

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 Seventeenth Legislature

OF THE

State Of Maine

VOLUME VII

SECOND REGULAR SESSION

Senate

March 14, 1996 to April 3, 1996

SECOND CONFIRMATION SESSION

August 1, 1996

SECOND SPECIAL SESSION

House of Representatives

September 5, 1996 to September 7, 1996

Senate

September 5, 1996 to September 7, 1996

Index to 117th Legislative Record

HOUSE AND SENATE LEGISLATIVE SENTIMENTS

Saxl, M.; Simoneau, Spear, Stedman, Strout, Taylor, Thompson, True, Tufts, Tyler, Underwood, Vigue, Waterhouse, Wheeler, Whitcomb, Winglass, Winn, Winsor, The Speaker.

NAY - Adams, Ahearne, Benedikt, Brennan, Chase, Chizmar, Clark, Cloutier, Daggett, Davidson, Dore, Driscoll, Etnier, Fitzpatrick, Gamache, Gerry, Green, Hatch, Heesch, Jacques, Johnson, Joseph, LaFountain, Lemaire, Lemke, Luther, Meres, Mitchell EH; Mitchell JE; Morrison, Richard, Richardson, Rowe, Samson, Saxl, J.; Shiah, Sirois, Stevens, Townsend, Treat, Tripp, Tuttle, Volenik, Watson.

ABSENT - Poulin, Rice, Stone, Truman.

Yes, 101; No, 44; Absent, 4; Excused,

1. 101 having voted in the affirmative and 44 voted in the negative, with 4 being absent, and 1 excused, (a two-thirds vote being necessary) the Bill was passed to be enacted, signed by the Speaker and sent to the Senate. Ordered sent forthwith.

On motion of Representative GWADOSKY of Fairfield, the House recessed until 8:15 p.m.

(After Recess)

The House was called to order by the Speaker.

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

Bill "An Act to Implement the Compact for Maine's Forests" (H.P. 1390) (L.D. 1892) (Governor's Bill) which was tabled by Representative JACQUES of Waterville pending adoption of Committee Amendment "A" (H-924) as amended by House Amendment "B" (H-931).

Representative HEESCHEN of Wilton presented House Amendment "F" (H-935) to Committee Amendment "A" (H-924) which was read by the Clerk.

The SPEAKER: The Chair recognizes the Representative from Wilton, Representative Heesch.

Representative HEESCHEN: Mr. Speaker, Men and Women of the House: There has been a lot of criticism that the referendum, the citizen's initiative, is flawed and overly complex and very confusing. Frankly I agree that there are a lot of problems with it. I think that the Legislature should and will amend it if it is passed. If I were to be in the Legislature I certainly would support amending it if it passes. I think that the Legislature should think very carefully before sending a second flawed piece of work to the public to vote on. It's one thing to criticize the Green Party for the referendum, it's another to compound the problem. I do believe that the forest compact, the bill we have before us, is fundamentally flawed from process to product. We are being asked to rush through this. Something that has supposedly taken months of delicate negotiations to come up with, we are expected to do something right away. The industry has said in their campaign that this isn't about clear-cuts. Read the bill for yourselves. There are a whole lot of other problems here. I hope they are preparing to send out all 23 pages of the forest compact bill for the people to read for themselves, too. I believe the Legislature owes it to

the people of the state to send out a simple question, stripped of the crippling language.

The amendment before you retains the compact definition of clear-cutting but it puts out to referendum the question that about 58,000 citizens thought they would be voting on, a simple question on clear-cutting. I lay it before you and I ask for your support. Thank you.

Representative SPEAR of Nobleboro requested a division on the motion to adopt House Amendment "F" (H-935) to Committee Amendment "A" (H-924).

Representative HEESCHEN of Wilton requested a roll call on adoption of House Amendment "F" (H-935) to Committee Amendment "A" (H-924).

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

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

The SPEAKER: A roll call has been ordered. The pending question before the House is Adoption of House Amendment "F" (H-935) to Committee Amendment "A" (H-924). All those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 402

YEA - Adams, Chartrand, Hatch, Heesch, Johnson, Jones, K.; Lemke, Richardson, Volenik.

NAY - Ahearne, Aikman, Ault, Bailey, Barth, Benedikt, Berry, Bigl, Birney, Bouffard, Brennan, Buck, Bunker, Cameron, Campbell, Carleton, Carr, Chase, Chick, Chizmar, Clukey, Cross, Daggett, Damren, Davidson, Desmond, Dexter, Donnelly, Dunn, Etnier, Farnum, Fisher, Fitzpatrick, Gamache, Gerry, Gooley, Gould, Green, Guerrette, Hartnett, Heino, Hichborn, Jacques, Jones, S.; Joseph, Joy, Joyce, Joyner, Keane, Kilkelly, Kneeland, Kontos, Labrecque, LaFountain, Lane, Layton, Lemaire, Lemont, Libby JD; Libby JL; Lindahl, Look, Lovett, Lumbra, Luther, Madore, Marshall, Martin, Marvin, Mayo, McAlevey, McElroy, Meres, Mitchell EH; Mitchell JE; Murphy, Nadeau, Nass, Nickerson, O'Gara, O'Neal, Ott, Paul, Peavey, Pendleton, Perkins, Pinkham, Plowman, Poirier, Povich, Reed, G.; Reed, W.; Richard, Robichaud, Rowe, Savage, Saxl, J.; Saxl, M.; Shiah, Simoneau, Sirois, Spear, Stedman, Stevens, Strout, Taylor, Townsend, Treat, Tripp, True, Tufts, Tuttle, Tyler, Underwood, Vigue, Waterhouse, Watson, Wheeler, Whitcomb, Winglass, Winn, Winsor.

ABSENT - Clark, Cloutier, DiPietro, Dore, Driscoll, Gates, Gieringer, Greenlaw, Kerr, Morrison, Poulin, Pouliot, Rice, Rosebush, Samson, Stone, Thompson, Truman, The Speaker.

Yes, 9; No, 122; Absent, 19; Excused, 0.

9 having voted in the affirmative and 122 voted in the negative, with 19 being absent, House Amendment "F" (H-935) to Committee Amendment "A" (H-924) was not adopted.

Representative HEESCHEN of Wilton moved that the House adjourn until 8:00 a.m., Friday, September 6, 1996.

The same Representative requested a roll call on his motion to adjourn.

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

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

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

ROLL CALL NO. 403

YEA - Buck, Cameron, Campbell, Chartrand, Clark, Dexter, DiPietro, Driscoll, Gieringer, Greenlaw, Hartnett, Hatch, Heeschen, Johnson, Jones, K.; Joy, Kilkelly, Kneeland, Labrecque, LaFountain, Lane, Layton, Lemke, Lemont, Libby JD; Lumbr, Luther, McElroy, Meres, Nass, Pendleton, Plowman, Reed, W.; Richardson, Rosebush, Saxl, J.; Stedman, Treat, Tuttle, Vigue, Volenik, Wheeler.

NAY - Adams, Ahearne, Aikman, Ault, Bailey, Barth, Benedikt, Berry, Bigl, Birney, Bouffard, Brennan, Bunker, Carleton, Carr, Chase, Chick, Chizmar, Clukey, Cross, Daggett, Damren, Davidson, Desmond, Donnelly, Dunn, Etnier, Farnum, Fisher, Fitzpatrick, Gamache, Gerry, Gooley, Gould, Green, Guerrette, Heino, Hichborn, Jacques, Jones, S.; Joseph, Joyce, Joyner, Keane, Kerr, Kontos, Lemaire, Libby JL; Lindahl, Look, Lovett, Madore, Marshall, Martin, Marvin, Mayo, McAlevey, Mitchell EH; Mitchell JE; Murphy, Nadeau, Nickerson, O'Gara, O'Neal, Ott, Paul, Peavey, Perkins, Pinkham, Poirier, Povich, Reed, G.; Richard, Robichaud, Rowe, Samson, Savage, Saxl, M.; Shiah, Simoneau, Sirois, Spear, Stevens, Strout, Taylor, Townsend, Tripp, True, Tufts, Tyler, Underwood, Waterhouse, Watson, Whitcomb, Winglass, Winn.

ABSENT - Cloutier, Dore, Gates, Morrison, Poulin, Pouliot, Rice, Stone, Thompson, Truman, Winsor, The Speaker.

Yes, 42; No, 96; Absent, 12; Excused, 0.

42 having voted in the affirmative and 96 voted in the negative, with 12 being absent, the motion to adjourn was not accepted.

Representative HEESCHEN of Wilton presented House Amendment "E" (H-934) to Committee Amendment "A" (H-924) which was read by the Clerk.

At this point the Speaker appointed Representative JACQUES of Waterville to serve as Speaker Pro Tem.

The House was called to order by the Speaker Pro Tem.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Wilton, Representative Heeschen.

Representative HEESCHEN: Mr. Speaker, Men and Women of the House: The guidelines in the forest compact bill on clear-cutting are changed but they remain pretty much as one-dimensional a solution as the current law. The stocking levels proposed are really only appropriate for hardwood. The 45 square feet basal area, is still below the minimum that is suggested and this is repeated in the Council on Sustainable Forestry Management's reports

suggestion for nonregenerative harvest. That is not clear-cuts, the B level. The recommended level is the so-called B line which relates the square footage of basal area to the number of trees on a particular site. For four and a half inch hardwood, if you follow the B line, we should have 55 square feet in here instead of 45 square feet. So the forest compact's 45 square feet is somewhere between the B line and the C line, which represents the absolute rock bottom for a manageable stand for a nonregeneration stand.

The amendment before you proposes standards for hardwood, retains the 45 square feet, which is again between the B line and C line, and provides standards for mixed wood at 60 square basal area and softwood at 80 square feet. Note that those are below the B line level, which is 55, 80 and 100. I believe it's a change that would could make improvements in the residual stands of the non-clear-cut areas in the forest and I hope you will support it. I request a roll call.

Representative HEESCHEN of Wilton requested a roll call on adoption of House Amendment "E" (H-934) to Committee Amendment "A" (H-924).

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

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

The SPEAKER PRO TEM: The Chair recognizes the Representative from Farmington, Representative Gooley.

Representative GOOLEY: Mr. Speaker, Men and Women of the House: I rise in opposition to this amendment. Although the intent is honorable that to increase clear-cutting, right now it is 30 square feet, as proposed it is an increase to 45 square feet, and even though when we are talking about the A line, B line and C line, and C line is understocked, there has to be some minimums placed here which are reasonable. I really feel that increasing it beyond the 45 square feet is a disservice to the land owners who would have to live with this. It would really be unpalatable.

I did pass out an information brochure earlier this morning about the basal area definition, and I did talk about understocked, fully stocked and overstocked stands. When it comes right down to it, in a selection type cut, understocked stands in softwood would be somewhat, anything like in hemlock under a 100 could be understocked, spruce and fir under 90 square feet would be understocked, but in a harvest operation to put this in law, the 45, 65 and 80 square feet, it really would be a real disservice to the owners of the land. Thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Wiscasset, Representative Kilkelly.

Representative KILKELLY: Mr. Speaker, Men and Women of the House: I think it's important to point out two things about the bill that is before you. First of all, it does increase basal area by a third. We are going from 30 feet to 45 feet. Second, it does not allow trees that are less than four and a half inches to be part of that formula. The current formula at 30 feet does allow trees as small as one inch to be included in that basal area

formula. So, there are two things that we have done. I believe they are both significant. They have been agreed upon and it is an important part of the compact. I would urge you to vote against the pending motion. Thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from China, Representative Chase.

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

The SPEAKER PRO TEM: The Representative may pose her question.

Representative CHASE: To anyone who is involved with the compact, does the current Forest Practices Act segregate basal area by tree type? If it does, why did we change it for the compact? Thank you.

The SPEAKER PRO TEM: The Representative from China, Representative Chase has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Wilton, Representative Heeschen.

Representative HEESCHEN: Mr. Speaker, Ladies and Gentlemen of the House: To the Representative from China, the current law does not distinguish between types of stands, hardwood, softwood or mixed wood. The compact represents no change. If I may continue, the proposed amendment would make that distinction because as the Representative from Farmington noted, the C line is understocked, and if you compare the C line for four and a half inch trees you find that the hardwood C line was about 35 or slightly more basal area square feet, so 45 is above that. For mixed wood the C line for four and a half inch trees is about 55, so the proposed compact will be below that. For soft wood the C line is about 60 square feet for four and a half inch trees, and again the 45 basal area square feet is below the line that is considered understocked for nonregeneration stands, that is not clear-cut. Thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Nobleboro, Representative Spear.

Representative SPEAR: Mr. Speaker, Ladies and Gentlemen of the House: If you had the opportunity to attend all three of the hearings that we had last week, a lot of the testimony we had was that even at 45 basal feet people were upset because they felt that we were taking too much from them. If you increase that any more than 45 basal square feet everybody across the state would be after us. I'm telling you this is a bad thing and I would urge you to defeat it. Thank you.

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

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

The SPEAKER PRO TEM: The Representative may pose his question.

Representative KEANE: Thank you. To the good Representative from Wilton. My problem with this amendment is under what auspices and what credentials have the people that devised this change acted? Are they professional foresters? Who is presenting these changes to us to a compact that has evidently been reviewed by very professional people in the field? I need to know under what auspices and what professional credentials this is being submitted. Thank you.

The SPEAKER PRO TEM: The Representative from Representative Old Town has posed a question through the Chair to the Representative from Wilton,

Representative Heeschen. The Chair recognizes that Representative.

Representative HEESCHEN: Mr. Speaker, Men and Women of the House: The numbers actually come from the bill that we had last year, L.D. 1347. Those numbers came from foresters. I would have to go back to the committee notes to tell you who was involved in that. It also comes from reading the report of the Maine Council of Sustainable Forest Management, the Governor's Council, their recommendations for B line as the minimum for regeneration standards. So, it wasn't just pulled out of the air. I suppose you could say it's just a back-room deal, as the compact is, because it wasn't something that was a big public discussion coming up with these. I feel it makes a minor change to this bill that could have major positive implications for our forests. I should note also, someone else had asked about restocking standards, the alternative in the compact is if you have a well distributed stand of five foot saplings you don't have to meet the basal area.

The SPEAKER PRO TEM: A roll call has been ordered. The pending question before the House is Adoption of House Amendment "E" (H-934) to Committee Amendment "A" (H-924). All those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 404

YEA - Benedikt, Green, Heeschen, Johnson, Jones, K.; Richardson, Volenik.

NAY - Adams, Ahearne, Aikman, Ault, Bailey, Barth, Berry, Bigl, Birney, Bouffard, Brennan, Buck, Bunker, Cameron, Campbell, Carleton, Carr, Chartrand, Chase, Chick, Chizmar, Clark, Cloutier, Clukey, Cross, Daggett, Damren, Davidson, Desmond, Dexter, DiPietro, Donnelly, Dore, Driscoll, Dunn, Etnier, Farnum, Fisher, Fitzpatrick, Gamache, Gates, Gerry, Gieringer, Gooley, Gould, Greenlaw, Hartnett, Hatch, Heino, Hichborn, Jacques, Jones, S.; Joseph, Joy, Joyce, Joyner, Keane, Kerr, Kilkelly, Kneeland, Kontos, Labrecque, LaFountain, Lane, Layton, Lemaire, Lemont, Libby JD; Libby JL; Lindahl, Look, Lovett, Lumbr, Madore, Marshall, Martin, Marvin, Mayo, McAlevey, McElroy, Meres, Mitchell EH; Mitchell JE; Morrison, Murphy, Nadeau, Nass, Nickerson, O'Gara, O'Neal, Ott, Paul, Peavey, Pendleton, Perkins, Pinkham, Plowman, Poirier, Povich, Reed, G.; Reed, W.; Richard, Robichaud, Rosebush, Rowe, Samson, Savage, Saxl, J.; Saxl, M.; Shiah, Simoneau, Sirois, Spear, Stedman, Stevens, Strout, Taylor, Thompson, Townsend, Treat, Tripp, True, Tufts, Tuttle, Tyler, Underwood, Vigue, Waterhouse, Watson, Wheeler, Whitcomb, Winglass, Winn, Winsor.

ABSENT - Guerrette, Lemke, Luther, Poulin, Pouliot, Rice, Stone, Truman, The Speaker.

Yes, 7; No, 134; Absent, 9; Excused, 0.

7 having voted in the affirmative and 134 voted in the negative, with 9 being absent, House Amendment "E" (H-934) to Committee Amendment "A" (H-924) was not adopted.

Representative DEXTER of Kingfield presented House Amendment "G" (H-937) to Committee Amendment "A" (H-924) which was read by the Clerk.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Kingfield, Representative Dexter.

Representative DEXTER: Mr. Speaker, Men and Women of the House: I hope I have it right this time. All this does now is keep the service foresters in there, sixteen of them, spread out over the entire great State of Maine at the discretion of the Director of

the Forest Service. The other one is the makeup of the Audit Board. The Governor appoints three, the Speaker of the House two, and the President of the Senate two. I hope I have all the objections out. I'm a little scared after that last vote. Thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Wiscasset, Representative Kilkelly.

Representative KILKELLY: Mr. Speaker, Men and Women of the House: This amendment certainly is somewhat changed from the last time. There is one thing that I would like to point out. The compact that is before us is an agreement between a number of people. Each and every piece of it does make some sense. The committee listened for three days, two hearings each day, and then spent two days in work sessions. The board being appointed by the Governor, and only by the Governor in consultation with the Speaker and the President, is a fairly unique situation. There are some other unique situations in terms of that board. The board is going to be working on a process of unanimous vote. The board is going to be working toward consensus. A lot of people said that can't be done. It can be done because that is how the compact got to us in the first place. People that are very, very diverse sat down and worked through difficult issues. The concern about having a board that was either representing specific concerns or a board that was appointed and answerable to various parties is that it would be much easier for them to line up in support of their individual folks, whether the folks they represented are the folks that are appointed by them, and that it would be more difficult to come to agreement. The compact before us represents an agreement between folks as diverse as the paper companies and the Natural Resources Council, the large land owners and Maine Audubon. Those people got together and they hammered through a process in which if one of the people in that group said no they all had to go back and work through it again until they all agreed. They did that. They were successful in doing that. They believe that they can be successful in doing it in the future. This throws a monkey wrench in that process. It does not allow them to continue a process that they have begun. A process that, in fact, has been proven to work, and a process that has some significant capacity for making a change in how we create policy in this state, because everyone will be on board. I would urge you to vote against this amendment and to leave the compact in tact as it is. Thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Norridgewock, Representative Meres.

Representative MERES: Mr. Speaker, Ladies and Gentlemen of the House: I have been very patient today and I haven't said much. I have been waiting for an opportunity to bring together the things that have been most on my mind. At this particular point in time I would like to express myself in the form of frustration and disappointment and that is because I have heard once again the onerous rationale that says that we here in this Legislature, representing our constituents, have got to maintain some sort of code that says that we cannot tamper, tinker or oppose a compact that was generated in secret by people who did not necessarily represent the philosophies of my district, or anyone else. I have a contract with the people that elected me to make sure that their voices

were heard. I have had more time than most of you to go and do my homework on this issue. I have been to meetings where I wasn't invited. I flew over the area with WINGS. I was on the committee that went to the hearings and I went to the workshop, so I have walked the walk and I think I have a right now to talk. What I heard at each one of these levels was don't tinker with the compact, don't tinker with the stake holders, don't have a point of view, don't express yourself because you might ruin it. Baloney. I'm here to represent people and I think this amendment has validity and I think it ought to be talked about on its merits. Every single constituent that contacted me complained about the fact that we didn't have the foresters there when they needed them. They told me that it would have made a big difference. I also feel that consensus is wonderful, but also it is important to be able to say that once in a while you disagree. You don't always have to have unanimous consent to be a team player. So, I want to say to you here, now, that I totally support the amendment that is on the floor and I totally resent the implication that we have to follow a compact that was not ours to make. Thank you.

The Chair ordered a division on adoption of House Amendment "G" (H-937) to Committee Amendment "A" (H-924).

A vote of the House was taken. 78 voted in favor of the same and 45 against, subsequently, House Amendment "G" (H-937) to Committee Amendment "A" (H-924) was adopted.

Representative GWADOSKY of Fairfield presented House Amendment "D" (H-933) to Committee Amendment "A" (H-924) which was read by the Clerk.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Fairfield, Representative Gwadosky.

Representative GWADOSKY: Mr. Speaker, Ladies and Gentlemen of the House: I am offering House Amendment "D" as a result of several conversations with Clerk, Secretary and joint discussions with members of leadership. Based on the Supreme Court ruling earlier today that put us in somewhat of a unique situation in that we had to create a new type of document, or a new type of instrument, to facilitate the process of submitting a competing measure to the voters. This amendment changes the form of L.D. 1892 to a Resolution pursuant to the Constitution. It makes no substantive changes to the bill as an act. It simply changes it to a resolution and the amendment changes the title to conform to this change. The amendment removes the enacting clause and substitutes a resolution clause because the court has ruled that the Legislature in and of itself cannot enact a bill that is going to be a competing measure. That is a right only given to the people by the choice they make in November. So this amendment substitutes the word resolution for the word act in those parts of the bill that is unallocated law. It does not make any substantive changes to the bill. It simply changes the type of instrument. It still will require a second reading, and come back for enactment, like any other item that we typically use. It will have to have two readings and enactment in the Senate. It doesn't change the two-thirds majority threshold that we would consider this bill under in normal circumstances. It simply is a technical amendment to conform to the Supreme Court opinion that we received earlier this morning.

I would urge your support of the following amendment. Thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Wilton, Representative Heesch.

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

The SPEAKER PRO TEM: The Representative may pose his question.

Representative HEESCHEN: Thank you. To the Representative from Fairfield. I don't believe I have been here in the past eight years when the Legislature has put a competing measure on the ballot, yet I believe it has happened in the past. If so, what instrument did the Legislature use at that time and why is this necessary now?

The SPEAKER PRO TEM: The Representative from Wilton, Representative Heesch has posed a question through the Chair to the Representative from Fairfield, Representative Gwadosky. The Chair recognizes that Representative.

Representative GWADOSKY: Mr. Speaker, Ladies and Gentlemen of the House: I would be happy to respond to the excellent question by the Representative from Wilton, Representative Heesch. The precedent in case law is pretty interesting. In fact there are several people who would suggest that the Legislature needs to pass nothing more than an order, a joint order, to put out a competing measure. In fact there is precedent in which the Legislature has done that. We have not used an act or an L.D. We have actually just passed an order to put out a competing measure. In this instance we are changing this act into a resolution once again because we need to change the enacting clause and substitute the resolution clause, because as I indicated earlier the Legislature has no authority to enact this bill. That is a right that is reserved for the people. We can only present it to them as a competing measure and so in the past they have used a variety of vehicles, most typically I believe in the isolated instances in which we have had competing measures we have used a joint order. A joint order would actually be simpler than this version because it only requires one vote by a majority vote in both bodies. In any event these items no longer have to go to the Governor as well. They are simply voted on in the Legislature and put on as a competing measure. I hope that answers the question.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Wilton, Representative Heesch.

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

The SPEAKER PRO TEM: The Representative may pose his question.

Representative HEESCHEN: It answered part of it but raised another one. Why aren't we just going to do a joint order as you say has been done in the past? Why create a new instrument?

The SPEAKER PRO TEM: The Representative from Wilton, Representative Heesch has posed a question through the Chair to the Representative from Fairfield, Representative Gwadosky. The Chair recognizes that Representative.

Representative GWADOSKY: Mr. Speaker, Ladies and Gentlemen of the House: In response to the question posed by the good Representative from Wilton, Representative Heesch, we discussed earlier this morning placing the entire Majority Report into an order and thought that that mechanism might be so foreign to this Legislature, might be so different

that it would be more complicated than not. We knew there were going to be a variety of amendments that were going to be offered and we wanted to try and keep it in as similar form as we could. We knew it couldn't be an act. We knew it could be a resolution as well as an order and that is the simple answer as to why we are now changing it into a resolution as described by the Supreme Court. Thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Caribou, Representative Robichaud.

Representative ROBICHAUD: Mr. Speaker, Men and Women of the House: May I make a request to the Chair? I would kindly request that the members may be given a copy of this morning's Supreme Court opinion, because even though the Representative from Fairfield has very deftly filled us in, I'm not sure that many of us have had a chance to look at that and since it does impact our decision making process, not directly but indirectly, it might be helpful just to go back to our constituents and explain what we have done. It would be appreciated at some time before we leave this evening if possible. Thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Bethel, Representative Barth.

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

The SPEAKER PRO TEM: The Representative may pose his question.

Representative BARTH: Thank you. If we adopt what is under discussion, what do we call it? Is it still L.D. 1892, or is it resolution 1892, or what is it?

The SPEAKER PRO TEM: The Chair believes it would still be L.D. 1892.

House Amendment "D" (H-933) to Committee Amendment "A" (H-924) Adopted.

The Speaker resumed the Chair.

The House was called to order by the Speaker.

Committee Amendment "A" (H-924) as amended by House Amendments "B" (H-931), "D" (H-933) and "G" (H-937) thereto was adopted.

Under suspension of the rules, the Bill was given its second reading without reference to the Committee on Bills in the Second Reading.

Representative BARTH of Bethel presented House Amendment "A" (H-927) which was read by the Clerk.

Representative LUTHER of Mexico presented House Amendment "A" (H-936) to House Amendment "A" (H-927) which was read by the Clerk.

Representative REED of Falmouth asked ruling from the Chair if House Amendment "A" (H-936) to House Amendment "A" (H-927) was germane to the Bill.

The Chair ruled, pursuant to Joint Rule 217, House Amendment "A" (H-936) was not properly before the body.

The SPEAKER: The Chair recognizes the Representative from Bethel, Representative Barth.

Representative Barth: Mr. Speaker, Ladies and Gentlemen of the House: Passage of the resolution that is before us, L.D. 1892, will reduce the current value of wood land. If this occurs, the value of land currently in the tree growth program will decline. For small towns, particularly those in my area and throughout much of western and northern Maine loss of tree growth valuation will cause local property tax rates to increase. Currently towns are

reimbursed their tree growth at a rate of about 40 percent. Another budget balancing gimmick. The state owes those towns up to 90 percent of the reimbursement and if we have the money we are supposed to pay it. We do have the money in the Rainy Day Fund. This amendment will help correct the situation and eliminate, maybe, although I won't guarantee it, the last gimmick that we have used in previous years. I urge your support for this and I request a roll call. Thank you.

Representative BARTH of Bethel requested a roll call on adoption of House Amendment "A" (H-927).

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

Representative LIBBY: Mr. Speaker, Men and Women of the House: I just want to compliment the good Representative from Bethel, Representative Barth. He has, I think, a measure in front of us that is just plain the right thing. I have spoken on this before, so I am not going to bend your ear all night, and I know we are all tired and it is late, but it's the spirit of the law. We should be funding this for 90 percent. It's as plain as day. This is a good thing for the towns. The tree growth law is one of the few laws that actually accomplishes something that it is supposed to accomplish and something government does. There aren't many of those, but this is an example of us not carrying out the laws that we have been asked to carry out. We simply should be funding tree growth to 90 percent. Representative Barth is right. I really applaud him for putting this in front of us and I would urge you to vote for this amendment because it is just plain the right thing to do. I thank you for your time.

The SPEAKER: The Chair recognizes the Representative from Old Orchard Beach, Representative Kerr.

Representative KERR: Mr. Speaker, Men and Women of the House: This may be an admirable thing to do, but at this point in time I don't think it's the prudent thing to do and raid the Rainy Day Fund. In fact you can go back in time to two years ago when we all took office. We sat in this chamber and we were dealing with the budget. The Appropriations Committee and this Legislature, at that time there was probably a little under 6 million dollars in the Rainy Day Fund. Collectively, through bipartisan support, we have worked very hard and diligently to provide tax relief in some areas for Maine citizens. We probably didn't go as far as everybody wanted, but bipartisanly we continued to work together. Today I can report to you, which I think is a bright spot on the 117th Legislature, that we did get rid of some of those gimmicks that many of us supported and were able to now, as revenues came in, make some tough decisions and we have got rid of most of those. Today in the Rainy Day Fund we've got the most money that we have ever had, 38.4 million dollars. I don't think at this point in time it would be healthy for this Legislative body to start raiding the Rainy Day Fund when we know out there on the horizon, if you want to look at and talk about what the Governor of this State has said is a structural gap, somewhere around 433 million dollars, or what our staff on Fiscal and Program Review has said what the gap may be, somewhere between 350 million dollars and 360 million dollars, if we start raiding that fund today our appetites will grow. I would ask you to vote against the pending motion and let's not touch any of the money out of the Rainy Day Fund because I know

that the next Legislature, the 118th Legislature, will be looking for some money and this money may come in handy. I would urge you to vote against the pending motion. Thank you.

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

Representative CHASE: Mr. Speaker, May I pose a question to the Chair?

The SPEAKER: The Representative may pose her question.

Representative CHASE: If we pass this amendment and this is a referendum issue, are we authorized to add to that an expenditure of a given fiscal year be approved through the referendum process?

The SPEAKER: The Chair would respond to the Representative from China, Representative Chase, that since this would be the same fiscal year the answer is yes. This would be allocating this money by referendum. The Chair recognizes the Representative from Kossuth Township, Representative Bunker.

Representative BUNKER: Mr. Speaker, Men and Women of the House: This subject is pretty near to my heart and I want to congratulate Representative Barth for bringing it up. I have only woods and trees and moose and deer, as many of you know, and rural area, and I want you to know that the most struck people in my area on the school funding, and all of those other things we are doing to the small areas, are the same towns that are most affected by us not owning up to our obligations in the law and reimbursing them at the 90 percent. We have done a lot of things and I think this is just one step that is going to help everybody. I did some research, this bill, if it is defeated, is going to be coming back, I can guarantee you that. I did some research, there are over 100 Representatives in this body that represent rural towns and if you are here to represent your people and your rural towns this is the way to do it. This is the time to do it. It's appropriate to pay our bills and as far as somebody trying to raid the Rainy Day Fund and find monies for other programs, we've got to pay our bills before we go with those new programs. I would ask everybody in here to support this measure. Thank you.

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

Representative CAMERON: Mr. Speaker, Men and Women of the House: I agree that this is the right thing to do. We have an obligation to fund this at 90 percent. We have heard a lot of comments today about this compact being rushed through without the proper time to study it. This may be the right thing to do to reimburse our towns and I represent small towns as well. We do have the obligation, but spending our money has to be a piece of the big picture, not just one little piece that will make us all feel good and we can go home and say what we did to help our towns. As far as this compact decreasing the value of the land, that's all speculation at this point. It's my opinion versus someone else's opinion. We shouldn't be spending 3 million dollars on somebody's opinion, and while we should, when we come back here in January, take this issue up, we should fund it fully. It would be, in my mind, a grave error to rob the Rainy Day Fund for one year and then find that we can't sustain that and go back to the low level of funding that we are now. That would create more havoc than to not do it at all. While I think it's a great idea, I think this is not the time. Thank you.

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

Representative LIBBY: Mr. Speaker, Men and Women of the House: With all due respect I think the robbery is the other way around. I mean we have got a law to uphold here and I think it's very important that we do that. The question I would pose, and I'm not going to do this formally, but at what level of the Rainy Day Fund should we start thinking about funding tree growth? I mean what level? How high should we get that Rainy Day Fund until we start thinking about making sure that we take care of the laws that we have already passed? "Notwithstanding," what does that actually mean? There is a lot of avoiding the issues here and I'm tired of avoiding the issue. This is a head-on issue. I mean it's just plain wrong and I just compliment Representative Barth for bringing this in front of us as something we should have done last term, not next term, last term. Again, I think we have debated it long enough. I hope that you will go ahead and vote for this amendment. Thank you.

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

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

The pending question before the House is Adoption of House Amendment "A" (H-927). All those in favor will vote yes; those opposed will vote no.

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

ROLL CALL NO. 405

YEA - Ault, Bailey, Barth, Birney, Buck, Bunker, Campbell, Carr, Chase, Chick, Clark, Damren, Donnelly, Dunn, Gerry, Gooley, Greenlaw, Hartnett, Heeschen, Heino, Jones, S.; Joy, Lane, Layton, Lemke, Libby JD; Look, Lumbra, Luther, Marshall, McAlevey, McElroy, Meres, Nass, Nickerson, Perkins, Pinkham, Plowman, Poirier, Reed, W.; Robichaud, Stedman, Thompson, True, Tufts, Underwood, Volenik, Waterhouse, Whitcomb, Winsor.

NAY - Adams, Ahearne, Aikman, Benedikt, Berry, Bigl, Bouffard, Brennan, Cameron, Carleton, Chartrand, Chizmar, Cloutier, Clukey, Cross, Daggett, Davidson, Desmond, Dore, Driscoll, Etnier, Farnum, Fisher, Fitzpatrick, Gamache, Gates, Gieringer, Gould, Green, Guerrette, Hatch, Hichborn, Jacques, Johnson, Jones, K.; Joseph, Joyce, Joyner, Keane, Kerr, Kilkelly, Kneeland, Kontos, Labrecque, LaFountain, Lemaire, Lemont, Libby JL; Lindahl, Lovett, Madore, Martin, Marvin, Mayo, Mitchell EH; Mitchell JE; Murphy, O'Gara, O'Neal, Ott, Paul, Peavey, Pendleton, Povich, Reed, G.; Richard, Richardson, Rosebush, Rowe, Samson, Savage, Saxl, J.; Saxl, M.; Shiah, Simoneau, Sirois, Spear, Stevens, Strout, Taylor, Townsend, Treat, Tripp, Tuttle, Tyler, Vigue, Watson, Wheeler, Winglass, Winn, The Speaker.

ABSENT - Dexter, DiPietro, Morrison, Nadeau, Poulin, Pouliot, Rice, Stone, Truman.

Yes, 50; No, 91; Absent, 9; Excused, 0.

50 having voted in the affirmative and 91 voted in the negative, with 9 being absent, House Amendment "A" (H-927) was not adopted.

On motion of Representative BOUFFARD of Lewiston, the House adjourned at 10:35 p.m., until Friday, September 6, 1996 at 9:00 a.m. in honor and lasting tribute to the memory of Representative George F. Ricker of Lewiston.