MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

One Hundred and Twelfth Legislature

OF THE

STATE OF MAINE

Volume II

FIRST REGULAR SESSION

December 5, 1984 - June 20, 1985

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kinds of equipment, expensive major medical equipment, and if you will forgive the pronunciation of the words because I am not sure too many people in here could pronounce them, because they are long and they are expensive, one is the Nuclear Magnetic Resident Scanner, a Computer Axio Topography Scanner and an Extra Corporeal Lithotripter Equipment. Those are some pretty huge words and they have some pretty huge price tags on them.

When we first did the Certificate of Need and when we first did Health Care Finance up in Human Resources, I made the observation then of saying what about the doctors? Why don't we ever address the doctors and their costs and also why don't we ever address how much medical equipment costs in general? Why haven't we ever looked at that? I said I would like to see that and I would have liked to put it in then. But, the decision was made to wait and get through the Health Care Finance and do some things with Certificate of Need before we address the issue.

The issue is now before us and we are addressing it. The Bill would have any medical equipment over \$300,000 go through the Certificate of Need process. We have amended that down to only cover these three different pieces of equipment. I would hope that you would defeat the Majority Report so you could accept the Minority Report and include these pieces of equipment in the Certificate of Need.

One of the biggest reasons you have this before you is because of the situation in Bangor where some doctors are planning to purchase an N.M.R., a Nuclear Magnetc Resignator, and put it in their offices. All that did was point up the need to try to get doctors under the Certificate of Need. And the reason that you would want to do that is because of the expense of the equipment. In fact, what it will cost each person who uses that equipment is approximately \$700. It means an additional million dollars of health care payments in this State and when you talk about health care payments in this about third party payments and that means that the Medicare/Medicaid, Blue Cross/Blue Shield, all those people must then kick in for that. There is nothing wrong with that because the equipment may be needed and it may be needed in the Bangor area, it may be needed and it may be needed in the Portland area, it may even be needed in my area, God forbid, and maybe we should have it.

The problem is where does the equipment go? If you put it in doctor's offices does it limit the use. That is what you have to decide. If you are a patient in a hospital and already have this expensive piece of equipment in a doctor's office, must you then move the patient out of the hospital, go use a piece of equipment and come back in the hospital? Doesn't it make a bit more sense to put it in a more central setting where everybody can use it? Whether or not it is a hospital or a doctor's office is for the Certificate of Need review process. You have to have the doctors come under the process for those three pieces of equipment in order to review it. That is the basic difference between the two amendments.

I have passed around a piece of material that will explain some of this to you why you need it. I will sit down now and listen to some of the other arguements and hope that you would vote against the pending motion.

THE PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Berube. Senator BERUBE: Thank you Mr. President and fellow Senators. I hope you will go along with the Majority Ought to Pass as Amended Report. The Committee worked long hours on this particular issue trying to correct some of these inequities that have evolved since the initial passage of this law a few years ago. I think the Committee has worked well enough so everybody could live with this. However, there

were some who favored including, extending rather, to the medical profession the same rules and regulations pertaining to Certificate of Need.

If I could briefly mention some of the issues that our colleague on the Committee, Senator Bustin, has mentioned, She mentioned third party reimbursement. It is my understanding that hospitals, when it comes to third party reimbursement, are reimbursed on a cost plus basis, not so with the doctors. Also, they do have an organization of peer review and I suspect that if doctors felt they couldn't support a piece of equipment they wouldn't bring it into their office or clinic.

We must also think that it is cheaper to be diagnosed in a doctor's office than it is certainly to spend two or three days in a hospital. And we also have to look at those areas in the state, rural areas which would conceivably be deprived of sophisticated diagnostic equipment. And again, I would rather be diagnosed without pain than be diagnosed through diagnostic surgery as happens many times.

I would, therefore, ask you to support the Majority Report and vote for my position.

Mr. President, I would ask to have the pending motion restated to make sure we are on the right track.

THE PRESIDENT: The pending question is the motion of the Senator from Androscoggin, Senator Berube, that the Senate Accept the Majority Ought to Pass as Amended by Committee Amendment "A" (S-274) Report of the Committee. A Division has been requested.

Will all those Senators in favor of Acceptance of the Majority Ought to Pass as Amended Report, please rise in their places until counted.

Will all those Senators opposed, please rise in their places until counted.

20 Senators having voted in the affirmative and 6 Senators having voted in the negative, the motion of the Senator from Androscoggin, Senator BERUBE, to ACCEPT the Majority OUGHT TO PASS AS AMENDED Report PREVAILS.

The Bill READ ONCE

Committee Amendment "A" (S-274) READ and ADOPTED.

The Bill as Amended ASSIGNED FOR SEC-OND READING LATER IN TODAY'S SESSION.

Out of order and under suspension of the Rules, the Senate considered the following: SECOND READERS

The Committee on Bills in the Second Reading reported the following: **House As Amended**

Bill "An Act to Improve the Administration of General Assistance" (H.P. 916) (L.D. 1309)

(C "A" H-384)
Bill "An Act Relating to Investigations of Child Abuse in Institutions Licensed by the State" (H.P. 923) (L.D. 1330) (C "A" H-385) (See action later today)

Bill "An Act to Fund Community Response Programs to Address Child Sexual Abuse in Maine Communities" (H.P. 962) (L.D. 1383) (C "A" H-388)

Which were READ A SECOND TIME and PASSED TO BE ENGROSSED as Amended. in concurrence.

Senate As Amended

Bill "An Act to Amend the Maine Certificate of Need Act to Require More Timely Decision Making on the Part of the Department of Human Services" (S.P. 214) (L.D. 572) (C "A"

Bill "An Act to Establish a Procedure to Ap point Advocates for Foster Children" (S.P. 450) (L.D. 1253) (C 'A' S-271) Which were **READ A SECOND TIME** and

PASSED TO BE ENGROSSED as Amended.

Sent down for concurrence.

Senate At Ease Senate called to Order by the President.

On motion by Senator VIOLETTE of Aroostook, the Senate RECONSIDERED its action earlier in Today's session whereby it ENGROSSED PASSED TO BE AMENDED:

Bill "An Act Relating to Investigation of Child Abuse in Institutions Licensed by the State' (H.P. 923) (L.D. 1330) (C "A" H-385) (In House June 12, 1985, PASSED TO BE

ENGROSSED AS AMENDED.)

On further motion by same Senator, Tabled until Later in Today's session, pending PASSAGE TO BE ENGROSSED AS AMENDED.

Out of order and under suspension of the Rules, the Senate considered the following: COMMITTEE REPORTS

House

Divided Report

The Majority of the Committee on JUDICIARY on Bill "An Act to Create a Cause of Action Against the State for Wrongful Imprisonment" (H.P. 171) (L.D. 205)

Reported that the same Ought to Pass as Amended by Committee Amendment "A" (H-387)

Signed:

Senators

CARPENTER of Aroostook CHALMERS of Knox

Representatives

MacBRIDE of Presque Isle DRINKWATER of Belfast COOPER of Windham PRIEST of Brunswick PARADIS of Augusta LEBOWITZ of Bangor ALLEN of Washington

The Minority of the same Committee on the ame subject reported that the same Ought Not to Pass

Signed:

Senator:

SEWALL of Lincoln

Representatives:

CARRIER Of Westbrook STETSON of Damariscotta KANE of South Portland

Comes from the House with the Majority OUGHT TO PASS AS AMENDED BY COM-MITTEE AMENDMENT "A" (H-387) Report READ and ACCEPTED and the Bill PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-387)

Which Reports were **READ**.
The Majority **OUGHT TO PASS AS AMEND**-ED Report READ and ACCEPTED, in concurrence

The Bill READ ONCE.

Committee Amendment "A" (H-387) READ and ADOPTED, in concurrence.

The Bill as Amended, ASSIGNED FOR SEC-OND READING LATER IN TODAY'S SESSION.

Out of order and under suspension of the Rules, the Senate considered the following:

COMMITTEE REPORTS House

Divided Report

The Majority of the Committee on ENERGY AND NATURAL RESOURCES on Bill "An Act to Require Voter Approval of the Disposal of Low-level Radioactive Waste' (I.B. 1) J.D.

Reported that the same Ought to Pass in New Draft under New Title Bill "An Act to Establish a State Policy Relating to the Disposal of Low-level Radioactive Waste" (H.P. 1141) (L.D. 1649)

Signed: Senators

USHER of Cumberland EMERSON of Penobscot

Representatives:

MICHAUD of Medway JACQUES of Waterville RIDLEY of Shapleigh HOGLUND of Portland BROWN of Livermore Falls DEXTER of Kingfield LAW of Dover-Foxcroft COLES of Harpswell

The Minority of the same Committee on the same subject reported that the same Ought to

Signed: Senator:

KANY of Kennebec

Representatives:

MITCHELL of Freeport HOLLOWAY of Edgecomb

Comes from the House the Majority OUGHT TO PASS IN NEW DRAFT UNDER NEW TITLE Report READ and ACCEPTED and the Bill in New Draft under New Title PASSED TO BE ENGROSSED.

Which Reports were READ.

THE PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Andrews.

Senator ANDREWS: Mr. President, Men and Women of the Maine Senate. Before we pass the Majority Ought to Pass in New Draft Under New Title Report, there are some questions and concerns I have about this issue that I simply would like to have addressed on the Floor.

I think many of us have discussed this issue during various caucuses earlier today and have had a chance to go through some of the material and some of the issues that have been presented to the Committee on Energy and Natural Resources.

My concern, I guess I have one primary concern with the Majority Report and that is the concern with the competing measure we would have on the ballot before the Maine voters. Now, I have heard from my constitutents when I travel throughout the district, particularly after we have had an election that has involved referendum questions. Lots of concerns and criticism is about what we do up here with respect to these questions. We put a question before the voter and often times it is very confusing. The issue is not clear and what people think they are voting on perhaps they are not voting on at all. Perhaps they are voting on just the opposite issue. They could be voting just the opposite position they believe in.

I look at the specific wording of the competing measure that the Majority of the Committee is seeking to put before the voters and I could just hear those constituents complaining to me once again that what we are putting out before them is not clear. It is confusing and perhaps what they are seeking to do in voting for this referendum they in fact are not doing. The specific problem I have with this question is that it deals and asks the voters specifically about disposal of low-level radioactive waste and whether or not they want to have a vote on disposal of low-level radioactive waste.

The issue that this competing measure and the original question that we have before us addresses is the tremendous concern in this state about the existence of low-level radioactive waste and what we are going to do with it both in the short run and in the long run. The people who signed that petition, I believe, felt strongly that the people of Maine should have a say in what happens to that waste in the long and the short run. This competing measure excluded storage of low-level nuclear waste. There is no mention of storage of low-level nuclear waste, simply disposal.

When I asked this morning at our caucus, the Democratic Caucus, the distinction between

storage and disposal, I learned that a state, the State of New York for example, could, if we pass this competing measure, bring in low-level nuclear waste, dump it in Maine as a storage measure and the voters of Maine would have nothing to say about whether or not that waste from New York is dumped in the State of Maine. If we call it storage its okay, if we call it disposal then it would have to go before the voters.

I then asked: Do we have a say? That is, the State of Maine, whether it be this Legislature or whomever, have a say in whether or not we label this radioactive material storage or whether we label it disposal. I found out no, we have no control of that at all, we have no say in that at all. That is controlled by the Federal Government and as a matter of fact those definitions are changing and evolving. So, for example, if the Federal Government decided in its wisdom that storage meant "Temporary storage of up to a hundred years" then we conceivably could take all the low-level radioactive material in this Country, have it placed in the State of Maine and the people of this State would have nothing to say about it one way or the other.

In my view, the intention behind the initiative that was circulated throughout the various months last year to have this question before the voters, the intention of those people who did that was to give people a choice in where low-level nuclear waste is being stored as well as being disposed. I think this question we have doesn't make clear to the voters that they may not have a chance to say up or down whether or not we would like to store that waste for whatever length of time. the Federal Government is defining as storage. That is now the question. I feel particularly uncomfortable about putting that question before the voters, it is going to be very confusing for them. I will not be able to support the Majority Report because of that ambiguity in that question

If anybody on the Committee or anyone who has expertise in this issue can align my concern, I would be very grateful. I would ask for a division on this question and because of that lack of clarity, I ask that we do not accept the Majority Report.

THE PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Kany.

Senator KANY: Mr. President and Senators. The Senator from Cumberland, Senator Andrews, is accurate in his statements and if there is to be a storage facility here in Maine presently under current law the State would have to have approval from the B.E.P., the Board of Environmental Protection, and then the State Legislature would have to approve of any such facility.

Apparently Maine Yankee has a storage license to store its own waste at its own site for five years and would have to reapply for further license to keep stored waste there. It would have to apply for a new license in order to store others waste at Maine Yankee, but there would be no public participation necessarily in that particular license approval.

It is a fairly complicated procedure regarding licensing of any facility now and I will say that the Nuclear Regulatory Commission rules on storage are evolving. It is something that they are looking at now. The Nuclear Regulatory Commission has new proposed rules out on decommissioning. A decommissioned nuclear power plant is mostly contaminated and is mostly considered low-level radioactive waste. Just for everybody's benefit, a decommissioned nuclear power plant is largely low-level radioactive waste also. Just to go further into what actually is low-level radioactive waste, it is all radioacative waste other than spent fuel rods which would be generated here in the State of Maine. It includes primarily the waste

from Maine Yankee also some from our biomedical research laboratories and from the University, Bowdoin College and also some from Portsmouth/Kittery Naval Shipyard.

We are required by a federal law to make arrangements for the low-level radioactive waste generated commercially here in the State of Maine and to have made arrangements by next January. Unfortunately, the existence of this initiated measure in a way, perhaps takes away a little bit from the development of that policy and makes it a little more difficult to make such arrangements. We simply must deal with the fact that we do have an initiated measure before us seeking to change our statutes, to require a referendum on any storage or disposal plan or facility here in the State of Maine and any proposed compact.

You really do have three choices how to comply with the federal law. Number one, we could enact the initiated measure before us and allow us to go on about our way seeking approval or disapproval of a particular plan or compact or storage facility or disposal facility. Secondly, we could go along with this competing measure which is reported out by the Majority of the Energy and Natural Resources Committee, that competing measure is primarily the developed policy of the Low-level Radioacative Waste Siting Commission which has really been working for over three years to develop such a policy. It is the current policy recommendations of that Commission.

In my opinion, even though I did not vote for that competing measure out of Committee, I do think that is a reasonable policy and one very appropriate for the State of Maine. Thirdly, of course, we could reject both the immediate enactment of L.D. 615 whch is the initiated measure, the one that the voters brought to use here, the petition signers brought to us or we could reject the choice of having a competing measure and if we reject that choice, then we would be sending the initiated measure up to the voters alone. You notice no member of the Energy and Natural Resources Committee sought to do that because we probably all decided to reject it because we decided that any public debate would not be over should people have the right to vote over certain things, but instead should be focused on the more important policy on what to do with this radioactive waste which does exist in the State and which we must make arrangements for to isolate it from our population and from our food chain.

I urge you to vote as you see fit given those circumstances and although I voted with the Minority to enact the initiated measure now so we could get on about our business. I would say that the Majority Report in the Committee is a very reasonable one and if you do have any questions on this topic, I would be happy to attempt to answer them now or in the future or to find others who can help you with your questions or your constituents questions because I am sure you will have hundreds if not thousands of questions on this issue prior to November.

THE PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Baldacci

Senator from Penobscot, Senator Baldacci. Senator BALDACCI: Mr. President and Members of the Senate: It is my understanding on this very complicated issue that it is very clear and very simple.

The initiative has to go through and be placed on the ballot. The Committee draft to be placed on the ballot also would deal directly with taking the waste and storing it somewhere here in the State of Maine and giving the people of the State of Maine an opportunity to vote on it at that time if waste is to be stored here ultimately as a storage site. Now that is my understanding of it. If I am incorrect I would appreciate the good Senator correcting me.

THE PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Kany

Senator KANY: Mr. President and Senators. Briefly, the initiated measure, the one that is brought to us here by thousands of petition signers, ask would statutorily require the voters of Maine to approve or disapprove of any proposed storage facility in the State of Maine. That would include at Maine Medical, it does exclude medical waste, but it would include any storage facility generally in the State of Maine.

In addition, it would require voter approval of any disposal facility in the State of Maine for low-level radioactive waste and thirdly, it would require a voter approval of any compact in which the Legislature had obligated the State to a compact with other states. That is the initiated measure, that includes approval of storage.

Now the competing measure, which the Majority of the Members of the Energy and Natural Resources Committee preferred and that includes, of course, the good Senator from Cumberland, Senator Usher, who serves on the Low-level Radioactive Waste Siting Commission also, along with the good Senator from Penobscot, Senator Emerson, who serves on both the Committee and on the Low-level Waste Commission, that competing measure would not require voter approval of storage facilities at all. It would not require voter approval of the disposal facility if it were located at Maine Yankee and it would not require a voter approval of a compact. That competing measure would only require future referendum, future voter approval of a Maine disposal facility not located at Maine Yankee.

I hope that answers the good gentlemen from Penobscot's question, Senator Baldacci's question

THE PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Baldacci.

Senator BALDACCI: I would like to thank the very good Senator from Kennebec, Senator Kany, for clearing that up;

This underlines the basic point with this particular measure is the fact that the Committee's Report would allow for the utilities that are affected, Maine Yankee in particular, to get into out-of-state compacts without, say they were going to be taking the waste from Maine to New York, would allow them to get into this out-of-state compacts and agreements without having to have it as an ultimate provision that they would have to get voter ratification because while the negotiations would be going on it would be less than in good faith.

I would be supporting the motion Ought to

Pass on the Majority Report.

THE PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Kany

Senator KANY: Having spoken perhaps more than I should have, need I request permission to speak?

THE PRESIDENT: The Chair would inform the Senator this would be her third time.

Senator KANY: Thank you, Mr. President and Senators. Just to clarify the good Senator from Penobscot's statement, Senator Baldacci's statement, I just wanted to make it clear that although the voters would not have to approve of any compact, that the Maine Legislature would have to approve of any compact.

First, that requirement would be made and the Maine Legislature would approve of a compact and then Congress would also have to ratify that compact before it would go into effect. Now if that compact includes the provision that Maine waste and other states waste be stored in Maine, then there would not have to be a voter approval of that storage facility in Maine. But, if within that compact that had been approved by the Maine Legislature, if it called for a disposal facility in Maine for out of State waste, then the provision would come into effect in which the voter approval would still be required under the competing measure that is being offered.

THE PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Andrews.

Senator ANDREWS: Thank you Mr. President. Mr. President, Men and Women of the Maine Senate. I think the discussion we have had on this issue for the past ten or fifteen minutes illustrates the kind of confusion that may exist in the balloting booth when voters go to vote on this question. That is the underlying concern that I have for this competing measure.

If you have the opportunity to sit and listen to the Maine Senate debate this issue, you probably will have a fairly good idea of the distinction between these two measures, but if you don't have that opportunity and you simply look at that question and if you are looking at that question on that ballot it is not going to be clear to you that you are allowing for storage of nuclear waste in this State for as long as the Federal Government decides to define storage. I think that is, as matter of fairness to voters and clarity on the ballot. I think that at the very least if that is going to be a key distinguishing factor we should be clear on that ballot and on that question and this question is not clear whatsoever.

THE PRESIDENT: The Chair recognizes the

Senator from Penobscot, Senator Baldacci. Senator BALDACCI: Mr. President and Members of the Senate. I beg to disagree with the good Senator from Cumberland, Senator Andrews. It is very clear to me upon listening to the good Senator from Kennebec, Senator Kany's explanation, it is very simple that by going with the Majority Report and putting an initiative on the ballot, we are allowing the people an opportunity for ratification within the State where it doesn't deal with a particular compact as the Legislature and the Congress would and on the other, would be encompassing everything on that particular point.

THE PRESIDENT: The pending question is the ACCEPTANCE of the Majority OUGHT TO PASS IN NEW DRAFT UNDER NEW TITLE Report of the Committee. A Division has been

requested.

Will all those Senators in favor of the AC-**CEPTANCE** of the Majority OUGHT TO PASS IN NEW DRAFT UNDER NEW TITLE Report of the Committee, please rise in their places until counted.

Will all those Senators opposed, please rise

The Chair recognizes the Senator from Cumberland, Senator Usher.
Senator USHER: Mr. President, I request a

Roll Call.

THE PRESIDENT: The Senator from Cumberland, Senator Usher, has requested a Roll Call. Under the Constitution, in order for the Chair to order a Roll Call it requires the affirmative vote of at least one-fifth of those Senators present and voting.

Will all those Senators in favor of ordering a Roll Call, please rise and remain standing until counted.

Obviously more than one-fifth having arisen, a Roll Call is in order.

The Chair recognizes the Senator from Cumberland, Senator Usher.

Senator USHER: Thank you Mr. President. Members of the Senate. If you do accept this Minority Report you are going against the petition signers. They have requested a referendum. The referendum is in the Majority Report. The Minority Report means you want to take action here. They have requested over 40,000 signatures. We have coupled in a competing measure with the Majority Report. It sends it out to referendum and also a competing

THE PRESIDENT: The Senator from Cumberland, Senator Andrews, asks Leave of the Senate to speak a fourth time.

Is it the pleasure of the Senate to grant this Leave?

It is a vote

Senator ANDREWS: Thank you Mr. President. Mr. President just so we are clear on what we are voting on, we are voting on Majority Report of the Committee. We are voting to send before the voters that competing question that we have been discussing just today.

After we dispose of this particular question

then the options we will have before us including enacting what the petitioners took around throughout the State to have signed. which would mean of course that voters would have the right to choose this disposal sight. We might also want to offer an amendment that may change the question, make the question clearer, different, take care of some of the problems which I have expressed in this debate.

What we are voting on right now is whether or not to send out to the voters the question of the Majority Report and nothing more.

THE PRESIDENT: The pending question before the Senate is ACCEPTANCE of the Majority OUGHT TO PASS IN NEW DRAFT UNDER NEW TITLE Report of the Committee. A Roll Call has been ordered.

A Yes vote will be in favor of the ACCEPT-ANCE of the Majority OUGHT TO PASS IN NEW DRAFT UNDER NEW TITLE Report.

A No vote will be opposed.

The Doorkeepers will secure the Chamber. The Secretary will call the Roll.

ROLL CALL

YEAS: -Senators, Baldacci, Black. Carpenter, Clark, Danton, Dow, Dutremble, Emerson, Gill, Hichens, Maybury, McBreairty, Sewall, Shute, Stover, Usher, Violette, Webster, The President - Charles P. Pray

NAYS:-Senators, Andrews, Berube, Brown, Bustin, Chalmers, Diamond, Erwin, Gauvreau, Kany, Matthews, Pearson, Trafton, Tuttle, Twitchell

ABSENT:-Senators, Najarian, Perkins

19 Senators having voted in the affirmative and 14 Senators having voted in the negative, with 2 Senators being absent, the motion to ACCEPT the Majority OUGHT TO PASS IN NEW DRAFT UNDER NEW TITLE Report PREVAILS.

The Bill in NEW DRAFT UNDER NEW TITLE READ ONCE.

The Bill in NEW DRAFT UNDER NEW TITLE ASSIGNED FOR SECOND READING LATER IN TODAY'S SESSION.

Out of order and under suspension of the Rules, the Senate considered the following:

COMMITTEE REPORTS

Senate **Ought Not To Pass**

The following Ought Not To Pass report shall be placed in the Legislative Files without further action pursuant to Rule 15 of the Joint Rules:

Bill "An Act to Establish Statutory Definitions of Entrapment under the Maine Criminal Code" (S.P. 451) (L.D. 1254)

Ought to Pass

Senator CARPENTER for the Committee on JUDICIARY on Bill "An Act to Permit Voluntary Hospitalization of Adults under Guardianship" (S.P. 423) (L.D. 1171)

Reported that the same Ought to Pass. Which Report was **READ** and **ACCEPTED**.

The Bill READ ONCE.
Under suspension of the Rules, READ A SECOND TIME and PASSED TO BE ENGROSSED.

Sent down for concurrence.

Senator CARPENTER for the Committee on