

MAINE STATE LEGISLATURE

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

Volume II

First Regular Session

May 27, 2003 – June 14, 2003

First Special Session

August 21, 2003 – August 23, 2003

Second Regular Session

January 7, 2004 - January 30, 2004

Second Special Session

February 3, 2004 - April 7, 2004

Pages 777-1562

ONE HUNDRED AND TWENTY-FIRST LEGISLATURE
SECOND SPECIAL SESSION
23rd Legislative Day
Tuesday, March 23, 2004

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

Prayer by Reverend Gertrude DeCoteau, East Otisfield Free Baptist Church.

National Anthem by Monmouth Middle School 4th Grade Chorus.

Pledge of Allegiance.

The Journal of yesterday was read and approved.

SENATE PAPERS

Non-Concurrent Matter

Resolve, Related to Aquaculture Leases in Blue Hill Bay
(S.P. 410) (L.D. 1279)

Majority (9) **OUGHT NOT TO PASS** Report of the Committee on **MARINE RESOURCES READ** and **ACCEPTED** in the House on March 18, 2004.

Came from the Senate with that Body having **INSISTED** on its former action whereby with the Minority (3) **OUGHT TO PASS** Report of the Committee on **MARINE RESOURCES** was **READ** and **ACCEPTED** and the Resolve **PASSED TO BE ENGROSSED** in **NON-CONCURRENCE**.

On motion of Representative BULL of Freeport, the House voted to **INSIST**. Sent for concurrence. **ORDERED SENT FORTHWITH**.

SPECIAL SENTIMENT CALENDAR

In accordance with House Rule 519 and Joint Rule 213, the following items:

Recognizing:

Monmouth Academy on the occasion of its 200th anniversary. The academy started in January 1801 when the General Court of Massachusetts granted a request for land to establish a school in the Town of Monmouth. With a gift of more than \$1,500 from Lady Elizabeth Bowdoin Temple, John Chandler and General Dearborn, and a land grant of 1,500 acres, the Monmouth Free Grammar School opened its doors to the young people of Monmouth and surrounding areas in 1803. In 1809, the school was renamed Monmouth Academy. The Monmouth school system continues to provide to its students and the town quality education, diverse extracurricular activities, as well as a strong sense of community. We extend our congratulations to Monmouth Academy and the citizens of Monmouth on this special occasion;

(HLS 1367)

Presented by Representative SMITH of Monmouth.
Cosponsored by President Pro Tem TREAT of Kennebec,
Speaker COLWELL of Gardiner.

On **OBJECTION** of Representative SMITH of Monmouth, was **REMOVED** from the Special Sentiment Calendar.

READ.

The **SPEAKER**: The Chair recognizes the Representative from Monmouth, Representative Smith.

Representative **SMITH**: Mr. Speaker, Men and Women of the House. I am at an interesting phase in my life. I have one child in each of the three schools in Monmouth, the HL Cottrell School, the middle school and the high school. My second grade daughter will be the third generation of her family to graduate from the academy. I think when your school system is older than

your state it is worth note. I congratulate the Monmouth School System on their 200th anniversary. Thank you.

Subsequently, was **PASSED** and sent for concurrence.

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

REPORTS OF COMMITTEE

Divided Report

Majority Report of the Committee on **LABOR** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-783)** on Bill "An Act To Establish the Maine Jobs, Trade and Democracy Act" (EMERGENCY)

(H.P. 1337) (L.D. 1815)

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 to Pass as Amended by Committee Amendment "B" (H-784)** on same Bill.

Signed:

Senator:

BLAIS of Kennebec

Representatives:

CRESSEY of Baldwin

HEIDRICH of Oxford

NUTTING of Oakland

TREADWELL of Carmel

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.

CONSENT CALENDAR

First Day

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

(H.P. 1246) (L.D. 1670) Bill "An Act To Include Disability Retirement Income in Retirement Income Eligible for Tax Exemption" Committee on **TAXATION** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-787)**

(H.P. 1332) (L.D. 1810) Bill "An Act To Amend the Laws Concerning Optional Membership for Participating Local Districts in the Maine State Retirement System" Committee on **LABOR** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-790)**

(H.P. 1415) (L.D. 1914) Resolve, Regarding Legislative Review of Chapter 302: Rules for the Maine Microenterprise Initiative, a Major Substantive Rule of the Department of Economic Development (EMERGENCY) Committee on **BUSINESS, RESEARCH AND ECONOMIC DEVELOPMENT**

reporting **Ought to Pass as Amended by Committee Amendment "A" (H-785)**

There being no objections, the above items were ordered to appear on the Consent Calendar tomorrow under the listing of Second Day.

**CONSENT CALENDAR
Second Day**

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

(S.P. 722) (L.D. 1874) Bill "An Act To Amend the Charter of the South Berwick Water District" (EMERGENCY)

(S.P. 727) (L.D. 1879) Bill "An Act To Amend the Boiler and Pressure Vessel Law" (C. "A" S-431)

(S.P. 728) (L.D. 1880) Bill "An Act To Amend the Laws Governing the Loring Development Authority of Maine" (EMERGENCY) (C. "A" S-432)

(H.P. 1295) (L.D. 1773) Bill "An Act To Amend the Definition of 'Electrical Installations' in the Laws Governing Electricians"

(H.P. 1265) (L.D. 1743) Bill "An Act To Make Technical Corrections to Maine's Fish and Wildlife Laws" (C. "A" H-781)

No objections having been noted at the end of the Second Legislative Day, the Senate Papers were **PASSED TO BE ENGROSSED** or **PASSED TO BE ENGROSSED AS AMENDED** in concurrence and the House Papers were **PASSED TO BE ENGROSSED** or **PASSED TO BE ENGROSSED AS AMENDED** and sent for concurrence.

**BILLS IN THE SECOND READING
Senate in Non-Concurrence**

Bill "An Act To Eliminate State Licensing of Boxers, Wrestlers and Transient Sellers"

(S.P. 468) (L.D. 1410)

Senate as Amended

Bill "An Act To Ensure Uniform Code Compliance and Efficient Oversight of Construction in the State"

(S.P. 356) (L.D. 1025)

(C. "A" S-417)

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

**ENACTORS
Acts**

An Act To Strengthen the Prohibition against Night Hunting

(H.P. 1238) (L.D. 1662)

(H. "A" H-762 to C. "A" H-692)

An Act To Authorize the STARBASE Program

(S.P. 622) (L.D. 1690)

(C. "A" S-423)

An Act To Simplify the Maine Turnpike Authority's Enforcement Procedures for Toll Violations

(S.P. 637) (L.D. 1705)

(H. "A" H-763 to C. "A" S-412)

An Act To Create the Position of Director of Energy Programs at the Public Utilities Commission

(H.P. 1252) (L.D. 1730)

(C. "A" H-761)

An Act To Clarify Prequalification Criteria for Public Improvements

(H.P. 1305) (L.D. 1783)

(S. "A" S-428 to C. "A" H-666)

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

Resolves

Resolve, To Improve the Quality of Health Care

(S.P. 225) (L.D. 616)

(C. "A" S-427)

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

Resolve, Directing the Secretary of State To Study the Feasibility of Instant Run-off Voting

(H.P. 171) (L.D. 212)

(C. "A" H-751)

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

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

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

Representative GLYNN: Mr. Speaker, Ladies and Gentlemen of the House. I rise in opposition to this measure. What we are considering is a study that started off as a bill to implement instant run off elections in the State of Maine. This concept is a very foreign concept to Maine voters and one that I do not believe should be implemented as a policy in the State of Maine. Instant run off voting is a method to change the outcome of elections. There are people who testified in front of the Legal and Veterans Affairs Committee that are unsatisfied with the outcomes of elections in Maine and want to change the makeup of who is serving in the House and Senate. How they want to do that is they would like to institute weighted voting in the State of Maine. What they would like to do is they would like to have a system where you will rank your choices when you go into the ballot box. If we have a third party candidate, a Green Party candidate or we have a three way race, the likelihood is one of those candidates isn't going to receive the majority of votes and that means there will be an instant run off election.

This system was testified against by the Maine Municipal Association. It was testified against by the Maine Clerk's Association. The voting process does not need to be this complicated in the State of Maine. Yes, majority rule should be the way that our system works. This bill ended up, as I said, being turned into a study and the study will be coming back as a bill in the next legislative session. It is not something that I believe that we should be pursuing as public policy. Mainers know who they want in public office. They cast their votes for those people and we are sitting in this chamber.

I would urge you all to oppose the pending motion. Mr. Speaker, when the vote is taken, I request the yeas and nays. I would further request that the Clerk read the Committee Report.

The same Representative **REQUESTED** a roll call on **FINAL PASSAGE.**

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

The same Representative **REQUESTED** that the Clerk **READ** the Committee Report.

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

The SPEAKER: The Chair recognizes the Representative from Freeport, Representative Glynn.

Representative **GLYNN**: Mr. Speaker, Men and Women of the House. I respectfully request your support for the pending motion, which is final passage of this bill. I submitted this bill last year to the Legal and Veterans Affairs Committee. What this bill is attempting to do is to re-enfranchise the voters of this state. It is important to realize that we are not asking today to vote on the merits of instant run off voting. I feel very strongly that instant run off voting is a right and proper thing for this state to embrace that is not what we are voting on today. Today, we are simply voting on a directive to the Secretary of State's Office to look at many of the issues that the Representative from South Portland, Representative Glynn raised. There are some legitimate concerns and questions surrounding this process that need to be worked out that needs to be evaluated. The language of the Resolve is simply directing the Secretary of State to look at the issues around instant run off voting, to look at all the potential problems and concerns around it and to come back with some recommendations on whether or not it is appropriate that Maine implement instant run off voting and then the next legislative body will be able to take action upon that and decide whether or not they want to move forward with instant run off voting. It is going to allow them to move forward with accurate and full information, not on the partial information that we have right now. I urge your support for the pending motion. Thank you Mr. Speaker.

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

Representative **MCKENNEY**: Mr. Speaker, Ladies and Gentlemen of the House. I note that the Secretary of State is being required to do this study. Most of you probably don't know this, but the Secretary of State is embroiled in a problem of gargantuan proportions. He has a computer system that he is trying to put on line. He spent \$11 million and he has nothing to show for it. This has the potential to keep him occupied for many months on this project. He does not need a new project to occupy his time. The state and the taxpayers need to find out what went wrong with this computer system and we don't want to occupy his time with anything else. Thank you.

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

Representative **CLARK**: Mr. Speaker, Ladies and Gentlemen of the House. The good Representative from Cumberland, Representative McKenney, might bring up a very valuable point about the Secretary of State. Let me just remind everybody in this body that he might be the one that oversees the whole department, but he is not the one who will be implementing the study. It is going to be the Bureau of Elections. They are going to be doing this study. What it does is it just has them look at instant run off voting. That is it. That is like with the gas tax for automobiles. Doesn't the Department of Transportation look at gas tax for a study? Did they look at other ways of funding the highway fund? I urge everybody to help us support LD 212. Thank you.

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

Representative **GLYNN**: Mr. Speaker, Ladies and Gentlemen of the House. I just wanted to add the testimony of the President of the Town Clerk's Association, Linda Cohen, who testified in front of our committee. I would just like to read a passage of her statement. She says, "We often receive complaints from the public that the ballot questions are confusing and that a no means yes and a yes means no. After spending time as a member of the Ballot Clarity Board, I know that a considerable

amount of effort has gone into the wording of ballot questions so that they are as clear as possible to the voter. I also hear from voters who do not understand the primary process. There are those who think that voting for a person in the primary means that the person is elected. Some voters don't understand why the name shows up in November. This run off process is very confusing. We are opposed to anything that makes voting more complicated or more confusing to voters. There is also some question as to whether the automatic tabulation equipment can be programmed to do instant runoffs and what the extra cost of the programming would be to the municipalities."

Ladies and gentlemen, we do not need to enact another mandate upon the municipalities to have them buy new balloting equipment. We do not need to change the method of electing House and Senate members. It has worked ever since we have been a state. It isn't broken. Don't fix it. Please oppose this measure.

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

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

The SPEAKER: The Representative may pose his question.

Representative **DUNLAP**: Mr. Speaker, Men and Women of the House. To anyone who may care to answer, I have a scenario in my mind that I would like explained if that is a possibility in this legislation. Suppose you have three candidates in a race, candidate A, candidate B and candidate C. Candidate A wins the race in a plurality, 48 percent of the vote. Candidate C would probably be a more viable candidate, but doesn't do very much work in the election and gets the least number of votes. Candidate B works hard, but is odious to the public. Under the auspices of an instant run off, is it possible that candidate C, being a more favorable candidate to the public, by having gotten the least number of votes, could, in fact, win the run off election, therefore, in a primary election, the candidate with the least number of votes could end up winning the election. Is that a possibility?

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 Freeport, Representative Bull.

Representative **BULL**: Mr. Speaker, Men and Women of the House. I thank the Representative for his question, but I would venture to say that it is irrelevant to the question at hand on this bill, which has been turned into a Resolve to study the issue of instant run off voting. Many of the questions that the Representative raised will be looked at by the Secretary of State if this Resolve passes. 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 just wish to commend the Representative from Freeport, Representative Bull, for his masterfully artful dodge. Thank you.

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

ROLL CALL NO. 350

YEA - Adams, Ash, Barstow, Bennett, Bliss, Brannigan, Breault, Bull, Bunker, Canavan, Clark, Cowger, Craven, Cummings, Dudley, Duplessie, Duprey G, Earle, Eder, Faircloth, Finch, Fischer, Gerzofsky, Grose, Hatch, Hutton, Jennings, Ketterer, Koffman, Landry, Lemoine, Lerman, Lessard, Lundeen, Mailhot, Makas, Marley, McKee, McLaughlin, Norbert, Norton, O'Brien L, O'Neil, Paradis, Pellon, Percy, Perry A, Pineau,

Pingree, Piotti, Richardson J, Rines, Sampson, Saviello, Simpson, Smith N, Smith W, Sukeforth, Sullivan, Suslovic, Thomas, Thompson, Twomey, Usher, Walcott, Watson, Wheeler, Woodbury, Wotton, Mr. Speaker.

NAY - Andrews, Annis, Austin, Beaudette, 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, Dugay, Dunlap, Duprey B, Fletcher, Gagne-Friel, Glynn, Heidrich, Honey, Jackson, Jacobsen, Jodrey, Joy, Ledwin, Lewin, Maietta, McCormick, McGowan, McKenney, McNeil, Millett, Mills S, Moore, Murphy, Nutting, O'Brien J, Peavey-Haskell, Rector, Richardson E, Richardson M, Rogers, Rosen, Sherman, Shields, Snowe-Mello, Stone, Sykes, Tardy, Tobin D, Tobin J, Trahan, Treadwell, Vaughan, Young.

ABSENT - Blanchette, Daigle, Goodwin, Greeley, Hotham, Kaelin, Kane, Marraché, McGlocklin, Mills J, Moody, Muse, Patrick, Perry J.

Yes, 70; No, 67; Absent, 14; Excused, 0.

70 having voted in the affirmative and 67 voted in the negative, with 14 being absent, and accordingly the Resolve was **FINALLY PASSAGE**, signed by the Speaker and sent to the Senate.

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, have preference in the Orders of the Day and continue with such preference until disposed of as provided by House Rule 502.

Bill "An Act To Promote the Financial Security of Maine's Families and Children"

(H.P. 1152) (L.D. 1579)

(H. "A" H-782 to C. "A" H-774)

TABLED - March 22, 2004 (Till Later Today) by Representative RICHARDSON of Brunswick.

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

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

Representative **CARR**: Mr. Speaker, Men and Women of the House. I wasn't able to be here when this bill came up. I do have something that I wanted to say on this bill. Serving on the Judiciary Committee, many of the members received a letter from the Roman Catholic Diocese of Portland. I know that there are many people here who are members. I just wanted to share with you that since you may not have received this letter that the Catholic Diocese does oppose this legislation. They have listed several reasons why they do. I wanted to share that with you. I oppose it as well for many of the issues that they listed here. Thank you Mr. Speaker.

The SPEAKER: 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. 351

YEA - Adams, Ash, Barstow, Bliss, Bowen, Brannigan, Brown R, Bull, Canavan, Cowger, Craven, Cummings, Dudley, Dunlap, Duplessie, Earle, Eder, Faircloth, Finch, Fischer, Gagne-Friel, Gerzofsky, Grose, Hatch, Hutton, Jackson, Kane, Ketterer,

Koffman, Lemoine, Lerman, Lessard, Mailhot, Makas, Marley, McCormick, McGowan, McKee, McLaughlin, Moody, Norbert, Norton, O'Brien J, O'Brien L, O'Neil, Paradis, Pellon, Percy, Perry A, 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, Austin, Beaudette, Bennett, Berry, Berube, Bierman, Bowles, Breault, Browne W, Bruno, Bryant-Deschenes, Campbell, Carr, Churchill E, Churchill J, Clark, Clough, Collins, Courtney, Cressey, Crosthwaite, Curley, Davis, Duprey B, Duprey G, Fletcher, Glynn, Heidrich, Honey, Jacobsen, Jennings, Jodrey, Joy, Landry, Ledwin, Lewin, Lundeen, Maietta, McKenney, McNeil, Millett, Mills J, Mills S, Moore, Murphy, Nutting, Peavey-Haskell, Richardson E, Richardson M, Rogers, Rosen, Saviello, Sherman, Shields, Snowe-Mello, Stone, Sukeforth, Sykes, Tardy, Tobin D, Tobin J, Trahan, Treadwell, Vaughan, Wotton, Young.

ABSENT - Blanchette, Bunker, Daigle, Dugay, Goodwin, Greeley, Hotham, Kaelin, Marraché, McGlocklin, Muse, Patrick, Perry 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 by Committee Amendment "A" (H-774) as Amended by House Amendment "A" (H-782)** thereto and sent for concurrence.

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

REPORTS OF COMMITTEE

Divided Report

Majority Report of the Committee on **TAXATION** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-786)** on Bill "An Act To Expand Property Tax Exemptions for Veterans to Cooperative Housing"

(H.P. 1250) (L.D. 1674)

Signed:

Senators:

STANLEY of Penobscot
STRIMLING of Cumberland
NASS of York

Representatives:

LEMOINE of Old Orchard Beach
LERMAN of Augusta
COURTNEY of Sanford
CLOUGH of Scarborough
PERRY of Bangor
SIMPSON of Auburn
McCORMICK of West Gardiner
TARDY of Newport
SUSLOVIC of Portland

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

Signed:

Representative:

McGOWAN of Pittsfield

READ.

On motion of Representative LEMOINE of Old Orchard Beach, the Majority **Ought to Pass as Amended** Report was **ACCEPTED**.

The Bill was **READ ONCE**. **Committee Amendment "A" (H-786)** was **READ** by the Clerk and **ADOPTED**. The Bill was assigned for **SECOND READING** Thursday, March 25, 2004.

The House recessed until the Sound of the Bell.

(After Recess)

The House was called to order by the Speaker.

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

SENATE PAPERS

Bill "An Act To Authorize the Town of Millinocket To Annex a Certain Parcel of Land"

(S.P. 774) (L.D. 1941)

Came from the Senate, **REFERRED** to the Committee on **STATE AND LOCAL GOVERNMENT** and ordered printed.

Representative CLARK of Millinocket moved that the Bill be **TABLED** until later in today's session pending **REFERENCE**.

Subsequently, Representative CLARK of Millinocket **WITHDREW** his motion to **TABLE**.

On motion of Representative RICHARDSON of Brunswick, **TABLED** pending **REFERENCE** and later today assigned.

REPORTS OF COMMITTEE

Divided Report

Majority Report of the Committee on **MARINE RESOURCES** reporting **Ought Not to Pass** on Bill "An Act To Repeal the Exception Provision for Certain Imported Lobster under the Laws Governing Lobster Measurement" (EMERGENCY)

(H.P. 1243) (L.D. 1667)

Signed:

Senators:

DAMON of Hancock
PENDLETON of Cumberland
BENNETT of Oxford

Representatives:

BULL of Freeport
SULLIVAN of Biddeford
PERCY of Phippsburg
MUSE of Fryeburg
McNEIL of Rockland
RECTOR of Thomaston

Minority Report of the same Committee reporting **Ought to Pass as Amended by Committee Amendment "A" (H-789)** on same Bill.

Signed:

Representatives:

ASH of Belfast
DUGAY of Cherryfield
BIERMAN of Sorrento

READ.

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

The same Representative **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 Calais, Representative Perry.

Representative **PERRY**: Mr. Speaker, Ladies and Gentlemen of the House. I want to speak to you about this bill to tell you a little bit about the history of it and why I feel this is important. This bill came to me as I was working with the lobstermen in Lobster Zone A down east who fish in what we call the gray zone. The gray zone is an area between Canada and the US that they disagree on where their borders are. They overlap each other. This has been in place for a number of years. In recent years the Canadian fishermen have made a concerted effort to fish in this area as well as the American fishermen. What has happened is that we have two different systems of conservation working in this area. The Canadian fishermen work by trap limitations and season fishing, whereas the American fishermen look at preserving the stock. One way of doing this is not fishing undersize. The other is not fishing oversize lobster.

What is happening in this area is that we have Canadian fishermen fishing oversize lobster and American fishermen throwing them away, back into the ocean.

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

Representative **PERRY**: Thank you. As this became more prominent the fishermen actually asked for some help. They were directed to the National Marine Resources. Essentially they were told that this is a local problem. The fishermen have to talk among themselves and come up with an agreement. As a result of that, they met in the winter of 2002/2003 with several meetings to try to come to an agreement on how to fish this area. Unfortunately what happened was the Canadian fishermen essentially at the end said that we don't have anything to lose, we really don't want to negotiate any more and called off the last meeting. We are dealing with fishermen who have what they felt like, no recourse at this point, and watching their brood stock being fished and asking for a way to solve this. One of the other issues that comes out of this is the lobster fishermen in down east Maine, when they fish three miles out, they are in the gray zone. Essentially a large part of their fishing area is in the gray zone. Therefore, they are talking about their own fishery. The brood stock also helps maintain the fishery all through the Gulf of Maine, which is the other thing they were looking at. Looking at a way to ensure that that brood stock stays in place was an attempt to look at this by at least not solving a problem in the gray area down east, but at least to prohibit the shipping of the oversized lobsters through Maine. The frustration is they are not fishing these lobsters. They are seeing them fished and then they are being shipped right by their front door. What I am asking with this bill is that we just repeal the exemption that allows the shipping of oversized lobsters through Maine. I would ask you to vote in opposition to the Majority Report.

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

Representative **BULL**: Mr. Speaker, Men and Women of the House. I rise to tell you why we voted Ought Not to Pass, the majority of the committee, on this bill. I know that I could speak for others when I say that I desperately wish that I could have voted for this bill. The good Representative from Calais, Representative Perry, has certainly brought to us an area of true and grave concern, particularly to the folks in down east Maine in this area of the gray zone not too far off the coast of Cutler.

While she raised some very good points and while this is certainly a problem and an issue that needs to be addressed, this bill is not the vehicle to provide the remedy that the lobstermen and lobsterwomen in down east Maine are hoping for. This bill is

very problematic in many, many ways. There are a number of unanswered questions and issue that have yet to be resolved on this. There are questions around the legality of such a bill. There are questions on the constitutionality of such a bill and questions on the effectiveness on such a bill. Simply prohibiting oversized lobsters from Canada to be shipped through Maine is not going to keep them from getting to market in Boston or New York City. It is just going to make it a little bit more difficult for them, but it is truly not going to solve the issue and keep those oversized lobsters from coming through Maine or going to market.

There has been some ongoing discussions on this issue. This is something that has involved many layers of our state and federal government. There have been numerous discussions and negotiations on this issue. We are at a bit of a deadlock here, but at least these discussions are still happening.

We heard quite a bit of testimony on this bill. The folks coming in to testify for it were from the down east area, the Cutler area. We also heard opposition from the Department of Marine Resources and from other lobstermen, in fact, even one up in that area. The Maine Lobstermen's Association did come in to testify neither for nor against, but raised some very serious and some very pertinent questions and concerns. One of the issues that was raised was whether or not there was a risk of retaliation from Canada on trade issues. If we do move forward with something along these lines, whether or not Canada may, in fact, retaliate against us on some of our trade. Again, while I am very, very sympathetic to the concerns brought forth by this bill to the lobstermen of down east Maine and to Representative Perry of Calais, this is not a viable solution to the problems brought forth. I request your support for the majority bipartisan Ought Not To Pass report. Thank you Mr. Speaker.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Fort Kent, Representative Jackson.

Representative **JACKSON**: Mr. Speaker, Ladies and Gentlemen of the House. I have to admit that I don't know very much about lobster fishermen. About the most I know is I definitely like to eat them. One thing that I remember back in 1998 when a group I was with was on the border was that there was a pickup load of guys that came from down east way. They stopped at the area that we were congregating on the road. We agreed to let them through because they were out to have a good time hunting. After they went through, they stopped and told us again that they were supportive of what we were doing because they had kind of the same issue. Canadian boats were coming in and picking up lobsters that they had just dropped because they were too small. They felt it was unfair. That was basically my first time having any discussion on how lobster fishing was facing some of the same issues that the logging was with the Canadian lobstermen. We had a pretty interesting conversation about it. I never really forgot it. Today when this bill came up, it made me remember back in 1998 and one of the things that I would say about the legality and the constitutionality, maybe all those things are true, but we have to start doing something to protect the people here in Maine.

The biggest thing I would say and I have seen this happen time and time again, if the shoe was on the other foot and it was the Canadian lobstermen that were having a hard time, the Canadian government would step up to the plate and protect their people. I think this is the perfect example of something we should do to protect our lobster fishermen. I am going to support it, be it unconstitutional or illegal or not, but I think it is certainly a way to send a message. Thank you.

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

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

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

Representative **TRAHAN**: Thank you Mr. Speaker. If this piece of legislation were to pass, it may benefit lobstermen, but would it impact those businesses that now handle these lobsters in the state? In other words, would some businesses lose business?

The SPEAKER PRO TEM: The Representative from Waldoboro, Representative Trahan has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Freeport, Representative Bull.

Representative **BULL**: Mr. Speaker, Ladies and Gentlemen of the House. I thank the Representative from Waldoboro, Representative Trahan, for his question. The short answer is I am not sure, but that was an issue that was raised at the public hearing. There is no definitive answer, but the issue here, it is important to realize, right now the oversized lobsters can be shipped through Maine by two Maine dealers, but they can only be as a pass through. If this bill passes, we wouldn't even be allowing that pass through to occur. There is the potential that fewer lobsters would be coming to the dealers here in Maine.

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

Representative **ASH**: Mr. Speaker, Ladies and Gentlemen of the House. I have a little different philosophy about losing business. I don't know if people realize, but 70 to 80 percent of the lobsters caught in the State of Maine are shipped to Canada. That alone tells me that the Canadians need that product for their market. I don't feel that we will be losing a lot of business if we stop the oversized lobsters from coming through the State of Maine. Thank you.

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

Representative **PERCY**: Mr. Speaker, Ladies and Gentlemen of the House. A couple of points, the majority of the lobster industry is opposed to this bill because of the fear of unintended consequences. Olympia Snowe's Office was contacted. The Attorney General's Office was contacted and these people said this isn't the way to deal with this situation. The bill was put in and I cosigned it with Representative Perry as a conservation measure. If this bill passed, it would do nothing to help conservation. They will still be allowed to fish those oversized lobsters. Even though I voted against it, it was with the hope that the federal government can get together with Canada and take care of this situation and that the fishermen from the two countries can get together and coordinate a good conservation program that helps the entire industry between both nations. Thank you very much.

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

Representative **SULLIVAN**: Mr. Speaker, Men and Women of the House. I, too, am on the Majority Ought Not to Pass Report. It has nothing to do with Representative Perry and a good idea. It has to do with the fact that in order to do this the unseen consequences could be immense. First of all, we have the conservation requirement and right now the feds are after us for whale taking that is totally upsetting everything up and down the coast. We have a situation where we have created a Lobster Advisory Board and we said you need to operate your fishery in a way where we don't have the problems we have with ground fish now and shrimp, which is short seasoned and it almost impossible if you only shrimp to even have it make money for you

because it is a short season and the equipment needed if you cannot rig your boat for another fishery.

The lobster fishery is the only fishery that is alive and well. What it does for the rest of tourism and the marine people who sell the oil and the mechanics, the impact is tremendous. We have Senator Snowe working on that issue and Senator Collins. It is important that we realize that we can make a difference and where we can't. I think the idea that Representative Perry has even brought this forward allows us to talk about this. It brings it to the press and it let's the nation know, especially our leaders that we are there. I am asking you to please go along with the Ought Not to Pass and then work, both sides of the aisle, with the congressional delegation. Thank you.

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

Representative **SHERMAN**: Mr. Speaker, Ladies and Gentlemen of the House. The Republican Caucus may already anticipate what I am going to say, because we have been around this road before. What you are hearing is a sad debate. It starts in northern Maine with the Canadians and lumber and we are talking about the lobster. We don't have an organized response from someone in this state government that can handle these issues. We keep talking about our national legislators, there are states where they have ombudsmen. It becomes a joke in our caucus, but this debate obviously points out the fact that you need someone in state government that can roll up their sleeves and be a point person with these issues. Business and Economic Development had Chuck Lotton do a report around NAFTA and one of his recommendations, number five, if I'm correct, said you need someone in the state to put their arms around all these issues with our great Canadian friends in dealing with them. It saddens me to hear we are going to talk to a Senator, you pick the party we are going to talk to. To me, that is long gone as the woods industry disappears, the potato industry disappears and the lobstermen are having their problems. I think it is sad that we continue this debate without doing anything along those lines.

Another thing, there is an International Trade Center in Bangor. Their objective is to get trade. They aren't worrying about how it is done. You have a Canada desk up there, a young man by the name of Wade Merit who runs that. They should be dealing with some of these cross border issues. To me, it is time to take a look at what we have done here in the Legislature, these issues that come in, and say that I think you can do something. Washington State has done something. Idaho has done something and I think we are basically beating our gums around the issue that you should have someone working on it full time. 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. 352

YEA - Annis, Austin, Barstow, Beaudette, Bennett, Berry, Berube, Bowen, Bowles, Brannigan, Breault, Brown R, Browne W, Bruno, Bryant-Deschenes, Bull, Campbell, Clough, Collins, Courtney, Cowger, Cressey, Crosthwaite, Cummings, Curley, Davis, Dudley, Dunlap, Duplessie, Duprey B, Eder, Fletcher, Gagne-Friel, Glynn, Heidrich, Honey, Hutton, Jacobsen, Jodrey, Kane, Koffman, Landry, Ledwin, Lemoine, Lerman, Lessard, Lundeen, Maietta, McCormick, McKenney, McLaughlin, McNeil, Millett, Mills S, Moody, Moore, Murphy, Muse, Norbert, Nutting, Percy, Pingree, Rector, Richardson E, Richardson J, Rogers, Rosen, Sampson, Shields, Simpson, Smith N, Snowe-Mello, Sukeforth, Sullivan, Suslovic, Sykes, Thompson, Tobin D,

Trahan, Vaughan, Wheeler, Woodbury, Wotton, Young, Mr. Speaker.

NAY - Adams, Ash, Bierman, Bliss, Bunker, Canavan, Carr, Clark, Craven, Dugay, Duprey G, Earle, Faircloth, Finch, Fischer, Gerzofsky, Greeley, Grose, Hatch, Jackson, Jennings, Joy, Ketterer, Mailhot, Makas, Marley, Marraché, McGowan, McKee, Mills J, Norton, O'Brien L, O'Neil, Paradis, Peavey-Haskell, Pellon, Perry A, Perry J, Pineau, Piotti, Richardson M, Rines, Saviello, Sherman, Smith W, Stone, Tardy, Thomas, Tobin J, Treadwell, Twomey, Usher, Walcott, Watson.

ABSENT - Andrews, Blanchette, Churchill E, Churchill J, Daigle, Goodwin, Hotham, Kaelin, Lewin, McGlocklin, O'Brien J, Patrick.

Yes, 85; No, 54; Absent, 12; Excused, 0.

85 having voted in the affirmative and 54 voted in the negative, with 12 being absent, and accordingly the Majority **Ought Not to Pass Report** was **ACCEPTED** and sent for concurrence.

The Speaker resumed the Chair.

The House was called to order by the Speaker.

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

HOUSE DIVIDED REPORT - Majority (8) Ought to Pass as Amended by Committee Amendment "A" (H-783) - Minority (5) Ought to Pass as Amended by Committee Amendment "B" (H-784) - Committee on LABOR on Bill "An Act To Establish the Maine Jobs, Trade and Democracy Act" (EMERGENCY) (H.P. 1337) (L.D. 1815)

Which was **TABLED** by Representative SMITH of Van Buren pending his motion to **ACCEPT** the Majority **Ought to Pass as Amended Report**.

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

Representative **TREADWELL**: Mr. Speaker, Ladies and Gentlemen of the House. The bill before us would establish a permanent trade policy commission to look into the many facets of trade agreements that are enacted by the federal government. As we all know, the states are prohibited from entering into international trade agreements. We have little or no say in federal trade agreements. I would submit to you that this bill, although it sounds good, will have little or no affect on the NAFTA agreement and other agreements that have been enacted by the US federal government. If we wanted to do something or complain about the effects of those agreements, we should be complaining to our legislative delegation.

This commission will have 17 members and they will assess after one year the need for additional staff, possibly an executive director and I can see this thing just expanding on and on and on and becoming another white elephant in our state government.

The fiscal note is \$12,870, which I don't think we can afford right now to start another commission with another expense when we don't have any money to fund state government as it exists right now.

I would urge you to defeat the pending motion. Mr. Speaker, I request a roll call.

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

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

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

Representative SMITH: Mr. Speaker, Ladies and Gentlemen of the House. The Majority Report came out from the Labor Committee with eight members in favor of a bill that will set up this commission and allow the members of that commission to study the impact of the trade policies, including NAFTA and report back and try some kinds of development of expertise and some kinds of solutions.

The interesting thing about what you have before you right now is that the Minority Report from the committee also is in favor of establishing a commission. I would suggest that this was done because of the impact upon the committee before it. We had a hearing on February 12, at which time 23 people appeared before us representing not only workers, but businesses of Maine. They all were unanimous that we needed to do something to try to come to grips with NAFTA and other trade agreements so that we had something that was not just free trade, but it was going to be fair trade. Both businesses and workers recognize the importance of coming to grips and dealing with NAFTA and somehow getting expertise in it so that we can use those rules to our benefit, not sit back and let Canada use the rules to their benefit. It is time for us to get proactive and take steps to help ourselves on this. The testimony was unanimous. Do something! The two reports basically have the same kind of result. At least when it came out of committee, the word was, do something. The only differences between the reports has to do with the makeup of the commission. The report from the majority has six legislators instead of four legislators. It has 11 other committee members, instead of seven and it provides for certain heads of governmental agencies, like the Department of Labor, Department of Economic and Community Development, Department of Environmental Protection, Department of Agriculture, Department of Human Services be on the board ex officio. That is the main difference between the Majority Report and the Minority Report. We submit that the Majority Report is more inclusive and offers better information for everybody. The word that we heard in front of the committee was do something. Both committee reports seek to do something. There is no basis whatsoever for voting against this report and doing nothing. I ask you to vote in favor. Thank you.

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

Representative TREADWELL: Mr. Speaker, Ladies and Gentlemen of the House. I rise for the purpose of thanking the good Representative Smith for bringing up the Minority Report. I was not aware that we were authorized to discuss a report that wasn't before us, but since it is now. Mr. Speaker, I will comply with the rules of decorum of the House and will not speak to it.

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

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

The SPEAKER: The Representative may pose his question.

Representative SHERMAN: Mr. Speaker, Men and Women of the House. The Business and Economic Development Committee spent \$25,000 to do a report around essentially this same subject. They had a full-blown hearing on it. They had a workshop. I listened to Chuck Lotton give his report, his recommendations. Would anybody on that committee tell me how this effort would differ from what has already been done for \$25,000?

The SPEAKER: The Representative from Hodgdon, Representative Sherman has posed a question through the Chair

to anyone who may care to respond. The Chair recognizes the Representative from Biddeford, Representative Sullivan.

Representative SULLIVAN: Mr. Speaker, Men and Women of the House. The Representative is correct. I am not sure how much we paid, but he is right. We did this hearing. I believe it might have been his bill or Representative Carr's bill. We did put that through. It is my understanding that this bill is to become a commission that is an ongoing commission to study the different issues, very much like the bill we just voted on for the lobsters. Actually, it is a bill designed to continue on where you suggested in the past that we might want to go, that everybody is bringing up issues one by one and there is no focus to this. This is the focus of a commission that will continue to take up issues like logging, modular homes, there is a major problem with that and there is the problem with the lobsters. This would be a commission that would have been very helpful in the last discussion we had. Thank you.

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

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

The SPEAKER: The Representative may pose his question.

Representative SHERMAN: Mr. Speaker, Men and Women of the House. There were six recommendations that came out of the Business and Economic Development Committee if I am correct on my numbers here. Number five of that was to actually put a person in place to grapple some of this. I wonder if the committee itself is going to make some recommendations based on that report?

The SPEAKER: The Representative from Hodgdon, Representative Sherman has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Biddeford, Representative Sullivan.

Representative SULLIVAN: Mr. Speaker, Men and Women of the House. Mr. Speaker, a question to you. I would be happy to answer it, but I am not sure it is germane to the bill. I would just as soon give him the answer outside, but I am wondering if we are not doing exactly what we have been asked not to do.

The SPEAKER: That is why the Chair pointed that out.

The Chair recognizes the Representative from Bucksport, Representative Rosen.

Representative ROSEN: Mr. Speaker, Men and Women of the House. As this legislation moves forward and if either report ends up establishing a commission, it is my hope that anyone who looks at this issue as we move forward does consider a couple of areas to study in terms of the impact of NAFTA from the time that President Clinton signed the bill and its impact in law for a variety of border states, we also have to consider a couple of other items. One, the impact of currency fluctuations. They certainly flow back and forth in the State of Maine and currency fluctuations with the Canadian currency have had a fairly dramatic impact on investment in the state. The second issue I hope people consider is the considerable amount of Canadian investment that has taken place over the same period of time that NAFTA has been in effect.

Many of us tend to stand shoulder to shoulder and look to the Boston Market and the lower 48 for investment in this state. Why we have been looking south is if we just scan over our shoulder behind us we see significant investments from Canadian firms like Hydro Quebec and Frazier and Domtar and the purchase of Bangor Hydro and McCann Foods and on and on. I just hope that the view includes both those factors in the discussion. Thank you Mr. Speaker.

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

Representative **WATSON**: Mr. Speaker, Ladies and Gentlemen of the House. Some of the issues that this commission will be charged to be looking into arose out of a leaked document that came the US's attention from the general agreement on trade and serves, GATS and revealed that European community has already requested that over 44 US state laws be eliminated as non-tariff barriers. In the area of engineering services and integrated engineering services, the European communities requested that these states remove the requirement of instate residency requirements, Idaho, Iowa, Kansas, Maine, Mississippi, Nevada, Oklahoma, South Carolina, South Dakota, Tennessee, Texas and West Virginia. We have a statute, 32 MRSA, Section 1255 that allows only limited practice for nonresident engineers in our state. The EC would have GATS, the powers of international trade, repeal that statute. Under security purposes the EC has requested that we remove requirements for permanent resident alien status or US citizenship required for contract security services in Maine. We have a statute, as you may know, Title 32, MRSA, Section 9405, which sets criteria for issuing a license for it to be a contract security company operating in this state.

In other words, the European community, true NAFTA and other international trade organizations has the potential for reaching into our state, coming into this chamber, if you will, and repealing statutes willy nilly that we have established for good reason.

This commission is charged with researching what laws they are after. What affects in Maine and what policies in Maine are under attack by these secret investigations? These are not public investigations. This document was leaked. There was no fair disclosure, no sunshine rule in the WTO.

This commission is charged with the responsibility of looking at what impact this state will feel to international trade agreements. You heard just minutes ago an argument about Canadian lobsters. That is the very kind of thing that the International Trade Agreement is supposed to be handling. Instead of doing so, we are losing Maine jobs because of a dispute with Canada and nobody will get off dead center to bring that to the public's attention or bring it to the federal government's attention. This Majority Report establishes that commission, staffs it well. There are representatives from business. There are representatives from this body and the body down the hall to form that commission. The cost is cheap. You can see the fiscal note. It is miniscule, mostly legislative per diem, if you will. The Majority Report also enables the commission to seek outside funding. Believe me, with this kind of potential impact on Maine business and Maine trade, there is lots of outside funding available to fund this commission. Thank you Mr. Speaker.

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. 353

YEA - Adams, Ash, Barstow, Beaudette, Bennett, Bliss, Brannigan, Breault, Bull, Bunker, Canavan, Carr, Clark, Collins, Cowger, Craven, Dudley, Dugay, Dunlap, Duplessie, Duprey G, Earle, Eder, Faircloth, Finch, Fischer, Gagne-Friel, Gerzofsky, Greeley, Grose, Hatch, Hutton, Jackson, Jennings, Kane, Ketterer, Koffman, Landry, Lemoine, Lerman, Lessard, Lundeen, Mailhot, Makas, Marley, Marraché, McGowan, McKee, McLaughlin, Mills J, Moody, Norbert, Norton, O'Brien L, O'Neil, Paradis, Pellon, Percy, Perry A, Perry J, Pineau, Pingree, Piotti,

Richardson J, Rines, Rosen, Sampson, Saviello, Sherman, Simpson, Smith N, Smith W, Sukeforth, Sullivan, Suslovic, Tardy, Thomas, Thompson, Tobin J, Twomey, Usher, Walcott, Watson, Wheeler, Woodbury, Wotton, Mr. Speaker.

NAY - Annis, Austin, Berry, Berube, Bierman, Bowen, Bowles, Brown R, Browne W, Bruno, Bryant-Deschenes, Campbell, Clough, Courtney, Cressey, Crosthwaite, Curley, Davis, Duprey B, Fletcher, Glynn, Heidrich, Honey, Jacobsen, Jodrey, Joy, Ledwin, Maietta, McCormick, McKenney, Millett, Mills S, Moore, Murphy, Muse, Nutting, Peavey-Haskell, Rector, Richardson E, Richardson M, Rogers, Shields, Snowe-Mello, Stone, Sykes, Tobin D, Trahan, Treadwell, Vaughan, Young.

ABSENT - Andrews, Blanchette, Churchill E, Churchill J, Cummings, Daigle, Goodwin, Hotham, Kaelin, Lewin, McGlocklin, McNeil, O'Brien J, Patrick.

Yes, 87; No, 50; Absent, 14; Excused, 0.

87 having voted in the affirmative and 50 voted in the negative, with 14 being absent, and accordingly the Majority **Ought to Pass as Amended Report was ACCEPTED.**

The Bill was **READ ONCE. Committee Amendment "A" (H-783)** was **READ** by the Clerk and **ADOPTED.** The Bill was assigned for **SECOND READING Thursday, March 25, 2004.**

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

CONSENT CALENDAR

First Day

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

(S.P. 627) (L.D. 1695) Bill "An Act To Ensure Compliance with Federal Medicaid Requirements" Committee on **HEALTH AND HUMAN SERVICES** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-433)**

(S.P. 631) (L.D. 1699) Bill "An Act To Establish the Maine Military Family Relief Fund" Committee on **LEGAL AND VETERANS AFFAIRS** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-438)**

(S.P. 733) (L.D. 1887) Resolve, To Reduce the State Valuation for the Town of Lincoln Committee on **TAXATION** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-440)**

(S.P. 741) (L.D. 1895) Resolve, To Reduce the State Valuation for the Town of East Millinocket Committee on **TAXATION** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-439)**

There being no objections, the above items were ordered to appear on the Consent Calendar tomorrow under the listing of Second Day.

REPORTS OF COMMITTEE

Divided Report

Ten Members of the Committee on **HEALTH AND HUMAN SERVICES** report in Report "A" **Ought to Pass as Amended by Committee Amendment "A" (S-434)** on Bill "An Act To Encourage Financial Efficiency of Facilities for Persons with Mental Retardation" (EMERGENCY)

(S.P. 613) (L.D. 1681)

Signed:

Senators:

BRENNAN of Cumberland

WESTON of Waldo

Representatives:

KANE of Saco

DUGAY of Cherryfield
 CRAVEN of Lewiston
 EARLE of Damariscotta
 PERRY of Calais
 CAMPBELL of Newfield
 LEWIN of Eliot
 WALCOTT of Lewiston

One Member of the same Committee reports in Report "B"
Ought to Pass as Amended by Committee Amendment "B"
(S-435) on same Bill.

Signed:

Representative:

CURLEY of Scarborough

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

Signed:

Representative:

SHIELDS of Auburn

Came from the Senate with Report "A" **OUGHT TO PASS AS AMENDED READ and ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-434).**

READ.

Representative KANE of Saco moved that the House **ACCEPT Report "A" Ought to Pass as Amended.**

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

Representative **CURLEY:** Mr. Speaker, Men and Women of the House. I was pleased to be on the Ought to Pass portion of the bill, but I would ask you if you could take a minute and look at friendly Amendment "B" while I am talking about the merits of this bill and why I will be voting against it.

The problem that was brought forward to our committee is that the Department of Human Services and the Bureau of Developmental Services is making changes to reimbursement for the providers of mental retardation. As all of you know, this is problematic for them and really has a negative impact on what we call their consumers, but it is their patients, our constituents and in some cases our own family members. The intermediate care facilities providing mental retardation services ask for two things in this bill. They wanted it to be major substantive rules, not routine technical rules. By asking for major substantive rules, they wanted to have the Health and Human Services Committee have oversight of changes in reimbursement to their facilities. They also ask that the consumers, their families and providers and advocates collaborate on any changes in reimbursement to their facilities. They felt that it was one sided. DHS and BDS making changes without them having input. In many cases they often have better ideas on how to save money than state government does. We can often achieve the same goal of savings to state government and also provide services without hurting the providers.

I am asking that we vote against LD 1681 as amended and move onto the friendly amendment. Thank you.

The SPEAKER: The Chair recognizes the Representative from Saco, Representative Kane.

Representative **KANE:** Mr. Speaker, Ladies and Gentlemen of the House. I do appreciate the Representative from Scarborough's explanation because, indeed, the effort is, in fact, to provide a balance of appropriate input and accountability in the MR system. The difference between the two amendments is that the Majority Report would designate rules regarding principles of reimbursement for intermediate care facilities for persons with mental retardation as major substantive. The amendment that

the Representative from Scarborough is addressing is a Minority Report that would designate all rules regarding payments to providers for Maine Care Services. Maine Care Services is a huge vast range of services provided within the Maine Care Program. The development and support of major substantive provisions for rules can be a very expensive process. I believe it needs to be done selectively. This constituency, as the Representative from Scarborough identified, brought the issue to us. When we look at the amendment that is being addressed in the Minority Report, it does apply to the whole vast range of services, including nursing facilities, hospitals, every provision, every service provided under Maine Care. It could be extremely expensive and I think that we have to utilize our designation of major substantive rules on a very selective basis.

Our committee in this budgetary process that we are going through right now has, in fact, designated or recommended that in the budget that many areas be designated as major substantive. We did it on a selective basis and those areas that we felt it both needed and appropriate. I think we do have to take a more surgical approach in designation of programs and rules as major substantive. Thank you Mr. Speaker.

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

Representative **CURLEY:** Mr. Speaker, Men and Women of the House. I appreciate my colleague from Saco's comments. He really made my point. It seems to me that we should also be including other caregivers in major substantive rules. For examples, nursing home and home health care agencies. Those are just two examples and they, too, deserve collaboration of all the stakeholders and oversight from the committee that has responsibility for those services that are provided. When the vote is taken, I would ask for a roll call.

Representative **CURLEY** of Scarborough **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 Saco, Representative Kane.

Representative **KANE:** Mr. Speaker, Ladies and Gentlemen of the House. I will only repeat the major point that I wish to make. The designation of rules is being major substantive is a very costly process. Most of these other providers have not, as was the case with mental retardation providers and consumers, requested that degree of oversight at this point. Thirdly, this budget, if it comes out as our committee recommended, is going to increase the number of areas in which there will be major substantive rules. Thank you Mr. Speaker. I urge you to adopt the Majority Report.

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. 354

YEA - Adams, Ash, Barstow, Beaudette, Bennett, Bliss, Brannigan, Breault, Bull, Bunker, Campbell, Canavan, Cowger, Craven, Dudley, Dunlap, Duplessie, Duprey G, Earle, Faircloth, Finch, Fischer, Gagne-Friel, Gerzofsky, Grose, Hutton, Jackson, Jennings, Kane, Ketterer, Koffman, Lemoine, Lerman, Lessard, Lundeen, Mailhot, Makas, Marley, McGowan, McKee, McLaughlin, Mills J, Moody, Norbert, Norton, O'Brien L, O'Neil, Paradis, Pellon, Percy, Perry A, Perry J, Pineau, Pingree, Piotti, Richardson J, Rines, Sampson, Saviello, Simpson, Smith N, Smith W, Sullivan, Suslovic, Thomas, Thompson, Twomey, Walcott, Watson, Wheeler, Woodbury, Wotton, Mr. Speaker.

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

ABSENT - Andrews, Blanchette, Churchill E, Churchill J, Clark, Cummings, Daigle, Dugay, Eder, Goodwin, Hatch, Hotham, Kaelin, Landry, Lewin, McGlocklin, McNeil, O'Brien J, Patrick, Stone, Usher.

Yes, 73; No, 57; Absent, 21; Excused, 0.

73 having voted in the affirmative and 57 voted in the negative, with 21 being absent, and accordingly Report "A" **Ought to Pass as Amended** was **ACCEPTED**.

The Bill was **READ ONCE**. **Committee Amendment "A" (S-434)** was **READ** by the Clerk and **ADOPTED**. The Bill was assigned for **SECOND READING** Thursday, March 25, 2004.

On motion of Representative BEAUDETTE of Biddeford, the House adjourned at 12:32 p.m., until 9:00 a.m., Thursday, March 25, 2004.