

MAINE STATE LEGISLATURE

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

Daily Edition

Second Regular Session

January 4, 2012 – May 31, 2012

pages 1084 - 1604

ONE HUNDRED AND TWENTY-FIFTH LEGISLATURE
SECOND REGULAR SESSION
47th Legislative Day
Wednesday, April 11, 2012

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

Prayer by the Honorable Michael D. McClellan, Raymond.
Pledge of Allegiance.
The Journal of yesterday was read and approved.

SPECIAL SENTIMENT CALENDAR

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

Recognizing:

the following members of the Deer Isle-Stonington Elementary School Odyssey of the Mind team, who won first place at the 2012 Division II middle school state tournament: Philomena Mattes, Oskar Mattes, Jadya LaDeau, Cameron Wendell, Amy Friedell, Ali Eaton and Alyssa Chesney. Odyssey of the Mind is an international problem-solving competition for students from kindergarten through college. The Deer Isle-Stonington team has been invited to compete at the world finals to be held at Iowa State University. We congratulate the members of the team on their accomplishment and we send them our best wishes;

(HLS 1165)

Presented by Representative KUMIEGA of Deer Isle.
Cosponsored by Senator LANGLEY of Hancock.

On **OBJECTION** of Representative KUMIEGA of Deer Isle, was **REMOVED** from the Special Sentiment Calendar.

READ.

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

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

UNFINISHED BUSINESS

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

Expression of Legislative Sentiment Recognizing The Wildwoods Band, of Lincoln

(HLS 1139)

TABLED - April 4, 2012 (Till Later Today) by Representative TURNER of Burlington.

PENDING - PASSAGE.

The **SPEAKER**: The Chair recognizes the Representative from Burlington, Representative Turner.

Representative **TURNER**: Thank you, Mr. Speaker. Mr. Speaker, Men and Women of the House. I am very pleased to bring forward this recognition for The Wildwoods Band. They attended a week long competition that is held annually in Pigeon Forge, Tennessee. For the second year in a row the Honorable Rod Carr, Cathy Severance, Rich Nye and Doug Danforth took the top honors in their Traditional Country music categories.

The band received awards and recognition for the 2012 Traditional Country Vocal Group of the Year. The Honorable Rod Carr and Cathy Severance also received the 2012 Traditional Country Duo of the year award. The North American Country Music, International, competition is held annually in Pigeon Forge

and showcases musicians as well as songwriters from all of North America, Canada and Mexico.

The band was also very pleased to learn that their CD "Pictures on the Wall" had been playing for five weeks on WJFC radio down in Johnson City, Tennessee. I wish to offer my congratulations to The Wildwoods Band. Thank you, Mr. Speaker.

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

REPORTS OF COMMITTEE

Divided Reports

Majority Report of the Committee on **HEALTH AND HUMAN SERVICES** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-542)** on Bill "An Act To Strengthen the State's Ability To Investigate and Prosecute Misuse of Public Benefits"

(S.P. 665) (L.D. 1888)

Signed:

Senators:

McCORMICK of Kennebec
FARNHAM of Penobscot

Representatives:

FOSEL of Alna
MALABY of Hancock
O'CONNOR of Berwick
SANDERSON of Chelsea
SIROCKI of Scarborough

Minority Report of the same Committee reporting **Ought to Pass as Amended by Committee Amendment "B" (S-543)** on same Bill.

Signed:

Senator:

CRAVEN of Androscoggin

Representatives:

STRANG BURGESS of Cumberland
EVES of North Berwick
PETERSON of Rumford
SANBORN of Gorham
STUCKEY of Portland

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-542).**

READ.

On motion of Representative STRANG BURGESS of Cumberland, the Majority **Ought to Pass as Amended** Report was **ACCEPTED.**

The Bill was **READ ONCE.** **Committee Amendment "A" (S-542)** was **READ** by the Clerk.

Representative STUCKEY of Portland **PRESENTED House Amendment "A" (H-936)** to **Committee Amendment "A" (S-542)**, which was **READ** by the Clerk.

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

Representative **STUCKEY**: Thank you, Mr. Speaker. Mr. Speaker, Men and Women of the House. We're all against fraud. We all want to be vigilant and proactive about exposing and punishing those who knowingly and maliciously steal and violate public trust. LD 1888, as amended, deals with two issues:

overpayment of program benefits and suspension of provider payments due to credible allegations of fraud in the MaineCare program. The bill requires that the Department shall adopt rules that define credible allegation of fraud, and provide exception and appeal procedures for suspension of payments as required by federal law and regulations.

Currently, the bill authorizes the Department to adopt a rule for expedited relief procedures if it chooses to do so. This amendment would simply require the rule shall include expedited procedures and here is why, Mr. Speaker. Suppose a small single purpose community agency who has had a contract with the Department of Health and Human Services for years to provide community-based mental health services. That agency, because of a determination of credible allegation of fraud, has had its payments suspended. The state contract may be the agency's entire budget and without these payments, they may not be able to meet payroll, they may have to stop providing essential community services and may even go out of business. If they are guilty of fraud then good riddance, but what if they're not? Shouldn't they have the right to ask someone like a court for an expedited relief? We really don't want the rules to say guilty until proven innocent, do we, especially if it means we run the risk of losing a valuable community organization, or at least temporarily maybe jobs and services critical to people's safety and well being. Including expedited relief in these rules strengthens due process and the public/private partnership that our human services delivery system depends on, and that, Men and Women of the House, is good public policy. Thank you, Mr. Speaker.

Representative CURTIS of Madison moved that **House Amendment "A" (H-936) to Committee Amendment "A" (S-542) be INDEFINITELY POSTPONED.**

The same Representative **REQUESTED** a roll call on the motion to **INDEFINITELY POSTPONE House Amendment "A" (H-936) to Committee Amendment "A" (S-542).**

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 Indefinite Postponement of House Amendment "A" (H-936) to Committee Amendment "A" (S-542). All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 316

YEA - Ayotte, Beaulieu, Bennett, Black, Burns DC, Cebra, Chase, Clark T, Cotta, Crafts, Cray, Crockett, Curtis, Cushing, Damon, Davis, Dow, Dunphy, Edgecomb, Espling, Fitts, Fitzpatrick, Flood, Fossel, Foster, Fredette, Gillway, Guerin, Hamper, Harmon, Harvell, Johnson D, Johnson P, Keschl, Knapp, Knight, Libby, Long, Maker, Malaby, McClellan, McFadden, McKane, Morissette, Moulton, Nass, Newendyke, O'Connor, Olsen, Parker, Parry, Picchiotti, Plummer, Prescott, Richardson D, Richardson W, Rioux, Rosen, Sanderson, Sarty, Sirocki, Strang Burgess, Tilton, Timberlake, Volk, Wallace, Waterhouse, Weaver, Willette A, Willette M, Winsor, Wood, Mr. Speaker.

NAY - Beaudoin, Beavers, Beck, Beliveau, Berry, Blodgett, Boland, Bolduc, Briggs, Bryant, Cain, Carey, Casavant, Chapman, Chipman, Clark H, Clarke, Cornell du Houx, Dill J, Dion, Driscoll, Duchesne, Eberle, Eves, Flemings, Gilbert, Goode, Graham, Hanley, Harlow, Haskell, Hayes, Herbig, Hinck, Hogan, Hunt, Innes Walsh, Kaenrath, Kruger, Kumiega, Lajoie, Longstaff, Lovejoy, Luchini, MacDonald, Maloney, Martin, Mazurek, McCabe, Monaghan-Derrig, Morrison, Nelson, O'Brien, Peoples, Pilon, Priest, Rankin, Rochelo, Rotundo, Russell, Sanborn, Stevens, Stuckey, Theriault, Treat, Tuttle, Valentino, Wagner R, Webster, Welsh.

ABSENT - Bickford, Celli, Gifford, Kent, Peterson, Shaw, Turner.

Yes, 73; No, 70; Absent, 7; Vacant, 1; Excused, 0.

73 having voted in the affirmative and 70 voted in the negative, 1 vacancy with 7 being absent, and accordingly **House Amendment "A" (H-936) to Committee Amendment "A" (S-542) was INDEFINITELY POSTPONED.**

Subsequently, **Committee Amendment "A" (S-542) was 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-542)** in concurrence.

Majority Report of the Committee on **TAXATION** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-501)** on Bill "An Act To Restore Equity in Revenue Sharing"

(S.P. 635) (L.D. 1835)

Signed:

Senators:

COURTNEY of York
WOODBURY of Cumberland

Representatives:

KNIGHT of Livermore Falls
BENNETT of Kennebunk
BERRY of Bowdoinham
BICKFORD of Auburn
BRYANT of Windham
FLEMINGS of Bar Harbor
PILON of Saco
WEAVER of York

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

Signed:

Senator:

HASTINGS of Oxford

Representatives:

HARMON of Palermo
WATERHOUSE of Bridgton

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-501).**

READ.

Representative KNIGHT of Livermore Falls moved that the House **ACCEPT** the Majority **Ought to Pass as Amended** Report.

The **SPEAKER:** The Chair recognizes the Representative from Livermore Falls, Representative Knight.

Representative **KNIGHT:** Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. This bill is quite different from many that come before this body and the name that we give to it is "Spreadsheet Politics." I fully expect people, when they vote, they will be voting as this bill particularly impacts their communities. I just want to explain very briefly, this is a 10-3 report, nonpartisan as you can see. All the Ds are on board and over half of the Rs are on board and the Independent. The reason the Majority Report came together as it did was for the

policy piece of this. Currently, Revenue Sharing II kicks in for those communities that are particularly handicapped by very high mill rates, and for years and years and years that mill rate has been arbitrarily been established at 10 mills. What this bill does is effectively removes it over a period of years to the state average, which is currently a little over 11.6 mills. So I fully expect and in fact would invite you to vote, as I say, on the spreadsheet. But the reason behind the bill is sound and I will be voting for the Majority Report as I've moved and I would encourage you to think seriously about doing the same. Thank you.

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

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

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

ROLL CALL NO. 317

YEA - Beaudoin, Beaulieu, Beck, Beliveau, Berry, Blodgett, Boland, Bolduc, Briggs, Bryant, Cain, Carey, Casavant, Chapman, Chipman, Clarke, Cornell du Houx, Crafts, Curtis, Cushing, Damon, Dill J, Dion, Driscoll, Duchesne, Eberle, Edgecomb, Eves, Fitts, Fitzpatrick, Flemings, Gifford, Gilbert, Goode, Hanley, Harlow, Haskell, Hayes, Herbig, Hinck, Hunt, Innes Walsh, Kaenrath, Knight, Kruger, Kumiega, Lajoie, Longstaff, Lovejoy, MacDonald, Maker, Malaby, Maloney, Martin, Mazurek, McCabe, Monaghan-Derrig, Morrison, Nelson, O'Brien, Parker, Peoples, Picchiotti, Pilon, Priest, Rankin, Rochelo, Rotundo, Russell, Sanborn, Stevens, Strang Burgess, Stuckey, Theriault, Treat, Tuttle, Valentino, Wagner R, Weaver, Webster, Welsh, Willette M.

NAY - Ayotte, Beavers, Bennett, Black, Burns DC, Cebra, Chase, Clark H, Clark T, Cotta, Cray, Crockett, Davis, Dow, Dunphy, Esping, Flood, Fossel, Foster, Fredette, Gillway, Graham, Guerin, Hamper, Harmon, Harvell, Johnson D, Johnson P, Keschl, Knapp, Libby, Long, Luchini, McCiellan, McFadden, McKane, Morissette, Moulton, Nass, Newendyke, O'Connor, Olsen, Parry, Plummer, Prescott, Richardson D, Richardson W, Rioux, Rosen, Sanderson, Sarty, Shaw, Sirocki, Tilton, Timberlake, Turner, Volk, Wallace, Waterhouse, Willette A, Winsor, Wood, Mr. Speaker.

ABSENT - Bickford, Celli, Hogan, Kent, Peterson.

Yes, 82; No, 63; Absent, 5; Vacant, 1; Excused, 0.

82 having voted in the affirmative and 63 voted in the negative, 1 vacancy with 5 being absent, and accordingly the Majority **Ought to Pass as Amended** Report was **ACCEPTED**.

The Bill was **READ ONCE**. **Committee Amendment "A" (S-501)** 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-501)** in concurrence.

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

Majority Report of the Committee on **VETERANS AND LEGAL AFFAIRS** reporting **Ought to Pass as Amended** by

Committee Amendment "A" (H-919) on Bill "An Act To Establish a Competitive Bid Process for Future Casinos and Slot Machine Facilities"

(H.P. 1400) (L.D. 1897)

Signed:

Senators:

FARNHAM of Penobscot
 PATRICK of Oxford
 PLOWMAN of Penobscot

Representatives:

BEAULIEU of Auburn
 CAREY of Lewiston
 CHIPMAN of Portland
 CROCKETT of Bethel
 DAMON of Bangor
 JOHNSON of Eddington
 LONGSTAFF of Waterville
 RUSSELL of Portland
 VALENTINO of Saco

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

Signed:

Representative:

WILLETTE of Presque Isle

READ.

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

The SPEAKER: The Chair recognizes the Representative from Passamaquoddy Tribe, Representative Soctomah.

Representative **SOCTOMAH**: Thank you, Mr. Speaker. Mr. Speaker, Men and Women of the House. I rise today in opposition to Amendment "A" to LD 1897. While I am not particularly pleased with LD 1897 as it was originally filed, Amendment "A" made the legislation even less palatable. My opposition to this legislation can be summed up in just one word: moratorium. LD 1897 seeks to place a moratorium on all casino or slot machine facilities in Maine that have not been licensed before September 1, 2012. The citizens of Washington County have been working on getting a tribal racino established for the past 18 years. During that period of time, a casino was established in Bangor and another casino is under construction in Oxford. Of interest to my colleagues in the House, Penn National Gaming, the owners of Hollywood Casino in Bangor, support the efforts of the Passamaquoddy Tribe to establish a tribal racino in Washington County. Instead of allowing such a proposal to go forward, the Joint Standing Committee on Veterans and Legal Affairs is intent on stopping all gaming developments in Maine.

LD 1897 also seeks to establish a Commission to develop a competitive bidding process for the operation of future casinos or slot machine facilities. On its face, this might seem like a good idea. However, the legislation sets an arbitrary privilege fee of \$250,000 and a cash bid of \$5 million, at least, for those who wish to establish a casino or slot machine facility. This fails to take into consideration the size of a particular project, where it is located in the state, and other demographics. The Passamaquoddy Tribe's racino has always been planned to be a smaller gaming venture, and it is completely unfair to subject smaller gaming projects to the same fees as large, full-scale casino projects.

I agree with the VLA Committee in one sense. I believe that current law regarding harness racing, the establishment of tribal commercial tracks, and the operation of slot machines at those

locations needs to be changed. However, it should not be changed the way they have suggested.

I would conclude my remarks by saying this: The Passamaquoddy Tribal Membership is not looking for a handout. Rather, we are asking the State to not limit our ability to participate in a business venture that is already available to others. Federally recognized tribes across the country have utilized the gaming industry to support their tribes and surrounding communities, and it is a matter of fairness that Maine tribes be afforded the same consideration. Thank you, Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Presque Isle, Representative Willette.

Representative **WILLETTE**: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I rise today as the sole occupier of the Minority Report on this and I'm going to give you a couple of reasons why I wound up on that Minority Report. Basically, two main issues for me for the Ought Not to Pass on LD 1897. These items were that, if added, would have made this bill somewhat palatable for me, enough so that I probably could have included myself on the Majority Report first.

The Commission proposal in the bill in section 4 excludes a few members that I feel should be included in this makeup of the Commission, I believe, to balance out in the Commission the fact that we have a representative from the Oxford Casino and the Hollywood Slots Casino. I think to provide balance we need to have developers that aren't currently licensed in the state to operate a casino or slot facility that might be interested. A member from the Maine Association of Agricultural Fairs, a member of the Maine Tourism Board, and a member from the Maine Chamber of Commerce. I think that those would add some value to what I might point out is already a huge commission, okay?

The timeframe in which the Commission was charged to develop the competitive bidding process for the operation of additional casinos or slot machine facilities is too vague and lacks hard deadlines. The appointment of the Commission being made no later than February 1, 2013, I believe that that should be done quite a bit sooner. The Commission should be appointed no later than 120 days after adjournment of this 125th session of the Legislature. That would mean that the work would start in the month – it depends on when we adjourn, I know that's up in the air – some time at the middle or end of August, the first half of September 2013.

I feel the preliminary findings of their study should be reported back to the Legislature for action by February 1, 2013, not by February 15, 2014. If you report back February 15, 2014, you are now pushing this into the short session of the 126th. We all know what happens when we start the bottleneck of work into the short session. We've all experienced that here this year. So the preliminary report I feel should be committed to VLA February 1, 2013. That will give time for the VLA Committee and the Commission to work out and iron out any differences and basically come forward with a piece of legislation. The final report, I believe, should be given April 3, 2013, and the reason why I bring these timelines up is if you're not given specific hard deadlines, that some people will say just because the deadline in the bill right now is February 15, 2014, that doesn't mean that they have to wait to that point. But if you're given the opportunity to drag out your work, most times you take the full allotted time.

The lack of urgency of the proposed dates ignores impending competition from states like Massachusetts and the legislation being considered in New Hampshire. Just recently, the Massachusetts Legislature approved three casinos and one slot

facility, so we're losing our competitive edge with surrounding states.

In giving this more thought and re-reading testimony provided at our public hearing held on the 26th of March, which included only one person speaking for the bill and four or so speaking against, and one neither for nor against, I came up with some other issues that caused some concern.

The moratorium – there is no moratorium in the bill that you see as labeled as such, but in looking at one of our VLA review sheets, it was brought into question when the moratorium was written down as part of the bill, there was, the highlighted section said that this language might be redundant considering the language in section 2-B. 2-B basically is a moratorium. You can label it whatever you want, but if you read section 2-B, a moratorium is a moratorium.

The "privilege fee" of \$250,000 and the minimum bid of \$5 million is fine with me, but then when I started rethinking the \$5 million, that figure would not apply to projects that are small. The fees are not very friendly with respect to size of the project, geographic location, and population bases, and taking in market conditions and demographics as well. We all discussed how casinos should look and feel and what kind of footprint they should occupy. They always had the belief that these up and coming or future casinos or racinos will right-size their projects to those certain standards, demographics and geographic location so why should the fees we impose on future facilities not be right-sized as well. This is a prime example of one size simply does not fit all.

There are also a host of other issues that would be greatly affected by the passage of this bill with regards to the remaining issue of the citizen's initiative referendum issues that this bill doesn't address. I'll leave that explanation for some other folks that are going to get up and speak in a minute. Thank you, Mr. Speaker, and I request a roll call on this.

The same Representative **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 Berwick, Representative O'Connor.

Representative **O'CONNOR**: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. Monopolies are terrific if you happen to be the one that owns the monopoly. I certainly would hope that that was not the intent of this legislation; however, I'm afraid that it will be if this happens to pass through this legislative body.

The 2003, the statewide referendum was for two racinos – that's harness racing with slots at the same facility.

Because this Legislature chose to make changes to the language approved by the voters of Maine, that never happened. The result with the Bangor facility is that instead of a racetrack that offers a diversified gaming experience, the perception is that slots are subsidizing the harness racing industry. Today the Bangor facility has table games and bills itself not as a racino but as a casino. The Oxford casino is on its way to a 2012 opening. To ignore the impact of two casinos on harness racing without providing the opportunity for Scarborough Downs to compete with new gaming products at the same or at a new location will mean the end to an industry as we know it today.

The harness racing industry, the agricultural fairs and their importance as economic engines for Maine agriculture in the \$300 million range has been discounted by the Veterans and Legal Affairs Committee as unimportant due to this bill. Again,

the 2003 statewide referendum was for two racinos – that's harness racing with slots at the same facility.

As has been said, the other contentious part of this bill is the privilege fee of \$250,000 and a minimum bid of \$5 million. This legislation also renders all of the efforts of the tribal negotiations regarding casinos and racinos virtually useless.

This bill is problematic in many forms and I reiterate...monopolies are great if you happen to be the owner...Representative Willette from Presque Isle was right in his no vote and I hope you follow his light and mine. Thank you.

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

Representative **PILON**: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. Mr. Speaker, I rise today to urge caution with regard to LD 1897. First, and perhaps most importantly, I do support a thoughtful and comprehensive and fair gaming policy and LD 1897 is none of the above. Gaming expansion in the state is inevitable, yet we're attempting to push through a bill that for all intents and purposes ignores competition for our southern neighbors, and while the study commission set forth in this legislation does in fact contemplate the impact of gaming in neighboring states, report back is so far out into the future that results will be virtually meaningless. Furthermore, this blue ribbon commission on gaming excludes critical input from resort developers, agricultural fairs, the tourism industry, the chamber of commerce and the public at large.

It's my understanding that the other Representative from Saco and some of my other members of the committee were adamant that stakeholders should not be involved in the discussion, and LD 1897 seems to ignore the fact that the Legislature cannot prevent a potential gaming developer from utilizing the citizen initiative process without first amending the Constitution. If a developer doesn't like the RFP process or any other provision set forth in LD 1897, they can simply include repeal language in their initiative legislation. If the intent here is to limit future referenda on casinos and racinos, I think we've missed the mark. Let's not forget that 2003 statewide referendum was for two racinos. That's harness racing with slots at the same facility. Because the Legislature chose to make changes to the language approved by the voters of Maine, only one facility exists and today the Bangor facility has table games and bills itself not as a racino but as a casino.

LD 1897 appears to neglect the inherent differences between a casino and a racino and the significant impact on harness racing on Maine's agricultural economy. The harness racing industry and the agricultural fairs they subsidize are indeed economic drivers that account for more than \$300 million in annual revenues, yet they are virtually ignored in 1897. Why are we not encouraging and promoting racinos in the legislation or, at the very least, ensuring that the will of the people in 2003 is upheld? There is a project in southern Maine, a willing developer and a willing harness racing partner. The people in York County support a racino, but now we're telling them they have to wait until the blue ribbon commission reports back in 2014.

I also question the arbitrary nature of the privilege fee, a \$250,000 fee, and the minimum bid of \$5 million. By the way, it was suggested at the public hearing by a member of the committee that perhaps the fee should actually be \$85 million. It doesn't seem fair that a Washington County racino should be saddled with the same fees as a facility in southern Maine that would likely be larger in scale. If this bill passes, I am very concerned at the impact of two casinos coupled with what amounts to a moratorium on new gaming. What happens to Maine's harness racing industry?

Finally, I'd like to add I'm a little perplexed at how we go about creating a comprehensive and fair competitive bid process when we already have one licensed casino and another scheduled for completion this year. It seems to me that passage of LD 1897 creates more problems than it solves. I urge you to vote no on LD 1897. Thank you, Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Pittsfield, Representative Fitts.

Representative **FITTS**: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I don't want to rehash all that's been said because I think they are valid arguments. I think in a nutshell this bill, if it were properly written, has some potential to have a positive effect on how Maine deals with the gambling industry. It is not in its present form acceptable, so I will not be supporting the Majority Report. It essentially, as drafted, sets up a perpetual system of referendums because of that magic word which we're all familiar with as legislators, notwithstanding. The \$5 million fee is arbitrary and I think had this been considered properly and those parties who have traditionally participated in the discussion had been included, better worded language could have been come up with. But as it stands today, I can't support it. Thank you, Mr. Speaker.

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

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

Representative **PARRY**: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I will start with saying that I was for the Oxford Casino and I was for the Biddeford Slots when that first came through and for the first, when they talked about getting racinos. But I'm not for monopolies and I'm afraid that this Commission that's been put together gives a lot of power to the current operators of the casinos and there are many members of the Commission, but I am sure the current operators of the two casinos we have now, or will soon have, will not be working very strongly to create more competition for themselves and I think as the good Representative from Pittsfield said, Representative Fitts, this will just be a continual citizen's referendum. It will force developers into that situation. I think that I was really hoping that we would have a real comprehensive bill and set some real strong rules for gaming in Maine, and I think all this does is sets up for monopolies. With all due respect to the current operators, if we set up a Commission and put Wal-Mart and Target on the Commission and ask them to look into allowing Kohl's to build, we would never do that and I don't think we should do it in this respect. I urge you to vote no on this pending motion. Thank you.

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

Representative **BEAULIEU**: Thank you, Mr. Speaker. Mr. Speaker, Men and Women of the House. Those of you who are not aware of what's been going on here in the last 10 or 12 years, we've had a perpetual, an ongoing referendum proposal every year. I doubt very much that the passage of this bill will increase that number to any large degree. My hope and I think the good Representative Parry mentioned it, my hope is that this does turn out to be a comprehensive report on gambling and a plan that in fact can be acceptable to all. But that comprehensive plan can't come into effect unless you give that Commission the opportunity

to do so. We haven't done that. Gambling policy in the State of Maine, truthfully, has been developers submitting their proposals in referendum after referendum and asking Maine voters to either agree or disagree with it. The largest majority of the time, they disagreed with it. But in 2011, we asked them to look at three proposals. All were defeated. I don't know. Maybe they were afraid of having that number. I think possibly they were afraid of the extent to which we had gone without having any plan in place that created uniformity and benefits to the state.

It appears to me that the state has been shortchanged in a lot of ways as a direct result of the method that we presently use. So my suspicion is that it is a motive to move this amendment out of the way, they don't like it, or this bill out of the way. But I hope that we in this body look beyond what I consider to be the very obvious and put something into effect which benefits all the people of the state, which brings revenue to the state commensurate with the kind of business activity which they engage in, and protects the integrity of the voters and the wishes which they have expressed over the years. They have talked about a program where we are going to get, or hopefully going to get, something that is positive, a program that is uniform, regulatory in nature, strong enough of course to make sure that it's good for the state and good for the business and industry component as well. So I hope that you'll rethink this process. I think the Commission is in place. It's a good body. Give it time to work, analyze some of the information we're going to get from both Bangor and Oxford, and be fair in your appraisal. I think that it will turn out positively one way or another. Thank you very much, Mr. Speaker, and thank you, members of the House.

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

Representative VALENTINO: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I rise today in support of LD 1897. I'd like to call your attention to two handouts that were passed out. One of them, since many people have been reading from the other handouts that were done, was taken by several members of the committee. It was passed out by Representative Beaulieu, Representative Carey and has had much input from the other members of the VLA Committee. I want to remind you that this report is a 12-1 report. Originally the report that came out, it was a unanimous report but one member of the committee rethought his vote, so we gave him the consideration to reconsider the bill so that he could be on the minority, but it is a 12-1 report. I want to just call your attention to the handout and to respond to some of the comments taken from the industry letters that were passed out.

First of all, I want to remind this body that the Harness Racing Commission has received from slot income, from November 2007 to June 2011, \$54 million. So since Hollywood Slots was up and running, the harness racing industry has received \$54 million to help the harness racing industry from slots. In the letter, it says that the bill creates a hardship for the future of harness racing in Maine. Our response is that it does not change, reduce, cap or amend any of the existing money that goes to this industry from slots or table games at Hollywood Casino or Oxford Casino. The Harness Racing Commission will get \$11.6 million this year from Hollywood and \$11.6 million next year from Hollywood, plus an additional \$1.2 million projected from Oxford. This is an estimated \$12.8 million per year, each year, to help the harness racing industry.

The second thing that they say in the letters is that there are a lot of horses that could and would be bred if we had some hope of a new racetrack and racino in southern Maine. Our response in that November 2011, only five months ago, the voters of Maine voted against having a racetrack and slots in southern Maine. LD

1897 does not prevent future casinos. It merely gives the Legislature time to convene the stakeholder group to report back to the Legislature on gambling expansion.

The other point that was said is that this association fully supports comprehensive planning for gaming as it is in the best interest of everyone, but this bill delays the process too long. Our response to that statement is that the purpose of 1897 is to do exactly what they say they support, comprehensive planning. LD 1897 will give the 126th Legislature, the one next year, the information to formulate comprehensive planning that takes into account the new opening of Oxford Casino and the addition of table games to Hollywood Casino. The timelines were not thrown in lightly. The reason that we're not having the committee meet this summer is that Hollywood Slots has just put table games in and Oxford is not up and running. It is not productive to have a meeting before these are up and running. So the idea is to have the meeting once we have credible data. They also state that the makeup of the Commission omits the Maine Association of Agricultural Fairs and lacks a resort developer that is key to any great project. That is true. But the stakeholder group, the Commission in LD 1897 is made up of 18 members. We've changed this composition at least three times in committee. We expanded it. We added other people. The horse industry has three positions on the committee, four positions are for legislators, four positions are for the tribes, two are for the veterans' nonprofits, two are for the casino operators, one is for an economist and two are only anti gaming. So the Commission is abundantly represented by people who want to expand gaming. People that did not make the 18, which we felt was cumbersome, were the Maine Agricultural Fairs because we already had three from the harness racing industry, the Sire Stakes, the Maine community colleges, the University of Maine, the Department of Education, the Maine Milk Commission and of course the senior citizens who receive Drugs for the Elderly. They all receive money from the racino and none of these people are on the commission. We had to draw a line somewhere.

The next statement that they have is that the timeframe ignores the ramifications of potential competition and consequently lost revenues to Massachusetts that is coming and proposals being considered in New Hampshire. Our response was that both the VLA Committee and the VLA Subcommittee that worked on this talked about gaming that was happening in other New England states and across the country. We cannot stop states from building and attracting Maine residents, but we need to make sure that we balance the needs and wants of pro gaming interests, anti gaming opponents and all Maine citizens. That is the purpose that we have under the jurisdiction of VLA, and that is why 1897 allows time to bring the stakeholders together to report and tackle this issue next session.

Their other point was that the harness racing industry, the agricultural fairs and their importance as an economic engine for Maine agriculture in the \$300 million range has been discounted by the Veterans and Legal Affairs Committee as unimportant. Our response is that VLA has never said that these organizations are unimportant. Gaming is under VLA's jurisdiction, therefore VLA must look at all aspects of the gaming and how they relate to all the people of the state, both those for and against gaming. VLA has tried to balance these competing interests. During the past 11 years, there have been eight citizen initiatives to expand gaming and six of them have been turned down.

The other statement that was made is that the 2003 statewide referendum was for two racinos. That's harness racing with slots at the same facility. Because the Legislature chose to make changes to the language approved by the voters of Maine, this never happened. Our response to that was the 2003 vote was

the two racinos, but it was subject to local approval. The voters in Scarborough repeatedly turned down the proposal to put slots at Scarborough Downs. That is why there are no slots at Scarborough Downs, not what the Legislature did but what the citizens of Scarborough did. That was not the Legislature.

I also want to just mention again about the timelines, that we're trying to do it to gather the information from the new revenue that's coming in. We had a subcommittee that met with this. We had many meetings. All of the stakeholders were there. The biggest thing is that we now have a window of opportunity to do something. Five months ago, the citizens of Maine voted down the expansion of gambling. Some people would say this bill actually flies in the face of that, that we should take that as saying that we do not want any more gambling in the State of Maine.

As stated here today, people have said that gaming expansion in Maine is inevitable. Well, if it's inevitable, then we need to get ahead of this and right now there's not a citizen initiative on the ballot so this is our window of opportunity. The \$5 million fee that we threw out was not arbitrary. Massachusetts has \$85 million for a license fee, so if you compare us to Massachusetts on one maybe you should compare in the other. Five million was a starting point for the committee to come back to.

The last point that I want to make is on the second handout that was done, which was an article taken from the *Portland Press Herald*, it was an editorial and the title is "Gaming vote gives Maine a timeout." There is many, many editorials I could tell you for over the years that have said that we need to get ahead of this, but I want to read to you a quote from this. This quote is actually from a member of the other body from the other side of the aisle from me, and he says "I think it's been a real failure that the Legislature and a succession of governors have punted on the issue of gaming and left it to lurch along from referendum to referendum, as opposed to having some kind of comprehensive state policy." We agree and that's what 1897 does.

It also goes on in the editorial which I take a little issue with because I feel I do have stomach for this and I have been talking about this in committee, but it says, a little slam at our committee, it says that lawmakers don't have the stomach to deal with gambling because it's controversial. They go on to say if that's right, then maybe we need some new lawmakers. "And supervision of legalized gambling is not only controversial, it's complicated -- too complicated to be left to ballot questions requiring yes or no answers from voters who don't have access to the depth of information that's needed to make the kind of sophisticated decisions this issue demands. Legislators have repeatedly tossed this hot potato to the voters. Last Tuesday, the voters tossed it back to the Legislature." And I would say, when it was tossed back to us, the result, 12-1 in our committee, was LD 1897 and I would urge you to support the work of the committee. Thank you.

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

Representative CAREY: Thank you, Mr. Speaker. Mr. Speaker, Men and Women of the House. I want to rise briefly and explain what my perception of the committee's intent is behind this 12-1 report. There are 151 of us in this body and there are 151 opinions about what we should do on any particular issue and nowhere is that more clear than this particular one. What I believe and what I think I share with my colleagues on the committee is that the Legislature should do its job and that this is an area that needs to be as we're going forward in making policy, we need to make sure that all of the stakeholders are involved in

setting that.

So the process by which this came forward, a little bit of background. This is my fifth year in the Legislature. This is the first year that we could have passed any bill like this because otherwise it would have been a competing measure. It would have gone out to the voters. Because of the way the Constitution works, anything that deals with the same section of statute would go out to the voters. So after five years, we've talked about various types of gambling and not just casino and racino gambling, but also nonprofits, also veterans' organizations, also the lottery. There is a number of different areas in which this implicates, including the ones that we're talking about today.

We created a subcommittee of four members of our committee and they had four hearings, each three hours long on average. Some were shorter, some were longer. There were other members of the committee who were not on the subcommittee who attended. I attended three of them. Representative Chipman from Portland attended some as well and I know that there are other members as well. Then we had a public hearing on the bill. Then we had a number of work sessions, not just on this bill but on other bills that have come before the body and will come before the body again. Then we finally came to a 12-1 report. I really think this is and I hearken back to what Representative Richardson said a couple of days on an entirely separate bill, that one of the things about this body is the committee process and when it works, it's a good thing. I think this is an example of the committee process working.

Now I want to answer some of the specific points that have been brought out of other folks who haven't been able to be part of those conversations and want to make sure that you understand that we did address them in the committee process. First, there was a question about whether or not this will create continued referenda. There is another example that was said earlier that there has been a number of referenda. We all know that. This is a place where it's pretty easy to spend \$5 million on the chance to make \$100. That's fine, that's not going to change. That doesn't mean that the Legislature doesn't have a responsibility to do its job and for each of us to sit here and try to make the best sense of all the information that we get and to put forward a policy.

Second, there have been a number of speakers who have questioned the committee's intent, specifically whether or not we want to stop the citizen initiative process. I can speak for myself. That is very much not what I have an interest in. I have an interest in making sure we get to the best policy for the State of Maine and I strongly believe that this is the best way to get there. There have been concerns that racinos aren't properly represented on this committee. As a matter of fact, the word "racino" does not appear in state law anymore. That was the case in 2003 in the referendum that went there and in the law until then, with the referendum that happened, the latest successful referendum, and then a bill that passed this body earlier this year. There is only the word "casino" in law. Now that doesn't mean that the harness racing industry is unimportant and it's been said that that's been suggested, whether that was the committee's intent, it was suggested that one member of the committee explicitly said "Stakeholders are not important." I would say categorically there is no member of my committee that I believe feels that way and I think that is the case in terms of the continuous support that we've given the harness racing industry when they've come before us on various different options, and I think that's also reflected in the makeup of the stakeholder group.

We've been told on a number of different times, on a number of different bills, that the industry stands together. Anybody who has been in this body before, I ask you to go back to when there

has been any suggestion about changes in the cascade, and the cascade and what happened to the Hollywood Slots, and it was unequivocal that the industry stands together. Fair enough. That industry is represented in four seats on the stakeholder group. The harness racing – I want to be real specific here – a representative of the harness racing horse industry in the state appointed by the President of the Senate, that's the harness racing industry, in particular, may or may not be somebody associated with an agricultural fair. An operator of a commercial harness racing horse track not authorized to operate slot machines. Now, there is only one of those in the state. That's Scarborough Downs. That was, as I understand, the business partner of the referendum that what went forward last year and it appears may go forward again. An off-track betting facility operator, again part of the industry. Then Hollywood Slots itself which creates most of where the \$54 million that's been referenced before.

Also, neighboring states have been mentioned. This has come into the debate in two different ways. First, there was this question that \$85 million was thrown as what the appropriate license should be. Well, \$85 million, as a matter of fact \$85 million is what the license is in the State of Massachusetts. None of us think, none of us and I will even go further, none of us know what the license should be in the State of Maine. We wouldn't know. The only way that a license, that we would know what the exact right number is in some kind of a competitive process, which is why the committee would like to look at what a competitive bid process would be. The concern that we have in the minimum, why the minimum is in there, is that without any language in statute, any developer who wants to have a racino and is concerned about the pace of the Legislature, which remains an option no matter what happens with this bill, any developer can write in what that would cost. Now we've had examples of targeting goals. Nowhere do we have the ability to walk into a commercial establishment and say "This is what I want and I'm going to tell you what I'm going to pay for it." This is just a minimum. If it turns out that that's too high, that can be changed. If it turns out that's too low, that could be changed.

Second, New Hampshire has been mentioned. New Hampshire recently overwhelmingly voted down a proposal to have four casinos or racinos, I'm not exactly sure, facilities that had slots. They voted them down unanimously. There's been concern about this Legislature changed the rules so that another, a second casino wasn't built. The second casino, as has been mentioned, had an opportunity to be built with a local municipal referendum that was not passed.

So I guess I just want to close with my intent and the intent that I believe was shared by the 11 colleagues that supported this is that the Legislature does have a role here. Their role is to set basic policy. Because of the particular policy that we're setting, we think we need to have the input of stakeholders, not just the folks who are in this particular industry but anybody who's touched by it, and that includes veterans' service organizations, that includes the ones that I mentioned before, that includes fraternal organizations, that includes federally recognized tribes, that includes members of the House and the other body to be – they don't have an interest in it, but we should be there and be able to report back to you folks when this comes up in the future – an economist or consultant with experience studying the gambling industry. Finally, and this has not happened with any other group that I'm familiar with and definitely no other group having to do with gaming, representatives from two groups who oppose the expansion of gaming in the state, one from a statewide religious organization and one not necessarily from a religious organization. If that doesn't suggest that the intention of

this committee is not to scuttle something, is not to have a unanimous report that is somehow going to stack the deck against some future applicant, what we want is a report that lays out all of the issues so that we can look at, this Legislature can look at and understand what do we need to be considering when we consider a future casino. I ask you to follow my light and the light of the rest of the committee and vote green on this. Thank you, Mr. Speaker.

The **SPEAKER**: The Chair recognizes the Representative from Skowhegan, Representative McCabe.

Representative **McCABE**: Thank you, Mr. Speaker. Mr. Speaker, Men and Women of the House. I rise today in opposition to the pending motion and I do so based on concerns that still exist, regardless of what we've heard so far from the harness racing industry and also from the fairs. I think that as we look at this issue and we talk specifically about the harness racing piece, it has a broad effect on our state, whether it's Dayton, Buxton, Saco, Skowhegan, Anson. We have open space because of this industry. If you think of the multiplying effect that the money that goes into harness racing has for agriculture across the state, it's enormous. I think when you look at agriculture as a whole, it's a complex web, even a puzzle, and it's always scary when you start to think about removing pieces of that puzzle. You know, we're not just talking about purses. We're not just talking about money that's handed down through Hollywood Slots. We're talking about indirect things like veterinarian services, feed costs and money that goes to equipment. It has just such a huge and broad geographical effect. I'm really concerned today that we haven't been able to come to some sort of compromise to address the concerns of these folks.

I have heard a lot of things today, a lot of pieces of paper on our desks referenced. But it's really clear to me, it's clear to me today that Maine agriculture can't take a timeout, we can't stop, we can't wait. I think what we need to do is sort of charge forward and we need to look at potential. There is a lot of industry in the State of Maine that can grow just under the potential of growth in the future that, you know, some things may happen, whether it's a racino or whether it's some sort of gaming facility that's tied to a racetrack. I hope that you'll follow my light and I fully support the concept of a competitive bidding process, but I just think that we need to get the framework right and we need to get that framework right from the beginning. Thank you, Mr. Speaker.

The **SPEAKER**: The Chair recognizes the Representative from Bethel, Representative Crockett.

Representative **CROCKETT**: Thank you, Mr. Speaker. Mr. Speaker, Distinguished Members of the House and my Colleagues in the back row. This bill mystifies astrologers, astronauts and has caused great study by meteorologists. Why, because the stars had to come into a certain alignment. For a guy like me who is anti gaming to agree to a bill like this, why do you agree? The reality is we have a patchwork of laws dealing with gaming in the State of Maine. It's more important to be fair than it is to advocate my particular perspective. So what did we do? We came up in its rawest form, we came up with a task force, the membership of which cannot be more broad, more inclusive than what is here. Two Senators, one from each party. Two Representatives, again one from each party. One Representative from each of the tribes. So out of 18 possible members, the tribes will have four. One charitable nonprofit organization, one veterans' organization, one harness racing, one commercial horse track racing, an off-track betting, an operator or representative of each casino. That's only two out of the 18, so despite the monopoly argument you've heard, don't let the facts

get in the way of a good argument because that's only two out of 18. An economist to look at the overall impact and that plays an important part. Why, because the reason you don't report back until 2014 is you're not going to have a good solid chunk of numbers to look at from Oxford and from Bangor before you can analyze and to determine whether there is an area to expand gaming in the State of Maine, because there may not be, but there may be. So we have to be fair and open-minded. That's why the Commission is set up like this. Then the last two out of the 18 are two people who are opposed to the expansion of gaming. This is a very fair and inclusive group. There is no monopoly dominating this group. There is going to be an open and broad conversation. We are going to hear every possible dimension of this argument, and what is that going to make us? Better legislators because we'll have more facts. That's why you have a report that's 12-1. We need to come up; we cannot abdicate our role any longer.

The good Representative from Lewiston has mentioned that we've always dealt with competing measures each year. Well, this is our only opportunity to do something. We can't punt right now. Even I who is an anti gaming person has to agree with the majority of the committee that is in favor of gaming. We have come to some sort of conclusion. The real debacle over this is there's one particular group that wants a seat on the Commission, but you can't give that particular group that lost that referendum a seat unless you're going to give the other organizations that lost at referendum a seat, because we have to be fair above all else. That's all the people of this state rely on is for us to be fair and judicious in our judgment.

So to recap, the membership is comprehensive. Even the anti gaming people think this is at least a fair conversation, a fair platform to have the conversation and we will be doing something that is productive as a body. So I would urge you to support the Majority Report and would request that the Clerk read the Committee Report. Thank you for your time and I hope my comments were brief enough.

The SPEAKER: The Chair would advise the member that the Committee Report is on page 12 in front of you. The Chair recognizes the Representative from Arundel, Representative Parry.

Representative **PARRY**: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I'm sorry for getting up a second time. I just kind of wanted to answer a couple of questions that the good Representative from Saco mentioned a few minutes ago. She was absolutely correct. The State of Maine voted down the Biddeford casino. But let's look into those numbers. York County didn't vote it down. The hometown where it was going to go, Biddeford, voted 61-39. Now let's look at the counties that voted against it. Penobscot County, Oxford County. Now I wonder why those two counties voted against the Biddeford casino. As was said before, this is a monopoly for those two casinos. Thank you.

The SPEAKER: The Chair recognizes the Representative from Passamaquoddy Tribe, Representative Soctomah.

Representative **SOCTOMAH**: Thank you, Mr. Speaker. I apologize for getting up for the second time. Back in the 115th, 116th Legislature I introduced the first casino bill in the State of Maine for the Passamaquoddy Tribe. That might be new information for you to consider. In listening to some of the speakers, I heard the word "fair." LD 1897 is not a good bill. It is not a fair bill. When the tribes first proposed a casino in the State of Maine two decades ago, to date we do not still have a casino. However, there is one in the Bangor area and one being developed in Oxford. At that time, when I introduced the legislation, it was said within the legislative body that there will be

no gaming in the State of Maine until there is a group of people to review gaming issues for impact of gaming and actually if the State of Maine does want gaming. At that time, that's what was said. Therefore, we were not allowed to have gaming.

Now you're talking about 1897 to review all those things that were said two decades ago that this body was going to do. It is very confusing for me as a tribal person to sit here and listen and observe what's going on at this level and within the State of Maine. I urge you not to support 1897. Even though the federally recognized tribal members are listed on there, my tribal governors, the two Passamaquoddy tribal governors question as to why they were put on there. I thank you and I apologize for getting up a second time. Thank you for your time.

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

Representative **RUSSELL**: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I think the good Representative from the Passamaquoddy Tribe illustrates some of the challenges that this industry has had over the years. We have, because previous Legislatures refused to address the issue of gaming, preferring to bury their heads in the sands and hope it wouldn't come to Maine at all, ultimately what has happened is that it has come to us through the citizens' initiative process time and time and time again. The point of this bill is to create a means by which we can control the gambling process, and frankly, out of this bill, our hope is or my personal hope is that the Passamaquoddy Tribe would be able to apply directly to the state in the future.

But I wanted to touch on two other things. One is, one of the Representatives mentioned the issue of geography. Oxford Casino competes against Biddeford, competes against Bangor and everybody else competes against Washington County. This creates an opportunity for us to take a comprehensive look at the state and to look in detail at how all gaming impacts each other, because there's only so much market share in the state for gaming. Every time something else goes in, it cannibalizes other aspects of gaming and given that each of us is from a different part of the state and has different geographic loyalties, that impacts our ability to make long-term decisions around gaming. This bill is designed to address that issue.

The final thing that I wanted to talk about, we continue to hear that this hurts the harness racing industry, that this hurts the agricultural industry. There are three things when it comes to gaming that would impact the harness racing industry. First, to close the racino, that would have a \$54 million impact over the course of several years as Representative Valentino pointed out. This does not do that. Two, to stop a racino from taking place, from developing, this does not do that either. A lot of people believe that it does and it doesn't. Yes, it gives us a timeout to be able to process things, but let me remind you that it was the people of Maine just a few short months ago that stopped the development of two racinos. It is not the Legislature and it is certainly not LD 1897 that is stopping the development of a racino.

Finally, the third thing that would hurt the harness racing industry or has the potential to harm the harness racing industry would be to open up the cascade. This bill does not do that either. This is not about the harness racing industry. This is about how we deal with gaming. As the good Representative from Bethel pointed out, there are many people in this state and many in this body who do not believe that gaming should exist in the first place, in any form. It does though in Maine. We are a gaming state. We can continue to bury our heads in the sand and not create a process by which we can make good determinations about how our gaming impacts our people or we

can take the timeout, and a very short timeout frankly, examine all the issues, bring the stakeholders to the table as we have done and create a system that works for all people. And instead of having out-of-state interests drop money on our state for the express purpose of influencing an election and then creating a tax system or a cascade system that may or may not benefit our people, instead we can actually develop a system that ensures that if we are going to have gaming in this state and if we are going to have new gaming in this state, that it ultimately benefits the people of Maine.

I guess the last thing I would point out is that the Veterans and Legal Affairs Committee does not always get along as well as we could. We have dealt with some seriously contentious issues over the last two years. One led to a people's veto and the fact that we were able to come together on this very controversial issue should send a message to this body of just how important it is that we get ahead of the gaming issue instead of continuing to fall further and further and further behind. And as one example of how we've done that, we have two very different cascades and two very different tax systems for the two casinos in this state, and that has everything to do with the fact that we did not have control over the negotiation process. It was entirely put upon us through the citizen's initiative process. I would ask you for once to really think through how hard it is for the Veterans and Legal Affairs Committee to come to an arrangement on such a controversial issue that is so bipartisan, and I would ask that you follow our light and move this forward. Thank you.

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

Representative **PILON**: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. As I've been sitting here listening to the debate and thinking about the likelihood of 18 members of this committee coming to any kind of consensus, I'm thinking about our committees and with 13 or 12 members of the committee trying to reach consensus, how difficult that is. Eighteen members coming from different disciplines trying to come to some kind of consensus in various backgrounds, I'm wondering how realistic it is to think that they would try to come to some kind of consensus, if that in fact is the end game. But what strikes me most is that there are a lot of missing people here. There is no one from the hospitality industry, no one from the tourism industry, again no one from the agricultural fair industry, but that's okay. But that's one issue.

The other issue is going back to what the Representative from Arundel mentioned, that when the referendum came out in November, that Biddeford voted in favor of this and that York County voted in favor of this and that is striking evidence that, you know, there is a demand for a racino in York County. What we're missing in York County is the opportunity to have a facility like this because, obviously, York County is the gateway to Maine. There are tens of thousands that come into Maine every year and to have a facility that has a racino and a resort community that has a facility like this, we don't have a destination or an entertainment destination in York County. This would certainly stimulate the economy in York County and the people in York County have voted for this and that's why this LD 1897 is not the right vehicle at this time. So I, again, cannot support 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. 318

YEA - Beaudoin, Beaulieu, Beavers, Beck, Beliveau, Berry, Black, Blodgett, Boland, Bolduc, Briggs, Bryant, Burns DC, Cain,

Carey, Casavant, Cebra, Chipman, Clark T, Clarke, Cornell du Houx, Crafts, Crockett, Curtis, Damon, Davis, Dill J, Dion, Driscoll, Duchesne, Dunphy, Eberle, Espling, Eves, Flemings, Flood, Fossel, Fredette, Gilbert, Goode, Graham, Guerin, Hamper, Hanley, Harlow, Harmon, Haskell, Hayes, Hinck, Hogan, Hunt, Innes Walsh, Johnson D, Kaenrath, Knapp, Kruger, Kumiega, Lajoie, Longstaff, Luchini, MacDonald, Malaby, Maloney, Martin, Mazurek, McClellan, Monaghan-Derrig, Morrison, Moulton, Nass, Nelson, Newendyke, Peoples, Peterson, Priest, Rankin, Richardson W, Rioux, Rochelo, Rosen, Rotundo, Russell, Sanborn, Stevens, Strang Burgess, Stuckey, Timberlake, Treat, Valentino, Volk, Wagner R, Webster, Welsh, Winsor, Mr. Speaker.

NAY - Ayotte, Bennett, Chapman, Chase, Clark H, Cotta, Cray, Cushing, Dow, Edgecomb, Fitts, Fitzpatrick, Foster, Gifford, Gillway, Harvell, Herbig, Johnson P, Keschl, Knight, Libby, Long, Lovejoy, Maker, McCabe, McFadden, McKane, Morissette, O'Brien, O'Connor, Olsen, Parker, Parry, Picchiotti, Pilon, Plummer, Prescott, Richardson D, Sanderson, Sarty, Shaw, Sirocki, Theriault, Tilton, Turner, Tuttle, Wallace, Waterhouse, Weaver, Willette A, Willette M, Wood.

ABSENT - Bickford, Celli, Kent.

Yes, 95; No, 52; Absent, 3; Vacant, 1; Excused, 0.

95 having voted in the affirmative and 52 voted in the negative, 1 vacancy with 3 being absent, and accordingly the Majority **Ought to Pass as Amended** Report was **ACCEPTED**.

The Bill was **READ ONCE**. **Committee Amendment "A" (H-919)** was **READ** by the Clerk.

On motion of Representative CURTIS of Madison, **TABLED** pending **ADOPTION of Committee Amendment "A" (H-919)** and later today assigned.

ENACTORS

Acts

An Act To Increase Gaming Opportunities for Charitable Fraternal and Veterans' Organizations

(H.P. 1078) (L.D. 1469)

(C. "A" H-887)

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

On motion of Representative JOHNSON of Eddington, was **SET ASIDE**.

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

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

The SPEAKER: The Chair recognizes the Representative from Eddington, Representative Johnson.

Representative **JOHNSON**: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. This bill, we just discussed the other day so I'm not going to belabor the situation, but in light of the bill that we just passed, 95-52, I think it's time that we really step back and take a look at what we're doing in this state as far as gambling is concerned. This is an extension of gambling. This pains me terribly to stand up and speak against this bill because I am a veteran and I want to work for veterans' organizations. But this is a large attempt to increase gambling in the State of Maine and I think we need to stop and take a look at where we're heading. Do we want a slot machine in every 7-Eleven around town? Do we want them when we get off at the airport in Bangor or in Portland and other places? So I just encourage you to follow my light and vote no on this bill. Thank you.

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

Representative **RUSSELL**: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. Sorry to rise, but I just wanted to remind folks that this is a bill that would directly impact veterans' organizations and their ability to raise money to deliver services to their members. I think they have made it very, very clear that this is incredibly important to their ability to work with veterans and ensure they get access to their pensions and access to the services that they have earned. So I would just ask those folks to remember that when they are voting this afternoon, and follow my light and vote green. Thank you, Mr. Speaker.

The SPEAKER: A roll call has been 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. 319

YEA - Beaudoin, Beavers, Beck, Beliveau, Berry, Blodgett, Boland, Bolduc, Briggs, Bryant, Cain, Carey, Casavant, Chapman, Chipman, Clark H, Clarke, Cornell du Houx, Cotta, Dill J, Dion, Driscoll, Duchesne, Edgecomb, Eves, Fitts, Flemings, Gilbert, Goode, Graham, Hanley, Harvell, Haskell, Herbig, Hinck, Hunt, Innes Walsh, Keschl, Kruger, Kumiega, Lajoie, Longstaff, Lovejoy, Luchini, MacDonald, Maker, Maloney, Martin, Mazurek, McCabe, McFadden, Monaghan-Derrig, Morrison, Nass, Nelson, O'Brien, O'Connor, Parry, Peoples, Peterson, Picchiotti, Pilon, Plummer, Priest, Rankin, Rioux, Rochelo, Rosen, Rotundo, Russell, Sanborn, Sanderson, Shaw, Sirocki, Stevens, Stuckey, Theriault, Tilton, Treat, Turner, Tuttle, Valentino, Weaver, Webster, Willette A, Willette M, Wood, Mr. Speaker.

NAY - Ayotte, Beaulieu, Bennett, Black, Burns DC, Cebra, Chase, Clark T, Crafts, Cray, Crockett, Cushing, Damon, Davis, Dow, Dunphy, Eberle, Espling, Fitzpatrick, Flood, Fossel, Foster, Fredette, Gifford, Gillway, Guerin, Hamper, Harlow, Harmon, Hayes, Hogan, Johnson D, Johnson P, Kaenrath, Knapp, Knight, Long, Malaby, McClellan, McKane, Morissette, Moulton, Newendyke, Olsen, Parker, Prescott, Richardson D, Richardson W, Sarty, Strang Burgess, Timberlake, Volk, Wagner R, Wallace, Waterhouse, Welsh, Winsor.

ABSENT - Bickford, Celli, Curtis, Kent, Libby.

Yes, 88; No, 57; Absent, 5; Vacant, 1; Excused, 0.

88 having voted in the affirmative and 57 voted in the negative, 1 vacancy with 5 being absent, and accordingly the Bill was **PASSED TO BE ENACTED**, signed by the Speaker and sent to the Senate.

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

Emergency Measure

An Act To Establish the Department of Agriculture, Conservation and Forestry

(H.P. 1350) (L.D. 1830)

(H. "C" H-910 to C. "A" H-876)

Reported by the Committee on **Engrossed Bills** as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 124 voted in favor of the same and 15 against, and accordingly the Bill was **PASSED TO BE ENACTED**, signed by the Speaker and sent to the Senate.

Acts

An Act To Create the Leased Space Reserve Fund and To Amend the Law Regarding the Issuance of Securities under the

Maine Governmental Facilities Authority and To Provide for the Transfer of Certain Land

(S.P. 678) (L.D. 1904)

(C. "A" S-527)

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

An Act To Restructure the Department of Health and Human Services

(S.P. 664) (L.D. 1887)

(C. "A" S-533)

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

On motion of Representative CAIN of Orono, was **SET ASIDE**.

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

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

The SPEAKER: The Chair recognizes the Representative from North Berwick, Representative Eves.

Representative **EVES**: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I rise again to oppose the pending motion, LD 1887. The strongest objection is what we talked about yesterday and that is the Intensive Case Management program. I will be brief in my statements this afternoon. Our objections relate to the public safety concerns that it poses in making the changes to this program. It is working well and we shouldn't change what is working, particularly because the stakes are so high. We should err on the side of caution when looking at this program. Please vote with me in opposing the pending motion. Thank you, Mr. Speaker.

The SPEAKER: A roll call has been 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. 320

YEA - Ayotte, Beaulieu, Bennett, Black, Burns DC, Cebra, Chase, Clark T, Cotta, Crafts, Cray, Crockett, Curtis, Cushing, Damon, Davis, Dow, Dunphy, Edgecomb, Espling, Fitts, Fitzpatrick, Flood, Fossel, Foster, Fredette, Gifford, Gillway, Guerin, Hamper, Harmon, Harvell, Johnson D, Johnson P, Keschl, Knapp, Knight, Long, Maker, Malaby, McClellan, McFadden, McKane, Morissette, Moulton, Nass, Newendyke, O'Connor, Olsen, Parker, Parry, Peterson, Picchiotti, Plummer, Prescott, Richardson D, Richardson W, Rioux, Rosen, Sanderson, Sarty, Sirocki, Strang Burgess, Tilton, Timberlake, Turner, Volk, Wallace, Waterhouse, Weaver, Willette A, Willette M, Winsor, Wood, Mr. Speaker.

NAY - Beaudoin, Beavers, Beck, Beliveau, Berry, Blodgett, Boland, Bolduc, Briggs, Bryant, Cain, Carey, Casavant, Chapman, Chipman, Clark H, Clarke, Cornell du Houx, Dill J, Dion, Driscoll, Duchesne, Eberle, Eves, Flemings, Gilbert, Goode, Graham, Hanley, Harlow, Haskell, Hayes, Herbig, Hinck, Hogan, Hunt, Innes Walsh, Kaenrath, Kruger, Kumiega, Lajoie, Longstaff, Lovejoy, Luchini, MacDonald, Maloney, Martin, Mazurek, McCabe, Monaghan-Derrig, Morrison, Nelson, O'Brien, Peoples, Pilon, Priest, Rankin, Rochelo, Rotundo, Russell, Sanborn, Shaw, Stevens, Stuckey, Theriault, Treat, Tuttle, Valentino, Wagner R, Webster, Welsh.

ABSENT - Bickford, Celli, Kent, Libby.

Yes, 75; No, 71; Absent, 4; Vacant, 1; Excused, 0.

75 having voted in the affirmative and 71 voted in the negative, 1 vacancy with 4 being absent, and accordingly the Bill

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

REPORTS OF COMMITTEE
Divided Report

Majority Report of the Committee on **TRANSPORTATION** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-931)** on Bill "An Act Making Supplemental Appropriations and Allocations for the Expenditures of State Government, Highway Fund and Other Funds, and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2012 and June 30, 2013" (EMERGENCY)

(H.P. 1412) (L.D. 1907)

Signed:

Senators:

COLLINS of York
DIAMOND of Cumberland

Representatives:

CEBRA of Naples
GILLWAY of Searsport
HOGAN of Old Orchard Beach
MAZUREK of Rockland
PARRY of Arundel
PEOPLES of Westbrook
RIOUX of Winterport
ROSEN of Bucksport
THERIAULT of Madawaska
WILLETTE of Mapleton

Minority Report of the same Committee reporting **Ought to Pass as Amended by Committee Amendment "B" (H-932)** on same Bill.

Signed:

Senator:

THOMAS of Somerset

READ.

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

The SPEAKER: The Chair recognizes the Representative from Naples, Representative Cebra.

Representative **CEBRA**: Thank you, Mr. Speaker. This is the first time in the six years that I've been on the Transportation Committee that I can recall that we haven't been addressing a reduction in revenues in a supplemental budget. There are a number of different initiatives, actually there were 31 different initiatives in this supplemental budget, but the budget does basically four things, this bill. It makes the multimodal accounts more transparent and I will explain that in a second. It moves the Personal Services savings into Maintenance and Operations to All Other which means more miles of road being paved. It utilizes available revenue to increase the capital line for the Capital program which is another really good thing. We want to continue to move money into the Capital program. And it makes some routine adjustments that supplemental budgets tend to do. We recognize in savings from some increases in the attrition rate, and I know that they're working on that in LD 1903 and the General Fund supplement budget as well, from 5 to 6 percent which, like I said a moment ago, adds money to the Capital Work Plan, just funding for savings not achieved through the retirement incentive program. It didn't work out quite as well as the Highway Fund as initially thought, so we made the adjustments that were

required there. It also recognized a savings from a reduction in some charges made by the DAFS, that money, again, back towards the Capital Work Plan. It reduces funding within the Secretary of State's office and that is a total on that line is \$170,000 of money going back to the Highway Fund, back into the work plan from the Secretary of State's office. It provides \$3.6 million in capital funding to the Highway and Bridge Capital program for those capital projects. That's where that money is coming from, so that's all good news for the Capital Work Plan.

I mentioned earlier the multimodal accounts. A couple of Legislatures back we set up the STAR account which is the State Transit, Aviation and Rail account, and it was one collected bucket of money, if you will, and this initiative in the supplemental budget creates six different multimodal accounts, individual modes of transportation such as the multimodal aviation, the freight, passenger rail, port and marine transit and transportation accounts. This way it will be much more transparent. People in those industries and people interested in those various accounts will be able to go and look in one place so that they're not looking at the STAR account and then having to find where the federal money is coming from and then Other Special Revenues. This really is the next step in the evolution of the STAR account and it's important that we do this because when this all started, it started off at about \$1.5 or \$1.8 million actually and it's now over \$8 million. So this increases the transparency in that whole STAR account, so we'll be renaming that the Multimodal accounts and they'll be six of those.

As far as other adjustments in this supplemental budget, there were a couple of initiatives from the State Police which included a forensic chemist that's now being paid out of the 49 percent of the Highway Fund and the 51 percent out of the General Fund. It's not a new position. It's just a moving of the position from the Fire Marshal's office and that is under the law we're required as the Highway Fund is to pay 49 percent of the State Police budget and this is just part of that current law. The other piece that has to do with the State Police in this budget is the moving of the State Police Barracks, the Orono Barracks, to the leased property in the City of Bangor. The committee went through the process of hearing from the colonel and the commissioner and the most viable option as determined by the 12 members of the committee on this report is to move the barracks to the Bangor facility at the airport. It makes the most fiscal sense and it also is a good move. It will provide the facility that the State Police need to move forward in their mission in that area.

Generally, it's a very positive bill. I'd like to specifically thank the members of the Transportation Committee. Representative Mazurek for his leadership. Representatives Hogan and Rosen, having served their terms on the Transportation Committee, have done a fantastic job. Representatives Peoples, Theriault, Parry, Gillway, Willette and Rioux. It was a great experience to work our way through this budget as it was the budget last year, and I thank you all for your hard work and I thank you, Mr. Speaker.

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

The Bill was **READ ONCE**. **Committee Amendment "A" (H-931)** 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" (H-931)** and sent for concurrence.

Committee of Conference

Report of the Committee of Conference on the disagreeing action of the two branches of the Legislature on Bill "An Act To Amend the Law Regarding the Sale of Wood Pellets" (EMERGENCY)

(H.P. 1219) (L.D. 1610)

has had the same under consideration, and asks leave to report: That the House **RECEDE** from **PASSAGE TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-727) AS AMENDED BY HOUSE AMENDMENT "A" (H-755)** thereto. **RECEDE** from **ADOPTION of COMMITTEE AMENDMENT "A" (H-727) AS AMENDED BY HOUSE AMENDMENT "A" (H-755)** thereto and **INDEFINITELY POSTPONE** same. **READ** and **ADOPT COMMITTEE OF CONFERENCE AMENDMENT "B" (H-937)** and **PASS** the Bill to be **ENGROSSED AS AMENDED by COMMITTEE OF CONFERENCE AMENDMENT "B" (H-937)** in **NON-CONCURRENCE** and send down for concurrence.

That the Senate **RECEDE** and **CONCUR** with the House.

Signed:

Representatives:

- WEAVER of York
- HARMON of Palermo
- PILON of Saco

Senators:

- COURTNEY of York
- SAVIELLO of Franklin
- JACKSON of Aroostook

The Committee of Conference Report was **READ** and **ACCEPTED**.

The House voted to **RECEDE**.

Subsequently, **Committee Amendment "A" (H-727) as Amended by House Amendment "A" (H-755)** thereto was **INDEFINITELY POSTPONED**.

Subsequently, **Committee of Conference Amendment "B" (H-937)** was **READ** by the Clerk and **ADOPTED**.

Subsequently, the Bill was **PASSSED TO BE ENGROSSED as Amended by Committee of Conference Amendment "B" (H-937)** in **NON-CONCURRENCE** and sent for concurrence.

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

The House recessed until 3:00 p.m.

(After Recess)

The House was called to order by the Speaker.

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

**ENACTORS
Acts**

- An Act To Promote Transparency in Government (S.P. 624) (L.D. 1806) (H. "A" H-935 to C. "A" S-523)
- An Act To Restore Equity in Revenue Sharing (S.P. 635) (L.D. 1835) (C. "A" S-501)

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

An Act To Strengthen the State's Ability To Investigate and Prosecute Misuse of Public Benefits

(S.P. 665) (L.D. 1888)
(C. "A" S-542)

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

On motion of Representative CAIN of Orono, was **SET ASIDE**.

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

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

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

ROLL CALL NO. 321

YEA - Ayotte, Beaudoin, Beaulieu, Beavers, Beliveau, Bennett, Berry, Black, Blodgett, Boland, Bolduc, Briggs, Bryant, Burns DC, Cain, Carey, Casavant, Cebra, Chapman, Chase, Chipman, Clark H, Clark T, Clarke, Cotta, Crafts, Cray, Crockett, Curtis, Cushing, Damon, Davis, Dill J, Dion, Dow, Driscoll, Duchesne, Dunphy, Eberle, Edgecomb, Espling, Eves, Fitts, Fitzpatrick, Flemings, Flood, Fossel, Foster, Fredette, Gifford, Gilbert, Gillway, Goode, Graham, Guerin, Hamper, Hanley, Harlow, Harmon, Harvell, Haskell, Hayes, Herbig, Hinck, Hogan, Hunt, Innes Walsh, Johnson D, Johnson P, Keschl, Knapp, Knight, Kruger, Kumiega, Lajoie, Libby, Long, Longstaff, Lovejoy, Luchini, MacDonald, Maker, Malaby, Maloney, Martin, Mazurek, McCabe, McClellan, McFadden, McKane, Monaghan-Derrig, Morissette, Morrison, Moulton, Nass, Nelson, Newendyke, O'Brien, O'Connor, Olsen, Parker, Parry, Peoples, Peterson, Picchiotti, Pilon, Plummer, Prescott, Priest, Rankin, Richardson D, Richardson W, Rioux, Rochelo, Rosen, Rotundo, Russell, Sanborn, Sanderson, Sarty, Shaw, Sirocki, Stevens, Strang Burgess, Stuckey, Theriault, Tilton, Timberlake, Treat, Turner, Tuttle, Valentino, Volk, Wagner R, Wallace, Waterhouse, Weaver, Webster, Welsh, Willette A, Willette M, Winsor, Wood.

NAY - NONE.

ABSENT - Beck, Bickford, Celli, Cornell du Houx, Kaenrath, Kent, Mr. Speaker.

Yes, 143; No, 0; Absent, 7; Vacant, 1; Excused, 0.

143 having voted in the affirmative and 0 voted in the negative, 1 vacancy with 7 being absent, and accordingly the Bill was **PASSSED TO BE ENACTED**, signed by the Speaker and sent to the Senate.

REPORTS OF COMMITTEE

Divided Report

Majority Report of the Committee on **LABOR, COMMERCE, RESEARCH AND ECONOMIC DEVELOPMENT** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-483)** on Bill "An Act To Strengthen the Unemployment Insurance Laws and Reduce Unemployment Fraud"

(S.P. 589) (L.D. 1725)

Signed:

Senators:

- RECTOR of Knox
- MARTIN of Kennebec

Representatives:

PRESCOTT of Topsham
DOW of Waldoboro
NEWENDYKE of Litchfield
VOLK of Scarborough
WALLACE of Dexter

Minority Report of the same Committee reporting **Ought to Pass as Amended by Committee Amendment "B" (S-484)** on same Bill.

Signed:

Senator:

JACKSON of Aroostook

Representatives:

DRISCOLL of Westbrook
GILBERT of Jay
HERBIG of Belfast
HUNT of Buxton
TUTTLE of Sanford

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-483) AND SENATE AMENDMENT "C" (S-545).**

READ.

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

Representative CAIN of Orono **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 Sanford, Representative Tuttle.

Representative **TUTTLE**: Thank you, Mr. Speaker. Mr. Speaker, Men and Women of the House. I would hope that you would vote against the pending motion. The Committee did work hard to gain consensus and we did in many areas, but there were a few areas we didn't agree on. The Majority Report changes the amount of earnings an individual must make before qualifying for benefits after being discharged for misconduct from 10 times the weekly benefit amount to 8 times the weekly benefit amount. It changes the number of weeks after which an individual must broaden the individual work search requirement from 6 to 10 weeks. The other report changes the amount of earnings an individual must make before qualifying benefits being discharged for misconduct from 10 times the weekly benefit to 8, and it retains the current provision that an individual must broaden the individual work search requirements for 12 weeks. The other amendment also removes vacation pay from the list of remuneration of benefits.

As I said before, we did work as a committee to try to gain some consensus, but I would hope that we would vote against this motion because I think – and if I could make the motion after we discuss this report – I think it's a more kinder and gentler approach to the unemployment situation in the state. I think that during the most difficult economic times creating jobs and returning employees should be the focus, not making it harder for workers to get that support of the unemployment program. Being out of work not only affects one's financial stability, it affects one's sense of value. Unemployment insurance acts as a temporary

safety net and helps preserve a worker's dignity when it is most threatened. The unfortunate thing, I think, is that this bill mischaracterizes Maine's unemployment program as one that is full of fraud, yet Maine has the fifth lowest rate of unemployment fraud in the nation. The Maine unemployment program is in great shape. The quality of the Maine Department of Labor determines, with regard to separation issue, is the second highest in the nation. We are in the middle of the pack when it comes to other states as far as employment tax rate and we have the fifth healthiest unemployment trust fund in the nation. I believe a couple of years ago we were number one. That's because of the changes that we have implemented over the years to do the right thing.

The proposed fraud penalties would make our law the most extreme in the nation, even though we have a low fraud rate. Despite the small percentages of misconduct cases in Maine and despite the fact that the misconduct provision has become increasingly more stringent over the years, this legislation would make it even tougher for workers who have already been penalized to requalify for secondary benefits. I think a better reform proposal for the unemployment program would be to improve education and training aspects of the program. The unemployment benefits system is a lifesaver for individuals, the employed worker, for his or her dependents and the economy. As far as the vacation pay which is an area of contention in both reports, vacation pay is an earned benefit often accumulated over the years of service. When one is unemployed, these savings may help the unemployed maintain health insurance and help them to pay a mortgage or stay afloat.

I receive many calls from many constituents during these hard times. I particularly remember a person who was 55 years old, had been in the same occupation for over 30 years and got laid off, and for some reason there was one week where the person made a mistake and was sent a bill from the State of Maine that she owed them \$5,000. I mean, if you're unemployed and you're about to be sent out without your rent, it's a hard time. I think that we want to make sure that we do the right thing, but we don't want to make it so hard that people in need don't get it and so I would hope that we would defeat the present motion so we can vote for the other report, because I think it's a much better report. Thank you, Mr. Speaker.

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

Representative **PRESCOTT**: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I actually hope you will support the Majority Ought to Pass Report and although the report out of committee was a divided partisan report, it's not as partisan as you would think. We actually agreed on everything in this bill except for two items and the first one is the definition of suitable work. Current law says after 12 weeks you need to broaden your horizon and look beyond the current area that you're looking after. All we did was change that to 10 weeks with the thought behind that of getting people back to work. People feel better when they get back to work. We don't want them to stay unemployed. We want them to get back to work. Current law requires individuals to consider jobs that differ somewhat from their earlier employment in terms of factors such as prior earnings, commuting distance and duties after being continuously unemployed. Currently, it's 12 weeks. The Majority Report says 10 weeks, the Minority Report would stay at 12.

The other factor that came up and this is where the disagreement lies is between what is considered vacation pay and is that salary or is it not. I just ask you to consider, you get paid for time off. You're getting paid a salary or a week's worth of pay, whether you're hourly, for time that you're not there. You're

not at work but you're getting paid. So if you take that pay during the year and go off to Florida for four weeks, then you've taken pay based on your paycheck, four weeks worth of pay and took the time off and you weren't at work. If you've gotten laid off and you've already used that vacation pay that you've had, then you're allowed to collect unemployment. Now if you're person number two who decided to keep your four weeks – I'm just using four weeks for argument's sake, I know a lot of people have a lot longer and a lot more vacation than that. I, however, don't. I only have one or two weeks – you would have to use your pay before you start collecting off the system. Now note that there is an amendment attached to this that comes from the other body. They have changed this. You are actually allowed now with the bill that we're passing, as amended, to add four weeks in. So you can actually collect your vacation and collect unemployment at the same time. So this is more of a compromise than the committee came to and I think that that is enough of a compromise to bring everybody in this body together to vote this bill in. We agreed on everything else. Thank you, ladies and gentlemen.

The SPEAKER: The Chair recognizes the Representative from Buxton, Representative Hunt.

Representative HUNT: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. First, let's begin with the good news. Maine's UI Trust survived one of the worst economic downturns while remaining solvent and not borrowing a single penny. The program we designed worked. Second, in terms of fraud, Maine's UI Trust is fifth best in the nation. Because people like to compare it, New Hampshire is 31st. Nevertheless, here we are making modifications. Now some of these changes are good. In this bill we have worked to eliminate overpayments, one of the major drags on the trust. Instead of a person having to report every five weeks about their work search, we've made it one, something that should greatly improve the efficiency of the fund and reduce large overpayments. However, there is one major area of contention, vacation. As it stands now, when an employee is laid off, their unused vacation would not offset their benefits. But with the changes in the Majority Report, the vacation would offset benefits the employee is entitled to. This is insurance. When unemployment happens the insurance should kick in. When I wreck my car the insurance company does not wait six, seven or eight weeks to see if my car is still wrecked. I don't have to use my rainy day fund first before I get my benefit. Some will argue that the vacation is severance. I would fundamentally disagree. This is something the employee is owed in lieu of salary. This is a debt the company is paying. A severance is something that is in addition to what you are owed.

I have also heard people argue that having vacation offset benefits extends the length the employee can collect benefits. I would argue that when you are first unemployed, that that is the exact time you want the benefits to kick in. When you lose your job there is uncertainty, there is fear. I would contend that this is the time you want reassurance of receiving benefits. That's the whole point of insurance. This is the time you want to know that you will be able to pay your mortgage, make your rent, keep the lights on, make sure that your family has enough to eat.

Under the Majority Report, here is a very real scenario. One employee who has been diligent about going to work every day, hasn't missed a day, hasn't taken any vacation, dedicated to the company and has accumulated 10 weeks of vacation will have to wait for benefits. Another who uses every scrap of vacation will receive benefits right away. This is inherently unfair. That vacation time is earned by the employee. The fact remains the employee has been laid off. They are entitled to the benefits they

are owed. Let's not use someone's earned vacation time against them. This is a time when an employee is down. They need the reassurance that they're going to be okay. They need that reassurance right away. Thank you, Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Jay, Representative Gilbert.

Representative GILBERT: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I urge you to reject this motion. Unemployment insurance provides benefits that people have worked for and earned. These benefits are a lifeline, helping workers and their families by putting money in their pockets while they search for a new job. At a time when jobs are scarce and these benefits provide critical support to unemployed workers and their families, LD 1725 seeks to weaken that lifeline in a number of ways.

We are being asked to decrease the time an unemployed worker has to find work at his or her prior wage level from 12 weeks to 10 weeks. After that, the worker would have to take any job that pays at least the average weekly wage. After only 10 weeks time, workers will be forced to take jobs that pay the average weekly wage, even if they are highly skilled workers who were previously making far more than this amount. This will force workers into jobs regardless of their specific skill-set and would result in an underutilization of workers' skills and training and a subsequent loss to the labor market and the economy.

Ladies and Gentlemen of the House, please keep in mind that we have not fully recovered from this terrible recession and many workers continue to have difficulty finding suitable work. Many professionals are finding themselves still looking after being unemployed 6, 12 or even 18 months. Many other unemployed workers are improving their skills to make themselves more employable. Why would we want to force them to accept a lesser job by decreasing the time an unemployed worker has to find a job?

This bill will also add vacation pay to the types of remuneration for which unemployment benefits are offset. This would mean that vacation time, which workers have worked for and earned, would offset benefits. Laid off workers are struggling to make ends meet. Many are counting on their owed vacation pay and their unemployment check for a little extra help to pay their bills, keep their home and stay afloat.

Keeping Maine's law on the books, as is, is a small yet significant thing we can do to help out thousands of displaced workers in a time of transition and make their lives a little bit easier. We were elected to create jobs, not make things harder for the unemployed. Working people deserve better than this bill would propose.

L.D. 1725, "An Act To Strengthen the Unemployment Insurance Laws and Reduce Unemployment Fraud," is a bill seeking to solve a nonexistent problem. While our immediate neighbor to the west, New Hampshire, has a severe UI fraud rate – only 15 states have a greater fraud problem in UI than they do – Maine has the 5th lowest UI fraud rate in the nation. In other words, 45 states have a greater UI fraud issue than Maine. Only 4 states have a lower UI fraud experience than we do. So why has this bill been proposed?

Maine's UI trust fund is one of the most solvent in America. We are one of a few states, of very few states, that did not need to borrow from US DOL to pay UI benefits in the most recent deep recession. As a result, as we move out of this recession, Maine does not need to make payments to US DOL to repay borrowed funds. Because of that, we are in a much better position to recover from that recession than most states.

So again I ask, why has this bill been proposed? There is no

need to fix something that works. Do not be fooled by this bill's title. Please join me in protecting Maine's UI trust fund, the nation's best UI trust fund and vote no.

The SPEAKER: The Chair recognizes the Representative from Belfast, Representative Herbig.

Representative **HERBIG**: Thank you, Mr. Speaker. Mr. Speaker, Men and Women of the House. I rise in opposition to the current motion. While there are just a few differences between the Majority and the Minority Report, one of those differences is a big deal, a really big deal to working Mainers. In 2008, I was part of a large layoff in Belfast, 80 some odd people from a manufacturing place. Two of my cousins were part of that large layoff as well. Being laid off is a terrible thing to go through and it's something that's been really common in the past few years in Maine. So in my family, it's bad to take days off. You don't take days off because it's an indication that you are not loyal to your employer. It's also an indication, it's a sign of weakness actually, and I also have to argue that a lot of Mainers can't afford to take a vacation to Florida. So my cousins and I, when we get laid off, that's earned time. To take that money away when you've earned it and you've been loyal to your employer, I feel like this spits in the face of the Maine work ethic. That's something I'm really proud of. I feel like this bill not only it's government taking away earned money from working Mainers, but it's also government telling Mainers how to spend their money. I, again, I have to say that this doesn't do anything to get people back to work, it doesn't do anything to create a single job and it doesn't do anything to stimulate our economy. I urge you to oppose LD 1725.

The SPEAKER: The Chair recognizes the Representative from Lincolnville, Representative O'Brien.

Representative **O'BRIEN**: Thank you, Mr. Speaker. Mr. Speaker, Men and Women of the House. You know, whenever we discuss the issue of unemployment, I always think of a quote from one of our former Presidents. "A recession is when a neighbor loses his job and depression is when you lose yours." I haven't always agreed with former President Ronald Reagan, but I think that anybody who has been through unemployment, being unemployed, can agree with that. We've heard a lot of talk about a recovery and supposedly since 2009 we've been in a recovery, but I think that a lot of people can tell you it's still really tough out there.

I've been really passionate about this issue because I've been there and I understand the anxiety and frustration that comes with not being able to get a break in the job market, which is why I'm opposing this motion. You may not hear these stories because there is a stigma in our society against being unemployed. You're meant to feel ashamed and that it's a personal failing. However, when I told my personal story to the press, I got emails from around the state, from many of your constituents pouring their hearts out about what they've been through, and I have a lot of those letters but one of them sort of stuck with me. What happens to me? Where do I go? What do I do for money? I don't know what to do anymore and I'm scared for the first time in my life. Maine's unemployment rate may look fine to some, when in fact many of us are falling through the cracks. This bill doesn't stamp out fraud. This bill rewards workers who took their vacation pay and punishes those who saved it up. As one unemployed woman told me after being told by her previous employer to enjoy the vacation pay and the benefits, she scoffed "Enjoy it? I just lost my job and I've got bills to pay." Since then, she's gone through a bankruptcy and she's had to go to the emergency room because she didn't have any health insurance. Why are we eliminating the amount of time by two weeks? I mean two weeks is kind of arbitrary, but it means a

lot when you're looking for a job in your profession in a similar wage scale, especially when you've taken out a lot of college loans.

Since the recession began in 2008, many frustrated job seekers, myself included, took out mountains of student loans with the hope that this additional training would translate into more opportunities. As any job seeking professional knows, the job search often lasts several months before you land a position. In my case, I sent out over 40 applications to employers around the state and was granted six interviews between several months. They had me come back for another interview, another interview, and I was working different jobs and part-time. I was working for myself so it was a lot easier to do that, but to take a low wage job when you've got, in my case, \$500 a month of student loans – I have a coworker who has \$1,500 a month in student loans after going through graduate school and taking out private loans – it's really not doable for a lot of people in the immediate time. So I'd just like you to think about that. You know, for me, I could go to the interviews whenever I was asked. You know, a day or two notice, they'd say "Can you come in for an interview?" and I could do it. But you just take a job and they expect you to be there. If our goal is to reduce fraud, I understand and I support any effort that actually really did that. But all this bill does is kick people who are already hurting in this recession. Just think about your constituents, really think about them before you vote on this. We're still weathering a storm and it's tough out there and let's really focus on creating good middle class jobs that will help people get back to work. Thank you.

The SPEAKER: The Chair recognizes the Representative from Lisbon, Representative Crafts.

Representative **CRAFTS**: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. Jobs, jobs, jobs. Isn't that what we all campaign on, both sides of the aisle? It's all about jobs. I hear about the person that gets laid off which I have compassion, I've laid people off in the past. I don't hear any compassion about the small business that creates all the jobs. I don't know about you, but I've gone out and had many business loans over the years and if you look at the fine print on the business loan, if you don't make that payment on that business loan, the house that you lived in, that you raised your children in, they have the right to take that. They have the right if when they sell off all of your assets, they also have the right to come back and sue you for the difference. You know, I'm tired as a businessman of trying to pay my workers' comp, my unemployment tax, my matches of my Social Security and my taxes, and on and on and on and on. I can testify today. I have many people, friends of mine and family, that are in business and I can testify today going through this recession that they are about ready to throw the towel in. People that I never expected in my small town that were the prominent businesspeople say to me "I've just about run out of all of my assets to survive." But we want to keep putting the burden on the backs of the businesses. The question was asked, why would we even be debating this bill? I ask you, why did we debate it three years ago and pass the existing law? You know, it's time that we realize it's the small businesses that are creating the jobs and if you drive the amount of business by putting expense more and more onto their backs, they'll be unemployed permanently. They won't be called back because the businesses won't exist to call them back. I urge you today and plead with you today as a small businessman to do the right thing. Thank you.

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

Representative **DRISCOLL**: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I actually served

on the Labor Committee when we debated this provision a few years ago and from my perspective, we couldn't have put this into place any sooner than we did. A lot of people have been hurt through this recent economy over the past couple of years. I don't know about you, but I've driven down streets in my town and all of a sudden I've noticed that there aren't any cars in the yard, that the lights in that house aren't on anymore and you wonder what happened to those folks and where did they end up going. These are people who used to be an integral part of the community and the neighborhood. This recession that we've been through has really hit close to home for all of us and to take this vacation pay provision which we put into place two or three years ago, it seems to me only hurts those who are or have been underemployed or unemployed or have just given up because they can't find employment.

You know, I think of the people that have lost their jobs, in responding to Representative Crafts's statement. We appreciate business coming to this state and setting up shop in this state. We appreciate entrepreneurship because we know that's the backbone of the Maine economy. We appreciate the large global corporate businesses such as IDEXX which resides in my town and has decided to stay in Maine and to increase its size in Maine and make this their corporate home, despite the fact that right now people are able to keep their vacation pay if they do become unemployed. We do have a very robust unemployment insurance trust fund, such as many members of my committee have already commented on, and that's something we can all be proud of. We can be proud of the fact that Maine was able to take care of its own. We know that there were many times when the Federal Government did step in to help us out, but that Maine didn't have to reach out to the Federal Government in order to ensure that Maine workers who became unemployed in this past recession had the means to at least attempt to provide for their family and their children's education and to put groceries on the table and to put gas in the car, all the while looking for a job that probably didn't exist and if they were fortunate enough to be able to get a job or two jobs, it probably ended up being a half or a third of what they had worked at previously.

I appreciate the Maine worker; I appreciate the Maine work ethic. We all know what that stands for. I don't think anybody is looking for a free ride, but I think this provision that we put in place three years ago couldn't have been put in place any sooner and is there to help people. It's there to help families get through tough times until the market improves. I ask you all to reject the current motion on the floor. Thank you very much, Mr. Speaker.

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

Representative **VOLK**: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I just want to go through what this bill does and does not do because I'm hearing a lot of information that I don't remember reading about in the bill that we worked in committee. This bill strengthens unemployment insurance laws and reduces unemployment fraud. There are some people who misrepresent their employment status and we will now take people who commit unemployment fraud and align them with the employment security law with Maine's criminal code, okay? Misrepresentation and fraud of less than \$1,000 is a Class D misdemeanor, \$1,000 to \$10,000 is a Class C felony, and fraud involving a principal amount exceeding \$10,000 is a Class B felony. This is not a change, it's a clarification. We're also making it clear that an individual will be eligible to receive unemployment benefits only if he or she complies with specific requirements, and these are not new requirements either I don't believe. Then also we're tightening

requirements to obtain future unemployment benefits if the individual loses their job due to misconduct.

The bill increases the earnings requirement in misconduct disqualifications to 8 times the weekly benefit amount. Twenty states require between 8 and 10 weeks of earnings to requalify after a misconduct separation, so that's if you were fired for good reason, while Maine is only one of six states that requires 4 times or less in earnings, so we're trying to make ourselves in line with the rest of the country once again. It also broadens the definition of suitable work after 10 weeks, current law is 12 weeks, and what we're asking is not that a worker completely changes their field. We're not asking that they begin to take on a 100-mile commute. The Department of Labor works very closely with these workers and they don't expect workers typically to drive significantly further than they drove before. They might look at a 35-mile radius. That's not a long drive for a lot of people. They also might be asked to take a slightly lower salary. Typically, I've been told what they look at is about 85 percent of their former earning, okay? So again, yes that's a little less but the goal is to become employed. Unemployment doesn't pay all that well either.

They might also be expected to perform slightly different tasks. They may not be able to get the exact job that they were performing before, but they're also not expected to get a job completely different from what they did before unless that's their choice, but no one is going to force them to do that. Again, that's only after 10 weeks of unemployment. Currently, it's 12 weeks and then it's all the same expectations anyhow. We're increasing earnings requirements after denial of benefit eligibility for refusal of suitable work. Again, suitable work is not a completely different field. Suitable work is something related to what you did before, okay?

Then we come to this with an amendment from the other body that is giving people 4 weeks of vacation time in which they will collect their unemployment benefit as well as their four weeks of vacation time. Thirty states offset unemployment benefits with vacation pay to avoid double dipping. Maine statute included this offset until 2009. That's fairly recent history, okay? In the 124th Legislature vacation pay was removed as a form of remuneration. So we have a nice compromise here. We're offering 4 weeks.

Then there is a "three strikes and you're out" clause. This is for individuals who have been found to have committed three separate instances of unemployment insurance fraud. Does this happen a lot? No, it doesn't happen a lot. There are lots of other things that don't happen a lot. That doesn't mean they're okay or acceptable in any way. I thank you and I hope that you will follow my light.

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

Representative **OLSEN**: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. As a self-employed person in a tough economy I would be happy for unemployment. I would be happy for vacation pay. I would be happy for any vacation at all. We're not taking away this money. Thank you.

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

Representative **HARVELL**: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. Who hasn't wanted to boss people around and tell them to do the right thing? I work with a lot of people. They get a big check and you can see it happen over and over and over again. They don't prepare. You know what? It's in human nature to want to run other people's lives, so if this really is an act, is to take 26 weeks of

unemployment benefits and if they have anything extra give them 29, 30, 31 or 32. So those of us that love the nanny state, let's get on board.

The SPEAKER: The Chair recognizes the Representative from Alna, Representative Fossel.

Representative **FOSSEL**: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I am officially an old Fossel. I am 65 now. I've been running my business since 1975. I don't have any retirement benefits. I don't have any Social Security. I don't have any unemployment. I have none of those things. I have not been able to pay myself for three and a half years so I could keep the business going. What I want out of the people in this body, this government, some sign that they're going to take my back and care about what I do and don't see me as a cash cow to milk. Thank you very much, 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. 322

YEA - Ayotte, Beaulieu, Bennett, Bickford, Black, Burns DC, Cebra, Chase, Clark T, Cotta, Crafts, Cray, Crockett, Curtis, Cushing, Damon, Davis, Dow, Dunphy, Edgecomb, Espling, Fitts, Fitzpatrick, Flood, Fossel, Foster, Fredette, Gifford, Gillway, Guerin, Hamper, Harmon, Harvell, Johnson D, Johnson P, Keschl, Knapp, Libby, Long, Maker, Malaby, McClellan, McFadden, McKane, Morissette, Moulton, Nass, Newendyke, O'Connor, Olsen, Parker, Parry, Picchiotti, Plummer, Prescott, Richardson D, Richardson W, Rioux, Rosen, Sanderson, Sarty, Sirocki, Strang Burgess, Tilton, Timberlake, Turner, Volk, Wallace, Waterhouse, Weaver, Willette A, Willette M, Winsor, Wood, Mr. Speaker.

NAY - Beaudoin, Beavers, Beliveau, Berry, Blodgett, Boland, Bolduc, Briggs, Bryant, Cain, Carey, Casavant, Chapman, Chipman, Clark H, Clarke, Cornell du Houx, Dill J, Dion, Driscoll, Duchesne, Eberle, Eves, Flemings, Gilbert, Goode, Graham, Hanley, Harlow, Haskell, Hayes, Herbig, Hinck, Hogan, Hunt, Innes Walsh, Knight, Kruger, Kumiega, Lajoie, Longstaff, Lovejoy, Luchini, MacDonald, Maloney, Martin, Mazurek, McCabe, Monaghan-Derrig, Morrison, Nelson, O'Brien, Peoples, Peterson, Pilon, Priest, Rankin, Rochelo, Rotundo, Russell, Sanborn, Shaw, Stevens, Stuckey, Theriault, Treat, Tuttle, Valentino, Wagner R, Webster, Welsh.

ABSENT - Beck, Celli, Kaenrath, Kent.

Yes, 75; No, 71; Absent, 4; Vacant, 1; Excused, 0.

75 having voted in the affirmative and 71 voted in the negative, 1 vacancy with 4 being absent, and accordingly the Majority **Ought to Pass as Amended Report** was **ACCEPTED**.

The Bill was **READ ONCE**. **Committee Amendment "A" (S-483)** was **READ** by the Clerk and **ADOPTED**.

Senate Amendment "C" (S-545) was **READ** by the Clerk and **ADOPTED**.

Representative **TUTTLE** of Sanford **OBJECTED** to suspending the rules in order to give the Bill its **SECOND READING WITHOUT REFERENCE** to the Committee on **Bills in the Second Reading**.

Subsequently, Representative **TUTTLE** of Sanford **WITHDREW** his **OBJECTION** to suspending the rules in order to give the Bill its **SECOND READING WITHOUT REFERENCE** to the Committee on **Bills in the Second Reading**.

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-483) and **Senate Amendment "C" (S-545)** in concurrence.

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

UNFINISHED BUSINESS

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

HOUSE DIVIDED REPORT - Majority (8) **Ought to Pass as Amended by Committee Amendment "A" (H-921)** - Minority (5) **Ought to Pass as Amended by Committee Amendment "B" (H-922)** - Committee on **JUDICIARY** on Bill "An Act To Implement Recommendations of the Committee To Review Issues Dealing with Regulatory Takings"

(H.P. 1334) (L.D. 1810)

TABLED - April 10, 2012 (Till Later Today) by Representative **NASS** of Acton.

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

The SPEAKER: The Chair recognizes the Representative from Acton, Representative **NASS**.

Representative **NASS**: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I rise today to speak for the Minority Report on LD 1810. I represent a largely rural area of western York County where people are tied closely to the land they own. Many of the properties there have been owned and managed by the same families for generations.

In other cases the ownership has changed hands over the years but the land use patterns remain the same, with farms and woodlots being primary use. With wise stewardship these landowners maintain the working landscape of rural character of our communities. They provide income for themselves and the promise of sustainable food and forest products for the next generation for their families or the next family to own the land.

The land is their present and their future, it is their savings account, retirement plan and 401k. In many cases, the land is their only real asset. These same lands provide a great many public benefits to people participating in various forms of outdoor recreation, hunting, hiking, snowmobiling, cross-country skiing and lots of other folks just out to enjoy a day in the woods. Without the generosity of Maine's private landowners, our claim to be "Vacationland" would be a hollow promise. There has never been nor will there be enough public land to meet the recreational needs of our people and those who visit the great state.

There are real costs associated with land ownership for these families, in addition to the taxes that we must all pay every year. The cost and burden of vandalism in the form of damage from off-road vehicle use, illegal tree harvesting and the illegal disposal of white goods and other trash left on their land is threatening the continued public access in many areas. In my district alone, there are a growing number of landowners who are posting their lands against public access and the threat of additional loss in value as a result of regulatory takings is a contributing factor.

The increasing burden of land and regulation is a growing threat to these same people and it adds to the significant cost of being a rural landowner. This is compounded by the realization that they currently have no recourse but to accept the next layer of land use regulation without any legal remedy and suffer the

loss in value that it will represent.

If the regulation takes away the ability to sell off a house lot to pay some unexpected medical bill or denies them the ability to harvest timber that they have been managing to maturity, they have to accept it under the current law. This is not right and it's no way to treat our people, our neighbors.

The Minority Report that I support will finally give these citizens an opportunity to at least be heard and will give them a cause of action that will ensure them the respect they deserve and a place at the table during deliberations concerning their land and future use.

There are some who will argue that the cost of this bill to the taxpayers will be high. I argue that the cost of overburdensome land use regulations is too high for the landowners without some form of equitable compensation. The Minority Report sets the standard at 50 percent loss to trigger any cause of action, where now the case law has no limit on the reduction of property value.

Does anyone here today really believe that the state should be able to take the majority of property value without compensation? I truly doubt that anyone in this chamber would accept the loss of more than half of their property value without a fair hearing before the court. The Minority Report will at least guarantee that opportunity. And with regard to the concern that it will cost the state too much, I want to remind my colleagues that there will be no cost to the state treasury or state agency if there is no new state regulation enacted that causes diminution of 50 percent of the property value of any parcel of privately owned land. This Legislature and future Legislatures will have the responsibility to carefully enact land use regulations that value not only public benefit intended, but also equally important private costs to be borne by the family that owns the land. I urge you to support the Minority Report. Thank you, Mr. Speaker, ladies and gentlemen.

Representative CAIN of Orono **REQUESTED** a roll call on the motion to **ACCEPT** the Minority **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 Brunswick, Representative Priest.

Representative **PRIEST**: Thank you, Mr. Speaker. Mr. Speaker, Men and Women of the House. What can I say about the Minority Report? Well, I can give you a little history. About a week and a half, two weeks ago, those in the minority took the Majority Report, the Majority Report which had a strengthening of mediation and which had a regulatory fairness committee that considered landowner complaints, that they felt that their land was significantly affected by regulation and to try to do something about that, took that and crammed it into the old Minority Report which was frankly something very complex, expensive and difficult to understand.

This hybrid reminds me of a movie that I saw, I took my wife-to-be in 1986. It was called "The Fly." I don't know if any of you remember "The Fly?" It starred Jeff Goldblum and Jeff Goldblum was a scientist, Seth Brundle. He had two iron chambers, one on either side of the room, and he would take animals and transport them electronically from one chamber to another. So he decided, of course, that he was going to test it himself and he got into the chamber and forgot that there was a housefly that followed him in there. He shut the door, he was dematerialized, the housefly was dematerialized and lo and behold a second chamber started to materialize. The housefly and Seth Brundle, unfortunately it materialized them into one being, Brundle Fly, which started to get out of the chamber, opening the door and at that point my

wife got up and said "I've had enough of this" and walked out of the movie theatre.

We can't walk away from the Minority Report, but I'd tell you that it is extremely complex, very difficult to understand. It takes a lawyer to navigate it, it will take a lawyer to get somebody through it and it's extremely expensive. The AG told us that to be able to gear up for this for the first year it's in effect, they needed \$100,000. That's for an AG and for secretarial support. The courts told us its second year, along with the AG, they were going to have to have a fiscal note of \$500,000. The third year was going to be again in excess of \$500,000. This is just for litigation. Not one dime of this is for landowners. In fact, there was no money appropriated for landowners. There wasn't even a fund set up for money for landowners. Now some may say don't worry about it, when the landowners go to the department, the department can pay them or if they don't want to pay them, they can go ahead and waive the application. Well, if they waive the application, that means that the environmental law is going to apply to other people but not to this person. So there will be a patchwork of environmental laws and that's not a good thing.

If you think it's a good thing, think what would have happened if this Minority Report were in effect in the 1970s when the rivers were being cleaned up. The rivers probably would not have been cleaned up. Is that serious? Well, I can tell you that in my town of Brunswick if you parked your car down by the river, after two days near the Androscoggin before it was cleaned up, the paint on your car would peel. Are we done with environmental laws? Will we not need any environmental laws ever in the future? Can we absolutely predict with precision before we enact a law, whether it's going to affect property values or not? I don't think so and I think we will need environmental laws in the future.

This law unfortunately looks good on its face, but it is tremendously complicated, very convoluted and frankly leads landowners into an illusionary situation. Those who can afford to navigate it are going to be those who can hire expensive lawyers. The small landowner will not be able to hire a lawyer to go through what is likely to be a two or three-year process. I urge you to defeat the Minority Report so we can move on the Majority Report. Thank you.

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

Representative **MOULTON**: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. Alas, so much information, so little time. But over the past, well, in excess of 30 years, in the practices of law in my beloved home state, I've represented a great variety of people, some of whom you would describe as wanting to skirt land use laws and I do love helping people avoid subdivision laws in Title 30-A to the point of where we do it ad infinitum, and I hope my remarks today do not approach that point. I've also represented abutters, two people wanting to do horrendous things with their land and hoping and praying that the local planning board or appeal board will do the right thing. I've also represented the towns on occasion. I've consulted with them on zoning issues or even prosecuted some of these land use laws. So can you imagine my profound sadness and regret over a year ago to see a bill on inverse condemnation, which we call takings, squander a good opportunity to help landowners protect their rights? Do you think I enjoy sitting in a caucus where everybody around me thinks this is a great law, Mr. Speaker, when I, in good conscience, can't?

Why, do you say, do you have these profound problems with the law? For one thing, the original had no trigger. We call it ripeness. That was only added this year after public hearing when it was pointed out that there was no trigger. In other words,

the moment that the state in the future passed any sort of regulation at all affecting land ownership, it was a race and I would be in the forefront representing a landowner with an appraiser by my side claiming a 50 percent diminution of value, and that's all I needed, there was no trigger. I didn't have to go in for a permit and be denied. All I had to do was go in and say "Whatever you've done, I've lost half the value of my land." Can you imagine the number of people that can come in and just go after the government for what they perceive is a loss of value? We have to have a test. The test is an intent, a serious intent to actually want to do something with your land, and believe me, I am sympathetic with the people whom I have advised over the years who want to do something for their kids in the future, Mr. Speaker, and then find out because of some regulation they can't. We've heard all of these stories. I'm saying this, Mr. Speaker, so the people understand that I've heard all of these stories. I am sympathetic with them, it's just that I'm having a problem with this law, with the elaborate mechanism to try to sell it to this body and this government, when I know, Mr. Speaker, that it has fatal flaws that are ultimately going to disappoint all of us and cause us much heartache in the future. So the 50 percent bar is no bar at all. It's an invitation for people to go in and attempt to obtain a recovery.

But you ask, what is the mechanism? The mechanism is convoluted. It would have been nice to have a Minority Report that followed pretty much the original, but to insert a legislative fairness panel in the middle of that process, which by the way, Mr. Speaker, if you look at the text of the Minority Report, you find that if such a legislative review panel disagreed with the mediation held between the Attorney General's office and the property owner, they could actually decide against it. I can tell you a lot of lawyer time would be spent on trying to figure that out, because now the Legislature has inserted itself pretty much as a judge and jury when we should be out of the process and that is stuck in the middle of this Minority Report that is up for vote currently, Mr. Speaker. So where are we? It is true that there are strong reservations from both the Attorney General's office and the courts that irrespective of whether or not there are any regulations ventured in the future, they still have to gear up for that. And by the way, Mr. Speaker, wouldn't it be much better if the approach were not to create a large private remedy but just simply to say to government, don't do these things if they exceed this certain amount? But, Mr. Speaker, this proposal, this Minority Report, does not do that.

I would also like to take a moment. I've got three more points; I know you're all counting. Part of the language in this proposal is reasonable investment-backed expectations of the property owner at the time of acquisition or immediately prior to the implementation of the proposed regulation. To me, that is a perfect opportunity for a landowner and if I can wax a little bit of exaggeration, Mr. Speaker, by saying that why don't I just go in and ask for a casino? There's nothing to prohibit it in the zoning, but if that regulation out there interferes with my reasonable expectation of having a casino, who knows, I might be able to get the full amount of the \$400,000 limit on such a proposal and I may be able to bank something after I build a cottage for my kids. But beyond that, Mr. Speaker, an extreme disadvantage, if not a fatal defect of this proposal before this body, is that we don't even put our money where our mouth is. There are no funds set aside for this. Wouldn't it just be easier for the Chief Executive to say to all these regulatory agencies, don't issue any more environmental regs? It would be far cheaper for us. We're not even setting aside money for that, and help us if the Feds tell us we have to do something, because now you've set up a chain reaction, Mr. Speaker, whereby we're forced to do something

because the Feds tell us to and we're going to get caught in this quagmire of litigation.

So, Mr. Speaker, I should be really thrilled with the Minority Report, but forgive me, I can't, because it's part of my education and training to look for the defects in these and to point them out and to vote on them. So the fact that this proposal is prospective only bothers me also, and this is my final point, Mr. Speaker, that part of our problem and part of what we've been hearing from people is that they have suffered problems from past actions and I know that it is not doing, it is not an easy job in this Legislature or any Legislature to do fixer-uppers. But sometimes we have to do that and I'm sure that there are many people in this chamber that have brought in fixing upping legislation to correct for our errors. But this proposal, Mr. Speaker, does not do the job and for that reason, in good conscience and not because anybody's back there telling me I need to do this, I cannot support the Minority Report. Thank you, Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Alna, Representative Fossel.

Representative FOSSEL: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I rise today in support of the Minority Report on LD 1810, the regulatory takings bill, and I wish I could say that this is going to be brief but it's probably not. I wish I could say that what I have tried to do in this chamber and in committee over and over again is to try to find common ground between the two sides. Normally, what I've had is two sides who are trying to find common ground. In this case, I have found one side who is trying to find common ground and the other side who is planting landmines. I regret to say that you've heard some brand new landmines being reported right in the speeches that came before me. The opponents of the Minority Report have criticized it as being too "complex." I'm not sure how to respond to this. What we do in the Legislature is make laws. Some laws are very simple, others more complicated. Legislative language is simply a tool to get us to desired policy outcomes. Complexity is a second order issue. Policy outcomes should be the primary concern. If you disagree, then you should also oppose President Obama's Affordable Healthcare Act due to its complexity.

In any event, what drives the entire takings issue are various interpretations of the Maine and United States Constitutions, which essentially state that a landowner is not entitled to any relief when a land use regulation diminishes the value of that person's property, unless that property is rendered entirely completely worthless. Attorneys can quibble over whether this line is drawn at 100 percent or just 99 percent or 95 percent. Regardless, the threshold is so high that it prevents recovery by landowners who would otherwise be entitled to compensation if this same land was taken in a highway widening.

In response to this threshold problem, the Judiciary Committee voted to report out a bill that would create a right for landowners to sue the state when a future state law diminished a landowner's property value by 50 percent or more. This is limited to prospective state regulations and came with the bells and whistles that come with any cause of action, like a statute of limitations.

During the committee consideration of the bill, language was added to require landowners to first pursue mandatory mediation before they could file a claim in court. While opponents argue that this requirement makes the Minority Report too "complex," the real issue is that policy outcomes drive legislation. Mandatory mediation is a tool used to drive claims out of the court system and have them addressed in another forum. This is not a new idea in Maine where mediation is part of divorce proceedings. Do the complexity complainers really want to

remove divorce proceedings from mandatory mediation?

While in Committee I also worked to add language to the Minority Report that would add another step to the process before a claim could be filed in court. Under this language, if the mediation process does not result in a settlement, a landowner would have to give the Legislature time to consider the underlying law or regulation at issue to see if it wanted to correct the matter complained of by the landowner. Through this additional step, the Legislature is ensured control over this new regulatory takings procedure. Should a regulation have unintended consequences, the Legislature has time to act to prevent the regulation from disproportionately diminishing property values. When presented with the issue, the Legislature could also decide that the regulation at issue is so important that the state should enforce the regulation and compensate the affected landowner at the same time. Again, this is a desired policy outcome driving the language of the bill. Moreover, this is not a completely new idea. Maine has various screening mechanisms that delay a claim that can be brought to court, whether it be medical malpractice or the Maine Human Rights Commission.

At the end of this road, should a landowner not find relief during mediation and the Legislature fails to cure the underlying law or regulation, then the landowner can litigate their claim in court. This is not complexity for complexity's sake but rather a system that attempts to strike the right balance in providing relief to landowners while insulating our court system from so many claims. I leave it to others who don't have the facts on their side to confuse and complicate the issues and tell stories. While I have explained the details of the Minority Report, I do not want you to get lost in the details of this proposal because the underlying issue here is very simple.

So let's recap the differences between the reports – which will not create a feeding frenzy for the legal class: One, proposed legislation will have fiscal notes to reflect partial takings, just as we do now for other bills. The Legislature will know in advance what is coming – it will not be a surprise. There will be mandatory mediation to solve these disputes. From there on, the reports are identical with exactly the same Regulatory Fairness Commission. The difference comes only when the Regulatory Fairness Commission reports back to the Legislature. If they determine there is a credible problem, then the Legislature will have a chance to cure the problem. If the Legislature fails to take action, only then can the property owner finally take legal action in the courts to seek redress. This is not an employment plan for the legal profession.

Currently, Maine landowners can have almost all of their property value diminished by land use regulation and there is no legal recourse for the landowners under either the State or the United States Constitutions. The Minority Report attempts to provide modest relief to landowners who are disproportionately affected by regulation. The issue is one of fairness. Without our approach, we will continue to ask individuals to bear the entire cost of regulations that benefit all Mainers. This is not something our government should ask of any citizen. The basic question remains: Are we here to serve government, or is our government here to serve the people? Thank you very much, Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Wells, Representative Chase.

Representative CHASE: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I rise today to speak in support of the Minority Report. I am a strong supporter of takings legislation – not only because as a legislator it is the fair and right thing to do – but personally because of the negative impact on land values due to overregulation, for many Wells

landowners over the years as well as my own family's personal experience.

I'll spare the House with all the details but just know that my family felt the value impact of overregulation firsthand when state law turned our original 8.5 acre, buildable lot in Wells into a virtually unbuildable lot. A potential buildable lot value of more than \$100,000 into a (maybe) high value of \$10,000 as an 8.5 acre plot of excess unbuildable land.

Now in these dramatic instances where property values are drastically reduced, Maine landowners should be provided with some mechanism to seek compensation. Going forward, and this bill only goes forward, this bill as amended by the Minority Report can provide the means for financial remedies for negatively impacted landowners and that is a good thing. But what it will also do is ensure that future legislators – for the first time, in my opinion – will have to consider the impact on landowners' property rights and the cost of that impact before a law is passed. That is what the Minority Report provides and that is why I support the Minority Report and I hope the rest of you do too. Thank you.

The SPEAKER: The Chair recognizes the Representative from Thomaston, Representative Kruger.

Representative KRUGER: Thank you, Mr. Speaker. Mr. Speaker, Men and Women of the House. I rise in opposition to the Minority Report on 1810. I'm generally opposed to any bill that was crafted by wealthy out-of-state interests or agenda-driven organizations. This shouldn't be called takings. This should be called corporate special interest giveaway. That's who wins if this bill passes. Worse, it will pit neighbors against neighbors, towns against towns, communities against communities, and make lawyers and moneyed interests even better off. It does not help mom and pop, small businesses or regular people interested in improving their lot.

In Oregon, where a version of this bill became law with disastrous consequences, \$20 billion, with a "b," in claims before the law was repealed. Corporations won big loopholes, people stuck in endless court proceedings. That's not what any of us want. Oregon didn't have \$203 million to pay a takings claim from a developer, so the state waived laws to allow mining, geothermal plant and a huge resort very near a national monument. We shouldn't punch loopholes in Maine law or set up Maine for dubious settlements that we just cannot afford. Pitting Maine people against Maine people, that's not why I came here and it's the hallmark of bad lawmaking. Please oppose the Minority Report. The people of Maine and I thank you.

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

Representative ROCHELO: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. You may have heard supporters of this bill say it was modeled after a takings law from Florida, and they say that the Florida law is working. But I disagree, and I for one don't want Maine to look like Florida. I moved to Maine from Florida primarily because Maine is not Florida. Florida has thousands of miles of highways, strip malls, endless traffic congestion, sprawling development that has covered wetlands and wildlife habitat with concrete and pavement and increased pollution. Who wants to go down that path? Why would we want that for Maine?

Our committee received letters from land use experts in Florida who say their takings law has been a failure. One individual we heard from, Thomas Pelham, who served under two Republican Governors in Florida, wrote the following about Florida's takings law, which is known as the Bert-Harris Act. He said, "The Bert Harris Act has had undesirable and unintended

consequences. It has created a new "cottage industry" of Bert Harris claims in which governmental and private litigants battle over the meaning of the Act's provisions. These battles have consumed valuable local government and judicial resources in trying to ascertain the meaning and application of the Act, and the chief beneficiaries have been the lawyers, property appraisers and other consultants needed to prosecute and defend against the litigation."

We also heard from Richard Grosso, an attorney, land use lawyer, and Professor, who wrote: "The Act has undermined the effective functioning of government in our state, weakened important public protections, and made sensible community development planning more difficult, contentious and political..."

I feel the same way about the Minority Report. I believe that it would be a mistake that we would be paying for for years to come. Florida's takings law has been a failure. We should not emulate Florida's lax land use laws, where developers trample their way across the landscape. I urge you to vote against the Minority Report, so that we can adopt the Majority Report, which is a reasonable approach to this issue. Thank you.

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

Representative **MALONEY**: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I ask you to vote against the full employment lawyer protection bill because that is what this is. I've heard "Well, we don't need anymore environmental laws." What about things to regulate open pit mining? What about windmills? Would you like to see windmills on every single mountaintop in Maine? After we pass this, we have no way to prevent that. We have, our hands are tied for the future, going forward they can do what they wish. Now as we look at this, we have to think about what is the problem that we're trying to solve. I'm on the Judiciary Committee so I read the report of the Regulatory Takings Study Committee. I sat through the public hearing and the work sessions. I don't believe that we have a real answer to what the problem is that we're trying to fix. It's not that Maine people are having their permit applications routinely and systematically rejected by the DEP, because the opposite is true. Virtually all permit applications to the DEP are approved and this is demonstrated by the data in the Takings Study Committee Report. Ninety-nine point seven percent of all Natural Resources Protection Act permits were approved over the past 10 years, 99.99 percent of all site law permits were approved over the past 10 years, 100 percent of all permits near significant vernal pools have been approved and 100 percent of all permits near inland wading bird and waterfall habitat have been approved since 2006.

A number of people at the public hearing on this bill did express concerns about the impact of certain regulations, but let's take a look at some of the concerns that they expressed. One person told the committee he wanted to build a small cabin on his land and he wasn't allowed to do that, but the real story is completely different. The DEP field determination of this property showed that it was not a small cabin that he wanted to build as he testified to, but rather it was a single family residence, a gravel mine and 1,700-foot driveway that would cross 1,000 feet of freshwater wetland, involving at least 22,000 square feet of wetland alteration, and yet he still wasn't turned down for his permit. Instead he was told "You're simply filing for the wrong permit. You need to go to the Natural Resources Protection Act and apply for a permit there." But he never did, so he is complaining about something and he never took the steps to even try and get the permit that he needed.

We also heard from someone who claimed that the Bristol Conservation Committee took 20 acres of his land for a deer

winterizing yard. But the state does not regulate deer yards in organized towns and there is no evidence that Bristol regulates deer yards either. Another person testified about primarily local regulations during the 1960s and the 1970s that limited the number of house lots that could be developed on his family's property in York. But the Minority Report would provide no remedy for decisions made at the local level. It appears that those decisions were made based on legitimate community concerns, but those are home rule decisions and this report doesn't affect those. Now I'm not saying that land use regulations don't have an effect on property values. They do, in both directions. Some regulations increase property values by preventing incompatible uses near one's property and others decrease property values. We all want to know that we're not going to wake up the next day and that our neighbors are going to have something that we think is completely out of character cropping up right next to us. So it helps us as well.

So what I'm saying is that we should not be legislating based on anecdotes. We need to know what the problem is based on facts before adopting a solution. I believe the Minority Report would create more problems than it would solve. I will be voting against the Minority Report so that we can debate the Majority Report which puts in place a Regulatory Fairness Committee that will evaluate the real problems created by land use laws and then get the legislative process moving to solve those problems for everyone in Maine, not just for the person who can afford a law firm of attorneys. This is similar to what was done with the LD 1 Commission. Thank you, Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Hudson, Representative Duchesne.

Representative **DUCHESNE**: Thank you, Mr. Speaker. Mr. Speaker, Men and Women of the House. I'd like to speak to you about the four branches of State Government: the Executive, Legislative, Judiciary and Pierce Atwood. Here you have a bill that was written by lawyers for lawyers. Let me cut right to the chase. The Minority Report puts two groups of people we care about against each other: property owners and taxpayers. There is a bunch of hoops to jump through, but at the end of the day, if one wins, the other loses. Now by now most of the body has been lobbied in the hallway and told it's time for taxpayers to pay for some of the sacrifices that landowners have been making. The majority of the committee – the majority of the committee – found a solution that does not divide our friends, neighbors and constituents. But the lawyers and real estate lobby support the Minority Report and here it is, so let's debate it.

This report creates a new legal cause of action. That is what America needs, a new way to sue each other. What I most dislike about this report, Mr. Speaker, is that sometimes the property owner wins, sometimes the taxpayer wins, but the lawyer always wins. In fact, subsection 860 of this bill even makes the taxpayer pay all the lawyer fees in some cases. Let us just put to test some of the few assumptions and the hidden gems in this Minority Report. There is a municipal exemption. Municipalities in their zoning authority, permit authority, are not covered under this. We are giving that exemption to only half the state. Half the state is in LURC jurisdiction, that is not exempt from this bill and that's just after we gave that jurisdiction improved home rule authority yesterday.

Under this Minority Report, a guy in Greenville has less recourse in a zoning dispute than his neighbor just across the line in Beaver Cove. In my district, a constituent in Alton has different recourse under this law than his neighbor just across the line in Argyle. Yesterday morning we passed LURC reform. We are finally giving more local control to the northern half of the state, except that we are not giving them the same planning exemption

that we are giving this other half of the state. Here we go again, treating north and south differently. I thought we were going to stop doing that. As part of the LURC reform we are honoring the desire of the landowners to finally do prospective zoning in the unorganized territories so they can finally get clarity on what they can do with their own land, but we are hamstringing the LURC reform by throwing red meat into the lawyer's cage. The weird thing is if everything stays exactly the way nobody currently likes it, there is no threat of lawsuits and everybody can continue to hate it equally. This is a recipe for doing nothing.

Another weird gem in here, there is an exemption for complying with federal law. The Minority Report completely misunderstands Maine's relationship with federal law. The Federal Government doesn't have land use laws. It has what are quality laws under the Commerce Clause and the Clean Water Act. For certain wetlands, the ones people like to complain about most by the way, we have parallel regulations. If state and federal laws are relatively similar the feds leave us alone, but the Army Corps of Engineers has made it clear the less we regulate, the more they will and we won't like it. Some of our land use around wetlands are not meant to comply with federal law, they are meant to avoid the burden of federal law with a more flexible approach that makes sense for Maine, which is better for landowners.

Prospective application, here is another myth of this Minority Report, that it only applies to laws passed by the Legislature after August 1st next year. But in the definitions, the law applies to any law, rule, ordinance or government limitation imposed by the state or a state agency. So any new action taken by the state that creates a change under an old statute also unleashes the lawyers and this statute is so broad it applies to any action, even actions we haven't even thought of yet.

So here is what can go wrong: In 2006, IF and W revised its massive water fowl habitat requiring protection under the Natural Resources Protection Act. The action actually removed 40 percent of the wetlands mapped at that time. If that were to happen prospectively, would the remaining landowners have a cause for action? The remapping is a new state action. What will the lawyers and juries say, and it doesn't matter what you think because you no longer have a voice in this. The lawyers and juries are going to decide this one. In reality, if IF and W should continue to update its maps, it really should and it should remove restrictions where they aren't necessary. But it can't and it won't if it triggers lawsuits. IF and W will just leave bad enough alone and current landowners suffer the consequences, even if regulatory relief is possible. I am familiar with at least four sites in Belfast, Berwick, Cumberland and Gardiner where I think remapping should happen and it won't. I think this report locks in expedited wind power. Now that may be a good thing for some people, it may be bad for others. But I think if you remove something from expedited wind power, you trigger a takings claim if that mountain is now off use for wind power. And again, it doesn't matter what you think because the lawyers and the juries are going to decide this.

Mr. Speaker, this body needs to understand exactly at what point a property owner gains the right to take money from taxpayers. It is what was referred to earlier as ripeness or the trigger. It is in definition 8 of the Minority Report. It is when you are turned down for your permit. Mr. Speaker, almost all permits are approved. Only when you refuse to comply with the terms of your permit are you turned down. So you gain the right to sue the state, even if the reason you got turned down is you. Even if you are at fault, you get the right to take money from Maine's working people. This matters because here is another myth. The idea that this Minority Report will make the Legislature more

careful in enacting future laws. The problem is this bill is so broad the Legislature can't even imagine all the ways lawyers can sue us with it. You're probably going to pass one tomorrow, the mining bill.

T12R8 is the location of Bald Mountain west of Portage Lake. As timberland, that township is worth hundreds of thousands of dollars. As a mining site, it's worth hundreds of millions. If Irving is denied a permit under the law you are about to pass because they won't want to meet the strong requirements you are about to pass, there is no question the potential value of that land will be diminished by more than 50 percent. It's prospective, the rules won't go into effect for another two years. By the language in this bill, that's a taking. Lawyers will certainly argue it. Lawyers will argue anything, present company excepted of course. Under this Minority Report, Maine taxpayers could end up paying a Canadian company \$400,000 and pay for their lawyers. It will cost, even if the state wins, it will cost taxpayers money to defend the suit. And so we come full circle. The takings bill, written by Pierce Atwood, can be used to sue the state if their client doesn't like what happens under the mining bill, which was written by Pierce Atwood. Thank you, Mr. Speaker.

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 speak against the Minority Report today. First of all, the fiscal note of this bill starting next year will be well over \$100,000 and escalating to a total of over \$1.2 million in the next three years. My question is where does this money come from, let alone how are we going to come up with payments up to \$400,000 per claim allowed by this bill, as there is no money provided for in this bill? So what are we talking about, taking money from the poor taxpayers of Maine to finance this crazy scheme? Who would feel this law first? Well, first it would be the courts and the Attorney General's office who would be thrown into battle with an army of lawyers seeking money for their clients or waivers from this Maine law.

When did we get the idea of putting a bill through this House that would allow the state to waive the application of the law for some people or some corporations but not the rest of us? I'm for property rights, but this bill would grant giant loopholes in a law that could harm my rights and your rights. Also, that some corporation can advance its own property rights. That's just not right. This bill is bound to have the same fate as the bill in Oregon did. They adopted one in 2004. It was such a disaster they tried to repeal it, but they were a little late because they owed \$20 billion in claims against them. So my question is let's not push forward with this bill, let's reject it today and save ourselves a great deal of pain because it's only going to become a failure. Thank you.

The SPEAKER: The Chair recognizes the Representative from Cape Elizabeth, Representative Monaghan-Derrig.

Representative **MONAGHAN-DERRIG**: Thank you, Mr. Speaker. I rise today also in opposition to the Minority Report and, for me, what troubles me most about this Minority Report is that it would undermine Maine laws by allowing some landowners to secure waivers from laws that apply to everyone else, and in the Minority Report these waivers are referred to as variances in the bill. Agencies would be authorized to grant variances. Courts could grant variances. The state would be able to grant variances as part of settlement agreements. What are these takings variances? The Minority Report is very clear: A variance is a waiver of the law. It means a decision by the state to no longer apply a law or regulation to an individual property owner, thus allowing them to pursue development that otherwise would be illegal. Because Maine won't have the money to pay

damages as a settlement option, the state would invariably grant waivers which is just what has happened in Florida in response to their takings laws, which drafters of the Minority Report claim was the inspiration for their proposal.

During the public hearing on LD 1810, we learned what these waivers have looked like in Florida and I wish to add on to some of the facts that the good Representative from Biddeford, Representative Rochelo, has indicated in her remarks. Citrus County, Florida, didn't have the money to pay a \$730,000 claim so they waived the regulations, thus allowing a developer to build a 50 unit subdivision with 35 docks. Jacksonville County, Florida, faced a \$38 million claim which they couldn't pay, so they waived regulations and allowed a massive oceanfront development. Collier County, Florida, waived regulations in the face of a \$238 million claim, allowing a developer to build a golf course around a habitat nesting site. In each of these cases, major developers were the ones who benefited at the expense of the community.

I've traveled to Florida several times. During my graduate studies, I participated in research relative to this issue examining the economic versus environmental impacts of development in Collier County, Florida. I've seen the patterns and impacts of development there. I don't like the idea of Maine laws being lifted for those with the wealth to hire creative attorneys to secure waivers. In the words of a former Republican legislator, this bill is not a statute for the little guy. Therefore, I urge you in voting against the Minority Report. Thank you.

The SPEAKER: The Chair recognizes the Representative from Denmark, Representative Sarty.

Representative **SARTY**: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I think if you strip away all of the window dressing and the folderol that's been thrown around this room in the last hour on this bill, you come down to one serious and final conclusion as to what the bill really is on this floor for. It's on the floor of the House of Representatives simply because landowners have insisted upon it. I have not been approached by any corporations unless you consider a potato farmer, third generation, who might in fact be incorporated, a corporation. I've been approached by people who are managing woodlots, people who are agriculture, people who are very concerned with the constant rulemaking that regulates what they will be allowed to do with their land. That is what this bill is about. Is this bill perfect? It is not perfect. The Legislature had a chance to deal with this issue in 1994 and did nothing. Landowners have constantly come to two of the committees that I've served on in this Legislature asking "Please listen to our concerns. We feel we're being overwhelmed, especially by the land use regulations. We understand it, we appreciate the need to protect this state's environment, but you're going over the top."

Two weeks ago in Washington, D.C., before the United States Supreme Court, was a landmark decision that focuses on this very issue. A couple named Sackett in the State of Idaho filed and eventually went all the way to the Supreme Court because the Environmental Protection Agency told them they could not build on their land. Now there's a lot of details to it and that issue would have to be resolved through a hearing as to who's right and wrong, but the issue was they were denied to continue and pursue their right of due process as a landowner and a citizen of this country. The Supreme Court for the first time ruled against the EPA saying that they would not support the EPA's right to deny that property owner the right of due process. They made no decision as to who was right or wrong on the issue. It was the right of a citizen to access a process by which they can be offered the opportunity to express their views as a

landowner and have someone determine who is in fact right or wrong or what the fairness of the issue is.

I met with potato farmers in Aroostook County concerned about this bill, not with a foreign corporation or Pierce Atwood. I met with blueberry people in Washington County concerned about this bill, not with some giant corporation. And I heard from woodlot owners all over my town which is 85 percent forested and managed for forest products by many people, most of which are members of SWOM who support this bill. These are our neighbors, these are Maine landowners and they're asking for some relief from this body and they've been asking for it for the last 10 to 20 years and they haven't gotten it. How can we as a state that is asking our landowners to keep their lands open for reasonable public access and use which is one of the few engines in our economy that still works and brings revenue to this state, how can we ask them to do that and when they ask in return for some consideration as what they perceive is oppressive restrictions as to what they are allowed to do with their own property, that's the issue here.

This bill might not be perfect and no question it will be amended in the future, but these people, these landowners, your neighbors, whether you live in a half acre lot subdivision east of the Maine Turnpike or whether you live on a 22 acre spread in southwestern Maine or an 800 acre spread in Aroostook County shouldn't matter. Our duty here is to assure the citizens that we serve regardless of what district we come from that they will have an opportunity to be heard by this government. We are not asking to be, the people are asking that we serve them and not be served by government and I think it's about time that the Legislature grasp this problem. There's been an awful lot of drama in presentations here, but I would suggest as members of this body you all have the opportunity to go on legislative tours to various parts of this state and talk to landowners, forest products people, agriculture people, and you will hear these concerns. This bill is only for any future regulations that might be passed by this body and it is not too much to ask that the Maine State Legislature finally give some weighted value to the concerns of the landowners of this state before we strip away the value of their land, and if we can't accommodate that, we are violating, in my view, one of the basic premises of the Constitution of this country.

The SPEAKER: The Chair recognizes the Representative from Bridgton, Representative Waterhouse.

Representative **WATERHOUSE**: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I think I've heard the greatest flourish of rhetorical hyperbole in my 10 years up here and I thought about a previous bill and I made an analogy and I listened to the Representative from Brunswick come out with his analogy. A previous bill, I said that we listened to the parade of horrors and visions of the animals being loaded two by two on the ark. But then I realized this was something else. This is the Chicken Little syndrome, the sky is falling, and I thought I heard Foxy Loxy screaming out "This is the voice of doom speaking. Special bulletin flash: The sky is falling and a piece of it just hit you on the head. Now be calm, don't be panicky. Run for your lives." This bill is so mild in its content compared to some of the other takings bills. In fact, Pierce Atwood has an interesting concept of this bill here, because I put this bill in 16 years ago and I didn't even know who Pierce Atwood was. The only Atwood that I knew was my cousins. This bill only deals with prospective state regulation, not existing state regulation. It certainly can't affect federal regulation and it doesn't include local municipal regulation which, by the way, can be pretty onerous on its own.

I looked at state environmental laws affecting Maine agriculture, just Maine agriculture in existence now. Water quality: Maine Water Quality Laws and Regulations. Maine Water Pollution Control Program. Maine Nutrient Management Act. Nutrient Management Plans. Livestock Operations Permit. Enforcement. Maine Oil Discharge Prevention and Pollution Control. Maine Wetlands Regulation. Maine Criminal Liability for Corrupting Waters. Maine Underground Protection Program. Maine Underground Injection Control Program. Maine Registration Requirements for Well Construction. Maine Air Quality Law Regulations. Maine Solid Waste and Hazardous Waste Regulations. Maine Solid Waste Management Rules. Maine Hazardous Waste Management Rules. Maine Underground and Above Oil Storage. Facilities Regulations. Maine Pesticide and Chemical Laws and Regulations. Maine Pesticide Control and Regulations. Maine Laws Regulating Fertilizer, Agriculture and Liming Materials and Plants and Soil Amendments. Protection of Wildlife: Maine Wildlife Protection Laws and Regulations. Maine Uniform and Environmental Law Enforcement. Maine Site Location Development Act. Maine Mandatory Shoreline Zoning Act. Maine Animal Carcass Disposal. Maine Cull Potato Disposal. That's just scratching the surface, and I'm sure we can look at our own municipalities and come up with all kinds of regulations.

But with all of that, I think the environmental issue is really a strong end argument. So Chicken Little, you can calm down and Foxy Loxy, please stop yelling. We talk about the law and I would say to fellow members that we're the ipse dixit of the barristers. Because they say it's so, doesn't necessarily mean it's so. The current law has been in effect for 16 years. Only 200 cases have resulted with very few going to court. It's been amended several times but to make property protection rights stronger, not weaker. The sky has not fallen. I understand we heard different examples of developments. Some developments are good. Why shouldn't they take place? We have nuisance and harm under common law. If you can take care of a lot of that and don't even need the regulations, you can do nuisance and harm.

I heard the good Representative from Brunswick, in a previous bill last week, talking about a cause of action for people and he read from the Maine Constitution. I'll quote what he read. "Article I, Section 19. Right of redress for injuries. Every person, for an injury inflicted on the person or the person's reputation, property or immunities, shall have remedy by due course of law; and right and justice shall be administered freely and without sale, completely and without denial, promptly and without delay." Ladies and Gentlemen, we don't have a course of action for redress on partial takings in Maine. Maine goes by the Supreme Court decision which, by the way, changed through time, goes by the flavor of the judge that you have sitting on it. Back in 1933, there was a partial takings case, *Jacobs versus the United States*. In 1962, *Griffith versus the Alleghany County* which took into consideration partial takings, left value, commercial and residential, on the property. So it depends who is on the court at the time. Sometimes the Supreme Court has been real good with property rights, other times they have not as Kelo demonstrated.

I'm always fascinated with the barristers and I say barristers because lawyers are always getting beaten up here, so I'm going to change the title to barristers, although I think they know who I'm talking about. I hear them saying this is confusing, "Well, gee, you know." and I think if you go to court you should have a lawyer. Only a fool has himself for a lawyer. Lawyers can be expensive. But if a lawyer is confused with this law and I've heard other lawyers, I've been around lawyers now for 10 years, off and on, sitting on Judiciary Committee and other venues. If

they are confused by this law, I would suggest they go back to law school or at least bone up on some property law. I am fascinated with the concept of increased litigation. Barristers screaming "This is going to be a lawyer's bill. Oh my god, we're going to have all kinds of people running into court." That's like carpenters yelling about a flood of building permits. It doesn't make any sense to me.

And then there's the cost. We have no money set aside. Well, we have enough for today, maybe we have money set aside for that. But that's not the issue. Saying you don't have money is like a robber sticking his gun in a storeowner's ribs and saying "I don't have the money to pay for this. Please let me take it anyway."

Mr. Speaker, I think all of this verbiage and rhetorical hyperbole boils down to one thing. What's your basic philosophy on property rights? Are you a Hobbesian? Do you believe in Thomas Hobbes's view of property rights, that when people join a society in government that they subject themselves to the sovereign and all rights are with the sovereign, you don't have any property rights? The sovereign decides which rights you have. You have the property but you can't use it, dispose of it, sell it or whatever, unless the sovereign says you can. Locke, John Locke, of course, believed differently. He believed differently. He believed that the principle objective of government and the ultimate reason why men entered society is the preservation of property. You give up some rights but you maintain most of them yourself. The old bundles of sticks philosophy, you have so many sticks in the bundle and each one is a right. Sometimes we have a tendency to stick too big a Hobbesian stick in the Lockean rights, and we've done that with the regulatory takings that requires full complete value of your property to be gone before you have redress in court. Who is going to try to go to court if 90 percent of their property is gone? Unless you have a physical invasion of your property, you have no course of action. So for all practical purposes, whether you get a permit or not, whether 90 percent of the permits are granted, if that one person has 99 percent of his property rights done away with through regulations – and we're not talking about nuisance and harm laws now, just regulations – for whatever reason, for the public good, you have no course of action unless there is a physical invasion.

In short, with a Hobbesian view and that's basically what we have with regulatory takings, unless there's full complete value gone, the government has once again become the universal land law. We have become tenants. We are the surfs. Oh well, you get your permit. Well, that's nice. Property rights is an interesting concept down through the ages as you read it. It doesn't affect anybody. Most people aren't ever going to be faced with an issue of having their property restricted so they can't use it, and lucky them. Neighbors are always interested in what their neighbors are doing. "What is he doing over there? What is he building? He can't do that." But then when their neighbor looks on their property, you turn around and say "Mind your own business." It's the old adage, good fences make good neighbors. It's a rural and urban issue. With the urbans, it's probably not much of an issue on land use. Then there's the fairness and burden on public goods. Mr. Speaker, this gives a landowner a course of action and a place to go when 90 percent of their property is gone and they can't use it, for whatever reason.

I carried a quote from a court decision around with me for 20 years and I'd like to read it, a U.S. Supreme Court decision on regulatory takings, and this is the judge speaking, quoting from the decision. "We realize our present holding will undoubtedly lessen to some extent the freedom and flexibility of land-use

planners and governing bodies of municipal corporations when enacting land-use regulations. But such consequences necessarily flow from any decision upholding a claim of constitutional right; many of the provisions of the Constitution are designed to limit the flexibility and freedom of governmental authorities, and the Just Compensation Clause of the Fifth Amendment is one of them. A strong public desire to improve the public condition is not enough to warrant achieving the desired use/result by a shorter cut than the constitutional way of paying for the change." That is a good decision. Unfortunately, we have the 100 percent value god. We don't have partial regulation in the state and we should have so that our landowners have a course of action.

The SPEAKER: The Chair recognizes the Representative from Deer Isle, Representative Kumiega.

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

The SPEAKER: The Representative may pose his question.

Representative **KUMIEGA**: Can anyone answer what would be a landowner's rights if a permit or ruling was issued to a neighbor and it devalued the first landowner's property? Thank you, Mr. Speaker.

The SPEAKER: The Representative from Deer Isle, Representative Kumiega, has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Palermo, Representative Harmon.

Representative **HARMON**: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. Some issues, I guess I wanted not to speak on it, but I get that need and that fire. I've heard from some members in the Legislature about waivers for state laws, states' power, states' rights, setting up new committees, and from some of those members I haven't heard one concern about small businesses and takings of properties from the small businesses. I haven't heard takings from farmers and what the detrimental effect that has on their community. I haven't heard about the takings that it does from individuals and families. I've heard that from some individuals in this body.

But just to get to my point, most regulations do not reduce the value of a person's property to zero or near zero, Mr. Speaker. Rather they reduce the value by 25 percent, 50 percent, maybe 64.4 percent, maybe even up to 99 percent or some other fraction of the whole. In those circumstances, the vast majority of circumstances, the owner gets nothing. The owner gets nothing when we act as a legislative authority to regulate individuals. Farmers, small businesses, whomever it affects get nothing. Only if he or she is lucky enough to be completely wiped out by regulation do they get compensated, so it has to be 100 percent. One hundred percent, I guess, I suppose the use of eminent domain, if needed. Surely I don't think that's what the framers of our Constitution here in the United States thought they were doing. I don't think it was the framers of our own state constitution as well.

I've also heard talk about takings legislation and taking from other taxpayers and then paying the property owner, which is what the Minority Report might do too, only if we take 50 percent or more of their land. Those who are concerned about this effect, I think, are asking the wrong question. The proper question is not how such legislation will cost the taxpayer but how much the goods we acquire through legislation are costing, period. Right now, there is no way of knowing that because we are taking them off the accounting, off budget. We have no way of knowing what we've done in the past, which this bill does not affect, but what we could do in the future, something very important. The direct costs are borne by many people we prevent from using their

property. The indirect cost is unrealized opportunities are borne by all of us. In neither case, do we have the remotest idea of the cost in this House. We don't know, yet those costs are nonetheless real as occasionally successful litigation on the first category of costs make clear.

I think it is time, Mr. Speaker, that growth as the framers meant, it is time to rein in the growth as the framers meant it to be. The public, the victims today, both direct and indirect, are too numerous to let this go on any longer. It is so important that this is just a minute step. Only if we go out and we take 99 percent of someone's property, not take it but regulate it, we have to reimburse them. If we take 49 percent of their property, the state doesn't have to do anything. What gives us the right to do that? In some ways, this bill doesn't even go far enough, but it's a step in the right direction from undue and injustices that have arisen in the past. It's unfortunate that we're here today to discuss this. Thank you.

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

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

The SPEAKER: The Representative may pose his question.

Representative **TUTTLE**: Is there anybody who hasn't made up their mind on this bill an hour ago?

The SPEAKER: The Representative from Sanford, Representative Tuttle has posed a question through the Chair to anyone who may care to respond.

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

ROLL CALL NO. 323

YEA - Ayotte, Bennett, Bickford, Black, Burns DC, Cebra, Chase, Clark H, Clark T, Cotta, Crafts, Cray, Crockett, Curtis, Cushing, Damon, Davis, Dow, Dunphy, Edgecomb, Esping, Fitts, Fitzpatrick, Flood, Fossil, Foster, Fredette, Gifford, Gillway, Guerin, Hamper, Hanley, Harmon, Harvell, Johnson D, Johnson P, Knapp, Knight, Libby, Long, Maker, Malaby, McClellan, McFadden, McKane, Morissette, Nass, Newendyke, O'Connor, Olsen, Parker, Parry, Picchiotti, Pilon, Plummer, Prescott, Richardson W, Rioux, Rosen, Sanderson, Sarty, Sirocki, Tilton, Timberlake, Turner, Volk, Wallace, Waterhouse, Weaver, Willette A, Willette M, Winsor, Wood, Mr. Speaker.

NAY - Beaudoin, Beaulieu, Beavers, Beliveau, Berry, Blodgett, Boland, Bolduc, Briggs, Bryant, Cain, Carey, Casavant, Chapman, Chipman, Clarke, Cornell du Houx, Dill J, Dion, Driscoll, Duchesne, Eberle, Eves, Flemings, Gilbert, Goode, Graham, Harlow, Haskell, Hayes, Herbig, Hinck, Hogan, Hunt, Innes Walsh, Keschl, Kruger, Kumiega, Lajoie, Longstaff, Lovejoy, Luchini, MacDonald, Maloney, Martin, Mazurek, McCabe, Monaghan-Derrig, Morrison, Moulton, Nelson, O'Brien, Peoples, Peterson, Priest, Rankin, Richardson D, Rochelo, Rotundo, Russell, Sanborn, Shaw, Stevens, Strang Burgess, Stuckey, Theriault, Treat, Tuttle, Valentino, Wagner R, Webster, Welsh.

ABSENT - Beck, Celli, Kaenrath, Kent.

Yes, 74; No, 72; Absent, 4; Vacant, 1; Excused, 0.

74 having voted in the affirmative and 72 voted in the negative, 1 vacancy with 4 being absent, and accordingly the Minority **Ought to Pass as Amended Report was ACCEPTED.**

The Bill was **READ ONCE. Committee Amendment "B" (H-922) 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 "B" (H-922)** and sent for concurrence.

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

SENATE PAPERS

Non-Concurrent Matter

Bill "An Act To Amend the Laws Pertaining to the Maine Economic Improvement Fund"

(H.P. 1393) (L.D. 1885)

Minority (4) **OUGHT TO PASS AS AMENDED** Report of the Committee on **LABOR, COMMERCE, RESEARCH AND ECONOMIC DEVELOPMENT READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "B" (H-894) AND HOUSE AMENDMENT "B" (H-923)** in the House on April 9, 2012.

Came from the Senate with the Majority (9) **OUGHT TO PASS AS AMENDED** Report of the Committee on **LABOR, COMMERCE, RESEARCH AND ECONOMIC DEVELOPMENT READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-893) AS AMENDED BY SENATE AMENDMENT "A" (S-548)** thereto in **NON-CONCURRENCE**.

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

SENATE PAPERS

Non-Concurrent Matter

An Act To Revise the Target Prices for the Dairy Stabilization Program (EMERGENCY)

(H.P. 1409) (L.D. 1905)

(S. "A" S-535)

PASSED TO BE ENACTED in the House on April 10, 2012.

Came from the Senate **PASSED TO BE ENGROSSED AS AMENDED BY SENATE AMENDMENTS "A" (S-535) AND "B" (S-546)** in **NON-CONCURRENCE**.

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

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

On motion of Representative CURTIS of Madison, the House adjourned at 6:01 p.m., until 10:00 a.m., Thursday, April 12, 2012.