

MAINE STATE LEGISLATURE

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State of Maine

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ONE HUNDRED AND TWENTY-SECOND LEGISLATURE
FIRST SPECIAL SESSION
30th Legislative Day
Tuesday, June 7, 2005

The Speaker resumed the Chair.
The House met according to adjournment and was called to order by the Speaker.
Prayer by Honorable Emily Ann Cain, Orono.
National Anthem by Mahoney Middle School 8th Grade Band, South Portland.
Pledge of Allegiance.
The Journal of yesterday was read and approved.

COMMUNICATIONS

The Following Communication: (H.C. 278)

STATE OF MAINE

**ONE HUNDRED AND TWENTY-SECOND LEGISLATURE
COMMITTEE ON JUDICIARY**

June 6, 2005

Honorable Beth Edmonds, President of the Senate
Honorable John Richardson, Speaker of the House
122nd Maine Legislature
State House

Augusta, Maine 04333

Dear President Edmonds and Speaker Richardson:

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

L.D. 1006 An Act To Modify Joint and Several Liability
L.D. 1415 An Act Regarding Confidentiality in Litigation
L.D. 1582 An Act To Protect Maine Citizens from Medical Negligence

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

Sincerely,

S/Sen. Barry J. Hobbins

Senate Chair

S/Rep. Deborah Pelletier-Simpson

House Chair

READ and ORDERED PLACED ON FILE.

The Following Communication: (S.C. 374)

MAINE SENATE

**122ND LEGISLATURE
OFFICE OF THE SECRETARY**

June 6, 2005

Honorable Millicent M. MacFarland

Clerk of the House

2 State House Station

Augusta, ME 04333

Dear Clerk MacFarland:

Please be advised the Senate insisted and joined in the Committee of Conference on Bill "An Act To Allow Counties a One-year Exemption For Jail Costs from the Limitation on County Assessments" (H.P. 1175) (L.D. 1666).

Please be advised the President has appointed the following conferees on the part of the Senate:

Senator Schneider of Penobscot County

Senator Martin of Aroostook County

Senator Andrews of York County

Sincerely,

S/Joy J. O'Brien

Secretary of the Senate

READ and ORDERED PLACED ON FILE.

ORDERS

On motion of Representative TRAHAN of Waldoboro, the following House Order: (H.O. 39)

ORDERED, that the House Rules be amended by adding a new House Rule 108 to read:

Rule 108. Cameras allowed. Cameras are permitted to film the proceedings of the House for broadcast.

READ.

On motion of Representative TRAHAN of Waldoboro, **TABLED** pending **PASSAGE** and specially assigned for Wednesday, June 8, 2005.

SPECIAL SENTIMENT CALENDAR

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

Recognizing:

the Honorable Daniel B. Williams, of Orono, former member of the Maine House of Representatives and longtime and enthusiastic supporter of music and arts at the University of Maine, who is the 2005 recipient of the annual Vincent A. Hartgen Award by the University of Maine Patrons of the Arts for advancing the community of the arts on campus. An original advisory board member of the Maine Center for the Arts, he co-chairs the center's Gala Committee and serves on other center committees. He is a member of the American Choral Directors Association and has performed in several productions of the School of Performing Arts, where he has served as music director. Mr. Williams is the founder and music director of the University of Maine Black Bear Men's Chorus. He also directs "The Landlords," a men's glee club, which performs regularly for area civic groups and community organizations. Each year, Mr. Williams co-writes and co-directs a show performed by University students at the Stillwater Society Dinner, which, through song, recognizes and honors up to 4 prominent University of Maine alumni. He has been a valuable asset to the university arts community and the Maine Center for the Arts for almost a decade. We acknowledge his leadership and commitment to the area of arts outreach and we extend our congratulations to him on his receiving this honor;

(HLS 883)

On **OBJECTION** of Representative CAIN of Orono, was **REMOVED** from the Special Sentiment Calendar.

READ.

The **SPEAKER**: The Chair recognizes the Representative from Orono, Representative Cain.

Representative **CAIN**: It is a rare occasion when you can honor someone with a sentiment who is not only a constituent, but who is also a former member of this body and who is also your spouse. Danny's love of the arts is not a love that he has necessarily had since he was a child, but one that has grown since he was in college and I met Danny through a choir. We continue to prioritize music and the arts in our lives every single day. Danny has created choirs and performances from scratch including the Black Bear Men's Chorus, which has grown in the last four years to a group of over 50. He has sung at Carnegie Hall. He has traveled to Europe with choirs and for those of you that have known him and served with him you may not have known that Danny did any of these things. That is because Danny does it as a volunteer. He does it as something that he

loves to do, not something that he gets paid to do. That is what you call a true passion and that is why I admire him so much for his dedication and his contribution to the arts. Thank you for helping me to honor my husband today with this sentiment and please join me in congratulating Danny on this award. Thank you.

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

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

Divided Report

Majority Report of the Committee on **HEALTH AND HUMAN SERVICES** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-636)** on Resolve, Regarding Legislative Review of Chapter 101: Establishment of the Capital Investment Fund, a Major Substantive Rule of the Governor's Office of Health Policy and Finance (EMERGENCY)

(H.P. 36) (L.D. 33)

Signed:

Senators:

MAYO of Sagadahoc
MARTIN of Aroostook

Representatives:

PINGREE of North Haven
WALCOTT of Lewiston
GROSE of Woolwich
WEBSTER of Freeport
MILLER of Somerville
BURNS of Berwick

Minority Report of the same Committee reporting **Ought to Pass as Amended by Committee Amendment "B" (H-637)** on same Resolve.

Signed:

Senator:

ROSEN of Hancock

Representatives:

SHIELDS of Auburn
CAMPBELL of Newfield
LEWIN of Eliot
GLYNN of South Portland

Representative SOCKALEXIS of the Penobscot Nation - of the House - supports the Majority **Ought to Pass as Amended by Committee Amendment "A" (H-636)** Report.

READ.

Representative PINGREE of North Haven moved that the House **ACCEPT** the Majority **Ought to Pass as Amended** Report.

On further motion of the same Representative, **TABLED** pending her 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 item appeared on the Consent Calendar for the First Day:

(H.P. 357) (L.D. 482) Bill "An Act To Ensure Adequate Medical Care for Children" Committee on **HEALTH AND HUMAN SERVICES** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-641)**

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

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

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

BILLS IN THE SECOND READING
Senate as Amended

Bill "An Act To Ensure Sufficient Staffing To Properly Enforce the Laws and Rules of the Manufactured Housing Board"

(S.P. 87) (L.D. 267)

(C. "A" S-114)

Reported by the Committee on **Bills in the Second Reading**, read the second time, the Senate Paper was **PASSED TO BE ENGROSSED AS AMENDED** in concurrence. **ORDERED SENT FORTHWITH.**

Bill "An Act To Care for Families"

(S.P. 361) (L.D. 1044)

(C. "A" S-280)

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

On motion of Representative DAIGLE of Arundel, was **SET ASIDE.**

On further motion of the same Representative, the House **RECONSIDERED** its action whereby **Committee Amendment "A" (S-280)** was **ADOPTED.**

The same Representative **PRESENTED House Amendment "A" (H-644)** to **Committee Amendment "A" (S-280)** which was **READ** by the Clerk.

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

Representative **DAIGLE:** Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. This is the bill that we passed yesterday regarding the use of vacation time, medical leave and so forth in family emergencies. What my amendment proposes to do is to strip away the financial penalties for nonoccurrence. As the penalty was structured there were accelerating penalties that started out modest and rose \$250, but there was no limitation on the time period and there was no limitation on the number of employees and so forth so imagine this scenario: If you have a company with multiple locations and you have hundreds of thousands of employees in multiple locations because you are talking about a large and diverse organization any one incident anywhere in the state would count as the first charge. The second incident and third incident and so forth would make the company rise to the top enforcement penalty level and since there is no sunset it would basically go on forever. The result is that there would be very punitive penalties. Almost immediately the highest penalty would be assessed for every issue where leave was not granted exactly as this law requires. Some of you may think that it is a great outcome, but I think that we all understood during debate that we were looking to encourage industry to continue to give medical leave and to allow the vacation time in the first place and then to allow this law to be applied to a family emergency. What we are all concerned with is that the reaction from industry will be to say, "I am going to hurry up and change my policy and I am going to reduce my benefits so that I don't get myself in trouble." We don't think that

there is going to be a problem with this yet. Let's remove the penalty from this now and let's let the program roll out and let's not make it adverse for companies to join with this in the spirit of the law and go forward without penalties and then we can see if experience with the bill suggests that we need to have a heavy stick to club people with. Then we can always come back and we can add that, but I believe the heavy enforcement penalties in the bill today will have the adverse consequence of encouraging companies to drop their support for family medical leave. Thank you.

Representative SMITH of Van Buren moved that **House Amendment "A" (H-644) to Committee Amendment "A" (S-280) be INDEFINITELY POSTPONED.**

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

Representative DAIGLE: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. Without this amendment I cannot support this bill and I know many others who feel the same way. I know that the result will be excessive penalties almost immediately imposed upon businesses and I know that the result will be that they will simply reduce the sick time allowances for their employees because nobody is going to let themselves walk down this road when they get into trouble. If heavy handed, oppressive state government is the only way that we can do it we should not do it at all. I encourage you to sustain the survivability of this bill by voting against the motion to indefinitely postpone this amendment. Mr. Speaker, I ask for a roll call.

Representative DAIGLE of Arundel **REQUESTED** a roll call on the motion to **INDEFINITELY POSTPONE House Amendment "A" (H-644) to Committee Amendment "A" (S-280).**

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: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. The reason that I move to indefinitely postpone this matter is that the matter of penalties was fully considered by the committee and by the stakeholders who negotiated the present language of LD 1044. In this act the penalties are not great and it is required so that there will be consideration given to the application of this act. We ask you to support the motion to indefinitely postpone.

The SPEAKER: The Chair recognizes the Representative from Holden, Representative Hall.

Representative HALL: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I rise in opposition to the current motion. I was the lone member of the Labor Committee that voted against this bill originally and a big part of my reason was these penalties. We heard testimony in the committee that virtually all employers in our state that offer sick leave are already very flexible and are using it in concurrence with the federal Family Medical Leave Act. There are very few employers out there that will be covered by this law that are not currently allowing their employees to combine the Family Medical Leave Act with using their sick time that they have already been offered or their vacation time.

The problem that Representative Daigle has brought forward is very true. Under the terms of this bill a company will be able to say that they have decided not to give sick time to their employees anymore. They are just going to take it all away. That way they don't have to worry about this law and that is what we are voting on. People out there who currently have sick time are going to lose their benefits because the company is just

going to say that they give those benefits freely, that they want to give them and that they give them because they want to be decent to their employees. They don't give them because the government tells them that they have to. If the government is going to tell them that they have to give them then they are just going to take them away and the employer has every right to do that under this law, to just say that they have no more sick pay whatsoever. I strongly believe that if we were to pass this amendment it would actually save some people's benefits so I please urge you to vote against the current motion. Thank you.

The SPEAKER: A roll call has been ordered. The pending question before the House is Indefinite Postponement of House Amendment "A" (H-644) to Committee Amendment "A" (S-280). All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 267

YEA - Adams, Ash, Babbidge, Barstow, Blanchard, Blanchette, Bliss, Brannigan, Brautigam, Bryant, Burns, Cain, Canavan, Clark, Crosby, Cummings, Driscoll, Duchesne, Dunn, Duplessie, Eberle, Eder, Faircloth, Farrington, Finch, Fischer, Fisher, Gerzofsky, Grose, Hanley S, Harlow, Hogan, Hutton, Jackson, Jennings, Koffman, Lerman, Lundeen, Makas, Marley, Marraché, Mazurek, Merrill, Miller, Mills, Moody, Norton, O'Brien, Paradis, Patrick, Pelletier-Simpson, Percy, Perry, Pilon, Pineau, Pingree, Piotti, Rines, Sampson, Saviello, Schatz, Smith N, Smith W, Thompson, Tuttle, Twomey, Valentino, Walcott, Watson, Webster, Wheeler, Woodbury, Mr. Speaker.

NAY - Annis, Austin, Berube, Bierman, Bishop, Bowen, Bowles, Brown R, Browne W, Campbell, Carr, Cebra, Churchill, Clough, Collins, Cressey, Crosthwaite, Curley, Curtis, Daigle, Davis G, Duprey, Edgecomb, Emery, Fitts, Fletcher, Flood, Glynn, Goldman, Greeley, Hall, Hamper, Hanley B, Hotham, Jacobsen, Jodrey, Joy, Kaelin, Lansley, Lewin, Lindell, Marean, McCormick, McFadden, McKane, McKenney, McLeod, Millett, Moore G, Moulton, Muse, Nass, Nutting, Ott, Pinkham, Plummer, Rector, Richardson D, Richardson E, Richardson M, Richardson W, Robinson, Rosen, Seavey, Sherman, Shields, Stedman, Sykes, Tardy, Thomas, Trahan, Vaughan.

ABSENT - Beaudette, Bryant-Deschenes, Craven, Davis K, Dudley, Dugay.

Yes, 73; No, 72; Absent, 6; Excused, 0.

73 having voted in the affirmative and 72 voted in the negative, with 6 being absent, and accordingly **House Amendment "A" (H-644) to Committee Amendment "A" (S-280) was INDEFINITELY POSTPONED.**

Subsequently, **Committee Amendment "A" (S-280) was ADOPTED.**

Representative DAIGLE of Arundel **REQUESTED** a roll call on **PASSAGE TO BE ENGROSSED as Amended by Committee Amendment "A" (S-280).**

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 Sanford, Representative Bowles.

Representative BOWLES: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. It is indeed unfortunate that Republicans are now forced into a position where we are going to sit here and vote against a bill, which could have easily received if not unanimous than near unanimous support had we adopted a reasonable amendment that was just offered. Instead we are going to play party politics, as we just saw, and turn down an opportunity to put forward a piece of legislation that is going to have the same effect whether the amendment had been on it or not. I think that it is a shame, it is a disappointment and it doesn't reflect well on any of us.

The SPEAKER: The Chair recognizes the Representative from Hampden, Representative Duprey.

Representative DUPREY: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I would like to echo my sentiments from the Minority Leader, I am on the Majority Ought to Pass on this bill and I think that this is a pretty good bill, but I did have a problem with the fine piece on this and after what I just saw I have changed my mind and will be voting against this bill.

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. 268

YEA - Adams, Ash, Babbidge, Barstow, Blanchard, Blanchette, Bliss, Brannigan, Brautigam, Bryant, Burns, Cain, Canavan, Clark, Crosby, Cummings, Driscoll, Duchesne, Dunn, Duplessie, Eberle, Eder, Faircloth, Farrington, Finch, Fischer, Fisher, Gerzofsky, Grose, Hanley S, Harlow, Hogan, Hutton, Jackson, Jennings, Koffman, Lerman, Lundeen, Makas, Marley, Marraché, Mazurek, Merrill, Miller, Mills, Moody, Norton, O'Brien, Paradis, Patrick, Pelletier-Simpson, Percy, Perry, Pilon, Pineau, Pingree, Piotti, Rines, Sampson, Saviello, Schatz, Smith N, Smith W, Thompson, Tuttle, Twomey, Valentino, Walcott, Watson, Webster, Wheeler, Woodbury, Mr. Speaker.

NAY - Annis, Austin, Berube, Bierman, Bishop, Bowen, Bowles, Brown R, Browne W, Carr, Cebra, Churchill, Clough, Collins, Cressey, Crosthwaite, Curley, Curtis, Daigle, Davis G, Duprey, Edgecomb, Emery, Fitts, Fletcher, Flood, Glynn, Greeley, Hall, Hamper, Hanley B, Hotham, Jacobsen, Jodrey, Joy, Kaelin, Lansley, Lewin, Lindell, Marean, McCormick, McFadden, McKane, McKenney, McLeod, Millett, Moore G, Moulton, Muse, Nass, Nutting, Ott, Pinkham, Plummer, Rector, Richardson D, Richardson E, Richardson M, Richardson W, Robinson, Rosen, Seavey, Sherman, Shields, Stedman, Sykes, Tardy, Thomas, Trahan, Vaughan.

ABSENT - Beaudette, Bryant-Deschenes, Campbell, Craven, Davis K, Dudley, Dugay, Goldman.

Yes, 73; No, 70; Absent, 8; Excused, 0.

73 having voted in the affirmative and 70 voted in the negative, with 8 being absent, and accordingly the Bill was **PASSED TO BE ENGROSSED as Amended by Committee Amendment "A" (S-280)** in concurrence. **ORDERED SENT FORTHWITH.**

House as Amended

Bill "An Act To Conform the Maine Tax Code with the Federal Health Savings Accounts Laws"

(H.P. 146) (L.D. 195)
(C. "A" H-532)

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

On motion of Representative RINES of Wiscasset, was **SET ASIDE.**

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

Bill "An Act To Eliminate the Offset for Social Security and Certain Other Pensions for Unemployment Benefits"

(H.P. 365) (L.D. 490)
(C. "A" H-555)

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

On motion of Representative DUPREY of Hampden, was **SET ASIDE.**

The same Representative **REQUESTED** a roll call on **PASSAGE TO BE ENGROSSED as Amended.**

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 Passage to be Engrossed. All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 269

YEA - Adams, Ash, Babbidge, Barstow, Blanchard, Blanchette, Bliss, Brannigan, Brautigam, Brown R, Bryant, Burns, Cain, Campbell, Canavan, Carr, Clark, Collins, Cummings, Driscoll, Duchesne, Dunn, Duplessie, Eberle, Eder, Faircloth, Farrington, Finch, Fisher, Flood, Gerzofsky, Goldman, Grose, Hanley S, Harlow, Hogan, Hotham, Hutton, Jackson, Jacobsen, Jennings, Koffman, Lerman, Lundeen, Makas, Marley, Marraché, Mazurek, Merrill, Miller, Moore G, Norton, O'Brien, Paradis, Patrick, Pelletier-Simpson, Percy, Perry, Pilon, Pineau, Pingree, Piotti, Rines, Sampson, Schatz, Smith N, Smith W, Thompson, Trahan, Tuttle, Twomey, Valentino, Walcott, Watson, Webster, Wheeler, Mr. Speaker.

NAY - Annis, Austin, Berube, Bierman, Bishop, Bowen, Bowles, Browne W, Cebra, Churchill, Clough, Cressey, Crosby, Crosthwaite, Curley, Curtis, Daigle, Davis G, Duprey, Edgecomb, Emery, Fischer, Fitts, Fletcher, Glynn, Greeley, Hall, Hamper, Hanley B, Jodrey, Joy, Kaelin, Lansley, Lewin, Lindell, Marean, McCormick, McFadden, McKane, McKenney, McLeod, Millett, Mills, Moody, Moulton, Muse, Nass, Nutting, Ott, Pinkham, Plummer, Rector, Richardson D, Richardson E, Richardson M, Richardson W, Robinson, Rosen, Saviello, Seavey, Sherman, Shields, Stedman, Sykes, Tardy, Thomas, Vaughan, Woodbury.

ABSENT - Beaudette, Bryant-Deschenes, Craven, Davis K, Dudley, Dugay.

Yes, 77; No, 68; Absent, 6; Excused, 0.

77 having voted in the affirmative and 68 voted in the negative, with 6 being absent, and accordingly the Bill was **PASSED TO BE ENGROSSED AS AMENDED** and sent for concurrence. **ORDERED SENT FORTHWITH.**

Bill "An Act To Amend the Laws Governing Crimes against People Who Are Homeless" (EMERGENCY)

(H.P. 1170) (L.D. 1659)
(C. "A" H-595)

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

On motion of Representative BLANCHETTE of Bangor, was **SET ASIDE.**

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

ENACTORS

Acts

An Act To Amend the Sex Offender Registration and Notification Act of 1999

(H.P. 997) (L.D. 1433)
(C. "A" H-607)

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. **ORDERED SENT FORTHWITH.**

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

UNFINISHED BUSINESS

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

HOUSE DIVIDED REPORT - Majority (8) Ought to Pass as Amended by Committee Amendment "B" (H-445) - Minority (5) Ought Not to Pass - Committee on LABOR on Bill "An Act To Prohibit the Use of Foreign Labor Unless a Federal Prevailing Wage Is Set"

(H.P. 873) (L.D. 1276)

TABLED - May 23, 2005 (Till Later Today) by Representative TUTTLE of Sanford.

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

On motion of Representative SMITH of Van Buren, the Bill and all accompanying papers were **COMMITTED** to the Committee on **LABOR** and sent for concurrence.

Resolve, Directing the Board of Trustees of the University of Maine System To Institute a Statewide Sports Program

(S.P. 453) (L.D. 1326)

- In House, Majority (7) **OUGHT NOT TO PASS** Report of the Committee on **EDUCATION AND CULTURAL AFFAIRS READ** and **ACCEPTED** on June 1, 2005.

- In Senate, Senate **INSISTED** on its former action whereby the Minority (6) **OUGHT TO PASS AS AMENDED** Report of the Committee on **EDUCATION AND CULTURAL AFFAIRS** was **READ** and **ACCEPTED** and the Resolve **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-273) in NON-CONCURRENCE.**

TABLED - June 2, 2005 (Till Later Today) by Representative CAIN of Orono.

PENDING - FURTHER CONSIDERATION.

The House voted to **ADHERE.**

HOUSE DIVIDED REPORT - Majority (8) Ought to Pass as Amended by Committee Amendment "A" (H-491) - Minority (5) Ought Not to Pass - Committee on LABOR on Bill "An Act Regarding Occupational Safety and Health Training for Workers on State-funded Construction Projects"

(H.P. 1146) (L.D. 1628)

TABLED - June 3, 2005 (Till Later Today) by Representative DUPLESSIE of Westbrook.

PENDING - Motion of Representative SMITH of Van Buren to ACCEPT the Majority OUGHT TO PASS AS AMENDED Report. (Roll Call Ordered)

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

Representative **SMITH:** Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. When this was last debated on Friday I had distributed to the members of the House a paper which dealt with occupational injury and illness rates and was subsequently asked some questions about whether these actually applied to injuries on publicly funded jobs by private contractors and I responded that I believed it did. In fact, I was wrong. You had passed out to you yesterday a document, which has the same information and makes this very clear. So if anyone was intending to vote in favor of LD 1628

based on this information my advice to you is to not do so. But, there is one thing in my argument that I did say and that is absolutely true. That is that safety training prevents injuries and this bill provides for a minimum of ten hours of safety training and is going to prevent injuries and make work places safer and save money for employers. I ask you to vote in favor of LD 1628. Safety training saves lives. It saves injuries and it saves money and I ask you to vote in favor. Thank you.

The **SPEAKER:** The Chair recognizes the Representative from Hampden, Representative Duprey.

Representative **DUPREY:** Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I would like to thank the Representative from Van Buren, Representative Smith for correcting the information. We all make mistakes and he was just given the wrong information. Also I appreciate the Department of Labor's efforts to correct the information that we have in front of us and which proves that the private sector is the safest sector out there. State and local government actually does a lot more training then the private sector and this shows that the bill is not necessary so I will be voting against the pending motion. Thank you Mr. Speaker.

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

Representative **PATRICK:** Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I am the sponsor of the bill and I do disagree with the Representative from Hampden, Representative Duprey. I think that it is important.

Throughout the testimony at the public hearing those contractors that are large contractors have said that they give five to ten times the amount of training that we are asking for, which is the minimum amount. One of the contractors did say that they have seven or eight trainings that they give and one of them included the OSHA 10-hour course.

One third of all the deaths that occur in Maine in the construction industry happen to not be the contractors, but the subcontractors. The primary contractors have said that they do train their employees well. That is good, but what I am looking for is to hit that niche of employees that don't get the adequate training including that person that may get his first job and not have the specific training that he needs. I think this is the be-all of everything? No, I don't, but I do think that it is important and I will always ere on the side of employees and on the side of safety training. My company, as I said, gives way more than what they give in the construction field and I really think that whether the statistics are right or wrong I will always ere in the side of training our workforce, which is our most valuable asset other than our children. I would urge that you support the Ought to Pass as Amended Report. Thank you.

The **SPEAKER:** The Chair recognizes the Representative from Holden, Representative Hall.

Representative **HALL:** Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. The handout that we have is very clear. The private sector is safer than state government workers. State government workers are getting this OSHA 10-hour training. I don't see how we can say that there is any correlation between this training and saving lives. Please follow my light and vote against the pending motion.

The **SPEAKER:** The Chair recognizes the Representative from Westbrook, Representative Driscoll.

Representative **DRISCOLL:** Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. One illness, one injury, one fatality in Maine is really one too many. If we have a process in place that might eradicate that. Injuries are inherent within the construction industry in Maine. Most large industry leaders provide safety training for their workers.

We have a transient work force within the construction industry and it ebbs and flows with the seasons and that is my primary concern, the seasonal transient work force. It should be incumbent upon us to ensure that these seasonal workers receive the appropriate basic safety training to prevent serious injury, illness or, possibly, death. The education of workers should start with a premise of a basic understanding of health and safety issues regardless of whether you are a trench worker, a roofer or a crane operator. We as a legislature should ensure that the workforce is trained in basic safety concepts in order to reduce injuries and illnesses and fatalities here in Maine. Thank you Mr. Speaker.

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

Representative CROSBY: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. With all due respect to those on both sides of the aisle I would be remiss if I didn't say that I have been contacted by one of the largest construction companies in Maine and who are opposed to this and who have an impeccable safety record and believe that voting for this would cost their company far more money and I will be voting against the pending motion. Thank you Mr. Speaker.

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

Representative DRISCOLL: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I believe that there was conversation during committee that some of the large construction industry leaders in this state do provide adequate safety training for their workers. My feeling is that this bill protects the health and safety of transient seasonal workers in this state and that is where my concern is, not with the large industry leaders who provide safety training, but with a transient work force. Thank you very much.

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

ROLL CALL NO. 270

YEA - Adams, Ash, Babbidge, Blanchette, Bliss, Brannigan, Brautigam, Bryant, Burns, Cain, Canavan, Clark, Cummings, Driscoll, Duchesne, Dunn, Duplessie, Eberle, Eder, Faircloth, Fisher, Gerzofsky, Goldman, Grose, Hanley S, Harlow, Hogan, Hutton, Jackson, Jennings, Koffman, Lerman, Lundeen, Makas, Marley, Marraché, Mazurek, Merrill, Miller, Norton, O'Brien, Paradis, Patrick, Pelletier-Simpson, Percy, Perry, Pilon, Pineau, Pingree, Piotti, Rines, Smith N, Smith W, Tuttle, Twomey, Valentino, Walcott, Watson, Webster, Wheeler, Mr. Speaker.

NAY - Annis, Austin, Barstow, Berube, Bierman, Bishop, Blanchard, Bowen, Bowles, Brown R, Browne W, Bryant-Deschenes, Campbell, Carr, Cebra, Churchill, Clough, Collins, Cressey, Crosby, Crosthwaite, Curley, Curtis, Daigle, Davis G, Duprey, Edgecomb, Emery, Farrington, Finch, Fischer, Fitts, Fletcher, Flood, Glynn, Greeley, Hall, Hamper, Hanley B, Hotham, Jacobsen, Jodrey, Joy, Kaelin, Lansley, Lewin, Lindell, Marean, McCormick, McFadden, McKane, McKenney, McLeod, Millett, Mills, Moody, Moore G, Moulton, Muse, Nass, Nutting, Ott, Pinkham, Plummer, Rector, Richardson D, Richardson E, Richardson M, Richardson W, Robinson, Rosen, Sampson, Saviello, Schatz, Seavey, Sherman, Shields, Stedman, Sykes, Tardy, Thomas, Thompson, Trahan, Vaughan, Woodbury.

ABSENT - Beaudette, Craven, Davis K, Dudley, Dugay.

Yes, 61; No, 85; Absent, 5; Excused, 0.

61 having voted in the affirmative and 85 voted in the negative, with 5 being absent, and accordingly Majority Ought to Pass as Amended Report was NOT ACCEPTED.

Subsequently, the Minority Ought Not to Pass Report was ACCEPTED and sent for concurrence.

An Act To Include Regional Transportation Systems under the Maine Tort Claims Act

(H.P. 629) (L.D. 910)

TABLED - June 6, 2005 (Till Later Today) by Representative PELLETIER-SIMPSON of Auburn.

PENDING - **PASSAGE TO BE ENACTED.**

On motion of Representative PELLETIER-SIMPSON of Auburn, the Bill and all accompanying papers were COMMITTED to the Committee on JUDICIARY in NON-CONCURRENCE and sent for concurrence.

ENACTORS

Emergency Measure

An Act To Amend Water Quality Standards

(S.P. 496) (L.D. 1450)

(S. "A" S-315 to C. "A" S-291)

Reported by the Committee on Engrossed Bills as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 116 voted in favor of the same and 0 against, and accordingly the Bill was PASSED TO BE ENACTED, signed by the Speaker and sent to the Senate.

Emergency Measure

An Act To Amend the Laws Relating to Motorized Scooters, Motor-driven Cycles and Mopeds

(H.P. 1027) (L.D. 1464)

(C. "A" H-626)

Reported by the Committee on Engrossed Bills as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 111 voted in favor of the same and 6 against, and accordingly the Bill was PASSED TO BE ENACTED, signed by the Speaker and sent to the Senate.

Emergency Measure

Resolve, Establishing The Task Force To Study Cervical Cancer Prevention, Detection and Education

(H.P. 899) (L.D. 1302)

(C. "A" H-570; S. "A" S-325)

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

Representative MARRACHÉ of Waterville 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 SPEAKER: The Chair recognizes the Representative from Waterville, Representative Marraché.

Representative MARRACHÉ: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. This is a bill that I sponsored along with many of my counterparts here in the House and in the other body and this seeks to increase our education and understanding about cervical cancer and includes a wide variety of women's organizations to provide input as to how we can make this information get out there and educate more of our young ladies and older women about the fact that they should have pap smears and that there are other tests available now to them regarding HPV and a couple of other issues that are

associated with cervical cancer. This bill does not ask for any money from the government. It is going to be privately sponsored so there is no fiscal note attached to this. I hope that you can vote for this. 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. 271

YEA - Adams, Annis, Ash, Austin, Babbidge, Barstow, Beaudette, Berube, Bierman, Bishop, Blanchard, Blanchette, Bliss, Bowen, Bowles, Brannigan, Brautigam, Brown R, Browne W, Bryant, Bryant-Deschenes, Cain, Campbell, Canavan, Carr, Churchill, Clark, Clough, Collins, Cressey, Crosby, Crosthwaite, Cummings, Curley, Curtis, Davis G, Driscoll, Duchesne, Dunn, Duplessie, Duprey, Eberle, Eder, Edgecomb, Emery, Faircloth, Farrington, Finch, Fischer, Fisher, Fitts, Fletcher, Flood, Gerzofsky, Glynn, Goldman, Grose, Hall, Hamper, Hanley B, Hanley S, Harlow, Hogan, Hotham, Hutton, Jackson, Jacobsen, Jennings, Jodrey, Joy, Kaelin, Koffman, Lansley, Lerman, Lewin, Lindell, Lundeen, Makas, Marean, Marley, Marraché, Mazurek, McCormick, McFadden, McKane, McKenney, McLeod, Merrill, Miller, Millett, Mills, Moody, Moore G, Moulton, Muse, Nass, Norton, Nutting, O'Brien, Ott, Paradis, Patrick, Pelletier-Simpson, Percy, Perry, Pilon, Pineau, Pingree, Pinkham, Piotti, Plummer, Rector, Richardson D, Richardson E, Richardson M, Richardson W, Robinson, Rosen, Sampson, Saviello, Schatz, Seavey, Sherman, Shields, Smith N, Smith W, Stedman, Sykes, Tardy, Thomas, Thompson, Trahan, Tuttle, Twomey, Valentino, Vaughan, Walcott, Watson, Webster, Wheeler, Woodbury, Mr. Speaker.

NAY - NONE.

ABSENT - Burns, Cebra, Craven, Daigle, Davis K, Dudley, Dugay, Greeley, Rines.

Yes, 142; No, 0; Absent, 9; Excused, 0.

142 having voted in the affirmative and 0 voted in the negative, with 9 being absent, and accordingly the Resolve was **FINALLY PASSED**, signed by the Speaker and sent to the Senate.

Mandate

An Act To Facilitate Voting by Participants in the Address Confidentiality Program

(H.P. 768) (L.D. 1115)
(C. "A" H-625)

The SPEAKER: The Chair recognizes the Representative from Auburn, Representative Pelletier-Simpson.

Representative **PELLETIER-SIMPSON**: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I just wanted to rise and explain this mandate to allow voter participation in the Address Confidentiality Program and still being able to vote. The mandate is just to send absentee ballots and at the moment that would apply to eight people. So it is not what you would call an expensive mandate and it is worth it to protect victims of domestic violence so that they can also have their right to vote. I urge you to support this. Thank you.

Was reported by the Committee on **Engrossed Bills** as truly and strictly engrossed. In accordance with the provisions of Section 21 of Article IX of the Constitution, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 114 voted in favor of the same and 14 against, and accordingly the Mandate was **PASSED TO BE ENACTED**, signed by the Speaker and sent to the Senate.

Acts

An Act To Protect Dogs That Are Left Outside

(H.P. 155) (L.D. 204)
(S. "A" S-309 to C. "A" H-484)

An Act Relating to the Sale of Foreclosed Property

(H.P. 459) (L.D. 626)
(C. "A" H-590)

An Act To Create Freedom of Citizen Information Regarding Ballot Questions

(H.P. 648) (L.D. 929)
(H. "A" H-503 to C. "A" H-412)

An Act Concerning Gift Obligations, Stored-value Cards and Prefunded Bank Cards

(H.P. 737) (L.D. 1084)
(C. "A" H-624)

An Act To Provide Guidelines, Standards and Rights for Children and the Guardians Who Care for Them

(S.P. 491) (L.D. 1402)
(C. "A" S-326)

An Act To Adopt the Uniform Environmental Covenants Act

(S.P. 543) (L.D. 1559)
(C. "A" S-328)

An Act To Fully Fund the Homestead Exemption

(S.P. 602) (L.D. 1625)
(C. "A" S-306)

An Act To Award Income Tax Credits for Boiler or Furnace Systems That Reduce or Eliminate Certain Pollutants

(H.P. 1159) (L.D. 1647)
(C. "A" H-628)

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

An Act To Amend the Sunset on Part-time Unemployment Insurance Benefits

(H.P. 233) (L.D. 309)
(H. "C" H-402; S. "B" S-318 to C. "A" H-33)

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

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

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

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

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

ROLL CALL NO. 272

YEA - Adams, Ash, Babbidge, Barstow, Beaudette, Blanchard, Blanchette, Bliss, Brannigan, Brautigam, Bryant, Burns, Cain, Campbell, Canavan, Clark, Cummings, Driscoll, Duchesne, Dudley, Dunn, Duplessie, Eberle, Eder, Faircloth, Farrington, Finch, Fischer, Fisher, Gerzofsky, Goldman, Grose, Hanley S, Harlow, Hogan, Hutton, Jackson, Jennings, Koffman, Lerman, Lundeen, Makas, Marley, Marraché, Mazurek, Merrill, Miller, Mills, Moody, Norton, O'Brien, Paradis, Patrick, Pelletier-Simpson, Percy, Perry, Pilon, Pineau, Pingree, Piotti, Rines, Sampson, Saviello, Schatz, Smith N, Smith W, Thompson, Tuttle, Twomey, Valentino, Walcott, Watson, Webster, Wheeler, Mr. Speaker.

NAY - Annis, Austin, Berube, Bierman, Bishop, Bowen, Bowles, Brown R, Browne W, Bryant-Deschenes, Carr, Cebra, Churchill, Clough, Collins, Cressey, Crosby, Crosthwaite, Curley, Curtis, Davis G, Duprey, Edgecomb, Emery, Fitts, Fletcher, Flood, Glynn, Greeley, Hall, Hamper, Hanley B, Hotham, Jacobsen, Jodrey, Joy, Kaelin, Lansley, Lewin, Lindell, Marean, McCormick, McFadden, McKane, McKenney, McLeod, Millett, Moore G, Moulton, Muse, Nass, Nutting, Ott, Pinkham, Plummer, Rector, Richardson D, Richardson E, Richardson M, Richardson W, Robinson, Rosen, Seavey, Sherman, Shields, Stedman, Sykes, Tardy, Thomas, Trahan, Vaughan, Woodbury.

ABSENT - Craven, Daigle, Davis K, Dugay.
Yes, 75; No, 72; Absent, 4; Excused, 0.

75 having voted in the affirmative and 72 voted in the negative, with 4 being absent, and accordingly the Bill was **PASSED TO BE ENACTED**, signed by the Speaker and sent to the Senate.

An Act Allowing Certain Commercial Vehicles at Canadian Weight Limits To Travel from the Canadian Border at Calais to Baileyville

(H.P. 257) (L.D. 334)
(C. "A" H-261; S. "A" S-319)

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

On motion of Representative DUPLESSIE of Westbrook, was **SET ASIDE**.

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

An Act To Allow Tournament Games for Charitable Purposes
(H.P. 788) (L.D. 1145)

(C. "A" H-550)

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

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

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

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

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

ROLL CALL NO. 273

YEA - Adams, Annis, Ash, Babbidge, Barstow, Beaudette, Berube, Bierman, Bishop, Blanchard, Blanchette, Bliss, Bowen, Bowles, Brannigan, Brautigam, Brown R, Browne W, Bryant, Bryant-Deschenes, Burns, Cain, Campbell, Canavan, Carr, Churchill, Clark, Collins, Crosby, Cummings, Driscoll, Duchesne, Dudley, Dugay, Dunn, Duplessie, Duprey, Eberle, Edgecomb, Faircloth, Farrington, Finch, Fischer, Fisher, Fitts, Fletcher, Goldman, Greeley, Grose, Hall, Hamper, Hanley B, Hanley S, Harlow, Hogan, Hotham, Hutton, Jackson, Jacobsen, Jennings, Jodrey, Joy, Kaelin, Koffman, Lerman, Lindell, Lundeen, Makas, Marean, Marley, Marraché, Mazurek, McCormick, McFadden, McLeod, Miller, Millett, Moody, Moore G, Muse, Norton, Nutting, O'Brien, Ott, Paradis, Patrick, Pelletier-Simpson, Percy, Perry, Pineau, Pingree, Pinkham, Piotti, Plummer, Richardson D, Richardson E, Richardson M, Rines, Robinson, Rosen, Sampson, Saviello, Seavey, Shields, Smith N, Smith W, Sykes, Tardy, Thomas, Thompson, Trahan, Tuttle, Twomey, Valentino, Vaughan, Walcott, Watson, Webster, Woodbury, Mr. Speaker.

NAY - Austin, Cebra, Clough, Cressey, Crosthwaite, Curley, Curtis, Davis G, Eder, Flood, Glynn, Lansley, Lewin, McKane, McKenney, Merrill, Mills, Moulton, Nass, Pilon, Rector, Richardson W, Sherman, Stedman, Wheeler.

ABSENT - Craven, Daigle, Davis K, Emery, Gerzofsky, Schatz.

Yes, 120; No, 25; Absent, 6; Excused, 0.

120 having voted in the affirmative and 25 voted in the negative, with 6 being absent, and accordingly the Bill was **PASSED TO BE ENACTED**, signed by the Speaker and sent to the Senate.

CONSENT CALENDAR

First Day

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

(S.P. 384) (L.D. 1067) Resolve, To Establish the Task Force To Study and Design a Child Protection Mediation System (EMERGENCY) Committee on **JUDICIARY** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-337)**

(S.P. 494) (L.D. 1405) Bill "An Act To Prepare Maine for Public Health Emergencies" Committee on **JUDICIARY** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-336)**

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

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

REPORTS OF COMMITTEE

Divided Report

Majority Report of the Committee on **JUDICIARY** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-646)** on Bill "An Act To Make Certain Changes in the Laws Concerning the Family Division of District Court"

(H.P. 683) (L.D. 973)

Signed:

Senators:

HOBBS of York
BROMLEY of Cumberland
HASTINGS of Oxford

Representatives:

PELLETIER-SIMPSON of Auburn
FAIRCLOTH of Bangor
GERZOFKY of Brunswick
CANAVAN of Waterville
BRYANT of Windham
DUNN of Bangor
SHERMAN of Hodgdon
NASS of Acton

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

Signed:

Representatives:

CARR of Lincoln
BRYANT-DESCHENES of Turner

READ.

On motion of Representative PELLETIER-SIMPSON of Auburn, the Majority **Ought to Pass as Amended** Report was **ACCEPTED**.

The Bill was **READ ONCE**. Committee Amendment "A" (H-646) was **READ** by the Clerk and **ADOPTED**. The Bill was assigned for **SECOND READING** later in today's session.

REPORTS OF COMMITTEE
Divided Report

Majority Report of the Committee on **JUDICIARY** reporting **Ought Not to Pass** on Bill "An Act To Protect Certain Private Information Submitted to Municipalities"

(H.P. 872) (L.D. 1275)

Signed:

Senators:

HOBBS of York
BROMLEY of Cumberland
HASTINGS of Oxford

Representatives:

PELLETIER-SIMPSON of Auburn
FAIRCLOTH of Bangor
GERZOFKY of Brunswick
CANAVAN of Waterville
BRYANT of Windham
DUNN of Bangor
SHERMAN of Hodgdon
NASS of Acton

Minority Report of the same Committee reporting **Ought to Pass as Amended by Committee Amendment "A" (H-651)** on same Bill.

Signed:

Representatives:

CARR of Lincoln
BRYANT-DESCHENES of Turner

READ.

Representative PELLETIER-SIMPSON of Auburn moved that the House **ACCEPT** the Majority **Ought Not to Pass** Report.

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

Representative **BIERMAN**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. This doesn't exactly have a powerful committee report for my side, but I would just like to inform everybody what this bill's intention was and that is that as towns are developing email lists and for the understanding of efficiency in sending people in their town notifications of renewal for dog licenses and what have you, some have challenged the Freedom of Information Act requesting these email addresses from these towns.

Some residents understood that if they gave their email address they would not be spammed from this. They would not be getting pornography emails and what have you. This bill, if requested by the person who is giving the municipality their email address exempts that from somebody coming in and saying please give me the email addresses of all the people in the town. I really didn't understand the opposition to this. We didn't really have a lot of time to deliberate. On the day that the bill was to be offered it had to be offered by somebody else because I was at home with the flu so I hope that all of you would look this over before you vote and, Mr. Speaker, when the vote is taken I request the yeas and nays.

Representative **BIERMAN** of Sorrento **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 Auburn, Representative Pelletier-Simpson.

Representative **PELLETIER-SIMPSON**: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. While the committee certainly shared the sponsors concern for peoples privacy around emails our committee also has the charge of defending the publics right to information under the Freedom of Access Act and our concern with this bill is that it went too far and even legitimate people like newspapers would not have access to the information so that is why we were opposed

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

Representative **BIERMAN**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I did want to make a couple of other points. MMA had no opposition to it. They didn't fully understand why the committee was not in agreement and I would just like to present that a phone number and an email address are pretty much the same thing. You are paying for a service and are given identification and in phone books you can request that your phone number not be listed. If we don't address it today we will be addressing it later on because this is something that the freedom of information act has not addressed and it has not kept up with the times so I would appreciate your support. Thank you very much.

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

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. 274

YEA - Adams, Annis, Ash, Babbidge, Barstow, Blanchard, Blanchette, Bliss, Bowles, Brannigan, Brautigam, Bryant, Burns, Cain, Campbell, Canavan, Clark, Craven, Cummings, Daigle, Davis G, Driscoll, Duchesne, Dudley, Dugay, Dunn, Duplessie, Eberle, Eder, Faircloth, Farrington, Fischer, Fisher, Gerzofsky, Glynn, Goldman, Grose, Hanley S, Harlow, Hogan, Hotham, Hutton, Jackson, Jennings, Koffman, Lerman, Lundeen, Makas, Marley, Marraché, Mazurek, McCormick, Merrill, Miller, Mills, Moody, Nass, Norton, O'Brien, Paradis, Patrick, Pelletier-Simpson, Percy, Perry, Pilon, Pineau, Pingree, Piotti, Rines, Sampson, Saviello, Schatz, Seavey, Sherman, Smith N, Smith W, Thompson, Trahan, Tuttle, Twomey, Valentino, Walcott, Watson, Webster, Wheeler, Woodbury, Mr. Speaker.

NAY - Austin, Beaudette, Berube, Bierman, Bishop, Bowen, Brown R, Browne W, Bryant-Deschenes, Carr, Cebra, Churchill, Clough, Collins, Cressey, Crosby, Crosthwaite, Curley, Curtis, Davis K, Duprey, Edgecomb, Emery, Finch, Fitts, Fletcher, Flood, Greeley, Hall, Hamper, Hanley B, Jacobsen, Jodrey, Joy, Kaelin, Lansley, Lewin, Lindell, Marean, McFadden, McKane, McKenney, McLeod, Millett, Moore G, Moulton, Muse, Nutting, Ott, Pinkham, Plummer, Rector, Richardson D, Richardson E, Richardson M, Richardson W, Robinson, Rosen, Shields, Stedman, Sykes, Tardy, Thomas, Vaughan.

Yes, 87; No, 64; Absent, 0; Excused, 0.

87 having voted in the affirmative and 64 voted in the negative, with 0 being absent, and accordingly the Majority **Ought Not to Pass** Report was **ACCEPTED** and sent for concurrence.

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

CONSENT CALENDAR

First Day

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

(S.P. 446) (L.D. 1266) Bill "An Act To Ensure Integrity in the Voting Process" Committee on **LEGAL AND VETERANS AFFAIRS** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-340)**

(S.P. 628) (L.D. 1683) Bill "An Act To Clarify Entities Eligible for Funding by the Maine Health and Higher Educational Facilities Authority" (EMERGENCY) Committee on **HEALTH AND HUMAN SERVICES** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-339)**

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

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

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

Bill "An Act To Conform the Maine Tax Code with the Federal Health Savings Accounts Laws"

(H.P. 146) (L.D. 195)
(C. "A" H-532)

Which was **TABLED** by Representative RINES of Wiscasset pending **PASSAGE TO BE ENGROSSED as Amended**.

Representative RINES of Wiscasset **PRESENTED House Amendment "A" (H-653)**, which was **READ** by the Clerk.

The **SPEAKER**: The Chair recognizes the Representative from Wiscasset, Representative Rines.

Representative **RINES**: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. This is a technical amendment only from Bills in the Second Reading and cleans up language and some of the numbering sequence. Thank you Mr. Speaker.

Subsequently, House Amendment "A" (H-653) was **ADOPTED**.

Subsequently, the Bill was **PASSED TO BE ENGROSSED as Amended by Committee Amendment "A" (H-532)** and **House Amendment "A" (H-653)** and sent for concurrence. **ORDERED SENT FORTHWITH**.

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

Bill "An Act To Amend the Laws Governing Crimes against People Who Are Homeless" (EMERGENCY)

(H.P. 1170) (L.D. 1659)
(C. "A" H-595)

Which was **TABLED** by Representative BLANCHETTE of Bangor pending **PASSAGE TO BE ENGROSSED as Amended**.

On motion of Representative DUDLEY of Portland, the rules were **SUSPENDED** for the purpose of **RECONSIDERATION**.

On further motion of the same Representative, the House **RECONSIDERED** its action whereby **Committee Amendment "A" (H-595)** was **ADOPTED**.

The same Representative **PRESENTED House Amendment "A" (H-640)** to **Committee Amendment "A" (H-595)** which was **READ** by the Clerk.

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

Representative **DUDLEY**: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. This amendment adds a very simple component to the fine work of the criminal justice Committee. It is a requirement asking the Attorney General to convene a working group to examine the advisability of implementing aggravated sentencing factors for crimes committed against people who are homeless.

Representative **TARDY** of Newport **REQUESTED** a roll call on the motion to **ADOPT House Amendment "A" (H-640)** to **Committee Amendment "A" (H-595)**.

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 Newport, Representative Tardy.

Representative **TARDY**: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I am going to oppose this amendment. I really don't think that we should be studying creating an aggravating factor in sentencing. I think our prosecutors and judges have plenty of tools available to fairly evaluate an appropriate disposition in a criminal case. I think that this is unnecessary and I urge that we defeat this pending motion.

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

Representative **BLANCHETTE**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I am going to be supporting this amendment because at last it is going to first bring to the attention of the District Attorneys in all of the judicial branch the fact that there are hate crimes out there that are being committed every day against people who, through no fault of their own, find themselves homeless. I have to remind you that but for the grace of god that everyday around this country it is happening and everyday in the State of Maine.

The District Attorneys that appeared before Criminal Justice and Public Safety said that it would be nice if there was something in the law that directed them to take into consideration sentencing for people who were victims of hate crimes for the simple reason that they have to live on the street and not that they choose to live on the street, but because they have to.

I am going to encourage all of my members here in the House and on both sides of the aisle to think for a moment before you press the button to defeat this amendment. You will be voting against some of the very constituents who voted to put you in this hall to represent them. This does not come with a price tag on it. This is just asking the Attorney General to form a study group within the Attorney General's Office and the judicial branch in order to look at a very serious problem across the State of Maine. Please think before you vote to hurt these very, very vulnerable people. Thank you Mr. Speaker.

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

Representative **CARR**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. Last year there was a bill in the Judiciary Committee that went out and there was a study done and included in that was a study on the homeless people and whether or not they are discriminated against and whether or not they were assaulted. I think that if somebody really wanted to know they could actually look up and find a lot of the information that they already have.

As far as hate crimes go I think that you will find that when we are talking about assault and many of those types of crimes they are all hate crimes and to establish a different set of sentencing rules for different classes or types of people doesn't seem to be

what our country was actually founded upon and I would urge you to vote against the pending motion. Mr. Speaker. The chair recognizes the Representative from Portland, Representative Dudley.

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

Representative DUDLEY: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I want to make it very clear what we are talking about here. We are not talking about instituting these aggravated sentencing factors. All we are talking about here is asking the Attorney General to convene a working group to examine whether or not this is advisable. We are not predetermining the outcome of his recommendation. The Attorney General may very well come back to us and say such a move is inadvisable. I don't know what the Attorney General is going to say. What I do know, and Representative Carr was kind enough to point out, is that the Attorney General did, over the past year, conduct a study regarding discrimination against people who are homeless in Maine. This study was conducted at the direction of the Legislature and it was limited in its scope. It was limited to making an assessment of the prevalence of violence or threats of violence or criminal property damage or destruction or threats of criminal property damage or destruction and discrimination in housing. The Attorney General was to review these matters, which he did and came back with some recommendations and this bill seeks to implement the attorney general's recommendations from this report.

The unanswered question in the Attorney General's report is how to get people who are homeless to report the crimes or threats of crimes that are committed against them. In many instances people who are homeless are reluctant to come forward and what we need to do is make sure that these people, like all people in Maine, have access to the protection of law enforcement and the courts. All this amendment does is ask the Attorney General to study if this little piece – the aggravated sentencing factors – would be helpful in encouraging homeless people to come forward and report the crimes that are committed against them. Again, we are not predetermining the outcome. All we are asking is if this is worthy of study. I believe it is. Is the attorney general the right person to do it? He is. Is he willing to do it? He is. So let's see what he has to say.

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

Representative TARDY: Mr. Speaker, may I pose a question through the Chair?

The SPEAKER: The Representative may pose his question.

Representative TARDY: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. My question is if there is a fiscal note that is attached to this amendment and where is it?

The SPEAKER: The Representative from Newport, Representative Tardy has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Portland, Representative Dudley.

Representative DUDLEY: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. There is no fiscal note. The Attorney General can absorb this.

The SPEAKER: The Chair recognizes the Representative from Harrison, Representative Sykes.

Representative SYKES: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I have in front of me a report from the Attorney General's Office dated January 5, 2005. This report was requested by the 121st Maine Legislature. The report was to study the types and extent of the discrimination against homeless individuals in the state and the study must

include but is not limited to an assessment of the prevalence, acts of violence, physical force and so forth and it also request that the Attorney General submit legislation to the Legislature and they did. They submitted it to the Criminal Justice Committee. The submitted recommendations that included increased training at the Criminal Justice Academy, increased training in service for current police officers to the extent that they could understand and work better with the homeless population. The survey involved surveys of every police department, four public meetings throughout the state, interviews with the largest police departments, written comments taken, and the report comes back with no recommendation to enhance crimes against the homeless so I think that the report did respond to that and the amendment, to me, seems like it predisposes a decision and I would ask that you vote against this particular amendment. Thank you.

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

Representative PLUMMER: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. The Criminal Justice Committee had all of this information before us when we made our recommendation not to include this language, which was before us in our report. We came to the conclusion that there was no need to include this information because judges already have the authority to do the sentencing. We also came to the conclusion that the study was not needed because the report that has been mentioned has already been done by the Attorney General's office and was only issued in January of this year. This amendment is not necessary. Thank you Mr. Speaker.

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

Representative DUDLEY: Mr. Speaker, point of order.

The SPEAKER: The Representative may proceed.

Representative DUDLEY: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I would like to verify the rules regarding the use of props during floor debate. Thank you Mr. Speaker.

On POINT OF ORDER, Representative DUDLEY of Portland asked the Chair if the use of props by Representative PLUMMER of Windham were allowed during the floor debate.

The Chair reminded Representative PLUMMER of Windham that props were not allowed during the floor debate.

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

Representative BLANCHETTE: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I just need to point out to you that the AG, Steven Rowe and the Attorney General's Office did a very thorough analysis of the problems of discrimination against people who are homeless in Maine and it was a good report, but it didn't go far enough because they stopped where they were gathering data.

The economic times have changed drastically within the last year. If you want to talk to the people down in Portland and South Portland, Preble Street Homeless Shelter has had a horrific problem with abuse and hate crimes of homeless people because they are the largest population in the area because people are going into Portland and South Portland to receive the services that are available for them. God forbid when they are hungry they can get a meal and when they are cold they can get a bed to sleep in and hopefully they can walk to those services if we move fast enough and are diligent enough to put laws on the books so that the District Attorney's arresting people for supposed hate crimes can take into consideration the fact that Mary Smith, who was walking down the street in Portland, was, in

fact, beaten, for the simple reason that Mary lost her home. It happens everyday. This bill to ask the Attorney General's Office to conduct a working group within their office does not cost a dime. The results from this working group can be very significant.

We have asked them to report back by January 15, 2006 to the committee of jurisdiction, Criminal Justice and Public Safety. If, in fact, we need and want to take any further action that would be the appropriate time to do that. I am going to ask you to please follow my light on this one. There is nothing that you are going to loose. This is not a political hot potato. If you are thinking about it it is simply the right thing to do. Thank you Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Woolwich, Representative Grose.

Representative GROSE: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I don't know if many of you have had the opportunity to work with the homeless, but I have. A lot of times it is not their fault that they are homeless. I had the opportunity this winter to work with a vet who had a drinking problem, his wife kicked him out and he was homeless. He was living underneath the stairs of a church. We are all sitting in here with nice clothes. Look around, we are pretty well dressed and we probably have a pretty good car out in the parking lot and a home to go home too, but there are people out there that, unfortunately, do not have the opportunities that we have. A lot of times it is not their fault that they are homeless. I do not think that this study is going to hurt anyone in this building. It is going to help people and if the Attorney General is willing to work at no cost to research further why there are hate crimes against the homeless than we need to pay attention to this. Thank you.

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

Representative WEBSTER: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. As a member of the Health and Human Services Committee we certainly address the issues of those who are most vulnerable on a regular basis and, in addition, in my past careers I have worked with a number of people and, as you may recall, I recently spoke about the number of homeless people who are vets. Recently, many of us spoke on Memorial Day and we often applaud our brave soldiers, sailors and air corp. for their service to us and then they come home.

It has been said that one in four men who are on the street are vets. There is an old concept in the military, which is, "I have your back." Or, "Leave no man behind." I think that that point is appropriate in this discussion and I am pleased that we are having a roll call vote. Thank you Mr. Speaker.

The SPEAKER: A roll call has been ordered. The pending question before the House is Adoption of House Amendment "A" (H-640) to Committee Amendment "A" (H-595). All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 275

YEA - Adams, Ash, Babbidge, Barstow, Beaudette, Blanchard, Blanchette, Bliss, Brannigan, Brautigam, Bryant, Burns, Cain, Campbell, Canavan, Clark, Craven, Crosby, Cummings, Davis K, Driscoll, Duchesne, Dudley, Dunn, Duplessie, Eder, Faircloth, Farrington, Finch, Fischer, Fisher, Flood, Gerzofsky, Goldman, Grose, Hanley S, Harlow, Hogan, Hutton, Jackson, Jennings, Koffman, Lerman, Lundeen, Makas, Marley, Marraché, Mazurek, Merrill, Miller, Moody, Norton, O'Brien, Paradis, Patrick, Pelletier-Simpson, Percy, Perry, Pilon, Pineau, Pingree, Piotti, Rines, Saviello, Schatz, Smith N,

Smith W, Thompson, Tuttle, Twomey, Valentino, Walcott, Watson, Webster, Wheeler, Woodbury, Mr. Speaker.

NAY - Annis, Austin, Berube, Bierman, Bishop, Bowen, Bowles, Brown R, Browne W, Bryant-Deschenes, Carr, Cebra, Churchill, Clough, Collins, Cressey, Crosthwaite, Curley, Curtis, Daigle, Davis G, Dugay, Duprey, Edgecomb, Emery, Fitts, Fletcher, Glynn, Greeley, Hall, Hamper, Hanley B, Hotham, Jacobsen, Jodrey, Joy, Kaelin, Lansley, Lewin, Lindell, Marean, McCormick, McFadden, McKane, McKenney, McLeod, Millett, Mills, Moore G, Moulton, Muse, Nass, Nutting, Ott, Pinkham, Plummer, Rector, Richardson D, Richardson E, Richardson M, Richardson W, Robinson, Rosen, Sampson, Seavey, Sherman, Shields, Stedman, Sykes, Tardy, Thomas, Trahan, Vaughan.

ABSENT - Eberle.

Yes, 77; No, 73; Absent, 1; Excused, 0.

77 having voted in the affirmative and 73 voted in the negative, with 1 being absent, and accordingly **House Amendment "A" (H-640) to Committee Amendment "A" (H-595) was ADOPTED.**

Committee Amendment "A" (H-595) as Amended by House Amendment "A" (H-640) thereto was ADOPTED.

The Bill was **PASSED TO BE ENGROSSED as Amended by Committee Amendment "A" (H-595) as Amended by House Amendment "A" (H-640) thereto and sent for concurrence. ORDERED SENT FORTHWITH.**

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

SENATE PAPERS

Non-Concurrent Matter

An Act To Amend Certain Fish and Wildlife Laws

(S.P. 344) (L.D. 1004)

(C. "A" S-317)

PASSED TO BE ENACTED in the House on June 6, 2005.

Came from the Senate **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-317) AND SENATE AMENDMENT "A" (S-330) in NON-CONCURRENCE.**

Representative WATSON of Bath moved that the House **RECEDE.**

On further motion of the same Representative, **TABLED** pending his motion to **RECEDE** and later today assigned.

UNFINISHED BUSINESS

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

An Act To Amend the Child and Family Services and Protection Act

(H.P. 918) (L.D. 1320)

(C. "A" H-611)

TABLED - June 6, 2005 (Till Later Today) by Representative PELLETIER-SIMPSON of Auburn.

PENDING - PASSAGE TO BE ENACTED.

On motion of Representative PELLETIER-SIMPSON of Auburn, the rules were **SUSPENDED** for the purpose of **RECONSIDERATION.**

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

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

On further motion of the same Representative, the House **RECONSIDERED** its action whereby **Committee Amendment "A" (H-611)** was **ADOPTED**.

The same Representative **PRESENTED House Amendment "A" (H-656)** to **Committee Amendment "A" (H-611)** which was **READ** by the Clerk.

The **SPEAKER**: The Chair recognizes the Representative from Auburn, Representative Pelletier-Simpson.

Representative **PELLETIER-SIMPSON**: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. The original bill that we passed would add language that the Department of Human Services place children in the care of an adult relative where possible if they have been taken from their parent and the second thing that the bill had done was create liability for an oral false report which would be criminal liability and this amendment is to take that off. I think the effort of the Committee was to hold the Department of Human Services more accountable but it would actually apply to all people who might make an oral report regarding children who they believe to be endanger and I think it could have a chilling effect and we want to have citizens report if they think that children are being abused. I hope that you would support this floor amendment. Thank you.

Subsequently, House Amendment "A" (H-656) to Committee Amendment "A" (H-611) was **ADOPTED**.

Committee Amendment "A" (H-611) as Amended by House Amendment "A" (H-656) thereto was **ADOPTED**.

The Bill was **PASSED TO BE ENGROSSED as Amended by Committee Amendment "A" (H-611) as Amended by House Amendment "A" (H-656)** thereto in **NON-CONCURRENCE** and sent for concurrence.

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

An Act To Clarify the Definition of "Domiciled" for Maine Income Tax Purposes

(H.P. 248) (L.D. 325)
(C. "A" H-588)

TABLED - June 3, 2005 (Till Later Today) by Representative **CUMMINGS** of Portland.

PENDING - PASSAGE TO BE ENACTED.

On motion of Representative **CUMMINGS** of Portland, the rules were **SUSPENDED** for the purpose of **RECONSIDERATION**.

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

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

On further motion of the same Representative, the House **RECONSIDERED** its action whereby **Committee Amendment "A" (H-588)** was **ADOPTED**.

The same Representative **PRESENTED House Amendment "A" (H-658)** to **Committee Amendment "A" (H-588)** which was **READ** by the Clerk and **ADOPTED**.

Committee Amendment "A" (H-588) as Amended by House Amendment "A" (H-658) thereto was **ADOPTED**.

The Bill was **PASSED TO BE ENGROSSED as Amended by Committee Amendment "A" (H-588) as Amended by House Amendment "A" (H-658)** thereto in **NON-CONCURRENCE** and sent for concurrence. **ORDERED SENT FORTHWITH**.

Bill "An Act To Eliminate Term Limits in the Legislature"
(S.P. 180) (L.D. 572)
(C. "A" S-278)

TABLED - June 2, 2005 (Till Later Today) by Representative **CRAVEN** of Lewiston.

PENDING - PASSAGE TO BE ENGROSSED.

On motion of Representative **PATRICK** of Rumford, the Bill and all accompanying papers were **COMMITTED** to the Committee on **LEGAL AND VETERANS AFFAIRS** in **NON-CONCURRENCE** and sent for concurrence.

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

The House recessed until 4:00 p.m.

(After Recess)

The House was called to order by the Speaker.

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

CONSENT CALENDAR

First Day

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

(H.P. 850) (L.D. 1232) Bill "An Act To Protect Children from Individuals Who Have Engaged in Sexual Abuse of Children in the Past" Committee on **JUDICIARY** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-655)**

(H.P. 1180) (L.D. 1671) Bill "An Act To Protect Maine Citizens from Identity Theft" Committee on **INSURANCE AND FINANCIAL SERVICES** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-654)**

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

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

BILLS IN THE SECOND READING

House as Amended

Bill "An Act To Make Certain Changes in the Laws Concerning the Family Division of District Court"

(H.P. 683) (L.D. 973)
(C. "A" H-646)

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

On motion of Representative **DUPLESSIE** of Westbrook, was **SET ASIDE**.

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

**REPORTS OF COMMITTEE
Committee of Conference**

Report of the Committee of Conference on the disagreeing action of the two branches of the Legislature on Bill "An Act To Improve the Water Quality of Hall Pond in Paris"

(H.P. 306) (L.D. 421)

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

That they are **UNABLE TO AGREE.**

Signed:

Representatives:

WATSON of Bath
WHEELER of Kittery
HANLEY of Paris

Senators:

BRYANT of Oxford
STRIMLING of Cumberland
RAYE of Washington

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

**REPORTS OF COMMITTEE
Divided Report**

Majority Report of the Committee on **JUDICIARY** reporting **Ought to Pass as Amended by Committee Amendment "A"** (H-657) on Bill "An Act To Amend the Maine Tort Claims Act"

(H.P. 655) (L.D. 936)

Signed:

Senators:

HOBBINS of York
BROMLEY of Cumberland
HASTINGS of Oxford

Representatives:

PELLETIER-SIMPSON of Auburn
FAIRCLOTH of Bangor
GERZOFISKY of Brunswick
CANAVAN of Waterville
BRYANT of Windham
DUNN of Bangor
NASS of Acton

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

Signed:

Representative:

CARR of Lincoln

READ.

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

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

Representative **CARR**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I want to take a moment to discuss this a little bit more and you will see that I am the lone person on this, but maybe the one that has a great deal of experience along the lines of what we are talking about. This bill, in my opinion, may be one of the most important bills that we have addressed in this body this year.

It deals with overturning a Maine Supreme Court decision as it relates to court claims. It deals with a 4-3 Maine Supreme Court decision under the Norton Case and that involved a Cumberland County Deputy Sheriff responding to an emergency situation that involved a crash and it unfortunately killed two young people and was a very unfortunate situation that happened. But, for those of you who are or have been police

officers, firemen, EMTs, driven ambulances or otherwise responded to emergency situations you should pay attention to what this decision might do.

I am sure that you will be told that this decision was different than what people understood and the Maine Court claims and how it was actually interpreted as far as immunity goes for those responders who have to make instantaneous decisions on whether to respond fast or to not respond fast.

Police officers receive a great deal of training in emergency response and driving fast. At the academy they go through a week of direct training on the course in addition to the time that is spent in the classroom. Firemen also receive some training as to that as well as all of the people who do respond.

Because rescue people are required to respond at speeds greater than what the public is supposed to travel at they have been given immunity in matters of discretion. I want to use this an example that I am most familiar with. A police officer is involved in a high-speed chase. What the court said was that it is not just the first decision that is made on whether or not to start the chase. The court said that along the way during this chase there will be other things that come up. There will be vehicles that will come from side roads and you will be coming to areas where there is traffic and congestion, you may come to a school zone and so there are a number of discretionary decisions that have to be made along the way. It is not just whether you should chase or you should not chase. It entails all of those other things. It is the same thing for a fireman driving a fire truck. He has to make those decisions along the way as he has to travel to the fire scene. Should he stop at a stoplight or should he continue through the stoplight? These are all decisions that must be made and, as I understand it, if we pass this bill the decision would be made when you start the chase that you decided to start it, but any other thing that you do along the way will not be forgiven.

I am not going to take a lot of time other than to put some things on the record, but I want to remind you that, for those of you who live in the Waterville, Oakland, Pittsfield area, I received a letter from several of the police officers, EMTs and firemen who are very concerned and I am not sure how many other people did. I made a copy for some of the other members. There are actually 56 names from the small area around Waterville and they are showing their concern on this bill if it were passed, which would overturn the ruling of the Maine Supreme Court. I would ask for you to follow my light on this. I know that you will hear some other testimony but what you basically have is a bill that is trial lawyers versus police, fire and EMTs. Thank you Mr. Speaker.

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

Representative **MILLS**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. This is my bill and it does not severely change the standards that we have been accustomed to. In fact, it reverses a court ruling in 2003. Before that court ruling, all emergency responders and all other municipalities, counties and state government assumed that people were responsible for their actions and possibly subject to lawsuit if they performed their actions negligently while operating a motor vehicle in any context.

The Maine Tort Claims Act makes people subject to liability for any negligent operation of a motor vehicle. In another section of the act it states that for discretionary decisions and functions people are not liable. They are completely immune. What the law court did was say that one trumps the other and that the discretionary functions provision of the Tort Claims Act trumps the negligent operation of a motor vehicle section of the act.

The irony is that under the court case if you are negligent in operating a motor vehicle and have a fender bender than you are liable. If you are negligent in operating a motor vehicle and you killed two innocent children in a motor vehicle with their mother you are not liable because in that case the officer was operating in violation of policy, in violation of her training, in violation of standards of negligence that apply to high speed pursuit and in that case the officer was going more than 25 miles an hour over the limit on a the busy Route 302 in Raymond in violation of stated policy and, arguably, not in response to an emergency call, reportedly distracted and reportedly operating in a negligent manner.

The mother of the two children testified before the Judiciary Committee. It was the first time she testified in front of any public body about the death of her two children. When she described the evening that she had with her only two children and how they drove home from a restaurant that evening and how they were operating in accordance with law and how they stopped to make a left turn and how they never saw the deputy's vehicle coming from way, way, way behind and arguably without her siren, the evidence is unclear, and argueably not in response to an emergency call and how that private vehicle, operating in accordance with law, was smashed to bits and how those two children died in her arms and she was never able to do a thing about it. Ladies and Gentlemen the law court took those facts and made the deputy completely immune from lawsuit. Those two children and their mother never had their day in court. They were never even allowed the opportunity to make their case that the deputy was negligent.

This bill reverses that case decision. This bill does not reverse practice, because since 1943, up until this law court decision of 2003 everyone assumed that officers and responders of all sorts were, in fact, liable for the negligent operation of a motor vehicle in a high speed chase, in an emergency response situation and in any situation. This is an inconsistency and an injustice that we must fix and the law court has asked us to look at this. There were three opinions in the courts decision and they say that the Legislature hasn't clarified this way or the three dissenters say that they don't think that the Majority opinion is right in the first place but think that the Legislature ought to look at it and fix it. Ladies and Gentlemen it is what we must do. It is important to see what the bill is about. It is only two lines long. It is also important to understand what it is not about. With all due respect to the Representative from Lincoln with whom I have worked for three years and am very proud to have worked with, it is not about second guessing the judgment of a police officer. It is not about second-guessing the decision to engage in a high-speed pursuit or the decision to engage in an emergency response. That decision is completely immune. It was, is and shall be completely immune whether this bill passes or not. The officer is immune from any liability for making that decision, but if an officer violates well-known policies - we have had high-speed pursuit policies on the books for many years and have had statewide protocols for many years - to such an extent that they are negligent in how they operate a motor vehicle in an emergency response decision then the victims should have their day in court. It is as simple as that. Ladies and Gentlemen I ask you to follow my light and vote for the Majority Ought to Pass as Amended Report on this bill. Thank you.

The SPEAKER: The Chair recognizes the Representative from Levant, Representative Greeley.

Representative **GREELEY**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I don't make it a point to speak on the floor. I have not spoken on a bill this year and it is hard to do. The situation that the Representative from

Farmington, Representative Mills describes is horrifically tragic and part of the police training is that police officers have to watch that video every year. It was very hard to get through and it is mandatory training to watch that.

I would just like to express my own personal issues with this and would like to relate a little story because I think that I am afraid that what may happen is that when emergency personnel are responding to an emergency situation they will be so concerned about being liable for doing something wrong that they will be overly cautious and I can cite one example. I used to work with a gentleman who is a Waterville policeman and his first name is Lincoln. He doesn't work there now, he works elsewhere in Maine, but Lincoln got a call to go to a convent in Waterville back in the '90s where a man was assaulting some nuns and Lincoln drove quite quickly with his lights and sirens on to be able to respond to this convent where one nun had been killed and the man was in the process of attempting to stab the second. When Lincoln arrived - he had drove quite quickly to get there because his number one concern was to get there to save a life - I am sure he went over the speed limit and did some things where he would be liable, but he got there safely and just in time to save another nun from being stabbed. He was the first one in the convent with his weapon out and he pointed the weapon at the man as the man was just about to put the knife into the nun, he was actually in motion with the knife when Lincoln arrived. He told him to put the knife down and the man did. Officer Ryder, had this law been in effect when the officer was responding, may not have taken the chance in trying to get there. If this passes many of us will be delayed in our responses because of being too cautious.

Ladies and Gentlemen of the House I work as a police officer when I am not here. I worked 32.5 hours this last weekend at \$12.74 an hour. That is my pay. \$12.74 an hour and I don't know that I want to take a chance with three kids and a house payment for \$12.74 an hour because I might have made a mistake trying to get to what I perceive to be an emergency situation as quickly as I felt I should get there. I do not want to be in a situation where I am second-guessing myself wondering do I get to that domestic, do I get to that problem as fast as possible or do I follow the speed limit and completely stop at every stop sign because if I make a mistake on the way there I could be held personally responsible and we have a shortage of quality emergency personnel in this state. Many fire departments are always at a deficit and I think that if this passes this will cause more turnovers in police and fire departments. I appreciate your patience and time.

The SPEAKER: The Chair recognizes the Representative from Auburn, Representative Pelletier-Simpson.

Representative **PELLETIER-SIMPSON**: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I am not a lawyer or a police officer but I find this bill pretty interesting and I would like to try to explain some of this to the rest of us in layman's terms.

Ordinarily as a governmental entity we have sovereign immunity, both municipalities and the state and the Legislature in the past decided that it was in the best interest of fairness to wave that immunity with some exceptions and one of them being the ownership, maintenance and use of vehicles. A governmental entity is liable for its negligent acts or omissions in its ownership, maintenance or use of any motor vehicle. That was understood to be the law and things have changed with this court decision and I would read part of Chief Saufley's opinion just to give you a little more information. "The analysis diverges, however, with regard to the possibility of separating the whether of the emergency response from the how of the emergency

response." So, the question is not about whether you should respond and whether or not that decision carries over into how one responds. She goes on to say that it is within the Legislature's province to decide if in the future these two concepts should be separated and whether one or both should not be shielded from liability for negligence.

In my personal opinion, given the fact that we waived immunity for negligent acts with the use of a motor vehicle, I thought that we should put the law back into effect so that the decision whether to act would be protected, but how you act once you make that decision should not make one immune from liability if one behaves in a negligent fashion. As to whether or not a police officer is personally liable, I would like to read the statutes to you. "When the governmental entity is liable, the governmental entity shall, with the consent of the employee, assume the defense and shall indemnify any employee against a claim which arises out of an act or omission occurring within the course and scope of employment for which sovereign immunity has been waived under the section having to do with automobiles." I think the police are protected and the general public needs protection as well. Thank you.

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

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

Representative **CARR**: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I would like to order a roll call Mr. Speaker. Thank you.

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

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

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

ROLL CALL NO. 276

YEA - Adams, Ash, Babbidge, Barstow, Beaudette, Blanchard, Blanchette, Bliss, Brannigan, Brautigam, Bryant, Burns, Cain, Clark, Craven, Cummings, Driscoll, Duchesne, Dudley, Dugay, Dunn, Duplessie, Eberle, Eder, Faircloth, Farrington, Fischer, Fisher, Gerzofsky, Goldman, Grose, Harlow, Hogan, Hutton, Jennings, Koffman, Lerman, Lundeen, Makas, Marley, Marraché, Mazurek, Merrill, Miller, Mills, Moody, Norton, O'Brien, Paradis, Patrick, Pelletier-Simpson, Percy, Perry, Pilon, Pineau, Pingree, Piotti, Rines, Sampson, Saviello, Schatz, Seavey, Sherman, Smith N, Smith W, Thompson, Tuttle, Twomey, Valentino, Walcott, Watson, Webster, Wheeler, Woodbury, Mr. Speaker.

NAY - Annis, Austin, Berube, Bierman, Bishop, Bowen, Bowles, Brown R, Browne W, Bryant-Deschenes, Campbell, Canavan, Carr, Cebra, Churchill, Clough, Collins, Cressey, Crosthwaite, Curley, Curtis, Daigle, Davis G, Davis K, Duprey, Edgecomb, Emery, Finch, Fitts, Fletcher, Flood, Glynn, Greeley, Hall, Hamper, Hanley B, Hanley S, Hotham, Jacobsen, Jodrey, Joy, Kaelin, Lansley, Lewin, Lindell, Marean, McCormick, McFadden, McKane, McKenney, McLeod, Millett, Moore G, Moulton, Muse, Nass, Nutting, Ott, Pinkham, Plummer, Rector, Richardson D, Richardson E, Richardson M, Richardson W, Robinson, Rosen, Shields, Stedman, Sykes, Tardy, Thomas, Trahan, Vaughan.

ABSENT - Crosby, Jackson.

Yes, 75; No, 74; Absent, 2; Excused, 0.

75 having voted in the affirmative and 74 voted in the negative, with 2 being absent, and accordingly the Majority **Ought to Pass as Amended Report** was **ACCEPTED**.

The Bill was **READ ONCE**. Committee Amendment "**A**" (**H-657**) was **READ** by the Clerk and **ADOPTED**. The Bill was assigned for **SECOND READING** later in today's session.

REPORTS OF COMMITTEE

Divided Report

Majority Report of the Committee on **TAXATION** reporting **Ought Not to Pass** on Bill "An Act To Amend the Revaluation Process by Municipalities"

(S.P. 550) (L.D. 1563)

Signed:

Senators:

PERRY of Penobscot
COURTNEY of York
STRIMLING of Cumberland

Representatives:

HANLEY of Paris
CLARK of Millinocket
McCORMICK of West Gardiner
WOODBURY of Yarmouth
CLOUGH of Scarborough
PINEAU of Jay
HUTTON of Bowdoinham
BIERMAN of Sorrento
WATSON of Bath

Minority Report of the same Committee reporting **Ought to Pass as Amended by Committee Amendment "A" (S-303)** on same Bill.

Signed:

Representative:

SEAVEY of Kennebunkport

Came from the Senate with the Minority **OUGHT TO PASS AS AMENDED Report READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-303)**.

READ.

On motion of Representative **WOODBURY** of Yarmouth, the Majority **Ought Not to Pass Report** was **ACCEPTED** in **NON-CONCURRENCE** and sent for concurrence.

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

The 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-636)** - Minority (5) **Ought to Pass as Amended by Committee Amendment "B" (H-637)** - Committee on **HEALTH AND HUMAN SERVICES** on Resolve, Regarding Legislative Review of Chapter 101: Establishment of the Capital Investment Fund, a Major Substantive Rule of the Governor's Office of Health Policy and Finance (**EMERGENCY**)

(H.P. 36) (L.D. 33)

Which was **TABLED** by Representative **PINGREE** of North Haven pending her motion to **ACCEPT** the Majority **Ought to Pass as Amended Report**.

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

Representative **SHIELDS**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. This is the resolve that provides a Legislative review of Chapter 101, which is the establishment of the Capital Investment Fund, a major substantive rule of the Governor's Office of Health Policy and Finance. The Capital Investment Fund has a value calculated each year on the amount that would be allocated between hospital and non-hospital projects as well as smaller and larger projects, all of which are subject to review under the Maine Certificate of Need Act and Rules. The starting value for the Capital Investment Fund comes from the average total third year capital and operating costs of those hospital projects that are approved with the Certificate of Need program in a five year period and it is very complicated.

The Maine Hospital Association testified in opposition to this particular bill, calling it one of the most aggressive cost containment provisions in the Dirigo laws. It established an arbitrary cap to contain cost regardless of the demonstrated healthcare need or the merits of the project. The projects approved by the Certificate of Need would need to reapply if the monetary cap for that period of time had been exceeded. This Dirigo legislation was passed in May of 2003 and it was followed by emergency rulemaking calling a moratorium on all Certificates of Need. This was lifted in May of 2004. A list of the projects that were backed up because of this moratorium: MRI services, Mercy Hospital's Phase II proposal for replacement of its facility at an estimated cost of \$90 million, a proposal for facility expansion at Southern Maine Medical Center at an estimated cost of \$30 million, a proposal for construction and renovation projects for an estimated cost of \$20 million to the York Hospital, a proposal for the construction of a \$26 million ambulatory surgical center at Maine Medical Center, a proposal to develop a 12 bed cardiac care unit at Eastern Maine for \$3.8 million, a proposal to acquire Blue Hill Hospital submitted by Eastern Maine Healthcare, but with no estimate of cost provided.

In June of 2004, just after the moratorium expired, four additional letters of intent were submitted, including expansion and relocation of cardiac catheterizations and angioplasties at Central Maine Medical Center, a \$23 million project to develop a cancer center by Maine General Medical Center, a \$17 million Construction and renovation project at Inland hospital.

Testimony on this bill found a number of faulty items in this scheme. It proved to be arbitrary, very complex and too low an allowance of funding. It ignores the other factors affecting healthcare costs such as no high risk pool in healthcare insurance, a high welfare population with generous benefits and low reimbursements by the federal and state government to providers and an elderly and ill population and the antiquated scheme of MaineCare Reimbursement for hospitals, which is reimbursement for cost.

This is another intrusion of government on healthcare control and it should not continue. I hope that you will vote no on the pending motion. Mr. Speaker when the vote is taken I call for the yeas and nays.

Representative **SHIELDS** of Auburn **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 North Haven, Representative Pingree.

Representative **PINGREE**: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I am rising to urge you to support the Majority Ought to Pass as Amended Report and I remind you that this is a major substantive rule. The Health and

Human Services Committee's Majority Report is an amendment to a major substantive rule. As I have continued to learn, major substantive rules can only be accepted or amended. If we fail to pass this rule it goes into effect anyways. I urge you to pass the amended version because I do think that it makes improvements on a rule that was brought to us by the Governor's Office of Health Policy.

First of all, it is important to remember why this major substantive rule is coming to us. This was a part of the Dirigo Health Act, which those of us who were in this body last year or two years ago remember very well. There were a number of components to Dirigo apart from just the insurance products. Including the state health plan, including the Maine Quality Forum and this capital investment fund was an initiative voted on by many of us in this body and this is how this rule is being implemented. The Dirigo Health law, as many of you remember, was a compromise between hospitals, businesses, both major political parties and other political parties in this institution and consumer groups. Certainly everybody wasn't happy with the outcome and some people had major concerns with certain components of it, but it was a compromise and this capital investment fund was an important part of that compromise.

What is the capital investment fund? I think the good Representative from Auburn has started to elaborate a little about that, but capital investments in our healthcare systems add new technology and are an important part of how we better take care of people, but can also add significant costs to the system. These costs are passed on to payers who pass them onto consumers. The Capital Investment Fund was an attempt to strengthen our current Certificate of Need law. Every single major project where a hospital decides to add on a new oncology wing, good projects, a new hospital is built or a project is being redeveloped, the major projects that are over \$2 million have to go through the CON process. What the capital investment fund does is that it puts more teeth into the CON process. It sets a budget per year for how many CON projects can be approved. The good Representative from Auburn read you a list of some of the different projects that are waiting. They are projects with significant financial capital costs. But the CIF fund for next year is proposed to be \$8.2 million. It doesn't say that you can only fund \$8.2 million worth of total capital projects; each project's funding amount is based on its third year operating costs. You could build a \$4 million wing and have a half a million a year operating cost in the third year and that would be how it was considered under the capital investment fund. It is important to note that for small hospitals and for technology projects the vast majority of hospital and capital investment projects that happen are not under the CON process. Only 20% of all projects end up under CON.

I think this is something that we have all been working on. We need to give it time to work and I urge you to support this major substantive rule. We heard testimony from business groups and from consumer groups who believe that this is an important project to attempt to bring down the cost of healthcare for consumers. We are going to bring up another bill later today I believe. I actually distributed to you a note on that bill from the Maine Hospital Association which has had concerns with the capital investment fund, but in that thing I distributed it says that state review of new and expensive technology, new construction and new services through CON provides a means, while not perfect, of helping to achieve rational and orderly development of all healthcare facilities and services and eliminating the expensive duplication of services. I know that that is what we are seeking to do for our state and I urge you to support this bill that I

think seeks to do the same thing for our healthcare system. Thank you Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Elliot, Representative Lewin.

Representative LEWIN: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I just have a very short statement to make about this bill. By the end of the year Dirigo will have blown through \$53 million for some 7,000 plus clients. I personally am not in favor of starting any little funds there or anywhere else until we collectively get this government and the expense of it under control. Thank you very much.

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

Representative PERRY: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. The Dirigo Health Act is more than a health insurance product. Parts of that act are really to gain control over the escalating costs that have been growing at a higher percent than the rest of New England and the way of doing that was to create a statewide health plan and a part of that statewide health plan and gaining control of the costs and assuring that access to healthcare be statewide the Certificate of Need process was reinstated with a capital investment fund to go with that. It is not a whole lot different than what we do with education construction. You look at the need and you look at where it fits into the statewide needs and then you see where you plug the money. I think that this is an important tool in gaining control of health costs statewide and also maintaining access to healthcare. This is the part that we are talking about and I ask that you vote for this. Thank you.

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

Representative GLYNN: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. The reason why I am opposed to the current motion and in favor of the alternative report is that a great deal of work needs to be done in getting Control of the cost drivers in healthcare. It has been said that CON creates little monopolies and that is no secret in the state of Maine. We have all kinds of monopolies. On my other Committee, Insurance and Financial Services we have an Anthemopoly. We have single payer. We have one insurance carrier in the state, but we are seeing that regionally with regard to the CON process. What we are talking about is taking away the ability to have local competition, which drives down costs in these regions and I think that a great deal of thought has gone into this issue at the national level and has given states the ability to get rid of the CON laws. We have a number of states that have gotten rid of them and I think that Maine needs to start waking up to the fact that the cost drivers in the system have to do with our cumbersome state regulations. I urge you to vote against the pending report and move on for the Minority Report.

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

ROLL CALL NO. 277

YEA - Adams, Ash, Babbidge, Barstow, Beaudette, Blanchard, Blanchette, Bliss, Brannigan, Brautigam, Bryant, Burns, Cain, Canavan, Clark, Craven, Cummings, Driscoll, Duchesne, Dudley, Dugay, Dunn, Duplessie, Eberle, Faircloth, Farrington, Finch, Fischer, Fisher, Gerzofsky, Goldman, Grose, Hanley S, Harlow, Hogan, Hutton, Jackson, Jennings, Kaelin, Koffman, Lerman, Lundeen, Makas, Marley, Mazurek, Merrill, Miller, Millett, Mills, Moody, Norton, O'Brien, Paradis, Patrick, Pelletier-Simpson, Percy, Perry, Pilon, Pineau, Pingree, Piotti, Rines, Sampson, Saviello, Schatz, Smith N, Smith W, Thompson,

Tuttle, Valentino, Walcott, Watson, Webster, Wheeler, Woodbury, Mr. Speaker.

NAY - Annis, Austin, Berube, Bierman, Bishop, Bowen, Bowles, Brown R, Browne W, Bryant-Deschenes, Campbell, Carr, Cebra, Churchill, Clough, Collins, Cressey, Crosthwaite, Curley, Curtis, Daigle, Davis G, Davis K, Duprey, Eder, Edgecomb, Emery, Fitts, Fletcher, Flood, Glynn, Greeley, Hall, Hamper, Hanley B, Hotham, Jacobsen, Jodrey, Joy, Lansley, Lewin, Lindell, Marean, Marraché, McCormick, McFadden, McKane, McKenney, McLeod, Moore G, Moulton, Muse, Nass, Nutting, Ott, Pinkham, Plummer, Rector, Richardson D, Richardson E, Richardson M, Richardson W, Robinson, Rosen, Seavey, Sherman, Shields, Stedman, Sykes, Tardy, Thomas, Trahan, Twomey, Vaughan.

ABSENT - Crosby.

Yes, 76; No, 74; Absent, 1; Excused, 0.

76 having voted in the affirmative and 74 voted in the negative, with 1 being absent, and accordingly the Majority Ought to Pass as Amended Report was ACCEPTED.

The Resolve was READ ONCE. Committee Amendment "A" (H-636) was READ by the Clerk and ADOPTED. The Resolve was assigned for SECOND READING later in today's session.

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

REPORTS OF COMMITTEE

Divided Report

Majority Report of the Committee on HEALTH AND HUMAN SERVICES reporting Ought to Pass as Amended by Committee Amendment "A" (H-642) on Bill "An Act To Prevent Lead Poisoning of Children and Adults"

(H.P. 719) (L.D. 1034)

Signed:

Senators:

MAYO of Sagadahoc
MARTIN of Aroostook

Representatives:

PINGREE of North Haven
WALCOTT of Lewiston
GROSE of Woolwich
WEBSTER of Freeport
MILLER of Somerville
BURNS of Berwick
CAMPBELL of Newfield

Minority Report of the same Committee reporting Ought to Pass as Amended by Committee Amendment "B" (H-643) on same Bill.

Signed:

Senator:

ROSEN of Hancock

Representatives:

SHIELDS of Auburn
LEWIN of Eliot

GLYNN of South Portland

Representative SOCKALEXIS of the Penobscot Nation - of the House - supports the Majority Ought to Pass as Amended by Committee Amendment "A" (H-642) Report.

READ.

Representative PINGREE of North Haven moved that the House ACCEPT the Majority Ought to Pass as Amended Report.

Representative SHIELDS of Auburn **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 Auburn, Representative Shields.

Representative SHIELDS: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. Nobody wants children or parents or workmen to have lead poisoning. This bill, as amended, establishes a lead poisoning prevention fund. It acquires the funds by a fee \$.25 per gallon of paint sold in Maine in the prior year. It will be paid by manufacturers or wholesalers of paint sold in Maine. Testimony says that there has been no lead paint sold in Maine since 1978, except for some specialized marine paint. The connection between the paint sold in 2005 and the problem of lead paint in older houses is very curious. Some companies that were in business in 1978 are now out of business and other companies that are in business now were not in business in 1978. The bill has ignored the current obvious sources of lead in our environment, which are lead batteries and smokestack emissions. There is no responsibility placed on the owners of the older structures and their obligation to check for the lead paint problem and to take care of it.

Representative Faircloth has LD 1532, which is a good beginning on this because it is the right way to address the problem. It puts the focus on the building owner that has the lead paint on it. In conjunction with that, lead inspection and abatement programs could be the proper way to go. There is an organization called the National Paint and Coatings Association. They have volunteered to promote and conduct comprehensive training courses for contractors undertaking renovations and repainting or remodeling work as well as other parties involved in house care. The courses are offered many times per year nationally and there is no tuition.

There is no Maine specific date on paint sales that exist. The date that we have has been extrapolated from national data. An estimate of 1.75 gallons of paint per capita for architectural coverings was selected by estimating paint sales in Maine based on the population that we had in 2000. The industry testified that in 1954 they reduced the lead in paint to 1% and in 1961 they reduce the lead in paint to .5%. The Bureau of Health considers housing that was built before 1950 as the most dangerous and that appears to be about 36% of our housing stock. This is where they have been testing these children.

The Maine State Housing Authority has received \$4.9 million for lead abatement from HUD between 1998 and 2005. This year it was not funded, but the Center for Disease Control gives our Bureau of Health \$300,000 annually and that money supports three positions, a nurse manager, a data entry person and a clerical support person and it is limited to \$8,000 to be spent for printed material. I don't know what happens to the rest of it. There is a National Institute of Occupational Safety that gives Maine \$22,400 per year for a halftime lead poison follow up person.

This law will establish a fund, which will be used as followed if it passes: Grants for community outreach will be 50% of the fund, major media campaigns, educational mailings, measures to prevent occupational exposure and the assessment of current lead-free alternatives. This law establishes an advisory board for the fund, which can contract with professional services and will give preference to high risk and under served populations. There are legal weaknesses in this bill that will make it vulnerable to challenge. One example is the statute of limitations. We are now 27 years past when the last gallon of lead paint was sold in

Maine. There is no desire for people to have lead poisoning, but connecting the current paint manufacturers to those of 27 or more years ago is ridiculous. The state can throw its weight around and bully industry and that is what it looks like it is doing and if it wishes to do so it will do that. But, the connection proposed is extremely weak and is not likely to survive in the courts so I ask you to vote against he pending motion and accept the Minority motion.

The **SPEAKER**: The Chair recognizes the Representative from Somerville, Representative Miller.

Representative MILLER: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I go way back on this issue. About 30 years ago I did a lead-screening project in the City of Portland. I went door to door with a number of CETA volunteers, if you remember that program, and pricked children's fingers in 1400 households in Portland. It was a lot of work and back then the referral rate was 4 times higher than it is now. It was 40 micrograms per deciliter and now it is 10 micrograms per deciliter. This problem has evolved over these 30 years, but it has not gone away and, in fact, the risk pool has grown because of the lowering the test threshold.

By far the biggest hang up with this bill for people is whether it is a tax or a fee or are we punishing industry? We the public, have been paying for lead in our home environments for years. We pay through medical costs for our children. We have been paying through the Medicaid program. We paid local and state taxes for learning disabilities and problems among our kids and we have been paying federal taxes to fund all of those HUD grants that have come to Maine for remediation and we have paid to fix our own homes. We are now saying that we the people would like industry to work with us to help pay for this bill. I don't call that punitive, I call that asking them to join us in cleaning up this problem, which in thirty years has still not gone away.

We have other experiences with corporate responsibility in this state. We work with auto manufacturers around their mercury switches. We have fees on dog and cat food going to animal welfare issues. We are soon to implement our computer and TV manufacturer program around electronic waste. It is not like we don't do this in this state. We do believe in corporate responsibility around some issues.

No we are not going back historically and finding paint manufacturers. We are dealing with the industry as it is right now. For example about 30% of our market is Sherwin Williams. Sherwin Williams was in existence back then and who knows who else Sherwin Williams has bought out. I am sure that the paint industry is very much like all the other industries with mergers and acquisitions. We are going forward with industry as is. We are asking the industry to participate with us as the industry is today. They do have an agreement through the AG to help do some training programs in this state. It is 3 training programs per year times 4 years. The program suggested by the good Representative Duplessie's bill is much more comprehensive than three or four trainings for renovators per year. Finally, let me just have you take a look at the spiffy little map that went out under my name. You will see that lead poisoning is a problem for all of us and for all of our towns. You see the red spots. You see the yellow spots. This is a rural and urban problem and if you flip the page over you will see at the bottom that about 31% of children under the age of 6 live in homes that were built pre 1950 That is a fairly high risk pool right now, so I urge you to support the Ought to Pass Motion and follow my light. Thank you Mr. Speaker.

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

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

Representative DAIGLE: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. It is important to remember that this bill is not about lead poisoning because certainly nobody here is unaware of the problem of lead poisoning and we all think that this is a serious issue and that we should do something about it. What this bill is about is whether that response is a new tax on a product. This is a very familiar bill to me because in Natural Resources we have been seeing this type of bill put before us every year that I have been in the Legislature. Every year we have been defeating these new taxes and were, last time, asked to fund household waste disposal throughout the state. At an earlier time it was discussed that we would use it for chemicals in school and pesticides were also something where we said we would tax it. The flaw is that there is no nexus between the gallons of paint sold at Home Depot this weekend and the paint that is in our houses. It is important to also remember that there are other resources, which are always available and are currently being applied against lead hazards. We have bond money that has been proposed this year and we have bond money that has been rewarded many times in the past, federal money as well.

It is amazing to me that the sponsors of this bill would suggest that when you are talking about something as technical as paint. Something where it is basically a chemical process and they think the expertise lies in the Department of Health and Human Services to write the rules to understand enough about how paint is sold and used in this state to say that they understand which paint should be taxed and which paint should not be taxed. It is an impractical measure and it is too unrelated to the issue of lead paint and it is going to be a detriment to our small businesses. I am not just talking about the Ace Hardware store that sells paint. I am talking about those small wooden furniture manufacturers that do painting. I am talking about the house painters that make a living in this state and I am talking about the businesses that live in this state and along our borders where the gallon of paint will once again be cheaper across the boarder than in the State of Maine.

When it comes to raising money for this I agree that there is a responsibility to continue to fund lead paint. We do that now through what is called taxes that we already pay. The sale on every product is taxed and then it goes in the General Fund and is then used to pay off the bond money like the lead renovation money that is in the bond proposal for this year and the lead renovation bond money that was proposed in previous years. That is where we raise money to address this issue and that is where we should raise more because there is public interest to do so. Please, not another tax on a chemical that is unrelated to the hazard we are dealing with.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Bangor, Representative Faircloth.

Representative FAIRCLOTH: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I just wanted to briefly note that I appreciate the kind words of Representative Shields, but it is my preference to support the viewpoint of Representative Campbell of Newfield with regard to L.D. 1034. The bill that I sponsored was narrowly tailored and focused on real estate transactions and on landlord/tenant contracts. It provides a

warning as to those transactions, but let's look at what the State of Maine is supposed to be doing according to current Maine law.

MRSA Title 22 §1314-A provides now, under current Maine law that we are supposed to eliminate lead poisoning by the year 2010. I'll tell you, I am proud of my bill, but it won't get us close. It won't get us close to that goal. According to the National Institutes of Health there are four significant diseases affecting children that are linked to environmental factors. Here is the cost total, \$54.9 billion per year: \$.3 billion attributed to childhood cancers that have some environmental cause, \$2 billion attributed to asthma that has some environmental cause, \$9.2 billion to neuro-biological disorders and then, finally, \$43.4 billion of that \$54 billion attributed to lead poisoning.

The industry does play a role here and that is why in the 1920s when they banned lead paint in Europe there were strong lobbying efforts in the United States Congress that had nothing to do with science, but had everything to do with money. We continued to sell a poison and put it into homes for many, many years thereafter. We need to do something about that and this legislation, LD 1034, reaches that goal.

My bill can't, but this bill does provide training for lead smart renovators. You need the funding to do that. It provides lead awareness training for builders. It provides improved occupational surveillance. It talks about targeted education mailings to children. It provides targeted test kits. My bill couldn't do that. This bill does.

It is a tremendously important and positive piece of legislation. It is something out of Charles Dickens that in this new century, more than 2,000 children a year under the age of six are poisoned in the State of Maine to the degree that it might lower their IQ and increase their rate of ADHD. We can't continue with that; it is unacceptable and we have to pass LD 1034. Thank you Men and Women of the House.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Newfield, Representative Campbell.

Representative CAMPBELL: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I have spent the last couple days banging my head against the wall for senior citizens and now I hold in my hand a measure to protect children's health and I don't see the beginning of support for that one either. No matter what end I come out on I come out on the wrong end, but I appreciate all of the information my good colleague Dr. Shields gave us too, but you also cannot turn your back on 21 groups like the ones on the back of the sheet here.

As far as this thing about the Kennebec Journal is concerned, they are owned by the Portland Press Herald and I never paid much attention to what they have to say and I ask you to follow my light on this one and vote to protect the children of the state of Maine. Thank you.

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

Representative MAKAS: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. As you know I am from Lewiston. This is a huge problem in Lewiston/Auburn and I am particularly aware of this problem because of my involvement over the years with Head Start. We have a lot of children who have tested positive for lead poisoning and the cause has been attributed to lead paint in some of the older buildings.

Granted, lead paint was banned in 1978, but 80% of the homes in Lewiston, Auburn were built prior to that date. There has been quite a bit of cleanup but because there was so much of a problem before, it represents only a small percentage of the houses in Lewiston. One of the biggest problems now is a lack of awareness among the people of Maine as to the problem. According to a survey by the Bureau of Health, in 2003 43% of all

Mainers don't realize that lead poisoning is still a problem. Twenty-six percent are unaware that remodeling and repainting to remove the lead paint without proper precautions can be hazardous in and of itself.

It is true that education does cost money. Under the proposed LD it is estimated at about a half a million dollars, but as the good Representatives from Somerville and Bangor, Representatives Miller and Faircloth have pointed out the consequences are far more expensive. We can afford to do this because we cannot afford not to do this. Please support the Majority Ought to Pass as Amended Report. Thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Frankfort, Representative Lindell.

Representative LINDELL: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I find myself compelled once again to insert some facts into this debate that have, quite frankly, been filled with a little too much hyperbole this evening. It is true, lead poisoning is a dangerous condition. It can lead to all sorts of deleterious effects on the body from memory loss to lethargy to learning disabilities and that is in the lower doses. It can even lead to death in higher doses. Indeed, some have speculated that it was poisoning from the lead pipes that led to the decline and fall of the Roman empire, but what we are talking about today isn't about lead poisoning. We are talking about elevated blood levels of lead in children. The levels that we are talking about today are far smaller than those represented by poisoning. In fact, the Center for Disease Control measures lead content in the blood by micrograms of lead per deciliter of blood and the first threshold at which there might be a warning sign is the 10 micrograms of lead per deciliter of blood. Just to put this into perspective. It takes three times that amount before we begin to see a discernable situation where the Center for Disease Control recommends treatment for elevated blood levels. Arguably you could say that 30 micrograms of lead per deciliter of blood represents a mild case of lead poisoning. Ten does not represent lead poisoning so lets strike that little piece of misinformation. Now, that is not to denigrate the problem. The problem was actually very severe in the 1970s when the good Representative from Somerville, Representative Miller was out testing kids for lead poisoning. Indeed the Center for Disease Control has conducted a survey over the years called the National Health and Nutrition Examination Surveys and in the late '70s 88% of children between the ages of one and five had elevated levels of lead in their blood. Today, that number is 6%. So, we have gone from 88% to 6% of children that reach that point of 10 milligrams of lead per deciliter of blood. That is a dramatic reduction. In fact, over the entire population the average blood level went from 12.85 micrograms of lead per deciliter of blood to 2.8 today in the last 30 years. Again, a huge reduction. This is largely because of increased awareness of the problem, the elimination of lead in gasoline and the elimination of lead in household paint. This is a problem that is being licked. So, at this point it begs the question why we are going to impose a tax on paint that has nothing to do with lead today, in order to solve a problem that is 80% to 90% solved? Thank you Mr. Speaker.

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

Representative CUMMINGS: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I do appreciate what has been said today and I understand that we are making some progress on lead poisoning and I understand that 20 deciliters may not be a shocking and difficult amount, but I have to say that when it happens to your own son, as it did to my son, it is a frightening experience and, quite frankly, until we have

eliminated this from every child in the state we ought to think carefully about how much progress we want to make and need to make.

I want to talk a little bit about the issues in terms of what it means to Maine in dollar amounts. We have the fourth oldest housing stock in the country and we have the fifth highest number of special ed kids in our school districts. Now, I would put forward to you that there is a correlation. For those of you who have had to deal with local budgets, please keep in mind that that is costing us tens and hundreds of thousands of dollars a year. Now, to me, this can be called a tax or it can be called a settlement for the companies who between 1920 and 1978 when in this country there was mounting evidence year after year after year that we were damaging our own children decided that making profit was more important and so it is true that we have made some progress. In fact, I want to compliment on the floor of the House the Representative from Auburn, Representative Shields. He stood with me just two years ago and said that we must comply with a lead poisoning screen and every doctor must do this so that we can be assured that our children in this state are properly screened. It was a bipartisan effort and it was an appropriate effort. But, if you want to do something more than just screening you are going to have to go to where the source of the lead is coming from. This effort today is an excellent effort to finally get to the root cause of something that is destroying not just the pocketbooks, but some of the abilities of our people.

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

Representative KOFFMAN: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. At the national level and at the state level there has been a long history in environmental law of holding manufacturers responsible for the waste that they leave behind, with hazardous waste sites as an example. If we can't attribute the responsibility to a business that is currently active and if the business is bankrupt or has been out of business for a long time then we end up passing bond issues to protect the public from those hazards. We do that in Maine on a regular basis and we just discussed one the other day in Appropriations about a waste site in Waterville and the owner of that site does not have the resources pay the million and half that will be required to clean up that site which is across the street from a school. But, when manufacturers are in business and are returning a dividend to their stockholders and they have been responsible for creating the waste we do make them pay. A lot of that waste was of course generated in earlier decades, but continues today. We call it legacy waste. It is the legacy left behind. We hold them accountable for it. We hold them accountable for it and they have to clean up the site.

It is nothing new for this state and the Natural Resources Committee, or the Legislature or the Governor to support holding manufacturers or producers of a product responsible for the components of a product and the hazards that they pose to the public health. In the last several years for example we placed a bounty on mercury switches in automobiles and we held the manufacturers responsible for paying that bounty to those who collect and recycle automobiles in Maine. The manufacturers sued us a couple of years ago. They said something like we will get Maine with only a 1,250,000 people. They are not going to get away with telling Detroit what to do. But, guess what. Our courts held our bill as legal and they are paying that bounty for us to collect those mercury switches. Now a couple of thousand mercury switches may not mean much nationally, but since Maine is the repository of a lot of mercury coming from around the country – mercury that we can't control – at least we are trying to do something about what we can control. We placed a

bounty, the manufacturers are paying it and they are being held responsible.

We did the same thing two years ago with our electronic waste bill. We are holding the manufacturers and producers of televisions and computer screens responsible for taking them back. This isn't revolutionary, Asia is now doing this and the European union is now doing this and the State of Maine is a model for encouraging manufacturer take back. We have the support of some major manufacturers in the United States who are willing to do this at their expense. They will collect and properly dispose of their computer monitors and TVs, which hold four to eight pounds of lead for the average TV.

In conclusion, it isn't unusual for us and it is in fact probably the trend in the global marketplace and a number of manufacturers are gearing up for this to take responsibility for their products and it is called cradle to cradle. They make it, they take it back and they remake something else with the parts and the ingredients. As has been pointed out in the case with the mercury switches in automobiles, the industry had already removed mercury switches from American made automobiles being sold in Europe because Europe said you can't sell your Fords, and GM products in Europe if you include these mercury switches. They began to put a little BB switch, a simple little BB switch, in as a replacement item for the European market and kept selling mercury switches to the United States' market. Those very switches get crushed and smelted in smelters in New Jersey and those emissions go up the pipe, into the air stream and end up right back here in Maine again. The paint manufacturers and, as has been the case with asbestos manufacturers and those manufacturers of other highly toxic materials and chemicals, knew darn well what they were doing, just as well as the tobacco industry knew what they were doing and they cashed in while they could cash in and they paid off the suits as they have done and walked away. There is a clear nexus between the manufacturers of lead paint who knowingly sold it here for another 40 or 50 years while they could cash in and have the responsibility to help us remove lead from our homes and residences. The United States has certainly seen improvements in the levels of lead in children, but most of the lead free housing being built is in the southwest and in California and other places. We still have a very high percentage of older housing stock and it is our kids that we have to protect. Thank you Mr. Speaker.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Eliot, Representative Lewin.

Representative LEWIN: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I would just like to make a few points.

I spent 45 years of my life before I came here, as a retailer in both hard and soft lines and can assure you all that the \$.25 a gallon tax that will be levied on the wholesalers that send paint into this state will translate to something in the area of \$.75 a gallon by the consumer gets to pay for it. I think that that is an important point to remember.

As to the settlement issue, I am not sure that that is an appropriate phrase personally. I think the paint dealers didn't break the law selling paint here for many, many years. In 1950 the lead level went down to 1%. In the 60s it went down another half percent and in 1978 it became non-existent in home paints. I have to tell you that we did have here in the state government a DHS department and where was it all those years if we were so concerned about it? Where were we? So, I think that is important to consider.

As to awareness of the problem in residential homes, properties generally turn over every 7-10 years. Many, many of

these homes in Maine that have lead paint were purchased by people that knew they had lead paint and it is now required by law at closings that there be a paint certificate and that everybody knows that you are buying a property that has got a problem. I think that if we are really serious about this lead paint problem and we really want to solve it we should have a very good plan to solve it. That should not just include a half million dollars worth of education a year that may or may not have an affect. I think that the Department should be planning some sort of a program that is a three to five year or five to ten year life and that program should encourage people to clean up the paint problem by a specific prescribed manner, that they should be instructed in and we should be giving them some sort of a tax break for cleaning up the property. They should get a certificate that goes with the sale of that property at the appointed time that says that the property is free of lead paint. In my mind, we don't have a plan. We haven't done anything awfully serious about solving this problem in over 55 years. If we are really serious about it and we really want this bill I think we ought to think twice about how we fund it and we should do the right thing and that is to stop persecuting manufacturers and suppliers in the State of Maine. Thank you very much.

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

Representative WEBSTER: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I believe that there is a historic linkage between the paint manufacturers of today and paint manufacturers prior to lead paint being removed from our shelves. Names like Sherwin Williams, ICI paints, which you might not recognize and one you might, Fuller O'Brian. Mastco Corporation you might not recognize, but you might recognize BEHR. You might not recognize a number of the current names but believe me that through mergers and acquisitions the paint industry of today resembles the paint industry of the past.

I would like to just address for a moment the history between 1920 and the present. The Lead Industry Association was formed in the 1920s. That was around the same time that lead was taken off of the shelves Europe. The Lead Industry Association did an excellent job of selling the idea that lead paint was going to be great for America. Do you remember the Little Dutch Boy who encouraged people to buy lead paint after Europe and the United States manufacturers knew that lead paint was dangerous? They sold it as sanitary, hygienic, pure white lead, safe for your children's bedroom. They persisted in this strategy through the 1950s while children were dying. Unfortunately, while some knew about the hazards of lead, the Lead Industries Association did not acknowledge it. In fact they received a Public Relations Industry Award for promoting corporate interests, which helped to overcome unfavorable public opinion which was starting to form around lead paint.

Mr. Speaker the question is what is the responsibility of us to the Commons – the air, the soil, our communities, the homes that we share in our communities, the playgrounds. We are concerned and outraged by the irresponsibility of dead beat dads and we are very concerned about the irresponsibility of predators and we are very concerned about people who are not responsible for themselves and those around them, but where is the outrage when a corporation or corporations knew something and then didn't do something about it? I think that responsible shareholders like myself because I am certain that I own shares in paint companies because I invest, I think that we want to be responsible for the Commons. I believe that because there has been a change from *caveat emptor* the belief that buyer beware, to the belief in *caveat venditor*, let the vendor beware, which has

evolved over the last 100 years tells us that the vendors should be responsible for their actions since there is a direct line of responsibility from now back through the times when lead paint was sold in spite of the fact that it was no longer available in Europe because of its recognized hazards.

I think, as a stockholder, that we, as trustees of the common good, should support an effort to try to educate people to make sure that homes are cleaned up properly, to make sure that our land and our soil is cleaned up properly and this is just one small step. I would be happy to work with the good Representative who suggested that we should get serious and do more. Let's take this first step and then let's do more. Thank you very much.

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

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

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

Representative BOWEN: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I am wondering, while we are on this theme of corporate responsibility for past wrongs, whether the Committee, in its deliberations, considered going after Coca-Cola to help pay for our drug treatment costs because it once had cocaine in it?

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

Representative PINGREE: Mr. Speaker, Men and Women of the House. I would just very briefly respond and I would welcome the good Representative from Rockport to put that measure forward as everybody in this body knows that we deal with the issues that come before us and I would look forward to his bill next session. Thank you Mr. Speaker.

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

Representative DAIGLE: Mr. Speaker, Ladies and Gentlemen of the House. Let me try to seriously answer that question. Obviously we feel that there is no connection with what Coca-Cola did, but there is an important principle being discussed when we talk about that. When we talked about the mercury bill we got a lengthy explanation about that from my good friend from Bar Harbor. An important principle is that we are not asking Toyota to pay for a mercury switch from a Ford. That was a tremendously important part of that and we probably would not have passed the bill if we thought Toyota was going to have to pay for a switch that was in a Ford car.

One of the problems that I see with this bill is that you are asking paint manufacturers who were not around when lead was used and who are totally unrelated to when lead was used. You are not getting the Dutch Boy to pay for this; you are getting the innocent current manufacturers and wholesalers to pay for something that they had no accountability to. If you are voting for this because you think that it is similar to the precedent that we set with mercury switches in cars that is incorrect. We only passed that bill when we had a link between the current manufacturers being responsible for the waste that they were taking care of. Thank you.

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

Representative KOFFMAN: Mr. Speaker, Ladies and Gentlemen of the House. I apologize for getting up a second time on this issue, but I think that the good Representative from Arundel, Representative Daigle perhaps forgot that with our

electronic waste bill we had to figure out what to do with the so called orphan waste, waste that was left over by manufacturers who no longer manufacture a TV or a computer and are out of business or not in business here anymore and what we did was that we agreed that the manufacturers currently selling in Maine would take the responsibility on a pro rated share for the orphan waste left behind by others. I think that sets a precedent for that particular problem.

As to holding Coca-Cola responsible I think that the Representative from Rockport, Representative Bowen is right on target, but I think that it should be dental bills that we hold them responsible for and not drug addiction. Thank you Mr. Speaker.

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

Representative PINGREE: Mr. Speaker, Men and Women of the House. I just want to briefly add something to this debate and that is just a little bit more information about the Committee process. Our Committee, Health and Human Services, has worked very well together this year and we have tried hard often, but not always, to have bipartisan and unanimous reports.

There are quite a few things in this bill that we all agreed on. I think that we all agreed that lead was a significant problem that had proven detrimental effects on kids and workers of all ages. I think we all agreed that it was an area in which the state should focus both resources and energy.

We had a very detailed plan from the Bureau of Health and the DEP about how the half million dollars would be spent targeting parents, targeting renovation projects, targeting workers, doing community outreach, occupational disease reporting and awareness at schools. We were all in agreement that more money needed to be spent on education. In addition, our Committee spent a lot of time talking about how we could raise the kind of funds that would be needed.

This bill had a very different fee mechanism originally imposed that would go back to historical groups that had put lead in our environment from paint manufacturers to oil dealers to the people who made the gasoline to the paper companies. Everybody that emitted any lead into our environment could be held responsible. The Committee was concerned that it was a very broad bill and I think there were bipartisan interests in making in proactive rather than retroactive. In fact, the difference between the Majority Report and the Minority Report is very small. Both the Majority Report and the Minority Report talk about a \$.25 fee, not on retailers and businesses, but on the manufacturers per gallon of paint sold in the State of Maine. The only difference between the Majority and Minority Report is that the Majority Report made this fee a mandatory fee to be negotiated by the Department of Health and Human Services. The Minority Report made it a voluntary fee. I think that we all had the best interest in mind. There was good representative who was a member of the other body who put forward the voluntary component. I would submit to you that I am not sure if voluntary fees would be successful and it would be something akin to a voluntary income tax, voluntary highway tolls, a voluntary speeding ticket. We don't attempt voluntary fees in many parts of state government because they are not realistic.

I would say to you that this bill talks about the paint manufacturers. Paint manufacturers who have created a lot of the paint that is on the walls and that is causing the lead poisoning in the State of Maine. Even the paint manufacturers came forward in a work session and asked us to propose a fee to pay for these programs. The paint manufacturers asked for a fee on every Maine homeowner. They said that homeowners should pay for this kind of educational effort. I would submit to you that

homeowners are not the people responsible for the lead that is in our homes and that is injuring our children.

I hope that knowing a little more about the Committee process and the fact that we weren't all on such different pages will help you. I would urge you to support the Majority Ought to Pass Report. Thank you Mr. Speaker.

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

Representative RICHARDSON: Mr. Speaker, Ladies and Gentlemen of the House. The good Representative Pingree just hit the nail on the head. The homeowner is going to pay for this. Who else? Do you think that the manufacturer gives a hoot whether we make them charge an extra quarter or not? They don't and they won't. All of these well intentioned, but I think misguided policies of this type are just coming home to roost. Every gallon of paint that you buy will just cost you \$.75 more, as Representative Lewin said. Let's not be self-righteous and pick on the villainous manufacturer because the villainous manufacturer couldn't care less. He is just going to charge me an extra \$.75 per gallon of paint. Thank you Mr. Speaker.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Crystal, Representative Joy.

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

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

Representative JOY: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I presume that all of you will agree with me that the Legislature in this particular body is representative of all of the people in the State of Maine. If we are exposed to so many hazards how did any of us ever live long enough to grow up and get here? Thank you.

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

Representative CUMMINGS: Mr. Speaker, Ladies and Gentlemen of the House. If had not been affected by lead poisoning we would be smart enough to end this debate.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Cape Elizabeth, Representative Goldman.

Representative GOLDMAN: Mr. Speaker, Ladies and Gentlemen of the House. I agree, this has been a long debate, but I feel, perhaps having lived as long as my good colleague from Crystal, Representative Joy, that I might just make a few comments.

One of the things that I have been sitting here thinking about is the asbestos abatement that I have become quite familiar with through my involvement with many school projects. Frankly, asbestos removal is one of those subjects that was the object of many suits. Ultimately, you know who is paying for asbestos removal and the large sums that have gone into asbestos removal in publicly funded projects. It is coming out of my taxes, your taxes and the taxes of the state of Maine because it was, in fact, something that had to be addressed.

This is something that has to be addressed too. Children need to be protected. We had to do it and we are still doing it in any of our school projects, as well as any other publicly funded projects through taxpayer dollars. So, it seems to me that if this bill is trying to address a necessary removal I am not positive that I know that the funding in this bill is the best possible route, but if it isn't going to come that way then it will ultimately have to come out of tax dollars. Thank you very much.

The SPEAKER PRO TEM: A roll call has been ordered. The pending question before the House is Acceptance of the Majority

Ought to Pass as Amended Report. All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 278

YEA - Adams, Ash, Babbidge, Barstow, Beaudette, Blanchard, Blanchette, Bliss, Brannigan, Brautigam, Brown R, Bryant, Burns, Cain, Campbell, Canavan, Clark, Craven, Cummings, Curley, Driscoll, Duchesne, Dudley, Dugay, Dunn, Duplessie, Eberle, Eder, Faircloth, Farrington, Finch, Fischer, Fisher, Gerzofsky, Goldman, Greeley, Grose, Hanley S, Harlow, Hogan, Hotham, Hutton, Jennings, Kaelin, Koffman, Lerman, Lundeen, Makas, Marley, Marraché, Mazurek, Merrill, Miller, Mills, Moody, Moore G, Muse, Norton, O'Brien, Paradis, Patrick, Pelletier-Simpson, Percy, Perry, Pilon, Pineau, Pingree, Piotti, Rector, Rines, Sampson, Saviello, Schatz, Smith N, Smith W, Thompson, Trahan, Tuttle, Twomey, Valentino, Walcott, Watson, Webster, Wheeler, Woodbury, Mr. Speaker.

NAY - Annis, Austin, Berube, Bierman, Bishop, Bowen, Bowles, Browne W, Bryant-Deschenes, Carr, Cebra, Churchill, Clough, Collins, Cressey, Crosthwaite, Curtis, Daigle, Davis G, Davis K, Duprey, Edgecomb, Emery, Fitts, Fletcher, Flood, Glynn, Hall, Hamper, Hanley B, Jacobsen, Jodrey, Joy, Lansley, Lewin, Lindell, Marean, McCormick, McFadden, McKane, McKenney, McLeod, Millett, Moulton, Nass, Nutting, Ott, Pinkham, Plummer, Richardson D, Richardson E, Richardson M, Richardson W, Robinson, Rosen, Seavey, Sherman, Shields, Stedman, Sykes, Tardy, Thomas, Vaughan.

ABSENT - Crosby, Jackson.

Yes, 86; No, 63; Absent, 2; Excused, 0.

86 having voted in the affirmative and 63 voted in the negative, with 2 being absent, and accordingly the Majority Ought to Pass as Amended Report was ACCEPTED.

The Bill was READ ONCE. Committee Amendment "A" (H-642) was READ by the Clerk and ADOPTED. The Bill was assigned for SECOND READING Wednesday, June 8, 2005.

The Speaker resumed the Chair.

The House was called to order by the Speaker.

REPORTS OF COMMITTEE

Divided Report

Majority Report of the Committee on JUDICIARY reporting Ought Not to Pass on RESOLUTION, Proposing an Amendment to the Constitution of Maine To Define Marriage

(H.P. 891) (L.D. 1294)

Signed:

Senators:

HOBBS of York
BROMLEY of Cumberland

Representatives:

PELLETIER-SIMPSON of Auburn
FAIRCLOTH of Bangor
GERZOFKY of Brunswick
CANAVAN of Waterville
BRYANT of Windham
DUNN of Bangor

Minority Report of the same Committee reporting Ought to Pass as Amended by Committee Amendment "A" (H-648) on same RESOLUTION.

Signed:

Senator:

HASTINGS of Oxford

Representatives:

SHERMAN of Hodgdon

CARR of Lincoln
 BRYANT-DESCHENES of Turner
 NASS of Acton

READ.

Representative PELLETIER-SIMPSON of Auburn moved that the House **ACCEPT** the Majority **Ought Not to Pass** Report.

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

Representative **FAIRCLOTH**: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I just want to note that I, like Representative Duprey, I like his wife, I respect his views and if anybody were to attack him for his viewpoints I would be on his side in that regard. However, in December 2004 every member of this House swore an oath to uphold the Constitution, not only of Maine, but also of the United States of America. LD 1294 violates the federal Constitution's Bill of Rights, but first I want to talk about murder.

The Maine State Prison holds men who have brutally beaten their wives to death. These men, under Maine law, can get married again. The Department of Corrections has, in fact, facilitated marriages on behalf of inmates incarcerated for homicide. Representative Larry Bliss, according to a 1997 Maine statute cannot marry his partner of ten years, but a convicted wife killer can remarry. In May, Senator Scott Cowger celebrated nine years of a committed relationship. Marriage for Senator Cowger? No. Marriage for incarcerated woman killers? Yes.

Some say that a remarrying wife killer is more of a threat to the sanctity of marriage than is the prospect of Representative Bliss getting hitched, but that's current Maine law. The issue before us is whether we should enshrine in Maine's Constitution, for the first time ever, a restriction on rights, a restriction on marriage. Enshrining this restriction constitutionally could only be overturned with one, a two-thirds legislative vote and then two, a popular vote on minority rights.

The United States District Court in Nebraska last month held that language like LD 1294 violates the first amendment of the Bill of Rights of the United States of America, which guarantees the right "to petition the government to redress grievances." The court ruled that language similar to 1294 is a major barrier to the right of gay people to participate in the political process. Think about it. By passing 1294 Maine would be saying, "If you gay people attempt to exercise your first amendment right to petition the government regarding marriage law, government will impose on you a two thirds vote hurdle in the Legislature, followed by a popular vote on minority rights." Of course, we heterosexuals can change marriage laws affecting us by a simple majority. Quashing a minority's first amendment right to petition the government is not the American way.

With 1294 legislators would, in essence, travel to the future and use Maine's Constitution to impose a 1997 definition of marriage on people in the year 2030 or 2050. Are we in 2005 so certain of this 1997 definition; is it so important that this is the legacy, my colleagues of the House, that we will leave in Maine's Constitution. LD 1294 also violates the constitutional rights of many Quakers, Unitarian Universalists, some Jewish congregations and some Methodists who now sanctify gay marriage. If a Quaker congregation petitions our Legislature to recognize in law, marriages that they already sanctify, then why should government force Quakers to jump a two-thirds hurdle? LD 1294 favors one set of church doctrines over another and that is unconstitutional.

Some ask us to protect traditional marriage. In the 1700's the English jurist William Blackstone correctly stated the longstanding legal definition of marriage in which, women do not exist as people. Blackstone stated that pursuant to marriages legal

definition a wife is her husband's property. Under centuries old common law a man's marital rights permitted him to take all of his wife's money and beat her and rape her. This legal definition of marriage - the beating, the owning, the raping - existed as law and as traditional marriage for many more years than our more recent definition. Who are we to constitutionally freeze the legal definition of marriage so that it can no longer evolve? LD 1294 doesn't even make gay marriage illegal in Maine because it already is and 1294 seeks not to protect the sanctity of heterosexual marriage - remember wife killers can join the marriage club - LD 1294 seeks solely to use Maine's Constitution to permanently demean same sex relationships. After all we know about hate crimes against gay people why make our state constitution a weapon and not a shield.

When 1294 came before the Judicial Committee many legislators testified in favor and that is their right, but think of all of the energy spent to restrict first amendment rights. In the recent two-year budget there were \$20 million dollars in cuts affecting abused children, mentally ill children, and developmentally delayed children. Where is the energy? Where is the Christian passion for these children? Let us heed the scripture, "What does the Lord require of thee but to do justice, love mercy and to walk humbly with thy God?" What could be less humble, less merciful than denying first amendment rights to a minority, not just today, but for generations to come.

When I was a boy giants walked this earth, giants like the Reverend Dr. Martin Luther King, and when Martin Luther King spoke of Christian values he did not speak of trivia, when Doctor King spoke of moral values he spoke for poor children. He spoke for stigmatized minorities. He called us to a passion for justice. Dr. King's values are moral values. Something has gone very wrong in recent decades when the very words, moral values, have been hijacked by trivia. Maine is better than LD 1294. We, my colleagues of the House, we are better than this legislation. Mr. Speaker I request a roll call.

Representative **FAIRCLOTH** of Bangor **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 Hampden, Representative Duprey.

Representative **DUPREY**: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I am going to give one of my shortest floor speeches ever because I don't want to belabor this issue because everyone knows how they are going to vote. I am not going to try to change anybody's mind because I respect everyone's opinion, but if you support gay marriage vote green and if you oppose gay marriage and you believe in marriage between one man and one woman vote red. That is it.

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

Representative **CUMMINGS**: Mr. Speaker, Ladies and Gentlemen of the House. With all due respect to the Representative from Hampden, Representative Duprey, it isn't that simple and I want to be clear that it is not that simple. There are many in this House who may oppose gay marriage. The question is, where does it belong in our body of laws? I believe that we should not scribble the graffiti of fear and discrimination into Maine's most sacred political document.

The reason for that is because that sacred political document was designed specifically for us to understand how people in this country ought to treat each other in relationship to power and the very foundations of this democracy and in order to function. And, today, many of you would support statutory language opposing

gay marriage. Many of you have. Many of you would support an amendment to the Equal Rights Amendment and the equal rights legislation that would say it could never be interpreted to include gay marriage, but is this the appropriate place to place it? I would argue that it is not.

The SPEAKER: The Chair recognizes the Representative from Waterville, Representative Canavan.

Representative CANAVAN: Mr. Speaker, Men and Women of the House. As I listened in Committee to some of the rhetoric used in support of this bill I had déjà vu because it clearly had the ring of a sermon designed to play on people's fears. One speaker made a correlation between the rise of feminism and today's moral ills and her remarks actually drew cheers from the audience. It all sounded eerily like a replay of the scare tactics used back in the '70s by opponents of the ERA designed to keep women in their place and it was hard to see what it all had to do with protecting marriage.

The same speakers that attacked feminism went on to pontificate about why the institute of marriage could be best protected by the passage of this constitutional amendment and listening to the remarks I thought of my own marriage. It is a union that has lasted for more than 51 years. Yes I do think we deserve a medal. My husband and I have five great children and six feisty grandkids and for sixteen years I was a stay at home mom. All of which my kids will be quick to tell you doesn't make me any more perfect than anyone else. But, I mention it simply to point out that I do have some first hand knowledge about the subject of marriage. Our years together involved a certain level of stress, a ton of work and some pretty good times as well, but the truth is that none of the stress we experienced had anything to do with the fact that a gay couple lived up the street from our house. What got us through had nothing to do with the fact that the law defines marriage as between a man and a woman. What strengthens marriage plain and simple is commitment to one another and to family. What helps are decent wages, affordable healthcare and the support of friends and neighbors, which we had. More paid family leave would defiantly help. I can quite honestly say that a few superfluous lines submitted into the Maine Constitution would not have made one bit of evidence in our lives and there is, in fact, not one scintilla of evidence to show that such an amendment will serve to strengthen anyone's marriage or prevent one single divorce. All this bill does is play on people's fears.

The proponents suggest that if we can put gays and feminists in their place then moral order will prevail. Well, I have to say that opponents of the civil rights movement used the same tactics against black Americans 45 years ago. The truth is that we don't have a marriage problem in this country. We have a divorce crisis. One that existed long before this issue came to the fore. If we really want to defend and strengthen marriage then let's stop pointing the finger of shame at caring couples regardless of gender and live and let live. If we really want to strengthen marriage let's work to find out why marriage has failed and try to remedy that. We have a lot of work to do here in this body. Let's put this bill where it belongs in the dead file and get on with the work that will make a real difference in the lives of Maine families. Thank you.

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

Representative RICHARDSON: Mr. Speaker, Ladies and Gentlemen of the House. Really, there are no less rights for gay men than mine. They have the right to marry a woman. The fact that they don't have the marriage right to marry each other is the same denial that I have. So, as far as that particular argument is concerned it is not an argument. It isn't a first amendment right

and I don't really care whether they marry each other or not, but as far as the legal argument is concerned they don't have a leg to stand on.

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

Representative SHERMAN: Mr. Speaker, Ladies and Gentlemen of the House. This saddens me. The rhetoric that I heard on the other side, in the interest of being fair, starting off with prisoners and the allegations there, this is not about gay marriage to me. This country has 41 states that prohibit some form of gay marriage and doesn't say anything about civil unions. There are eighteen states that have a constitutional amendment. We have been in the great sweep of history here for the last 25 or 30 years. Some institutions have been under attack and it seems to me that there is left over rhetoric from the 1960s and the 1970s and I seem to sense that on the other side they are fighting a civil rights battle that is long over.

This is not a Christian morality, it is an institution or an arrangement that has been in place for thousands of years and I think that there is all sorts of data that says that the best way to raise children and family is to have a male and female doing it.

I think that the fact that divorced people get remarried is a basic building block of any country and we are engaged in a great social experiment and I would like to live to be 100 years old and to look back and see what the actions we take in this Legislature will have in the resulting society that we have.

A lot of this is about sexual arrangements. Look at what is on television. Look at what we have become accustomed to on TV is that the degradation of women and men and marriage? I am one of those who have been married a long time. I haven't made the 50-year mark yet, but I hope that I do. It is however through thick and thin and I am not a great bible person and that is not what I am talking about, but it is the institution that holds us together.

I heard the phrase "scribbling something in the Constitution" and that bothered me. This body, when we went into special session decided to override the Constitution and the courts of the State of Maine said that you did wrong and to pay up and there was big fight not to pay up. I took that money as a penalty, hoping that you can't use it. Now we are in another special session. We have overridden the Constitution twice at least and it is like when you take your first drink at 16 years old. It feels pretty good and then you take it again and again. I think that we have done it to our own Constitution here. This institution is playing games with budgets – that may be off the mark there, slide a little money here or there – listen to what we are saying. We call it spin. You can call it what you want, but come back to this issue. If this is in the Constitution so what, it heightens what is already in statute. I see nothing wrong with putting this in the Constitution and highlighting it as a moral rule.

We are one of the greatest countries in the world and in the words of Senator Sawyer, I think that we are nickel and diming ourselves to death and we are doing it by making a thousand cuts and this seems to be one of them. Thank you.

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

Representative TWOMEY: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I want to break out and sing *We Shall Overcome* but I won't. I have to respond to a comment that my good friend and seatmate on the Agriculture Committee just made. I have too. I cannot sit here in silence. The best way to raise children is with love. The best way to raise children is with love.

The SPEAKER: The Chair recognizes the Representative from Ripley, Representative Thomas.

Representative **THOMAS**: Mr. Speaker, Ladies and Gentlemen of the House. Last Sunday I attended the wedding of a young man that works for me. He and his girlfriend have lived together for quite a while. They have a young daughter that is eight years old and a young son that is two. The happiest person at the wedding was little Sadie. She is eight years old. She was going to have a mom and a dad that were committed to being a family. Marriage isn't about adults as much as it is about children. Kids need a mom and a dad and that is important enough to me that I think it should be in the Constitution. Thank you.

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

Representative **GERZOFSKY**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. This state and this country have been in a great social experiment since it's founding. This body no more represents the people than the body that was here in 1823 or any other time. It has been changing over the years and decades for the better. We are no longer just a group of rich white men sitting here. We have women and we have had people of color and we have had people of different thoughts, faiths and creeds, as it should be. I hope it will continue to be a great experiment for another 200 years. As long as there is one person or one group of people being discriminated against I don't think that the social progress that this state and country are capable of will be reached.

I also remember the '60s and '70s and '80s and there were giants because there was a time that we needed giants. There was a time that we needed to make social change. Those times haven't changed because the decades have. Those fights are still here. As long as there is a group of people that are not being treated with the same dignity that we would want to be treated ourselves then we have a battle. The Constitution of the State of Maine, like the Constitution of the United States, was not written to divide people, but to unite them. That is not what this bill does. This bill divides us. It doesn't unite us and I will never vote for a piece of legislation that will put dividing people against people into the Constitution. Nor do I think that this body should ever vote that way. Thank you very much for your time and patience and for listening to me.

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

Representative **HARLOW**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I will be very brief. I don't think that sexual preference or sexual anything has anything to do with the security of our country or anything about it. All that we have to do is look back historically. The Roman Empire was very free with its sexual preference and it was one of the longest lasting governments in the history of the world. One of the shortest-lived ones was Nazi Germany, which was so pro family. So, let's not forget that.

Secondly, the Constitution, in most areas of the country, has been used to protect the minority. Sometimes we fail, but I hope that today we will be protecting the minority again.

Another point as well. A single parent brought me up. My dad had died and nobody knew it, but I knew what it was like to have a single parent and it is no different. My mother was my mother and my mother was my father so believe me, it doesn't matter. If you are loved you are loved and that is the bottom of the line. If we really want to protect marriage it is not a tough law. Anybody who gets divorced goes to jail. Thank you.

The SPEAKER: The Chair recognizes the Representative from Wilton, Representative Saviello.

Representative **SAVIELLO**: Mr. Speaker, Ladies and Gentlemen of the House. After great thought I want to make this

statement. Number one, I am against gay marriage. However, I do not believe that it belongs in the Constitution. Thank you Mr. Speaker.

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

Representative **DUDLEY**: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. We have a lot of problems facing us this session and the people of Maine have a lot of problems facing them. We have issues of job creation and improving our business climate – expanding access to healthcare, Controlling property taxes, managing our natural resources, dealing with levels of crime in the corrections system, confronting poverty and homelessness, confronting child abuse and neglect, creating access to opportunity through quality education, but the question before us has nothing to do with any of it.

With all due respect to the people who brought this bill forward and without impugning their motives at all, I have to say that from my perspective that this question is a huge distraction from the very real problems that are facing us and that we should be spending our time on. 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. 279

YEA - Adams, Ash, Babbidge, Barstow, Beaudette, Bishop, Blanchard, Blanchette, Bliss, Bowen, Brannigan, Brautigam, Brown R, Bryant, Burns, Cain, Campbell, Canavan, Craven, Cummings, Davis K, Driscoll, Duchesne, Dudley, Dunn, Duplessie, Eberle, Eder, Faircloth, Farrington, Finch, Fischer, Fisher, Flood, Gerzofsky, Goldman, Greeley, Grose, Hanley S, Harlow, Hogan, Hutton, Jennings, Koffman, Lerman, Makas, Marley, Marraché, Mazurek, McCormick, McFadden, McKane, Merrill, Miller, Mills, Moody, Muse, Norton, O'Brien, Paradis, Patrick, Pelletier-Simpson, Percy, Perry, Pilon, Pineau, Pingree, Pinkham, Piotti, Rector, Richardson D, Rines, Robinson, Rosen, Sampson, Saviello, Schatz, Smith N, Smith W, Thompson, Twomey, Valentino, Walcott, Watson, Webster, Wheeler, Woodbury, Mr. Speaker.

NAY - Annis, Austin, Bowles, Browne W, Bryant-Deschenes, Carr, Cebra, Churchill, Clark, Clough, Collins, Cressey, Crosthwaite, Curley, Curtis, Daigle, Davis G, Duprey, Edgecomb, Emery, Fletcher, Glynn, Hall, Hamper, Hanley B, Hotham, Jacobsen, Jodrey, Joy, Kaelin, Lansley, Lewin, Lundeen, Marean, McKenney, McLeod, Millett, Moore G, Moulton, Nass, Nutting, Ott, Plummer, Richardson E, Richardson M, Richardson W, Seavey, Sherman, Shields, Stedman, Sykes, Tardy, Thomas, Trahan, Tuttle, Vaughan.

ABSENT - Berube, Bierman, Crosby, Dugay, Fitts, Jackson, Lindell.

Yes, 88; No, 56; Absent, 7; Excused, 0.

88 having voted in the affirmative and 56 voted in the negative, with 7 being absent, and accordingly the Majority Ought Not to Pass Report was **ACCEPTED** and sent for concurrence. **ORDERED SENT FORTHWITH.**

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

Bill "An Act To Make Certain Changes in the Laws Concerning the Family Division of District Court"

(H.P. 683) (L.D. 973)

(C. "A" H-646)

Which was **TABLED** by Representative DUPLESSIE of Westbrook pending **PASSAGE TO BE ENGROSSED as Amended**.

On motion of Representative PELLETIER-SIMPSON of Auburn, the rules were **SUSPENDED** for the purpose of **RECONSIDERATION**.

On further motion of the same Representative, the House **RECONSIDERED** its action whereby **Committee Amendment "A" (H-646) was ADOPTED**.

The same Representative **PRESENTED** House Amendment "A" (H-665) to **Committee Amendment "A" (H-646)** which was **READ** by the Clerk.

The **SPEAKER**: The Chair recognizes the Representative from Auburn, Representative Pelletier-Simpson.

Representative **PELLETIER-SIMPSON**: Mr. Speaker, Men and Women of the House. This is just a technical amendment. When we amended the bill we changed the language back to case management officer and the bill was intended to say family law magistrate. This is just to fix that language. Thank you.

Subsequently, House Amendment "A" (H-665) to Committee Amendment "A" (H-646) was **ADOPTED**.

Committee Amendment "A" (H-646) as Amended by House Amendment "A" (H-665) thereto was ADOPTED.

The Bill was **PASSED TO BE ENGROSSED as Amended by Committee Amendment "A" (H-646) as Amended by House Amendment "A" (H-665) thereto and sent for concurrence. ORDERED SENT FORTHWITH**.

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

REPORTS OF COMMITTEE

Divided Report

Majority Report of the Committee on **JUDICIARY** reporting **Ought Not to Pass** on Bill "An Act Authorizing Municipalities To Establish Walking Trails"

(S.P. 165) (L.D. 539)

Signed:

Senators:

BROMLEY of Cumberland

HASTINGS of Oxford

Representatives:

PELLETIER-SIMPSON of Auburn

GERZOFKY of Brunswick

CANAVAN of Waterville

BRYANT of Windham

SHERMAN of Hodgdon

CARR of Lincoln

BRYANT-DESCHENES of Turner

NASS of Acton

Minority Report of the same Committee reporting **Ought to Pass as Amended by Committee Amendment "A" (S-338)** on same Bill.

Signed:

Senator:

HOBBINS of York

Representatives:

FAIRCLOTH of Bangor

DUNN of Bangor

Came from the Senate with the Minority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-338)**.

READ.

On motion of Representative PELLETIER-SIMPSON of Auburn, the Majority **Ought Not to Pass** Report was **ACCEPTED** in **NON-CONCURRENCE** and sent for concurrence.

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

REPORTS OF COMMITTEE

Divided Report

Majority Report of the Committee on **HEALTH AND HUMAN SERVICES** reporting **Ought Not to Pass** on Bill "An Act To Repeal Certificate of Need as It Applies to Hospitals, Ambulatory Surgical Units and Physician Offices"

(H.P. 1043) (L.D. 1487)

Signed:

Senators:

MAYO of Sagadahoc

MARTIN of Aroostook

Representatives:

PINGREE of North Haven

WALCOTT of Lewiston

GROSE of Woolwich

WEBSTER of Freeport

MILLER of Somerville

Minority Report of the same Committee reporting **Ought to Pass as Amended by Committee Amendment "A" (H-652)** on same Bill.

Signed:

Senator:

ROSEN of Hancock

Representatives:

SHIELDS of Auburn

CAMPBELL of Newfield

LEWIN of Eliot

GLYNN of South Portland

BURNS of Berwick

Representative SOCKALEXIS of the Penobscot Nation - of the House - supports the Majority **Ought Not to Pass** Report.

READ.

Representative PINGREE of North Haven moved that the House **ACCEPT** the Majority **Ought Not to Pass** Report.

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

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

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

Representative **SHIELDS**: Mr. Speaker, Ladies and Gentlemen of the House. I need to tell you a story about how we arrived where we are with LD 1487. Now, I have never been a fan of Certificate of Need, having observed my hospital and others being rung out by that process and the fierce turf battles that have occurred between larger hospitals. They all wanted to protect their turf and did not want competition for their franchise. All of this consumed a lot of time, energy and money.

I will tell you a little bit about the Certificate of Need law just in case you don't know about it. Congress enacted it in 1974. It was an attempt to control rising healthcare costs. States were forced to institute Certificate of Need statutes or they would lose their federal funding. In 1986 Congress realized that Certificate of Need was a failure and removed the requirement for states to continue their Certificate of Need activities. In other words the Certificate of Need was a flop. Fourteen states cancelled the Certificate of Need completely and six others kept it a part only and it was mainly limited to the control of nursing home expansions.

Maine has continued to use the Certificate of Need process in spite of the time and resources it consumes. We currently are the only state in this country that subjects physician's offices to the approval process. Again, Certificate of Need law was passed to control the cost of medical care. It has not done that in the United States and particularly not in Maine.

Ambulatory surgical units or centers, as they are called, began in the '80s and early '90s and because they were classified as doctors offices, were not subjected to the Certificate of Need process and then the law was changed in 2003 and subjected ambulatory surgical units and physician's offices to Certificate of Need approval. Why did this occur? Why are these facilities being treated like hospitals? These specialized surgical units were different from hospitals. Ambulatory surgical units pay property taxes while hospitals don't. They are operated like any physician's office. They cannot keep people overnight. Only the hospital can do that. They have developed efficiencies, lowered costs, and provide faster service than the hospitals can provide. Hospitals don't like these unless they happen to own one and then they are okay.

Hospitals claim that ambulatory surgical units pick only the well-insured patients and leave the others to the hospital. Studies show that this is inaccurate and ambulatory surgical units have low paying Medicaid and non-paying patients also. Currently, hospitals receive reimbursement from Medicaid patients through a different mechanism than the ambulatory surgical units. Hospitals are being paid on the basis of cost and ambulatory surgical units on a fee for service basis. So, this bill, as amended, proposes to exempt ambulatory surgical centers and doctor offices from the Certificate of Need law. Nursing homes and hospitals will continue under Certificate of Need. The reason for this, including nursing homes is because the fiscal note on this bill would be phenomenal if nursing home expansions were not controlled. The reason for removing hospitals from the bill is because I receive some support from across the aisle if the hospitals were removed.

This is an interesting occurrence since the hospitals have historically endorsed Certificate of Need when it comes to competitors expanding and are against it when it comes to their own expansions. I originally put them in the bill so that they would be free of the Certificate of Need nuisance and I thought that I was doing them a favor. However, they like the franchise protection created by the Certificate of Need and do not want any competition. They have floated an email to everyone indicating the threat that the small little ambulatory surgical units have to community hospitals and how the playing field is not level.

Let's talk about what the amended version of this bill does not do. It does not cost the State of Maine any additional funding. It does not diminish any standards of quality of care and it does not destroy the Certificate of Need organization that we still need. What it does do is that this allows easier expansion of doctors' offices and ambulatory surgical units to more rural areas of this state. If the rural areas want more facilities than it opens the door. It allows communities to determine what the healthcare

communities will serve them instead of the decision being made by bureaucrats in Augusta. It allows communities to benefit from the property tax base and the jobs created by these privately owned facilities. It allows the community to benefit from the increased efficiency and lower cost of medical care that they can bring. It allows the local hospital staff to be enhanced and to benefit from the highly trained specialist and the specialized techniques that are present in ambulatory surgical units. It allows competition to occur which results in more efficient care and less costly care. Hospitals are adverse to competition and having once gone through a successful Certificate of Need process they adopt this franchise mentality toward any competitors. That is what a lot of it is about. This has been noted in most other parts of the United States.

Very importantly this bill has another part. It calls for the Department of Health and Human Services to explore and report in 2006 on alternative methods of reimbursement for healthcare facilities for MaineCare. We are one of only five states that reimburse hospitals on a cost basis. All of the other 45 states have awakened and adopted the federal Medicare DRG method, the Diagnostic Related Group, or used a computation method. Our Department of Health and Human Services officials say that they are considering the DRG payment method, which is a fee for service to the hospitals, but I believe that those considerations should be backed up with statutory authority from us. Maine is beginning to catch on.

I now find that hospitals, in spite of always wanting a Certificate of Need process are saying that that is unfair and that the playing field is not level. We should now see how unleveling it really is.

In the ambulatory surgical units a reimbursement rate is noted and in your salmon colored handout it shows the difference in what hospitals get paid for a procedure as opposed to what the ambulatory surgical units are paying. Nationally, hospital outpatient claims average \$891 per claim versus \$571 for ambulatory surgical units, which is a savings of \$320 per claim. This is on a handout also. Ambulatory surgical units are usually privately owned and pay taxes whereas hospitals do not pay taxes. The ambulatory surgical unit in my community pays \$135,000 in property taxes and employs about 60 people. The ambulatory surgical unit cannot keep anyone overnight. This is the sole privilege of the hospital and there are many procedures that call for an overnight stay so hospitals are not going to be put out of the surgical business.

Ambulatory surgical units are paid at a much lower rate than hospitals. Look at your handouts. Our state bureaucracy uses the Certificate of Need process to regulate the private practice of medicine. If this continues we will be going down the road to socialized medicine with the government charting the course for your medical decisions and making you dependent on what they have decided that you can or cannot have. In summary, the Certificate of Need process provides a franchise to existing facilities increases costs and reduces choices for consumers and patients. The controlling bureaucracy in Augusta tries to use the Certificate of Need law and the Capital Investment Fund to control healthcare costs. What they are actually doing is controlling access to care. This is a form of rationing. This powerful bureaucracy in Augusta opposes losing any control over the private practice of medicine and will try to defeat this bill. The question is do you want bureaucrats in Augusta to determine what healthcare facilities will be in your community or do you want your community to make that decision? Please vote to support the bill and vote against the pending motion.

The SPEAKER: The Chair recognizes the Representative from Waterville, Representative Marraché.

Representative **MARRACHÉ**: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I too stand along with the good Representative from Auburn, Representative Shields to support the Minority Report. He gave you an overview of a lot of things that you probably don't understand called DRGs. I am going to give to you plainly spoken what really happens.

Most hospitals do us a great service. When physicians who try and make it on their own cannot, due to low reimbursement from Medicaid or other reasons, the hospitals do pick them up and they become employees of the hospital. They then function as they did before, however they are now being paid a salary through the hospital and when that happens, while they are not allowed to say you need to send us your labs, x-rays and other studies you are going to do that because they are the ones that are keeping you going. So, when your patients come to you and need procedures done or other things you are going to tell them where to go and it is usually the hospital that has supported you. But, if you happen to have an ambulatory unit in your area, and there is one in mine, you give your patients an option that they don't ordinarily get and that might be a lower cost place to go for their procedures or labs, or anything else that is now offered at the ambulatory unit.

In the place that is in Waterville they provide rooms for you to have stress tests done. Just so you know what happens in a hospital when you have specialists like cardiologists who do heart medicine, they can easily negotiate that they are the only ones who can read EKGs and they are the only ones that can do certain procedures and they get paid more. So let's say that my husband, who is an internist, does a stress test, his charge will be much less than the charge of a cardiologist who does the same thing. He is not allowed to read EKGs in the hospitals. They have made sure that only cardiologists can read them so they charge a higher fee and they are the only ones. He can order them in his own office and read them. He can order them in an ambulatory unit and read them, and is quite capable of that, and is certified to do so, but he cannot do it on his own patients in the hospital. It has to be read by a cardiologist and that costs more. The same goes for EGDs when you have an ulcer or abdominal pain and somebody is going down in your stomach to see if there is an ulcer there. A GI specialist is usually the one to do it. However, you can have internists who have been qualified enough to do the procedures do them at a lower cost. Will they allow that in the hospital? Absolutely not. Most of the time it is specialists who can do that procedure at a higher cost.

Ambulatory units give you opportunities to have procedures done at a lower cost to you and in the case of my practice they can actually have their own physician do the procedures that they are qualified to do and get it done in a timely manner. If we have somebody who has to have an EGD done he can probably do it in a week or a day's time, but if I have to try and get him in to see someone else it could be months so it also helps in terms of getting your patients the care they need in a timely fashion. I see this as a way to even the playing field so that these ambulatory units are stopped from being squeezed out by the hospitals, which is currently being done. They are trying to put these guys out of business so that they can keep their stronghold on all of the procedures and all of the other things going on out there. I do support the Minority Report and hope that you do too. Thank you.

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

Representative **PINGREE**: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I appreciate all of the

comments that were made by both of my colleagues from Waterville and from Auburn and I certainly would not dispute that ambulatory surgical centers can be more cost effective for some services and provide high quality service and have good doctors that work at the centers.

What we are talking about with this bill is providing an unlevel playing field between our hospitals and ambulatory surgical centers. We decided in the last session that because of the proliferation of ambulatory surgical centers, especially in urban areas, directly competing with hospitals, and especially in the areas where the hospitals actually made money and not concerned with the areas where they didn't make money, we decided that it was not right to create an unlevel playing field and to exempt only these centers from CON law and not hospitals from CON law. The original bill repealed the CON law on everything except for nursing homes. The Minority Report repeals CON for only ambulatory surgical centers. If you are concerned about the future of rural and small community hospitals and about hospitals in general and if you have been concerned about many of the issues that we have debated in this chamber, whether it is tax and match or it is funding to hospitals, etc - I don't always argue on this side of the issue - I urge you to support the Majority Ought Not to Pass Report. This bill creates an unlevel playing field between two groups that are competing in the exact same healthcare arena.

One thing that I have to point out, and we have already debated this issue somewhat today, is that the Capital Investment Fund specifically says that the ambulatory surgical centers and hospitals do not have to compete for the same funds. A good Representative from the other body put in a bill this year to ensure that ambulatory surgical centers got a certain percentage of the Capital Investment Fund pie, 12.5%. The ambulatory surgical centers felt that this was a huge success and that it would allow them to continue to expand and to continue to set up new practices and to compete, but this bill would remove them altogether from the CON law. It creates, as I have repeated a number of times and can't emphasize enough, an unlevel playing field that isn't acceptable, will lead to higher costs in our healthcare system and that I don't believe is necessary at this time. This is a relatively new law intended to create a level playing field and I urge you to accept the Majority Ought Not to Pass Report. Thank you Mr. Speaker.

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

ROLL CALL NO. 280

YEA - Adams, Ash, Babbidge, Barstow, Beaudette, Blanchard, Blanchette, Bliss, Brannigan, Brautigam, Bryant, Burns, Cain, Canavan, Craven, Cummings, Driscoll, Duchesne, Dudley, Dugay, Dunn, Duplessie, Eberle, Eder, Faircloth, Farrington, Fischer, Fisher, Gerzofsky, Goldman, Harlow, Hogan, Hutton, Jennings, Kaelin, Koffman, Lerman, Makas, Marley, Mazurek, Merrill, Miller, Mills, Norton, O'Brien, Paradis, Patrick, Pelletier-Simpson, Percy, Perry, Pineau, Pingree, Pinkham, Piotti, Rector, Saviello, Schatz, Seavey, Smith N, Thompson, Trahan, Tuttle, Valentino, Walcott, Watson, Webster, Wheeler, Woodbury, Mr. Speaker.

NAY - Annis, Austin, Bishop, Bowen, Bowles, Brown R, Browne W, Bryant-Deschenes, Campbell, Carr, Cebra, Churchill, Clark, Clough, Collins, Cressey, Crosthwaite, Curley, Curtis, Daigle, Davis G, Davis K, Duprey, Edgecomb, Emery, Finch, Fletcher, Flood, Glynn, Greeley, Hall, Hamper, Hanley B, Hanley S, Hotham, Jacobsen, Jodrey, Joy, Lansley, Lewin, Lindell, Lundeen, Marean, Marraché, McCormick, McFadden,

McKane, McKenney, McLeod, Millett, Moody, Moore G, Moulton, Muse, Nass, Nutting, Ott, Pilon, Plummer, Richardson D, Richardson E, Richardson M, Richardson W, Rines, Robinson, Rosen, Sampson, Sherman, Shields, Smith W, Stedman, Sykes, Tardy, Thomas, Twomey, Vaughan.

ABSENT - Berube, Bierman, Crosby, Fitts, Jackson.
Yes, 70; No, 76; Absent, 5; Excused, 0.

70 having voted in the affirmative and 76 voted in the negative, with 5 being absent, and accordingly the Majority **Ought Not to Pass** Report was **NOT ACCEPTED**.

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

The Bill was **READ ONCE**. **Committee Amendment "A" (H-652)** was **READ** by the Clerk and **ADOPTED**. The Bill was assigned for **SECOND READING** Wednesday, June 8, 2005.

REPORTS OF COMMITTEE
Divided Report

Majority Report of the Committee on **JUDICIARY** reporting **Ought Not to Pass** on Bill "An Act To Educate Women on the Medical Risks Associated with Abortion"

(H.P. 28) (L.D. 25)

Signed:

Senators:

HOBBS of York
BROMLEY of Cumberland
HASTINGS of Oxford

Representatives:

PELLETIER-SIMPSON of Auburn
FAIRCLOTH of Bangor
GERZOFKY of Brunswick
CANAVAN of Waterville
BRYANT of Windham
DUNN of Bangor
SHERMAN of Hodgdon

Minority Report of the same Committee reporting **Ought to Pass as Amended by Committee Amendment "A" (H-650)** on same Bill.

Signed:

Representatives:

CARR of Lincoln
BRYANT-DESCHENES of Turner
NASS of Acton

READ.

Representative PELLETIER-SIMPSON of Auburn moved that the House **ACCEPT** the Majority **Ought Not to Pass** Report.

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

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

The **SPEAKER**: 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. 281

YEA - Adams, Ash, Babbidge, Barstow, Blanchard, Blanchette, Bliss, Bowen, Brannigan, Brautigam, Brown R, Bryant, Burns, Cain, Campbell, Canavan, Craven, Cummings, Daigle, Driscoll, Duchesne, Dudley, Dugay, Dunn, Duplessie, Eberle, Eder, Faircloth, Farrington, Finch, Fischer, Fisher, Flood, Gerzofsky, Goldman, Grose, Hanley B, Hanley S, Harlow, Hogan, Hutton, Jacobsen, Jennings, Kaelin, Koffman, Lerman, Lindell, Makas, Marley, Marraché, Mazurek, McCormick, Merrill, Miller, Mills, Moody, Muse, Norton, Nutting, O'Brien, Patrick,

Pelletier-Simpson, Percy, Perry, Pilon, Pineau, Pingree, Pinkham, Piotti, Plummer, Rector, Richardson D, Richardson E, Richardson W, Rines, Robinson, Sampson, Saviello, Schatz, Sherman, Smith N, Smith W, Thompson, Twomey, Valentino, Walcott, Watson, Webster, Wheeler, Woodbury, Mr. Speaker.

NAY - Annis, Austin, Beaudette, Bishop, Bowles, Browne W, Bryant-Deschenes, Carr, Cebra, Churchill, Clark, Clough, Collins, Cressey, Crosthwaite, Curley, Curtis, Davis G, Davis K, Duprey, Edgecomb, Emery, Fletcher, Glynn, Greeley, Hall, Hamper, Hotham, Jodrey, Joy, Lansley, Lewin, Lundeen, Marean, McFadden, McKane, McKenney, McLeod, Millett, Moore G, Moulton, Nass, Ott, Paradis, Richardson M, Rosen, Seavey, Shields, Stedman, Sykes, Tardy, Thomas, Trahan, Tuttle, Vaughan.

ABSENT - Berube, Bierman, Crosby, Fitts, Jackson.
Yes, 91; No, 55; Absent, 5; Excused, 0.

91 having voted in the affirmative and 55 voted in the negative, with 5 being absent, and accordingly the Majority **Ought Not to Pass** Report was **ACCEPTED** and sent for concurrence. **ORDERED SENT FORTHWITH.**

REPORTS OF COMMITTEE
Divided Report

Majority Report of the Committee on **JUDICIARY** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-664)** on Resolve, Directing the Bureau of Health To Study the Effectiveness and Quality of Reproductive Counseling
(H.P. 1057) (L.D. 1512)

Signed:

Senators:

HOBBS of York
HASTINGS of Oxford

Representatives:

PELLETIER-SIMPSON of Auburn
FAIRCLOTH of Bangor
CANAVAN of Waterville
DUNN of Bangor
SHERMAN of Hodgdon
CARR of Lincoln
NASS of Acton
BRYANT-DESCHENES of Turner

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

Signed:

Senator:

BROMLEY of Cumberland

Representatives:

BRYANT of Windham
GERZOFKY of Brunswick

READ.

Representative Pelletier-Simpson of Auburn moved that the House **ACCEPT** the Majority **Ought to Pass as Amended** Report.

The **SPEAKER**: The Chair recognizes the Representative from Auburn, Representative Pelletier-Simpson.

Representative **PELLETIER-SIMPSON**: Mr. Speaker, Men and Women of the House. For too long the focus in America has been on the division between pro choice and pro life. The same phrases have been repeated over and over for decades – the right to choose, life begins with conception, restricting access to safe and legal abortion. While abortion has been the major battleground we have lost sight of the problem, unintended pregnancy. We need to drop all of the labels and slogans and it is time to refocus our efforts on unintended and unwanted

pregnancies instead of fighting over how to react to it, it is time to put prevention first.

I ask my colleagues, members with varying faiths, beliefs and views on abortion, to join me in supporting this bill. This bill would ask the Bureau of Health to assess what information we can use to continue the remarkable success that Maine has had in reducing the incidences of unintended pregnancy and, subsequently, the number of abortions. Yes, it also bears noting that Maine has done an incredible job in the reduction of unintended pregnancy.

Maine has one of the lowest teen pregnancy rates in the country and saw the steepest decline in the nation during the 1990s. The number of abortions in Maine has been cut in half over the last 15 years. Maine's overall abortion rate is half the national average. Two major factors have been associated with these successes, free and low cost access to preventative reproductive healthcare and a standard of comprehensive family life education that begins with abstinence and provides full information to our youth. We need to focus our attention on other ways to prevent unintended pregnancy. This approach is the best strategy to meeting everyone's goal and reducing the number of abortions in Maine. Please join me in supporting LD 1512.

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

The Resolve was **READ ONCE**. Committee Amendment "A" (H-664) was **READ** by the Clerk and **ADOPTED**. The Resolve was assigned for **SECOND READING** later in today's session.

REPORTS OF COMMITTEE

Divided Report

Majority Report of the Committee on **JUDICIARY** reporting **Ought Not to Pass** on Bill "An Act To Require Parental Notification of Teenage Abortions"

(H.P. 1112) (L.D. 1575)

Signed:

Senators:

HOBBS of York
BROMLEY of Cumberland
HASTINGS of Oxford

Representatives:

PELLETIER-SIMPSON of Auburn
FAIRCLOTH of Bangor
GERZOFKY of Brunswick
CANAVAN of Waterville
BRYANT of Windham
DUNN of Bangor

Minority Report of the same Committee reporting **Ought to Pass as Amended by Committee Amendment "A" (H-649)** on same Bill.

Signed:

Representatives:

SHERMAN of Hodgdon
CARR of Lincoln
BRYANT-DESCHENES of Turner
NASS of Acton

READ.

Representative PELLETIER-SIMPSON of Auburn moved that the House **ACCEPT** the Majority **Ought Not to Pass** Report.

The **SPEAKER**: The Chair recognizes the Representative from Auburn, Representative Pelletier-Simpson.

Representative **PELLETIER-SIMPSON**: Mr. Speaker, Men and Women of the House. We all share the common goal of

continuing to reduce the need for abortion and unintended teen pregnancy. The bill before you however would be a giant step in the wrong direction, threatening the health and privacy of Maine's young women.

The Maine Legislature first debated mandated parental consent in 1979, again in 1983, 1985 and 1987 and in 1989 the Legislature recognized the need to better address the issues that arise when a minor seeks abortion services and passed the adult involvement law. Its passage resulted from a broad consensus that young women that are under 18 and making decisions about their pregnancies need support and guidance. They should not and need not make those choices alone. Parental involvement and guidance are ideal for young women facing crisis pregnancies. When this is not possible Maine's teens should have the option of turning to another trusted adult for support and council.

Government cannot mandate good family communication. While most women find love, support and safety in their home a few fear that they would be physically or emotionally abused if forced to disclose their pregnancy. The bill before you would mandate parental notification for all young women facing a crisis pregnancy and choosing to have an abortion. If a parent is not a safe option the young woman would have to present clear and convincing evidence to a judge in their local court that she was capable of making this decision or was the victim of physical or sexual abuse. Imagine how overwhelming it would be for a young woman without a lawyer to maneuver the legal procedures required for a judicial bypass. Many experience fear and distress and do not want to reveal intimate details to strangers in a courtroom and are courts and judges the right place for a young woman to go? The adult involvement law ensures that a psychiatrist, psychologist, social worker, ordained clergy member, physician, physician's assistant, nurse practitioner, guidance counselor or registered nurse provide counseling and support the young woman. This law would repeal this critical counseling requirement.

The adult involvement law encourages family communication while providing every young woman with the guidance and support necessary to consider and evaluate all of the options available to her. Please oppose LD 1575. It is a step in the wrong direction for Maine's young women. Thank you.

Representative **CRESSEY** of Cornish **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 Cornish, Representative Cressey.

Representative **CRESSEY**: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. This is an issue that hits home directly for me. My daughter Amanda is 13. She is a special ed student at Socopee Valley High School and has won many medals at the Special Olympics events in Orono and Gorham and she will, in fact, be competing this weekend in Orono. Her best event is in running and she is one of the super fast people there and you can almost always guarantee that she will get a gold medal in that area. I try to encourage her to be on the high school team, but she is a little intimidated to do so though I know she would do very well competing at the high school level.

I would like to read my daughter's testimony as she presented it to the committee when this bill was heard, a copy of which I submit to you and would like to be entered on the record. This is what she has to say in her own words. "I am a supporter to the bill. I have heard about a 13 year old girl who is pregnant and

she had a pregnancy test. The school nurse took her off school grounds and did not tell her parents. I think that was wrong of the school nurse to do that because she did not tell the principal and she did not tell the parents and this nurse got fired and now there is a new nurse for the rest of the year." To preface this you may have heard in the news what was going on up in northern Maine a few months ago with this particular incident and my daughter had heard this on the radio and had asked me questions about this particular matter and this is what's referenced here. To continue with my daughter's letter, "If the parent did not know about this pregnancy and yes, the 13 year old girl should tell her parents about this and I hope her dad would not hurt her, but if she is afraid to tell her parents then she cannot get help about it and yet no one will know when the baby will come or not. But the 13 year old girl needs to know that her parents love her and will take care of her and trust her and she needs to trust them and let them know what is going on in her life. She needs to trust her parents, not the government." This is what a 13 year old thinks Ladies and Gentlemen of the House.

My wife Patria and I are responsible to rear our daughter the way that we believe that God wants us to. The government, at any level, should not interfere nor hide from responsible parents what goes on in a minor's life. No member of this body and no bureaucrat here in Augusta or anywhere in Maine know the unique needs of my daughter more than my wife or I do.

I work hard everyday to teach my daughter how to enunciate her words properly, the best way to clean a room and some good talk on boys and relationships with others. When it comes to questions about sex I do what any responsible father does. I tell her to go talk to her mother.

I love my daughter very much and would never harm her in anyway even if she were to become pregnant out of wedlock. Her schoolteachers should not have a greater authority over my daughter's body than herself or her parents. I ask you to join me in opposing this Ought Not to Pass motion and to go on to the Minority Report. Thank you.

The SPEAKER: The Chair recognizes the Representative from Waterville, Representative Marraché.

Representative **MARRACHÉ**: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I never thought that I would stand up twice in one day when I haven't talked this whole session, but on this bill I feel the need to do so because of a recent event that occurred in my own practice not more than a month ago. That was when a young girl came to my office to talk about a pregnancy that she had just found out about and didn't know what to do about it. We spent an enormous amount of time discussing it and I highly encouraged her to speak with her mother and she the said that I didn't understand and that her mother didn't want here to keep it.

I didn't believe it. I told her to go get her mother. She was in the waiting room. I said that with me in the room I am sure that we can work this out. It was not a lie. She was telling the truth. The mother was adamant that this girl was going to have an abortion whether she wanted it or not and we spent a long time arguing almost. So, if you make children talk to their parents and they are saying that their parent does not want this then they are probably right. There is a reason sometimes that children do not get their parents involved. In fact, the young girl said if only I had found out when it was too late, then she couldn't have forced me to do this or make me.

Think very carefully when you make this vote. Sometimes you don't want your parents involved. Thank you.

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

Representative **MUSE**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. The traditional strength of the Republican Party has been its ability to respect the diverse viewpoint of rank and file members. Last year the GOP illustrated this commitment to diversity by passing a party platform amendment supported by the Republican Majority for Choice and the National Right to Life Committee, which stated, "We are the party of the open door and that we respect and accept that members of our party have deeply held and sometimes differing views." I join my peers in celebrating these traditional GOP principles of privacy, personal freedom and minimal government intrusion into American's lives.

On the very personal issue of abortion many seem to have the attitude that government should make this decision and that individual Americans are incapable of thinking or deciding for themselves on this terribly anguishing and very intimate issue. As a long time supporter of the right to choose I have never believed that the Legislature should interfere with deeply personal and private decisions that women sometimes face regarding unintended and crisis pregnancies. A lot of my colleagues agree with me and alot do not.

We are never going to unite our state around a particular set of religious beliefs, nor would we want to. In fact, we should be particularly vigilant against blurring the lines between religion and government that is occurring in our country today. However, we can unite our country around practical policies that improve the collective life of all our people.

The bill before you right now will not improve the quality of healthcare for young women facing crisis pregnancies. It will not reduce the number of abortions in our state. It will not promote better family communication. It will simply place more roadblocks in front of women who are grappling with a very difficult decision of whether or not to have an abortion. Some of these in our state find themselves in this crisis because of the very close relatives that we are asking to consult. Think about that.

For many reasons they cannot go to mom and dad to discuss the situation that they find themselves in, as we have seen. So, I ask you to join me today in opposing this bill and in demonstrating that a commitment to core principles of privacy, personal freedom and minimal government intrusion is truly bipartisan. Thank you.

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

Representative **BABBIDGE**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I have three daughters and through those three daughters I feel parental to their immediate friends so there are about 15 to 20 young ladies that I feel very close to from their growing up and I also teach juniors and seniors in high school and the kids in our classes are very special. So, I feel particularly in tune with an age group that would be very much affected by this legislation.

I am also a Baby Boomer. What I have observed from my generation of parents is that we want the best for our kids. We are the ones with the video cameras. We go to all of the sporting events and plays and what have you and I am sure that we consider ourselves good parents. I guess the reason that I bring that up is that we are all concerned about that child that is afraid to go to their parent because of devout religious feelings, the fear of an angry parent and so forth, but I also think that there are those kids that just don't want to disappoint their parents. I think we are talking about a much larger group here than merely those that fear their parents, but also those that love them and don't want to disappoint them and to me this bill is not about parental rights. As a parent I want to be there for my kid. But, it is actually the young woman's choice as to where she needs to go

and the fact is that requiring this could force a person to go to alternative means or may even make them contemplate suicide. To me, this bill is not as much about parental rights as it is about the safety of young women in this state. Thank you.

The SPEAKER: The Chair recognizes the Representative from Waterboro, Representative Jacobson.

Representative JACOBSEN: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. Today has been very difficult for me. I have had difficulty making decisions on the many questions. When we make those decisions others look at us and judge us. They don't know our personal experiences or our past history and they don't know why we have decided to vote one way or the other on questions about gay rights, questions about abortion, questions about parent's rights. No matter how many of us answer these questions with a red or a green light others in the audience and others in this chamber will not understand why we made that decision. Some of us will try to judge each other. It is a very difficult situation. Thank you.

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

ROLL CALL NO. 282

YEA - Adams, Ash, Babbidge, Barstow, Beaudette, Blanchette, Bliss, Bowen, Brannigan, Brautigam, Brown R, Bryant, Cain, Campbell, Canavan, Churchill, Craven, Cummings, Daigle, Driscoll, Duchesne, Dudley, Dugay, Dunn, Duplessie, Eberle, Eder, Faircloth, Farrington, Finch, Fischer, Fisher, Flood, Gerzofsky, Goldman, Grose, Hanley B, Hanley S, Harlow, Hogan, Hotham, Hutton, Jacobsen, Jennings, Jodrey, Kaelin, Koffman, Lerman, Makas, Marean, Marley, Marraché, Mazurek, McCormick, Merrill, Miller, Millett, Mills, Moody, Muse, Norton, Nutting, O'Brien, Ott, Patrick, Pelletier-Simpson, Percy, Perry, Pilon, Pineau, Pingree, Piotti, Plummer, Rector, Richardson D, Rines, Rosen, Sampson, Saviello, Schatz, Smith N, Smith W, Thompson, Twomey, Valentino, Walcott, Watson, Webster, Wheeler, Woodbury, Mr. Speaker.

NAY - Annis, Austin, Bishop, Blanchard, Bowles, Browne W, Bryant-Deschenes, Carr, Cebra, Clark, Clough, Collins, Cressey, Crosthwaite, Curley, Curtis, Davis G, Davis K, Duprey, Edgecomb, Emery, Fletcher, Glynn, Greeley, Hall, Hamper, Joy, Lansley, Lewin, Lindell, Lundeen, McFadden, McKane, McKenney, McLeod, Moore G, Moulton, Nass, Paradis, Pinkham, Richardson E, Richardson M, Richardson W, Robinson, Seavey, Sherman, Shields, Stedman, Sykes, Tardy, Thomas, Trahan, Tuttle, Vaughan.

ABSENT - Berube, Bierman, Burns, Crosby, Fitts, Jackson.

Yes, 91; No, 54; Absent, 6; Excused, 0.

91 having voted in the affirmative and 54 voted in the negative, with 6 being absent, and accordingly the Majority Ought Not to Pass Report was **ACCEPTED** and sent for concurrence.

SENATE PAPERS

Non-Concurrent Matter

Bill "An Act To Eliminate Estate Taxes on Family-owned Businesses"

(H.P. 321) (L.D. 436)

Minority (6) **OUGHT TO PASS AS AMENDED** Report of the Committee on **TAXATION READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-589)** in the House on June 3, 2005.

Came from the Senate with the Majority (7) **OUGHT NOT TO PASS** Report of the Committee on **TAXATION READ** and **ACCEPTED** in **NON-CONCURRENCE**.

The House voted to **ADHERE**.

ORDERS

On motion of Representative BRANNIGAN of Portland, the following Joint Order: (H.P. 1194)

ORDERED, the Senate concurring, that the Joint Standing Committee on Appropriations and Financial Affairs shall report out, to the House, a bill to address pension cost reduction bonding.

READ and **PASSED**.

Sent for concurrence. **ORDERED SENT FORTHWITH**.

Reference was made to Bill "An Act To Allow Counties a One-year Exemption For Jail Costs from the Limitation on County Assessments"

(H.P. 1175) (L.D. 1666)

In reference to the action of the House on June 3, 2005 whereby it Insisted and Asked for a Committee of Conference, the Chair appointed the following members on the part of the House as Conferees:

Representative BARSTOW of Gorham

Representative GROSE of Woolwich

Representative BISHOP of Boothbay

SENATE PAPERS

Non-Concurrent Matter

Bill "An Act Regarding Occupational Safety and Health Training for Workers on State-funded Construction Projects"

(H.P. 1146) (L.D. 1628)

Minority (5) **OUGHT NOT TO PASS** Report of the Committee on **LABOR READ** and **ACCEPTED** in the House on June 7, 2005.

Came from the Senate with the Reports **READ** and the Bill and accompanying papers **COMMITTED** to the Committee on **LABOR** in **NON-CONCURRENCE**.

Representative RICHARDSON of Brunswick moved that the House **RECEDE AND CONCUR**.

Representative DUPREY of Hampden **REQUESTED** a roll call on the motion to **RECEDE AND CONCUR**.

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 Portland, Representative Cummings.

Representative CUMMINGS: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. Colleagues in the Senate have requested that this be recommitted and we are asking that this piece of legislation be recommitted back to the Labor Committee and I think that it is a reasonable procedural request and I ask that you respect that.

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

ROLL CALL NO. 283

YEA - Adams, Ash, Babbidge, Barstow, Beaudette, Blanchard, Blanchette, Bliss, Brannigan, Brautigam, Bryant, Burns, Cain, Canavan, Clark, Craven, Cummings, Driscoll, Duchesne, Dudley, Dugay, Dunn, Duplessie, Eberle, Eder, Faircloth, Farrington, Finch, Fischer, Fisher, Gerzofsky, Goldman, Grose, Hanley S, Harlow, Hogan, Hutton, Jennings, Koffman, Lerman, Lundeen, Makas, Marley, Marraché, Mazurek, Merrill, Miller, Mills, Moody, Norton, O'Brien, Paradis, Patrick, Pelletier-Simpson, Percy, Perry, Pilon, Pineau, Pingree, Piotti, Plummer, Rines, Sampson, Saviello, Schatz, Smith N, Smith W, Thompson, Tuttle, Twomey, Valentino, Walcott, Watson, Webster, Wheeler, Woodbury, Mr. Speaker.

NAY - Annis, Austin, Bishop, Bowen, Bowles, Brown R, Browne W, Bryant-Deschenes, Campbell, Carr, Cebra, Churchill, Clough, Collins, Cressey, Crosthwaite, Curley, Curtis, Daigle, Davis G, Davis K, Duprey, Edgecomb, Emery, Fletcher, Flood, Glynn, Greeley, Hall, Hamper, Hanley B, Hotham, Jacobsen, Jodrey, Joy, Kaelin, Lansley, Lewin, Lindell, Marean, McCormick, McFadden, McKane, McKenney, McLeod, Millett, Moore G, Moulton, Muse, Nass, Nutting, Ott, Pinkham, Plummer, Rector, Richardson D, Richardson E, Richardson M, Richardson W, Robinson, Rosen, Seavey, Sherman, Shields, Stedman, Sykes, Tardy, Thomas, Trahan, Vaughan.

ABSENT - Berube, Bierman, Crosby, Fitts, Jackson.
Yes, 76; No, 70; Absent, 5; Excused, 0.

76 having voted in the affirmative and 70 voted in the negative, with 5 being absent, and accordingly the House voted to **RECEDE AND CONCUR**.

**SENATE PAPERS
Non-Concurrent Matter**

Bill "An Act To Eliminate Term Limits in the Legislature"
(S.P. 180) (L.D. 572)

Bill and accompanying papers **COMMITTED** to the Committee on **LEGAL AND VETERANS AFFAIRS** in the House on June 7, 2005.

Came from the Senate with that Body having **INSISTED** on its former action whereby the Bill was **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-278)** and **ASKED** for a Committee of Conference in **NON-CONCURRENCE**.

Representative RICHARDSON of Brunswick moved that the House **ADHERE**.

Representative BOWLES of Sanford **REQUESTED** a roll call on the motion to **ADHERE**.

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 to Adhere. All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 284

YEA - Adams, Annis, Ash, Babbidge, Barstow, Beaudette, Bishop, Blanchard, Blanchette, Bliss, Bowen, Bowles, Brannigan, Brautigam, Brown R, Browne W, Bryant, Burns, Cain, Canavan, Carr, Cebra, Churchill, Clark, Clough, Collins, Craven, Cressey, Cummings, Curley, Curtis, Daigle, Davis G, Davis K, Driscoll, Duchesne, Dudley, Dugay, Dunn, Duplessie, Duprey, Eberle, Edgecomb, Emery, Faircloth, Farrington, Finch, Fischer, Fisher, Fletcher, Flood, Gerzofsky, Goldman, Greeley, Grose, Hall, Hamper, Hanley B, Hanley S, Harlow, Hogan, Hotham, Hutton, Jacobsen, Jennings, Jodrey, Joy, Kaelin, Koffman, Lansley, Lerman, Lewin, Lundeen, Makas, Marean, Marley, Marraché, Mazurek, McCormick, McKane, McKenney, McLeod, Merrill,

Miller, Millett, Mills, Moody, Moore G, Moulton, Muse, Nass, Norton, Nutting, O'Brien, Ott, Paradis, Patrick, Pelletier-Simpson, Percy, Perry, Pilon, Pineau, Pingree, Pinkham, Piotti, Plummer, Rector, Richardson D, Richardson E, Richardson M, Richardson W, Rines, Robinson, Rosen, Sampson, Saviello, Schatz, Seavey, Sherman, Shields, Smith N, Smith W, Stedman, Sykes, Tardy, Thomas, Thompson, Trahan, Tuttle, Twomey, Valentino, Vaughan, Walcott, Watson, Webster, Wheeler, Woodbury, Mr. Speaker.

NAY - Austin, Bryant-Deschenes, Campbell, Crosthwaite, Eder, Glynn, Lindell, McFadden.

ABSENT - Berube, Bierman, Crosby, Fitts, Jackson.
Yes, 138; No, 8; Absent, 5; Excused, 0.

138 having voted in the affirmative and 8 voted in the negative, with 5 being absent, and accordingly the House voted to **ADHERE**.

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

Resolve, Regarding Legislative Review of Chapter 101: Establishment of the Capital Investment Fund, a Major Substantive Rule of the Governor's Office of Health Policy and Finance (EMERGENCY)

(H.P. 36) (L.D. 33)
(C. "A" H-636)

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

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

The same Representative **REQUESTED** a roll call on **PASSAGE TO BE ENGROSSED as Amended**.

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 Passage to be Engrossed as amended. All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 285

YEA - Adams, Ash, Babbidge, Barstow, Beaudette, Blanchard, Blanchette, Bliss, Brannigan, Brautigam, Bryant, Burns, Cain, Canavan, Clark, Craven, Cummings, Driscoll, Duchesne, Dudley, Dugay, Dunn, Duplessie, Eberle, Eder, Faircloth, Farrington, Finch, Fischer, Fisher, Gerzofsky, Goldman, Grose, Hanley S, Harlow, Hogan, Hutton, Jennings, Koffman, Lerman, Makas, Marley, Mazurek, Merrill, Miller, Mills, Moody, Norton, O'Brien, Paradis, Patrick, Pelletier-Simpson, Percy, Perry, Pilon, Pineau, Pingree, Piotti, Rines, Sampson, Saviello, Schatz, Smith N, Smith W, Thompson, Tuttle, Twomey, Valentino, Walcott, Watson, Webster, Wheeler, Woodbury, Mr. Speaker.

NAY - Annis, Austin, Bishop, Bowen, Bowles, Brown R, Browne W, Bryant-Deschenes, Campbell, Carr, Cebra, Churchill, Clough, Collins, Cressey, Crosthwaite, Curley, Curtis, Daigle, Davis G, Davis K, Duprey, Edgecomb, Emery, Fletcher, Flood, Glynn, Greeley, Hall, Hamper, Hanley B, Hotham, Jacobsen, Jodrey, Joy, Kaelin, Lansley, Lewin, Lindell, Lundeen, Marean, Marraché, McCormick, McFadden, McKane, McKenney, McLeod, Millett, Moore G, Moulton, Muse, Nass, Nutting, Ott, Pinkham, Plummer, Rector, Richardson D, Richardson E, Richardson M, Richardson W, Robinson, Rosen, Seavey, Sherman, Shields, Stedman, Sykes, Tardy, Thomas, Trahan, Vaughan.

ABSENT - Berube, Bierman, Crosby, Fitts, Jackson.
Yes, 74; No, 72; Absent, 5; Excused, 0.

74 having voted in the affirmative and 72 voted in the negative, with 5 being absent, and accordingly the Resolve was **PASSED TO BE ENGROSSED as Amended** and sent for concurrence.

Bill "An Act To Amend the Maine Tort Claims Act"
(H.P. 655) (L.D. 936)
(C. "A" H-657)

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

On motion of Representative CARR of Lincoln, was **SET ASIDE**.

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

REPORTS OF COMMITTEE
Divided Report

Majority Report of the Committee on **JUDICIARY** reporting **Ought Not to Pass** on Bill "An Act To Protect Unborn Children from Acts of Violence"

(H.P. 201) (L.D. 262)

Signed:

Senators:

HOBBS of York
BROMLEY of Cumberland

Representatives:

PELLETIER-SIMPSON of Auburn
FAIRCLOTH of Bangor
GERZOFISKY of Brunswick
CANAVAN of Waterville
BRYANT of Windham
DUNN of Bangor

Minority Report of the same Committee reporting **Ought to Pass as Amended by Committee Amendment "A"** (H-647) on same Bill.

Signed:

Senator:

HASTINGS of Oxford

Representatives:

SHERMAN of Hodgdon
CARR of Lincoln
BRYANT-DESCHENES of Turner
NASS of Acton

READ.

Representative PELLETIER-SIMPSON of Auburn moved that the House **ACCEPT** the Majority **Ought Not to Pass** Report.

Representative HALL of Holden **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 Holden, Representative Hall.

Representative **HALL**: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I rise today in opposition to this motion. This piece of legislation is one that is very near and dear to my heart. First of all, my constituent who resides in Dedham had a very, very tragic instance where her aunt, who was eight months pregnant was brutally murdered at the hands of her husband because she had chosen to leave and get away from an abusive relationship and he could not stand the

fact that she was leaving with his child so he decided to murder them both. She has been following this legislation and she urges me everyday to keep fighting for little Jonah. His mother was eight months along when she was brutally murdered.

You have received an awful lot of information and I am sure that many of you have been grabbed at the door and you have been bombarded with arguments why this bill should not receive passage. You have been told that this is going to lead to a woman being charged with some kind of crime that is absolutely a falsehood. When you read the bill and it says in Section 221, it says that a person under this chapter does not include the pregnant woman whose unborn child was killed. That means that we are saying that a person is guilty of murder of another person that that does not include the pregnant woman. We just saw a recent handout where they acknowledged that. That is absolutely not true. The death of a pregnant woman cannot be charged anywhere under this bill.

The second argument that you have heard is that we passed the Motherhood Act, that it is beautiful and that it protects pregnant women and that this bill is not necessary. While we all know the kind of games that get played around here, look at the number, it is LD 262. Anybody that doesn't remember, the Motherhood bill was 884. Somehow we discussed the Motherhood bill a month ago and LD 262 has been stuck hanging around and couldn't get to the floor of the House first even though it was 600 bills ahead of it. I don't think that we need any explanation of how that happened.

You are going to hear that this is a bill about abortion. Well friends, if you read the bill, it clearly acknowledges in here that a woman has a right to an abortion. Many of you feel that the bill's sponsor is out to take away a woman's right to abortion and to otherwise somehow restrict a woman's right to an abortion. This bill is a pro-choice bill. I stand here proudly and tell you that I am a pro-choice legislator. The purpose of this bill is clear. The committee had the Committee Amendment "A". If you take that out and read it it clearly says, without question, that the purpose of this chapter is to provide appropriate criminal justice consequences for crimes committed against an unborn child. By establishing crimes against an unborn child the Legislature does not intend that an unborn child be given status.

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

Representative **FAIRCLOTH**: Mr. Speaker, point of order.

The **SPEAKER**: The Representative may proceed.

Representative **FAIRCLOTH**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. Is discussing the amendment appropriate at this time when we are considering the Majority Ought Not to Pass Report.

On **POINT OF ORDER**, Representative **FAIRCLOTH** of Bangor asked the Chair if the remarks of Representative **HALL** of Holden were germane to the pending question.

The **SPEAKER**: What is germane or relevant to the discussion today is the question of the merits of why or why not the bill should go forward. We are not quite yet to the Committee Amendment "A" report, but it is fair and relevant to discuss the reasons for or against the merits of this bill. The Representative may proceed.

The Chair **RULED** that the remarks of Representative **HALL** of Holden were germane to the pending question.

Representative **HALL**: Thank you Mr. Speaker. Let me pick up where I left off. By establishing crimes against an unborn child the Legislature does not intend that an unborn child be given status as a person beyond that necessary to define, prosecute and provide punishment for the crimes established in this chapter. This chapter may not be construed to affect the

state's policies or the rights of a pregnant woman concerning abortion as provided in Title 22, Chapter 263-B.

Having read the statute, I am sure that the good Representative from Auburn is going to stand up and say that the purpose of this bill is not what it says and that it is some other purpose. I don't know how that can be, but that was the reasoning given in committee as to why this bill could not be passed as amended. We already have federal law in place, which very closely mirrors what this bill is. This bill is actually mirrored after the federal law. What that means is that a pregnant woman goes to Dunkin Donuts and gets attacked, beaten and the child that she is carrying is lost. It is simple assault. You can't be charged with murder. Yet, if she is in the parking lot of the post office you can be charged with murder. It makes no sense. You are hearing that and you are hearing out there that this is somehow infringing upon the right of a woman to have an abortion. It is giving special status to a fetus that we don't want to give.

I want to ask a simple question and I would really request that anybody answer this. If a woman who is imprisoned on death row and is scheduled to be executed happens to become pregnant and she is eight and half months pregnant on the date that she is supposed to be executed, do we execute her? I want to know how many people believe that she should be executed. When I finish I would invite anybody to stand up and answer that question by saying that she does need to be executed. The argument from your side has got to be that that is not a life, that that is not a child and that we can't give any special rights to that child so we should go ahead and execute that woman.

We already recognize unborn children where it suits our purpose. A pregnant woman who would otherwise not qualify for MaineCare can receive MaineCare by virtue of the fact that she is now a family of two from the moment that she is found to be pregnant. A pregnant woman can receive food stamps for her unborn child, but yet that unborn child does not deserve protection from a brutal act of violence.

The good Representative from Bangor asked you earlier. He talked about all of the wasted energy and I agree. There is an awful lot of stuff that goes on. There is legislation that is brought forward down here that is an absolute waste of time. But, what I want to know is, as he said, where is the passion for these children. I would ask where is your passion now for these children?

The good Representative from Waterville, Representative Canavan said that we are just playing on people's fears and that, Ladies and Gentlemen of the House, is what these people out in the hallway have been doing. They are playing on your fears. They are telling you that that is an inclined plain with a low co-efficiency of friction or a slippery slope for those of you who have never taken an engineering course. It just does not hold water.

Currently, we have on the calendar a sentiment that says that October 15th of every year is Pregnancy and Infant Loss Remembrance Day to recognize the grief of families involved in pregnancies where the infant was lost and to comfort families and give them hope for the future. We encourage that information on this subject be made available to the public and we also encourage all of society to respond with compassion and to help heal the pain of these families. Where is your compassion now?

I was asked a question and it was brought up in committee. Why do we only protect the women from viability? Why do we only protect the child from viability forward? Why not the whole pregnancy like the motherhood bill does. I have a very good answer for that. Many of you know, and maybe some don't, that I have a wife at home who is currently seven months pregnant and I can tell you, from personal experience, having had a wife have

a miscarriage at two months that loosing a child at seven months, eight months, eight and a half months would be substantially different than loosing one at two months. Any of you out here who are parents and who were closely involved during the pregnancy will hopefully agree with me that as that pregnancy goes forward and you get closer and closer and closer to your due date that that becomes more and more of a child, at least in your mind, if not in anyone else's.

I have a little boy whose name is Dawson. He is going to be born August 13 or thereabouts and there is not a person in here that can tell me that he is not a human being. He is my little boy, and for anybody to say that it would be okay for somebody to beat my wife to the point where he died I cannot accept. I can't and I won't.

My wife is listening at home I hope. Laurie I love you and I am doing the best I can. I urge you to please vote no.

The SPEAKER: The Chair recognizes the Representative from Gorham, Representative Barstow.

Representative **BARSTOW**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I feel that I bear the same heavy heart that we all do regardless of where we stand on this issue. Further, I think that we all bear with that different philosophy the passion that the good Representative from Holden talks about for the good people of the State of Maine. I do rise on the opposite side of the good Representative in support of the Majority Ought Not to Pass Report. The Representative alluded to passage of an Act to Protect Motherhood and we did pass that and I supported that and support this report with the understanding that that did give the severity and the increased punishment that we wanted to add to the justice system for these types of crimes that we talk about today. They have publicized nationally domestic violence that has occurred locally, in our state and in our own backyards. It is very tough for all of us in the districts that we represent knowing that there are people that we know and that there are people that are affected, people that this could happen to tomorrow and in the future.

I supported an Act to Protect Motherhood for that reason. Knowing that it was a compromise between the status quo that we had before the session began and the bill that we are facing now and where I am supporting the Ought Not to Pass Report on it.

We can ensure the justice system and we can ensure that those victims. Those who have family members that are left behind that dealt with this sad situation have that justice now. However, I think, looking at the situation and being a parent with a young daughter and knowing the joy that the good Representative from Holden is experiencing right now as he anticipates the birth of his son and the pride that he has shown here today and the passion that he has brought forth that it is with that hope and understanding that we can look perceptively at the issue of domestic violence.

The item that really brings forward what causes the majority of these cases that we speak about today and the justice that we are looking to bring to the system by discussing this bill. I would feel better, Mr. Speaker and Ladies and Gentlemen of the House that if we were to continue to support, bipartisanly, legislation that helps to prevent domestic violence and helps give support at the home front to make sure that we don't have to deal with laws like this and to make sure that the justice system does not have to step in and a live or two lives, whatever your philosophy claims, is lost. We can feel good about the extra punishment that we have given, whether it be through this bill if the Ought not to Pass Report does prevail, or through the Act to Protect Motherhood that we have implemented here and passed into law. But, when

push comes to shove, and with all of the emotions that are tied into it there is nothing that we can do in this body and there is nothing that we can do in this building to bring the life or lives back. As much authority and responsibility as we have, that would be the best justice of all.

I understand that there are going to be differences and it is my hope that what we have passed already and the work that we are going to continue to do to prevent this domestic violence and this violence in general in our state, is going to continue. I urge my colleagues to support the Majority Ought Not to Pass Report. Thank you Mr. Speaker.

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

Representative SMITH: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. This is a horrific subject. It is heart breaking and it is well worth the time that we are putting into the debate. I do feel the need to clarify something though. The good Representative from Holden, Representative Hall made reference to a sentiment that is currently under unfinished business in the calendar. One of the concerns I have in bringing this effort forward for the Pregnancy and Infant Loss Remembrance Day is that it would get pulled into these sort of debates and I feel that it is incredibly inappropriate.

The Representative from Holden did read parts of it and let me read it again. What the sentiment is referring to is "to recognize the grief of the families involved and to remember infants and pregnancies lost." Then it deals with the healing of the families and I hope that we can schedule this so that my constituent can come in and we can talk directly to this sentiment. Having it brought up now is completely irrelevant. There is nothing in the sentiment relevant to the pregnancy as a second being in the discussion of the abuse of women. It is unfortunate that it was brought up and I think that it diminishes what I am trying to do for people who loose a child in pregnancy, still life miscarriage and in the first year of life and I felt the need to rise and clarify that. Thank you.

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

Representative PARADIS: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I am a proud cosponsor of LD 262 because I feel that it is the right thing to do. Last week I was lobbied intensely by two young pro-choice women from the Bangor area and both were related to Heather Fliegelmen and her unborn son Jonah. They told me that they had made a promise at the funeral of this 20 year old woman that they would do all that they could to change the laws of Maine to recognize a double tragedy of people like the slain 20-year old woman and her much wanted and anticipated baby boy Jonah. In turn, I promised them that I would do my part to see LD 262 passed. It is the least I can do as a person that values life in all its forms and stages. I have supported bills that protect animals because I believe in that. We had one today that protects dogs that are left outside and that is fine. I support that. That is the right thing to do. Why not extend it to human beings in the making, especially in the later stages?

In the past few years I have been talking to legislators on both sides of this issue hoping to form a group similar to one that exists in Massachusetts to go beyond the polarized and often acrimonious debate and to identify common ground. Although the group has not yet materialized I hope that we can do it in the near future. We have in front of us in LD 262 a genuine common ground issue. Many states, including liberal California and its left leaning US Senators endorse legislation such as the Lacey Peterson bill and her unborn child Conner, seeing there is a common ground area that does not threaten Roe v. Wade or the

basic beliefs of the pro choice lobby. This is a very good bill and is worthy of our serious consideration.

As of March 31, 2004 twenty-nine states have made laws that allow a homicide charge to be brought for the unlawful killing of an unborn child or fetus in a state crime. If these, 16 provide this protection throughout the period of in utero development while the other 13 provide protection during certain specified stages of development, which varies from state to state. These laws are sometimes referred to as fetal homicide laws and my good friend from Holden has spelled out the difference between the federal law and the state law and I think that in this case the federal law is ahead of the non-existent law in the state of Maine and I would encourage you to vote red for life.

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

Representative DAVIS: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I agree with my friend from Frenchville absolutely and to attack a woman in domestic violence is indeed a very bad act. To attack a woman who is caring for another human being is not only a tragic happening, but also a heinous and despicable crime as old as the bible and part of the mosaic code. I urge you to think this through. A crime against a woman and her unborn child is a very, very evil deed and it is as old as our civilization is old.

My wife and I are expecting our ninth grandchild. It is not a fetus, it is a baby and it is going to be born momentarily and I pray that everything is alright, but this is what life is about to me, family and immortality with our grandchildren. I really urge you to vote for this. Thank you very much.

The SPEAKER: The Chair recognizes the Representative from Auburn, Representative Pelletier-Simpson.

Representative PELLETIER-SIMPSON: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I agree with my good colleague that it is a heinous thing to attack a pregnant woman. Unfortunately, this bill before us makes absolutely no mention of a crime against a pregnant woman. It is all about the unborn child. I want to read to you a letter from the director of the Maine Coalition to End Domestic Violence.

There has been a lot of conversation here about how there is language in here that is going to protect women from being prosecuted for choices that they make. LD 262 will not lead to healthy mothers or healthy children. Instead the law will likely lead to the prosecution of pregnant women. Even though on its face the law exempts conduct by pregnant women, states across the country where similar laws have been passed have seen prosecutors direct their energies and their enforcement powers against pregnant women rather than against people who commit assaults against them.

The Motherhood Protection Act, which they strongly supported, and that was recently signed into law is an appropriate measure for addressing the problem of violence against women. LD 262 on the other hand could lead to unintended and disfavored consequences. The most instructive story about unintended consequences comes from Texas. In 2003 the Texas Legislature passes Senate bill 319, which defined a fetus as an individual for the narrow purpose of defining the scope of liability in the event of a criminal act resulting in the termination of pregnancy. Like LD 262, the Texas law clearly states that the intent is not to criminalize abortions or conduct by pregnant women. Like the debate here the Texas legislative record was full of clear and unambiguous statements that the purpose of the law was not to go after pregnant women. It was to go after people who attack pregnant women. Nonetheless, the District Attorney in Potter County, Texas read that law to mean that doctors are required to report pregnant women who have

used narcotics to the district attorney's office so that they might be prosecuted for assault on themselves. One woman was indeed prosecuted and made a conditional plea of guilty and appealed the charge. The attorney general of Texas wrote a letter specifically explaining that the law does not cover actions by pregnant women that may be unhealthy, but the case is going forward and it is not clear what the result will be.

Unfortunately, the Texas case is by no means an isolated incident. Similar cases have occurred in Kentucky, Florida, North Carolina, Wyoming, South Carolina, California and Illinois. The story is one of many from across the country that show, whatever the intent that laws like this are being used to prosecute pregnant women. The law would introduce an inconsistency into our laws that is not welcomed and not needed and would likely put battered women at risk from the very system that purports to protect them. This body should be proud of the work that it has done in passing the Motherhood Protection Act and should not undermine the effort by supporting this law. Thank you.

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

Representative FAIRCLOTH: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. Every single one of us agrees that an assault on a pregnant woman that induces a miscarriage is a horrific act deserving of strong punishment. Representative Smith earlier stated that this is an uncomfortable subject and she is right. But, there is something that we can be proud of. Together we passed the Motherhood Protection Act. I respect Representative Hall's views on these issues but I am particularly proud of the Motherhood Protection Act because it is broader in response to these types of assaults than that bill before us. We passed that so overwhelmingly that I think sometimes we may have not noted how it works. It mandates that a judge must consider the assault of a woman when she is pregnant as an enhancement factor and in the horrific case in the Bangor area where that criminal received 50 years, I can guarantee you that if that crime had occurred when the Motherhood Protection Act was effective you would see an even longer sentence and I know that is true because we have this mandate enhancement factor already on the books with regards to other enhancement factors and it has worked. It has increased the penalty range when we have applied it and it will work in this instance, but as I said the Motherhood Protection Act is even broader than the bill here. Specifically, if there is a case in which, for example - I hate to talk about horrific circumstances, but that is what they are - if there is a stabbing incident in which the fetus is carried to term but is injured that is covered by the enhancement of the Motherhood Protection Act. If there is a situation where a woman is assaulted and she miscarries, but it happens before the viability - however that is defined - that would not be covered by this bill, but is covered by the Motherhood Protection Act.

While I agree with what Representative Hall said about the passion for punishing people who commit these horrific crimes I think they should receive the enhanced punishment at one month and two months if that perpetrator knows that that woman was pregnant and he should get a tough punishment and we do it with the Motherhood Protection Act. So I think we can be very proud and I think that is the only reason that I can discern for why there are these exceptions in 262 that have to do with, as the bill talks about, the unborn child. I think that it is best stated not by me, but by Mr. Samuel Casey of the Christian Legal Society, which is associated with the Christian Coalition and he said, to the Los Angeles Times, that "In as many areas as we can we want to put on the books that a fetus is a person, that this has to do with those goals of incremental steps with those who are in the anti-

choice movement." That is their right. They are free to go out and petition the government for any kind of laws they want, but if the goal is to enhance punishment for people who assault women and induce the termination of pregnancies then we have already covered it with the Motherhood Protection Act. I thank the Men and Women of the House.

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

Representative SHERMAN: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. The hour draws late, but I rise to make a couple of points, but I guess that since we are on Judiciary we have some different interpretation of what this bills stands for. It is my understanding that under this particular bill the penalty would only exist when the child has reached the stage of development where it can survive independently outside of the mother and I don't think that would be covered by the bill that was talked about. We have also had cases cited here like the Florida case and the Kentucky case and the cite that I heard was different than the one that I am reading here and there is an Illinois case that held that a child injured in the womb cannot sue the mother. The statute was not involved in the case at all. In Kentucky I heard in the prosecution of a mother whose drug addiction affected her unborn child was held by the court to set forth that the crime of child abuse was not intended to be applied to the actions of the mother when the child is in vitro. In the Florida case that was cited for us it did not involve an unborn child in any of the testimony and the case involved what happened to the child after delivery. That is some of the testimony that we have had that has turned out to not be true.

I would like to end by noting that we also had some testimony that involved President Clinton on his third day in office nullifying various anti-abortion policies that were adopted by earlier presidents and there is a gentleman by the name of Walter Delanger who is the former Solicitor General in the Clinton Administration. He was Acting Solicitor General of the United States and is now teaching at Duke University. Although he is a strong advocate for a woman's right to choose abortion he sees no major problem with the fetal homicide laws. The legislatures can decide which fetuses are deserving of protection without having to make any judgment that the entity being protected has free standing constitutional rights, in other words protecting the fetus without making that decision. I think that proposals like this ought to be considered on their own merit. This bill explicitly excludes abortion, medical treatment and any other action of the mother herself with respect to her unborn child and they have a quote, which I assume to be correct. I didn't call Barbara Boxer, but California Senator Barbara Boxer said in a telephone call, when asked about California's Fetal Rights Law that helped convict Scott Peterson on two counts of homicide with a sentence of death and whether it was a threat to woman's rights, she responded, "No." When asked if the limit in the California Fetal Rights Law about seven to eight weeks was an issue she responded, "No, that is when a woman usually finds out she is pregnant and makes a choice to be a mother or have an abortion." I think that some of those things need to be put on the record. Some of the cases that are cited may be cited in dicta, but not the holding. Thank you.

The SPEAKER: The Chair recognizes the Representative from Woolwich, Representative Grose.

Representative GROSE: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I am a domestic violence advocate. I work with battered women and abused children. I passed out this lavender piece of paper with information and I am just going to shortly repeat a couple of

points that I would like to really make known to you all. Not a single provision of this bill addresses the underlying problem of violence against women. In fact, at the federal level, at the National Coalition Against Domestic Violence, Senator Olympia Snowe a pro choice Republican and Congressman Mike Michaud, a pro-life Democrat all oppose the Unborn Victims of Violence Act because it does nothing to help women who are victims of violence and it still emphasizes the fetus over the woman and diverts attention away from violence against women and fails to recognize that the best way to protect the unborn is to protect women from violence. If the supporters of this bill were truly concerned with protecting pregnant women from violence they would focus their entire energy on legislation that would help fight domestic violence.

While LD 262 specifically exempts a pregnant woman from prosecution, a battered woman can be intimidated or pressured by her batterer not to reveal the cause of her miscarriage and if she is financially or emotionally reliant on her batterer, which is normally the case, she may be less likely to seek the appropriate medical assistance if doing so could result in the prosecution of her batterer for an offence as serious as murder. I urge you not to pass this report and to oppose it. Thank you.

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

Representative MILLS: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I have just read this bill this evening for the first time and cross referenced it with the amendment and have tried to determine what the exact scope of this bill is. I understand the tragedy of the Sergeant homicide case, but I am trying to look at this from the point of view of a person who was a career prosecutor for 19 years and who has practiced law in the state for nearly 30 years and almost all of that in the criminal law. Looking at the terms that are included in this bill, it is not difficult to look at the Sergeant case and think that it was unjust what happened. He got 50 years and maybe he should have gotten a longer term and maybe it should have been more important that she was so far along in her pregnancy and he did this deliberately and that he did this in a tragic and vicious manner. That is the easy case.

This bill encompasses a lot of other cases and, in fact, while they are not so easy and when you look at the criminal law and are dealing in the criminal law you are looking at burdens of proof beyond a reasonable doubt and you are looking at presumptions of innocence and you are looking at definitions that have to be workable within the context of our court system and not some symbolic gesture but something that juries can apply.

I look at the definition of unborn child in this bill that proposes to become law and it says that it means any individual of the human species from the state of fetal development when the life of the fetus may be continued indefinitely outside the womb by natural or artificial life supportive systems until birth. Ladies and Gentlemen, if I were prosecuting a case under this law I wouldn't know how to apply that definition. That is a definition that involves medical testimony that would require an after the fact determination of whether or not a fetus whose life was terminated through some act of a third party could have survived with or without artificial life support systems had it not died.

Look at it from the point of view of the third party. Intentionally or knowingly causing the death of an unborn child. This bill would require the state to prove that the person charged intended or knew that the woman was pregnant and knew that the unborn child could have continued indefinitely outside of the womb by natural or artificial life supported systems until birth. I don't think that that is a workable standard. I don't think that that is something that the jury can really apply. Look at the definition

of manslaughter under this bill, which proposes to become law in our state. A person is guilty of manslaughter of an unborn child if a person recklessly or with criminal negligence causes the death of an unborn child. I ask you, if you are driving down the street on a snowy day and another car is approaching you and your car slides on the ice or you slide through a stop sign and you tragically hit another vehicle in which a woman is a passenger or the driver, a woman between the age of 15 and 45, are you negligently driving with respect to that unborn fetus and should you anticipate in every case that a woman of that age might be pregnant? Should you be held criminally liable and sent to prison for up to five years for a class C crime or for up to 30 years for a class A crime of criminal negligence or recklessly causing the death of a fetus? How would you know whether or not the woman was pregnant? How would you be held to know, if she were pregnant that that fetus had a life that would be continued indefinitely outside the womb by natural or artificial life supporting systems until birth? I ask you from a professional standpoint to vote against this bill because it is simply unworkable as a matter of public policy and criminal law under our constitutional standards. Thank you.

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

Representative PARADIS: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. There is a false assumption here that LD 262 favors the unborn child and disregards the mother. That is totally false. We are talking about double murder and it does not disregard the mother that would be battered or would be killed, it is far from that. If you had asked Heather Flieglemen if she favored the child and if she wanted the child to live she would most likely have said that she would have. Most mothers would say that about their children, born or near birth. That is clear. Polls have been taken on that by the way. The general public says that an unborn child should be recognized as a victim if they were injured or killed during a crime against the baby's mother. Three polls were very close in their results. For one victim, 10%. For two victims, 79%. Another one for one victim 9% and two victims, 84%. The last one, 7% one victim and two victims, 84%.

We are getting entangled in legalese here and what are we doing? What have we wrought here when we can't even protect our unborn children in the last stage of pregnancy? Come on, we can do a lot better than that.

The SPEAKER: The Chair recognizes the Representative from Waterville, Representative Canavan.

Representative CANAVAN: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. Not only do I know a bit about marriage I know something about pregnancy having been pregnant five times. I know something about the pain and the joy of bringing a child into the world and I know something about the joy that children bring to families. My heart truly went out to the family who testified before our committee but I would offer this concerning the bill before you. During the past few days we have received several letters from lobbying groups containing impassioned pleas to support this bill. The author of one letter asserted that when a violent crime against a mother is committed and the act results in the death of an unborn child two crimes have been committed. However, just a few weeks before the same lobbying group chose not to take a position with respect to the Motherhood Protection Act that addresses the issue of violent crimes against pregnant women. Apparently, the rationale of that group is that when violence involves a pregnant woman only strengthening the law to protect her is not warranted, but when a violent crime against a mother and an unborn fetus occurs the perpetrator must be punished for two crimes.

Men and Women of the House I would ask you to consider the inconsistency of that rationale. Violence against women, especially pregnant women, is unacceptable and such a task must be vigorously prosecuted and severely punished and the motherhood act seeks to ensure that the court has discretion to do just that. As it stands now we know that many women are fearful of reporting domestic violence. This bill will simply render victims of domestic violence less likely to seek appropriate medical assistance if doing so could result in the prosecution of her batterer for an offense as serious as murder. This bill is unnecessary and I would submit to you, I am sorry to say, the bill is simply a way of laying the groundwork for a challenge to the foundation of Roe v. Wade. Thank you.

The SPEAKER: The Chair recognizes the Representative from Holden, Representative Hall.

Representative HALL: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. First I would like to apologize. Earlier I was very emotional having followed this bill through the entire process. I have been upset with decisions that have been made. To the good chair of the committee, Representative Pelletier-Simpson, the Representative from Bangor, Representative Faircloth I understand that both of them are doing their job and doing what they feel to be correct and I did not mean in anyway to make a personal attack against them. I disagree vehemently with their positions, but I did not mean to attack them personally and I apologize if I did.

The Representative from Monmouth, Representative Smith and I spoke earlier today regarding her legislative sentiment. She actually invited me to speak on her legislative sentiment and I said that I did not want to because I did not want to, in front of her constituents here, say anything and I knew that I probably would not be able to control myself and stop from saying anything so I respectfully decline to speak on her sentiment, but I did want to bring it up tonight just to show the fact that I feel we are being very hypocritical when we pass one piece and do not pass another piece of legislation that is equally as good.

My one problem that I will bring up is that everyone keeps talking about the motherhood bill, which is a great piece of legislation, but it does not go far enough in a situation where a woman is assaulted. The good Representative from Bangor, Representative Faircloth said that if the motherhood bill had already been passed into law when Roscoe Hicks committed this crime he would have gotten a much worse sentence than fifty years, but I would pose two questions to Representative Faircloth if he would be willing to answer them, or to anyone else who could answer, especially some of the attorneys in the House. What punishment would Roscoe Hicks have received if Heather Fliegelman had not died and the child did? Is the most that he could have received for the maximum penalty assault? I am sure that that is not more than 50 years? I guess that it is a lot less than 50 years and that it is a lot less than 25 years. Hopefully somebody can answer that question for me? My second question is to anyone who wishes to answer. Do you agree that a woman who is eight months pregnant on death row who is scheduled for execution should be scheduled for execution as scheduled? If not then why?

The SPEAKER: The Representative from Holden, Representative Hall has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Bangor, Representative Faircloth.

Representative FAIRCLOTH: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I think in committee, because of the wisdom of our good Chair Representative Pelletier-Simpson, we applied the Motherhood Protection Act not only to the situation where the mother is killed but also to

assaults. That was something we thought was important to apply across the board, so the legislation that became law does apply. Secondly, with regard to the death row situation, and of course Maine doesn't have the death penalty, but I think that the mother should be able to bring the child to term but that would never arise in the State of Maine.

The SPEAKER: The Chair recognizes the Representative from Auburn, Representative Pelletier-Simpson.

Representative PELLETIER-SIMPSON: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I don't want to belabor the point. There is nothing in this bill that makes any mention of the pregnant woman. I just wanted to repeat that. This is all about offenses against an unborn child. I don't think that people actually commit crimes against unborn children with that sort of intent. The crime is against the pregnant woman who is never mentioned.

The SPEAKER: The Chair recognizes the Representative from Holden, Representative Hall.

Representative HALL: Mr. Speaker, Point of order.

The SPEAKER: The Representative may proceed.

Representative HALL: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. The Representative is using props.

On POINT OF ORDER, Representative HALL of Holden asked the Chair if the use of props by Representative PELLETIER-SIMPSON of Auburn were allowed during the floor debate.

The SPEAKER: I understand that there is paper moving back and forth. What is, in fact objectionable may be the manner in which the papers are being used. The Representative may proceed.

The Chair reminded Representative PELLETIER-SIMPSON of Auburn that no props were allowed during the floor debate.

Representative PELLETIER-SIMPSON: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I apologize if it was interpreted to be a prop. This is an offense against an unborn child, the murder of an unborn child, felony murder of an unborn child, manslaughter of an unborn child. That is it. As I said it never mentions a pregnant woman. I don't believe that anyone in this House thinks that people commit crimes against unborn children devoid of an intention to commit crime against the pregnant woman.

I want to read something from the YWCA, "The YWCA fully supports efforts to punish acts of violence against pregnant women. We believe that LD 262 is the wrong approach because it seeks to separate a pregnant woman from her fetus in the eyes of the law. LD 262 is part of a national strategy to use a criminal code to overturn Roe v. Wade by defining a fetus in any stage of development as a person. Such a broad definition would divert the focus and attention of criminal proceedings from the woman who is a victim of the crime and would likely compel courts to address a woman's right to choose in the context of the law and could even have legal implications for certain forms of birth control. The Maine Legislature should promote measures that focus on the harm to the woman rather than enact a bill that threatens a woman's rights." I urge you all to please join me in supporting the Majority Ought Not to Pass Report.

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

Representative BISHOP: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I support the law of the land, Roe v. Wade. My position is somewhere in the middle in terms of whether I am pro-choice or pro life. I have already received calls today from people who have said that they feel that this is an insidious attack on Roe v. Wade. I confronted

the author of this bill and asked him a question and I watched very closely how he reacted to what I asked him and he told me that this is federal law and is in thirty other states also. I watched him closely and I can see that this is not that attack. This is a very narrowly defined bill. So, I came back to why we are doing this and I thought about it and I think that we can all agree that laws are designed not only to delineate what is criminal behavior, and to prescribe punishment for that behavior, but also to act as a possible deterrent to abhorrent and violent behavior. The law can be an aid. This particular law can be an aid in our ongoing effort to stop domestic violence. It raises the bar. It could become an even greater deterrent to anyone cruel enough to attack a pregnant woman. I too am worried about the especially insidious effects of domestic violence on our society and I too want to dearly protect those children and women who are most often its victims, but that is different legislation. That is different legislation for another time. Today this legislation is for those victims of violence who have no voice and no vote.

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

Representative **BRYANT-DESCHENES**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I only want to rise for a moment tonight because I want to speak for Jonah. When I saw the pictures of him in the Judiciary Committee and I heard the story of the last moments of the time that he lived I had decided that I wanted to speak for him tonight if no one else did.

Earlier Representative Mills spoke about LD 936 and about the fact that the victims of that terrible accident were never allowed a day in court and were never allowed to make their case. Jonah has never been allowed to make his case either and he has been sort of forgotten here. The fact of the matter is that Jonah was a baby that was wanted. His mother made a choice to have Jonah and someone took that choice away from her. That is the kind of choice that we are talking about tonight. There is the pregnant woman who wants to have a baby and is trying to carry that baby and someone interferes with that process. Whether it is violence, whether it is a robber, an intruder or anybody else and to me this bill is about Jonah and what happened with him. His mother was stabbed 47 times and the baby was unharmed. In fact, I am not so sure that she didn't give here life to try to protect him and defend him. Maybe if she had tried to defend herself and not worry about her abdomen she would have been able to repel the attack on herself. I just think that this bill is about Jonah and that we should remember him. Thank you.

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

ROLL CALL NO. 286

YEA - Adams, Ash, Babbidge, Barstow, Blanchette, Bliss, Brannigan, Brautigam, Bryant, Burns, Cain, Campbell, Canavan, Craven, Cummings, Driscoll, Duchesne, Dudley, Dunn, Duplessie, Eberle, Eder, Faircloth, Fisher, Gerzofsky, Goldman, Grose, Harlow, Hutton, Jacobsen, Jennings, Kaelin, Koffman, Lerman, Makas, Marley, Marraché, McCormick, Merrill, Miller, Mills, Muse, Norton, O'Brien, Patrick, Pelletier-Simpson, Percy, Perry, Pilon, Pineau, Pingree, Piotti, Plummer, Richardson D, Rines, Sampson, Schatz, Smith N, Smith W, Thompson, Twomey, Valentino, Walcott, Watson, Webster, Wheeler, Woodbury, Mr. Speaker.

NAY - Annis, Austin, Beaudette, Bishop, Blanchard, Bowen, Bowles, Brown R, Browne W, Bryant-Deschenes, Carr, Cebra, Churchill, Clark, Clough, Collins, Cressey, Crosthwaite, Curley,

Curtis, Daigle, Davis G, Davis K, Dugay, Duprey, Edgecomb, Emery, Farrington, Finch, Fischer, Fletcher, Flood, Glynn, Greeley, Hall, Hamper, Hanley B, Hanley S, Hogan, Hotham, Jodrey, Joy, Lansley, Lewin, Lindell, Lundeen, Marean, Mazurek, McFadden, McKane, McKenney, McLeod, Millett, Moody, Moulton, Nass, Nutting, Ott, Paradis, Pinkham, Rector, Richardson E, Richardson M, Richardson W, Robinson, Rosen, Saviello, Seavey, Sherman, Shields, Stedman, Sykes, Tardy, Thomas, Trahan, Tuttle, Vaughan.

ABSENT - Berube, Bierman, Crosby, Fitts, Jackson, Moore G.

Yes, 68; No, 77; Absent, 6; Excused, 0.

68 having voted in the affirmative and 77 voted in the negative, with 6 being absent, and accordingly the Majority **Ought Not to Pass Report was NOT ACCEPTED.**

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

The Bill was **READ ONCE. Committee Amendment "A" (H-647) was READ** by the Clerk and **ADOPTED.** The Bill was assigned for **SECOND READING** Wednesday, June 8, 2005.

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

Resolve, Directing the Bureau of Health To Study the Effectiveness and Quality of Reproductive Counseling

(H.P. 1057) (L.D. 1512)

(C. "A" H-664)

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

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

On motion of Representative CLARK of Millinocket, the House adjourned at 9:04 p.m., until 9:00 a.m., Wednesday, June 8, 2005.