

# MAINE STATE LEGISLATURE

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**Legislative Record**  
**House of Representatives**  
**One Hundred and Nineteenth Legislature**  
**State of Maine**

**Volume I**

**First Regular Session**

December 2, 1998 – May 12, 1999

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

(H.P. 353) (L.D. 469) Bill "An Act Concerning the Requirement for Surety Bonds for County Treasurers, Sheriffs and Chief Deputies"

(H.P. 380) (L.D. 511) Bill "An Act to Increase the Amount Below Which Counties Do Not Need to Solicit Bids for Purchases"

No objections having been noted at the end of the Second Legislative Day, the House Papers were **PASSED TO BE ENGROSSED** and sent for concurrence.

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### BILLS IN THE SECOND READING

#### Senate As Amended

Bill "An Act to Restrict the Posting on the Internet of Personal Information About Public School Students"

(S.P. 93) (L.D. 232)

(S. "A" S-8)

Reported by the Committee on **Bills in the Second Reading**, read the second time, the Senate Paper was **PASSED TO BE ENGROSSED AS AMENDED** in concurrence.

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### UNFINISHED BUSINESS

The following matters, in the consideration of which the House was engaged at the time of adjournment Thursday, February 25, 1999, have preference in the Orders of the Day and continue with such preference until disposed of as provided by House Rule 502.

Bill "An Act to Provide Preference to Farmers for Disaster Relief"

(H.P. 942) (L.D. 1339)

- In House, **REFERRED** to the Committee on **AGRICULTURE, CONSERVATION AND FORESTRY** on February 16, 1999.

- In Senate, **REFERRED** to the Committee on **LEGAL AND VETERANS AFFAIRS** in **NON-CONCURRENCE**.

TABLED - February 25, 1999 (Till Later Today) by Representative PIEH of Bremen.

PENDING - **FURTHER CONSIDERATION**.

Subsequently, the House voted to **RECEDE AND CONCUR**.

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Bill "An Act to Amend Criminal Law Procedures Regarding Defendants Found Incompetent to Stand Trial"

(H.P. 1076) (L.D. 1523)

(Committee on **JUDICIARY** suggested)

TABLED - February 25, 1999 (Till Later Today) by Representative THOMPSON of Naples.

PENDING - **REFERENCE**.

On motion of Representative THOMPSON of Naples, **TABLED** pending **REFERENCE** and later today assigned.

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Bill "An Act to Establish Fair Funding for Independent and 3rd-Party Legislators"

(H.P. 991) (L.D. 1389)

(Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS** suggested)

TABLED - February 25, 1999 (Till Later Today) by Representative SAXL of Portland.

PENDING - **REFERENCE**.

Subsequently, the Bill was **REFERRED** to the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS**, ordered printed and sent for concurrence.

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### TABLED AND TODAY ASSIGNED

The Chair laid before the House the following items which were **TABLED** and today assigned:

HOUSE ORDER - Relative to amending House Rule 401, subsection 13

(H.O. 14)

TABLED - February 25, 1999 by Representative THOMPSON of Naples.

(Pursuant to House Rule 524)

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

This being an amendment to the House Rules, according to House Rule 524 a two-thirds vote of the members present being necessary, a total was taken. 136 voted in favor of the same and 1 against, the House Order was **PASSED**.

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### MATTERS PENDING RULING

Bill "An Act to Provide Term Limits for the Secretary of the Senate and the Clerk of the House of Representatives"

(H.P. 654) (L.D. 904)

(Committee on **STATE AND LOCAL GOVERNMENT** suggested)

TABLED - February 9, 1999 by Speaker ROWE of Portland.

PENDING - **RULING OF THE CHAIR**.

The SPEAKER: The Chair has had under its consideration a request from the Representative from Naples, Representative Thompson, as to the propriety of LD 904, relative to House Rule 107. The Chair has carefully considered the question of the Representative from Naples, Representative Thompson, as to the propriety of LD 904, under House Rule 107.

House Rule 107 states, "A member may question the appropriateness of a bill that attempts to establish proceedings of the House in statute. Such legislation may be ruled not properly before the House by the Speaker."

House Rule 107 is based upon the Maine Constitution, Article 4, Part 3<sup>d</sup>, Section 4, which reads in part, "Each House may determine the rules of its proceedings."

Mason's Manual of Legislative Procedure adopted by this House, as its parliamentary manual provides in Section 3, Part 4, the controlling explanation of the term proceedings. I quote from Masons. "The provision of the Constitution that each House shall have the power to determine the rules of its proceedings is not restricted to the proceedings of the body in ordinary legislative matters, but extends to determination of propriety and affect of any action taken by the body in the exercise of any power in the transaction of any business for performance of any duty conferred upon it by the Constitution, as in proposing amendments to the Constitution."

Therefore the working principle upon which the Chair must rely is provided by reading the Constitutional phrase, "Each House may determine the rules of its proceedings." In conjunction with Mason's Manual of Legislature Procedure, Section 3, Part 4. The principle may fairly be summarized as follows: Each House may determine a) the rules of the proceedings of the body in ordinary legislative matters and b) the propriety and affect of any action taken by the body in one, the exercise of any power, two, the transaction of any business

or three, the performance of any duty conferred upon it by the Constitution.

The Constitutional duty with which this ruling is most concerned is that Article 4, Part 1<sup>st</sup>, Section 7. That section of the Constitution states, "The House of Representatives shall choose their Speaker, Clerk and other officers."

The Chair finds that LD 904, which among other things, attempts to establish term limits for the Clerk of the House attempts to limit the House's determination of the propriety and affect of the performance of the constitutional duty to choose a Clerk by directing whom the House may not elect. For this reason, LD 904 is not properly before the House.

As a practical matter, a statute establishing term limits for the Clerk of the House would not be binding upon a future House. In its internal affairs, the Maine Legislature is constrained only by the Maine Constitution. House Rule 107 and this ruling are not intended to frustrate the legislative process. On the contrary, they are intended to insure the legitimacy, relevance and sanctity of the legislative process by preventing statutes that are unenforceable against the House from becoming statute and by keeping Maine law free of a pretense that the statutes can limit a right or power conferred by the Constitution.

The Chair believes that it is our job to pass statutes that have the full force and affect, not merely the color of law. That is the ruling of the Chair on that issue.

Subsequently, the Chair **RULED** the Bill was not properly before the body pursuant to House Rule 107.

Representative MURPHY of Kennebunk **APPEALED** the Ruling of the Chair.

The same Representative **REQUESTED** a roll call on the motion to **SUSTAIN** the Decision of the Chair.

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

Representative **MURPHY**: Mr. Speaker, Men and Women of the House. My appeal is based upon two general areas. I don't want to get into debating the merits of the bill. As a citizen, not as a legislator, I had voted for term limits and I have tried to follow the bills that are before the committee as we have moved through this first three or three and a half months of the session. My feelings about term limits are very fluid right now. I would like more information before the bills come back out. Term limits now apply to legislators, the Governor, the Constitutional Officers. Those people that had opposed or had proposed term limits and they continue to say so today, that longevity of service, in their mind, leads to a consolidation of power. We have heard continually from supporters of term limits that that consolidation of power is not fully democratic.

I think the committee needs to look that as term limits have been applied to this House and to the other body, has it lead to a shift of power to the staff, either non-partisan or partisan?

The SPEAKER: The Chair recognizes the Representative from Portland, Representative Saxl. For what reason does the Representative rise?

Representative **SAXL**: Mr. Speaker, Men and Women of the House. I object to the floor speech. We are not arguing about the merits of this legislation, but rather the point of order of whether this legislation is properly before this House.

The Speaker: The Chair would instruct the Representative from Kennebunk, Representative Murphy, to keep his comments confined to the point of order before the body. The Representative may continue.

Representative **MURPHY**: Thank you Mr. Speaker. As we have gone through this session and as we have gone through other sessions, I have never voted against allowing one of your bills to go to committee, even though I have been violently opposed to some of those bills. I have always given you the courtesy and the right, as a legislator, to take your bill to a committee, let the committee hear the bill and let the public comment and then dispose of it as the committee sees fit. This bill is part of that issue that needs to be addressed. I am asking, with this appeal, that I be given that same courtesy and that same right for my bill to go to committee and let us address that issue of the staff, partisan and nonpartisan and let's move forward. Let's let it be part of the decision that may or may not happen with term limits. I would ask for the same courtesy and the same right that I have extended to both sides of the aisle on your legislation.

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

Representative **SAXL**: Mr. Speaker, Men and Women of the House. This ruling is not about being cordial about the substance of a piece of legislation. It is about the Constitution of the State of Maine. The Constitution of the State of Maine, Article 4, Part 3, reads, "Each house may determine the rules of its proceedings." House Rule 107, which was given to all the members of leadership prior to cloture and prior to the initiation of this piece of legislation reads, "A member may question the appropriateness of a bill that attempts to establish proceedings of the House in statute. Such legislation may be ruled not properly before the House by the Speaker." That is exactly what has come to us today. It comes as division of our Constitution and it has been endorsed by the United States Supreme Court, District Courts and State Courts throughout the land.

In a case called Magino vs. Springs, the court says that there is an ability of a Legislature to be bound by an action of any prior Legislature. All that means is that if we pass legislation this year, say we pass legislation this year that we think the turnip growth is the most important thing for us to do. In their wisdom, the next Legislature doesn't find turnip growth to be the key for the economic future of the State of Maine, they can simply change that law.

The reason that we elect the Speaker and the Clerk of the House, as a House, and not put it into statute is when we, as a House, want to do something or we want to elect our officers, we do not need the okay of the Senate. We do not need the signature of the Governor. We are a body unto ourselves. The proceedings of this chamber are defined in the Constitution of the United States. For us to accept this legislation and allow it to be heard in committee today is to undermine the very power of this body. I ask that the members here join with me and say that the House is to control its own management and its own future. Thank you.

The SPEAKER: The Chair recognizes the Representative from Waterboro, Representative McAlevy.

Representative **MCALVEY**: Mr. Speaker, Ladies and Gentlemen of the House. I concur with what both sides said this morning and House Rule 107 does say that the Speaker has the ability to rule any legislation out. We cannot bind one Legislature to another. The only thing that supersedes our rules is the Constitution of the State of Maine. The Constitution of the State of Maine in Article 4, Section 9 says that bills may originate in either one of these two chambers. The question I would have and I am not an expert on rules. We have a section 301 that outlines the duties of a Clerk. I saw nothing in those

rules that said anything about the length of term. We don't know what form this would have taken had it had the chance to go to a committee.

In all due respect, I think the objection to the bill was premature. I think it should have gone to committee. We have a standing precedent of debate and discussion. We have no idea what form this would have taken out of committee. Would it have died? The issue would have been valid at the committee level. We don't know if the committee would have come back with a request or a referendum. We have nothing to fear from discussion. We have nothing to fear from agreeing or disagreeing with each other. We are a chamber of words. We must never be fearful of hearing these words. Thank you.

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

Representative **SAXL**: Mr. Speaker, Men and Women of the House. Just in answer from my good friend from Waterboro's concern. I stand before you and do not fear debate or do not fear discussion, but I do want to bring to his attention and to the attention of the members of this chamber that the only way to change the term of the Clerk of the House is by amending the Constitution. You cannot amend a piece of legislation into a Constitutional Amendment according to our House Rules. If this bill were in the form of a Constitutional Amendment, it would be absolutely properly be a vehicle for discussion of this matter, but you can't refer it to committee and then ask them once they find the constitutional problem, to make that change. I agree with my good friend from Waterboro that discussion is always healthy and I promote discussion, but this is not the format for that discussion to take place.

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

Representative **THOMPSON**: Mr. Speaker, Men and Women of the House. I listen to my good Representative, Representative Murphy, indicate that he hasn't opposed bills going to committee and I certainly agree with him. That is not what this ruling is about. What this ruling is about is whether the challenge is appropriate under our rule. We are not voting right now if it is a good rule or a bad rule. We are voting whether under this rule 107 that this bill can be challenged. The good Representative did not give any information to this body that would say that it is not a proper ruling of the Chair. I would submit to you that ruling of the Chair is very sound and very proper and that there are other remedies, such as repealing the rule that would be the appropriate remedy if this rule interferes with a bill being introduced. If you think the rule is inappropriate, then you should fight the rule, not the ruling of the Chair.

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

Representative **DAIGLE**: Mr. Speaker, Ladies and Gentlemen of the House. I find that everyday that as I sit here in this session is a great learning experience. The greatest day I have had so far was last week hearing the debate about reference to a committee on a bill that later on we decided we would stick with the committee process. The integrity of the committee process was the very essence of that discussion. I ultimately voted in favor with the majority on that issue. I respect that issue and I don't understand what the concern is. All the points that have been brought out about why this may or may not be an appropriate thing to bring forward can't be left to the committee that it could be referred to. Thank you.

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

Representative **MENDROS**: Mr. Speaker, Men and Women of the House. I have heard a lot of good arguments today as to why I should vote against this bill when it comes up. From what I have heard now, if I didn't hear anything new, I probably would. It seems like it would tie our hands, but I think it should go to committee to be looked at. A point I would like to make about our hands being tied by statute, that is currently in effect. We currently have term limits on all our committee chairs and on our Speaker through the term limits law that was passed and help up in the courts. There is a precedent already in statute that limits our time that people can serve. Thank you.

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

Representative **GLYNN**: Mr. Speaker, Ladies and Gentlemen of the House. I rise in opposition to the Chair's ruling on several points. First, I would like to begin by stating that I am a freshman member of the House of Representatives and I am not an attorney. As with most members of this body, there is a great amount of reliance on the nonpartisan staff that draft the legislation for the ideas that are important to our constituents. I can tell each one of you that a number of issues were brought to my attention by my constituents that I was not a legal expert on. However, in the exercising of my duties to them as their state representative, it was necessary for me to rely on the nonpartisan staff that draft legislation to put these ideas before the body. Our staff have felt, obviously, that the bill that is before us is in legal format or else it would not have come out of the Revisor's Office. There is a certain amount of reliance and dependency on that process.

I can tell you that a bill not being in proper legalese wording, in my opinion, is not an adequate reason for denial and, in fact, is the purpose of the committee process. To review that legislation, to look at it, to talk about it and to get input. Was it proper to be in a different portion of the statute? Was it proper to be in the Constitution or, in fact, is it in good legal format and is just simply a policy issue of this state? In any regard, constituents of the good Representative from Kennebunk, have asked legislation to be put before this body. They do deserve an answer and that answer should not be frustrated by a ruling that eliminates debate. I feel very strongly on that. Thank you.

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

Representative **TRAHAN**: Mr. Speaker, Men and Women of the House. I also have a copy of the Constitution. Section 2, "Power inherent in people. All power is inherent in the people; all free governments are founded in their authority and instituted for their benefit."

I am very concerned when this body, or any body in government, will stop the process of people bringing bills before this body. If this rule stops that from happening, then this rule definitely needs to be reviewed and changed. I think that this bill should be allowed to go to committee. It should be heard. That is the process that our Constitution dictates. If that rule is in violation, let's eliminate it. Thank you.

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

Representative **SAXL**: Mr. Speaker, Men and Women of the House. I have heard a couple of questions or statements brought up on the floor of the House and I would like to clarify

them. The Representative from Auburn, Representative Mendros, mentioned that term limits for leadership in the State House was endorsed by the State Supreme Court. He is mistaken in that regard. The Supreme Court only reflected upon term limits as they were initiated by the citizens of the State of Maine. Those term limits do not dictate the way we manage the floor of this House.

Number two, Representative Glynn suggested that he is concerned that we are frustrating the process in discussion. If adhering to the Constitution of the State of Maine frustrates us, then we must amend the Constitution of the State of Maine. We are not talking about the substance of this legislation and that is not appropriately before this body at this time. Whether we believe or disbelieve in term limits does not have merits. What has merit is that the Constitution of the State of Maine is clear that the House dictate its own proceedings. Clearly articulated in the Constitution is that the Clerk of the House shall be elected by the members of this body. We are not frustrating discussion. We are adhering to the Constitution. If this were in a form that amended the Constitution, it would be appropriately before this body. If we were to refer this to committee, would it enhance discussion because they could then make it work? No. As I stated previously, you cannot amend a bill in committee to make it into a constitutional amendment.

The good Representative, Representative Trahan, quoted another part of the Constitution. He is absolutely right. The power of the people of the State of Maine create the authority for Maine's Constitution. If we adopt and pass a constitutional amendment in this chamber, then the people of the State of Maine, in their authority, can choose to adopt that or to deny it. That authority does rest with the people of the State of Maine. That is exactly what I am saying here today. The authority we are restricted by and guided by here in the State of Maine is nothing less than our Constitution.

This is not personal. This is not about substance. This is about a procedure and how we get from point A to point B. I would welcome the opportunity to discuss this as a constitutional amendment and fight the merits of the legislation on the floor of the House, but that is not the place we find ourselves. Please join me in sustaining the ruling of our Speaker. Thank you.

The SPEAKER: The Chair recognizes the Representative from Hamden, Representative Plowman.

Representative **PLOWMAN**: Mr. Speaker, Men and Women of the House. In the legislator's handbook, the *Guide for Maine Legislators*, on page 2. "Maine law limits the number of terms of presiding officers and floor leaders of both chambers may serve." I will repeat that. "Maine law limits the number of terms the presiding officers and floor leaders of both chambers may serve." The law limits the President of the Senate, Speaker of the House and House and Senate party floor leaders and assistant party floor leaders to no more than three consecutive legislative biennium in office. This is set in statute. It was set in statute by the Legislature. It came to us as a bill and effected both bodies of the Legislature and was passed. I think we have a precedent here where we have gone forward and done exactly what we are trying to discuss today in statute and because people are elected, we have already done that. We elect people here every year and its term limited. It is set in statute. It is disingenuous to say that we can't do it in statute again.

The SPEAKER: The Chair recognizes the Representative from Waterboro, Representative McAlevey.

Representative **MCALLEVEY**: Mr. Speaker, Ladies and Gentlemen of the House. I rarely rise a second time to speak, but I am going to do that today. Rule 107 is a rule that we put into place this term. I believe it is an important rule to have. Should this piece of legislation ever go to a committee and make it out, rule 107 would be a very compelling argument as to why it shouldn't be enacted. I think the members right, specified in the Constitution, to bring legislation to this body supersedes the House Rules. The pyramid of power comes from the people to the Constitution to the House Rules and then the Joint Rules. I don't have a position on the merits of the legislation. I haven't read it all, but I think the ability of a house member or a member of the other body to bring legislation, which is guaranteed in the Constitution, supersedes our House Rules.

I think on first blush, the application of rule 107 by our Speaker, is a reasonable thing to do, but I think if you look at it a little bit deeper, it supersedes the members right to bring a bill. I would like to pose a question. I know most times people who pose questions know the answer to this, but I truly don't know. If this legislation were in the form or an order amending the House Rules, would it be properly before this body at this time or in the future? Thank you for indulging me during my second discussion of this issue.

The SPEAKER: The Representative from Waterboro, Representative McAlevey has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Naples, Representative Thompson.

Representative **THOMPSON**: Mr. Speaker, Men and Women of the House. In response to the question, it is always an order before the House to change a House Rule and is always in order. That is a simple answer to the bill.

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 shall the decision of the Chair stand as the judgment of the House. All those in favor will vote yes, those opposed will vote no.

#### ROLL CALL NO. 14

YEA - Ahearne, Baker, Berry RL, Bolduc, Bouffard, Brennan, Brooks, Bryant, Bull, Cameron, Chizmar, Clark, Colwell, Cote, Cowger, Davidson, Desmond, Dudley, Dugay, Dunlap, Duplessie, Etnier, Fisher, Fuller, Gagne, Gagnon, Goodwin, Green, Hatch, Jabar, Jacobs, Kane, LaVerdiere, Lemoine, Mailhot, Matthews, McGlocklin, McKee, Muse, Norbert, O'Neal, O'Neil, Perry, Pieh, Povich, Powers, Quint, Richard, Richardson J, Rines, Samson, Sanborn, Savage W, Saxl MV, Shiah, Sirois, Skoglund, Stanley, Stevens, Sullivan, Tessier, Thompson, Townsend, Tracy, Tripp, Tuttle, Twomey, Usher, Volenik, Watson, Wheeler GJ, Williams, Mr. Speaker.

NAY - Andrews, Belanger, Berry DP, Bowles, Bragdon, Bruno, Buck, Bumps, Campbell, Carr, Cianchette, Clough, Collins, Cross, Daigle, Davis, Duncan, Foster, Gerry, Gillis, Glynn, Gooley, Heidrich, Honey, Jodrey, Jones, Kasprzak, Kneeland, Labrecque, Lemont, Lindahl, MacDougall, Mack, Madore, Marvin, Mayo, McAlevey, McKenney, McNeil, Mendros, Murphy E, Murphy T, Nass, Nutting, O'Brien, Peavey, Perkins, Pinkham, Plowman, Richardson E, Rosen, Savage C, Schneider, Sherman, Shields, Snowe-Mello, Stanwood, Stedman, Tobin D, Tobin J, Trahan, Treadwell, True, Waterhouse, Weston, Wheeler EM, Winsor.

ABSENT - Bagley, Chick, Frechette, Joy, Lovett, Martin, McDonough, Mitchell, Saxl JW, Shorey.

Yes, 73; No, 67; Absent, 10; Excused, 0.

73 having voted in the affirmative and 67 voted in the negative, with 10 being absent, the Decision of the Chair was **SUSTAINED**.

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

**SENATE PAPERS**

The following Joint Resolution: (S.P. 559)

**JOINT RESOLUTION DECLARING MARCH 2, 1999**

**READ ACROSS MAINE DAY**

WHEREAS, the children of America are our most precious resource and the best hope for a prosperous, thriving and free nation; and

WHEREAS, studies have confirmed that a high literacy rate is closely related to a higher standard of living; and

WHEREAS, children are naturally drawn to books and to stories and this is an interest that needs to be nurtured and encouraged; and

WHEREAS, Read Across America is a nationwide program organized by the National Education Association in coalition with other literacy, education and community groups; and

WHEREAS, in its quest to expand children's horizons and to raise awareness of the importance and value of reading, Read Across America has chosen the 95th anniversary of the birth of the late Dr. Seuss, beloved author of numerous popular

children's books, to encourage every child to be in the company of a book; and

WHEREAS, March 2, 1999 has been designated to be the day to make a conscious effort to urge all people to honor both Dr. Seuss and the power of reading for children; now, therefore be it

RESOLVED: That We, the Members of the One Hundred and Nineteenth Legislature, now assembled in the First Regular Session, take this occasion to declare Read Across Maine Day, and to encourage all people in Maine to encourage children to read and to develop an abiding and lifelong relationship with books for the betterment of the children and all society; and be it further

RESOLVED: That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to the Honorable Angus S. King, Jr., Governor of Maine, to the Department of Education and to the National Education Association.

Came from the Senate, **READ** and **ADOPTED**.

**READ** and **ADOPTED** in concurrence.

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On motion of Representative BERRY of Livermore, the House adjourned at 12:20 p.m., until 10:00 a.m., Wednesday, March 3, 1999.