

MAINE STATE LEGISLATURE

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



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

LEGISLATIVE RECORD

OF THE

One Hundred And Fifteenth Legislature

OF THE

State Of Maine

VOLUME III

FIRST REGULAR SESSION

Senate

December 5, 1990 to May 20, 1991

NAYS: Senators BRAWN, CARPENTER, COLLINS, EMERSON, FOSTER, GILL, GOULD, HOLLOWAY, LUDWIG, RICH, SUMMERS

ABSENT: Senators NONE

PAIRED: Senators CAHILL, PEARSON, PRAY, WEBSTER

20 Senators having voted in the affirmative and 11 Senators having voted in the negative, with 4 Senators having paired their votes, the motion by Senator **BRANNIGAN** of Cumberland, to **ACCEPT** the Majority (H.P. 192) (L.D. 274) **OUGHT TO PASS** Report, in concurrence, **PREVAILED**.

Senator **WEBSTER** of Franklin moved that the Bill and Accompanying Papers be **RECOMMITTED** to the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS** in **NON-CONCURRENCE**.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Cumberland, Senator Clark.

Senator **CLARK:** Thank you Mr. President. Ladies and Gentlemen of the Senate. While I don't think that eventually the motion of the Senator from Franklin, Senator Webster, is a bad motion, I think that at this point in time its inappropriate to refer the Bill back to Committee in its present form. There are a number of Senators who have worked long and hard to present Amendments, either today, or on Monday when the Bill is in Second Reading, to highlight points of interest and budgetary items in this public forum of the Maine Senate. It is this vehicle that ads emphasis and focuses on those priorities. It is this process that reaffirms the importance of those particular Amendment topics to the Joint Standing Committee on Appropriations and Financial Affairs, as well as the public, and the constituents they are pledged to serve. And so, while I hope eventually, either this Bill is soundly returned to the Committee on Appropriations, or disposed of in some other fashion while that Committee continues to work, I think I would encourage you to vote against the pending motion, and thus allow this process to continue to prevail. Because I assure you, while this goes on here in this Senate Chamber, the Appropriations Committee is not sitting around twiddling its thumbs, but that Parties are continuing the process of negotiations, not in a formal sense that they did during that long tenure of forty plus days, but in an informal sense without the constraints that sometimes that process imposed on that Committee. Thank you Mr. President.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Franklin, Senator Webster.

Senator **WEBSTER:** I would like to assure you that I have no intention of having a prolonged debate on whether we should refer this to Committee or not, but it would seem to me that my feeling is that we, the

Legislature itself, is beginning to look rather foolish in the way we have knocked this legislation around. Anyone here can count and can see it doesn't matter how much time we spend, hours or days, adding Amendments to this Bill, it is unacceptable to many members of the Legislature. It would seem to me that we ought to send a message to the citizenry that we are serious.

The good Senator from Cumberland, Senator Gill, made a point that I think is well taken. We ought to get back to business. We can posture, we can debate, we can go into each and every line of this Budget and debate to whether it is good or bad. The simple fact is, no Budget will pass in my humble opinion, unless we can get the Appropriations Committee to meet and agree on a unanimous Budget. Now, if we want to spend hours here today, and put on a half a dozen Amendments or more, that is fine. But it is my opinion, and I say this in all sincerity, it is my sincere opinion that we ought to just send this back to the Committee, let's send a message to the citizens out there that we want a balanced Budget, that we want to work together, the Democrats, the Republicans, the Liberals, the Conservatives, all Parties, all philosophies, and solve the problem. My interest is to put this back where it belongs, because I can assure you that we can bounce this thing back and forth between Bodies for weeks, and all it does is show the people of this state that we cannot act. The time has come to send this Bill back to the Committee, and let them decide, and reach an agreement with leadership with all the members of the Committee with whomever wants to become involved in this process, to come out with a Budget that is acceptable to everyone, all the people involved.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Cumberland, Senator Brannigan.

Senator **BRANNIGAN:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I feel certain that the Senator would probably withdraw his motion if he would listen to my words of wisdom. While I am waiting for that opportunity, I would also encourage you, as the Senator of Cumberland, Senator Clark, has encouraged you to vote against this motion were it to stand throughout after my convincing debate. My debate will be convincing throughout this motion, because I think you will understand the language that I am going to speak, as I speak it, and he listens to it. He will find that my language will be very convincing once he listens to it because he will decide then, very quickly, to withdraw his motion. I would like to say that if the proposer of this motion understood, given the fiscal conservative nature which he has shown during the last few hours, and knew that it cost eighteen thousand dollars to print the two Bills before you, when we can assure him, I believe his own members as well as myself, if people are in agreement, we can use these as vehicles and save thousands and thousands of dollars in the Legislative Budget, than we can go on with our work, we can use this as a vehicle. At this point, this is what we have before us, we hope that it will be acceptable at some point to everyone. But I would suggest, save the state money, and I would add respectfully, hope that the motion would be withdrawn. If not, defeat it. Thank you.

THE PRESIDENT PRO TEM: The pending question before the Senate is the motion by Senator **WEBSTER** of Franklin, to **RECOMMIT** the Bill and Accompanying Papers to the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS** in **NON-CONCURRENCE**.

The Chair has ordered a Division.

Will all those in favor of the motion by Senator **WEBSTER** of Franklin, to **RECOMMIT** the Bill and Accompanying Papers, please rise in their places and remain standing until counted.

Will all those opposed please rise in their places and remain standing until counted.

11 Senators having voted in the affirmative and 20 Senators having voted in the negative, the motion of Senator **WEBSTER** of Franklin, to **RECOMMIT** the Bill and Accompanying Papers, **FAILED**.

The Bill **READ ONCE**.

House Amendment "A" (H-11) **READ** and **ADOPTED**, in concurrence.

House Amendment "B" (H-12) **READ** and **ADOPTED**, in concurrence.

House Amendment "C" (H-13) **READ**.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Sagadahoc, Senator Cahill.

Senator **CAHILL:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I hope you will vote against House Amendment "C". It is an attempt to put in reorganization language into the Majority Report, and I disagree with that Amendment, and I would ask for a Division.

THE PRESIDENT PRO TEM: The pending question before the Senate is **ADOPTION** of House Amendment "C" (H-13), in concurrence.

A Division has been requested.

Will all those in favor of **ADOPTION** of House Amendment "C" (H-13), please rise in their places and remain standing until counted.

Will all those opposed please rise in their places and remain standing until counted.

20 Senators having voted in the affirmative and 11 Senators having voted in the negative, House Amendment "C" (H-13) **ADOPTED**, in concurrence.

House Amendment "D" (H-14) **READ**.

On motion by Senator **BUSTIN** of Kennebec, Senate Amendment "A" (S-8) to House Amendment "D" (H-14) **READ**.

On motion by Senator **CLARK** of Cumberland, Tabled until Later in Today's Session, pending the motion by Senator **BUSTIN** of Kennebec to **ADOPT** Senate Amendment "C" (S-8) to House Amendment "D" (H-14) in **NON-CONCURRENCE**.

On motion by Senator **BRANNIGAN** of Cumberland, Senate Amendment "B" (S-9) to House Amendment "D" (H-14) **READ**.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Sagadahoc, Senator Cahill.

Senator **CAHILL:** Thank you Mr. President. I have a question to ask about this particular Amendment. Is there is fiscal note attached to this? How much is the Amendment going to cost? Because it would appear to me that now we are not having one entity involved in this, but the entire state, and it seems that would cost money. Is that true?

THE PRESIDENT PRO TEM: The Senator from Sagadahoc, Senator Cahill, has posed a question through the Chair to anyone who would care to answer. The Chair recognizes the Senator from Cumberland, Senator Brannigan.

Senator **BRANNIGAN:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I believe that the Amendment does not change the original Amendment in which it amends, but the amounts stay the same.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Cumberland, Senator Gill.

Senator **GILL:** Thank you Mr. President. I would like to pose a question through the Chair. Can someone tell us how much the amount was?

THE PRESIDENT PRO TEM: The Senator from Cumberland, Senator Gill, has posed a question through the Chair to anyone who would like to answer. The Chair recognizes the Senator from Cumberland, Senator Brannigan.

Senator **BRANNIGAN:** Thank you Mr. President. I believe the original amount is twenty thousand dollars.

Senator **CAHILL** of Sagadahoc requested a Division.

THE PRESIDENT PRO TEM: The pending question before the Senate the motion of Senator **BRANNIGAN** of Cumberland to **ADOPT** Senate Amendment "B" (S-9) to House Amendment "D" (H-14).

A Division has been requested.

Will all those in favor of **ADOPTION** of Senate Amendment "B" (S-9) to House Amendment "D" (H-14), please rise in their places and remain standing until counted.

Will all those opposed please rise in their places and remain standing until counted.

19 Senators having voted in the affirmative and 11 Senators having voted in the negative, the motion by Senator **BRANNIGAN** of Cumberland to **ADOPT** Senate Amendment "B" (S-9) to House Amendment "D" (H-14) thereto, **PREVAILED** in **NON-CONCURRENCE**.

On motion by Senator **BUSTIN** of Kennebec, Senate Amendment "C" (S-10) to House Amendment "D" (H-14) **READ**.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Sagadahoc, Senator Cahill.

Senator **CAHILL:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I would hope that you would vote against Senate Amendment "C" for two reasons. First, it moves the Driver Education Evaluation Program, known as DEEP to the Department of Motor Vehicles. Both Reports currently put it over to corrections. They felt that it was the best place for this particular program in Corrections, and it also eliminates the Office of Alcohol and Drug Abuse Prevention.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Kennebec, Senator Bustin.

Senator **BUSTIN:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I know that you want to move this along fairly fast, and so do I. I will just tell you that the reason that I am presenting the Amendment is because DEEP, in my opinion and a lot of others, is not a Corrections Program. It is not a punishment model. It is a treatment model. It doesn't belong there. It also has to do directly with OUI's. Where it belongs is where OUI's are held and where the licenses are held, and that is in the Department of Motor Vehicles.

Secondly, we are in fact saving money, and I am surprised that the member of the Minority is telling us that we ought not to save money, because we are, in fact, eliminating a division of the state. Because we have set up the Office of Substance Abuse, and all we are doing is moving the few functions that are left over to the Office of Substance Abuse and it saves a position.

THE PRESIDENT PRO TEM: The pending question before the Senate is the motion by Senator **BUSTIN** of Kennebec to **ADOPT** Senate Amendment "C" (S-10) to House Amendment "D" (H-14).

The Chair ordered a Division.

Will all those in favor of the motion by Senator **BUSTIN** of Kennebec to **ADOPT** of Senate Amendment "C" (S-10) to House Amendment "D" (H-14), please rise in their places and remain standing until counted.

Will all those opposed please rise in their places and remain standing until counted.

19 Senator having voted in the affirmative and 11 Senators having voted in the negative, the motion by Senator **BUSTIN** of Kennebec to **ADOPT** Senate Amendment "C" (S-10) to House Amendment "D" (14) **PREVAILED** in **NON-CONCURRENCE**.

On motion by Senator **CLARK** of Cumberland, the Senate removed from the Tabled and Later Today Assigned matter:

Senate Amendment "A" (S-8) to House Amendment "D" (H-14)

Tabled - February 8, 1991, by Senator **CLARK** of Cumberland.

Pending - **ADOPTION**

(In Senate, February 8, 1991, on motion by Senator **BUSTIN** of Kennebec, Senate Amendment "A" (S-8) to House Amendment "D" (H-14) **READ**.)

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Franklin, Senator Webster.

Senator **WEBSTER:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I would like to pose a question to the good Senator from Kennebec, Senator Bustin. My understanding is, as I read this, that this Amendment would bypass recall procedures on the bargaining agreement. Are we coming into the Legislature now and tinkering with the bargaining agreement? I mean, basically, this is what this does from what I understand, and if so, it is difficult for me to understand the Senator from Kennebec, who since we had an existing bargaining agreement, I hadn't heard many ask me to alter, and all of a sudden we are trying to do that. That is my understanding of saying what this Amendment does, and perhaps it could be explained. Thank you.

THE PRESIDENT PRO TEM: The Senator from Franklin, Senator Webster, posed a question through the Chair to anyone who would like to answer. The Chair recognizes the Senator from Kennebec, Senator Bustin.

Senator **BUSTIN:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I would be happy to answer the good Senator from Franklin, Senator Webster.

Of course, I would never violate a bargaining agreement with my good friends from the Maine State Employees Association, nor the ASK ME Group. In fact, it does the exactly the opposite of what the good Senator implies. It kicks in the collective bargaining agreement to help when those positions are recalled to put that through. It, in fact, uses the Collective Bargaining Agreement to do that.

On further motion by same Senator, Senate Amendment "A" (S-8) to House Amendment "D" (H-14) **ADOPTED** in **NON-CONCURRENCE**.

THE PRESIDENT PRO TEM: The pending question before the Senate is **ADOPTION** of House Amendment "D" (H-14) as Amended by Senate Amendments "A" (S-8); "B" (S-9) and "C" (S-10) thereto, in **NON-CONCURRENCE**.

Senator **CAHILL** of Sagadahoc requested a Division.

Will all those in favor of **ADOPTION** of House Amendment "D" (H-14) as Amended by Senate Amendments "A" (S-8); "B" (S-9) and "C" (S-10) thereto, please rise in their places and remain standing until counted.

Will all those opposed please rise in their places and remain standing until counted.

19 Senator having voted in the affirmative and 11 Senators having voted in the negative, House Amendment "D" (H-14) as Amended by Senate Amendment "A" (S-8); "B" Senate Amendment "B" (S-9) and "C" (S-10) thereto, **ADOPTED** in **NON-CONCURRENCE**.

House Amendment "F" (H-16) **READ**.

On motion by Senator **CONLEY** of Cumberland, Senate Amendment "A" (S-11) to House Amendment "F" (H-16) **READ**.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Sagadahoc, Senator Cahill.

Senator **CAHILL:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I am not a lawyer, but I don't have any bad feelings to lawyers, but I just want you to know that, so, tongue and cheek I am saying that perhaps this is lawyer Bill, and if the good Senator from Cumberland would perhaps take a second to tell me what the lawyer words mean, I would appreciate it.

THE PRESIDENT PRO TEM: The Senator from Sagadahoc, Senator Cahill, has posed a question through the Chair to anyone who would care to answer. The Chair recognizes the Senator from Cumberland, Senator Conley.

Senator **CONLEY:** Thank you Mr. President. In answer to the question from the good Senator from Sagadahoc, Senator Cahill, some would question at times if I am a lawyer. You can actually, rest assured, I was asked to sponsor this Amendment after talking with people from MMA who have had a chance to review it, so people from the environment arena. Some cases are pending in court right now, and the Amendment as presently drafted, may affect their rights. Future people can always bring an action against the city through the Maine Courts Claims Act, and this would continue to allow them to have that right.

On further motion by same Senator, Senate Amendment "A" (S-11) to House Amendment "F" (H-16) **ADOPTED** in **NON-CONCURRENCE**.

On motion by Senator **ESTES** of York, Senate Amendment "B" (S-14) to House Amendment "F" (H-16) **READ**.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Sagadahoc, Senator Cahill.

Senator **CAHILL:** Thank you Mr. President. Ladies and Gentlemen of the Senate. Of all the Amendments that have been offered, I think that if I read this particular Amendment right, it is the most objectionable that we have heard so far.

This Amendment takes out the mandate language of House Amendment "F", and one of the things that I felt good the Majority Report. There were other things, but this happens to be one of the things. They included throughout the amendment process, and Amendment that municipalities, the school districts, and that sort of thing with some of the mandates that we have passed over the years. This would completely take out this mandated language, and on this particular Amendment, I would like a Roll Call.

Senator **CAHILL** of Sagadahoc requested a Roll Call.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from York, Senator Estes.

Senator **ESTES:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I left here late yesterday afternoon after listening to the debate that was ongoing in regards to this piece of legislation, L.D. 274, not knowing that there was going to be an Amendment proposed that would literally roll back and undo education reform in the State of Maine.

My departure late yesterday afternoon was to attend a conference that was being put on by the Maine Development Foundation dealing with a coalition on education excellence. I found out about seven o'clock last night that this Amendment had, in fact, been offered. When I came back this afternoon, at the very beginning at session, I was not able to locate the individual who offered the Amendment. I did talk to a few individuals, and I know there is objections out there, what are referred to as education mandates.

I think that one of the things that distressed me the most was the fact that this was not being considered and deliberated in the Education Committee, the education community, and interested parties. When in fact, there are a number of Bills that will be coming before the Education Committee with waivers and repeal of mandates. You did have on your desk yesterday afternoon a copy of an informational letter, Number 75, from the Commissioner of Education, that went out to various Superintendents across the state, as well as the School Board Chairs, informational letter Number 75, on Waiver Procedures for State Education Mandates. This was passed by the Legislature in the 114th, a Bill which I co-sponsored. It has not been utilized to a great deal.

I also rise out of frustration, because this work could have been well under way in terms of reviewing the mandates if the last Legislature in the First Regular Session had funded L.D. 1564, which was the Special Commission to Study and Evaluate the Status of Education Form in Maine. It was a Commission that

was an accountability to the tens of millions of dollars that we have spent since the Education Reform Act of 1984. We were able to carry that Bill over into the Second Session of the 114th, and we were able to pass it. But we passed it without a Budget. That Commission has been established, and it has met three times, and it is very anxious to do the work that needs to be done in terms of accessing what was good and what was bad about education reform before we start taking an ax to it. I would urge that the members of this Body accept this Amendment, which will delete the mandated programs section in House Amendment "F". Thank you.

On motion by Senator **CAHILL** of Sagadahoc, supported by a Division of one-fifth of the members present and voting, a Roll Call was ordered.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Androscoggin, Senator Gauvreau.

Senator **GAUVREAU:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I am sure that although we have heard a multiplicity of different voices this afternoon, we all share one common emotion, and that is fatigue.

I rise because I am somewhat uncertain as to what the intent is of my good colleague from York County, Senator Estes. Many years ago, I had occasion to serve on the Committee of Education, and those were heady times for all of us, because we were involved in what we thought was the Seminal Legislation, which ultimately came forth in the Maine Education format. I have generally been supportive of state requirements to enhance the requirements of education in our state. However, I certainly do understand, in fact, I am very sympathetic to the notion that as the states revenues decline and we provide less aid to our local governments, than we should provide some level of flexibility to the locals in administering the mandates. I share with my colleague from York County, Senator Estes, frustration at the delayed information on the mandates. When I arrived in the Chamber this afternoon, I thought that with respect to this particular issue, the one on mandates, I thought the real issue wasn't so much whether we should provide flexibility to the locals, but whether that flexibility should be ordained to whether we should repose authority in the Superintendent's Office, or the Commissioner's Office, or should there be some other mechanism that locals could apply for and secure relief from the mandates.

Now if I understand correctly, what Senate Amendment "B" to House Amendment "F" would do, is retain the mandates, and I am questioning if that is what the intent is, would this language do this if it were enacted?

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from York, Senator Estes.

Senator **ESTES:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I would like to be specifically clear on my Amendment.

My Amendment would eliminate a Section, Section GG1 of House Amendment "F". That section dealing with, "Any legislation, or rule containing a mandate inactive after January 1, 1984, may be eliminated or deferred until the state restores state aid to education at the levels required by laws in effect on January 1, 1990". The decision would be made at the local level, either as the Amendment originally proposed, either with the Counsel or the Selectmen of the municipalities, or the SAD Board.

It is my contention that this is not the proper time for us to be considering this in terms of fiscal savings to school districts and municipalities for this fiscal year, it will not save them a dime. I think we have plenty of time for the Education Committee and the full Legislature to consider legislation which will be coming before the Education Committee shortly, which deals with this issue of waivers and mandates. I hope that I have answered the question of the good Senator from Androscoggin.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Cumberland, Senator Clark.

Senator **CLARK:** Thank you Mr. President. Ladies and Gentlemen of the Senate. This Amendment was presented before the Democratic Caucus earlier today, and there was no unanimity with reference to our reaction to it. And as is the proud tradition of the Democratic Caucus, we celebrate our diversity. There will be Democrats who support this, and Democrats who oppose this, but we all know that whatever our position, it is no reflection on the sincerity of the Senator from York, Senator Estes, who presented this to us for our consideration. I guess that we who have been in education, for some of us, namely me, for over a quarter of a century now, understand the frustration of municipal officials, and can identify with their frustration.

But also, House Amendment "F" (H-16) does something that is embraced by the Maine Municipal Associations Legislative Body by a good Majority vote that has never been done before. Since local School Committees, School Boards, or SAD Boards of Directors were constituted, it shifts the responsibility for determining the program of the school Budget, and what is contained in that program, from the local School Board, School Committee, or SAD Board of Directors, to the local Legislative Body, whether it be the Board of Selectmen, your city Council, or your Town Council. That is what I have a problem with, I stand here and freely admit that I understand the frustration of the Municipal Officials as they wrestle with the entire Budget. But I also respect the integrity and dedication of those officials who likewise, are elected, who have had as long as our state has been a state, had the authority to determine how the monies allocated for local schools will be spent.

With that in mind, I need to share with you that I will be voting in support of the attachment of this Amendment, and the person with whom I intend to Pair, will be opposed to that Amendment. You will see that members of this side of the aisles Floor Leaders will be also split on that measure. So in case I haven't telegraphed quite directly enough, as usual, members of the Caucus, do as you wish.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Cumberland, Senator Gill.

Senator **GILL:** Thank you Mr. President. Ladies and Gentlemen of the Senate. The first portion of this Amendment can be handled through the waiver process that exists already, and through rules made by the Department of Education. And I also attended the Summit on Municipal and Legislative Affairs, and in the group that I moderated, it was apparent that MMA had not done its homework with its own members. Because many of those people in that group were not aware of the appeal process. I think that if we are doing to something to help them, than they had better get their ship in order, and do their work amongst their own municipalities before they come in here and want to throw something in as an Amendment in the Bill that we are debating. I would suggest that we not pass this.

THE PRESIDENT PRO TEM: The pending question before the Senate is the motion by Senator **ESTES** of York to **ADOPT** Senate Amendment "B" (S-14) to House Amendment "F" (H-16).

A vote of Yes will be in favor of the motion by Senator **ESTES** of York to **ADOPT** Senate Amendment "B" (S-14) to House Amendment "F" (H-16).

A vote of No will be opposed.

Is the Senate ready for the question?

Senator **CLARK** of Cumberland who would have voted **YEA** requested and received Leave of the Senate to pair her vote with Senator **PRAY** of Penobscot who would have voted **NAY**.

Senator **DUTREMBLE** of York, President Pro Tem of the Senate who would have voted **NAY** requested and received Leave of the Senate to pair his vote with Senator **PEARSON** of Penobscot who would have voted **YEA**.

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEAS: Senators **BRANNIGAN, ESTES**

NAYS: Senators **BALDACCI, BERUBE, BOST, BRAWN, BUSTIN, CAHILL, CARPENTER, CLEVELAND, CONLEY, EMERSON, ESTY, FOSTER, GAUVREAU GILL, GOULD, HOLLOWAY, KANY, LUDWIG, MATTHEWS, MCCORMICK, MILLS, RICH, SUMMERS, TITCOMB, TWITCHELL, VOSE, WEBSTER**

ABSENT: Senators **COLLINS, THERIAULT**

PAIRED: Senators **CLARK, PEARSON, PRAY, PRESIDENT PRO TEM - DENNIS L. DUTREMBLE**

2 Senators having voted in the affirmative and 27 Senators having voted in the negative, with 4 Senators having paired their votes, and 2 Senators being absent, the motion of Senator **ESTES** of York, to **ADOPT** Senate Amendment "B" (S-14) to House Amendment "F" (H-16), **FAILED**.

On motion by Senator **BALDACCI** of Penobscot, Senate Amendment "C" (S-15) to House Amendment "F" (H-16) **READ**.

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

Senator **BALDACCI:** Thank you Mr. President. Ladies and Gentlemen of the Senate. Just to clarify, its the local School Board which determines the program to which the review of the mandates it entertains instead of the local Council or Town Council.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Sagadahoc, Senator Cahill.

Senator **CAHILL:** Thank you Mr. President. I like this Amendment, and I hope you vote for it.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Cumberland, Senator Gill.

Senator **GILL:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I think the same argument goes to this one as goes to the other Amendment, that the process is there for the appeal process already, and only when those that giveth can taketh. It seems to me, if mandates are done by a Legislative Body, the State Legislative Body, that a Local School Board can't decide that they don't want to adopt the mandate. There is an appeal process, and if the municipality feels that they cannot uphold a mandate, than they have a process in which to ask for a waiver.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Penobscot, Senator Bost.

Senator **BOST:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I would like to pose a question through the Chair to the Gentlady from Cumberland, Senator Gill. Could you provide the Senate with any information as to how many waivers have been granted since that provision was in place?

THE PRESIDENT PRO TEM: The Senator from Penobscot, Senator Bost, has posed a question through the Chair to anyone who would like to answer. The Chair recognizes the Senator from Cumberland, Senator Gill.

Senator **GILL:** Thank you Mr. President. One of the things that I did at the Municipal Summit was chastise the Maine Municipal Association for not doing its job, and I am doing it again right here, now. Because if they had let their members know that the appeal process was in place, than there would be some appeals and waivers. But there were people who were dumb founded in the group that I was monitoring, who did not know that there was this process even available to them.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from York, Senator Estes.

Senator **ESTES:** Thank you Mr. President. Ladies and Gentlemen of the Senate. Either I am confused, or maybe some of the members of the Senate are confused in terms of what this Amendment does and what the previous Amendment that we just defeated would have done.

Under the original House Amendment, the waiver process is wiped out totally. No waiver process is left back to the localities to make a decision about whether they go along with mandates or not. And so the legislation that we passed the Second Session of the 114th, in which, to my understanding there have been several waivers that have been granted, but not very many applications because a lot of municipalities didn't know about it, and a lot of school districts didn't see the need in this particular school year. So, what we are doing with this current Amendment before us is just simply changing the House Amendment, which means it is up to the local school board if they decide that they do not want to, or cannot live up to one of the state mandates, and they won't. This negates the waiver process that currently is in effect and will be reviewed by the Education Committee in the next couple of weeks.

On motion by Senate **BALDACC**I of Penobscot, Senate Amendment "C" (S-15) to House Amendment "F" (H-16) **ADOPTED** in **NON-CONCURRENCE**.

House Amendment "F" (H-16), as Amended by Senate Amendments "A" (S-11) and "C" (S-15) thereto, **ADOPTED** in **NON-CONCURRENCE**.

The Bill as Amended, **TOMORROW ASSIGNED FOR SECOND READING**.

Senate

Leave to Withdraw

The following **Leave to Withdraw** Report shall be placed in the Legislative Files without further action pursuant to Rule 15 of the Joint Rules:

Senator **MILLS** for the Committee on **LEGAL AFFAIRS** on Bill "An Act Related to Pool Enclosures within 150 Feet of a Lake or Stream"

S.P. 27 L.D. 37

ORDERS OF THE DAY

The Chair laid before the Senate the Tabled and Specially Tabled and Assigned matter:

NOMINATION - of Lai Orenduff of Farmington for appointment as the Chair of the Cultural Affairs Council

Tabled - February 7, 1991, by Senator **CLARK** of Cumberland

Pending - **CONSIDERATION**

(In Senate, February 7, 1991, Communication from the Committee on **STATE AND LOCAL GOVERNMENT READ** and **ORDERED PLACED ON FILE**.)

On motion by Senator **CLARK** of Cumberland, Tabled 1 Legislative Day, pending **CONSIDERATION**.

Off Record Remarks

The **ADJOURNMENT ORDER** having been returned from the House **READ** and **PASSED**, in concurrence, on motion by the President Pro Tem, **ADJOURNED** until Monday, February 11, 1991 at 10:00 in the morning.