

# MAINE STATE LEGISLATURE

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**LEGISLATIVE RECORD**  
OF THE  
**One Hundred And Seventeenth Legislature**  
OF THE  
**State Of Maine**

**VOLUME II**

**FIRST REGULAR SESSION**

**House of Representatives**  
May 24, 1995 to June 30, 1995

An Act to Amend the Excise Tax Charged on Commercial Vehicles (H.P. 472) (L.D. 653) (C. "A" H-539)

An Act to Enable Small Farm Owners to Process and Sell Foods They Produce (H.P. 794) (L.D. 1111) (C. "A" H-537)

An Act to Amend the Operating-under-the-influence Laws (H.P. 836) (L.D. 1167) (C. "A" H-543)

An Act to Amend the Underground Oil Storage Facilities and Groundwater Protection Laws (H.P. 978) (L.D. 1387) (C. "A" H-533)

An Act to Create the Hebron Village Water District (S.P. 530) (L.D. 1447) (C. "A" S-267)

An Act to Create an Adopt-A-River Program (H.P. 1047) (L.D. 1466) (C. "A" H-538)

An Act to Strengthen the Motor Vehicle Laws Pertaining to Registration of Motor Vehicles (H.P. 1093) (L.D. 1538) (C. "A" H-541)

An Act to Update and Clarify the Corporate Laws (S.P. 571) (L.D. 1545) (C. "A" S-295)

An Act to Expedite the Appeal Process in the Case of a Writ of Possession (H.P. 1099) (L.D. 1546)

An Act to Exempt Food Banks from Sales Tax (H.P. 1116) (L.D. 1561) (C. "A" H-526)

An Act to Implement the Recommendations of the Governor's Task Force on Motor Carrier Safety Laws (H.P. 1118) (L.D. 1562) (Governor's Bill) (C. "A" H-542)

Were 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 Make Changes in the Law Establishing the Maine School of Science and Mathematics (H.P. 1035) (L.D. 1454) (C. "A" H-383)

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

On motion of Representative KEANE of Old Town, was set aside.

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

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

The SPEAKER: The Representative may pose his question.

Representative KEANE: Thank you Mr. Speaker. I notice that the amendment puts a fiscal note of \$617,000 on the magnet school and I am not sure what that fiscal note is for. I would appreciate somebody on the committee informing me as to why that \$617,000 fiscal note is on the bill.

The SPEAKER: The Representative from Old Town, Representative Keane has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Limestone, Representative O'Neal.

Representative O'NEAL: Mr. Speaker, Men and Women of the House: This is just language that would clean up for the bond bank. This does not take affect now. This is only if the bond has to be used. The language is not the amount that is listed there. We had asked that to be corrected and the amount is not the proper amount that is listed. I don't have the figures in front of me, but, again, this is just to clean up the language from the original bill. It will not have anything to do with this budget.

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

Representative KEANE: Mr. Speaker, Ladies and Gentlemen of the House: If you could be more clear and specific on that explanation, I would appreciate it. What it does is it seems to me, it authorized a 3 million dollar bond issue, if the trustees of the magnet school, so deem fit to reconstruct or do any type of maintenance on the school. If that is true, the fiscal note says if they use that money, that they will have a \$617,000 additional fiscal note. I guess my specific question is, how was that \$617,000 fiscal note arrived at?

The SPEAKER: The Representative from Old Town, Representative Keane has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Limestone, Representative O'Neal.

Representative O'NEAL: Mr. Speaker, Men and Women of the House: I will ask to table this at this time and I will get the information for the good Representative.

On motion of Representative HICHBORN of Lagrange, tabled pending passage to be enacted and later today assigned.

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By unanimous consent, all matters having been acted upon were ordered sent forthwith.

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

House Divided Report - Committee on State and Local Government - (7) Members "Ought to Pass" as amended by Committee Amendment "A" (H-584) - (5) Members "Ought to Pass" as amended by Committee Amendment "B" (H-585) on Bill "An Act to Ensure That Rulemaking by Agencies Does Not Exceed the Intent of Authorizing Legislation" (H.P. 806) (L.D. 1123) which was tabled by Representative DAGGETT of Augusta pending her motion to accept the Minority "Ought to Pass" as amended by Committee Amendment "B" (H-585).

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

Representative DAGGETT: Mr. Speaker, Ladies and Gentlemen of the House: In response to L.D. 1123, which was signed by an incredibly large number of legislators, cosponsored and sponsored, the committee on State and Local Government spent some time taking a look at the rulemaking process and what might be done to improve that. I think considering the large number of cosponsors and a variety of testimony that came in front of the committee, there really was a feeling that there was an opportunity to make some improvements on the Administrative Procedure Act, which is actually the name of the act that spells out rulemaking procedures.

I want to tell you that the first thing that seemed very obvious to me was that a lot of people, this includes the regulated communities, those that the rules affect and legislators really did not understand the APA process, the rulemaking process. That was the number one issue that seemed to pop up. People did not understand the current process. In order to use the process to do the things you want to do with it, you first need to understand the process as it is today. There was a lot of discomfort with that process and lack of knowledge.

The committee talked about a handful of things that could be done. There was a number of administrative things that could be done to help

clarify the process, help educate people on the process, help legislators understand how to use the APA and differentiate between what is rulemaking and what is statutory. There is a lot of confusion about where the problem really was. Was it a statutory problem or was it a rulemaking problem? I think there is a lot of buck passing. I think legislators are happy to say it is rulemaking. Bureaucrats are happy to say it is statutory. The kind of government that we have is one of overlapping jurisdictions and that is one of the problems with our type of government, is these overlapping jurisdictions that allow for passing of the buck.

I think that in rulemaking the legislative versus the bureaucratic response to problems has not been one of cooperation and helping to identify where the problem really is. There have been issues raised, that were suggested, that they were rulemaking problems when, in fact, they were not. I think one of the problems in front of the committee was that the problem was never well documented. There was a lot of heresay. There was a lot of, I believe, and this is what I have heard, but not a lot of documentation and not good documentation.

I don't believe the committee ever really took a look at the process to find out where there is a breakdown in the process. I felt bad about that. I think there perhaps are additional things or better things that could be done besides either of the reports that are in front of you. I think this is going to be confusing to people. I am sorry that this committee could not come up with one basic plan, because I think it is very difficult for legislators in your position, when you see a divided report that is pretty equal in division to understand where the problems are and to sort through that.

I am going to try to describe to you, now, Report "B," which is the report that I am on. What the intent of that is and how it makes an effort to fix the current process. There were several issues raised as problems with rulemaking. One of them was there wasn't really an opportunity for the legislature to be involved when the rule is in a proposed stage, when it is still being formulated, prior to its being adopted. There is a process for the legislature to review a rule that has been adopted, but there was no opportunity to get involved in the proposal stage. Report "B," I'm not taking this in order and I passed out a pink sheet earlier that helps to describe this, the third one down says it is a process for legislative review for all proposed rules. That is contained in Report "B."

There is nothing of that type in Report "A." There is the same process that the legislature currently has for reviewing a rule that has been put in place, has been listed and may not be used to review a proposed rule. This is an opportunity for the legislature to get involved, if they know or feel there is a problem with a proposed rule. Earlier in the process the legislature can become involved in an official way.

I am going to back the process up even further than that. Now we are looking for a process for the regulated community to be involved in a proposed rule. Today's Administrative Procedure Act does not give the regulated community, those are the folks that are regulated by the rules, an opportunity to be involved when the rule is actually being written. There was a report that came out earlier this year on alternative dispute resolution and it had in that

language that would call for a mediated rulemaking, so those who are being regulated have a mechanism to participate in actually writing the rules. It is a process that was used with the Sensible Transportation Act. It is not a process today that can't be used. It is just there is no formal mechanism for it.

Report "B," it spells out a process, which allows those people who are being regulated to participate in developing the rules. Theoretically, for those controversial rules, the regulated community can be involved, so the rule that is actually proposed is a better rule and there is consensus between those who are regulated and those who are regulating. I am going even closer to the front of the rulemaking process. In today's rulemaking process there is a requirement that the agency that is developing the rule send a copy over to the legislature of what they intend to do rulemaking on.

It is called the Regulatory Agenda. Today, they are required to send a copy of that. What Report "B" says is not only must you send us a copy of what you intend to do rules on during the coming year, you must schedule a meeting with the committee of jurisdiction and go over with them what your regulatory agenda is. The committees of jurisdiction have an opportunity to know ahead of time before the rule is proposed, what the agency intends to do during the next year. The committee would have an opportunity to talk with the agency about those rules and get a sense of whether they are going to be controversial or whether they might be controversial. It gives the legislature more of an opportunity to understand what is going on. Report "B" reduced paperwork.

My guess is what happened when the legislature decided to have notice of rules was an additional form was created. Report "B" simplifies and reduces the number of forms and allows one form that has the information on it that tells us the kinds of rule and whether it might be an overburdensome rule. That, which is called the cover sheet, is statutory. If legislators need more information about what a proposed rule will be doing, it will be on that sheet and the agency only has to fill out one sheet and the legislature gets the information that actually goes to the regulated communities. It serves a couple of purposes. It eliminates some paperwork and we then know what the summary information is that goes to regulated community so we can see if they are getting the notification they need.

Report "B" changes several of the items on that cover sheet. In an attempt to notify legislators about the kinds of things they want to know. In a pretty straight forward check-off manner it would have whether or not the rule exceeds the federal standard, whether or not it is a fee increase, whether or not there is a financial impact on the municipality or on the regulated community. The cover sheet would tell you that the proposed rule was actually a part of the regulatory agenda, so that you know if that has been gone over. There are a variety of red flags that can be raised right on that cover sheet.

For those of you who are on committees that do not get involved in a lot of rulemaking, when the agency is getting a rule, they send us a sheet of paper over and it goes to members of the committee of jurisdiction telling about that proposed rule. Those are the things that you would know about and would be

able to get more involved in the process if you felt there was a rule that seemed to be a controversial rule.

The second one down, Report "B," applies to all rules. If it were passed, all rules from here on out, believing that there can be a problem with any rule, not just a major rule, not just a technical rule or not just a procedural rule, but any rule has the potential to be a problem. Report "B" makes an attempt to snag all of those rules and to alert legislators if there is a problem with any of the future rules. While I think there are other improvements that could be made and other things that could be done and perhaps there is more work that could be done, I think that Report "B" introduces some education into the process. It raises more awareness of legislators without being overbearing and getting us involved in anything that is too bureaucratic or too micromanaging.

I have not gone into a great deal of explanation about why we have rules and how rulemaking fits into the governmental process. With the assumption that rulemaking, the micromanaging piece, is in the bureaucracy and under the executive's domain and that our domain is the larger overarching policy setting piece, I believe that Report "B" offers you a number of opportunities to be further involved in the process and to be a little more aware of what is going on with rulemaking. Thank you.

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

Representative LEMKE: Mr. Speaker, Men and Women of the House: As a member of the majority on this issue in the State and Local Government Committee, I would like to explain in three or four sentences why I believe you should vote against the pending motion. As the good Representative from Augusta pointed out, an incredibly large number of you did sign onto L.D. 1123 and I believe the reason you signed on as I did is because you wanted to deal directly, simply and in a way that is effective with a major problem in state government. The amendment you have before you does not do that. It is basically a bureaucratic mishmash to deal with a bureaucratic problem. If that is what you want to support, I encourage you to vote for it. If you want to get onto Report "A," which deals directly with this problem, please vote against the pending motion.

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

Representative CAMPBELL: Mr. Speaker, Men and Women of the House: As many of you know, this is a title that I submitted both last session in the 116th and in the 117th. I appreciated the support as I circulated the bill. The bill, L.D. 1123, essentially explains my intent with the title, An Act to Ensure That Rulemaking by Agencies Does Not Exceed the Intent of the Authorizing Legislation. That simply is my intent. To make sure that rules before they become the effect of law, promulgated and written by bureaucrats, come back before an elected body of officials who understand what the citizens of the state want. Essentially all I wanted to do was make sure that it came back before the legislature to make sure it didn't exceed the intent.

I feel that I must respond now that we are talking about Report "B" to the pink sheet that has been circulated. As the good Representative from Augusta, Representative Daggett mentioned, I will go through them very briefly and quickly concerning the five

points. Number one, Report "A" does not reduce paperwork. I believe sincerely if you read Report "A" that it does. I won't go into it because we are not talking about Report "A" at this point. A significant number of the rules will have a process which is less than the existing rulemaking process. I will tell you why when we get to Report "A."

Number two, applies to all rules. Point three, process of legislative review for all proposed rules, it says, no, under Report "A." If you look at Page two of Report "A," section one, it says all rules. Number four, process for regulating communities participating in development of the rules, it says no. It does. We have public hearings on every law. We have work sessions on every law. With the presentation of the rule back before the standing committee in the legislature, it will also allow them another point to participate. Again, with number five, agency meeting with committee of jurisdiction or review of regulatory agenda, they do that not only twice as we have it now in public hearing and work session, but they will also have a third opportunity to do that when it is presented back before the standing committee and the full legislature.

The intent of this legislation as you read the title of the bill was simply to make sure that the bureaucrats understood first, the intent of the legislation and that they simply did not exceed that intent when they promulgated the rules. If we can dispose of Amendment "B" and get on to Amendment "A," we will cite you some very prominent examples of where they have exactly done that. Please defeat the motion so we can get onto Amendment "A."

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

Representative SAXL: Mr. Speaker, Men and Women of the House: Rulemaking is a complicated business. At least some of the rules I have looked at are. I find them very difficult to understand. I tell you that with utter frankness. There are a large number of them that are promulgated out of Natural Resources, Utilities and a number of the other committees. The report which is before you now does not require these reports to come back to the legislature to be reviewed by the committee. Instead it says that if there is a problem that is noted by either the regulated community or by the legislative community or by an ordinary citizen it can be flagged and then brought to committee.

It seems to me that that is a more appropriate way of handling it, rather than having rules which are considered significant being brought back. Often these are very technical matters. Matters which we in our broad public policymaking may not have the educational experience or the technical experience to be able to accurately criticize. It has been an administrative procedure for a long time and not one that falls into the legislative branch. I think that with exceptions and ones we get angry at, the rulemaking process has worked fairly well. It is very easy to blame the bureaucrat or the technocrat for some of the messes that we have, but there is no reason why we as a body or we as individuals with committees of jurisdiction can't review those rules currently.

I urge you to accept this report, which makes some changes and goes a long way toward helping the process, but which doesn't undo the Administrative Procedure Act. Thank you.

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

Representative CLARK: Mr. Speaker, Men and Women of the House: I hope when you vote this morning that you vote to turn down the Minority Report and give up a chance to go to Report "A." When I am not in the legislature, when we do go home, we have to deal with corrections that we do down here. I spend most of my time dealing with DEP when I get back to Millinocket. Particularly when we pass a law and the interpretation that goes back to the bureaucrats is nothing like what we passed in legislation. I spend most of my summer months, when I should be relaxing and making a living for my family, trying to correct the problems that they give us once we go home.

It seems like when we leave here, they are waiting on a bridge waving to you saying, "Adios Amigos, now you are gone and we can do what we want to." I just hope when you pass something today that we do it right. I think a lot of you people signed on the Majority Report wanting to do something right. The Majority Report will at least send a message to these people and take some time in what they are doing and do it right. I deal a lot of times with Chapter 137 on air emissions, coming from the area I come from. I will tell you, it is no easy task doing the paperwork that is put in front of them. They don't pay a person enough money to deal with it. It is really frustrating. We all want clean air. We all want clean water, but why put people through a run that they have to be put through.

We are working on a simple project in northern Maine trying to get dams relicensed, for example, they have been there for 90 years. Eight million dollars later, those dams aren't relicensed. Eight million dollars that you could put back in the economy helping people in northern Maine make good money. I hope when you vote today, you vote to turn down the Minority Report and go with the Majority Report. Thank you.

The SPEAKER: The Chair recognizes the Representative from Union, Representative Savage.

Representative SAVAGE: Mr. Speaker, Ladies and Gentlemen of the House: I would like to remind you what our good Representative from Bangor, Representative Saxl just told you that Report "B" will look at a rule after it has become a problem. I, myself, in my home and my business like to look at issues and try to resolve them before they become a problem. Please vote not to pass on Report "B" and go on to Report "A." Thank you.

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

Representative SAXL: Mr. Speaker, Ladies and Gentlemen of the House: I just have to respond to the last comment. Report "B" allows this process prior to the rule becoming a law. Let me just share with you how one gets to review a rule. I would suggest to you that what we have been doing is that we really don't know about this process very much and it is used very rarely. The legislature or the legislative committee may review any rule on its own initiative. In addition, a formal process is established for the public to petition the legislature for rule review. An application for review of an agency rule can be filed with the Executive Director of the Legislative Council by a group of 100 or more registered voters who have substantial interest in the rules or any person who is directly, substantially or adversely affected by

the application rule. If this report is passed, that can be done while the rulemaking process is ongoing and also after the rule has taken place.

The SPEAKER: The Chair recognizes the Representative from Enfield, Representative Lane.

Representative LANE: Mr. Speaker, Ladies and Gentlemen of the House: I will be very brief. Simply put, what is before you does not really come close to the intent that the original legislation that 130 odd cosponsors signed. We definitely need to vote this out so that we can look at the legislation that was of such interest to so many legislators. I urge you to vote against the Minority "Ought to Pass." Thank you.

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

Representative STONE: Mr. Speaker, Ladies and Gentlemen of the House: Before we vote, just one brief reminder. The Constitution gave the law making duty and responsibility to the legislature, not to the bureaucrats and executives and since rules do have the force of law they should come back to us before they are implemented. Thank you.

The Chair ordered a division on the motion to accept the Minority "Ought to Pass" as amended Report.

A vote of the House was taken. 25 voted in favor of the same and 72 against, the Minority "Ought to Pass" as amended Report was not accepted.

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

Representative DAGGETT: Mr. Speaker, Men and Women of the House: Before we go on to accept this report, I think it is only appropriate that you have a good understanding of what this bill does. I am sure there will be others that will stand up and speak to it, but I would like to take a moment to speak to exactly what this bill does and to justify the pink sheet in which I have alleged that it does or doesn't do certain things.

As far as reducing paperwork, if an additional legislative process is necessary, I can't imagine how the current report in front of you reduces paperwork. I can only imagine that it adds to it, because now, in addition to having a public hearing, passage of a law, public notice for the rules, passage of the rule and we now have another legislative opportunity with advertising and public hearings and notice and the bill calls for passing that rule into law. I can't imagine that all of that takes place without additional paperwork, but perhaps there is some new mechanism for passing legislation that I don't know about.

When I put down it applies to all future rules, this report that is in front of you now, Report "A," would have the legislature review what is a questionable number of rules. We don't know how many it would be, but it would only be rules that fall into the major substantive category, which in some cases might be a judgment call. The major substantive category of rules are the only ones that the legislature would be reviewing. I find that somewhat ironic since the good Representative Stone just indicated that all rules had the force of law, so they should therefore come back in front of us. This report in front of you only asks for a very small number, proportionately, of rules to come in front of the legislature.

However, Report "B" had a trigger mechanism for every rule to be noticed to the legislature on the pivotal issues of exceeding federal standards.

Report "A" does not have any process for the regulated community to be involved in the development of the rule, in making the rule, in formulating the rule, there is none. That is not to say that today the regulated community couldn't be involved, because they can today. Report "A" does not set forth an institutionalized process for them to be involved. Report "A" does not require the agency to come in front of the legislative committee at a meeting. There is no language in there that requires that meeting. There is language that does require it in Report "B."

While the committee was meeting and taking a look at the kinds of things that could be done, there was a survey that was done of committee members asking them if they were in agreement to doing a number of different things. There was virtually unanimous agreement in a survey of a variety of improvements to the process. None of those improvements are included in the report in front of you. None of them are included, yet virtually all the committee members felt that they were good ideas. The bill that was in front of you is quite different from the bill that was submitted, the amendment in front of you. I hope you will think very carefully before you accept this.

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

Representative LEMKE: Mr. Speaker, Men and Women of the House: I will attempt to be equally brief. Ladies and gentlemen, if you believe that we should be the ones to take responsibility for what we have to go before the public with, then vote for this pending motion. I consider this a declaration of independence of the legislature from the rulemaking power of the unelected bureaucracy. I think the issue is very simple. I think it is one of the most important votes you will make this session. I think you know what the right thing is to do and I encourage you to do it.

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

Representative CAMPBELL: Mr. Speaker, Men and Women of the House: I would like to agree with the good Representative from Augusta, Representative Daggett. This bill is not in the form which I intended. As we all know, the process of negotiations, cooperation and collaboration is one that is vital to the success of the Maine Legislature. Unfortunately my intent was to ensure that every rule come back before the standing committee to ensure that the intent of the law was not exceeded. The response to that was, we will have "the sky is falling." We will have a full-time legislature. That was not the intent and I believe sincerely that that wouldn't have been the result.

Over a period of four maybe five weeks, we have been working this bill. We have been negotiating. We have been collaborating. From my perspective and the perspective of the lead in the other body, we have compromised significantly. We have taken a lot of teeth out of this bill. One thing we have to do is we have to send a message to the bureaucrats that we are in control. Do you realize that in the 116th Legislature there were over 1,000 rules which became the force of law, when, in fact, we, as a body, only passed 750 laws. The rulemakers seem to be winning here. In a lot of cases, these rules did exceed the intent of the law.

I will just read a real brief one. For example, the long-term contractors required by the PUC for the

NUG contracts. In section 35-A, MRSA 3307, section 1, it says, "A long-term contract shall be encouraged." In the rulemaking process, PUC, Chapter 36, document 80-268 went well beyond encouraging and stated and I will quote, "No utility may unnecessarily refuse to enter into a long-term contract for purchase of energy or capacity." Thus the Maine utilities were forced into a disastrous long-term contract for 15 years that created high rates. This cost CMP ratepayers 375 million dollars a year. We know what we have done to eliminate those contracts in the 117th Legislature.

Let me just try to briefly describe what this bill does. There has been some confusion. Yesterday we received Amendments "A" and "B," if you have interest there are corrected copies. Up in the right hand corner of the amendments, they are corrected. This copy of the Amendment "A" as I read it, if you want to follow along, has that corrected copy up in the right hand column. What this does is it allows a law, which requires a rule to fit into a category and it must be categorized as it leaves the standing committee of jurisdiction into one or two categories.

One, routine technical rules, which I mentioned before would reduce paperwork. Right now all rulemaking goes through the same process. This would allow the routine technical to go through a less stringent process, but major substantive rules, which is the second category will be subjected to a much more stringent process. It requires that a major substantive rule require the exercise of significant agency discretion and interpretation, because of the subject matter and anticipated impact are reasonably expected to result in a significant increase in the cost of doing business, a significant reduction in property values, the loss or significant reduction of government benefits or services, the imposition of state mandates on units of local government as defined in the constitution or other serious burdens on the public or units of local government.

What that does is it allows that after the rule is promulgated it comes back before the standing committee to make sure that the committee understands that the rulemakers have created a rule that doesn't exceed the intent of the law. It is simple. They categorize it. There is an initial interest, both from the departments, stake holders, legislature that this rule does this to the public, therefore, it goes into the routine technical rule category or it goes into the major substantive. If it is major substantive, just before it becomes a rule, it come back before the standing committee and the full legislature to ensure that it does exceed the intent. It is real simple.

We don't want to be a full-time legislature. We just want to make sure that the rulemakers don't exceed the intent. There are two basic philosophies here. One, do we want bureaucrats and government employees making rules that become the force of law or do we want the people's representatives doing it? I highly recommend and encourage the passage of Amendment "A," which is L.D. 1123 and appreciate your support. Thank you.

The SPEAKER: The Chair recognizes the Representative from Gardiner, Representative Treat.

Representative TREAT: Mr. Speaker, Men and Women of the House: I know we have had a long debate on this, but I am still confused about how this works. I wondered if I might pose a couple of questions through the Chair?

The SPEAKER: The Representative may pose her questions.

Representative TREAT: I have two basic questions about this. One, to what extent is the whole legislature involved in the oversight or is it pretty much going to up to be the committee of jurisdiction and secondly, what happens when we are not in session, particularly during the short session where there is almost no time for the legislature to review? Is this going to mean that many rules will be delayed in terms of them being ultimately adopted?

The SPEAKER: The Representative from Gardiner, Representative Treat has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Holden, Representative Campbell.

Representative CAMPBELL: Mr. Speaker, Men and Women of the House: Again, the intent was not to make a full-time legislature. There is a time frame where we are not in session. My hope is that the departments and the legislature's standing committees collaborate and cooperate. Right now they have an opportunity to create a rule and pass it at any period within the year. I am hoping that at least those that can be scheduled can come back before the legislature and the standing committee in a snapshot format. Just to make sure that each rule as it has been promulgated is explained to that committee and to ensure it doesn't exceed the intent. For those that come before us, either federally mandated or emergency, there is a mechanism in the legislation which will allow that to happen. It is clearly not the intent of this legislation to make a full-time legislature, therefore, there are provisions as it has been drafted, to allow those rules to become adopted.

The SPEAKER: The Chair recognizes the Representative from Rumford, Representative Cameron.

Representative CAMERON: Mr. Speaker, Ladies and Gentlemen of the House: I apologize before I even start, because this is something I rarely do. I would like to read you something out of the law book, as an example of what happens now and why we are concerned and why we would like to go ahead and support this report, it is entitled Unavoidable malfunctions.

"The commissioner may exempt from civil penalty an air emission or wastewater discharge in excess of licensed limitations if the emission or discharge occurs during a start-up or shutdown or results exclusively from an unavoidable malfunction. From an unavoidable malfunction entirely beyond the control of the licensee and the licensee has taken all reasonable steps to minimize or prevent any discharge or emission." This doesn't say that they are free to come and go and do whatever they want to, when they want to. It says that there are unforeseeable circumstances that we may not be prepared for.

I will give you an example of one that occurred and what the result was. There was a company here in Maine whose air emission equipment was rendered inoperable through a lightning strike. That seems to me to be an unavoidable consequence. The DEP ruled or denied their request for exclusion because they said the DEP ruled that the people who ran this facility should have been able to anticipate this. That to me does not make any sense. Yes, I can anticipate we are going to have thunderstorms and we are going to have lightning and that there are facilities, homes and trees that are ultimately going

to be hit. To me, it is absolutely impossible to predict where that is going to be and do what we need to do to avoid that. This is the kind of situation that we are hoping to avoid by passing this rule.

We are expecting people to live within the confines of the rules and the rules are great. I don't think there is anybody in this House that would disagree that this isn't a better state than it was 25 years ago and there are places to go. I ask you to support the pending motion, because we want the people to live within the confines of the intent of the laws that we pass here. The laws that we pass are very appropriate. We are the elected people and we are the ones that have the responsibility and we are the ones that ultimately are held responsible, as well we should be, at the ballot box. I ask you to support the pending motion, so that we can merely direct the folks that work for us, I don't mean the Legislature, I mean for us the citizens of Maine, to do the things that we in the Legislature direct them to do and no more than that. Thank you very much.

The SPEAKER: The Chair recognizes the Representative from Gardiner, Representative Treat.

Representative TREAT: Mr. Speaker, Men and Women of the House: I am still confused about how this works and I guess I will just share a couple of concerns. I am sympathetic with the reasons for this piece of legislation. I understand where people are coming from and their concerns about agency rulemaking, which may not reflect what we thought we were doing when we were enacting legislation. My concerns are two for one. It is going to dictate to an agency what their work schedule is. They are going to cram all their rulemaking activity into the same time period during which the Legislature is meeting. I think that is going to be very disruptive in terms of their trying to do things efficiently. I see it being very disruptive to this Legislature who, as we all know, is already well past the deadline now for doing the work that we have.

Now every single committee is going to have to review literally hundreds of rules. For example, in the case of DHS rules, it is voluminous types of rules which would have to be reviewed by those committees. I just don't understand how the committees are going to have the capacity, even in terms of a time schedule, to do that. My second concern is I do find it unclear in the bill and again, I apologize, there is just such a volume of paper on my desk, I have had a hard time understanding every word of everything, but I am unclear about to what extent the decisions that are being made are being made by the committees of jurisdiction and to what extent the legislature as a whole is involved.

My concerns stem from the fact that, I believe, as we have been seeing over the last couple of months committee reports, like 12 to 1 or 11 to 2 are being routinely overturned by the body as a whole. To the extent that these decisions are being left in the hands of a standing committee to make up their mind about whether this rule is good or not. I have a few concerns about that. In that if the rest of us have no idea that they are doing that, we might have a completely different point of view. Again, maybe this is all very clear in the bill and in the amendment, but my reading of it, I really didn't understand how it worked. Those are two inner-related concerns.



The more you involve the legislature as a whole, the more you are going to force us into meeting on more of a full-time schedule. I feel like this year has been basically full-time. I have been here almost five days a week since the beginning of the session because of the workload of the committee that I serve on. I just don't see how we can escape that. On the other hand, if we take it away from the legislature as a whole, I see us giving a great deal of authority to these joint standing committees which we apparently have been disagreeing with quite a bit. Even when they come out with very strong Majority Reports on various issues.

I would just express those concerns. Understanding that I think the intent of this, I understand where it's coming from, but I do think there will be unintended consequences from this legislation that we should be very concerned about. I think that even people supporting it would be concerned about those consequences.

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

Representative CAMPBELL: Mr. Speaker, Men and Women of the House: If I might, I would like to try to address that concern. As many of you know who have been here in the past session, the 116th, we had two bills addressing this issue. One offered by Representative Martin, which was a constitutional amendment and another by a significant number of other Representatives. The problem that we had was one of constitutionality. The concern as we drafted this was that the legislature designate a committee instead of the full legislature. In terms of the constitutionality it was very important in the language to allow that it come back before the full legislature.

Also, I share the concern of the good Representative Treat that it must not become a full-time legislature. It is a function of communication and collaboration. If we can communicate to those promulgating the rules that we want them to adhere to the intent of the law going out, before it goes to rulemaking, then they will come back with a rule, which has not exceeded the intent. The function of categorizing them as it goes through the existing process of public hearings and work sessions is a simple one.

One more question, what category does it go in? Bang, it goes into that category. If it is major and substantive, it then comes back before the legislature. The function of coming back before the full legislature was one of constitutionality. Thank you.

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

Representative VIGUE: Mr. Speaker, Ladies and Gentlemen of the House: A good example of the rules going beyond the intent of the legislature is Car Test. Look back at what happened and then we ended up taking the heat for it. This is a good example. They should have come to us and we should have been able to control it. This way the elected portion of government should be the part that is responsible to the people. If they don't like what we have done, the rules, then they can get rid of us. That is the way that it should be. The other way, they can't get rid of the people that make the rules because they are not elected and they stay here ad infinitum. What I would ask you to do is accept the Majority

"Ought to Pass" as amended by Committee Amendment "A." Thank you.

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

Representative DAGGETT: Mr. Speaker, Men and Women of the House: I would like to speak for a moment to the issue of a full-time legislature and the kind of time involved here. I would just like to tell you that the mechanism that is in front of you was based on the West Virginia law. West Virginia deals with about 100 rules a year. They have legislative review. They have a staff of five people. Three or four of which are attorneys. Maine does about 400 or 500 rules a year. Five times that amount. There is a serious concern about the staff time. There is a serious concern about the amount of legislative time needed for review of rules. I happen to have a handfull of rules in front of me.

I am just going to ask you to think for a moment this year when you had a large bill say 25 pages in front of you. The kind of time and effort necessary to go through that whole bill and make sure you understood what it did and why it did it. How many times have you agreed to amendments that had not been carefully read all the way through? You took someone else's word for it. You didn't spend a lot of time on it.

I have just one rule right here. It is a 19-page rule on cogeneration and small power production filled with definitions, descriptions, criteria for quantifying small power production facilities, criteria for quantifying cogeneration facilities, efficiency standards for bottoming cycle facilities, availability of electric utilities system cost data, avoided energy costs, capacity energy costs, load forecasts, energy resource plans, projected costs, avoided costs, sensitivity analysis, arrangements between electric utilities and qualifying facilities. This is an incredibly complex rule. I would hope that any legislative committee that was reviewing this rule would make sure that they had gone through the entire thing and understood what they were passing into law. That is what the report in front of you asks, that when these come in front of you, you will pass them into law.

Any changes would have to be done statutorily. We are talking about 400 to 500 a year. I understand that the measure in front of you only brings the major substantive rules, kind of a tossup as to how that is decided, but I would guess a 20-page rule would be major substantive. I may be wrong. I have a handful of other rules here. This is just a random sample of rules. Before we would pass those into law, we have got to go through them and make sure that we understand everything that is there. It is a major, major new source of responsibility. Report "A" requires you to do all of the major substantive rules. The report that is not in front of you allows you to flag the rules that are likely to be a problem. Pulling out the ones that are likely to be a problem.

I do not believe that anyone who has made a guess about the number of rules that are likely to be a problem has guessed there are more than 2 to 3 percent of the rules. Both reports recognize that there is a problem. Both reports attempt to do something about the problem. I have a very serious concern about passing a rule into law that we do not know and have not taken the time to thoroughly go through that. In fact, I believe, that one of the

unanswered questions that I raised when we were looking at this proposal which has to do with the legal impact of whether or not the legislature passes a rule into law. No one ever answered that question. They simply deleted the part that referred to judicial review. That is an unanswered question and I don't know how that is affected.

There was reference made by Representative Cameron regarding a rule that came from the PUC. Today if there is a rule that this Legislature does not like, there is a process for legislative review and a process for putting in legislation to change that. That exists today. Interestingly enough the question was raised while we were looking at this and talking about rulemaking and someone said I wonder how many people put in bills today to correct a rulemaking issue? A person in the back of the room popped up and said, "We have 11 bills in to fix problems with rules that were bad." While the person was standing, I asked, "Did you call into play the current process for the Legislature to review a rule?" No, he didn't even know about it. I was talking on the side with Representative Saxl and said, "That is the point, people don't even know how to use today's process." Instead of going through the most intensive and expensive mechanism, which is trying to pass a law, they could have asked for the legislature, the committee of jurisdiction to review that rule under the today's process.

When I turned to Representative Saxl I said, "Can you believe it?" She said, "They know how to put in a bill, but they don't know how to call into play the legislative process." It simply is not known. It is very well spelled out and, in fact, it was called into play this year with the Human Resources Committee. It is a process whereby one individual who is adversely affected by a rule can ask for review of that rule by the legislature. One person need only request it and the committee decides if they are going to review it. In this case the committee, Human Resources, did review a rule. It is a very simple process. It doesn't require passing a number of rules into law. It doesn't require that heavy handed approach. We don't need to do that.

The SPEAKER: The Chair recognizes the Representative from Pittston, Representative Guerrette.

Representative GUERRETTE: Mr. Speaker, Ladies and Gentlemen of the House: I rise today to support the Majority "Ought to Pass" Report on this bill. Let me very briefly explain why. It seems to me that this is a simple solution to a problem that Representative Daggett has admitted is real. It is not complex. We are not asking the Legislature to remake rules. We are asking the Legislature to simply see that the rules conform to the intent of the legislation and does not exceed it. We don't want them to remake the law. We don't want them to remake the rule. We just want to see if this conforms to the intent of the law we passed or does it exceed the intent of the law we passed. We want the rules made by our rulemakers to be the iron tent, not be something else. It is a simple solution. It is not a problem.

I would finish by asking one other question. It seems interesting to me that a state the size of West Virginia can get by on one-fifth the rules of the State of Maine. Maybe this is a small step toward rectifying that problem. I urge you to support the pending motion. Thank you.

The Chair ordered a division on the motion to accept the Majority "Ought to Pass" as amended Report.

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

Representative SAXL: Mr. Speaker, Ladies and Gentlemen of the House: I just want to wind up by saying that this proposed amendment may sound simple and may explain simply, but, in fact, it is not. The first place we will have difficulty is when we are deciding whether it is going to be substantive or not, that will take us long to argue. Think about how long we have been discussing this already.

The second place that we are going to find difficult is that it is going to require hours and hours of OPLA time. Then we are going to have to understand, in fact, what it is that that rule says, because after all you wouldn't want to vote on a rule that you didn't understand. You are going to have to do that with every major substantive rule that comes before you. Then it will come to the floor and the floor will have to understand what it says and well, you know what kind of floor debate and how long the floor debates are. You know how many people are absent from this because it is tedious and dull. Wait until you get to the substantive nature of the rule.

I urge you not to vote for this because I believe that the other amendment would take care of a rule that is a problem and you won't have to look at exact quantities of material that you may not be interested in. Mr. Speaker, I ask for a roll call.

Representative SAXL of Bangor requested a roll call on the motion to accept the Majority "Ought to Pass" as amended Report.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call it must have the expressed desire of more than one-fifth of members present and voting. All those in favor will vote yes; those opposed will vote no.

A vote of the House was taken and more than one-fifth of the members present and voting having expressed a desire for a roll call, a roll call was ordered.

Representative DAGGETT of Augusta moved that the Bill and all accompanying papers be recommitted to the Committee on State and Local Government.

Representative WHITCOMB of Waldo requested a roll call on the motion to recommit the Bill to the Committee on State and Local Government.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call it must have the expressed desire of more than one-fifth of members present and voting. All those in favor will vote yes; those opposed will vote no.

A vote of the House was taken and more than one-fifth of the members present and voting having expressed a desire for a roll call, a roll call was ordered.

The pending question before the House is to Recommit. All those in favor will vote yes; those opposed will vote no.

#### ROLL CALL NO. 225

YEA - Adams, Ahearne, Benedikt, Berry, Bouffard, Brennan, Chartrand, Chase, Chizmar, Cloutier, Daggett, Davidson, Desmond, Dore, Etnier, Gamache, Gates, Green, Heesch, Johnson, Jones, K.; Kilkelly, Kontos, Lemaire, Mitchell JE; O'Gara, O'Neal, Povich, Richardson, Rosebush, Rowe, Samson, Saxl, J.; Saxl, M.; Shiah, Sirois, Stevens, Thompson, Townsend, Treat, Tyler, Volenik, Watson, Winn.

NAY - Aikman, Ault, Bailey, Barth, Bigl, Buck, Bunker, Cameron, Campbell, Carleton, Chick, Clark, Clukey, Cross, Damren, Dexter, DiPietro, Donnelly, Driscoll, Dunn, Farnum, Fisher, Gerry, Gieringer, Gooley, Gould, Guerrette, Hartnett, Hatch, Heino, Hichborn, Jones, S.; Joseph, Joy, Joyce, Keane, Kneeland, Labrecque, Lane, Layton, Lemke, Lemont, Libby JD; Libby JL; Lindahl, Look, Lovett, Lumbra, Luther, Madore, Marshall, Martin, Marvin, Mayo, McElroy, Meres, Murphy, Nass, Nickerson, Ott, Paul, Peavey, Pendleton, Perkins, Pinkham, Poirier, Poulin, Reed, G.; Reed, W.; Rice, Ricker, Robichaud, Rotondi, Savage, Simoneau, Spear, Stedman, Stone, Strout, Taylor, Tripp, True, Truman, Tufts, Tuttle, Underwood, Vigue, Waterhouse, Wheeler, Whitcomb, Winglass, Winsor.

ABSENT - Birney, Fitzpatrick, Greenlaw, Jacques, Joyner, Kerr, LaFountain, McAleve, Mitchell EH; Morrison, Nadeau, Plowman, Pouliot, Yackobitz, The Speaker.

Yes, 44; No, 92; Absent, 15; Excused, 0.

44 having voted in the affirmative and 92 voted in the negative, with 15 being absent, the motion to recommit did not prevail.

The SPEAKER: A roll call having been previously ordered. The pending question before the House is to accept the Majority "Ought to Pass" as amended Report. All those in favor will vote yes; those opposed will vote no.

A roll call having previously been ordered on the motion to accept the Majority "Ought to Pass" as amended Report was now taken.

ROLL CALL NO. 226

YEA - Aikman, Ault, Bailey, Barth, Bigl, Bouffard, Buck, Bunker, Cameron, Campbell, Carleton, Chick, Clark, Clukey, Cross, Damren, Davidson, Dexter, DiPietro, Donnelly, Driscoll, Dunn, Farnum, Fisher, Gates, Gerry, Gieringer, Gooley, Gould, Guerrette, Hartnett, Hatch, Heino, Hichborn, Jones, S.; Joseph, Joy, Joyce, Keane, Kerr, Kneeland, Labrecque, Lane, Layton, Lemke, Lemont, Libby JD; Libby JL; Lindahl, Look, Lovett, Lumbra, Madore, Marshall, Marvin, Mayo, McElroy, Meres, Morrison, Murphy, Nass, Nickerson, Ott, Paul, Peavey, Pendleton, Perkins, Pinkham, Plowman, Poirier, Poulin, Povich, Reed, G.; Reed, W.; Rice, Ricker, Robichaud, Rosebush, Rotondi, Savage, Simoneau, Spear, Stedman, Stone, Strout, Taylor, Thompson, Tripp, True, Truman, Tufts, Tuttle, Tyler, Underwood, Vigue, Waterhouse, Wheeler, Whitcomb, Winglass, Winsor.

NAY - Adams, Ahearne, Benedikt, Berry, Brennan, Chartrand, Chase, Chizmar, Cloutier, Daggett, Desmond, Dore, Etnier, Gamache, Green, Heeschen, Johnson, Jones, K.; Kilkelly, Kontos, Lemaire, Luther, Martin, Mitchell JE; O'Gara, O'Neal, Richardson, Rowe, Samson, Saxl, J.; Saxl, M.; Shiah, Sirois, Stevens, Townsend, Treat, Volenik, Watson, Winn.

ABSENT - Birney, Fitzpatrick, Greenlaw, Jacques, Joyner, LaFountain, McAleve, Mitchell EH; Nadeau, Pouliot, Yackobitz, The Speaker.

Yes, 100; No, 39; Absent, 12; Excused, 0.

100 having voted in the affirmative and 39 voted in the negative, with 12 being absent, the Majority "Ought to Pass" as amended Report was accepted.

The Bill was read once. Committee Amendment "A" (H-584) 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-584) and sent up for concurrence.

By unanimous consent, all matters having been acted upon were ordered sent forthwith.

On motion of Representative HICHBORN of Lagrange the House recessed until 2:00 p.m.

(After Recess)

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

ENACTORS

Emergency Mandate

Resolve, Establishing a Moratorium on Implementation of the Law Requiring Public Employers to Pay the Costs of Early Retirement Incentives (S.P. 563) (L.D. 1531) (C. "A" S-297)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. In accordance with the provisions of Section 21 of Article IX of the Constitution, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 101 voted in favor of the same and 0 against, and accordingly the Mandate was finally passed, signed by the Speaker and sent to the Senate.

An Act to Revise the Somerset County Budget Committee (H.P. 822) (L.D. 1153) (S. "A" S-300)

An Act to Widen the Maine Turnpike (S.P. 489) (L.D. 1323) (C. "A" S-282)

Resolve, to Strengthen Fish Hatchery Capacity within the State by Establishing a Partnership between Public and Private Organizations (S.P. 365) (L.D. 991) (S. "A" S-301 to C. "A" S-116)

Were reported by the Committee on Engrossed Bills as truly and strictly engrossed, passed to be enacted or finally passed, signed by the Speaker and sent to the Senate.

COMMUNICATIONS

The following Communication: (H.C. 228)

STATE OF MAINE

ONE HUNDRED AND SEVENTEENTH LEGISLATURE  
COMMITTEE ON EDUCATION AND CULTURAL AFFAIRS

June 23, 1995

Honorable Jeffrey H. Butland, President of the Senate  
Honorable Dan A. Gwadosky, Speaker of the House  
117th Maine Legislature  
State House  
Augusta, Maine 04333

Dear President Butland and Speaker Gwadosky:

Pursuant to Joint Rule 15, we are writing to notify you that the Joint Standing Committee on Education and Cultural Affairs has voted unanimously to report the following bills out "Ought Not to Pass":  
L.D. 1394 An Act to Extend the Life of Existing School Buildings