

# MAINE STATE LEGISLATURE

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

**Volume II**

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Pages 777-1562

ONE HUNDRED AND TWENTY-FIRST LEGISLATURE  
SECOND REGULAR SESSION  
3rd Legislative Day  
Tuesday, January 13, 2004

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

Prayer by Reverend Kimberly J. Murphy, Winthrop Congregational Church.

National Anthem by Cynthia Libby, Dixfield.

Pledge of Allegiance.

The Journal of Thursday, January 8, 2004 was read and approved.

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**PETITIONS, BILLS AND RESOLVES REQUIRING REFERENCE**

Bill "An Act To Amend the Membership of the Children's Cabinet"

(H.P. 1352) (L.D. 1829)

Sponsored by Representative KANE of Saco. (GOVERNOR'S BILL)

Cosponsored by Senator BRENNAN of Cumberland and Representatives: CRAVEN of Lewiston, CURLEY of Scarborough, EARLE of Damariscotta, WALCOTT of Lewiston, Senator: WESTON of Waldo.

Committee on **HEALTH AND HUMAN SERVICES** suggested and ordered printed.

**REFERRED** to the Committee on **HEALTH AND HUMAN SERVICES** and ordered printed.

Sent for concurrence.

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**Pursuant to Statute  
Department of Human Services**

Representative KANE for the **Department of Human Services** pursuant to the Maine Revised Statutes, Title 5, section 8072 asks leave to report that the accompanying Resolve, Regarding Legislative Review of Portions of Chapter 16: Foster Home Licensing Rule Regarding Smoking by Foster Parents, a Major Substantive Rule of the Department of Human Services (EMERGENCY)

(H.P. 1353) (L.D. 1830)

Be **REFERRED** to the Committee on **HEALTH AND HUMAN SERVICES** and printed pursuant to Joint Rule 218.

Report was **READ** and **ACCEPTED** and the Resolve **REFERRED** to the Committee on **HEALTH AND HUMAN SERVICES** and ordered printed pursuant to Joint Rule 218.

Sent for concurrence.

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

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**REPORTS OF COMMITTEE  
Change of Committee**

Representative O'NEIL from the Committee on **INSURANCE AND FINANCIAL SERVICES** on Bill "An Act Making Amendments to the Uniform Commercial Code Covering Provisions Dealing with Negotiable Instruments and Bank Deposits and Collections"

(H.P. 1308) (L.D. 1786)

Reporting that it be **REFERRED** to the Committee on **JUDICIARY**.

Report was **READ** and **ACCEPTED** and the Bill **REFERRED** to the Committee on **JUDICIARY**.  
Sent for concurrence. **ORDERED SENT FORTHWITH**.

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At this point, the Speaker recognized the Representative from Cornville, Representative MILLS and he was added to the quorum call of the Second Regular Session of the 121st Legislature.

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

Bill "An Act to Establish a Seamless Strategic Drug Abuse Model for Addressing Criminal Enforcement, Treatment, Education and Public Advocacy within Washington County"

(H.P. 38) (L.D. 31)

(C. "A" H-624)

Bill "An Act To Protect Consumer Privacy Rights"

(H.P. 509) (L.D. 692)

(C. "B" H-627)

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

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

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Pursuant to House Rule 201.1.H, the Speaker appointed Representative RICHARDSON of Brunswick to serve as Speaker Pro Tem on Wednesday, January 14, 2004.

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

**REPORTS OF COMMITTEE  
Divided Report**

Majority Report of the Committee on **LEGAL AND VETERANS AFFAIRS** reporting **Ought Not to Pass** on Bill "An Act To Recognize the Regional Impact of Casino-style Gambling Facilities"

(H.P. 916) (L.D. 1242)

Signed:

Senators:

GAGNON of Kennebec

MAYO of Sagadahoc

Representatives:

CLARK of Millinocket

PATRICK of Rumford

BLANCHETTE of Bangor

CANAVAN of Waterville

JENNINGS of Leeds

LANDRY of Sanford

MOORE of Standish

BROWN of South Berwick

HOTHAM of Dixfield

Minority Report of the same Committee reporting **Ought to Pass as Amended by Committee Amendment "A" (H-630)** on same Bill.

Signed:

Senator:

LEMONT of York

Representative:

GLYNN of South Portland

**READ.**

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

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The House recessed until the Sound of the Bell.

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(After Recess)

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The House was called to order by the Speaker.

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The following 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 Thursday, January 8, 2004, 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 (10) Ought Not to Pass - Minority (3) Ought to Pass as Amended by Committee Amendment "A" (H-626) - Committee on JUDICIARY on Bill "An Act To Clarify the Freedom of Access Laws as They Pertain to the Penobscot Nation"**

(H.P. 1116) (L.D. 1525)

**TABLED - January 8, 2004 (Till Later Today)** by Representative NORBERT of Portland.

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

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

Representative **LORING:** Mr. Speaker, Men and Women of the House. LD 1525, "An Act to Clarify the Freedom of Access Laws as they Pertain to the Penobscot Nation and the Passamaquoddy Tribe" proves that the Maine Freedom of Access laws concerning public proceedings and public records do not apply to the Penobscot Nation. To the extent the holding in Great Northern Paper Company v. Penobscot Nation is inconsistent with the act. It is overruled.

This seems like a simple enough bill, but it is deceptively so. There is a long extensive history of mistrust, abuse and litigation between the tribes and the state. In this instance the state intervened to support the corporations, the corporations being Great Northern Paper, Georgia-Pacific and International Paper. The state claimed an interest in the corporations' Maine Access Act case because the case involved interpretations of jurisdictional relationship between the state and the tribes.

This is a tremendously important issue for the tribes in that it involves clean water and the very survival of our tribal governments and culture. The tribe considers this case a breach of their sovereign status by the state's interpretation of the Land Claims Settlement Act to claim they are a quasi municipality and a political subdivision of the state and therefore subject to the Maine Access Act. It is an attempt by the State of Maine and the corporations to terminate our very existence. Once the tribe is considered a municipality, it no longer exists as a tribal entity and no longer has the protection of the federal government under its federal trust and fiduciary responsibilities.

I must add that this case took on a very ominous nature when on November 11, 2000, the Tribal Chiefs of the Penobscot and Passamaquoddy Tribes were ordered jailed for contempt for refusing to turn over documents, which the tribes considered internal tribal documents.

I would like to give you a brief history of the relationship between the state and the tribes as I feel it will help you better understand the situation as it exists today.

I would like to read to you Lewis Mitchell's speech before this House in 1887. That was at the time when the State Legislature had voted to take over 99 percent of the Penobscot land and take over Passamaquoddy lands. Representative Mitchell, at that time, said, "Just consider today how many rich men here are in Calais, in St. Stephen, Milltown, Machias, East Machias, Columbia, Cherryfield and other lumbering towns. We see a good many of them worth thousands and even millions of dollars. We ask ourselves how they make most of their money? The answer is, they make it on lumber or timber once owned by the Passamaquoddy Indians. How many of their privileges have been broken? How many of their lands have been taken from them by the authority of the state.

Between 1821 and 1839 the Maine Legislature authorized the harvesting of timber from Passamaquoddy land in violation of the 1794 treaty. Over the years, also in violation of the treaty, the Legislature authorized sale or lease of various pieces of the Passamaquoddy land without compensation and without consent of the Passamaquoddy."

The state's treatment of the Indians was paternalistic and the Legislature assumed the authority to make whatever decisions it thought necessary at any given time. Even the state courts fostered this attitude.

The following court cases give you a glimpse of the court's attitude toward Indians. In a case decided by the Maine Supreme Court in 1842, Murch v. Tomer, the court said, "[I]mbecility on their [the Indians] part, and the dictates of humanity on ours, have necessarily prescribed to them their subjection of our paternal control; in disregard to some, at least, of abstract principles of the right of man."

State v. Newell, 1892, the court following Murch said, "Though these Indians perhaps consider themselves a Tribe, they have for many years been without a tribal organization in any political sense. They are as completely subject to the state as any other inhabitants can be." This at the time when Indian representatives were in the State Legislature representing their tribal governments.

Indian agents were put on Indian lands to control people. Indian people, through an act of the Legislature, were forbidden to speak their own language. The state even kept track of marriages and offspring. They took children from their native homes and sent them to Carlisle Indian School in Carlisle, Pennsylvania to learn to assimilate. This took place in the years 1899 through 1912. Through all of this the state's taking of our lands and our resources and giving us back through welfare. We suffered a loss of self-image and we faced prejudice and discriminate and injustice.

One of the most glaring injustices of all perpetrated on us by the State of Maine was disenfranchisement. This injustice was upheld by Maine's highest court. On March 14, 1941, the Legislature requested on solemn occasion to the Maine Supreme Judicial Court the following question. "If by legislative enactment, a poll tax should be imposed upon the Indians living on reservations within the state, would said poll tax be such tax as within the meaning of Section 1 of Article 11 of the Constitution that it would entitle Indians to such tax, to vote?"

Answer, four days later, March 19, 1941. "To the Honorable Senate of the State of Maine. The undersigned Justices of the Supreme Judicial Court, having considered the question upon which their advisory opinions were requested by Senate Order March 14, 1941, inform the honorable Senate that we are of the opinion that it is not within the scope of our duty to answer this question in view of the fact that Senate Paper 486 entitled, 'An Act Permitting Indians to Vote in State Elections', to which the interrogatory refers, not only does not conform with or justify the question submitted, but is inherently illegal and insufficient."

Although Indians were made citizens of this country in 1923, Maine Indians were not allowed to vote in US elections until 1954 and state elections in 1967.

There will be some that say that the Land Claims Settlement Act will be affected by approving this bill. The Land Claims Settlement Act was signed into law in 1980. It is the document that presently defines our relationship with the state. We all know and all have heard how the Indians benefited from this Maine Land Claims Settlement Act. We never hear or it is not talked about much of what did the state get from the Land Claims Settlement Act. The state got a settlement of over two-thirds of the land claims. The State of Maine did not pay one penny. They kept the majority of its jurisdiction and the tribes were excluded from any new federal laws pertaining to Indians unless the Maine Tribes were specifically mentioned. The State of Maine is held harmless for any past injustices. Tribes cannot sue for past abuses of trust funds or stolen resources. The state has never admitted any past wrongdoing.

I ask you to keep this historical perspective in mind when you review this proposed bill. This is a policy setting body, not a court of law. The courts have not always been right, but it is not a question of right or wrong. It is a question of fairness, recognition and respect. I ask that we begin to change the policy of abuse and control that this state has held over the tribe for almost 200 years and do it by exempting the tribe from this act that is clearly meant for political subdivisions of the state and is just another method to terminate our existence. Thank you.

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

Representative **NORBERT**: Mr. Speaker, Ladies and Gentlemen of the House. I urge you to support the pending motion to reject this bill. Despite my sympathies and great respect for my friend from the Penobscot Nation, and there is no question in my mind that this state's past relations with the tribes have not always been stainless, this is a bad public policy. It would be the wrong step at the wrong time. It would fundamentally alter a great amount of jurist prudence of the law. I think you have to think and tread very carefully before you would vote for this bill because it would overturn a unanimous Maine Supreme Court decision of two and a half years ago that made clear that Maine's Right to Know Laws, which have been in effect since 1959, apply to the tribes when they act in their municipal capacity, that is when they interact with those who are not members of the tribe, when they regulate water that may flow to your community and they conduct high stakes gaming. It is all the things that are external tribal matters. They should be subject to Maine's Freedom of Access Laws. I know your hometown newspapers feel the same way. The Maine Press Association certainly does.

This Legislature right now is going to be taking up a report by a commission that has been studying ways of strengthening Maine's Freedom of Access Laws. If anything, we need to be moving in that direction. In yesterday's *Portland Press Herald* there was a fine editorial about the problems we have had in the

past with enforcing this Freedom of Access Law, which we pride ourselves on. It says, "Public meetings should be open to the public. The public should be given access to public records."

There has been some talk of the Settlement Act, which in 1980 it was decided both by the state and ratified, approved by the federal Congress and President Carter, which was an exchange. The tribes gave up certain rights in order to have other rights. One of the things that was decided was that they agreed to limit their sovereignty and to be treated as municipalities when dealing with the state. The Freedom of Access Law applied when the tribe's actions have a meaningful affect on members of the public who aren't tribal members.

As I said, voting for this would not only overturn this Great Northern Paper decision, which was decided by our law court, it is a very well reasoned decision and we have made some copies for people who want to see a copy before they vote. We have time. You can send me a note. It is a very well reasoned opinion. It would do more than that. At least three provisions of this Indian Claims Settlement Act would be affected. I really think if we want to get into that, the details, very complex legal matters, then perhaps we should reexamine the whole treaty and go back to Congress. I don't think it is for us now, here, to chip away at it, especially with something that makes a lot of sense.

I want to make clear that with respect to internal tribal matters this is an exception that I support. We don't disagree that the tribes have a right to govern internal affairs free from regulation by the state that is deciding who can be a member of the tribe or what their hunting season will be like. I suggest to you strongly that the state has a legitimate interest in having the basic laws of this state that you are here to make, you are here to represent your constituents that these laws apply uniformly throughout the state. I encourage you to keep that in mind as you vote today.

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

Representative **PARADIS**: Mr. Speaker, Ladies and Gentlemen of the House. This is a classic case of large versus small, powerful versus disenfranchised and it goes on and on. Fortunately we have in our Constitution the Bill of Rights, which was put in there to protect the minority. I think the gauge of how well the majority is doing and how honorable and moral it is, is how they treat the minority.

It goes back several years. Even the Romans on their best hay day, until they got corrupt internally, the Pax Romana did respect local entities and try not to step on those too much. I think we have to be careful in this state, the big business versus state alliance, whether it be Great Northern or Irving, this can be very negative and destructive. When is enough enough, as Yogi Barra would say. Discrimination lives on in subtle forms in this state. Hey, just look right here in the Legislature. We have tried time and time again to give the right of vote in committees to our Tribal Representatives. We still do not have it. We lingered even to give them the right to vote. This is not a credit to the state as a whole. We can learn from our Native Americans instead of trying to keep them down. Recycling, they are the original recyclists. Remedies, they know a lot more than we do. Organic farming, they were champions at it. I would urge you to respect the sovereignty of the Penobscot Nation and in this case also the Passamaquoddy and directly a vote for LD 1525. Thank you.

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

Representative **MILLS**: Mr. Speaker, Men and Women of the House. I rise to speak briefly to this bill because it was hotly debated in the committee and the work sessions. Many of us ready very carefully the 18-page court opinion in Great Northern Paper versus the Penobscot Nation. Most of us on the

committee in bipartisan fashion determined that that decision should stand. It does not merit being overturned by this Legislature. The reasons for that are pretty clear. I recall, and many of us in this body recall, the four years of very hot and heavy negotiations that lead to the enactment of the Indian Land Claims Settlement Act. It was ratified by the US Congress and following the signing of which, the tribes and their very able council and co-council lauded the resolution of this matter and applauded it on behalf of the tribes and found it to be very much to their liking. Benefits were given to both sides. Concessions were given to both sides.

Let me read you the statute that resulted from that Settlement Act. It says, "In 1606 of Title 30, which is the Indian Claims Settlement Act, accept as otherwise provided in this act, the Passamaquoddy Tribe and Penobscot Nation within their respective Indian territories shall have, exercise and enjoy all the rights privileges, powers and immunities including, but, without limitation, the power to enact ordinances and collect taxes and shall be subject to all the duties, obligations, liabilities and limitations of a municipality of and subject to the laws of the state, provided, however, that internal tribal matters, including membership in the respective tribes and the rights to reside in the tribes shall not be subject to regulation by the state."

That was the language that the court digested and the legislative history behind that language. The court took 18 pages to digest very thoroughly to determine that internal tribal matters, tribal meetings and the like would never be subject to the Freedom of Information Act unless somebody were to put in a bill to open them up that affect and then, I think, I suspect that people in this body would hotly oppose such a measure. If we were to suggest that all tribal meetings and records should be open to the public as municipality records are, I think that would be justifiably opposed. This is the reverse of that. This bill seeks to overturn the court decision, which found a very narrow exception to the Freedom of Information Act and that is to say when the tribes acting in their capacities as municipalities, the word in the statutes that both sides agreed upon and the language that was agreed upon after years of negotiation, when they act as municipalities, vis-à-vis some external agency then those records are subject to public scrutiny as are records of municipalities. When municipalities apply for grants from HUD or recycling grants or grants from the Local Council of Governments or from some private foundation, for instance, or when the tribes negotiate on things like the casino issue that came up in our discussions in the Judiciary Committee meetings and work shops. Those things would be subject to public scrutiny because the tribes acting in their capacity as municipalities acting and corresponding with external agencies and organizations, not just government agencies, but any kind of agency.

I suspect that the court opinions interpretation of the Freedom of Information Act and the Indian Land Claims Settlement Act would exclude more than 90 percent of what the tribes do. Specifically excluded are determinations of tribal residency, tribal membership. Specifically excluded would be the specific things that the Indian Land Claims Act left to the unique jurisdiction of the tribes, that is, for instance, determination of child custody within tribal families, determination of fish and game laws within tribal lands. Those things are within their unique internal organization. They are not subject to public scrutiny.

I do not think there are grounds to overturn this very well thought out, well researched court opinion. This is not a question of the history of the tribes prior to 1980. This is not a question of big corporations or big people or little people. The tribes were very ably represented in these negotiations and a compromise was established based on well-represented parties on both sides.

This is not a question of attitude towards tribes or towards anybody else. This is not a question of reparations. This is a simple question of law. Do we want to change, in a fairly important aspect the Indian Land Claims Settlement Act, which was driven by such fierce negotiations over such a long period of time? Do we want to overturn a court opinion that was unanimous and that was based on thorough research of the Settlement Act and the Freedom of Information Act? This is a question of law; public policy and I say don't overturn the decision and don't vote for this bill.

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

Representative LORING: Mr. Speaker, Men and Women of the House. I have three things to say. One is, the information that the paper companies sought, they could have gotten that same information through other avenues. They did not need to implement the Maine Access Act. Secondly, the Maine Indian Tribal State Commission was made up of both State Representatives and Indian Representatives and they unanimously said in their opinion the court made the wrong decision. Lastly, and most importantly, the interpretation of the word municipality in Title 30, 1606, I happened to be at these meetings when the tribes were deciding on this land claims language. The word municipality scared us to death. We didn't want to be known as a municipality. However, the argument was that the word municipality is used so that you can be able to get federal grant monies and also state funding. You can be eligible for state funding. Municipality was used for funding purposes. It was not used so that we would be a subdivision of the state government. I ask you to step back. Look at the tribes as what we are, tribal sovereign governments and be fair and pass this bill. Thank you.

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

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At this point, the Speaker recognized the Representative from Madison, Representative KETTERER and she was added to the quorum call of the Second Regular Session of the 121st Legislature.

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Representative LORING of the Penobscot Nation **REQUESTED** a roll call on the motion to **ACCEPT** the Majority **Ought Not to Pass** Report.

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

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

**ROLL CALL NO. 260**

YEA - Adams, Andrews, Annis, Ash, Austin, Barstow, Bennett, Berube, Bierman, Blanchette, Bliss, Bowen, Bowles, Brannigan, Breault, Brown R, Browne W, Bruno, Bull, Campbell, Carr, Churchill E, Churchill J, Clark, Clough, Collins, Courtney, Cowger, Craven, Cressey, Crosthwaite, Cummings, Curley, Dajgle, Davis, Dudley, Duplessie, Duprey G, Earle, Faircloth, Fischer, Fletcher, Gagne-Friel, Glynn, Greeley, Heidrich, Honey, Jacobsen, Jennings, Jodrey, Joy, Kaelin, Ketterer, Koffman, Ledwin, Lemoine, Lessard, Lewin, Lundeen, Mailhot, Marley, McCormick, McGlocklin, McGowan, McKenney, McLaughlin, McNeil, Millett, Mills J, Mills S, Muse, Norbert, Norton, Nutting, O'Brien J, O'Neil, Patrick, Perry J, Pineau, Rector, Richardson E, Richardson J, Richardson M, Rines, Rogers, Rosen, Saviello,

Sherman, Shields, Smith N, Snowe-Mello, Stone, Sukeforth, Sullivan, Suslovic, Sykes, Tardy, Thompson, Tobin D, Tobin J, Trahan, Treadwell, Usher, Woodbury, Mr. Speaker.

NAY - Dugay, Dunlap, Eder, Gerzofsky, Goodwin, Grose, Hutton, Jackson, Landry, Lerman, Makas, Moore, O'Brien L, Paradis, Peavey-Haskell, Pellon, Percy, Perry A, Pingree, Simpson, Thomas, Twomey, Vaughan, Walcott, Watson, Wheeler, Wotton.

ABSENT - Berry, Bryant-Deschenes, Bunker, Canavan, Duprey B, Finch, Hatch, Hotham, Kane, Maietta, Marraché, McKee, Moody, Murphy, Piotti, Sampson, Smith W, Young.

Yes, 105; No, 27; Absent, 18; Excused, 0.

105 having voted in the affirmative and 27 voted in the negative, with 18 being absent, and accordingly the Majority **Ought Not to Pass** Report was **ACCEPTED** and sent for concurrence.

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

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On motion of Representative CLARK of Millinocket, the House adjourned at 12:05 p.m., until 10:00 a.m., Wednesday, January 14, 2004 in honor and lasting tribute to George Henry Martin, Sr., of Millinocket, Henry J. Deabay, of Millinocket and Charles Paul Bonis, of Millinocket.