

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

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

Volume III

Second Regular Session

April 7, 2006 - May 24, 2006

Appendix
House Legislative Sentiments
Index

Pages 1488-2248

ONE HUNDRED AND TWENTY-SECOND LEGISLATURE
SECOND REGULAR SESSION
46th Legislative Day
Monday, May 22, 2006

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

Prayer by Pastor Brian Thompson, Brooks Bible Church.

National Anthem by Churchill Elanqwe, China.

Pledge of Allegiance.

Doctor of the day, Rod Chelberg, M.D., Hermon.

The Journal of Friday, April 28, 2006 and Saturday, April 29, 2006 was read and approved.

SENATE PAPERS

Non-Concurrent Matter

RESOLUTION, Proposing an Amendment to the Constitution of Maine To Limit the Rate of Change in Taxable Value of Homestead Land

(H.P. 7) (L.D. 2)

Reports **READ** and the RESOLUTION and accompanying papers **INDEFINITELY POSTPONED** in the House on April 28, 2006.

Came from the Senate with the Majority (6) **OUGHT TO PASS AS AMENDED** Report of the Committee on **TAXATION READ** and **ACCEPTED** and the RESOLUTION **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "C" (H-1014)** in **NON-CONCURRENCE**.

On motion of Representative **WOODBURY** of Yarmouth, **TABLED** pending **FURTHER CONSIDERATION** and later today assigned.

Non-Concurrent Matter

Bill "An Act To Enact the Tax Fairness Act"

(H.P. 359) (L.D. 484)

Minority (5) **OUGHT NOT TO PASS** Report of the Committee on **TAXATION READ** and **ACCEPTED** in the House on April 28, 2006.

Came from the Senate with the Majority (6) **OUGHT TO PASS AS AMENDED** Report of the Committee on **TAXATION READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-812)** in **NON-CONCURRENCE**.

On motion of Representative **WOODBURY** of Yarmouth, **TABLED** pending **FURTHER CONSIDERATION** and later today assigned.

Non-Concurrent Matter

Resolve, Establishing an Apportionment Commission To Develop New Cumberland County Commissioner Districts (MANDATE)

(H.P. 1236) (L.D. 1728)

(S. "A" S-639 to C. "A" H-840)

FAILED of **FINAL PASSAGE** in the House on April 28, 2006.

Came from the Senate **FINALLY PASSED** in **NON-CONCURRENCE**.

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

Representative **GLYNN** of South Portland requested a division on the motion to **RECEDE AND CONCUR**.

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

Representative **BARSTOW** of Gorham **REQUESTED** a roll call on the motion to **RECEDE AND CONCUR**.

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

On further motion of the same Representative, **TABLED** pending the motion of Representative **RICHARDSON** of Brunswick **RECEDE AND CONCUR** and later today assigned. (Roll Call Ordered)

COMMUNICATIONS

The Following Communication: (H.C. 453)

STATE OF MAINE

**ONE HUNDRED AND TWENTY-SECOND LEGISLATURE
COMMITTEE ON EDUCATION AND CULTURAL AFFAIRS**

April 28, 2006

The Honorable Beth Edmonds

President of the Senate

The Honorable John Richardson

Speaker of the House of Representatives

122nd Legislature

State House

Augusta, ME 04333

Dear Madam President and Mr. Speaker:

Pursuant to Title 3 Maine Revised Statutes, chapter 35, we are pleased to submit the findings of the Joint Standing Committee on Education and Cultural Affairs from the review and evaluation of the State Board of Education under the State Government Evaluation Act. In its review, the Committee found that the State Board is operating within its statutory authority.

Sincerely,

S/Senator Elizabeth H. Mitchell

Senate Chair

S/Representative Jacqueline R. Norton

House Chair

READ and **ORDERED PLACED ON FILE**.

The Following Communication: (H.C. 454)

STATE OF MAINE

**ONE HUNDRED AND TWENTY-SECOND LEGISLATURE
COMMITTEE ON EDUCATION AND CULTURAL AFFAIRS**

April 28, 2006

The Honorable Beth Edmonds

President of the Senate

The Honorable John Richardson

Speaker of the House of Representatives

122nd Legislature

State House

Augusta, ME 04333

Dear Madam President and Mr. Speaker:

Pursuant to Title 3 Maine Revised Statutes, chapter 35, we are pleased to submit the findings of the Joint Standing Committee on Education and Cultural Affairs from the review and evaluation of the Telecommunications Relay Services Advisory Council under the State Government Evaluation Act. In its review, the Committee found that the Advisory Council is operating within its statutory authority.

Sincerely,

S/Senator Elizabeth H. Mitchell
Senate Chair
S/Representative Jacqueline R. Norton
House Chair

READ and ORDERED PLACED ON FILE.

The Following Communication: (H.C. 455)
STATE OF MAINE
HOUSE OF REPRESENTATIVES
SPEAKER'S OFFICE
AUGUSTA, MAINE 04333-0002

May 11, 2006
Honorable Millicent M. MacFarland
Clerk of the House
2 State House Station
Augusta, ME 04333
Dear Clerk MacFarland:
Pursuant to my authority under Resolve 2005, Chapter 207, I have appointed the following to the Blue Ribbon Commission on Solid Waste Management;
Representative Robert S. Duchesne of Old Town, Chair
Representative Joanne T. Twomey of Biddeford
Representative Lillian LaFontaine O'Brien of Lewiston
Gregory Lounder of Ellsworth
Should you have questions regarding these appointments, please do not hesitate to contact me.
Sincerely,
S/John Richardson
Speaker of the House

READ and ORDERED PLACED ON FILE.

The Following Communication: (H.C. 456)
STATE OF MAINE
HOUSE OF REPRESENTATIVES
SPEAKER'S OFFICE
AUGUSTA, MAINE 04333-0002

May 11, 2006
Honorable Millicent M. MacFarland
Clerk of the House
2 State House Station
Augusta, ME 04333
Dear Clerk MacFarland:
Pursuant to my authority under Resolve 2005, Chapter 200, I have appointed Representative Marilyn E. Canavan of Waterville to serve as Chair on the Human Trafficking Task Force.
Should you have any questions regarding this appointment, please do not hesitate to contact me.
Sincerely,
S/John Richardson
Speaker of the House

READ and ORDERED PLACED ON FILE.

SPECIAL SENTIMENT CALENDAR

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

Recognizing:

Colonel Mitchell P. Sammons, of Belgrade, Commander of the Maine Wing of the United States Air Force Auxiliary-Civil Air Patrol from September 2002 to April 2006. The Maine Wing emergency preparedness performance level has been recognized by the United States Air Force as one of the best in

the nation, due in large part to Colonel Sammons' leadership. We acknowledge his dedicated service to his State and Nation and we send him our best wishes;

(HLS 1952)

Presented by Representative MOODY of Manchester.
Cosponsored by Senator WOODCOCK of Franklin.

On **OBJECTION** of Representative MOODY of Manchester, was **REMOVED** from the Special Sentiment Calendar.

READ.

The **SPEAKER**: The Chair recognizes the Representative from Manchester, Representative Moody.

Representative **MOODY**: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. During World War II, the Civil Air Patrol was seen as a way to actively use America's civil aviation resources to aid the war effort without grounding them as they did in Britain. The organization assumed many missions including anti-submarine patrol and warfare, border patrols and courier services. Despite being a volunteer force that was untrained in combat, the organizations performance was far exceeding of its expectations. Today, the Civil Air Patrol is a volunteer organization with a strongly aviation minded membership that includes people from all backgrounds and all walks of life. It performs three key missions, emergency services, including search and rescue, aerospace education for youth and the general public and cadet programs. The September 11 attacks on the World Trade Center demonstrated the importance of the Civil Air Patrol as they flew blood to victims of the attacks and also provided the first aerial photos of the Trade Center site. Colonel Sammons served as Commander of the 500 member Maine Wing of the Civil Air Patrol from September 2002 through April 2006. During the post-9/11 period the Civil Air Patrol has been challenged with dramatically intensifying training requirements in order to meet the enhanced missions posed by the war on terror. The Maine Wing emergency preparedness performance level has been recognized by the US Air Force, on several occasions, as one of the top wings in the Nation due in large part to Colonel Sammons' leadership. I commend Colonel Sammons for his unselfish dedication and support of the mission, the Civil Air Patrol, and for his contributions toward improving the security and the safety of Maine citizens. Thank you Mr. Speaker.

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

Recognizing:

the Inn By The Sea, in Cape Elizabeth, recipient of a Green Lodging Certification from Maine's Department of Environmental Protection. The Inn is one of the first hotels in the State to receive the certification, which was awarded to the Inn for its ongoing commitment to aligning business practices with environmental responsibility. The Inn has incorporated water conservation, energy efficiency and solid waste minimization and has created an indigenous landscape to support wildlife habitats. We extend our appreciation to the Inn for its commitment to the environment and send our congratulations on its receiving this award;

(HLS 1988)

Presented by Representative EBERLE of South Portland.
Cosponsored by Senator BROMLEY of Cumberland,
Representative GOLDMAN of Cape Elizabeth.

On **OBJECTION** of Representative EBERLE of South Portland, was **REMOVED** from the Special Sentiment Calendar.

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

Representative **EBERLE**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. It is my great pleasure to have with us today representatives of Cape Elizabeth's Inn By The Sea. In the beautiful State of Maine, our environment is our economy. The Inn By The Sea was awarded this certification after demonstrating their ongoing commitment to align business practices with environmental responsibility. General Manager Tom Petot says, "The challenge to the hospitality industry is to balance an enjoyable visit and an enjoyable guest experience with minimizing our footprint on the earth. The Green Lodging Certification provides us with a framework to measure our success and we are honored to be one of the first six hotels in the state to receive this designation." As part of their business plan, the Inn By The Sea has adopted practices that incorporate protecting the natural beauty of their surroundings and then reinforcing the importance of the environment to their employees and guests through education. "The environmental practices undertaken by the Inn By The Sea are a great example to the entire business community," stated Peter Cooke of Maine's DEP. The Inn By The Sea values the environment of Maine as much as its customers do and demonstrates this in a number of ways from landscaping to energy efficiency. Cooke, who runs the program, hopes Green Lodging Certification will bring heightened awareness to the hospitality industry. Maine's natural environment and resources are widely recognized as vital to tourism, Maine's number one industry. In addition to that certification, the Inn By The Sea has also been designated as a backyard wildlife habitat from the National Wildlife Federation. They run children's educational and fun programs to help create awareness in our younger population. It's just a beautiful example of how the environment can support the economy and visa-versa. Thank you Mr. Speaker.

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

Representative **GOLDMAN**: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I agree with all of the things that have just been said, but it is my great pleasure to say I am a neighbor of the inn. I walk by there almost every morning, except on days like this when I can't. I want you to know that Cape Elizabeth is, in many respects, a little town of different neighborhoods. In our neighborhood, we often identify ourselves as, we live near the Inn By The Sea. The people who run the inn, Maureen McQuade and others who are here today, ought to be thanked by many people, including myself, for running a business that is a successful business, but that also takes into consideration our needs. We have many families stay there because we live in a small house and we don't have enough bedrooms. They're very welcoming and opening to that. We had our latest family wedding there. When you talk about the environment, the flowers there are beautiful, but they are not exotic. They are what is native to our area. As a gardener myself, I appreciate the work that it takes. I also appreciate the fact that this is an inn that has welcomed people who have pets. On my walks in the morning, I often walk along with people who are staying there who have very interesting dogs and who care for them as if they were members of the family. I know that they appreciate the inn having that kind of welcoming. So, if I could give an award this morning I would give them the good neighbor award in addition to the environmental award. Thank you 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. You put significant pressure on me having to show off my best foot at this point. I too am a neighbor of the Inn By The Sea, although from the other direction as my good friend the Representative from Cape Elizabeth. For a long time the Inn By The Sea has been the inn of choice for folks who come visit me from California where, as you know, I'm from. I am their good neighbor and they are mine. More important than that though, as Chair of the Utilities and Energy Committee, as someone who has worked for a long time to try to emphasize sustainability in this state, I am delighted and extremely proud of the work that the inn has done. Not because anybody said they had to do it, not because their municipality required it, but because they know that it's the right thing. So, I think it's terrific that we're honoring the inn today. I'm delighted that they're here to hear our words about them. It certainly is my hope that those of you from other parts of the state who make your periodic pilgrimages to the South Portland/Cape Elizabeth greater metropolitan area will consider stopping at the inn and enjoying their hospitality as well as the fabulous beach where they are located. Thank you Mr. Speaker.

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

Recognizing:

John Bagnulo, of Freeman Township, who became the first person from the State of Maine to climb to the summit of Mt. Everest, the tallest mountain in the world. Mr. Bagnulo, a graduate of Mt. Blue High School, left his position as a professor at the University of Maine at Farmington to pursue his dream of conquering Mt. Everest. Mr. Bagnulo and his climbing partner, Bill Yeo, of Durham, chose to climb without guides from the less-traveled Chinese side of the mountain. The two men were also collecting soil samples from Mt. Everest for an environmental study at the University of Southern Maine. We acknowledge John Bagnulo's extraordinary feat of courage and determination and we congratulate him on his achievement;

(HLS 1996)

Presented by Representative SAVIELLO of Wilton. Cosponsored by Senator WOODCOCK of Franklin, Representative MILLS of Farmington.

On **OBJECTION** of Representative SAVIELLO of Wilton, was **REMOVED** from the Special Sentiment Calendar.

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. It's my pleasure this morning to join in welcoming John Bagnulo who is a personal friend. His family are personal friends of mine. Although this sentiment reads that he is of Freeman Township, he is really of Farmington and of Franklin County as a whole. He is a Mt. Blue High School graduate in 1988, he graduated Boston College and he has his doctorate from the University of Maine in Orono in human nutrition. He's been a teacher at the University of Maine at Farmington for five or six years now and a gentlemen whom everyone in town has always looked up to. He's always been top-notch in our books. I know that having read several of the books about the terrible climb of a number of years ago, the book written by Jon Krakauer, *Into Thin Air*, and some of the sequels of that book, it takes a great deal of training, stamina and discipline to even make it half way up Mt. Everest. It takes years of physical discipline, it takes months of training and it takes, I think,

an inbred mental stamina to make that climb. In Mr. Bagnulo's case, he and his partner made the climb with typical Franklin County frugality using Sherpas for guides but carrying their own gear and taking the less traveled route, spending less money doing the climb than most Americans spend. We watched breathlessly and read the daily reports in the newspaper from his wife and relatives who heard from him. He was held in our prayers dearly for those last few days of that treacherous climb and on his decent from the top of Mt. Everest. We are so pleased and so happy that he made a safe return, although not without some trepidation and some potential mishaps. We welcome him back to Franklin County where he grew up in the shadows of Mt. Blue, Tory Hill, Kennebago and Saddleback, four of the highest peaks in the State of Maine, short of Katahdin. We know that that helped inspire him on his climb. We are so thrilled to have him here in Augusta today and have him safely back on Franklin County soil.

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. Today I have a unique opportunity to talk about a young man that has literally been to the top of the world. Dr. Bagnulo, of Freeman, is where he lives now, after months of strenuous training and effort, made it to the top of Mt. Everest. I'd like to share with you an account of this accomplishment written by David Guftafson, who's at the *Franklin Journal*, which was published last week. As I read this to you, remember, Janet is his mother, Joanna is his wife and I, in the letter, is David. "Last Wednesday, Janet called sounding calm with a ripple of excitement held back to say her son was on the way to the top of the summit right now. He said he'd call when he got there." Like it's just next door. "In the attempt, he needed to climb all night and would reach the summit top around 7:30 a.m. I read somewhere that at that altitude it takes two to three deep breaths to take one step. Would he make it? Excitement mixed with real concern. So many things could go wrong. It's not like you test yourself first and see if you can tolerate that altitude. You just have to try it. I found myself watching the clock that night. When I saw 8 p.m., I kept the phone and internet free. I didn't want to miss Joanna's call once she heard from John at the summit. 9 p.m. came and went. Maybe he didn't get there. Maybe something happened. I looked outside into the darkness and wondered what John was seeing at the moment. An incredible view I had hoped. I also wondered how on earth the Bagnulo family could stand this awful waiting. At four minutes past 10 p.m. the phone sprang to life and I jumped. It was Joanna and she was one happy woman. Sounding positively joyful, she told me John was standing, at that moment, where very few others had, on the top of Everest. Giggling, too, I asked her what he said to her. 'Hi honey, I'm here,'" Franklin County type language, "and how he said it to her breathlessly. After talking some more, I hung up and I happily thought of how I would change the front page, early the next morning, in order to make the Friday 7:45 a.m. press run deadline. Then I realized, John had to climb back down. As we soon found out later, Bill Yeo was forced to return back at camp three (27,000 feet) due to health concerns, and not reach the summit. John, with other lucky climbers would continue on and get the great view. 'It's beautiful,' he told his mother." Beautiful, that's right. Thanks to John and congratulations to John and his family. Thank you Mr. Speaker.

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

In Memory of:

Alfred W. Coffin, a well-loved resident of Phippsburg. The town dedicated the latest town report to his memory as a token of its respect and affection. Mr. Coffin operated the transfer station and worked for the town for more than 30 years. He was a dedicated employee and a friend to all. He was also a self-employed fisherman. He enjoyed talking and visiting with friends, doing puzzles and working with metal. He will be greatly missed and lovingly remembered by his family, neighbors and friends;

(HLS 1986)

Presented by Representative PERCY of Phippsburg.
Cosponsored by Senator MAYO of Sagadahoc.

READ and ADOPTED.

On motion of Representative PERCY of Phippsburg, the House **RECONSIDERED** its action whereby the Sentiment was **ADOPTED**.

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

Representative PERCY: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. All of us have people in our communities who do various levels of public service. We have people who serve as planning board members, as selectmen, as councilmen and then there are those people in our communities who are so quiet the only way you ever know they're there is because they smile and say hello and welcome you when you go to transfer station. Down home I call it the dump and I always get into trouble for that, but Mr. Coffin was a cheerful soul. The cool thing is he kept working at the dump until he was in his late 80s. About 10 years ago, he got Martha, his daughter who's in her 60s, to come and help at the dump. So, I wanted to put in sentiment because we are so lucky in this state. We have people who love the communities and volunteer and give a lot of time and energy and good will to our communities. Alfred will be greatly missed and we're very happy that Martha is still continuing the tradition. Every time you go there you have to take her an ice cream cone, but that's worth that smile and the directions of how to deal with things at the transfer station. Thank you.

Subsequently, this Expression of Legislative Sentiment was **ADOPTED** and sent for concurrence.

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

REPORTS OF COMMITTEE

Divided Report

Majority Report of the Committee on **INSURANCE AND FINANCIAL SERVICES** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-655)** on Bill "An Act To Protect Health Insurance Consumers" (EMERGENCY)

(S.P. 736) (L.D. 1935)

Signed:

Senators:

SULLIVAN of York
MAYO of Sagadahoc

Representatives:

PERRY of Calais
BRAUTIGAM of Falmouth
PILON of Saco
MARRACHÉ of Waterville
HARLOW of Portland

Minority Report of the same Committee reporting **Ought to Pass as Amended by Committee Amendment "B" (S-656)** on same Bill.

Signed:
Senator:
MILLS of Somerset

Representatives:
McKANE of Newcastle
LINDELL of Frankfort
VAUGHAN of Durham
GLYNN of South Portland
RICHARDSON of Warren

Came from the Senate with the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-655)**.

READ.

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

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

CONSENT CALENDAR

First Day

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

(H.P. 1449) (L.D. 2055) Bill "An Act To Correct Errors and Inconsistencies in the Laws of Maine" (EMERGENCY) Committee on **JUDICIARY** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-1085)**

On motion of Representative SIMPSON of Auburn, was **REMOVED** from the First Day Consent Calendar.

The Unanimous Committee Report was **READ**.

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

ENACTORS

Acts

An Act To Encourage Reporting of Potential Fraud, Waste, Inefficiency and Abuse in State Government

(S.P. 658) (L.D. 1741)
(H. "C" H-1081 to C. "A" S-543)

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.

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

An Act To Amend the Laws Governing the Enactment Procedures for Ordinances

(S.P. 507) (L.D. 1481)
(S. "C" S-554 to C. "C" S-437)

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

On motion of Representative BARSTOW of Gorham, was **SET ASIDE**.

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

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

Representative TRAHAN of Waldoboro asked the chair to **RULE** if the Bill was properly before the body.

Subsequently, the Bill was **TABLED** by the Speaker pending a Ruling of the Chair. (Roll Call Ordered)

UNFINISHED BUSINESS

The following matter, in the consideration of which the House was engaged at the time of adjournment Saturday, April 29, 2006, had preference in the Orders of the Day and continued with such preference until disposed of as provided by House Rule 502.

HOUSE DIVIDED REPORT - Majority (7) Ought Not to Pass - Minority (6) Ought to Pass as Amended by Committee Amendment "A" (H-1039) - Committee on LABOR on Bill "An Act Authorizing Participation in the State Group Health Plan for Retiring Legislators"

(H.P. 1491) (L.D. 2098)

TABLED - April 27, 2006 (Till Later Today) by Representative SMITH of Van Buren.

PENDING - ACCEPTANCE OF EITHER REPORT.

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

The House recessed until 4:00 p.m.

(After Recess)

The House was called to order by the Speaker.

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

RESOLUTION, Proposing an Amendment to the Constitution of Maine To Limit the Rate of Change in Taxable Value of Homestead Land

(H.P. 7) (L.D. 2)

Which was **TABLED** by Representative WOODBURY of Yarmouth pending **FURTHER CONSIDERATION**.

Representative WOODBURY of Yarmouth moved that the House **RECEDE AND CONCUR**.

Representative BOWLES of Sanford **REQUESTED** a roll call on the motion to **RECEDE AND CONCUR**.

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

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

ROLL CALL NO. 557

YEA - Adams, Annis, Ash, Babbidge, Barstow, Beaudette, Blanchard, Blanchette, Bliss, Brannigan, Brautigam, Bryant, Burns, Canavan, Clark, Craven, Crosby, Cummings, Driscoll, Duchesne, Dudley, Dugay, Dunn, Duplessie, Eberle, Eder,

Faircloth, Farrington, Fischer, Fisher, Gerzofsky, Goldman, Grose, Hanley S, Harlow, Hutton, Koffman, Lundeen, Makas, Marraché, Mazurek, Merrill, Miller, Mills, Moody, Norton, O'Brien, Paradis, Patrick, Percy, Perry, Pilon, Pingree, Piotti, Richardson E, Rines, Schatz, Simpson, Smith N, Smith W, Thompson, Tuttle, Twomey, Valentino, Walcott, Watson, Webster, Wheeler, Woodbury, Mr. Speaker.

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

ABSENT - Cain, Davis K, Greeley, Hall, Hogan, Jackson, Jennings, Kaelin, Lerman, Marley, Moore G, Pineau, Stedman.

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

70 having voted in the affirmative and 68 voted in the negative, with 13 being absent, and accordingly the House voted to **RECEDE AND CONCUR**.

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

An Act To Amend the Laws Governing the Enactment Procedures for Ordinances

(S.P. 507) (L.D. 1481)
(S. "C" S-554 to C. "C" S-437)

Which was **TABLED** by Representative RICHARDSON of Brunswick pending a Ruling of the Chair.

The SPEAKER: The Chair has been asked if LD 1481 is properly before the body. LD 1481 was introduced on March 24, 2005 and referred to the Committee on State and Local Government. A public hearing was held on April 15, 2005 and the bill was reported out of committee as a divided report. After consideration of the measure, the Legislature committed LD 1481 to the Committee on State and Local Government and carried LD 1481 over from the First Regular Session to the Second Regular Session. On January 31, 2006, the bill was reported out of committee and began its journey through the legislative processes and after much discussion, the bill because engrossed in concurrence on April 27, 2006 as amended by Committee Amendment "C" as amended by Senate Amendment "C" thereto. On April 28th, an inquiry was made to the Attorney General. Two questions were posed. Number one, does the 75-day limit require a municipality to schedule a special meeting for a vote on a citizen petition to amend or nullify a land use permit and, if so, does that constitute a mandate on the municipality within the meaning of Article IX, section 21, of the Maine Constitution? Number two, if LD 1481 permits a municipality to delay a vote on such a citizen petition beyond the 75-day limit, would that delay deprive citizens of a true right of initiative and referendum under the rule of *LaFleur v. Frost*, 146 Me. 270, 80 A.2d 407 decided in 1951. The Attorney General answered his questions as follows, "We believe that it's likely that a court would conclude that, when considered within the existing statutory framework, the 75-day limit in LD 1481 implicitly requires towns to schedule a special meeting to vote on a timely citizen petition for an ordinance change to amend or nullify a land use permit, if a regular meeting is not already set to occur within those 75 days. It is less clear whether a court would find that this requirement results in a

modification of town activities necessitating additional spending of local revenues so as to constitute a mandate within the meaning of Article IX, section 21. On balance, however, we believe it is more likely than not that a court would conclude that, because LD 1481 would compel municipalities to schedule special meetings in some cases, it results in a mandate." And number two, the Attorney General answered as follows, "As noted in answer to Question one, we believe that a court would conclude that LD 1481 does not permit a town to delay a vote on a timely citizen petition for an ordinance change to amend or nullify a land use permit beyond 75 days from final permit approval. To allow such a delay and thereby deny a town vote on an ordinance within the scope of LD 1481 would be inconsistent with the statutory right to petition for an ordinance change." In the Attorney General's answer, he does state that "We cannot say that it would be indefensible for the Legislature to treat LD 1481 as not containing a mandate and enact it without the mandate preamble or a two-thirds vote." Pursuant to Joint Rule 312, every bill or resolve that affects state revenues, appropriations or allocations or that requires a local unit of government to expand or modify that unit's activities so as to necessitate additional expenditures from local revenues and that has a committee recommendation other than "Ought Not to Pass" or "Referral to Another Committee" must include a fiscal note. I reference you to Joint Rule 312 which is in your *Register*. This statement must be incorporated in the bill before it is reported out of committee. Any amendment introduced that would affect the fiscal impact of the original bill must also include a fiscal note. The Office of Fiscal and Program Review has the sole responsibility for preparing all fiscal notes. If the Office of Fiscal and Program Review had the Attorney General's opinion when they wrote the fiscal note to the committee amendment, they would have identified LD 1481 as a potential state mandate at that juncture in the legislative process. The Committee on State and Local government could have examined the question of whether or not the bill was a mandate under Article IX, Section 21 of the Constitution which requires that "the State may not require a local unit of government to expand or modify that unit's activity so as to necessitate additional expenditures from local revenues unless the State provides annually 90% of the funding for these expenditures from State funds not previously appropriated to local government." Based on the Attorney General's opinion, the Office of Fiscal and Program Review has revised the fiscal note to indicate that, according to the Attorney General's opinion of May 13, 2006, the amended version of the bill may create a state mandate. However, Section 578.6 of Mason's Manual of Legislative Procedure states "It is not the right of the presiding officer to rule upon the constitutionality of bills, because that authority belongs to the House." In other words, it was appropriate for the Office of Fiscal and Program Review or the State and Local Committee to raise that issue. However, the introduction of the Attorney General opinion late in the game has, and should, raise certain concerns for each of you. However, they are not questions which I can answer. According to Mason's, I am prohibited from answering questions of constitutionality. Therefore, it is this body's decision that has to be made. The question as to whether or not LD 1481 should be a mandate under Article IX, section 21 of the Maine Constitution, as I said, is a question to be decided by the members of the legislature. The Chair, therefore, rules that LD 1481 is properly before the body. And I repeat, properly before this body though the issues I have described are real and those are issues which you may or may not determine are important to you as you decide to vote. Therefore, the pending question before the

House is Final Enactment of LD 1481. A roll call has been ordered.

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

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

Representative ADAMS: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. Given the verbal communication just presented by the Speaker to the body which exists in printed form not available as of yet to the members, and given the fact that a moment to read that would be of value, I believe, to the members, and given further that the Attorney General's opinion rather clearly states the nature of the mandate which I would further quote from the Attorney General's letter dated the 13th of May, 2006, page 2, "On balance, we believe it is more likely than not a court would conclude that because LD 1481 would compel municipalities to schedule special meetings, in some cases it results in a mandate." And, indeed, following in the same opinion of the Attorney General, on page 9, "On balance we believe it is more than likely that a court would conclude that 1481 would require towns to modify their activities in at least some cases where citizen petitions, within its scope, are submitted. If the first part of the mandate test is satisfied, there is little question that the second part is also met." Concluding in the Attorney General's opinion on page 12, the Attorney General, in his concluding paragraph states that, "We believe it is more than likely than not a court would so conclude that LD 1481 as written would, in fact, constitute a mandate under Article 9, section 21." For those reasons, Mr. Speaker, I would move that LD 1481 be referred to the Committee on Bills in Engrossing for the attachment of the appropriate wording of the mandate thus described and thereafter returned to this body when we may have a chance to have a copy of the Attorney General's written opinion before every member of the body and the Speaker's own conclusions before every member of the body. Thank you.

Representative ADAMS of Portland moved that the Bill be REFERRED to the House Committee on ENGROSSED BILLS.

Representative BARSTOW of Gorham REQUESTED a roll call on the motion to REFER the Bill to the House Committee on ENGROSSED BILLS.

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 Glynn.

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

The SPEAKER: The Representative may pose his question.

Representative GLYNN: My question to any member who may wish to respond is, we've heard the rationale from the good Representative from Portland Representative Adams why, indeed, we should refer this bill to the Committee on Engrossed Bills in order to have all of the information, the updated fiscal note attached, would seem to be prudent practice. I have not heard any rationale why we would not want to do that. I would like to hear that rationale before I vote.

The SPEAKER: The Representative from South Portland, Representative Glynn has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from York, Representative Moulton.

Representative MOULTON: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. We have listened to a very long and involved explanation, not only of some of the background of the bill, but also the process that is involved. It is part of the nature of the beast, when you deal with municipal law,

that trigger goes off when least you expect them. However, in specific response to the question, this issue, in broad stroke, was brought to the attention of the Attorney General's staff back in December of last year. At the request of the Committee on State and Local Government in January, an opinion was given to the committee that this bill, in fact, complied with the standards, even those answered by the AG's office as recently as May 13th. It is unfortunate that the Attorney General's Office, although it made a passing reference to a case from my hometown of York, did not take and examine a detailed examination of that case. I bring it to the House's attention both through a handout that came through earlier by specific reference and also by way of the brief explanation that I'll give this body. That is, in this case of *Dunston v. Town of York*, decided in April of 1991 found in 590 Atlantic Reporter 2nd, beginning at page 526, we've got a case where a citizen of the Town of York was disgruntled with the school department and the Town Selectmen for approving the construction of a new school, in this case, an elementary school and had put through a petition signed, we don't know by how many people, but we'll assume it's the requisite number in the Town of York to put an article on a warrant. The Selectmen turned it down. The petition occurred long after the vote was taken in favor of school construction. The court, in that case, said that you cannot compel a municipality to do a discretionary act. What we have in the nature of the bill before this body is merely a 75 day deadline by which actions may or may not take place, but not compelling municipalities to so act. In saying so, I'm well aware of the fact that there are critics of this bill that can say that, "Well you know, the Selectmen can just decide that they're not going to put it on the ballot within the 75 days." I agree. Selectmen do those things. They never do what you want them to do when you want them to do it. We all have that frustration. This bill, 1481, is not a mechanism whereby we're compelling the municipalities to take action within a specific timeframe. We are attempting to balance interest between those people or organizations going through the process and balancing it against the interests of the people within the municipality, in some cases, to question that process. It is in the nature of a protection for those people that have expended large sums of money, in some cases, or if not, just simply the effort of going through the process, to provide them with some protection against a retroactive process that, at the moment, seems unfettered and without limit. In answer to the question, this matter of mandate has been considered. The committee acted to avoid putting in any sort of procedure to try to peg a specific process. That is handled separately under State Law. Under the Dunston case decided 15 years ago, the Court said there is, in fact, under Title 30-A, section 2521, Subsection 4, that there is a mandate process in effect and if the citizenry triggers it, then the Selectmen, or Town Council, or what have you, are going to have to act. It is not the nature of this bill, in and of itself, to require any of that. For that reason Mr. Speaker, I do respectfully disagree with the opinion of the Attorney General because we are not setting up a mandate on the municipality. We have set up a process whereby it affords a protection for somebody going through a process such that if the municipality does in fact act within that timeframe with the other conditions that are part of the bill, then, in fact, the approval is not grandfathered and can be affectively negated. The short answer Mr. Speaker, Ladies and Gentlemen of the House, this has been considered when the bill was going through Committee. The Committee took pains to try to balance out those interests. This body has labored under what can be conflicting interests to try to achieve a balance. This late effort to try to derail it just because something may or may not. If you listen to the language that has just been used a few minutes

ago, that's legalize. May or may not. For that reason I do not think that, and I encourage this body to disregard the Attorney General's opinion as being simply may or may not. It is not a mandate Ladies and Gentlemen. I would urge you and encourage you to vote against the pending motion. Let's get this thing enacted. 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. There may have been discussions with the Attorney General's Office in the past, but I can assure you this discussion did not occur because this most recent version of the legislation did not exist at that time. The Attorney General was asked about the version that is before this body, not something that was before the committee months ago. He concludes that it more likely than not that this is a mandate. The appropriate solution at this stage is before us. Send it to the Committee on Engrossed Bills. We have a charge to work together as a body, not to use procedural measures to block each other from discussing the merits of legislation, but to get to those merits. I am a supporter of LD 1481 in some form. I believe in the goal of this legislation, but the way it's written it is not a mandate. I think that might lead us to a compromise. Let's send it to the Committee on Engrossed Bills and let's work together on this legislation. I support the pending motion.

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. Whatever your feelings are about the merits of this bill or the merits of this particular amendment that was passed and tacked on to the bill that is before us today, I would urge you to consider the unfeasibility of enacting a law that may well be struck down because it has a mandate that we didn't recognize. The last thing I want to do is see, exit from this chamber and the other chamber and go the Chief Executive's desk, a bill that may be struck down and may be invalid. If we're going to enact something, let's do it right. I believe the request before you is simply to have the Committee on Engrossed Bills review the Attorney General's opinion, review Representative Moulton's comments and any other commentary regarding the mandate issues and report back to us with or without a mandate preamble without any preconceived notion about what their recommendation might be. I urge you to deliberate very carefully and let the Committee on Engrossed Bills deliberate much more carefully lest we commit the error of enacting a flawed piece of legislation. Thank you.

The SPEAKER: The Chair recognizes the Representative from Newcastle, Representative McKane.

Representative MCKANE: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I respectfully disagree with my good friend, the Representative from York, Representative Moulton that this isn't a mandate. If a group of citizens get together and get the required signatures, the entire process must be held within the 75 days. That would often require a special town meeting. Town meetings cost money. Special town meetings cost money too. That is a mandate on the town. Thank you Mr. Speaker.

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

Representative ADAMS: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I am shocked, shocked to learn that "legalese" is being spoken in this chamber. I didn't know we'd all gone to Rick's American Café in Casablanca, I thought we were still in Speaker Richardson's House in Augusta. Those of us who have the pleasure of not being lawyers, can

take comfort in the fact that we have an Attorney General who is. LD 1481, under the considerations of his office, was declared to be unconstitutional on June 10, 2005, in its original form. In January of 2006, it was reworked in the committee and declared to be constitutional, but unkind, and that version now changed is that which came to us, and the Attorney General has again found, in a letter dated May 13, 2006, that the bill is a mandate. Well, all cases that went into those decisions were considered by the Attorney General. All cases referred to him were reviewed and these were the conclusions that he came to. We cannot pick and choose among them simply to find something we like, or that we don't, because there's enough berries to be picked in each to both please us and to be distasteful. The question before us is not a debate about whether it is or is not a mandate. That is a question determined by the Attorney General who has far more books on the subject on his desk than you and I do right now. All we are asking is that the bill be sent to the appropriate committee for the appropriate preambles to be placed upon it, as is our right, and it will return again for an illuminating, fireworks filled, enchanting and lovely debate about what mandates are or may not be. That is all we're asking for today. That is all that I think the bill deserves, today to go the right place so it may be heard correctly, dealt with correctly and returned here for our absolute disposition on another day. So, I would urge you, please, to send the bill, as suggested, to the appropriate committee for the appropriate action to be taken given the guidance of the Attorney General of the State of Maine on these three separate, and elaborate, occasions. When the bill returns, you will have, in front of us, a copy of the Speaker's comments and of the Attorney General's conclusions and onward we will go with night time reading that will delight your family when you read it aloud before the light of the television and after you have walked the dog. Thank you Ladies and Gentlemen.

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. The only reason I rise is because my point hasn't been mentioned yet. I want to point out to you something much more concerning to me than the mandate concerns, something I believe is much more sinister and should concern each and every one of you, is what was revealed in this decision by the Attorney General. That is what communities will not have to, or under this Bernstien insure memo before you, that municipalities will not have to hold this special referendum. What this does is it creates the power within the Board of Selectmen to deny the public and an individual the opportunity to petition their government. If a business is likely or is successful in getting three Selectmen on a board of five to deny this referendum process, they can deny a whole community the opportunity to petition their government to stop a project. In other words, all they have to do is play out the clock and not hold a referendum. That will deny that community the opportunity to petition their government. All they need is three people in the community to agree. I ask that you go back to my earlier testimony weeks ago when I brought to you the situation of the folks that wanted to come to my community and dredge the river. They went to all the key players before it ever became public, for that project. They got all the people in the delegation, both State and National, to support it, but myself. That's what will happen Ladies and Gentlemen. Not you have the information for you on paper. It's disturbing. That is why it's important to make sure we put on, this piece of legislation, the mandate preamble. At least we'll pay for it and the communities won't have the excuse that we're not going to hold this referendum because we can't pay for

it, and let the clock run out. I think this is extremely important Ladies and Gentlemen. Let's send it to the proper place.

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

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

The SPEAKER: The Representative may pose his question.

Representative DAIGLE: Thank you. Mr. Speaker, a few moments ago, before the balloting for my awards was totally blow by recent changes, you articulated quite well the limitations upon your particular position to add a mandate or not. Much of the discussion that has been held in the last few minutes has been along the lines that the Committee on Engrossed Bills may have the ability to amend the bill or add such a mandate preamble. In other words, to take the very same action which noted that, through Mason's Manual you are precluded to do and rests with the entire body. Could you clarify, please, if the Committee on Engrossed Bills could, in fact, take action which you, a moment ago, said you would not?

The SPEAKER: The answer is the practical affect of a motion to refer to the Committee on Engrossed Bills will mean the mandate preamble will be attached to the bill and brought back to us. That is something that I could not do according to Mason's Manual, but if it is the desire of the body, it's something that will be done.

A roll call has been ordered. The pending question before the House is Refer the Bill to the House Committee on Engrossed Bills. All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 558

YEA - Adams, Ash, Babbidge, Blanchette, Bliss, Brautigam, Brown R, Bryant, Burns, Canavan, Craven, Cressey, Cummings, Curley, Driscoll, Duchesne, Dudley, Dunn, Duplessie, Eder, Faircloth, Farrington, Finch, Gerzofsky, Glynn, Goldman, Grose, Harlow, Hotham, Hutton, Lerman, Lundeen, Makas, Marley, Marraché, Mazurek, McKane, McLeod, Merrill, Miller, Mills, Nass, Norton, O'Brien, Paradis, Patrick, Percy, Perry, Pingree, Piotti, Rector, Rines, Schatz, Simpson, Smith W, Thompson, Trahan, Tuttle, Twomey, Vaughan, Walcott, Watson, Webster, Wheeler, Mr. Speaker.

NAY - Annis, Austin, Barstow, Beaudette, Berube, Bierman, Bishop, Blanchard, Bowen, Bowles, Brannigan, Browne W, Bryant-Deschenes, Campbell, Carr, Cebra, Churchill, Clark, Clough, Collins, Crosby, Crosthwaite, Curtis, Daigle, Davis G, Dugay, Duprey, Eberle, Edgecomb, Emery, Fischer, Fisher, Fitts, Fletcher, Flood, Hall, Hamper, Hanley B, Hanley S, Jacobsen, Jodrey, Joy, Koffman, Lansley, Lewin, Lindell, Marean, McCormick, McFadden, McKenney, Millett, Moody, Moulton, Muse, Nutting, Ott, Pilon, Pinkham, Plummer, Richardson D, Richardson E, Richardson M, Richardson W, Robinson, Rosen, Sampson, Saviello, Seavey, Sherman, Shields, Smith N, Sykes, Tardy, Thomas, Valentino, Woodbury.

ABSENT - Cain, Davis K, Greeley, Hogan, Jackson, Jennings, Kaelin, Moore G, Pineau, Stedman.

Yes, 65; No, 76; Absent, 10; Excused, 0.

65 having voted in the affirmative and 76 voted in the negative, with 10 being absent, and accordingly the motion to REFER the Bill to the House Committee on **ENGROSSED BILLS FAILED.**

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

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

The SPEAKER: The Representative may pose his question.

Representative ADAMS: Thank you Mr. Speaker. A question through the Chair to the greatly respected Republican

lead upon the Committee of State and Government, my friend Representative Crosthwaite. The question being if local elected officials refuse to schedule an election within the 75 day window called for by the bill, an election which would otherwise lawfully be conducted under the terms of the bill, would that refusal be "unreasonable", as that term is used in the Committee and in existing State Law and in the proposed law? The existing law being, for the sake of reference, 30-A MRSA, 2521 Section, 4.

The SPEAKER: The Representative from Portland, Representative Adams has posed a question through the Chair to the Representative from Ellsworth, Representative Crosthwaite. The Chair recognizes that Representative.

Representative CROSTHWAITE: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I thank the good Representative from Portland, Representative Adams for the question. My answer to the question would be that if there's some suspicion of wrongdoing on the part of a local official, and we've heard a lot of innuendo and a lot of insinuation that that might be the case across the State. I think we've taken a lot of cheap shots at local officials. My answer to you would be that those local officials would then have to face the wrath of the voters.

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

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

The SPEAKER: The Representative may pose his question.

Representative ADAMS: Thank you Mr. Speaker. I would like to pose the question again to the esteemed Representative from Ellsworth, my friend and my colleague Representative Crosthwaite. The question I asked was if the local elected officials - with whom I have no argument and about whom I make no suggestion today, having served as one myself, as I know many members of this body have - receive a petition, otherwise lawfully certified, circulated and received, and if local elected officials refused to schedule an election within the proposed 75 days window in the proposed bill, an election which would otherwise be lawfully conducted, is that refusal "unreasonable", as that term is used, in the law as defined? I would assume that my friend from Ellsworth, Representative Crosthwaite has just answered no, because they then would have to quote, "Face the wrath of the voters." I ask for an elaboration. Is his answer yes or is his answer no.

The SPEAKER: The Representative from Portland, Representative Adams has posed a question through the Chair to the Representative from Ellsworth, Representative Crosthwaite. The Chair recognizes that Representative.

Representative CROSTHWAITE: Thank you Mr. Speaker and thank you to the Representative from Portland for the question. The question as I heard it was, "Is my answer yes or no." My answer is yes it is yes or no. If I may continue Mr. Speaker since I have the floor, I would like to advise the House that I'm the last Brit to come over the ridge. A lot was said about the red coats and the British envisions and our early days as a Republic. Twenty-one years ago, three months and just a few odd days, I came to America from a British Commonwealth country and so you can put away your trepidation. The red coats are gone and they're not going to be invading anytime soon. I'm intrigued by the debate and the protocol and substance, and the lack of same, that we've heard on LD 1481. I've spent an entire evening in this House listening to debate on three major bills. The first half of an evening we debated providing benefit packages to first responders, which is very, very, very noble. In so doing, we completely overstepped the authority and boundary of local control, home rule and the collective bargaining

process. Then, in at times an entertaining second half, many of the very same members of the body stood in this hall and identified themselves as protectors and defenders of home rule and local control. I, too, have served a local municipality in this State. As a matter of fact, I served one term as the Mayor of the largest city, land wise, in the State of Maine. A city that's larger land wise than Boston, larger than Pittsburg, larger than Baltimore, Miami or Washington D.C. It isn't Portland and it isn't Bangor. LD 1481 is not about home rule. It's not about local control. It is about retroactivity. It's about citizen petition. It's about referenda. It's about land use planning and it's really about process and fairness in that process. It's also about economic development for those who are interested in that topic. It's about permitting and local rules and ordinances. Some of you have stated that you're very proactive in economic development pursuits. This is another fundamental I've found of the American cornerstone. I believe that if local officials are doing something that's less than honorable, and in this respect, unlawful or illegal, that they must be brought to task and that voters will be the final court of appeal. Having said that, I trust that I've sufficiently answered the question and thank you Mr. Speaker.

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. I ask you to reference your State Constitution Ladies and Gentlemen. I described earlier for you how, using this law now and letting the clock run out, that we have in essence passed a law that could deny the public an opportunity to petition their government. I ask you to look at your State Constitution, Section 15, Right of Petition, "The people have a right at all times in an orderly and peaceable manner to assemble to consult upon the common good, to give instructions to their representatives, and to request, of either department of the government by petition or remonstrance, redress of their wrongs and grievances." Ladies and Gentlemen, we're passing a law that will allow a local government to let a person's right to petition their government to go away, for the time to run out for them to petition their government. We're simply getting the support of three people on a board of selectmen to not allow people to petition their government. It's unconstitutional. It's disturbing. I understand, Ladies and Gentlemen, that you've heard the debates, you've heard the arguments and you want to do something for these businesses. There is something we can do, but we've now passed that moment. Ladies and Gentlemen you're passing a law that's unconstitutional and I hope it does go to court.

Representative **BARSTOW**: Point of Order.

The SPEAKER: The Chair inquires as to why the Representative from Gorham, Representative Barstow rises.

Representative **BARSTOW**: Point of Order Mr. Speaker.

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

Representative **BARSTOW**: Thank you. The Representative from Waldoboro is stating that the bill before us as amended and here for enactment is unconstitutional. That is not true.

The SPEAKER: The Representative may rephrase his point and, I'm assuming, his question.

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

Representative **TRAHAN**: Thank you Mr. Speaker. Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. It is my opinion that the law that we're passing is unconstitutional. It is obvious to me that, in my opinion, having read the Constitution and the clear words that it has in the document, that we are clearly passing a law that will allow,

through inaction, our constituents an opportunity to petition their government. I hope that is clearer for the Representative. Thank you and I ask you, Mr. Speaker, for a roll call.

The SPEAKER: A roll call has already been ordered with respect to final enactment of LD 1481.

The Chair recognizes the Representative from Portland, Representative Adams.

Representative **ADAMS**: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I thank my good friend from Ellsworth, Representative Crosthwaite. I'm glad my good friend from Ellsworth's ancestors got over the bridge in time into this grand country. I am glad to hear his long speech in answer to a question about a bill on which he cannot answer yes or no. Mr. Speaker. May I pose a question through the Chair?

The SPEAKER: The Representative may pose his question.

Representative **ADAMS**: Thank you Mr. Speaker. I pose a question to my friend, the Representative from Gorham, the good Representative Barstow, Chairman of the State and Local Government Committee, my question being that which I have posed before and shall repeat again. If local elected officials refuse to schedule an election within the 75 day window, an election which would otherwise lawfully be conducted, is that refusal unreasonable as that term has been defined and used in this discussion and in 30-A MRSA 2521 (4?)

The SPEAKER: The Representative from Portland, Representative Adams has posed a question through the Chair to the Representative from Gorham, Representative Barstow. The Chair recognizes that Representative.

Representative **BARSTOW**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I thank the good Representative and my good friend from Portland for the question. The answer is no and further I would state that in the Committee's deliberations on this bill and what we have passed out here and we have considered on this floor for the last year and a half, it is with the understanding that there are many resources and many powers and responsibilities given to municipal officers to make sure that the will of the voters are carried out in these matters. Thank you Mr. Speaker.

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

Representative **WALCOTT**: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. Before our almost month break, I offered a suggestion to the body that you go home and you check to see what your locality does on this issue. I did that with my own city. It's very confusing, but here is what I learned basically. The City of Lewiston has a population of approximately 35,000 people. In order to get an issue on the ballot in this way you need to have approximately 1,000 signatures. However, to get those 1,000 signatures, you may not circulate the petition. The petition must be signed at city hall. So, within 75 days you have to realize there's a problem, you have to have lawyers draft a question, you have to get a petition form printed, you have to collect approximately 1,000 signatures from registered voters of the City of Lewiston and then, to throw a wrench into the whole system, in the City of Lewiston, ballots must be on display for a total of 60 days before the election. So, regardless of what the good people that serve on the city council, and actually there is a member of the Lewiston city council that sits in this body, regardless of what they may or may not do or may or may not choose, I do not ever see this being able to be done in the City of Lewiston within 75 days. This is the way the City of Lewiston has decided to do it. That should be their decision. So, my question, if I can pose a question through the Chair, Mr. Speaker.

The SPEAKER: The Representative may pose his question.

Representative **WALCOTT**: My question would be, to any member, actually, of the State and Local Government Committee, or anybody that's been involved in this bill, is did the State and Local Government Committee review what different cities do because there aren't actually localities that allow this kind of action to begin with, did you review that cities and towns currently do and to see whether it was even feasible for that to be done under their current laws within 75 days? If you did I wished you had taken a look at the City of Lewiston because I don't believe that it would be. Thank you Mr. Speaker.

The SPEAKER: The Representative from Lewiston, Representative Walcott has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Gorham, Representative Barstow.

Representative **BARSTOW**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. In response to the good Representative's question, we reviewed the 75 day policy with town and city clerks with regards to the feasibility and also counseled with a former Secretary of State with regards to feasibility of moving it forward and thus the reason why we have the prevailing committee report.

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

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

The SPEAKER: The Representative may pose his question.

Representative **WEBSTER**: Thank you Mr. Speaker. Mr. Speaker or to whomever would wish to answer this question, I met with the clerk's and representatives of the two towns I represent and one, they said that it was conceivable, but highly unlikely, that a person or a group could go through all the steps in order to return a referendum to them in time for the clerk to have the required 45 days, in our town, in order to print and disseminate absentee ballots and to be able to complete the voting process, if a question were raised, within the 75 day time. In my other town, I learned that the town would find it extremely difficult to A, have the question approved by the selectmen, which might take a week or perhaps two, B, for that person who has posed the question finally to have the petition to go out and raise the mandatory 10% of the persons who had voted in the last gubernatorial election, C, return those petitions for them to be certified as voters who could sign that petition and then D, have the clerk process the question into a voted ballot for 45 days. They believe that the amount of time a citizen would actually have would be somewhere between 10 to 12 to 15 days. My question is two part, one, does it seem like 10 to 15 days is an equitable number of days to allow someone to prepare a question and to inform and educate their citizenry, but more importantly, if the petitions are returned and are certified as being legal, but as the clerk does not have the required 45 days to prepare the question for a vote, is the town in error and breaking the law? Does the vote go forward and count or does the vote not count? In closing, although this is supposed to be a question, I would say that this is, unfortunately, although I approve of the idea of having some mechanism to put closure and to help make a fair process for developers, this seems to me to be a cynical way to make voters believe they have a voice but to restrict their voice unreasonably. I would appreciate an answer to those two questions. Thank you Mr. Speaker.

The SPEAKER: The Representative from Freeport, Representative Webster has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from York, Representative Moulton.

Representative **MOULTON**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. In response to the question posed by the good Representative from Freeport, Representative Webster, basically the short answer to the question is that in a number of cases, it may be many or it may be few, that number of days may not be enough. To borrow from a prior speech given by the good Representative from Gorham, Representative Barstow, one of the focuses that we have made during the process of the debate over this bill is that we want people to participate in government but not wait till the last minute. Don't wait until the permit is issued. There is nothing to prevent someone from hearing of a proposal even before it's submitted to start the process. We want people to be proactive because that's what land use is all about. You don't look through the rearview mirror, you look out the front windshield. You're trying to provide direction for the orderly development of land use within your community. We really don't want to cut people off, we're trying to set something that will address many of the concerns, but it cannot answer all of them. So, if you're proactive, that's good. I watched an initiative to keep out Dunkin' Donuts passed in Ogunquit. It went through practically overnight just because it was rumored that they were looking for a site. So, they passed this ordinance that effectively keeps out the chains as York had done previously. Those are all part of the local process that we all love and hate. So, to get back to the question posed by the Representative, the 75 days may not be enough, and you've looked at your towns. It is not a mandate that you wait for that permit to be issued before you start the process. The citizens can easily start it ahead of time and have sufficient time to bring it to a reasonable conclusion, that is, a vote. Thank you Mr. Speaker.

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

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

The SPEAKER: The Representative may pose his question.

Representative **SIMPSON**: Thank you Mr. Speaker. I was curious about a question asked earlier in the debate by the good Representative from Portland so I'd like to pose the same question to the good Chair from Gorham, Representative Barstow. Would it be unreasonable to have no vote?

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

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

The SPEAKER: The Representative may pose his question.

Representative **RICHARDSON**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I'm sufficiently confused with this whole discussion, so I'm not really sure if this is a coherent question. We started this whole debate thinking in terms of 30 days. Now we're up to 75 days, but we haven't considered, and I'm not sure that this is a reasonable question. Is there anything that says that a permit has to be issued exactly on a given date? Can a permit, and this is a question, I guess to Mr. Speaker, be issued for sometime just prior to 75 day prior to the next municipal election? Does it have to be issued in a certain timeframe?

The SPEAKER: The Representative from Skowhegan, Representative Richardson has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from York, Representative Moulton.

Representative **MOULTON**: Thank you Mr. Speaker. In answer to the question from the good Representative from Skowhegan, Representative Richardson, each zoning ordinance is different and some require that a municipal board or code

enforcement officer act within the specific timeframe. It's really pretty much left up to the municipality one way or another. Some of them are under a structure that they cannot just put it out there 30 days, that they have to do it within a specific timeframe. Some, by the mere scheduling of their meetings, may actually accomplish the same purpose to provide some wiggle room. We leave that up to the municipality. I don't try to get involved in that sort of decision. Thank you Mr. Speaker.

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

Representative **EDER**: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. In my discussions with Legal and Policy Analysis about this bill, it is their understanding that the developer will be expecting his answer within 75 days. Mr. Speaker, I'd like to pose a question through the Chair if I may.

The SPEAKER: The Representative may pose his question.

Representative **EDER**: Thank you Mr. Speaker. I'm still looking for an answer for a question from anybody on the committee who wishes to answer. Now that we understand fully that this bill, as written, does not guarantee an election within the 75 day period for redress of a citizen's petition, please answer, does any member of the committee wish to answer, is this reasonable?

The SPEAKER: The Representative from Portland, Representative Eder has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from York, Representative Moulton.

Representative **MOULTON**: Thank you Mr. Speaker. The short answer is yes it is reasonable.

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

Representative **WEBSTER**: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I'd like the good Representative from York, Representative Moulton for his candor regarding the fact that 75 days is understood to not be a sufficient number of days. I too would agree that we want citizens to be more involved proactively. I am completely in favor of that concept. I also am aware that not only do I represent a town that has an extraordinarily transparent process in which citizens know about every pending permit, but I also represent a town in which a part-time contractor works as the code enforcement officer. That part-time contractor who works as a code enforcement officer goes to town hall on Monday night for two hours and he gives out permits that he does not think require scrutiny of the planning board. Therefore, a person can get a permit on Monday night, and in fact I have spoken with the selectmen and many of them don't even know that that permit has been given for weeks. Those are involved and concerned citizens. In fact, in a recent incident in the town that I represent, has a part-time code enforcement officer, the chair of the planning board was disturbed to see construction taking place near his home. He hadn't known about the permit that was given for a small business to be built on the road he lived on. He's a pretty darned involved citizen, but the town of Pownal does not have a mechanism for making the information about permits available. They don't have the money, like Freeport does or like Portland does, to put an ad or an announcement in the paper every week of every permit that's given out. So, if a permit is dispensed on a Monday night it could presumably be pocketed for two months or it could presumably start work or be vested before anyone even knows. So, I would hope that in the interest of taking the good efforts of this committee to try to balance the interests of citizens and the interests of developers, that we would, as a body, allow that committee, with the extraordinary patience that they've

demonstrated, to go back and to take one last pass at this. To look at the amendments that have been offered and to try to find a solution that will allow more of us to come to yes. Thank you Mr. Speaker.

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

Representative **TWOMEY**: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I was on the city council for six years in Biddeford and one of the comments that we heard this evening was that, "Oh, just leave it up to your town officers and they're the ones that are going to have to face your wrath." It doesn't work that way. We had an incinerator. They wanted to build it in the middle of our town and we petitioned. We circulated petitions. I was part of it. We brought it to our local town meeting that night and the Mayor took the petitions and he threw it in the garbage can. That was the first time I ever went into my city hall. I was not politically active at all. I never went away after that night because I couldn't believe that the voice of the people was just thrown in a garbage can. So, you can't be beholden to your officers in your community. This isn't about 75 days. This isn't about fairness. Let's cut to the chase. It's about developers. It's about protecting that real estate corner up there in the chamber. It's about them. It's about the money they make to be here and lobby us. That's what this bill's all about. It's about the powerful. It's about those who can go into our town halls, go upstairs, get the mylars and they walk into our code enforcement office like they own it. They just go in and they get the red carpet treatment every time. I've seen it over and over again. Southern Maine is turning into Boston because we haven't seen a development we don't like. This is what this debate is about. It's about those citizens who aren't going to have a say in the way their community is going to be shaped. It's about opening the doors for those who want to come in and have the money to have the lawyers to stand up before our committees and present their projects. It's not about not allowing affordable housing. Let's not lose sight of what this bill is all about. It comes back year after year because those people aren't going to go away. They are the powerful. They are the ones that get paid and the little people, the people who haven't heard about it who are working two jobs because they can't afford to meet their house payment don't get to see that notice. The rural areas which have very few newspapers very rarely get to see the notice in the paper that there's a meeting that night. Those are the people that we're slapping in the face here. This is at the heart of why we're here, representing people's interests. That's about democracy and petitions and what your town is going to have is about democracy. Let's not lose sight of what this bill is really about. Thank you.

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

Representative **GLYNN**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. The information that was given by members of the Committee on State and Local Government, I challenge the reasoning that they had put forward and, in fact, unfortunately, if this law does go forward I think that history will prove the interpretation that a municipality has the option of holding a special, I think will be proven a false premise, and a false premise for all of us to have in our minds. A lesson that I learned when I was on the South Portland City Council for nine years, and it sound like a very, very funny question to ask, but if there are two laws that are on the books that state that you have to follow, let's say we had a law that said buildings can't be more than 100 feet tall and there was another law that said buildings have to be the color red. Which State law would the municipality have its option to not follow and not obey? The

answer is neither. You must follow both laws. So, if we have a law on the books that said that buildings can be no higher than 100 feet and a law that said buildings must be the color red, then, in fact, you have buildings no more than 100 feet tall that are the color red. That is it. That's the same case when you look at State law and State Statutes. State law and State Statutes says that citizens have the right to petition their government. That process has to be provided for. It is. State law says that this decision has to be rendered within 75 days. Those are facts if this law is enacted. That means municipalities must follow all the laws. They can't pick which laws that they want to follow. They follow all of the laws. This process from an initiated permit would have to be met within the 75 days. The municipality is going to have to hold a special election. What that means for the poor citizen that has the right to an absentee ballot? Are they going to be denied their right to absentee ballots? What about the costs to the municipalities to hold special elections? In my municipality, South Portland, we have a city council form of government with a city charter. We don't have town meetings. In order to resolve this, we will have to call a special election almost every time because they will not fall within these 75 day windows. Take a look at the calendar. How many elections would have to be called in the course of a calendar year in order to meet all of these 75 day windows? Quite simply, it can't be done. Our municipality will be calling these special elections or they will be subjected to tremendous liability. That's what we're talking about in creating these laws. If you have laws which make unreasonable confines, the poor judge that is probably going to be reading this legislative record trying to make sense of this on the first lawsuit challenge, is going to be looking at these statements on the floor saying, "Well gee, we have a 75 day window and we have the right to petition. Both have to be accommodated." The town that did not follow this process within 75 days has created an onerous liability for the town and they will be subject to sanctions and damages for not following State law if they didn't resolve this situation and either issue the permit or hold the election to give final resolution to it within 75 days. In my municipality, South Portland, we're bordered by two communities, the Town of Scarborough and the Town of Cape Elizabeth. The Town of Scarborough, the town council, just voted a recommendation to the legislature that the 75 days was unreasonable for them to be able to meet these guidelines and in fact said anything under 90, they couldn't possibly meet the guideline. My neighboring community of Cape Elizabeth currently has, on the ballot for a special municipal election in June, a citizen referendum dealing with access to streets. All of these things are very important to local communities because they can't pick and choose which laws they're going to follow. They can't not issue permits or issue permits twice per year. Could you imagine if a municipality said that in order to meet these State laws, the only things that we could do is issue building permits 75 days before a June primary election or 75 days before a November general election in order to meet the criteria of all these laws? Is that what we want? Do we want a local process where local municipalities, in order to meet all of the time restrictions and requirements of the law, would only be able to issue building permits twice per year and stop all construction in municipalities? Is this the unintended consequences we want? How would you, if you were sitting on a local town board of selectmen or if you were sitting on a city council, read all of these laws together and not pick and choose which laws you're going to comply with? Comply with all the laws. The simple answer is we've created an unconstitutionally vague guideline. We've created a scenario if this law passes, this final enactment, and does become statute, we've created a

scenario where there are such short windows of five, 10, 15 days for citizens to petition their government for councils to be able to act to meet all these windows. What we will do is we will just subject these poor municipalities and these poor municipal offices to untold litigation. Everybody is going to be suing these poor guys. Everybody is going to be suing your town. Think about it. How are you going to resolve this? If a town council sits and looks at this and says, "We have to issue this permit within 75 days. We must comply with this law," and they can't hold an election within the 75 day window, they subject themselves to a lawsuit from the petitioner's committee. If, instead, they schedule a municipal election to be held giving enough time for absentee ballots, printing and circulating and now they're outside of the 75 day window, then the developer is going to sue the community because they have not followed the State law saying that there is a 75 day window. The town can't win. We've set up windows that are absolutely unreasonable. If in fact we are to pass a State law, it needs to be reasonable. Why do you think Maine Municipal Association keeps putting out bulletins opposing this? Why are town after town after town passing resolutions in opposition of this bill? I certainly don't want to empower these developers, who bring forward these applications, an ability to sue which doesn't exist in statute today but, in fact, we will do that if the town can't issue the permit and/or resolve it by holding an election within the 75 day window. I would just as soon have this proposal reworked with some amendments. Absent that, I certainly can't support it and I urge you also to not support this on its enactment.

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

Representative ADAMS: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. To review the direct answers to the direct questions we have now heard today, the answer to the one question posed to all: if the answer is "yes," as Representative Moulton has asserted, then this bill is a mandate. If the answer is "don't know," as Representative Crosthwaite has asserted, then the question has been answered for you by the Attorney General of the State of Maine and the Office of Fiscal and Program Review. It is a mandate. If the answer is "no," as Representative Barstow asserts, we now have three simultaneous different answers to the same question posed in the same debate within minutes of one another. Here is the import of the answer. If there is no mandate preamble on the bill then municipalities are free to schedule a petition vote after the 75 day deadline, if they choose, or even no vote at all, if they choose, if the answer is "no," even if citizens turn in their petitions on day one with 74 days remaining on the clock. Therefore, if passed, this law cannot be cited as justification to compel a vote within 75 days if it is not a mandate. If, in court, you could cite it, then it would be a mandate. If fact, if this law is ever so cited by a court then municipalities can safely ignore LD 1481 for lack of the mandate preamble. You cannot pick and choose your answer. We have three different answers from the same committee, but you cannot pick and choose among them. There is only one import to the bill. If, in law, you prescribe a right and if, as a citizen, you qualify for your rights, that promise implies an obligation on the part of those who make the machinery work. As we've just had explained to us by members of the committee itself, this law, as now written, means that if you and your fellow citizens and neighbors jump through the hoops, pass the tripwires and get all your petitions signed and turned in on the first legal day, day one with 74 days remaining on the clock, your town officials, if the answer is "no" have no legal obligation to schedule any election at any time ever that counts. They could even schedule it on the 76th day. If your town ordinances today

require a 180 day cooling off period when citizen petitions are received, as many do in the State of Maine, some of you voting contrary to the way I would like you to vote live in those very towns, you had best know what the answer is when you go home. Or, say you live in a community such as Rockland which will not allow a special election to be held within 90 days of a regularly scheduled election because they want to do that to save money, many of you voting contrary to the way I wish you would, live in such communities. I hope you know if your community is one of them before you continue to vote on the bill. You now have opened the door for your governing body to completely disregard a petition on whatever subject at whatever time. Your chance to get a vote that matters died on the 75th day. Men and Women of the house, I want to repeat that. Your chance to get a vote that mattered died upon the 75th day. From the mouth of the very proponents who claim this bill is about fairness comes that confession. It is not about fairness, its result will be to cut folks out. Now this is a beggar's bill. By the very words of the committee members that passed it, you do all that you can do under law, your neighbors follow the rules, you meet every deadline, you get every signature, you hold out the legal petition, you turn it in, you present it certified and you turn your eyes to government for redress - and you have to beg. Constitutional rights guaranteed by State Supreme Court decisions will be overturned and now you must beg for an election, you must beg to be heard and will beg for rights that were once yours. How grateful do you think your town is really going to be for this option that you are sending them? Men and Women of the House, this bill is now a beggar's trade as defined by its very own proponents. It is a bad deal. It is a big loss of rights for your neighbors and for your towns who used to have those rights since the Constitution was written. Anyone who wishes to be reminded about how precious our rights are once we've lost them need only look at LD 1481. Furthermore, those reading this House Record in the future, looking for the fatal weaknesses of LD 1481 and for the seeds of the very court decisions to overturn it can find it in this Record, in these speeches, in the answers by those on the committee who cannot give you a definitive reply and in the speech that I am now just concluding. It is either a mandate or it is not. If it is a mandate it must have the proper preamble attached or the bill will have no impact upon those people and those communities that its proponents wish to make it have. As Yul Brynner once said to Charlton Heston famously in another context, "So let it be written, so let it be done." Men and Women of the House, I move that this bill be referred to the Committee on Bills in the Second Reading for appropriate study and application of a mandate preamble and fiscal note if determined to be accurately applied as per the opinion of the Attorney General, the opinion of the Office of Fiscal and Program Review and the answers of the very committee members as today received in this testimony.

Representative ADAMS of Portland moved that the Bill be **REFERRED** to the House Committee on **BILLS IN THE SECOND READING**.

Subsequently, Representative ADAMS of Portland **WITHDREW** his motion to **REFER** the Bill to the House Committee on **BILLS IN THE SECOND READING**.

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

Representative **ADAMS**: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. Prior to the last statement that I will make, I wish to read from the Maine State Supreme Court decision allowing the TABOR petitions to proceed to the ballot this fall. The Maine State Supreme Judicial Court says, "We have previously recognized the importance of the right

of initiative and we again conclude that the right of the people to initiate and to seek and to enact legislation is an absolute right. It cannot be abridged *directly* or *indirectly* by an action of the Legislature." Upon advice of the Chair I would respectfully withdraw the previous motion that I had made regarding sending the bill to the Committee on Bills in the Second Reading. Thank you Mr. Speaker.

Representative FAIRCLOTH of Bangor moved that the Bill be **TABLED** one legislative day pending **PASSAGE TO BE ENACTED**.

Representative BARSTOW of Gorham **REQUESTED** a roll call on the motion to **TABLE** the Bill one legislative day.

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

The **SPEAKER**: A roll call has been ordered. The pending question before the House is to Table the Bill for one legislative day. All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 559

YEA - Adams, Ash, Babbidge, Bliss, Brautigam, Bryant, Burns, Canavan, Craven, Cummings, Driscoll, Duchesne, Dudley, Dunn, Duplessie, Eder, Faircloth, Farrington, Finch, Gerzofsky, Glynn, Goldman, Grose, Harlow, Hutton, Lerman, Lundeen, Makas, Marley, Marraché, Mazurek, McKane, Merrill, Miller, Mills, Norton, O'Brien, Patrick, Percy, Perry, Pingree, Piotti, Rector, Rines, Schatz, Simpson, Smith N, Smith W, Thompson, Trahan, Twomey, Vaughan, Walcott, Watson, Webster, Wheeler, Mr. Speaker.

NAY - Annis, Austin, Barstow, Beaudette, Berube, Bierman, Bishop, Blanchard, Blanchette, Bowen, Bowles, Brannigan, Brown R, Browne W, Bryant-Deschenes, Campbell, Carr, Cebra, Churchill, Clark, Clough, Collins, Cressey, Crosby, Crosthwaite, Curley, Curtis, Daigle, Davis G, Dugay, Duprey, Eberle, Edgecomb, Fischer, Fisher, Fitts, Fletcher, Flood, Hall, Hamper, Hanley B, Hanley S, Hotham, Jacobsen, Jodrey, Joy, Koffman, Lansley, Lewin, Lindell, Marean, McCormick, McFadden, McKenney, McLeod, Millett, Moody, Moulton, Muse, Nass, Nutting, Ott, Paradis, Pilon, Pinkham, Plummer, Richardson D, Richardson E, Richardson M, Richardson W, Robinson, Rosen, Sampson, Saviello, Seavey, Sherman, Shields, Sykes, Tardy, Thomas, Tuttle, Valentino, Woodbury.

ABSENT - Cain, Davis K, Emery, Greeley, Hogan, Jackson, Jennings, Kaelin, Moore G, Pineau, Stedman.

Yes, 57; No, 83; Absent, 11; Excused, 0.

57 having voted in the affirmative and 83 voted in the negative, with 11 being absent, and accordingly the motion to **TABLE** the Bill one legislative day **FAILED**.

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

ROLL CALL NO. 560

YEA - Annis, Austin, Barstow, Beaudette, Berube, Bierman, Bishop, Blanchard, Bliss, Bowen, Bowles, Brannigan, Browne W, Bryant-Deschenes, Carr, Cebra, Churchill, Clark, Clough, Cressey, Crosby, Crosthwaite, Curtis, Daigle, Davis G, Dugay, Duprey, Eberle, Edgecomb, Emery, Fischer, Fisher, Fitts, Fletcher, Flood, Hall, Hamper, Hanley B, Hanley S, Jacobsen, Jodrey, Joy, Koffman, Lansley, Lewin, Lindell, Marean, McCormick, McFadden, McKenney, Millett, Moody, Moulton, Muse, Nass, Nutting, Pilon, Pinkham, Plummer, Richardson D, Richardson E, Richardson M, Richardson W, Robinson, Rosen, Sampson, Saviello, Seavey, Sherman, Shields, Sykes, Tardy, Thomas, Valentino, Woodbury.

NAY - Adams, Ash, Babbidge, Blanchette, Brautigam, Brown R, Bryant, Burns, Campbell, Canavan, Collins, Craven,

Cummings, Curley, Driscoll, Duchesne, Dudley, Dunn, Duplessie, Eder, Faircloth, Farrington, Finch, Gerzofsky, Glynn, Goldman, Grose, Harlow, Hotham, Hutton, Lerman, Lundeen, Makas, Marley, Marraché, Mazurek, McKane, McLeod, Merrill, Miller, Mills, Norton, O'Brien, Ott, Paradis, Patrick, Percy, Perry, Pingree, Piotti, Rector, Rines, Schatz, Simpson, Smith N, Smith W, Thompson, Trahan, Tuttle, Twomey, Vaughan, Walcott, Watson, Webster, Wheeler, Mr. Speaker.

ABSENT - Cain, Davis K, Greeley, Hogan, Jackson, Jennings, Kaelin, Moore G, Pineau, Stedman.

Yes, 75; No, 66; Absent, 10; Excused, 0.

75 having voted in the affirmative and 66 voted in the negative, with 10 being absent, and accordingly the Bill was **PASSED TO BE ENACTED**, signed by the Speaker and sent to the Senate.

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

The House recessed until 6:45 p.m.

(After Recess)

The House was called to order by the Speaker.

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

**SENATE PAPERS
Non-Concurrent Matter**

Bill "An Act To Make Additional Allocations from the Highway Fund and Other Funds for the Expenditures of State Government and To Change Certain Provisions of State Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2005 and June 30, 2006" (EMERGENCY)

(H.P. 1382) (L.D. 1974)

PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "B" (H-1037) AS AMENDED BY HOUSE AMENDMENTS "A" (H-1053) AND "B" (H-1054) thereto in the House on April 27, 2006.

Came from the Senate **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "B" (H-1037) AS AMENDED BY HOUSE AMENDMENT "B" (H-1054) AND SENATE AMENDMENTS "A" (S-635), "B" (S-641), "C" (S-646) AND "D" (S-650)** thereto in **NON-CONCURRENCE**.

Representative MARLEY of Portland moved that the House **RECEDE AND CONCUR**.

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

Representative MARLEY: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. The bill that's before us is from the other body. It's their version of the highway budget and it includes two pieces that they added as an amendment which is to suspend gas indexing, just under one cent, for the upcoming July. The second piece is the \$60 million GARVEE bond. It has been very frustrating, this entire discussion, simply because back in December we started this discussion, the deferment. We've talked about this ad nauseam. Everyone's recognized the concern and the needs. Thousands of jobs could be at risk. Hundreds of projects and 112 communities affected, and still we're at an impasse. I need to

make this very clear, personally and make sure leadership hears this because they've done this to me before. I personally will never be bound by a deal that's made in the appropriation fund budget that affects the highway fund budget. We've talked about this time and again about the transfers and the importance of keeping them separate, but this very act, what we've done, has tied the hands of the highway fund, of the Transportation Committee and the people of Maine from improving their roads and actually voting on how they want to spend their money. I think that's a shame. It's purely politics. We want to have an issue to run on rather than doing what's right and trying to find a solution and I'm very disturbed by that. If you look at the editorials, and I'm going to just read a couple quickly and I apologize if it takes too long. This was in the *Bangor Daily* this past weekend. Because one of the solutions from my colleagues on the other side of the aisle was to take the newfound \$40 million to \$60 million surplus. First of all, it's \$40 million to \$60 million because we can't quantify what it is. It's a projection. "With the freshly found \$40 million to \$60 million budget surplus burning a hole in the Maine Legislature's pocket, the temptation for lawmakers to spend the money is strong. But, using the surplus to cover a highway bond as legislation would cost Maine more than it would save it." It goes on to say, "That's saying because building up reserves and paying down other liabilities does not score a lot of political points because these responsibilities aren't nearly as visible as a new bridge and a road." According to Rebecca Wyke, the Commissioner of the Department of Administration and Financial Services, if we use these surplus dollars rather than to pay down the unfunded liability, it would cost us in interest over the 23 years \$228 million. We'd be putting \$228 million in additional interest on those funds. It goes on to say, "Maine doesn't need a study to say that the roads need substantial improvement." Then it asks the question, "Can Maine afford to bond for the roads?" This is the political part of the issue because this is what's going to be the, I'll guarantee it, we're going to see it on all the cards coming in. We borrow too much. Well, seems that anyone who's looked at this issue says we don't bond too much for our roads. In fact, if we bond for our roads, it helps our bond situation because we're making improvements in capital. The largest creditor of government bonds is Moodies, which recently praised the State of Maine's conservative approach to debt with moderate bond issuance and an aggressive payout structure and capacity to accommodate unforeseen borrowing needs. What Moodies is concerned about are the fixed costs due to the State's pension liabilities. That's where the surplus would cascade into, to pay down that area that they're concerned about. Maine needs a regular investment in long-lasting capital projects that support Maine businesses and creates efficient road work, but it cannot abandon its liabilities to achieve this. It can, however, afford to bond and Legislators should mutually drop their no-bond pledge, which is important only to themselves, and get on with the process. Unfortunately, I feel that we're not going to get on with the process despite the needs. Just to give you a quick update, since we left, and I think we've been out of session three weeks, the Department has gotten estimates on what it's paying for the new round of pavement that we're putting on the roads. It's actually up 14% in the last three weeks. Just to give you a comparison last year, a ton of pavement cost \$35. It's actually now up to \$52 per ton and in parts of the State I've heard it's as high as \$72 per ton. That's an added cost we didn't foresee. Northern Maine with all their posted road needs are going to not see any of those addressed. Then we have the York County floods. I know that the Federal Government will come in and reimburse us up to 80% of our costs of those roads and bridges

that washed out in York County, however, we have to put the money upfront to repair those roads and bridges. So, remember, the \$30 million to \$50 million from the general fund and \$13 million from the highway fund? That's now already down to probably more closely to \$20 million because of the increased pavement costs I just talked about and then the upfront dollars that we have to spend to replace those roads and bridges in York County. It's going to probably be another \$5 million, \$6 million or \$7 million to fix those roads and bridges. The ironic thing here is how these are all interconnected. If we don't fix those roads and bridges, I'll guarantee you that surplus that you want to depend on will not be there. It certainly won't be in the same amount because people will not come to the State of Maine. The economic dollars will dry out and that surplus will dry up. It's a very disturbing development that we can't sit down and try to compromise and find a way to do this. The last thing I have to say is just that I've heard this righteous indignation about the "deal." As I just said to the leaders, I have as much righteous indignation as any of them have because I started working on this proposal back in December. We came out with a plan in January, months before the leadership deal. No one made a peep about the bonding. Then they act like we never would have considered bonding. Why are we even talking about it? It was out there for months. Either we're not reading the reports that go out and trying to make the appropriate needed repairs on our roads, or we're playing politics. I certainly hope that people sit down and try to vote their conscience. I think this is too important to the people of Maine and I certainly would hope that you'd support this Recede and Concur motion. Thank you.

Representative **TARDY** of Newport **REQUESTED** a roll call on the motion to **RECEDE AND CONCUR**.

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

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

Representative **CLARK**: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I was going to sit in my seat and not say anything at all but driving over these roads in rural Maine going from Millinocket to Lee to Medway to Crystal to Houlton, you name it in the last few weeks, you can see the damage that's been taking place in the State of Maine on these roads. It isn't only Southern Maine, it's rural Maine and all over Maine. The bridges and roads are in bad shape. When this agreement was made back in January with leadership, I can understand them making their agreement, but I can tell you right now, the roads have changed from when they made an agreement to what they are today with the weather we have, the open winter we had and everywhere I go I hear from people at work, "You need to do something with the roads. My car can't take it anymore." They're beaten right to a pulp, beating it right to a pulp. Last week there was a little editorial in my local paper accusing me of not doing my job down here. I know where the word came from. I know how it got into the paper, but I can tell you right now, if you don't take care of your roads you're not going to have economic development. You're not going to have growth. You're not going to have people get around because in rural Maine, I'm speaking for rural Maine, that's how we get around, is on rubber. Like it or not, you're going to have to fix them now or some other time down the road. The cost of fixing them later is going to be a lot more than what it is right now. Think when you vote. Think about the people back home you have to represent. Just don't only think about political party, Democrat or Republican. Think how people are going to get around in this State. It's getting bad. Thank you very much Mr. Speaker.

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 would concur with my good colleague from Millinocket. I know this is an important issue that needs to be addressed by this Legislature. Many of us have heard the situation that has occurred in York County in the recent floods of last week and I think it's paramount that we address this issue immediately. I know there are some concerns about how to do it and whether bonding is the right way to go, but we do need to do something about the roads in this state. It's something that's long overdue and I would support the motion as presented, to Recede and Concur. I think something has to be done. The hour is here and if we don't do something I don't know what we're going to do. We're in a situation that needs to be addressed and I'm hoping that we can get all sides together and both sides of leadership and try to get together and do this. It's the right thing to do. I know our bonded indebtedness is the lowest it has been in 25 years. I think it's something that we need to do. Hopefully, collectively, this Legislature can do it. Thank you Mr. Speaker.

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

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

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

Representative **SHERMAN**: My question is, and we've gone around and around on this bonding issue, how much money is in the budget right now that will be going out there for roads? I'm driving around the countryside and seeing roads being build and constructed, so I'd like to hear that figure. How much? Is it \$100,000? \$150 million? How much money is out there currently without a \$60 million bond issue?

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

Representative **MCKENNEY**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. We're fixing roads today. We're going to be fixing roads tomorrow in your town. We're fixing roads next week. We're going to fix roads next month. We've got about \$600 million dollars to fix roads with.

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

Representative **MARLEY**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. Thank you for the good Representative's answer. He's accurate. We are doing, I think you said \$600 million, in the roads. Don't forget, the bonds we're talking about the deferment list. We have a pie, if I didn't get myself in trouble I'd actually use a display, some sort of prop to show you. Draw a circle and take a piece of pie out of that. Make that circle about \$2 billion. The piece of pie is about \$650 million, I believe, in what we projected to do. Then take the \$130 million out of that pie. That comes out of the \$650 million piece of the pie. We're talking about the deferment list. We have a very aggressive program. We are building roads throughout the State of Maine, but we're not doing what we had projected to do and we certainly are not keeping up with the backlog of roads and bridges that need repair. I just have to put this out there very quickly. I know the Rosens, when the Waldo-Hancock bridge, that community had come forward repeatedly to get their bridge fixed and I think they were actually selling shirts that said, "Do you feel lucky?" That's because, do you feel lucky because something is going to happen to that bridge one day and the State of Maine has turned a blind eye to it. They were right

because we have not been doing the capital improvements on our roads that we need to. We kept playing Russian roulette with our bridges. So, when you drive home, if you didn't vote for this, I hope you feel lucky because I sure as heck don't. Thank you.

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

Representative **EBERLE**: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I also would like to encourage you to vote for the motion on the floor, Recede and Concur. I have had many communications from constituents. Nobody has asked me not to support this. Everybody is interested in getting the roads and bridges fixed. Not only do they want the work done, they also are in support of the bonding issue as proposed. So, they are beyond just getting the roads and bridges fixed. They are onboard for this mechanism for doing it. So, I would encourage your support for the motion on the floor. Thank you.

The **SPEAKER**: The Chair recognizes the Representative from Rockland, Representative Mazurek.

Representative **MAZUREK**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I'm urging you to support this bond issue. As Representative Eberle said, all the people I've talk to back home, regardless of party, have all asked and are concerned about the roads. We do a lot of work up here and we do things that the people back home don't have any idea what we're doing. It's like another world to them, but they do know about roads. They drive them and their cars hit the bumps and the potholes and everything else. That's something they can see and feel. Then they say, "What are you people doing up there? You can't get together to fix the roads?" No wonder sometimes we have the reputation we have because of what the people think of us. Here we have an opportunity to do something for the people that elected us, but yet we choose to fight over party politics. Put aside the party politics, let's do something that's right for the people of Maine. Let's vote this in and let's give the people of Maine something that they deserve, some decent roads. Thank you.

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

Representative **MCKENNEY**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. Let's look at the timeline here for a second. If we put a bond on ballot in November, it gets voted on in November, the bond will be sold next June, a year from this June, by January a few months after that general election a new Legislature comes in that could have a bond on the June ballot. This is not a crisis by any definition of the word crisis. We have plenty of money to fix roads right now. The next Legislature can deal with the bond.

The **SPEAKER**: The Chair recognizes the Representative from Portland, Representative Marley. 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 **MARLEY**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I just need to address what the good Representative from Cumberland, who served on the Joint Task Force Working Group, at a time seemed to feel that there was a crisis and helped come to the unanimous decision that we should have one-third cash and two-thirds bonding at the time. The other piece is, and I think he knows, if you look at statewide voter averages for how transportation bonds have fared, they voted, typically, high 60% to 70%. The most popular bonds that you'll see. What happens is once those bonds have been passed even though we can't go out to bond until June, we can do bond anticipation notes. They can be

issued in early 2007 and we can start those projects. So, even though we don't have the money in hand, we can start those projects. You've seen this. It's gone out. It's from the Department of Transportation. I'm not making this up. I trust the people that build our roads. Most people here say they did a great job in York during the floods, so I would trust them when they say that if we do not do this bond that we're currently talking about or some sort of variation on it, these deferred projects will not be built until the 2008-2009 season. We'll lose the entire 2007 season. We've said this before and we'll say it again and again and again and again, it's going to cost us, conservatively, \$10 million if not more to do these exact same projects. All of these things are going up in cost, steel, construction and any petroleum-based product. It makes no sense. I think it's irresponsible and it deeply disturbs me that we've come to this point that we can't find some sort of reasonable compromise. Please support the Recede and Concur.

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

ROLL CALL NO. 561

YEA - Adams, Ash, Babbidge, Barstow, Beaudette, Blanchard, Blanchette, Bliss, Brautigam, Bryant, Burns, Canavan, Clark, Craven, Driscoll, Duchesne, Dunn, Eberle, Faircloth, Farrington, Finch, Fisher, Gerzofsky, Goldman, Grose, Harlow, Hutton, Jackson, Koffman, Lerman, Lundeen, Makas, Marley, Marraché, Mazurek, Merrill, Miller, Moody, Norton, O'Brien, Paradis, Patrick, Percy, Perry, Pilon, Pingree, Piotti, Rines, Sampson, Schatz, Simpson, Smith N, Smith W, Thompson, Tuttle, Twomey, Valentino, Walcott, Watson, Webster, Wheeler, Woodbury.

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

ABSENT - Cain, Davis K, Greeley, Hogan, Jennings, Kaelin, Moore G, Pineau, Stedman.

Yes, 62; No, 80; Absent, 9; Excused, 0.

62 having voted in the affirmative and 80 voted in the negative, with 9 being absent, and accordingly the motion to **RECEDE AND CONCUR FAILED**.

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

Representative **MARLEY**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I'm glad to see that passionate, informed speeches make such a difference in the House of Representatives. I'm going to make a motion, Mr. Speaker, to Insist and Ask for a Committee of Conference and I would like to speak to my motion.

The **SPEAKER**: The Representative from Portland Representative Marley may proceed.

Representative **MARLEY** of Portland moved that the House **INSIST AND ASK** for a **COMMITTEE OF CONFERENCE**.

Representative **MARLEY**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. Basically, if this fails we will not have bonds. If that's what you want, if you want

to deprive the people of the State of Maine, because all we're doing is we're asking them in a referendum, "Do you want to spend GARVEE dollars to fix your roads and bridges?" I will guarantee you they would support 60% if not 70% of the voters. I would hope that reasonable people would allow us to continue to have a discussion, at least, on this issue and to move it to a Committee of Conference and sit down and talk about it. Basically, the point is I would hope that reasonable people would want to keep the conversation going to sit down and see if there's a way to compromise to do what's best for the people of Maine. If you want to do that, you'll support the Insist and Committee of Conference. If, basically, you want to play politics with the issue, deny the people even an opportunity to have one more chance for its Legislators to sit down, be reasonable, rational, look at all the needs and come up with a solution for this deferment project, then vote against it. If you want to deny any opportunities for us to address our road needs in this session, it would be a sad testament to what this Legislature has done for us to leave turning a blind eye to the needs to our roads and bridges, the economic backbone of our state. I hope you'll support the Insist, which basically puts us in the position of the Minority report without any bonding. This has no bonds in it, but it would move it down to the other body so we could have a conversation and start the discussion all over again and give the people of Maine an opportunity. Thank you.

Representative MCKENNEY of Cumberland **REQUESTED** a roll call on the motion to **INSIST** and **ASK** for a **COMMITTEE OF CONFERENCE**.

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

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

Representative **TUTTLE**: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. Very briefly, I would encourage you to support the motion to have a Committee of Conference. All a Committee of Conference will do is allow sides from the House and sides from the other body to get together. Whatever recommendation they make, it will come back to us so that we can make a decision one way or another. Let's give this thing a chance. Let's allow a Committee of Conference. There's no harm in doing this, so I hope support the motion.

The **SPEAKER**: A roll call has been ordered. The pending question before the House is to Insist and ask for a Committee of Conference. All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 562

YEA - Adams, Ash, Babbidge, Barstow, Beaudette, Blanchard, Blanchette, Bliss, Brautigam, Bryant, Burns, Canavan, Clark, Craven, Driscoll, Duchesne, Dunn, Eberle, Eder, Faircloth, Farrington, Finch, Fisher, Goldman, Grose, Harlow, Hutton, Jackson, Koffman, Lerman, Lundeen, Makas, Marley, Marraché, Mazurek, Merrill, Miller, Moody, Norton, O'Brien, Paradis, Patrick, Percy, Perry, Pilon, Pingree, Piotti, Rines, Sampson, Schatz, Simpson, Smith N, Smith W, Thompson, Tuttle, Twomey, Valentino, Walcott, Watson, Webster, Wheeler, Woodbury.

NAY - Annis, Austin, Berube, Bierman, Bishop, Bowen, Bowles, Brannigan, Brown R, Browne W, Bryant-Deschenes, Campbell, Carr, Cebra, Churchill, Clough, Collins, Cressey, Crosby, Crosthwaite, Cummings, Curley, Curtis, Daigle, Davis G, Dudley, Dugay, Duplessie, Duprey, Edgcomb, Emery, Fischer, Fitts, Fletcher, Flood, Gerzofsky, Glynn, Hall, Hamper, Hanley B, Hanley S, Hotham, Jacobsen, Jodrey, Joy, Lansley, Lewin, Lindell, Marean, McCormick, McFadden, McKane, McKenney, McLeod, Millett, Mills, Moulton, Muse, Nass, Nutting, Ott, Pinkham, Plummer, Rector, Richardson D, Richardson E,

Richardson M, Richardson W, Robinson, Rosen, Saviello, Seavey, Sherman, Shields, Sykes, Tardy, Thomas, Trahan, Vaughan, Mr. Speaker.

ABSENT - Cain, Davis K, Greeley, Hogan, Jennings, Kaelin, Moore G, Pineau, Stedman.

Yes, 62; No, 80; Absent, 9; Excused, 0.

62 having voted in the affirmative and 80 voted in the negative, with 9 being absent, and accordingly the motion to **INSIST** and **ASK** for a **COMMITTEE OF CONFERENCE** **FAILED**.

Subsequently, on motion of Representative BOWLES of Sanford, the House voted to **INSIST**.

SENATE PAPERS

Bill "An Act To Amend the Boundaries between the City of Saco and The Town of Old Orchard Beach" (EMERGENCY)

(S.P. 861) (L.D. 2115)

Committee on **STATE AND LOCAL GOVERNMENT** suggested and ordered printed.

Came from the Senate, under suspension of the rules and **WITHOUT REFERENCE** to a Committee, the Bill **READ TWICE** and **PASSED TO BE ENGROSSED**.

Under suspension of the rules, the Bill was given its **FIRST READING WITHOUT REFERENCE** to a committee.

Under further suspension of the rules, the Bill was given its **SECOND READING WITHOUT REFERENCE** to the Committee on **Bills in the Second Reading**.

Under further suspension of the rules, the Bill was **PASSED TO BE ENGROSSED** in concurrence.

Bill "An Act To Provide Protection for Victims of Domestic Violence"

(S.P. 860) (L.D. 2116)

Committee on **CRIMINAL JUSTICE AND PUBLIC SAFETY** suggested and ordered printed.

Came from the Senate, under suspension of the rules and **WITHOUT REFERENCE** to a Committee, the Bill **READ TWICE** and **PASSED TO BE ENGROSSED**.

Under suspension of the rules, the Bill was given its **FIRST READING WITHOUT REFERENCE** to a committee.

Under further suspension of the rules, the Bill was given its **SECOND READING WITHOUT REFERENCE** to the Committee on **Bills in the Second Reading**.

Representative DAVIS of Falmouth **REQUESTED** a roll call on **PASSAGE TO BE ENGROSSED**.

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

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

ROLL CALL NO. 563

YEA - Adams, Annis, Ash, Austin, Babbidge, Barstow, Beaudette, Berube, Bierman, Bishop, Blanchard, Blanchette, Bliss, Bowen, Bowles, Brannigan, Brautigam, Brown R, Browne W, Bryant, Bryant-Deschenes, Burns, Campbell, Canavan, Carr, Cebra, Churchill, Clark, Clough, Collins, Craven, Cressey, Crosby, Crosthwaite, Cummings, Curley, Curtis, Daigle, Davis G, Driscoll, Duchesne, Dudley, Dugay, Dunn, Duplessie, Duprey, Eberle, Eder, Edgcomb, Emery, Faircloth, Farrington, Finch, Fischer, Fisher, Fitts, Fletcher, Flood, Gerzofsky, Glynn, Grose, Hall, Hamper, Hanley B, Hanley S, Harlow, Hotham, Hutton, Jackson, Jacobsen, Jodrey, Joy, Koffman, Lansley, Lerman, Lewin, Lindell, Lundeen, Makas, Marean, Marley,

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

NAY - NONE.

ABSENT - Cain, Davis K, Goldman, Greeley, Hogan, Jennings, Kaelin, Moore G, Pineau, Stedman.

Yes, 141; No, 0; Absent, 10; Excused, 0.

141 having voted in the affirmative and 0 voted in the negative, with 10 being absent, and accordingly the Bill was **PASSED TO BE ENGROSSED** in concurrence.

SENATE PAPERS

Bill "An Act To Amend the Charter of the Starboard Water District" (EMERGENCY)

(S.P. 862) (L.D. 2117)

Committee on **UTILITIES AND ENERGY** suggested and ordered printed.

Came from the Senate, under suspension of the rules and **WITHOUT REFERENCE** to a Committee, the Bill **READ TWICE** and **PASSED TO BE ENGROSSED**.

Under suspension of the rules, the Bill was given its **FIRST READING WITHOUT REFERENCE** to a committee.

Under further suspension of the rules, the Bill was given its **SECOND READING WITHOUT REFERENCE** to the Committee on **Bills in the Second Reading**.

Under further suspension of the rules, the Bill was **PASSED TO BE ENGROSSED** in concurrence.

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

REPORTS OF COMMITTEE

Divided Report

Majority Report of the Committee on **HEALTH AND HUMAN SERVICES** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-654)** on Bill "An Act To Establish the Hospital and Health Care Provider Cooperation Act" (S.P. 852) (L.D. 2110)

Signed:

Senators:

MAYO of Sagadahoc
MARTIN of Aroostook
ROSEN of Hancock

Representatives:

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

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

Signed:

Representatives:

SHIELDS of Auburn
LEWIN of Eliot

Representative SOCKALEXIS of the Penobscot Nation - of the House - supports the Majority **Ought to Pass as Amended by Committee Amendment "A" (S-654)** Report.

Came from the Senate with the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-654)**.

READ.

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

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

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

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

Representative **SHIELDS**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. There's a saying that goes around, "Gentlemen this is no humbug." Ladies and Gentlemen, this bill is humbug. This bill first came to our committee on Tuesday of the week before we recessed. We received a brand new bill at that time which carried a lot of baggage with it and that close to adjournment, giving us a bill like that was reckless. It had it's first public hearing on a Tuesday and a little bit of work session that week, although we were very busy in this chamber. Friday we recessed. A number of errors and omissions were obvious in this bill and that's why you have an amendment. This is in spite of the fact that those preparing the bill said they had at least nine months to do it and testifies that their attorneys worked it over with a fine toothed comb and that's why it took so long to get it to us. It doesn't fit. How thoroughly and reasonably can a committee consider a bill in this restricted time? Now, the bill amends the Hospital Cooperation Act, it actually replaces it, and the basis of the bill is this, and I'll read it to you directly from the language because most of you are not familiar with it. "It is the intent of the Legislature that a certificate of public advantage, approved under this chapter, provide State action immunity under applicable Federal antitrust laws." What this bill is intended to do is if two or more hospitals get together and want to form an action together and they can get permission of the Department of Human Services and the Attorney General, then they may do this and remain immune from any State action on antitrust laws. My question is what illegal action do they want to do? What do they want to remain immune from? That's exactly what the bill says it does. If they succeed in this, it's called giving a certificate of public advantage. So, this might allow price fixing, which is most likely because we don't have that many hospitals in Maine and physician groups can do some price fixing under restricted conditions. Nothing in the bill prevents the hospitals from fixing prices except what they might discover when they review this by the authorities. Other antitrust activities such as monopoly, pressure, unfair competition, restrain of trade, collusion, discrimination and kickbacks will only be factors if the reviewing organization or authority realizes that this flowery language, of the application, doesn't disguise it well. There are many opportunities for unintended consequences in

this relatively raw bill. We had to add in it, for instance, the mandatory public hearing. It was not there in the bill. The bill did not designate how the Department of Human Services would proceed with these applications, who would do it and how many new positions could be added to the Department of Human Services. The supervisory activity, after a certificate of public advantage is granted to hospitals or physician groups, is very weak. There's not a provision to see if these, so called, advantageous cost savings from this cooperative act would be passed along to the consumers of the health care. So, in closing, would you like to have the privilege to apply to State government for an exemption from prosecution from illegal activity? Well, this is what the hospitals want to do and this time they've added the doctors into it. In the guise of improving healthcare services and controlling costs, the purpose of this bill really is to allow healthcare providers to avoid the danger of prosecution by engaging in antitrust activities. It adds little else to the current relations between the hospitals and doctors because agreements have taken place for years, among providers, to allow market forces to determine these activities. In my community, there are two hospitals. They could get together and collude on these things, but they've already agreed that one hospital would do psychiatry, one hospital would do trauma and one hospital would do cardiac surgery. It didn't require any action through the Department of Health and Human Services or the Attorney General. So, I hope you'll defeat this flawed bill and Mr. Speaker, when the vote is taken, I ask for a Roll Call.

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

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

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

Representative **PINGREE**: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I know that the hour is getting late and people are getting hungry and I don't want to bore you for hours on the Hospital Cooperation Act, but I do think it's important to clarify it. As the good Representative from Auburn pointed out it is complex. It did come to us late in the session, which all of us found very unfortunate, but just a little bit of history behind this bill, just before we get into some of the details. The Hospital Cooperation Act has actually been on the books, much of the law sitting before you, since 1992. Because the bill passed in 1992 was so specific, it was actually never ever been used. It was meant, in 1992, to help hospitals better work together so they could work on cooperative agreements, but it was so stringent it was never used. Under the Hospital Study Commission, which is probably very infamous in the minds of many Legislators, spent about a year reviewing hospitals. They worked very hard and there were a number of recommendations. The vast majority of those recommendations, or a number of those recommendations, were unanimous. Some of them were not unanimous. Amending the Hospital Cooperation Act was a unanimous recommendation of the Hospital Study Commission. That commission reported to our committee last year. When the bill came forward to amend the Hospital Cooperation Act there were still a number of questions in people's minds and a number of problems. So, we as the Legislative committee of oversight, the Health and Human Services Committee said to a number of people, all the parties that were before us including the insurers, including the hospitals, including the AG's Office and including the Chief Executive's Office of Health Policy, we said, "Go back and negotiate this. Don't come back to us until you have some kind of agreement, hopefully a unanimous agreement." And

that's what they did. Unfortunately the agreement didn't come about until late in the session and I completely concur with the good Representative from Auburn, but the bill did have a public hearing, it did have more than one work session and we really worked hard to try to find some common ground on a bill that especially the AG's Office and especially the hospitals had worked very, very hard to agree on. What this bill does is take the Act of 1992 and it strengthens it. It articulates a State policy of allowing cooperative agreements that facilitate cost containment, improve quality of care and increase access to care. Every single agreement will be reviewed by the Department of Health and Human Services and the AG's Office. If it's found that that agreement is only to try to pull the wool over our eyes, to try to fix prices or to do anything else it would never be approved. It wouldn't have been approved under the old act. It wouldn't be approved under this act. Only agreements that somehow are in the best interest of consumers will be approved. We did find a few flaws in the bill, a few issues that we as Legislators were concerned with. It left out mental health service providers. We included them. We made sure that the act would not allow coordinated negotiation for contracts with payers or employers to be if they were just for the purpose of setting prices. There was a concern that a large group of doctors could group together and they could use this as a way to negotiate with insurers or other groups that would, in some way, fix prices. That is not allowed under this act. We also required that a public hearing be held for any sort of proposed agreement if five or more parties requested a public hearing. We think this is in the best interest of the public, and if there is concern that there's some kind of agreement that could go forward, which would not be in the best interest of the public or would not be in the best interest of another provider, there will be a public hearing. I think that the facts will be able to come out there. So, this is a late bill but it's been very carefully negotiated. I think our committee gave it its due consideration and it received a very overwhelming support of the committee members. I urge your support. Thank you Mr. Speaker.

The **SPEAKER**: The Chair recognizes the Representative from Berwick, Representative Burns.

Representative **BURNS**: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I'd just like to reiterate what our good Chair had said. This issue did come to our committee last year and we asked that stakeholders to go away and come back when they've resolved issues, and they did. They came back to us, yes it was late in this session, but they had resolved issues. Everybody had resolved their issues, including the insurance industry, which caused me to be suspicious. Quite frankly, if healthcare were a game, our constituency, the people of this state, are losing and the insurance industry is on the winning side here. This bill is about public advantage and I'm confident that this bill will serve the public interest. I ask you to support it. 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. I again ask what illegal activity do they want to be exempt from? Which one is it? Which antitrust criminal act do they want to be exempt from? That's what the bill says. Here's what it also says. They will be allowed to do the coordinated negotiation and contracting with payer or employers. If this isn't price fixing, I've never heard it. Let me tell you what can really happen. In our community there are two hospitals, neither one of them like the ambulatory surgical center. The ambulatory surgical center is an orthopedic one. They only can do orthopedics, they can't do anything else.

Of course, if they're ambulatory surgical that means they can't keep people overnight, so a lot of big procedures can't be done there. They have day surgery that they can do. Suppose the two hospitals got together and said, "Boy, we're going to help the public, we're going to lower the price on all the arthroscopy. So, it's way down and we can make up the difference with the other things that are in the hospital, but we're going to lower ours down so far that if the ambulatory surgical center was to compete with us, they can't because they're going to go broke." This is the sort of thing that can happen. I just think that this is appalling that we are even considering a bill that exempts people from the Federal Law. I hope you will vote against it.

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 rise to support the remarks of my good friend Representative Shields from Auburn. He was quite correct in his assessment of this bill. I was absolutely appalled to see a bill of this magnitude coming to us on the Tuesday before we adjourned last. I think that's absolutely absurd. The people who worked on this over the winter spent nine months and it came to us in two very brief work sessions while we were running up and down to this chamber. We were expected to repair a lot of things that were very flawed in this bill and many things were addressed. Confidentiality was addressed to a degree and a number of other things. There are very many obvious unintended consequences that were pointed out. It would seem to me it would behoove this body to learn some of the lessons of the past. We spent countless, countless hours discussing things like transportation. Guess what, we wouldn't have had to talk about transportation a whole lot if we hadn't, in a previous Legislature, taken money from the transportation fund. It would have been there. There would have been no need of all this nonsense over those bonds. I think we need to learn from the mistakes of the past and not be in such a hurry to meet misfortune. We should be very concerned about the possibility of unintended consequences and when you talk about making law that is to help avoid Federal Law, I think that puts this Legislature in a very unique and absurd position. I think it's a very, very, very bad policy. Representative Shields is quite correct in his assessment of this bill. I would hope that you would all take his remarks to heart. Thank you.

Representative **WEBSTER** of Freeport **REQUESTED** that the Clerk **READ** the Committee Report.

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

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

Representative **GLYNN**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I'm a member of the Health and Human Services Committee. I have to say, this was a very tough bill for me. In my region of the State, in Greater Portland, we have two major hospitals, Maine Medical Center and Mercy Hospital. Mercy Hospital is opposed to this bill and had very specific reasons why. I did vote in favor of this report and I am going to support this. I think it's important to underscore that the concerns that have been raised are very real concerns. They're very real concerns that are held by a number of local hospitals. Essentially, what's being proposed here is to exempt activities from the antitrust laws and to allow collaboration. There's a lot of faith and a lot of trust put forward here that we're not going to have price fixing in this State, where doctor's groups or groups of medical centers bear together to set prices and fix prices and fix markets. That is a leap that a lot of folks do have trouble making. I can say that from my participation in it and having opportunities to speak with other people outside of the

committee hearing process, I feel, at this point, it's comfortable and it's tailored down to a narrow enough scope that there could be some opportunities for price savings. I think it's worth the risk to try. I can say that I am very skeptical, at the same time, of this legislation. I think that the comments that have been raised by Representative Lewin and Representative Shields are very valid ones and ones that we should all take to heart. We should absolutely follow up by a close review of this in the following Legislature, after it's enacted, to make sure, in fact, that we are not creating an environment where price fixing of markets take place.

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

Representative **MARRACHE**: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I rise to speak on this because I didn't quite understand the bill. I went out in the back and looked it up and then had a conversation with a member of Trish Riley's office. I'd have to say that I actually support this measure given the fact that we're trying to get healthcare providers to cooperate, to work together, along with hospitals. If you have two hospitals in your community, like I do, you know how difficult it can be at times. If they're going to work together to lower the cost of healthcare, why not let them? This bill seems like a way to allow that to occur. So, I will be supporting this bill. Thank you.

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 would like to give a different perspective. Quite honestly, I live in a monopoly. The monopoly is Calais. We happen to have two hospitals in Greater Washington County. What this might offer for us is the ability for these hospitals to work together so that they both might be able to provide part time services that they can't afford to do not because they can't get the people in to do that. This is not just about the cities working together. This is about access to affordable healthcare. I look at this as an opportunity for those areas who need the kind of things like a diabetes clinic or cardiac rehab. To be able to get them to work together so that those services can be provided on a local level so that we're not traveling two to two and a half hours away to get something that should be local. This offers that opportunity. The safeguards are there and I ask you to support that.

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

Representative **MILLER**: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I'd like to give another example of how this might be a very useful bill. I think it is worth worrying about the price fixing issue, but the flip side is, like other speakers have said, we do need ways of encouraging hospitals to cooperate. Years ago I worked with Maine's four family practice residencies and they all, simultaneously, were thinking about expanding the size of their residency because we needed primary care physicians. They could not talk to each other about how much they wanted to expand their residencies because that was an antitrust issue. What happened was they all expanded to the max and we have too many family practice residency slots. They could not talk to each other. I think we all feel, in these days, when we're all trying to control hospital costs that that's kind of nuts, to be honest. So, I think this bill offers an opportunity for places where collaboration should occur and could occur. Thank you Mr. Speaker.

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

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

The SPEAKER: The Representative may pose his question.

Representative **TRAHAN**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. One of the trends that has been occurring along the coast is that small physician offices, because of the cost of their malpractice insurance, have been joining hospitals. They have been gathering most of our small providers under the umbrella. How will this legislation affect those types of situations?

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

Representative **PINGREE**: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. To answer the good Representative's question, I think it's a good point that he brings up. This bill was supported by the Maine Medical Association, I think for the very reason, an example that you bring up. It could not be used by a group of physicians to try to negotiate with, say, the largest insurer in Maine for, you know, if they all say, "If we all band together, we could get a much higher rate for a certain service." But, if they use it to work together to bring down other kinds of costs, to try to lower the cost of care, that could be potentially approved. It still would require review of the AG's Office to insure it wouldn't be going to far into antitrust law. The point of it was to try to find ways that different types of providers, whether they be hospitals or doctors, to work together to try to bring down costs, to make it so they can make a better living and so that consumers could get a better price. Again, I can't guarantee you in that case, but I think that the doctors did support this and they saw this as something that would help keep their profession going in the State of Maine and I think exactly the example you bring up is one of the concerns the doctors do have.

The SPEAKER: The Chair recognizes the Representative from Auburn, Representative Shields. 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 **SHIELDS**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. In answer to the good Representative's question, the bill specifically prohibits any agreements between physician groups and hospitals. It's either hospital to hospital or physician to physician. It can't go back and forth. Now, working for the hospital is another matter which is a private agreement. It just seems to me that hospitals can work together without violating antitrust laws. To exempt them from that is just looking for monopoly activities and for collusion. The bill specifically allows hospitals to negotiate with third-party payers. That's price fixing. It does not allow physician's groups to do that. That's very interesting, and unless there are certain circumstances involved. So, hopefully that will answer your question. I just you'll seriously consider this bill and the ramifications of it.

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

Representative **WEBSTER**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I would just like to clarify, my memory of our conversations in the committee and my side conversations with the Attorney General's Office, a couple of points. I think that the good Representative from Auburn raises some important questions and things that we will certainly have

to be concerned about and watch. But, those are the things that the Attorney General's Office is concerned about and they watch. One of the criteria that the Attorney General's Office told us that they would be adamant about would be that it create savings. That's what we're looking for. They would not be allowing relationships, to take place and to develop, that would have an adverse impact on consumers. That's what we should be focused on. The cost of healthcare and strategies in a controlled manner, with oversight, that are going to reduce the cost of healthcare for your constituents. That's what this is doing. The Attorney General's Office is very competent and experienced in dealing with these issues. They were in support of this agreement and they are going to be participants in oversight of this. 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. 564

YEA - Adams, Ash, Babbidge, Barstow, Beaudette, Blanchard, Blanchette, Bliss, Bowen, Brannigan, Brautigam, Bryant, Burns, Campbell, Canavan, Clark, Craven, Crosby, Cummings, Daigle, Davis G, Driscoll, Duchesne, Dudley, Dugay, Dunn, Duplessie, Eberle, Eder, Faircloth, Farrington, Finch, Fischer, Fisher, Gerzofsky, Glynn, Grose, Hanley S, Harlow, Hutton, Jackson, Koffman, Lerman, Lundeen, Makas, Marraché, Mazurek, Merrill, Miller, Millett, Mills, Moody, Nass, Norton, O'Brien, Paradis, Patrick, Percy, Perry, Pilon, Pingree, Piotti, Rector, Richardson D, Richardson E, Rines, Saviello, Schatz, Sherman, Simpson, Smith N, Smith W, Tardy, Thompson, Tuttle, Twomey, Valentino, Walcott, Watson, Webster, Wheeler, Woodbury, Mr. Speaker.

NAY - Annis, Austin, Berube, Bierman, Bishop, Bowles, Brown R, Browne W, Bryant-Deschenes, Carr, Cebra, Churchill, Clough, Collins, Cressey, Crosthwaite, Curley, Curtis, Duprey, Edgecomb, Emery, Fitts, Fletcher, Flood, Hall, Hamper, Hanley B, Hotham, Jacobsen, Jodrey, Joy, Lansley, Lewin, Lindell, Marean, McCormick, McFadden, McKane, McKenney, McLeod, Moulton, Muse, Nutting, Ott, Pinkham, Plummer, Richardson M, Richardson W, Robinson, Rosen, Sampson, Seavey, Shields, Sykes, Thomas, Trahan, Vaughan.

ABSENT - Cain, Davis K, Goldman, Greeley, Hogan, Jennings, Kaelin, Marley, Moore G, Pineau, Stedman.

Yes, 83; No, 57; Absent, 11; Excused, 0.

83 having voted in the affirmative and 57 voted in the negative, with 11 being absent, and accordingly the Majority Ought to Pass as Amended Report was **ACCEPTED**.

The Bill was **READ ONCE**. Committee Amendment "A" (S-654) was **READ** by the Clerk and **ADOPTED**.

Under suspension of the rules, the Bill was given its **SECOND READING WITHOUT REFERENCE** to the Committee on Bills in the Second Reading.

Under further suspension of the rules, the Bill was **PASSED TO BE ENGROSSED as Amended by Committee Amendment "A" (S-654)** in concurrence.

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

**PETITIONS, BILLS AND RESOLVES REQUIRING
REFERENCE**

Bill "An Act Relating to the Handling of Firearms Confiscated
by Law Enforcement Officers Pursuant to a Court Order"

(H.P. 1507) (L.D. 2118)

Sponsored by Representative MILLS of Farmington.

Approved for introduction by a majority of the Legislative Council
pursuant to Joint Rule 205.

Committee on **EDUCATION AND CULTURAL AFFAIRS**
suggested.

Under suspension of the rules, the Bill was given its **FIRST
READING WITHOUT REFERENCE** to a committee.

Under further suspension of the rules, the Bill was given its
SECOND READING WITHOUT REFERENCE to the Committee
on **Bills in the Second Reading**.

Under further suspension of the rules, the Bill was **PASSED
TO BE ENGROSSED** and sent for concurrence.

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

On motion of Representative PATRICK of Rumford, the
House adjourned at 8:37 p.m., until 10:30 a.m., Tuesday, May
23, 2006, in honor and lasting tribute to the Honorable Donald R.
O'Leary, Sr., of Mexico.