

MAINE STATE LEGISLATURE

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House of Representatives
One Hundred and Twenty-Second Legislature
State of Maine

Volume II

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May 26, 2005 – June 17, 2005

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Pages 737-1487

ONE HUNDRED AND TWENTY-SECOND LEGISLATURE
FIRST SPECIAL SESSION
31st Legislative Day
Wednesday, June 8, 2005

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

Prayer by Reverend Peter B. Panagore, First Radio Parish Church of America.

National Anthem by Erin Melanson, Falmouth.

Pledge of Allegiance.

Doctor of the day, Michelle Sicard, MD, Freeport.

The Journal of yesterday was read and approved.

SENATE PAPERS
Non-Concurrent Matter

An Act To Require That the Department of Health and Human Services Include a Bureau of Elder Services

(H.P. 262) (L.D. 349)

PASSED TO BE ENACTED in the House on May 11, 2005.

Came from the Senate with the Bill and accompanying papers **INDEFINITELY POSTPONED** in **NON-CONCURRENCE**.

The House voted to **INSIST** and **ASK** for a **COMMITTEE OF CONFERENCE**. Sent for concurrence.

COMMUNICATIONS

The Following Communication: (H.C. 280)

STATE OF MAINE

ONE HUNDRED AND TWENTY-SECOND LEGISLATURE
COMMITTEE ON JUDICIARY

June 7, 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 bill out "Ought Not to Pass":

L.D. 1479 An Act To Ensure Systematic Reporting of Abortions

We have also notified the sponsor and cosponsors 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**.

REPORTS OF COMMITTEE

Divided Report

Majority Report of the Committee on **UTILITIES AND ENERGY** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-283)** on Bill "An Act To Amend the Maine Wind Energy Act"

(S.P. 477) (L.D. 1379)

Signed:

Senators:

BARTLETT of Cumberland

COWGER of Kennebec

Representatives:

BLISS of South Portland

BABBIDGE of Kennebunk

BRAUTIGAM of Falmouth

ADAMS of Portland

RINES of Wiscasset

Minority Report of the same Committee reporting **Ought to Pass as Amended by Committee Amendment "B" (S-284)** on same Bill.

Signed:

Senator:

WESTON of Waldo

Representatives:

FITTS of Pittsfield

CURTIS of Madison

FLETCHER of Winslow

RICHARDSON of Skowhegan

McLEOD of Lee

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 "B" (S-284) AS AMENDED BY SENATE AMENDMENTS "A" (S-322) AND "B" (S-341)** thereto. **READ**.

On motion of Representative BLISS of South Portland, **TABLED** pending **ACCEPTANCE** of either Report and later today assigned.

Majority Report of the Committee on **HEALTH AND HUMAN SERVICES** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-661)** on Bill "An Act Regarding Advertising by Drug Manufacturers"

(H.P. 1141) (L.D. 1618)

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 Not to Pass** 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-661)** 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.

(H.P. 913) (L.D. 1315)

CONSENT CALENDAR

First Day

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

(H.P. 946) (L.D. 1363) Bill "An Act To Make Supplemental Highway Allocations for the Expenditures of State Government and To Change Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2006 and June 30, 2007" (EMERGENCY) Committee on **TRANSPORTATION** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-663)**

(H.P. 975) (L.D. 1411) Bill "An Act To Require Standardized Reporting of the Prices for Certain Health Care Services and To Repeal the Confidentiality of Sentinel Events" Committee on **HEALTH AND HUMAN SERVICES** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-660)**

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 Protect Unborn Children from Acts of Violence"

(H.P. 201) (L.D. 262)
(C. "A" H-647)

Bill "An Act To Prevent Lead Poisoning of Children and Adults"

(H.P. 719) (L.D. 1034)
(C. "A" H-642)

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)
(C. "A" H-652)

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

ENACTORS

Emergency Measure

Resolve, Regarding the Prevention of Suicide

(S.P. 422) (L.D. 1208)
(C. "A" S-308)

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

On motion of Representative DUPLESSIE of Westbrook, the Resolve was placed on the Special Study Table pursuant to Joint Rule 353 pending **FINAL PASSAGE.**

UNFINISHED BUSINESS

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

HOUSE REPORT - **Ought to Pass as Amended by Committee Amendment "A" (H-414)** - Committee on **STATE AND LOCAL GOVERNMENT** on Bill "An Act To Permit Recording Proceedings of the Legislature"

TABLED - May 19, 2005 (Till Later Today) by Representative DUPLESSIE of Westbrook.

PENDING - ACCEPTANCE OF COMMITTEE REPORT.

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

Representative **TRAHAN**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. This issue has been on our unfinished business calendar for quite some time because of some concerns with the legislation. Those concerns have been worked out for me. I am the sponsor of this bill and the Chair of the State and Local Government Committee and the Rules Committee Chair and the Speaker and I have been talking about this issue for quite some time and have worked out an agreement. So, I believe that this issue is no longer needed as legislation and I ask you to support the indefinite postponement of this item.

Representative Trahan of Waldoboro moved that the house **INDEFINITELY POSTPONE** the Bill and all accompanying papers.

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. Let me first thank the good Representative from Waldoboro for his cooperation in this negotiation, but further, with regards to the passion and the effort he has brought to this issue, I am personally very dedicated to improving the technology and the transparency of government in this institution here and many of us do care for this institution. I also would like to thank the Speaker as well as the good Representative from Brunswick, Representative Gerzofsky for his work with us being the Chairman of the House Rules Committee and I feel that in the next year we can help to work out some of the technical glitches that, due to the Legislative session schedule and the number of bills our committee handled, we were unfortunately unable to give justice to in our deliberations. I would ask the body to indefinitely postpone this bill with the understanding that progress is going to continue on this issue and that may achieve the means that we all wish to have. Thank you Mr. Speaker.

Subsequently, the Bill and all accompanying papers were **INDEFINITELY POSTPONED** and sent for concurrence.

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

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

UNFINISHED BUSINESS

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

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)

TABLED - June 7, 2005 (Till Later Today) by Representative DUPLESSIE of Westbrook.

PENDING - PASSAGE TO BE ENACTED.

Subsequently, the Bill was **PASSED TO BE ENACTED**, signed by the Speaker and sent to the Senate.

TABLED AND TODAY ASSIGNED

House Order, amending the House Rules by adding House Rule 108, to Allow Broadcast of the House Proceedings

(H.O. 39)

TABLED - June 7, 2005 by Representative TRAHAN of Waldoboro.

PENDING - **PASSAGE** (2/3 Vote Required).

Subsequently, the House Order was **REFERRED** to the House Committee on **HOUSE RULES**.

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

SPECIAL SENTIMENT CALENDAR

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

Recognizing:

Zachary Hynes, of Yarmouth, who is the recipient of a Diplomacy Award. The award was given at the 2005 Maine Model United Nations Conference at the University of Southern Maine. The conference was held May 17 to 19 and involved more than 300 students from high schools throughout New England in a simulation of the activities and deliberations of the United Nations. The award is the highest individual honor granted at the conference and is given to a delegate in each United Nations committee who best embodies excellence in research, written composition, knowledge of procedures, conflict resolution, negotiation skills and speech making. Zachary received the award for his exemplary work as the delegate representing Bolivia in the Organization of American States. We extend our congratulations to Zachary on this achievement;

(HLS 871)

Presented by Representative WOODBURY of Yarmouth.

Cosponsored by Representative FARRINGTON of Gorham, Senator TURNER of Cumberland.

On **OBJECTION** of Representative WOODBURY of Yarmouth, was **REMOVED** from the Special Sentiment Calendar. **READ.**

The **SPEAKER**: The Chair recognizes the Representative from Yarmouth, Representative Woodbury.

Representative **WOODBURY**: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I am pleased to recognize Zach Hines today, an exceptional young man whom I am proud to represent in Yarmouth. As Zach has moved through the Yarmouth school system he has earned the respect and admiration of his peers, his teachers – including the Representative from Gorham, Representative Farrington – and his entire community.

As he finishes his first year in high school we are pleased and proud to see that his outstanding reputation is now spreading beyond Yarmouth. We congratulate Zach on receiving this Diplomacy Award from the Maine Model U.N. conference and we look forward to celebrating his future accomplishments. Thank you Mr. Speaker.

The **SPEAKER**: The Chair recognizes the Representative from Gorham, Representative Farrington.

Representative **FARRINGTON**: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. As Representative Woodbury alluded to I am, in my other life, a teacher at Yarmouth High School and this year it has been my great privilege and honor to be one of Zach Hines' teachers as well as to serve as his advisor in the Model U.N. program.

You heard in the sentiment that was read aloud the description of the Diplomacy Award that Zach received at the Model UN Conference and I would like to add one further point about that award. On the last day of this conference when the judges convened to decide the awards for each committee, when it came time to grant the award the Diplomacy Award for Zach's committee, it was an immediate, unanimous decision. There was no need to debate. He was clearly in a class by himself. I have attended a number of these conferences and I can honestly say that that is a rare occurrence. It is a very high caliber of students that participate in these and for someone to be so clearly the most skilled member of the committee so that there is no need for deliberation is rare. He was singled out not only for his skill, but also for the thoughtful and courteous manner in which he treated all the other members of the committee. Those of us who know Zach are not at all surprised to hear that. He truly is an outstanding student and he is an exceptional individual.

Thinking a few years down the road there will come a time when Representative Woodbury will reach the end of his tenure here in the House and I am confident that we can recommend to the people of Yarmouth a worthy young successor to take his place here in the House. So, start thinking about that Zach and once again, congratulations on receiving this award.

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

UNFINISHED BUSINESS

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

Bill "An Act To Amend the Maine Tort Claims Act"

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

(C. "A" H-657)

TABLED - June 7, 2005 (Till Later Today) by Representative CARR of Lincoln.

PENDING - **PASSAGE TO BE ENGROSSED.**

On motion of Representative CARR of Lincoln, 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-657)** was **ADOPTED.**

The same Representative **PRESENTED House Amendment "A" (H-666)** to **Committee Amendment "A" (H-657)** which was **READ** by the Clerk.

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. Yesterday I am sure that you probably heard more about tort reform than you ever really wanted to know. But, this is a very important issue to many people who drive emergency vehicles in the State of Maine. First of all, I have had some questions on this and one of the things that I want to answer is who does this cover. This doesn't cover only police. It also covers firemen, ambulance drivers, and all the people who respond daily to emergency situations. This amendment would change one word. It would still allow the folks who are in a situation – the Nortons of the world – an opportunity to bring their case forward, but with a standard a little higher than negligence and instead labeled recklessness. I offered to bring forth a Unanimous Report out of the committee by making this change earlier on before it came out of committee, but we weren't able to reach a consensus on that. I suspect that, as far as the committee is concerned, we still

may not be able to do that. But, I would ask your support, not just for me because I am retired now and I really don't respond to emergencies anymore, but there are still a lot of men and women out there driving police vehicles, ambulances and fire trucks and all of those emergency vehicles. Ironically, while this debate was going on yesterday a siren went by and the thing that you want to remember is that that person was responding to an emergency and that person would be covered under this and this recklessness would be a standard higher than negligence. It would be more difficult to prove, but it would give a sense of coverage to those people who, when it is raining, snowing and the roads are icy, still have to respond. Those are the days that most of us stay at home.

I am sure that very soon after I sit down you are going to hear that there is no such terminology or definition in statute in the Civil Code in the State of Maine, but I actually heard this when we were discussing the issue in committee and what I have found out and, to the best of my knowledge, New York state has a similar law for tort claims and they use reckless as a standard. There are also some Maine Supreme Court rulings if you go back that use reckless rather than negligence.

I am going to sum up now and just say that I know that this morning some of the members of the fire departments and communities around the state are beginning to talk about this and I am not sure if calls will be coming in soon or not. It is not anything that I have asked people to do so if you get those calls it is really not me, but I do want to say that I am sure that they would certainly appreciate your support of this amendment. Thank you Mr. Speaker.

On motion of Representative DUPLESSIE of Westbrook, **TABLED** pending the motion of Representative CARR of Lincoln to **ADOPT House Amendment "A" (H-666) to Committee Amendment "A" (H-657)** and later today assigned.

CONSENT CALENDAR

First Day

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

(S.P. 608) (L.D. 1642) Bill "An Act To Further the Transition to the New Department of Health and Human Services" Committee on **HEALTH AND HUMAN SERVICES** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-349)**

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

There being no objection, the Senate Paper was **ACCEPTANCE** of the Unanimous **Committee Report** and later today assigned.

(S.P. 443) (L.D. 1263) Bill "An Act To Contain Costs, Reduce Paperwork and Streamline the Regulatory Process for Maine's Small Businesses" Committee on **BUSINESS, RESEARCH AND ECONOMIC DEVELOPMENT** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-348)**

On motion of Representative SMITH of Monmouth, was **REMOVED** from the First Day Consent Calendar.

The Unanimous Committee Report was **READ**.

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

(After Recess)

The House was called to order by the Speaker.

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

ENACTORS
Emergency Measure

Resolve, Establishing the Commission To Study Retirement Eligibility and Benefits for Corrections Officers, Certain Other Law Enforcement Officers and Mental Health Workers

(S.P. 246) (L.D. 748)
(S. "A" S-311 to C. "A" S-68)

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

On motion of Representative CUMMINGS of Portland, the Resolve was placed on the Special Study Table pursuant to Joint Rule 353 pending **FINAL PASSAGE**.

Acts

An Act To Authorize a Tax Rebate Program for Established Residents

(S.P. 41) (L.D. 135)
(H. "A" H-631 to C. "A" S-302)

An Act To Clarify the Smoking Ban for Off-track Betting Facilities

(H.P. 815) (L.D. 1186)
(C. "A" H-528)

An Act To Protect Small Forest Landowners

(H.P. 954) (L.D. 1368)
(C. "A" H-629)

An Act To Further Coordinate the Laws Regarding Certificate of Need, the State Health Plan and the Capital Investment Fund

(S.P. 490) (L.D. 1401)
(C. "A" S-333)

An Act Regarding Implementation of the Central Voter Registration System

(S.P. 583) (L.D. 1602)
(C. "A" S-331)

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

Resolves

Resolve, To Study Adoption of the Streamlined Sales and Use Tax Agreement

(H.P. 747) (L.D. 1094)
(C. "A" H-603)

Resolve, To Increase the Quality of Care and Reduce Administrative Burdens in the Pharmacy Prior Approval Process

(S.P. 493) (L.D. 1404)
(C. "A" S-332)

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

The House recessed until 4:00 p.m.

SENATE PAPERS
Non-Concurrent Matter

Bill "An Act Authorizing Municipalities To Establish Walking Trails"

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

Majority (10) **OUGHT NOT TO PASS** Report of the Committee on **JUDICIARY READ** and **ACCEPTED** in the House on June 7, 2005.

Came from the Senate with that Body having **INSISTED** on its former action whereby the Minority (3) **OUGHT TO PASS AS AMENDED** Report of the Committee on **JUDICIARY** was **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-338)** and **ASKED** for a Committee of Conference in **NON-CONCURRENCE**.

The House voted to **ADHERE**.

SENATE PAPERS
Non-Concurrent Matter

Bill "An Act To Amend the Revaluation Process by Municipalities"

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

Majority (12) **OUGHT NOT TO PASS** Report of the Committee on **TAXATION READ** and **ACCEPTED** in the House on June 7, 2005.

Came from the Senate with that Body having **ADHERED** to its former action whereby the Minority (1) **OUGHT TO PASS AS AMENDED** Report of the Committee on **TAXATION** was **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-303)** in **NON-CONCURRENCE**.

The House voted to **ADHERE**.

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

HOUSE DIVIDED REPORT - Majority (7) Ought to Pass as Amended by Committee Amendment "A" (S-283) - Minority (6) Ought to Pass as Amended by Committee Amendment "B" (S-284) - Committee on UTILITIES AND ENERGY on Bill "An Act To Amend the Maine Wind Energy Act"

(S.P. 477) (L.D. 1379)

Which was **TABLED** by Representative **BLISS** of South Portland pending **ACCEPTANCE** of either Report.

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

Representative Fletcher.

Representative **FLETCHER**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I would like to speak just a few moments on this. The good news is that we all agree that wind power for the future has a great deal of potential for the State of Maine. I think that is the most important thing. There has been a lot of good work done and the PUC did a feasibility study and identified what needed to happen and I would just like to take a few minutes and share with you the thoughts that I have.

What we know is that the technology is there. Small-scale wind power can be cost effective and will work within our transmission system so we know that it is a doable process. As many of you know, in Europe smaller scale community wind projects are very common and are providing an important source

of local renewable energy and what we are talking about is decreasing our dependence on foreign fossil fuel and decreasing our dependence on electricity generated with coal fired plants and getting ourselves to be independent and that is a real advantage of local indigenous renewable energy and Maine has great potential, that we already know.

I want to talk a little bit about the Majority Report. It supports the same concept, but does not actively result in anything happening except going to the Energy Resources Council and doing another study. The Majority Report I would respectfully suggest could get us into the paralysis by analysis stage. We know that it works. The PUC did an exhaustive analysis and said that these are the steps that need to happen and we are ready to implement. Spending another year doing another study to verify what we already know seems not to be a very productive use of time. With oil recently hitting about \$52 a barrel and the price of natural gas twice as high to three times as high as it was I am not sure that I want to wait another year before we take the next logical step to start to realize the true potential of wind power in the State of Maine. I can't talk about the Minority Report, but what I would suggest is that we are ready to implement. The PUC identified what needs to be done and I would ask that you support defeating the pending motion so that we can move on to the Minority Report and so that we can start this process.

There is an old country and western song that calls for a little less talk and a lot more action. I would respectfully suggest small-scale wind power in Maine is ready for action and not just more talk. Mr. Speaker when the vote is taken I request the yeas and nays.

Representative **FLETCHER** of Winslow **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 South Portland, Representative **Bliss**.

Representative **BLISS**: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. Last week this body heard a divided report from the Utilities and Energy Committee and I know that this is one of your favorite things to listen to. That one was about solar power, but the irony was that both the Majority and Minority Reports were in favor of the development of solar power. The issue was simply the mechanism necessary to move forward. This week you see before you another divided report from the Utilities and Energy Committee, this one dealing with wind power. Again, both reports are in favor of the development of wind power. In this case the discerning issue is the speed with which the state should move forward with something called community wind power. The Majority Report includes a determination that it is the policy of the State of Maine that we ought to encourage the attraction of appropriately sited wind energy consistent with high environmental standards. The report goes on to ask the Energy Resources Council to examine the concept of community wind and report back by January 13th. We believe that this represents a careful and thoughtful approach to the development of wind power.

The other report offers the same policy statement, but it leaps over the examination of what community wind actually means and offers Pine Tree Zone status to any community wind project anywhere in the state. It offers credit trading for wind electricity providers; it offers PUC assistance in financing wind energy projects. It supports construction and operation of wind energy generating facilities up to a total installed capacity of 300 megawatts by the year 2010. By comparison, for those of you less familiar with PUC terminology, 300 megawatts is roughly 1/3

the maximum capacity of Maine Yankee and just about at the operating level of Maine Yankee on an average day. Finally, almost as an afterthought, the Minority Report suggests that the PUC should undertake a study determining just what community wind power actually means.

Mr. Speaker, the entire Utilities and Energy Committee supports the development of wind power as one of the variety of sources of power for the state, but the Majority Report advocates making sure that we know what we are talking about before we offer incentives, not after. Mr. Speaker, the fine report presented by the Public Utilities Commission already this January makes no mention of community wind power. The term didn't even exist as a generally recognized term as recently as last January.

The Majority Report asks the Energy Resources Council to explore the term before we offer incentives and Pine Tree Zone status, not after. Mr. Speaker, the best way to lower the cost of power to Maine consumers is to diversify our power supply. We have already made a strong statement this year in favor of solar power. Everyone on the Utilities and Energy Committee believes that a similarly strong statement ought to be made in favor of wind power, but the Majority Report advocates knowing what we are really talking about before we offer incentives, before we offer Pine Tree Zone status and before we offer PUC assistance in financing, not after. Mr. Speaker I urge acceptance of the Majority Report.

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

Representative SAVIELLO: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I rise today in opposition to the Majority Report. I have a very strong wind power proponent in my district named Dane Trafton. Dane is from Phillips and has studied this issue very much and I listen to him very carefully as I talk about these issues. As I have talked with Dane about this amendment he has made a point to me that it is perhaps time to stop studying and let the communities just do it. Thank you Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Winslow, Representative Fletcher.

Representative FLETCHER: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I wasn't going to talk about the Minority Report, but if I could have the indulgence I would like to make just a few points if I could. What I would like to mention is that we do know and it is defined what community wind is and maybe we can think of a lot more creative name, but community wind is less than 10 megawatts. That is defined. It is not an ambiguous term. It is small scale, locally produced electric energy that will be integrated into the existing power grid. Why do we talk about a number of 300 peak megawatts installed?

The things that we already know from other people's experience is that if wind power becomes more than 10% of your total energy generation you start to run into potential transmission and distribution issues. That is why community wind is structured to be less than 10 megawatts and is to be integrated into the existing power grid of the particular region if that community or area decides to go ahead with it. We already have a project in the works and will hopefully be very productive. That is the project at Fox Island. It has yet to be built, but that is the concept.

The other thing that I want to point out is that we are not trying to create Pine Tree Zones for the windmills. We are trying to follow the PUC recommendation that said to help overcome the initial capital costs, the Pine Tree Zone type of incentive should be applied. It is not that we are going to have a whole mess of Pine Tree Zones scattered throughout with windmills on

them, it is to apply the benefits, not necessarily the classification to that portion which is to be used to generate the renewable energy. This is still at the discretion of the DECD director because it goes to the test of whether the project would have been built if the Pine Tree Zone incentives were not available. So, it still is in the discretion. There is nothing automatic and, more importantly, this isn't to just automatically make it happen. In the other report, which I cannot talk about we would know by March 1, 2006 what the PUC is going to suggest after working with DECD, DEP, LURC and FAME to really put this package together. So, I am just trying to make sure that we understand that.

I think that my good colleague has correctly stated in the Majority Report that we need more renewable energy in the state of Maine. This is the way to make it happen in a very direct and straightforward manner. There are no hidden tricks. This is the time to make it happen, versus another study, which I believe we are at the point where we are paying \$52 a barrel that I am not sure we can wait another year before we get a little more renewable energy and a little bit less greenhouse gasses into the atmosphere. Thank you very much ladies and gentlemen.

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

Representative BLISS: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I am not going to give another long speech nor am I going to wave around a prop, but since the good Representative mentioned Dane Trafton I do want to point out that all of the members of the Utilities and Energy Committee did receive an email from Mr. Trafton dated today at 11:28am, which speaks specifically about his problems with the report that we can't talk about yet.

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

Representative SAVIELLO: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. Just a quick correction. I talked to Mr. Trafton about 15 minutes ago and he has got a different opinion. Thank you Mr. Speaker.

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

Representative BABBIDGE: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. The good Representative from Winslow is correct in that everyone on this committee is very interested in renewable energy, including wind power. But, as usual the devil is in the details. It is not where we want to go, it is how we want to get there. We had a great deal of testimony in committee when this bill came before us. For instance, environmental advocates who are special to me were on both sides of this issue. Those that advocated for wind power did have exceptions. The problem is not economics. It is siting it. Don't raid the Maine Energy Efficiency fund. Some said that this state mandate was needed to support wind because the problem was local communities. So, in other words, what we are saying is that going too fast on wind would provide a way of streamlining and overriding local control. Some said that subsidies would allow companies to not pay taxes on their fossil fuel plants. We do offer energy credit transfers as part of the consideration here. In other words, some of the discussion is how fast to go to get to where we want to be. But, even those that support going as quickly as possible really claim that financing wasn't the major issue, it was siting and the good place to put wind generators in this state are probably high altitude areas such as the ridgelines of mountains or off the coast where winds get an opportunity to develop some momentum. Of course, we know how populated the coastal region is. The Director of Energy Policy, the Maine Appalachian Mountain Club,

the Public Advocate, the Maine Audubon Society all expressed opposition to this legislation and the reason that they did was because of the speed and the fact that we were using Pine Tree Zones no matter where they were geographically located and the fact that we were using energy transfers and the fact that siting problems were not solved in the legislation so it is the majorities feeling that if we ask the PUC to look at community wind, specifically as an option, our understanding would be clusters of mills that would generate 10 megawatts or less than we can take a look at this in mid January and hopefully have a better idea of how to carefully craft this legislation. I urge you to vote for the very sensible Majority Report. Thank you.

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

Representative **KOFFMAN**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. This issue is far too important for the State of Maine to have such a divided report over the means to get to what is such an important end for us, which is energy independence and reductions in fossil fuel dependence and all of the other merits that come with it. I am disappointed with some of my environmental organization colleagues who have been slow on the draw in leading the way on this issue as opposed to reacting to it. Nevertheless, I am going to support the Majority Report because I think that the Majority Report lays a foundation for us to build on and that we are going to have discussions in future generations where legislators are going to be discussing this and other energy related issues that are so key to our economy and our quality of life for generations to come. To the extent to which the Majority Report is building a cautious yet strong foundation for future development, which I hope will stimulate the development of wind power in Maine, including Bar Harbor I would be delighted to see.

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

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

The SPEAKER: The Representative may pose her question.

Representative **PERCY**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. Is there a fiscal note with the Minority Report? It talks about the Pine Tree Zones and the benefits and I did not get a fiscal note across my desk so is there one attached with the Minority Report?

The SPEAKER: The Representative from Phippsburg, Representative Percy has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Winslow, Representative Fletcher.

Representative **FLETCHER**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I just received the Minority Amendment, which we can't talk about and if I may there is one attached when you do see it that says that it could potentially produce revenue loss to the general fund. This amendment reduces the potential situations in which an entity would be eligible for Pine Tree Zone development benefits which may decrease the general fund revenue loss associated with community wind power generators. If I may add to that, I think that we always have to remember that the criteria for granting Pine Tree Zone tax reductions is the test that if these benefits were not provided then the project would not move forward. So, if you apply that logic you wouldn't be losing anything because it wouldn't be there to lose. Thank you very much Mr. Speaker.

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

Representative **VAUGHAN**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. As far as I can tell the main thing that you need to determine in a study is

whether or not the wind blows enough operate a wind turbine in a given location. If you are concerned about the viability of the wind turbine as a machine you can look at some other locations.

It is no secret that I am from away. I come from Nebraska. If you happen to have a laptop and want to www.nppd.com, that is the Nebraska Public Power District, you can see a couple of studies. Out north of town as they say, over in the next town 30 miles away from where I was raised they erected two wind turbines. The town was called Spring View. Those two have been running for a long enough period of time for them to make determinations that they are erecting 36 south of town. Facts and figures are available on that site and you just go to www.nppd.com and click on wind turbines and as far as determining whether or not the wind blows enough here is, I am sure, already determined. Thank you very much.

The SPEAKER: The Chair recognizes the Representative from Winthrop, Representative Flood.

Representative **FLOOD**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I wanted to support the Representative from Winslow, Representative Fletcher. For 25 years I managed large blocks of land in Maine and other parts of New England, millions of acres and there were lots of sites for wind generation and every year we received five or ten different requests for that type of activity. But, very few of those requests actually came to fruition because every time that someone got into exploration there was no state policy or direction. Things at that level were missing so these things tended to fail after several months of discovery. Little happened and most things bogged down waiting for better direction. This Ought Not to Pass Majority Report perpetuates that problem and I think that we need to strengthen that up. Thank you.

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. I think this debate makes it obvious to me that there is, in fact, a lot of wind blowing around here in Maine and its quite warm and I appreciate everybody's remarks and hope that we can get going.

The SPEAKER: The Chair recognizes the Representative from Winslow, Representative Fletcher. Having spoken twice now requests unanimous consent to address the House a third time. Is there objection? Chair hears no objection, the Representative may proceed.

Representative **FLETCHER**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I will be very brief. I think that we have certainly exhausted enough wind, but in the PUC report of January 27, 2005 on page 38 I will read you one line. "For the promotion of smaller on site or community wind projects, however the commission recommends consideration of tax incentives as an appropriate support mechanism." On a previous page, page 27, their thought was that it would be appropriate to designate all wind facilities as qualified Pine Tree Zone businesses regardless of their location and the status as a manufacturing operation. The only point that I want to make is that the PUC did recognize that there is such a thing as community wind and it is not an abstract concept. It is small scale and that was one of their conclusions that would provide the incentives to begin the process. 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. 287

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

NAY - Austin, Berube, Bierman, Bishop, Bowen, Bowles, Browne W, Bryant-Deschenes, Campbell, Carr, Cebra, Churchill, Clough, Collins, Cressey, Crosby, Crosthwaite, Curley, Curtis, Daigle, Davis K, Dugay, Duprey, Eder, Edgecomb, Fischer, Fisher, Fitts, Fletcher, Flood, Glynn, Greeley, Hall, Hamper, Hanley B, Harlow, Jacobsen, Jodrey, Joy, Kaelin, Lansley, Lewin, Lindell, Lundeen, Marean, McCormick, McFadden, McKane, McKenney, McLeod, Merrill, Millett, Moulton, Muse, Nass, Nutting, Ott, Pinkham, Plummer, Rector, Richardson D, Richardson E, Richardson W, Robinson, Rosen, Saviello, Seavey, Sherman, Shields, Stedman, Sykes, Tardy, Thomas, Trahan, Twomey, Valentino, Vaughan.

ABSENT - Annis, Brown R, Emery, Hogan, Hotham, Makas, Marraché, Moore G, Pilon, Richardson M.

Yes, 64; No, 77; Absent, 10; Excused, 0.

64 having voted in the affirmative and 77 voted in the negative, with 10 being absent, and accordingly the Majority **Ought to Pass as Amended Report was NOT ACCEPTED.**

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

The Bill was **READ ONCE. Committee Amendment "B" (S-284) was READ** by the Clerk.

On motion of Representative BLISS of South Portland, **TABLED** pending **ADOPTION of Committee Amendment "B" (S-284)** and later today assigned.

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

HOUSE DIVIDED REPORT - Majority (9) Ought to Pass as Amended by Committee Amendment "A" (H-661) - Minority (4) Ought Not to Pass - Committee on HEALTH AND HUMAN SERVICES on Bill "An Act Regarding Advertising by Drug Manufacturers"

(H.P. 1141) (L.D. 1618)

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 Augusta, Representative Lerman.

Representative **LERMAN:** Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I am sure that many of you have noticed on television these days and for the past few years that there is advertising by pharmaceutical companies and drug manufacturers. They advertise little yellow pills, little purple pills, pills that have butterflies around them and needless to say, at this point it is part of our staple diet of advertising on TV

Just so you are aware, in case you weren't, it is only since 1997 that the federal Food and Drug Administration allowed drug companies to advertise on television. I will be honest with you, I am a little offended by some of the adds because in some cases, at least in the past, they didn't tell you what the drugs were for, they just said here is a purple pill go to your doctor and ask them whether it is right for you.

The impact of this advertising has been significant. Last year, for example, the pharmaceutical companies spent \$4 billion on direct advertising to individuals so that they would purchase the product. Also, another impact of drug advertising in the past few years has been nearly a 400% increase in the cost of the Medicaid program for pharmaceuticals. The drug companies have made a very good investment from their point of view in the advertising that they have undertaken. Just to put it into a broad context, the major driver of increased costs to health insurance in this country and in this state has been the increased use of pharmaceutical drugs. In the case of the company that I had we were told by Anthem that, while a few years ago in the mid to late 90's the cost of drugs was roughly 6% of the total cost of payments paid through health insurance, since 1997 it has gone from 6% to 25%. At least in the opinion of the person who we work with at Anthem, it was influenced by the aggressive campaign on the part of the pharmaceutical companies to directly market their products.

This bill does a few things but the major thing for you to know in terms of this bill is that it simply says this: if you are going to advertise drugs you need to fully disclose the results of clinical trials so that the public is informed as to what the potential benefits and side effects of those medications are. In essence that is what this bill does. This is a public right to know bill. It is to inform the public so that while they are being marketed too heavily they also have somewhere where they can go to get the full picture on the benefits and potential side effects of those medications that are being marketed to them. The core thing that this bill does is that it says if you want to advertise your drugs in Maine that is certainly your prerogative, but if you are going to do it, you need to disclose to the public the results of all clinical trials, not just those clinical trials that you may choose to advertise.

There are a couple of other pieces of this bill that I want to bring to your attention. There is also a piece in this legislation that says we are going to give the state the authority to hold the manufacturers who do choose to advertise accountable to the federal standards that have been established regarding drug advertising. It doesn't create a higher standard, it doesn't create a different standard, it simply says that the state can hold the drug manufacturers or the drug advertisers accountable to the same set of standards that the federal government has. The third piece in this bill is simply there to direct the Department of Human Services to make sure that the public is aware, if they are interested, on where to go to get information regarding the results of clinical trials. That is what this bill does.

There is a fee in here just so that you are aware. It charges the manufacturers and has nothing to do with a fee on advertising. It simply says that if you are a manufacturer of pharmaceuticals that distributes medication through the Medicaid program then you have to pay \$1,000 a year to support informing the public on where they need to go to find out more information regarding side effects and the effectiveness of particular medications. I want you to know that what this bill doesn't do is that it doesn't require manufacturers to pay a fee to advertise. It doesn't regulate advertising, it doesn't create another level of bureaucracy then what currently exists and it is certainly not a tax on advertising. This is not an anti-business bill, this is really a buyer beware bill. I hope that you will seriously consider this bill.

One last point, this bill also avoids duplicating anything that currently exists. There is no state or federal law or regulation that requires the pharmaceutical companies to do what this bill asks them to do, which is to disclose the results of all clinical trials. The pharmaceutical company agreed to do this on a voluntary basis last year, but they have yet to produce. They volunteered.

They created a timetable for them to meet the commitment that they have made and they have failed to meet that commitment. It is in response to their unwillingness to self regulate or to self disclose. This bill is being brought forward to make sure that we do have access to information that is critical. I am sure that you have heard of some of the controversies around Paxil or some of the controversies around Vioxx. There are people who have been seriously harmed if not died as a result of the failure to be fully informed as to the consequences of taking particular medications. This bill is intended to make sure that that doesn't happen in the future. Thank you Mr. Chair.

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

Representative **CAMPBELL**: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. This was originally my bill when I put it in, but I found out I put it in too late so I signed on as a chief co-sponsor with Representative Lerman. Now he told you about all the technicalities about Vioxx and all that, but how about the latest one, Viagra. Not only does it block the blood somewhere, but it blocks it in the eyes as well and is causing blindness and that is not a joke either. The drug companies in PhRMA have discussed this with our committee and the dude from PhRMA said one day that I don't think the people in Maine know who PhRMA is and I told him that it wasn't a farmer down the street milking cows. But they are also running ads for Viagra that are totally disgusting. They show the woman with her finger calling the guy forward. I imagine the children sitting there watching, must be asking mom and dad what they are talking about and what this blue pill is for.

I signed onto this bill because I think that it is time that the drug companies' stop lying to us and buffalooing us. We had Vioxx, now we got the Viagra. They got all upset when Paris Hilton made an ad the other day with a big hamburger and hosing herself down, but the ads for the drug companies don't seem to bother anybody. I signed onto this bill with Arthur and I hope that you will follow my light and support this bill. Thank you.

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

Representative **BRAUTIGAM**: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I want to just briefly share a couple of details on two of the products that have been called into question by some of the previous speakers. The GlaxoSmithKline product Paxil, an antidepressant, has had five studies, four of which had a negative outcome and never saw the light of day, and failed to show that the drug was efficacious and also suggested increased suicide among children. Glaxo failed to disclose these studies and otherwise failed to inform general practitioners of the results of this study even if they didn't disclose the studies themselves. The other drug, Vioxx, is a MERC product that you have probably all heard about. However, I would just remind the body that in March of 2000 a MERC research director had concluded, based on nonpublished studies, that there was, "a clearly elevated risk of heart attack from the use of Vioxx." It wasn't till October 5, 2004 that it was revealed that 27,785 heart attacks and sudden cardiac deaths were attributable to Vioxx. In fact, at the time, training materials published by MERC regarding Vioxx listed several thorny health related side effect questions that might come up and urged the employees to "dodge" these questions. There is a great deal of questions concerning the integrity of some of these business practices and a certainty in my mind that this is far from a transparent area. The public health would benefit greatly from the disclosure of these clinical trials and I urge your support of the bill. Thank you.

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. Most of us do not support drug companies that engage in unscrupulous activities, but I didn't support this bill because though it is well intentioned it addresses a problem of lack of information to the public on the results of clinical trials of medications. It says that as of October 15, 2005, if this passes, a medication may not be presented in a regulated advertisement in Maine unless the medications clinical trials have been posted on the publicly accessible internet site for the National Institutes of Health or other publicly accessible website for any clinical trial conducted on or after October 15, 2002. It is requiring only clinical trials that were in the last three years and currently under way. The particulars of what needed to be posted were listed.

The bill also states that on April 1, 2006 the manufacturers of medications provided through the MaineCare program will pay \$1,000 tax per year to the Department of Health and Human Services to cover the cost of four things – overseeing the implementation of this bill, maintaining a publicly accessible website to which manufacturers are to post their clinical trial information, accessing the extent of Maine residents harmed by the use of these drugs and undertaking a public education initiative. The penalties for noncompliance have been named.

There was a lot of opposition testimony to this bill and it went like this. The clinical trial data is already posted on the National Institutes of Health website and on another specific website called www.clinicaltrials.gov. The opposition suggested transferring this information to the already existing Department of Health and Human Services website. They said that the statute is in conflict with federal prescription drug advertising and labeling regulations and in conflict with constitutional provisions protecting commercial speech. The opposition indicated that the federal law already requires labeling and packaging inserts with information and has a clinical trials databank at the National Institute of Health's Library of Medicine.

Recently, we were given articles and reprints from the New York Times, which were, I think, referred to by the good Representatives indicating that the lack of compliance with reporting clinical trials and particularly Pfizer, MERC and GlaxoSmithKline, who actually paid a \$2.5 million fine in New York. The questions that arise are whether we can conclude that these companies are going to pay more attention to us in Maine then they will to the federal government? They can respond that long-term results of clinical trials are still under study and the final results are not known and, as we have already heard in testimony today, long-term results are important. Does it do any good to deem 300 companies, which is the number supplying drugs for our programs, \$1,000 each a year to provide information on clinical trials? How many people in Maine have access to a website? How many people will be able to understand the scientific results that are listed? No major drug manufacturers are based in Maine and I suspect that we need them and their products more than they need us. Few if any television ads for medications originate in Maine. They are mostly on national networks.

Is Maine, in the role of Mighty Mouse ready to take on all these giant international corporations? I think that there may be better ways for us to get the information out to the public and not insult the 300 companies that who furnish our medication supply. This bill has no sunset and that should be noted because the \$1,000 tax per companies will continue. For this I oppose the bill. Thank you.

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

Representative **CAMPBELL**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. Now we will get onto the serious side. "Senate Republicans, FDA needs a watchdog. Senate Finance Committee Chairman Charles E. Grassly (R-Iowa) said that he is drafting legislation to create such an office. The FDA has become too complacent about safety and too cozy with the drug companies." This is the Republicans now. "Grassly declared in his speech to the Consumer Federation of America that he was working on legislation with Senator Christopher J. Dodd (D-Connecticut), a member of the Senate Health Education, Labor and Pensions Committee, which has oversight authority for the FDA." Now get this one, "The Bush administration has already acknowledged shortcomings in the FDA systems." I think that that kind of shoots the good doctor right out of the water. 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. It is certainly a hard act to follow, but I do want to express a thank you to the good Representatives from Newfield and Augusta for bringing this bill forward. In addition, we had what was sort of a first step in the right direction with a bill coming from the good Representative from Farmington, Representative Mills.

The good Representative from Auburn, Representative Shields, mentioned who are we in Maine to be Mighty Mouse and I thank him for that comment because I would say that the State of Maine has been Mighty Mouse a number of times when it comes to the pharmaceutical industry. We have won at the highest level of court in this nation and I think that the State of Maine has led with a prescription drug policy that has been helpful to the entire country and I would say that these Representatives who brought this bill forward have taken us another step in the right direction with one of the major prescription drug issues that we certainly read about in the national news and media. I will tell you honestly about our committee process.

When this bill first came to us we heard immediately from the pharmaceutical industry. They were putting the clinical trials on a website voluntarily and I will tell you that I don't often feel this way, but I said why does Maine need to reinvent the wheel? If the prescription drug companies are already doing this do we really want to use state resources, energy, a fee and all that kind of stuff to make this happen?

Well, in the month and more that we worked this bill article after article in national newspapers, many of which you have seen on your desk today have said that while the pharmaceutical industry said that they would go about doing this, publicly disclosing clinical trial information in the wake of so many scandals – Vioxx, Bextra, Celebrex and old ones like Phen-Phen, Zoloft for kids, Paxil – the national media has been following this and it has come out in the past couple of weeks that the supposed good faith efforts being made by PhRMA and the drug companies are not happening. They have been criticized by the American Medical Association. They have been criticized by numerous trade journals for not doing what they said they were going to do. They said that they were going to step up and do this in a voluntary way. We appreciated that and they are not doing it.

I don't think that you need to be convinced as to why more information on the clinical trials is important. I think that you have probably heard that. The good Representative from Auburn raised an important point about the fact that if we put this on a

website somewhere it may be helpful. Even if we just link people to websites that are providing clinical trial information that is needed. We heard testimony from doctors and clinicians. I have a feeling that the average consumer is not going to sit down and read complicated clinical trial information, but the people who need access to this information are our doctors, our clinicians and the people who are describing drugs and are pharmacists, etc.

I want to close, Mr. Speaker, by saying that this is a bill that I cannot imagine anyone of us have more than a few people in our district who would not think that this was a good idea. The vast majority of the public is behind transparency. They are frustrated with what has been going on with these clinical trials and I would highly recommend that you support the Majority Ought to Pass. I think that it is in the best interest of all of the people in the State of Maine. The only people that we heard from who don't like this are the drug companies. We are here to represent the people of Maine, not the drug companies and I urge your support. Mr. Speaker when the vote is taken I request the yeas and nays.

Representative **PINGREE** of North Haven **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 Elliot, Representative Lewin.

Representative **LEWIN**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I have just a few comments to make. We are talking about advertising that is placed in the state of Maine. Some of you may not be aware when you are purchasing electronic or print media you frequently buying a package. The northeast is a typical package. When those packages are sold they do not just take the State of Maine out for anybody. You buy the package. You get the package. I think that it is very difficult to track some of this.

I have some concerns, first, how are we going to police it? How are we going to met out the fines or whatever? Who is going to monitor it and what kind of staff is it going to take charge of these some 300 companies and monitor all of this so that it can be policed and so that it can be prosecuted?

I have some other information from the president and CEP of the Maine Association of Broadcasters and I think that some of this is very interesting. She questions what is advertising and is suggesting that the United States Supreme Court has deemed some of these laws in the states, much like what we are trying to pass here today, as unconstitutional so I do question the constitutionality of it. Over 99% of the pharmaceutical advertising that reaches this state comes from outside of this state through network broadcasting and cable television. It isn't generated here in this state. She further suggests from an informal study that was done of television stations in Maine that there is only \$250 that are spent on pharmaceutical advertising in this state annually. That is not a whole lot of money. She would consider this law redundant because the federal law is already in place and the existence of a federal database for developing this sort of a database would be burdensome. I think that she is quite right. If we are really upset about this and we think that this is a terrible thing than we should be talking to our congressional people and having them do something about it at a federal level where the law already exists. Thank you.

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

Representative **GOLDMAN**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I would like to comment on this as a consumer and as a member of a family that has paid a lot of attention to the pharmaceutical and drug marketing industries in the past few years. My husband has been deeply involved with those issues for a number of years and I also.

What I really feel that this bill is about is more than the actual mechanism that is mentioned in the bill, that pays attention to the clinical trials. I agree with people who have said that there are not many people who actually, as a consumer, tune into their Internet provider and seriously search for those. If they do find them it is sort of like the information that is in the drug package that you buy. It is a lot of fine print and is sometimes difficult to decipher. What I do believe that this bill can do though is to put on notice that the State of Maine is paying attention to these things. There are many, many times when my family and I have felt that we are between laughter at some of the drug ads that are on there and something is advertised and then while a very happy scene is shown on front of you there is all this warning, be careful or you may fall dead if you take this product. It is about time that, as a culture, we started paying attention to what has been happening to the widespread advertisement of drugs that may or may not be something that we personally want or need and that may or may not be safe for us. This may not be a complete package as far as the bill is concerned, but the issue is an important one and I agree with my good colleague Representative Campbell that it is of great interest to the senior community. If any of you are old enough to receive the AARP bulletins you will find a lot of information there where people are becoming much more aware of what the ups and downs and various kinds of problems associated with the drugs being prescribed are. So, I do intend to support this bill and I think that it is going to become an increasingly important issue for us to pay attention to. Thank you Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Newfield, Representative Campbell. Having spoken twice now requests unanimous consent to address the House a third time. Is there objection? Chair hears no objection, the Representative may proceed.

Representative **CAMPBELL**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I only rise now to apologize to my good friend Dr. Shields for my last statement.

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. I have prescribed Vioxx and thank God none of the people that I prescribed it to had a heart attack. I feel responsible for what I prescribe and you are darn tooting I will look that up because I want to know that anything I am giving is not going to react adversely to the person that I am giving it to nor to any other medication that they are taking. That is my responsibility as a prescriber and I take it seriously. This will help me be better at what I need to be doing. The other thing is that this is voluntary nationally. Why the heck shouldn't it be regulated to be as open as possible in Maine? There is nothing that prevents the drug companies from doing it nationally just because we are asking them to do it in Maine. Thank you.

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

Representative **LINDELL**: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I will make this brief. I

remind you of the story of Prometheus. Prometheus went and stole the fire from the gods and brought it to mankind and gave him fire. His penalty was to be chained for eternity and to have his flesh eaten by vultures. Are the drug companies now our Prometheus? They have brought us life saving drugs. There are constituents of mine that I know live today thanks to the life giving benefits of these new therapies. They are expensive, they are costly and our federal government has made the decision to grant these companies' patents in order to encourage them to bring these life-saving therapies to market. Who are we to be the vultures that pick at the flesh of these companies? Perhaps one day the Prometheus's of the world will cast off their chains and take back the fire to the gods and leave us in the cold. Let's vote against this bill. Thank you.

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

Representative **BOWEN**: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I don't think that it is productive to get into a referendum here on the drug companies because I question whether this bill will have any effect on them whatsoever. The question, before we start talking about what the effects of this is whether it will have any effect at all. I am reading the amendment and this bill mystifies me. There is all of this language in here about regulated advertisement. Regulated advertisement is a broadcast over the television or over the Internet or in a magazine. This says that beginning October 15 the manufacturer may not present or cause to be presented in the state a regulated advertisement unless that advertisement meets all of these requirements. Are we going to say that drug companies cannot advertise in magazines that are distributed in this state, may not advertise on television that is received over satellite and cable if they don't do this? What effect do we think that this is going to have exactly? I don't understand it! It absolutely doesn't make any sense to me! What we appear to be saying through this bill is that people are watching these ads, they are going to their physicians and they are saying give me these drugs, the physicians are apparently not doing research to find out which drugs are harmful and are prescribing these drugs – remember people can't buy them off the shelf like tires or something – in a professional setting and they are supposed to know what they are doing and to have done the research. We are saying that they are handing out these drugs even though this information is incomplete. I don't understand it.

I made a little speech in here about an empty promise the other day and this seems to me to be another empty promise where we are going to go home and say look at the blow that we have struck against the drug companies for lying to us about Viagra. This is a federal, national problem. My good seatmate here, Representative Campbell pointed out that there is national legislation pending on this. This is not a problem that I think the State of Maine can solve. We need to be sure that our physicians are well trained and that they have the resources that they need and we need to the federal government to take action against the drug companies if action is warranted, but frankly I don't see a reasonable role for us and I certainly don't see how banning drug companies from advertising in magazines and over cable and the internet makes any sense. I ask you to vote against this bill.

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

Representative **LERMAN**: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. This is not a complicated bill. This is not a technical bill. This is not a legal bill in the sense that there is not a lot of gobbledygook. This is really a very straightforward piece of legislation. It simply says that it is

the responsibility of the drug manufacturers to share with the people of the State of Maine what the affects of their drugs are.

With all due respect to Representative Lewin, some of the issue that she raised while relevant to an earlier draft of this bill have all been addressed and there are no legal or constitutional issues and there is no prohibition on advertising. We have actually tried to make it very simple so that the administration of this bill by the state and the compliance by the drug companies is nothing more than they have already said that they are willing to do on a voluntary basis, but have failed to do. It is not a confusing bill. It is not a complicated bill.

The manufacturers said that as of October 2004 they were going to do what this bill says they must do. This is simply to create accountability so that the drug companies are held to their word and to what they said that they feel is a responsible thing to do but have so far failed to do.

When all is said and done I just hope that when you decide how to vote on this bill that you will get away from the issue of the drug companies and look at your constituents. This is really about the people that we represent and us making sure that they are protected. It is to make sure that they have all of the information that they need to be able to make decisions that are going to be of a life and death nature.

We have seen in the past through other cases that there have been other industries that have chosen not to fully disclose the impacts of the use of their products and we have seen that there has been a tremendous amount of injury and death and an enormous amount of expense associated with it. This bill is about protecting the people that we represent so that they don't suffer inappropriately or by omission and by simply not knowing what the potential impact is and that they don't suffer as a result of not having the information necessary to really way the benefits and risks associated with some of the medications that they are considering. I ask you again to support this bill and I ask you again to think about your constituents. We all have more than one person, in fact, many people within our districts, who take medications that are the kinds that in question right now. We don't really know what the consequences are and we don't really know if they do what they are claiming to do or whether the side effects are, in fact, limited to what we have been told the side effects are. Vote for your constituents. Vote for them having the information that they need to make appropriate and thoughtful decisions in managing their health. Thank you Mr. Speaker.

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

Representative CURLEY: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I agree with the comments of my colleague from Augusta, Representative Lerman that we do want to make sure that the medications that our constituents take are safe and that they at least know what the side effects are.

My good colleague from Newfield identified an issue that I agree with. Many of the ads on television are not tasteful, but their not being tasteful has nothing to do with the fact that the medication might be effective. So I would like to separate the fact that they are not tasteful as opposed to whether or not the medication is effective and then talk a little bit about it being effective.

I think that much of this information that we want to put on the web is information that constituents should have. I just looked up Paxil because that was one of the medications that was mentioned and when I Google Paxil it says that it is only approved for adults 18 years or older. In some children and teens antidepressants increase suicidal thoughts or actions. Whether or not you take antidepressants you or your family

should call the doctor right away, blah, blah, blah and on and on and on. It gives the results of the clinical trials and if you go to the website for Paxil there is a link to clinical trials. I think it is good that that information is available and I think that physicians are responsible for talking to their patients about the side effects and I think that we need to give our constituents some credit that they can look at this information and that it is already there if you pull out that sheet that comes with your prescription when you buy it. My only complaint is that it is getting too small to read, but it is there and I think that our constituents can make a decision. This information is already available. I support the effort of the bill and I think that we should make sure that the information is available, but it already is and because of that I will be opposing this motion. 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 stand only briefly to thank the good Representative from Scarborough for her comments and her support for the concept that citizens, and especially the professionals who are prescribing drugs to us should have the information that they need and I think that she is right that the information on Paxil is available now. A number of the major drugs that have been key sources of controversy like Paxil and like Vioxx, now give us access to a lot of the clinical trials that show us that there could have been problems with these drugs. The problem is that that there are hundreds and thousands of drugs currently on the market and we only find out about some of the concerns with these drugs after there have been major studies that have show that there are dangers. So, our effort with this bill is not about advertising, it is about regulating clinical trials or at ensuring that the public has access to information about clinical trials and it tries to provide some way of urging them to do this.

The good Representative from Rockport said that the federal government is already considering this and yes, there are members of the federal government who are considering this, but I don't think that anybody should be under the illusion that the federal government is about to pass a major reform of this. This has been an issue for more than a year and there has not been federal action. I know that many of those on the other side of the aisle are strong believers that if the federal government doesn't do it then we, as states, have the right to take action and I think that that is what this bill is attempting to do. Thank you Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Oakland, Representative Nutting.

Representative NUTTING: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I rise only to belabor the issue. I don't pretend to know much about advertising, but I do know something about drugs. I can explain that to you later. The information that we seek to put on a website at the cost of hundreds of thousands of dollars and several jobs is already currently available and is available for nothing and the latest studies about clinical reports and side effects. I am not sure how many of you have seen that when you have prescriptions filled you get a one page monograph that gives you what the drug is used for, possible side effects, stay out of the sun, don't do this, don't drink alcohol with it. That is a monograph and that is a one page piece of what, in the same size printing font would be a forty page document that is curled up and rolled into every prescription bottle that is on the shelf in your pharmacy. If you ask for it your pharmacist will give you one. There is no rule that says he can't give you one and he would be glad to and you can take it home and learn all about clinical studies and side effects and you can

learn that 1% of the people who take this medication that saves lives could die from a bad side effect. If that is what you want to know it is already available. It is available from AARP as you heard earlier. It is available on the websites. It is available from Consumer Reports. So, if you don't have a computer and you don't have a library you must have a pharmacy because we haven't managed to put all of them out of business yet, just most of them. You can go and get this information for nothing.

I think that I know the results of how we are going to vote tonight and I don't hope to change that. I just hope to give you an idea that the solution is not to create a new bureaucracy to take money away from the drug manufacturers and, therefore, increase what they need to charge us for the medications that keep us well and keep us alive. The solution is much more simple. If we like this approach with drugs maybe we will like it with something else. Maybe we will like it about soft drinks or beer or automobiles. Do we consider that we might charge automobile manufacturers? There aren't as many of those so instead of \$1,000 let's charge them \$100,000 and we will create an agency and a website and on that website we will explain the crash test results and show pictures of the crash test dummies. Is that where we want to go? I know it is popular to beat up the drug companies and I don't always agree with the drug companies. I think there are lots of things that they can do different and if they asked me I would help them, but this isn't a productive use of our time.

Last night I was struck when somebody says that with all that we have to do and the budget problems that we have are we spending all this time on something that really doesn't amount to much? I think that may have been true last night and I assure you that it is certainly true this evening. Thank you Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Augusta, Representative Lerman. Having spoken twice now requests unanimous consent to address the House a third time. Is there objection? Chair hears no objection, the Representative may proceed.

Representative **LERMAN**: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. With all due respect to the fine Representative from Oakland, Representative Nutting I just want to clarify one thing. There is no question that there is a lot of information available. I do agree that some of it is in very small print and not easy to read, but at the same time you need to understand that the basis of that information is not the result of all clinical trials. The basis of that information is simply the result of those clinical trials that the pharmaceutical companies have chosen to publicly disclose. So, it is not complete information.

Just so we are all clear, let me say that this is not about creating a bureaucracy. We have gone out of our way to keep this very simple. If the pharmaceutical companies come forward and do what they said they would do that would be all that would be necessary. There would be no additional requirement except for them to stand by the word that they gave to the consumers of pharmaceuticals in this country that they would disclose. They have not done that and if they do that then they will comply with this law just by doing what they said that they would do.

The third thing and last thing that I will say is this. This is not a solution looking for a problem. Unlike some legislation that we debate here this is not speculating on what might happen at some point in the future. All you have to do is go back over the last few years and read numerous newspaper articles and see that this issue has affected thousands of people in this country. The failure on the part of the pharmaceutical companies in the past to not fully disclose has resulted in thousands of people being affected by their medications in a way that was absolutely unexpected by pharmacists, by doctors, by consumers, by

patients and, in fact, some people have died as a result of the failure to fully disclose. This is not a solution looking for a problem. This is, in fact, a problem that has affected many, many people in our country and this is an effort to try to create very modest accountability so that our constituents are protected and the pharmaceutical companies are held to their word. Thank you Mr. Speaker.

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

ROLL CALL NO. 288

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

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

ABSENT - Annis, Brown R, Emery, Fischer, Hogan, Hotham, Makas, Marraché, Moore G, Pilon, Richardson M, Sampson.

Yes, 70; No, 69; Absent, 12; Excused, 0.

70 having voted in the affirmative and 69 voted in the negative, with 12 being absent, and accordingly the Majority Ought to Pass as Amended Report was **ACCEPTED**.

The Bill was **READ ONCE**. **Committee Amendment "A" (H-661)** was **READ** by the Clerk and **ADOPTED**. The Bill was assigned for **SECOND READING** Thursday, June 9, 2005.

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:

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

Which was **TABLED** by Representative **DUPLESSIE** of Westbrook pending the motion of Representative **CARR** of Lincoln to **ADOPT** House Amendment "A" (H-666) to **Committee Amendment "A" (H-657)**.

Representative **PELLETIER-SIMPSON** of Auburn moved that **House Amendment "A" (H-666)** to **Committee Amendment "A" (H-657)** be **INDEFINITELY POSTPONED**.

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 am sure that

you want this to be fast and I will try to comply with that. I know that you have heard quite a few stories about this, but basically, there are already plenty standards for the term recklessness in Maine law. It is a standard in the New York code under the tort bill, as it deals with immunity for emergency responders. Reckless or gross negligence is a standard for civil liability in Maine and it is frequently found in situations as an exception to immunity. I will give you a few examples. In Maine, harbormasters are protected under civil liability for negligence, recklessness or bad faith. In addition, teachers are immune from civil liability under the same terms. A medical examiner is also exempt under the same terms. These are some of the examples.

This morning or yesterday we heard that there may be a problem as far as getting insurance coverage under the term recklessness. In the State of Maine, the Maine Municipal Association provides insurance coverage for 480 of the 492 towns and Maine Municipal Association can see no reason why they would not cover it whether it was called reckless or negligent under the present law.

Mr. Speaker this is a very important bill. It is very important to a very small class of people. Those are the people who respond to emergency situations and I would ask that when you cast your vote that you think about that and try to protect those people and, at the same time, protect the Nortons and similar people affected by this. This does still give those people an avenue to the court system. The only thing it does is that it also gives some assistance to those people who have to drive in adverse conditions and at times at high speeds.

Although there is plenty of coverage here, having been on the other side of receiving these summonses as a principal in a lawsuit before that generally happens by you receiving a call from the deputy sheriff that you know pretty well and he wants to meet you somewhere and he serves those papers on you. The last time that I was sued was because I was a supervisor and I was in charge on the night that an accident happened. Not only was I sued, but my lieutenant was sued, the State Police Chief was sued and the Commissioner of Public Safety was sued. This case went on for three years. Although it didn't cost me anything other than the cost of defense there was a lot of cost to myself, to my family and we had to live through this for three years.

The reason that I have taken the time to do this is that I just want to make sure that other people who get caught up in these situations don't have to go through this as well. I would ask that you follow my light. Thank you Mr. Speaker.

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

Representative LINDELL: Mr. Speaker, point of order.

The SPEAKER: The Representative may proceed.

Representative LINDELL: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I have been reading Mason's and according to Mason's the motion to indefinitely postpone is only to be made on the main motion and also defines a motion to amend as a subsidiary motion so my question to the Speaker is whether a motion to indefinitely postpone is properly made on a motion to amend a bill?

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. Let me address the issues raised by the good Representative from Lincoln's proposed amendment. He suggested that in other parts of the law the term recklessness is used. In terms of the operation of a motor vehicle the only time the term recklessness is used is in the context of criminal law. The inconsistency posed by this amendment, with understanding of the good intentions behind it,

is that under the Tort Claims Act if a person who is a government official is operating a motor vehicle in a reckless manner they are committing a crime if you incorporate the definition from the criminal statute and I know of no other that applies to the operation of motor vehicles. If they are committing a crime then there is no indemnification. The Tort Claims Act does not provide that their employer indemnifies the officer or other official. That raises an inconsistency.

Recklessness is an extreme kind of conduct. It is basically criminal conduct in the context of motor vehicles. It is the kind of conduct that warrants, under other statutes, you're being denied insurance if you are found to have committed reckless driving for instance.

Let me go back to the term negligent because in terms of this statute negligent behavior is, by definition, unreasonable behavior. It is not the normal behavior in responding to an emergency call. It is not normal driving. It is not normal emergency response. It is an abhorration by definition. It is not the kind of conduct that most good law enforcement officers and other emergency responders engage when responding to an emergency call. Most officers – probably 99.9% of them – comply with their training and with the protocols and policies that we have on the books and in the official manuals that they are trained by. In very rare occasions there is negligent conduct and those occasions are when somebody violates the policy to such an egregious extent that it becomes unreasonable behavior causing a collision like in the case we are talking about and causing serious bodily injury or death to another person. That is what we are talking about. In fact, in the testimony in the hearing questions were asked about whether, prior to the Maine Supreme Court's decision the governmental entities, police departments and others were, in fact, insured for such conduct and the answer was that they had in fact paid claims for the negligent operation of a motor vehicle in occasional emergency situations and very, very small numbers of them.

The point that I raise in the use of the term reckless is one that I raised in the committee and that is that I find it difficult to believe that a governmental entity covered by the Tort Claims Act would be able to find insurance in the normal market for reckless behavior. It is not the kind of behavior that you can insure for as a matter of public policy just like insurance policies won't cover you if you are caught for OUI, driving under the influence. Your insurance policy won't cover you if you are convicted of motor vehicle manslaughter or some such conduct or driving to endanger, but the negligent standard is a standard that has meaning in the law. I am afraid that if you open it up and change the standard to something called reckless, which we don't really know the meaning of, than you are inviting more litigation and not preventing more litigation and you are posing a question of the insurability of this conduct for the municipalities, counties, state government and other governmental entities that fall within the tort claims act. We are talking about a very small number of cases where negligence may be found. Can we, at all costs, prevent lawsuits from being brought at all? Of course not, but can we allow a compromise here where victims of serious bodily injury or death, victims of egregious, negligent, unreasonable conduct in which an officer does not put on their siren and does not engage in proper emergency conduct and conduct in which a person goes through an intersection and hits school children walking to school. That is negligent behavior and that is what we are trying to capture and put back into the law, the same kind of conduct that was covered prior to the law court decision in Horton less than two years ago. I ask you to vote to indefinitely postpone the amendment with all due respect to the Representative from

Lincoln. I share his purposes and I think that the bill as we voted on it last night accomplishes the same purposes. Thank you.

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 just want to go over some of the things that were just brought up. I want to repeat that I have checked and spent time while others were caucusing to obtain this information. This is information because I have talked to people to get this information and I am not just making it up. Maine Municipal Association provides insurance coverage for 480 of the 492 towns so they are the people who cover and the information that I got is that it would not make a difference whether the term was used in the tort claims whether reckless or negligent. The State of Maine is self-insured through a risk pool, as are the counties. As far as getting insurance that really should not be a major problem by changing the term.

The term reckless is definitely used in the Civil Code in Maine law through court decisions and the way that it is written and I have given reference to that in the areas in which that is covered and that term is used. Mr. Speaker when the vote is taken I would ask for a roll call.

Representative **CARR** of Lincoln **REQUESTED** a roll call on the motion to **INDEFINITELY POSTPONE House Amendment "A" (H-666) to Committee Amendment "A" (H-657)**.

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 Turner, Representative Bryant-Deschenes.

Representative **BRYANT-DESCHENES**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I just wanted to say on the record that I was away last week having surgery and I had joined Representative Carr on this bill when this amendment had been proposed in committee and I would like to also say that I join him in that tonight. I would like to say as well that I disagree with one of his statements a few moments ago when he said that this would affect a very small class of people. I think that what this is going to do is create a lot more litigation. It is going to create a lot of settlements because money will be paid to avoid long protracted lawsuits. It will have a chilling effect on response times and it will have a chilling effect on responders doing these jobs.

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

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

The SPEAKER: The Representative may proceed

Representative **MILLS**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I hate to interrupt but I would like to know whether or not the Gentlewoman is addressing the amendment or whether she is addressing the underlying bill, which we debated last night. I think that the only proper points of debate relate to this amendment and the Indefinite Postponement motion.

On **POINT OF ORDER**, Representative **MILLS** of Farmington asked the Chair if the remarks of Representative **BRYANT-DESCHENES** of Turner were germane to the pending question.

The Chair reminded Representative **BRYANT-DESCHENES** of Turner to stay as close as possible to the pending question.

Representative **BRYANT-DESCHENES**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I guess the statement that I was making was that if we leave this as it was that is what I feel the effect would be.

I have been someone who has had people in my family who have benefited from very fast response times. Last session when I missed the first couple of months because my husband had five

heart attacks and were told a couple of times he wasn't going to make it through getting from here to Maine Medical Center and it was only because there was a quick response time that he did make it. I think that this amendment is going to prevent some of the consequences that we would find taking place if we do not pass this. As far as whether or not there is a remedy and whether or not there is litigation and whether or not people like he Nortons have any remedy available to them, is something that we did discuss in committee and I think in their case the Legislature could have provided an opportunity for them to file a lawsuit. To create something that does affect a large class of people because of one incident would be a mistake. 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. I have great respect for Representative Carr. He is a person of steady judgment and I want to offer a couple of distinct reasons why I support indefinite postponement. This would apply, even in the amended version that we are discussing, not just to law enforcement officers, but it would apply in a whole myriad of situations involving government employees. Consider this example. Let's say a Department of Human Services employee makes a decision about whether or not to remove a child from the home in a child protective case. The decision whether or not to do so is discretionary and would be immune and would remain immune. However, if that child protective worker drives the child away from the home and does so in a negligent way in which the child is terribly injured or killed that would also be a situation where we would be saying that we would not hold them responsible for their negligent acts. That doesn't make sense to me. It doesn't make sense at all.

With regard to law enforcement officers, I have great respect for them, but the concept applies equally. Every law enforcement officer that I have spoken to about the case that prompted this legislation has agreed with me that that conduct, unlike the great majority of law enforcement officers, that conduct in that case was negligent and I have talked to several officers about it and they all concur. Should the municipality in that case be held responsible for their actions? I think that they should be held responsible and if the DHS worker drives a child negligently and the child is injured and if in the context of a case a law enforcement officer is negligent then the municipality should take that responsibility. Bear in mind that I said municipality because in earlier discussion of this Representative Greeley expressed concerns that I understand, but would be covered by insurance and wouldn't be coming out of the individual officer's pocket. It would simply mean that the municipality would assume that responsibility. That is the reasonable way to hold people responsible for those actions because I can tell you, looking at the mother in this case, where she saw with her own eyes her two sons die right in front of her, that some responsibility should be assumed. That doesn't denigrate a DHS worker, it doesn't denigrate a law enforcement officer, it is simply applying responsibility as it should and won't chill conduct.

The last point I have heard is that it will chill conduct in the future and create litigation in the future. From the 1940's up until this case, this was the understanding and it was rarely that it came up, but in those cases where it does come up it is reasonable. It is reasonable that people should be held responsible for negligent acts. That is all it does and we will just be going back to the situation that we had for 40 or 50 years. I thank the Men and Women of the House.

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

Representative TUTTLE: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I have been very silent on this issue. As most of you know I have been an Emergency Medical Technician for the last 30 years and I have listened to debate very carefully. I will be supporting this amendment by Representative Carr because it may not be the best amendment, but makes the bill a little bit better. I think that as we progress in the debate there is going to be much discussion on what we should do, but I have been in those situations and I have talked to my fellow EMTs and fellow firefighters on this issue and I can remember different occasions and one in particular where I was going Code 3 from Freeport to Maine Medical Center and a car got in back of me and I was going a little over 70 and the car stayed in back and then passed me. What would have happened if the car had run into us? I mean what would be the liability then?

For any of us in this profession you don't do it for the money you do it because being a police officer or an Emergency Technician comes from somewhere in your heart. In my heart I think that the present bill without the amendment isn't the right thing to do. I am supporting the amendment and I am asking you as a 30-year member, as an EMT, to support me and to support Representative Carr.

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. I must speak against the proposed amendment and in favor of the motion to indefinitely postpone and the reason I am doing this is because if this motion passes and the standard now becomes reckless conduct that means that we are leaving behind the standard of negligence, which is that the officer has to follow a duty of care. In other words, the officer or the governmental employee, if this amendment passes, does not have to be careful and that is the wrong message to send out. We train our governmental employees to follow standards of care and now we would be passing a law that would, in fact, tell them that they don't have to worry. If you are performing a discretionary function you don't have to be careful. Forget what we told you about your training for being careful. It only matters if you are reckless. That is not the protection that we need to give to our people in the State of Maine. That is not the kind of instruction that we need to give to our governmental employees. That is why I will be voting in favor of the motion to indefinitely postpone.

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 this, but I do want to read to you from the testimony of the Maine Chiefs of Police Association from the public hearing on this bill, "The Maine Chiefs of Police Association agrees that law enforcement officers who, although may be acting under the color of law and who are exercising discretionary functions covered by qualifying immunity under the Maine Tort Claims Act, should be held accountable for their negligent and reckless acts when operating a governmental vehicle without due regard for the safety of the public, a much higher standard established by the Legislature for operating police vehicle and responding to emergencies." Even the Chiefs of Police, though opposed to the bill, are saying that they should be held accountable for negligent operation of a government vehicle. I don't know why we are continuing to have this debate. I think that the general public would think that we expect our government employees to drive in a way, which is not negligent

and if they are negligent that they be held responsible for that action if a citizen is injured. 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 hate to even get up twice and speak with regard to this issue. I am not fond of getting up and speaking and some of you probably aren't that fond of having me do so and I appreciate your patience. My concern over this personally is what is negligent because I am concerned that it is hard to compete with the good Representative from Farmington, Representative Mills, an educated person and the Representative from Bangor, Representative Faircloth. These folks are very educated and great debaters and I certainly can't compete with them. But, I can tell you what it feels like to be a cop. I can tell you what it feels like to get the call of the domestic, which in the last shift I worked was a situation that I responded to and my concern, as far as the police officers are concerned, if this amendment is postponed, is that when I get the call and I am in the car and put the lights and sirens on and start to head for the call I am being updated by the dispatcher while I am driving and the dispatcher says he is at the back door and kicking the door and I'm going 45 miles an hour, and the next transmission is that he has got her on the floor and a knife and I'm going 45 miles an hour, because what is negligence? Can someone explain to me what is negligent? Is 7 miles over the speed limit negligent? Could an expired inspection sticker by one month on my cruiser be negligence? Could a bad tire when they do the vehicle autopsy be negligent? If I am driving 10 miles an hour over to get to that emergency call and save that person's life in a domestic situation or some other emergency and somebody comes through a red light and hits me on the side and it is determined that I was going ten miles over the speed limit is that negligence? Is that contributory negligence? I am not a lawyer I don't know. Even if I win my case in court I still have to take time off from work and defend myself and somebody has to pay. That is my concern. What is negligence? 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 welcome the question because I think it is important for readers of the legislative record, courts and what not, to understand what we believe negligence is under these circumstances. I whole-heartedly agree with the folks who have spoken earlier about the need to protect law enforcement officials and other emergency responders in responding to legitimate emergencies. We are not suggesting that anyone be sued for going five or six or seven miles an hour over the limit. In fact, we already provide immunity from the criminal statutes for emergency responders when they have blue lights and sirens going, in the case of police officers. We provide the immunity from the criminal statutes for right of way purposes, for speeding purposes and that kind of thing.

Negligence, in the context of the response to an emergency or high-speed pursuit is a pretty serious breach of the duty of due care, more serious perhaps than in the context of other situations because negligence takes into account the context of a persons acts. When they are responding to an emergency situation and they are acting in an emergency fashion that is all taken into consideration. So the violation of the duty of due care is something different than a violation of due care would be in ordinary traffic circumstances. For instance, if you were responding to a minor fender bender and you were going 110 mile an hour to respond to what you understood to be a fender

bender. That might be negligent if your actions were the primary cause of somebody else's injury in a collision. If you were going ten miles an hour over the speed limit I doubt that they would be, but that is also why we have high-speed pursuit policies. If an officer is trained in accordance with the standards of the criminal justice academy and if the officer basically complies with the high speed pursuit policy or any other protocol applicable they are not going to be found negligent or sued, but if they are in egregious violation of that policy and are going 50 miles over the limit in a crowded situation like Route 302 in Raymond in the Horton matter and the officer was speeding, distracted and picking something up off the floor and did not have her siren on and was egregiously violating the protocol that 99.9% of all law enforcement officers and first responders would comply with, than that is negligence. I hope that that satisfies the inquirer's question. I would love to give more examples, but I know that people want to vote on this matter and I will leave it at that. Negligence is a pretty tough standard. It is not easy to allege or prove negligence in the situation, which involves an emergency response. Thank you.

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

Representative **BRAUTIGAM**: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I just want to make a very quick point of clarification. Whether the standard is recklessness or negligence this is not about the liability of the individual to pay for the consequences that might result from the action at issue. This is about the Maine Tort Claims Act. It is about the liability of the state or municipality and I just want to make that clear because a number of statements have been made to suggest that the person who works for DHS or the police department would have to reach into their own pocket to pay their settlement or award and I don't believe that that is what we are talking about here and I just wanted to clarify that. Thank you.

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

Representative **DUPLESSIE**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I will be voting to indefinitely postpone this amendment and I do have great respect for the Representative from Lincoln, Representative Carr. But, the recommendation the committee's Majority Report used the term negligent sufficiently. We are talking about semantics I believe. You have heard it very clearly spelled out by the good Representative from Farmington, Representative Mills as to what those terms mean. The bottom line is that whatever we do will not affect response times. It should not effect response times. The bottom line is that there is a duty of care and a duty to act reasonable.

I spent twenty-eight years on the City of Portland Fire Department. It is the busiest most congested community in the State of Maine. Every time that I responded on an emergency I was usually driving a ladder truck that weights 12 to 14 tons. When I was going a little over the speed limit or possibly going through an intersection and running the light, I always knew that I could not be negligent and that I had to keep my brain engaged and pay attention to the driving and the traffic conditions and the pedestrians at those intersections, but I knew that I had a duty to act reasonable, a duty to care and that is what I did at all times because I did not want to be negligent in my response. Yes there were close calls at times, but every time you have a close call you learn from it. Believe me the bottom line is that we need to protect our citizens and the current system has not been fair to some of the citizens of Maine. There have been a few times when public employees have been negligent and they should be

found negligent. They will still not have to pay. The insurance carriers will have to pay that, but they do have a duty to act reasonable. Please support the indefinite postponement so that we can get onto the main motion. Thank you Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from York, Representative Moulton.

Representative **MOULTON**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. The starting premise for all of us is that we have accorded the municipalities sovereign immunity so that they can perform some specific functions. In this case it is responding to people in distress, whether it is for medical reasons or for public safety. It is our responsibility here in the Legislature to define that standard by which we deviate from that doctrine of sovereign immunity and we must tread very carefully. Therefore, I would encourage the body to strongly consider the amendment offered by Representative Carr from Lincoln. I have been on both sides. In an earlier life I was a reserve police officer and I received a portion of that training that is given to law enforcement personnel and more recently in civil practice. It is commonly the case nowadays to go after anyone who might have deep pockets and we find emergency response personnel being sued and having to dig into their own pockets to defend themselves in such litigation. I recognize that the Representative from Farmington was saying that we are borrowing from the criminal side. It is quite common in law to borrow from other sections of the law. That is how the law moves and the courts depend upon us, in this situation to define for them the standard that we use. Therefore, since we are in the process of loosening that sovereign immunity slightly to permit more suits of this nature we must still be very careful and I would encourage the body to think strongly against just using the simpler standard of negligence and using instead that standard suggested by the amendment that we are now voting on. I encourage you to vote against the indefinite postponement. Thank you Mr. Speaker.

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 have unfortunately learned a lot about the Maine Tort Claims Act in the last few months. Not being a lawyer I had to read the books and I understand that since 1977 the standard under the exception to immunity for ownership "the governmental entity is liable for property damage, bodily injury or death in the following instances; ownership, maintenance or use of vehicles, machinery and equipment. A governmental entity is liable for its negligent acts or omissions in ownership, maintenance or use of any motor vehicle." Since 1977. I don't think that there is a problem. Raising the standard to reckless is a bad precedent for the safety of the people of Maine or, more importantly, for those few individuals who are harmed by government workers negligently driving an automobile. If the rest of us negligently drive our automobiles and cause an accident and cause some injury to someone our insurance pays. Why shouldn't the municipalities pay for the negligent acts of its employees? Please join me in indefinitely postponing this amendment.

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

Representative **WATSON**: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I am going to try and make this as simple as possible, simple enough maybe so that the lawyers among us cannot understand it. When a judge charges a jury in a civil action involving an accident the judge delivers instructions and tells the jury what negligence is. Negligence based on the legal definition is very simple. It is

carelessness and inattention. It is wandering from the standard of care that a reasonably prudent person would do or how they would act in a similar circumstance. That is what negligence is. Recklessness, on the other hand, is wanton disregard for the dangers presented by a person's actions, so if we change the standard from negligence to recklessness what we are saying is what my colleague from Van Buren said a while ago. We are saying that it is okay to be negligent. Just because you have blue lights and are in pursuit it is okay to be inattentive. It is okay to be careless. It is okay to disregard the normal actions of a reasonably prudent person in similar circumstances. That just doesn't wash. It just doesn't wash. Recklessness is not a standard that needs to be applied in this case. Negligence is simple. It is easy to understand and it should remain so. I encourage you to vote in favor of indefinite postponement. Thank you.

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 have only been an attorney since 2000 and I have only done *pro-bono* practice because I have met a lot of people in my district who have needed it. I have very little experience in criminal court but I think that one thing I feel is very easy to understand and very simple to present is the fact that what we are discussing here is two different concepts. One is what is considered a matter of law, which is all the discussion about duty of care and standard of care, which is determined by the judge who would be sitting in the case. We have, in addition to that what is a question of fact and that is what happened in all of these instances? Basically, the bottom line here is that all of these things are not determined by what is said here tonight. They are going to be determined by a judge in a court of law and either a jury or the judge, depending on the way the trial is set up. We are not talking about defining this tonight and solving the problem. We are talking about laying out something that is going to be decided in more litigation and it is going to create more expensive insurance for the municipalities and not having the amendment is what I consider a cause of that. Thank you.

The SPEAKER: A roll call has been ordered. The pending question before the House is Indefinite Postponement of House Amendment "A" (H-666) to Committee Amendment "A" (H-657). All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 289

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

NAY - Austin, Bierman, 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, Finch, Fletcher, Flood, Glynn, Greeley, Hall, Hamper, Hanley B, Hanley S, Jacobsen, Jodrey, Joy, Kaelin, Lansley, Lewin, Lindell, Marean, McCormick, McFadden, McKane, McKenney, McLeod, Millett, Moulton, Muse, Nass, Nutting, Ott, Pinkham, Plummer, Rector, Richardson D, Richardson E, Richardson W, Robinson, Rosen,

Seavey, Shields, Stedman, Sykes, Tardy, Thomas, Trahan, Tuttle, Vaughan.

ABSENT - Annis, Berube, Emery, Fitts, Hogan, Hotham, Makas, Marraché, Moore G, Pilon, Richardson M, Sampson.

Yes, 70; No, 69; Absent, 12; Excused, 0.

70 having voted in the affirmative and 69 voted in the negative, with 12 being absent, and accordingly **House Amendment "A" (H-666) to Committee Amendment "A" (H-657) was INDEFINITELY POSTPONED.**

Subsequently, **Committee Amendment "A" (H-657) was ADOPTED.**

The Bill was **PASSED TO BE ENGROSSED as Amended by Committee Amendment "A" (H-657)** 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 (7) Ought to Pass as Amended by Committee Amendment "A" (S-283) - Minority (6) Ought to Pass as Amended by Committee Amendment "B" (S-284) - Committee on UTILITIES AND ENERGY on Bill "An Act To Amend the Maine Wind Energy Act"

(S.P. 477) (L.D. 1379)

Which was **TABLED** by Representative BLISS of South Portland pending **ADOPTION of Committee Amendment "B" (S-284).**

Representative FLETCHER of Winslow **PRESENTED House Amendment "A" (H-667) to Committee Amendment "B" (S-284),** which was **READ** by the Clerk.

The SPEAKER: The Chair recognizes the Representative from Winslow, Representative Fletcher.

Representative FLETCHER: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I would just like to explain briefly what this amendment does. In the amendment that came from the other body there was a provision that talked about long term contracts and that could raise some concerns so to make sure that we have clarity we are taking that clause out of this amendment. The other thing was that there was some non-conformity of report dates, January 1, 2006 versus March 1, 2006 and this amendment makes that clear. Thank you very much Mr. Speaker.

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

Representative BLISS: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. While I may obviously have preferred a different outcome on the earlier vote I want to thank my colleague the good Representative from Winslow for presenting this amendment. I think that it goes a long way to clearing up some of the issues that we were concerned about in the original amendment as it was attached. I heartily encourage my colleagues to support this and move forward with the bill. Thank you.

Subsequently, House Amendment "A" (H-667) to Committee Amendment "B" (S-284) was **ADOPTED.**

Senate Amendment "A" (S-322) to Committee Amendment "B" (S-284) was READ by the Clerk and **ADOPTED.**

Senate Amendment "B" (S-341) to Committee Amendment "B" (S-284) was READ by the Clerk and **ADOPTED.**

On motion of Representative FLETCHER of Winslow, the House **RECONSIDERED** its action whereby **Senate Amendment "B" (S-341)** to **Committee Amendment "B" (H-284)** was **ADOPTED**.

On motion of the same Representative, **Senate Amendment "B" (S-341)** to **Committee Amendment "B" (H-284)** was **INDEFINITELY POSTPONED**.

The **SPEAKER**: The Chair recognizes the Representative from Winslow, Representative Fletcher.

Representative **FLETCHER**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. Just for clarity, we need to postpone Senate Amendment "B" which is in conflict with Amendment (H-667) this is just making sure that we do not have duplication and conflicting amendments. Thank you very much Mr. Speaker.

Subsequently, **Committee Amendment "B" (H-284)** as **Amended by House Amendment "A" (H-667)** and **Senate Amendment "A" (S-322)** thereto was **ADOPTED**.

The Bill was assigned for **SECOND READING** later in today's session.

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

SENATE PAPERS

Non-Concurrent Matter

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

(H.P. 365) (L.D. 490)

Majority (7) **OUGHT TO PASS AS AMENDED** Report of the Committee on **LABOR READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-555)** in the House on June 7, 2005.

Came from the Senate with the Minority (5) **OUGHT NOT TO PASS** Report of the Committee on **LABOR READ** and **ACCEPTED** in **NON-CONCURRENCE**.

On motion of Representative **DUPREY** of Hampden the House voted to **RECEDE AND CONCUR**.

SENATE PAPERS

Non-Concurrent Matter

An Act To Replace the Interagency Task Force on Homelessness and Housing Opportunities with the Statewide Homeless Council

(S.P. 624) (L.D. 1678)

(C. "A" S-320)

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

Came from the Senate **PASSED TO BE ENGROSSED** in **NON-CONCURRENCE**.

The House voted to **RECEDE AND CONCUR**.

REPORTS OF COMMITTEE

Divided Report

Majority Report of the Committee on **CRIMINAL JUSTICE AND PUBLIC SAFETY** reporting **Ought Not to Pass** on Bill "An Act To Require the Secretary of State To Collect Information on Operating-under-the-influence Convictions from Other Jurisdictions before Issuing a Driver's License in Maine"

(H.P. 1150) (L.D. 1632)

Signed:

Senators:

DIAMOND of Cumberland
NUTTING of Androscoggin

CLUKEY of Aroostook

Representatives:

BLANCHETTE of Bangor
GERZOFISKY of Brunswick
GROSE of Woolwich
PARADIS of Frenchville
HANLEY of Gardiner
SYKES of Harrison
CHURCHILL of Washburn
DAVIS of Augusta
PLUMMER of Windham

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

Signed:

Representative:

GREELEY of Levant

READ.

On motion of Representative **BLANCHETTE** of Bangor, the Majority **Ought Not to Pass** Report was **ACCEPTED** and sent for concurrence.

Majority Report of the Committee on **CRIMINAL JUSTICE AND PUBLIC SAFETY** reporting **Ought Not to Pass** on Bill "An Act To Create the Crime of Vehicular Manslaughter for Persons Who, while Committing a Traffic Infraction, Cause the Death of Another Person"

(H.P. 784) (L.D. 1141)

Signed:

Senators:

DIAMOND of Cumberland
NUTTING of Androscoggin
CLUKEY of Aroostook

Representatives:

BLANCHETTE of Bangor
GERZOFISKY of Brunswick
GROSE of Woolwich
PARADIS of Frenchville
HANLEY of Gardiner
CHURCHILL of Washburn
GREELEY of Levant
DAVIS of Augusta
PLUMMER of Windham

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

Signed:

Representative:

SYKES of Harrison

READ.

On motion of Representative **BLANCHETTE** of Bangor, 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**.

On motion of Representative **TUTTLE** of Sanford, the House adjourned at 7:11 p.m., until 9:00 a.m., Thursday, June 9, 2005.