **RECONSIDERED** its action whereby **Committee Amendment "A" (H-365) as Amended by Senate Amendment "A" (S-167)** thereto was **ADOPTED**.

On further motion of the same Representative, the rules were **SUSPENDED** for the purpose of **FURTHER RECONSIDERATION**.

On further motion of the same Representative, the House **RECONSIDERED** its action whereby **Senate Amendment "A" (S-167) to Committee Amendment "A" (H-365)** was **ADOPTED**.

On motion of Representative RICHARDSON of Brunswick, **TABLED** pending **ADOPTION** of **Senate Amendment "A" (S-167) to Committee Amendment "A" (H-365)** and later today assigned.

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 (11) Ought Not to Pass - Minority (2) Ought to Pass as Amended by Committee Amendment "A" (H-438) - Committee on LEGAL AND

VETERANS AFFAIRS on Bill "An Act To Ensure Fairness in Elections"

(H.P. 940) (L.D. 1268)

TABLED - May 20, 2003 (Till Later Today) by Representative CLARK of Millinocket.

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

Subsequently, 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**.

HOUSE DIVIDED REPORT - Majority (7) Ought to Pass as Amended by Committee Amendment "A" (H-441) - Minority (6) Ought Not to Pass - Committee on LABOR on Bill "An Act Concerning Retirement Benefits for State Employees"

(H.P. 730) (L.D. 1009)

TABLED - May 20, 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, Men and Women of the House. According to the analysis from the Labor Committee, the bill will create an unfunded liability, which is not allowed under the Maine state law and it is going to cost about \$76,000, slightly over. The actual cost was not calculated because we didn't ask the Maine State Retirement System to do that. The general purpose of the bill was to give credit to those employees during the past two years, had to take three unpaid leave days as a measure of reducing the budget deficit. This bill will credit those days as though the employees had actually worked for those three days and they will get credit toward their retirement. The \$76,000 that is the fiscal note in the bill is the state's share of that. The employees would have to pick up their share of the costs as well.

The reason that I am on the Ought Not to Pass side of this bill is because of the unfunded liability and the cost at the time when the state doesn't have that money to contribute to the Maine State Retirement System. I would ask you to oppose the pending motion. Mr. Speaker, I would ask for 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 Bath, Representative Watson.

Representative **WATSON**: Mr. Speaker, Ladies and Gentlemen of the House. The Representative from Carmel, Representative Treadwell, is certainly correct. There is a \$76,000 fiscal note on this. That note, however, was an estimate based on a projection that every employee eligible for retirement would voluntarily pay his contribution for the three or four days of furlough days and those furlough days would then be credited to his retirement. It is almost impossible to estimate how many employees that actually applies to. Naturally the fiscal note of \$76,000, the estimate, on the unfunded liability would be if every employee that this could conceivably apply to took advantage of it. Remember the employee would have to pay his own share of the retirement contribution in order to take advantage of that. It

would just apply to employees whose earnings are contingent on his earning in the last couple years, in other words, people ready to retire right away. The \$76,000 figure is a very high one in my estimation. It could be that much. It could be lower. On the other hand, it could be that much. It could be lower. On the other hand, these employees, as you well know, as this body probably knows better than anyone else, we are forced to take furlough days without pay and those days are extracted from their potential retirement benefit. The majority of the committee felt that those employees ought to have the option of buying back into the system, securing those three days if that is important to their retirement plans, they ought to have the option to do that. Therefore, I would encourage you to accept the majority position on 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. 146

YEA - Adams, Ash, Bennett, Blanchette, Bliss, Brannigan, Breault, Brown R, Bull, Bunker, Canavan, Carr, Churchill J, Clark, Cowger, Craven, Cummings, Davis, Dudley, Dunlap, Duplessie, Duprey G, Earle, Eder, Faircloth, Finch, Fischer, Gagne-Friel, Gerzofsky, Grose, Hatch, Hotham, Hutton, Jackson, Jennings, Kane, Ketterer, Koffman, Landry, Laverriere-Boucher, Lemoine, Lerman, Lessard, Lundeen, Makas, Marley, Marraché, McCormick, McGlockin, 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 E, Richardson J, Rines, Sampson, Simpson, Smith N, Smith W, Sullivan, Suslovic, Thomas, Thompson, Tobin D, Twomey, Usher, Walcott, Watson, Wheeler, Woodbury, Wotton, Mr. Speaker.

NAY - Andrews, Annis, Austin, Berry, Berube, Bierman, Bowen, Bowles, Browne W, Bruno, Campbell, Clough, Courtney, Cressey, Crosthwaite, Curley, Daigle, Fletcher, Glynn, Greeley, Heidrich, Honey, Jacobsen, Jodrey, Joy, Kaelin, Ledwin, Lewin, McKenney, McNeil, Millett, Mills S, Murphy, Muse, Nutting, O'Brien J, Peavey-Haskell, Rector, Richardson M, Rosen, Sherman, Shields, Snowe-Mello, Stone, Sukeforth, Sykes, Tardy, Tobin J, Trahan, Treadwell, Vaughan, Young.

ABSENT - Barstow, Bryant-Deschenes, Churchill E, Collins, Dugay, Duprey B, Goodwin, Maietta, Mailhot, McGowan, Rogers, Saviello.

Yes, 87; No, 52; Absent, 12; Excused, 0.

87 having voted in the affirmative and 52 voted in the negative, with 12 being absent, and accordingly the Majority Ought to Pass as Amended Report was **ACCEPTED**.

The Bill was **READ ONCE**. **Committee Amendment "A" (H-441)** was **READ** by the Clerk and **ADOPTED**. The Bill was assigned for **SECOND READING** Thursday, May 22, 2003.

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

Bill "An Act To Allow a Worker at a Beano Game To Play the Cards of a Player Who Takes a Restroom Break"

(H.P. 775) (L.D. 1057)

(C. "A" H-404)

TABLED - May 19, 2003 (Till Later Today) by Representative RICHARDSON of Brunswick.

PENDING - **PASSAGE TO BE ENGROSSED**. (Roll Call Ordered)

Representative SUKEFORTH of Union **PRESENTED House Amendment "A" (H-462)**, which was **READ** by the Clerk.

The SPEAKER: The Chair recognizes the Representative from Union, Representative Sukeforth.

Representative **SUKEFORTH**: Mr. Speaker, Ladies and Gentlemen of the House. You really don't need to go shuffling through your papers looking for this amendment. It is four simple words, which adds to the end of the bill, or a smoking break. That makes the bill read, "A person conducting or assisting in the conduct of beano may assist a player by playing that players cards while the player takes a restroom break or a smoking break."

The reason I offered this floor amendment was because of a concern that was given to me by a constituent that is involved in the beano playing. I will be the first to admit that I am out of touch with that segment of my constituency and I really don't understand the beano culture, but his concern was the original bill allowing a break for restroom breaks and if that bill should pass, administering that bill, that if a person should ask for a restroom break and indeed they don't go for a restroom break, but they go to have a cigarette instead, what does that mean to him? I said that I didn't know and perhaps somebody on the committee could further explain the original bill, but that is why I present this amendment.

Representative CLARK of Millinocket moved that **House Amendment "A" (H-462)** be **INDEFINITELY POSTPONED**.

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

Representative **CLARK**: Mr. Speaker, Ladies and Gentlemen of the House. You will remember that this body the other day passed a non-smoking for beano halls. All this amendment does is add a break for people that want to go and have a cigarette. Of the beano halls that we have in the state now, the people that do not have smoking in the beano halls allow a 10 or 15 minute intermission between four or five games. This amendment is really not necessary for smoking breaks for people to play their cards. What they do is they have four or five games, they take a 10 or 15 minute intermission, they come back and they play five or 10 more games, have another 10 to 15 minute intermission, then they play the rest of the games totaling up to the total amount of games played at the end of the night. I believe this amendment is not necessary. Mr. Speaker, I request the yeas and nays.

Representative CLARK of Millinocket **REQUESTED** a roll call on the motion to **INDEFINITELY POSTPONE House Amendment "A" (H-462)**.

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**: Point of Order Mr. Speaker.

The SPEAKER: The Representative may state his point of order.

Representative **DUNLAP**: Mr. Speaker, I believe the pending question is passage to be engrossed.

The SPEAKER: The pending question is adoption of House Amendment "A" and the Representative from Millinocket moved Indefinite Postponement of House Amendment "A" and that is the pending question. The Representative may proceed.

Representative **DUNLAP**: Mr. Speaker, I may be in error, but I never heard a motion to Reconsider passage to be engrossed.

The SPEAKER: The bill is pending engrossment. That is the clarification that the Representative seeks.

The Chair recognizes the Representative from Arundel, Representative Daigle.

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

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

Representative **DAIGLE**: Thank you Mr. Speaker. Regarding this break, are there any limitations to the duration of a break? In other words, could it be five minutes or could it be a matter of hours? The person could use this as a method of having a surrogate play the game through an extended period of time?

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

Representative **CLARK**: Mr. Speaker, Ladies and Gentlemen of the House. To the good Representative from Arundel, every beano or bingo facility has its own house rules. They have to abide by the house rules when they play in those games.

The **SPEAKER**: The Chair recognizes the Representative from Union, Representative Sukeforth.

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

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

Representative **SUKEFORTH**: Mr. Speaker, Ladies and Gentlemen of the House. A little bit earlier the Representative from Millinocket, Representative Clark, stated that beano halls have a break every so often and they especially will be doing that now that we have passed the no smoking ban. My question is, is that break only for smoking or can somebody go to the restroom during that break? If they can, why are we passing this bill for a restroom break?

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

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

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

Representative **SHIELDS**: Mr. Speaker, Ladies and Gentlemen of the House. Thank you Mr. Speaker. Is there a statute that says that someone else can't play your cards while you are away from your table?

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

Representative **PATRICK**: Mr. Speaker, Men and Women of the House. To the good Representative from Auburn, I am actually the sponsor of this piece of legislation. Yes, currently right now it is illegal for anyone to watch anyone's card if they get up from the table for any reason whatsoever. That is basically the idea behind this. I am not going to speak on anything, but the indefinite postponement because I learned a valuable lesson early in the session when the good Speaker says only speak to the motion. I will say that I am going to be voting for Indefinite Postponement on this amendment. Once we get rid of this, then I will explain a little bit more about the bill. Thank you.

The **SPEAKER**: A roll call has been ordered. The pending question before the House is Indefinite Postponement of House Amendment "A" (H-462). All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 147

YEA - Adams, Ash, Bennett, Blanchette, Bliss, Brannigan, Breault, Brown R, Bull, Bunker, Canavan, Clark, Cowger, Craven, Cummings, Daigle, Dudley, Dunlap, Duplessie, Duprey G, Earle,

Faircloth, Finch, Fischer, Gagne-Friel, Gerzofsky, Grose, Hatch, Hutton, Jackson, Jennings, Kane, Ketterer, Koffman, Landry, Lemoine, Lerman, Lessard, Lundeen, Makas, Marley, Marraché, McGlocklin, McGowan, McKee, McLaughlin, Moody, Murphy, Norbert, Norton, O'Brien L, O'Neil, Paradis, Patrick, Pellon, Percy, Perry J, Pineau, Piotti, Richardson J, Rines, Sampson, Simpson, Smith N, Smith W, Sullivan, Suslovic, Thomas, Thompson, Twomey, Usher, Walcott, Watson, Wheeler, Woodbury, Wotton, Mr. Speaker.

NAY - Andrews, Austin, Berry, Berube, Bierman, Bowen, Bowles, Browne W, Bruno, Campbell, Carr, Churchill J, Courtney, Cressey, Crosthwaite, Curley, Davis, Eder, Fletcher, Glynn, Greeley, Heidrich, Honey, Hotham, Jacobsen, Jodrey, Joy, Kaelin, Laverriere-Boucher, Ledwin, Lewin, McCormick, McKenney, McNeil, Millett, Mills J, Mills S, Moore, Muse, Nutting, O'Brien J, Peavey-Haskell, Perry A, Pingree, Rector, Richardson E, Richardson M, Rosen, Sherman, Shields, Snowe-Mello, Stone, Sukeforth, Sykes, Tardy, Tobin D, Trahan, Treadwell, Vaughan, Young.

ABSENT - Annis, Barstow, Bryant-Deschenes, Churchill E, Clough, Collins, Dugay, Duprey B, Goodwin, Maietta, Mailhot, Rogers, Saviello, Tobin J.

Yes, 77; No, 60; Absent, 14; Excused, 0.

77 having voted in the affirmative and 60 voted in the negative, with 14 being absent, and accordingly **House Amendment "A" (H-462) was INDEFINITELY POSTPONED.**

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

Representative **BOWLES**: Mr. Speaker, Ladies and Gentlemen of the House. Frankly, I don't have a great deal of interest in this bill one way or the other as I am not a bingo player. I wasn't particularly opposed to it and I am not now, but a question was raised in my mind about the necessity for this legislation. When I hear the chair of the committee state just a couple moments ago that the bingo hall operators have regularly scheduled breaks anyway, it makes me wonder why we need this piece of legislation. If we do need it, that is fine. As I say, I am not particularly opposed, but what is the point of passing a law if this problem is already being taken care of at level of the operators. Both statements can't be true. It can't be true that we both need the law and that the chair of the committee is correct. One or the other is in conflict here.

The **SPEAKER**: The Chair recognizes the Representative from Rumford, Representative Patrick.

Representative **PATRICK**: Mr. Speaker, Men and Women of the House. I presented this legislation for one reason. This bill is actually to protect non-profits whether you're a religious group, a veteran's organization or not from the instance of the possibility if a bingo inspector came to your non-profit, whether you have scheduled bathroom breaks or not, if somebody, I will basically use the same verbiage I used in committee, if an 85 or 90 year old lady or gentleman with a bladder control problem gets up out of their chair and says to one of the two or three bingo workers that I have to run, could you watch my cards? The State Police state at the hearing if they were caught dobbing the card of someone who took a bathroom break and you watched their card, they would lose their license.

Getting back to the good Representative from Arundel, Representative Daigle's point about making money, the non-profits in the greater Rumford area combined probably give to their local charities, I would have to estimate between \$200,000 and \$300,000 a year. I am extremely proud of that. My sole purpose is protecting the non-profits. You say, can you ask all

the bingos to have two or three extra bathroom breaks? Yes you can. Am I willing to do that and are they willing to do that? I don't know. I have asked them, but the way the dynamics of bingo work, Representative Clark was right. In our non-smoking bingos after three games we have a smoke break. People can run to the bathroom and they can run and have a cigarette. We then play three more games and there is a 15-minute intermission. You can take care of business and you can have a couple cigarettes, whatever you want to after then, but the way most bingos work now from the halfway point until the end there is not break. Can they have breaks if they wanted to? Yes, they can. For the rare instance, I do believe probably some do watch cards. I would hate to have a non-profit lose their license, lose \$50,000 worth of revenue that they give to the charities. That is why this legislation is put in. Can we ask them all nicely to have a bathroom break in the second half? Yes we can, but I put this bill in for the reason that I don't think they have to. Even if they did, if one person did and the inspector got there, it would be a shame to take their license away.

We did hear testimony also that this could probably result in more complaints. The good representative from the State Police didn't say how many complaints they are getting now nor do I believe they mentioned anything about how many cases they took to trial, nor did they say how many other cases of complaints. It was also suggested and asked me from questions about the possibility of cheating. The one thing I know about gambling, whether it be bingo, lottery or anything, people can find a way to cheat. They are doing it now. I don't believe this would increase cheating if there is any going on now. In reality, in a nutshell, this bill is actually to keep non-profits from losing their license if someone made a mistake or if they did it on purpose and watched the cards. I have been doing this for 30 years as a floor worker at bingos and as a caller at bingos and I probably can't remember of more than 200 or 300 times over the 30 years that I have actually had people ask me to do this. Is this a big problem? I don't believe it is a big problem. Like I said, once again, there is no way I would like to see a non-profit lose their license for something as simple as watching the cards of someone who had to go to a bathroom break.

Somebody asked me also, why don't you include a lot of things? I said for the benefit of bingos, I think that with as narrow a scope as possible, the bill probably would pass. Also, we got an awful lot of TV time and radio time probably being the butt of the funniest bill this year. I am not sure, but I take it serious. Like I said, I have been involved for 30 years. Almost every one of you have bingos in your communities or close by and stuff. All I can ask you is if you believe it is good to protect non-profits, then vote for it. If not, then don't support it. Thank you.

Representative DUNLAP of Old Town assumed the Chair.
The House was called to order by the Speaker Pro Tem.

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

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

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

Representative MCKENNEY: Thank you Mr. Speaker. I believe I heard the previous speaker, the Representative from Rumford, refer to the bingo inspectors. I am wondering how often a bingo game gets inspected? I am also finding it curious the we have bingo inspectors, but not liquor inspectors/

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

Representative CLARK: Mr. Speaker, Ladies and Gentlemen of the House. To the good Representative from Cumberland, we have what is called gaming officials that go and inspect gaming facilities. They are a part of the Maine State Police. As the good Representative from Cumberland knows, it has various parts of jurisdiction throughout the state government. I believe one of the jurisdictions is the committee that he serves on. What they do is most likely if a beano facility, non-profit facility, say for example the VFW, if there is a complaint and they are looked at and investigated thoroughly for that complaint, say the good Representative from Cumberland is playing that game of beano in a VFW in Cumberland and he gets up and goes to the restroom and his volunteer staff goes and dabs his cards for him, they can turn the VFW post in for a violation of the law and they can lose their license.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Hodgdon, Representative Sherman.

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

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

Representative SHERMAN: If we have a gentleman who goes out to use the restroom and instead goes out and has a smoke and he has won while he is out smoking, what happens to the prize?

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

Representative O'BRIEN: Mr. Speaker, Colleagues of the House. I certainly have respect for the Representative from Rumford, Representative Patrick. He seems to be very responsive to the desires and needs of his constituents. I share with him the opinion that non-profits and volunteers are definitely the backbone of our communities. However, because of the length of this debate and the many, many questions that have been asked, this seems to be one of those times, albeit, rare times, when this body and the body at the other end of the hall in our good wisdom and in our efforts to serve our constituents, we cause many, many more questions and confusion and problems than we would have had we left it alone.

Representative DUDLEY of Portland REQUESTED that the Clerk READ the Committee Report.

The Clerk READ the Committee Report in its entirety.

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

Representative PATRICK: Mr. Speaker, Men and Women of the House. Just to clarify a couple of points that I forgot. This bill does not make it mandatory on every bingo hall. This bill basically takes away the penalty of losing your license. The reason it does that is because not every bingo hall has enough workers to take care of problems if there are several people that want to go, nor philosophically there are those that say they won't do this because they don't like the idea. The only point that I am trying to make is if they do decide to, then they won't lose their license. Thank you.

The SPEAKER PRO TEM: A roll call has been ordered. The pending question before the House is Passage to be Engrossed. All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 148

YEA - Adams, Ash, Bennett, Bliss, Brannigan, Breault, Brown R, Bruno, Bull, Bunker, Clark, Cowger, Cressey, Cummings, Daigle, Dugay, Dunlap, Duplessie, Earle, Eder, Faircloth, Finch, Fischer, Fletcher, Gagne-Friel, Gerzofsky, Glynn, Grose, Hatch, Hotham, Hutton, Jackson, Jennings, Kaelin, Kane, Ketterer, Koffman, Landry, Lemoine, Lerman, Lessard, Lundeen, Mailhot, Makas, Marley, Marraché, McCormick, McGlocklin, McGowan, McKee, McLaughlin, Mills J, Mills S, Moody, Moore, Norbert, Paradis, Patrick, Pellon, Percy, Perry A, Perry J, Pineau, Pingree, Piotti, Richardson E, Richardson J, Sampson, Simpson, Smith N, Smith W, Sullivan, Suslovic, Thompson, Twomey, Usher, Walcott, Watson, Wheeler, Woodbury, Wotton.

NAY - Andrews, Austin, Berry, Bierman, Blanchette, Bowen, Bowles, Browne W, Campbell, Canavan, Carr, Churchill J, Clough, Courtney, Craven, Crosthwaite, Curley, Davis, Dudley, Duprey G, Greeley, Heidrich, Honey, Jacobsen, Jodrey, Joy, Laverriere-Boucher, Ledwin, Lewin, McKenney, McNeil, Millett, Murphy, Norton, Nutting, O'Brien J, O'Brien L, Rector, Richardson M, Rosen, Sherman, Shields, Snowe-Mello, Stone, Sukeforth, Sykes, Tardy, Thomas, Tobin D, Trahan, Treadwell, Young.

ABSENT - Annis, Barstow, Berube, Bryant-Deschenes, Churchill E, Collins, Duprey B, Goodwin, Maietta, Muse, O'Neil, Peavey-Haskell, Rines, Rogers, Saviello, Tobin J, Vaughan, Mr. Speaker.

Yes, 81; No, 52; Absent, 18; Excused, 0.

81 having voted in the affirmative and 52 voted in the negative, with 18 being absent, and accordingly the Bill was **PASSED TO BE ENGROSSED as Amended** and sent for concurrence.

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

Bill "An Act To Provide That Employee Terminations by Any Company That Receives Monetary Benefits from the State Require Just Cause"

(H.P. 860) (L.D. 1163)

- In House, **FAILED OF PASSAGE TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-175)** on May 12, 2003.

- In Senate, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-175)** in **NON-CONCURRENCE**.

TABLED - May 15, 2003 (Till Later Today) by Representative SMITH of Van Buren.

PENDING - Motion of same Representative to **RECEDE and CONCUR**.

Subsequently, Representative SMITH of Van Buren **WITHDREW** his motion to **RECEDE AND CONCUR**.

On motion of the same Representative, the House voted to **RECEDE**.

The same Representative **PRESENTED House Amendment "A" (H-497)**, which was **READ** by the Clerk.

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 amendment changes the application of the prohibition for termination of an employee without just cause. It

applies only to employees who have been employed by that business for a year or more. Thank you.

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

Representative **TREADWELL**: Mr. Speaker, Ladies and Gentlemen of the House. I appreciate the good Representative from Van Buren, Representative Smith's amendment, however, I don't think that it really does a lot to change the intent of the bill by allowing a company or by exempting those employees who have only been employed for a year or less does not really change the impact of this bill to any great extent. It is still going to be, I think, a hindrance to economic development for all of those companies that take advantage of the tax incentive programs that are listed in the bill, plus the new program coming along very shortly that the Chief Executive is pushing forward, the Pine Tree Zones. It is going to have a very serious impact, I think, on the Pine Tree Zones. Therefore, I don't think that it is the best interest of the State of Maine to pass this bill. It is going to have a negative impact on business. I had an inquiry. Oh, I'm sorry Mr. Speaker, that was on another just cause bill that I got that inquiry. We have so many of them it is hard to keep track. I would ask for a roll call vote on this amendment.

Representative **TREADWELL** of Carmel **REQUESTED** a roll call on the motion to **ADOPT House Amendment "A" (H-497)**.

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 Biddeford, Representative Sullivan.

Representative **SULLIVAN**: Mr. Speaker, Ladies and Gentlemen of the House. It is my understanding on LD 1163 that this affects only companies with 50 or more employees. The Pine Tree Zones are not set up for bringing in companies of 51 or 100 people. That, I would say, is probably not a factor. I am fairly familiar with the Pine Tree Zones. Number two, 90 percent of our businesses are at 25 or fewer. Fifty is another double of that. We simply use the federal definition of small business. This simply says that Maine citizens who are the workers that keep Maine businesses going, the workers, that when they are paying taxes into their state, they ought to at least be given just cause if their tax money is being given back to corporations for being able to get this money. I would truly say that if you pay in you ought to get something called just cause, a little protection. Unions offer it. Schools offer it. The state offers it. Certainly people who are working and paying to make the BETR Program and other incentives work deserve just cause after they have been with a company for a year or more. Thank you.

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

Representative **SMITH**: Mr. Speaker, Ladies and Gentlemen of the House. We keep hearing the argument that somehow giving a worker or treating a worker fairly is going to have a negative impact on economic development and somehow it is going to hinder economic development. I don't think that has been proven to be the case in this state. Just cause exists in our educational systems as a routine matter of the employer employee relationship. They haven't fallen apart because of that. We have seen it in our own state workers. They are producing for this state. We see that with the paper companies and they are producing. There is no evidence whatsoever that giving the workers just cause somehow makes them inefficient or takes away anything from the development of the state. The most developed areas of our industry all have this just cause. We ask you to vote so that this bill can be passed.

The **SPEAKER PRO TEM**: The Chair recognizes the Representative from Oxford, Representative Heidrich.

Representative **HEIDRICH**: Mr. Speaker, Ladies and Gentlemen of the House. Those of us that have been in business have one asset that makes our business successful and that is our employees. If you have a good employee, your business will grow. If an employee is not good, he is a deterrent to the business and he will hurt you and the rest of your employees. I ask you, please, to help small business, put this to Ought Not to Pass and hit the red light. Thank you.

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

Representative **TREADWELL**: Mr. Speaker, Ladies and Gentlemen of the House. I would like to explain or reply to the good Representative from Biddeford's comments. Anybody working in the State of Maine who is working under a union contract or a salutatory position in a municipality or any other type of contract is protected from termination of employment and must have just cause for that termination. All other employees in the State of Maine are what we call at will employees. That has been the standard from way, way back. I can't tell you how long back, but it has always been the standard here. We are an at will employment state and it has worked very well. If we require just cause in this case where it is a very narrow exception to the at will standard, but it is still expanding the just cause requirement. It is not good for business.

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

Representative **WATSON**: Mr. Speaker, Ladies and Gentlemen of the House. I would like just to follow up on the words from the Representative from Oxford, Representative Heidrich. I certainly agree and I appreciate the comment that an employee is a businesses most valuable asset. Just cause does not mean that that employee would have to shoot his boss in the foot in order to get fired. If you have a bad employee who cannot conform, then you fire him. Just cause is just that. The courts have looked at it as any reasonable reason for termination. If it is nonconformance, disobedience, insubordination or theft, then you fire him. That is just cause. What is not just cause is simply saying that I don't like the way the guy holds his mouth or for economic reasons or other reasons that you don't want to count as a layoff, which is perfectly allowable under this bill. You would simply let him go for no reason at all. That is at will. If that employee tried to bring a wrongful termination action based on this, as an attorney experienced in that, I would send him away if the reason he is fired is because he couldn't do his job or because he was a deterrent to the business because he was impolite to customers or for any reason. That is the reason. In an at will situation you can fire for any reason or no reason. In a just cause situation you just need a reason, just some explanation for why this employee is being let go. It is not an elevated standard to the point that he would be denied unemployment. He certainly would be for misconduct or for theft. It is not that standard at all. It is just cause to be let go, rather than saying here is the door, go away.

I assure you that employees who are valued by their employers consider themselves such. They are proud of that employment and they are proud of their employer and they want to make that business work. They feel they have an obligation as well. When they know that they can simply be told the next day not to show up for work for no reason at all, then their sense of self-worth is simply not there. That is what employees live with all the time on an at will situation.

In this situation as was pointed out over here a few moments ago where an employees taxes are basically returned and invested back into the business, that employee has a vested interest in the business. That employee, I feel, deserves the right to be allowed to work as long as he is doing his job and the employer doesn't have just cause for letting him go. What you get then is you get a grateful employee and like returning injured employees to work, a grateful employee is the best employee. Thank you Mr. Speaker.

The **SPEAKER PRO TEM**: The Chair recognizes the Representative from Raymond, Representative Bruno.

Representative **BRUNO**: Mr. Speaker, Men and Women of the House. I guess then we ought to have two levels of employees in this state. Those that work for companies that get benefits ought to have some further protection, just cause. Then we have the at will employees because they work for companies that get no benefits. Should we at some point just have just cause or should we be at will? The fact of the matter is, I don't care if you put a one-year probation, a five-year probation, it doesn't matter. A bad employee is a bad employee and you should have the right to terminate them. When you do terminate someone in this environment, even as an at will state, you will have a suit in front of the Maine Human Rights Commission. You will be sued by a lawyer because they are going to claim that it was age discrimination, you name it and you will be sued because you got rid of a bad employee. There is always an excuse. It doesn't matter. Just cause, because we have a company that gets a benefit from the state doesn't mean that those are the only ones that ought to be protected if we are really protecting employees.

Mr. Speaker, I have a question, if we do have Pine Tree Zones at some point here, will all the companies that go into a Pine Tree Zone have to have just cause termination since we are going to allow them not to pay any taxes at all?

The **SPEAKER PRO TEM**: A roll call has been ordered. The pending question before the House is Adoption of House Amendment "A" (H-497). All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 149

YEA - Adams, Blanchette, Bliss, Bowen, Brannigan, Breault, Bull, Bunker, Canavan, Clark, Cowger, Craven, Cummings, Dudley, Dunlap, Duplessie, Duprey G, Earle, Eder, Faircloth, Gerzofsky, Goodwin, Grose, Hatch, Hotham, Hutton, Jackson, Jennings, Kane, Ketterer, Koffman, Landry, Laverriere-Boucher, Lemoine, Lerman, Lessard, Mailhot, Makas, Marley, Marraché, McGlocklin, McKee, Norbert, Norton, O'Brien L, Paradis, Patrick, Pellon, Percy, Perry A, Perry J, Pineau, Pingree, Piotti, Richardson J, Rines, Sampson, Simpson, Smith N, Smith W, Sullivan, Suslovic, Thomas, Thompson, Twomey, Usher, Walcott, Watson, Wheeler, Mr. Speaker.

NAY - Andrews, Austin, Bennett, Berry, Berube, Bierman, Bowles, Brown R, Browne W, Bruno, Campbell, Carr, Churchill J, Clough, Courtney, Cressey, Crosthwaite, Curley, Daigle, Davis, Dugay, Finch, Fischer, Fletcher, Gagne-Friel, Glynn, Greeley, Heidrich, Honey, Jacobsen, Jodrey, Joy, Kaelin, Ledwin, Lewin, Lundeen, McCormick, McGowan, McKenney, McLaughlin, McNeil, Millett, Mills J, Mills S, Moody, Moore, Murphy, Muse, Nutting, O'Brien J, Rector, Richardson E, Richardson M, Rosen, Sherman, Shields, Snowe-Mello, Stone, Sukeforth, Sykes, Tardy, Tobin D, Trahan, Treadwell, Vaughan, Woodbury, Wotton, Young.

ABSENT - Annis, Ash, Barstow, Bryant-Deschenes, Churchill E, Collins, Duprey B, Maietta, O'Neil, Peavey-Haskell, Rogers, Saviello, Tobin J.

Yes, 70; No, 68; Absent, 13; Excused, 0.

70 having voted in the affirmative and 68 voted in the negative, with 13 being absent, and accordingly **House Amendment "A" (H-497) was ADOPTED.**

Representative CLOUGH of Scarborough **REQUESTED** a roll call on **PASSAGE TO BE ENGROSSED.**

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

The **SPEAKER PRO TEM:** A roll call has been ordered. The pending question before the House is Passage to be Engrossed. All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 150

YEA - Adams, Bennett, Blanchette, Bliss, Bowen, Brannigan, Breault, Bull, Bunker, Canavan, Clark, Cowger, Craven, Cummings, Dudley, Dunlap, Duplessie, Duprey G, Earle, Eder, Faircloth, Finch, Gerzofsky, Goodwin, Grose, Hatch, Hotham, Hutton, Jackson, Jennings, Kane, Ketterer, Koffman, Landry, Laverriere-Boucher, Lerman, Lessard, Mailhot, Makas, Marley, McGlocklin, McKee, Norbert, Norton, O'Brien L, Paradis, Patrick, Pellon, Percy, Perry A, Pineau, Pingree, Piotti, Richardson J, Rines, Sampson, Simpson, Smith N, Smith W, Sullivan, Suslovic, Thomas, Thompson, Twomey, Usher, Walcott, Watson, Wheeler, Wotton, Mr. Speaker.

NAY - Andrews, Austin, Berry, Berube, Bierman, Bowles, Brown R, Browne W, Bruno, Campbell, Carr, Churchill J, Clough, Courtney, Cresse, Crosthwaite, Curley, Daigle, Davis, Dugay, Fischer, Fletcher, Gagne-Friel, Glynn, Greeley, Heidrich, Honey, Jacobsen, Jodrey, Joy, Kaelin, Ledwin, Lemoine, Lewin, Lundeen, Marraché, McCormick, McGowan, McKenney, McLaughlin, McNeil, Millett, Mills J, Mills S, Moody, Moore, Murphy, Muse, Nutting, O'Brien J, Perry J, Rector, Richardson E, Richardson M, Rosen, Sherman, Shields, Snowe-Mello, Stone, Sukeforth, Sykes, Tardy, Tobin D, Trahan, Treadwell, Vaughan, Woodbury, Young.

ABSENT - Annis, Ash, Barstow, Bryant-Deschenes, Churchill E, Collins, Duprey B, Maietta, O'Neil, Peavey-Haskell, Rogers, Saviello, Tobin J.

Yes, 70; No, 68; Absent, 13; Excused, 0.

70 having voted in the affirmative and 68 voted in the negative, with 13 being absent, and accordingly the Bill was **PASSED TO BE ENGROSSED as Amended in NON-CONCURRENCE** and sent for concurrence.

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

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

SENATE PAPERS

Bill "An Act To Amend the Structure of the Office of Advocacy"

(S.P. 572) (L.D. 1621)

Came from the Senate, **REFERRED** to the Committee on **HEALTH AND HUMAN SERVICES** and ordered printed.

REFERRED to the Committee on **HEALTH AND HUMAN SERVICES** in concurrence.

CONSENT CALENDAR

First Day

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

(S.P. 110) (L.D. 328) Bill "An Act to Increase Courthouse Security" Committee on **JUDICIARY** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-215)**

(S.P. 467) (L.D. 1419) Bill "An Act To Protect Campers by Making Personal Information Confidential" Committee on **JUDICIARY** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-216)**

(H.P. 579) (L.D. 780) Bill "An Act To Amend the Maine Registry of Certified Nursing Assistants" Committee on **HEALTH AND HUMAN SERVICES** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-504)**

(H.P. 1175) (L.D. 1602) Bill "An Act To Revise and Amend Certain Public Health Laws" Committee on **HEALTH AND HUMAN SERVICES** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-505)**

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 and the House Papers were **PASSED TO BE ENGROSSED as Amended** and sent for concurrence. **ORDERED SENT FORTHWITH.**

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

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

UNFINISHED BUSINESS

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

HOUSE DIVIDED REPORT - Majority (11) **Ought Not to Pass** - Minority (2) **Ought to Pass as Amended by Committee Amendment "A" (H-413)** - Committee on **STATE AND LOCAL GOVERNMENT** on Bill "An Act to Reduce Legislative Salaries and Allowances"

(H.P. 169) (L.D. 210)

TABLED - May 19, 2003 (Till Later Today) by Representative **RICHARDSON** of Brunswick.

PENDING - **ACCEPTANCE** of the Majority **OUGHT NOT TO PASS** Report. (Roll Call Ordered)

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

Representative **RICHARDSON:** Mr. Speaker, Ladies and Gentlemen of the House. We have had weighty discussions on bathrooms and this type of thing all afternoon. This is a very simple direct bill. This is only going to affect you and the pocketbooks of your constituents. This is a bill that will save your constituents about a half a million dollars annually. It really won't even affect you this term or another term. It probably, what you might find out, might be a great election tool. Tomorrow morning somebody is going to be seeing headlines about whether the Legislature of the State of Maine was willing to save the taxpayers of the State of Maine some money by reducing their own salary. This would be such a novel idea. You don't know what kind of advertising you may get out of this. Probably you will get advertising no matter what you do. I would urge you to think in terms of how good this is going to look on your resume if you vote for it and how bad it is going to look if you vote against it. I think if you think that way, you are going to vote to pass it. I urge you to do it. I want a roll call please.

The **SPEAKER PRO TEM**: The Chair would advise the Representative that a roll call is already in order. The Chair recognizes the Representative from Levant, Representative Greeley.

Representative **GREELEY**: Mr. Speaker, Ladies and Gentlemen of the House. I feel like my friend Representative Richardson and I have a personal situation here, because the last time and the only time I have spoken on the House floor was when he got up recently to speak. It is not a personal thing. I certainly respect his opinion. I would just like to speak against this briefly. Why is that? Well, I don't think that our legislative salaries are that ridiculous. Let me tell you why I would be inclined to go against this. Number one, if you want to limit the Legislature to people that are retired or millionaires or people whose mommy and daddy can afford to send them here, then that is great. You are going to have a very limited amount of people. Right now we have Representative Fischer, age 22, all the way to a Representative who is 81 years of age. Neither of whom are here apparently, they can't afford to be here I guess. I apologize.

In all seriousness, the point is, I don't think our salary is so out of line. I personally, at my age, with two kids and one on the way, would not be able to afford to be here for much less money. It is, frankly, somewhat of a financial struggle for me to be here as it is. My wife looked this up on the web site, in Connecticut they make roughly \$28,000 a year. In Massachusetts they just got a raise, they make roughly \$55,000 a year. In California, as I mentioned previously, they make approximately \$125,000 a year. Some people would say that in New Hampshire they make much less money than we do. In New Hampshire that was also the place that had a State Representative who on his third try got elected to the House and then on his own personal web site put up information about why police officers should be killed in the line of duty. That person ultimately withdrew from that position. He was on the verge of being forced out. I don't know how that happened, but he actually stepped down just a few short years ago.

I have to ask you, yes, we certainly want to save people money. We certainly do, but who do you want to be in this Legislature? Do you want people who are only wealthy and people that are older? I don't think so. This is the first time in my life I have held political office. I think we have a great spectrum of people here from age 22 to 81. If you want to intentionally limit that, what you are doing is limiting the demographic of the people who represent you. I don't want that in my Legislature. I don't know how long I am going to be a State Representative. I don't know how long, but I do know that I want a broad spectrum of people representing my interest. If we cut the money back and cut the money back, some of us who also work a job while we are coming here, are just not going to be able to stay here. We will have more turnover and more turnover. I don't think that makes for an effective Legislature.

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

Representative **PARADIS**: Mr. Speaker, Ladies and Gentlemen of the House. I will be brief. This is a bad will. It is an insult to all those members who have sacrificed a lot to be here. It does not merit the light of day. Thank you.

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

Representative **SMITH**: Mr. Speaker, Ladies and Gentlemen of the House. The only thing I would suggest is if there is any legislator here who feels badly about being paid for coming here

to do this work, there is no legal impediment to taking the money and giving it back to the state. Thank you.

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

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

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

Representative **CLARK**: Mr. Speaker, Ladies and Gentlemen of the House. To anyone that might answer, didn't we already give back \$300 for the part-one budget?

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

Representative **WATSON**: Mr. Speaker, Ladies and Gentlemen of the House. I would, in fact, like to answer my seatmate's question. That is, of course, everyone here knows that the Legislative Council suspended the cost of living adjustments for our salaries as it is for this year. Thank you.

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

Representative **RICHARDSON**: Mr. Speaker, Ladies and Gentlemen of the House. I don't think anyone is questioning the ability of anybody in this body and what they are worth. This is not really a big deal. What you are going to lose in salary if you were to vote for this would be not much more than what you would spend for a good ad campaign for your reelection.

The other thing that it is going to do has nothing to do with how much money you earn in terms of what your job is. It has to do with credibility with the constituents that you are serving. I don't know how you folks found it, but I found out that people were just wondering what in the world we do down here and why don't you save a little money for us instead of always adding taxes and always adding fees. To me, it is just something that if we were to do it, we would look like heroes. You choose your poisons. I guess that is all I have to say.

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

Representative **SUSLOVIC**: Mr. Speaker, Men and Women of the House. In response to the good Representative's statements about whether this would look good on our resume or not, just from my own experience back in my district, whether it is nine or ten o'clock at night or on a Saturday or a Sunday returning phone calls or attending community meetings, the subject of how much I am paid as a legislator very infrequently comes up in all honesty. People, I think, have larger issues on their mind. When it does come up and I tell them exactly what I am paid with mileage and whatnot, the typical reaction is, why would anyone do that? Why would anyone put up with that for that amount of money? It is my experience that the people of Maine, on the whole, feel that they are getting a pretty good deal. They might not always agree with what we do up here or how we do it, but in general I believe that the typical person out there feels that the legislators are not being overpaid. They may have other complaints about us, but thinking that we are over paid and over stuffed is not on the top of their mind. Thank you very much.

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. 151

YEA - Adams, Bennett, Blanchette, Bliss, Bowen, Brannigan, Breault, Brown R, Bull, Bunker, Canavan, Carr, Churchill J, Clark, Courtney, Cowger, Craven, Cummings, Daigle, Davis, Dudley, Dugay, Dunlap, Duplessie, Duprey G, Earle, Eder, Faircloth, Finch, Fischer, Gagne-Friel, Gerzofsky, Goodwin, Greeley, Grose, Heidrich, Hutton, Jackson, Jennings, Jodrey, Kane, Ketterer, Koffman, Laverriere-Boucher, Ledwin, Lemoine, Lerman, Lessard, Lundeen, Mailhot, Makas, Marley, Marraché, McGlocklin, McKee, McKenney, McLaughlin, McNeil, Mills J, Moody, Murphy, Norbert, Norton, O'Brien J, O'Brien L, O'Neil, Paradis, Patrick, Pellon, Percy, Perry A, Perry J, Pineau, Pingree, Piotti, Rector, Richardson J, Rines, Sampson, Simpson, Smith N, Smith W, Sullivan, Suslovic, Tardy, Thomas, Trahan, Twomey, Usher, Walcott, Watson, Wheeler, Woodbury, Wotton, Young.

NAY - Andrews, Austin, Berry, Berube, Bierman, Bowles, Browne W, Campbell, Clough, Cressey, Crosthwaite, Curley, Fletcher, Glynn, Hatch, Honey, Hotham, Jacobsen, Joy, Kaelin, Landry, Lewin, McCormick, McGowan, Millett, Mills S, Moore, Muse, Nutting, Richardson E, Richardson M, Rosen, Sherman, Shields, Snowe-Mello, Stone, Sukeforth, Sykes, Thompson, Tobin D, Treadwell, Vaughan.

ABSENT - Annis, Ash, Barstow, Bruno, Bryant-Deschenes, Churchill E, Collins, Duprey B, Maietta, Peavey-Haskell, Rogers, Saviello, Tobin J, Mr. Speaker.

Yes, 95; No, 42; Absent, 14; Excused, 0.

95 having voted in the affirmative and 42 voted in the negative, with 14 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 item was taken up out of order by unanimous consent:

REPORTS OF COMMITTEE
Divided Report

Majority Report of the Committee on **JUDICIARY** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-499)** on Bill "An Act To Create a Uniform Approach to the Determination of Child Support When Parents Provide Substantially Equal Care for Children"

(H.P. 189) (L.D. 234)

Signed:

Senators:

PENDLETON of Cumberland

CATHCART of Penobscot
WOODCOCK of Franklin

Representatives:

NORBERT of Portland

BULL of Freeport

SIMPSON of Auburn

BENNETT of Caribou

GERZOFSKY of Brunswick

MILLS of Farmington

SHERMAN of Hodgdon

CARR of Lincoln

BRYANT-DESCHENES of Turner

Minority Report of the same Committee reporting **Ought to Pass as Amended by Committee Amendment "B" (H-500)** on same Bill.

Signed:

Representative:

DUPREY of Hampden

Representative LORING of the Penobscot Nation - of the House - supports the Minority **Ought to Pass as Amended by Committee Amendment "B" (H-500)** Report.

READ.

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

The Bill was **READ ONCE. Committee Amendment "A" (H-499)** was **READ** by the Clerk and **ADOPTED**. The Bill was assigned for **SECOND READING** Thursday, May 22, 2003.

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

The Speaker resumed the Chair.

The House was called to order by the Speaker.

The SPEAKER: The Chair recognizes the Representative from Medway, Representative Duprey who wishes to address the House on the record.

Representative **DUPREY**: Thank you Mr. Speaker. Had I voted on Roll Call 145, I would have voted in the negative.

On motion of Representative GERZOFSKY of Brunswick, the House adjourned at 5:02 p.m., until 9:00 a.m., Thursday, May 22, 2003 in honor and lasting tribute to Richard B. Paige, of Pittston and Elizabeth Kathleen "Libby" Szucs Crooker, of Brunswick.