

MAINE STATE LEGISLATURE

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Senate Legislative Record
One Hundred and Twenty-First Legislature
State of Maine

Volume II

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May 21, 2003 to June 14, 2003

First Special Session
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Second Regular Session
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Second Special Session
February 3, 2004 to March 18, 2004

Pages 715 - 1415

STATE OF MAINE
ONE HUNDRED AND TWENTY-FIRST LEGISLATURE
FIRST REGULAR SESSION
JOURNAL OF THE SENATE

In Senate Chamber
Tuesday
June 3, 2003

Senate called to order by President Beverly C. Daggett of
Kennebec County.

Prayer by Senator Pamela H. Hatch of Somerset County.

SENATOR HATCH: Thank you. Good morning. Please join me
in prayer. Dear Heavenly Father, thank You for this day. Thank
You for the sunshine and the green trees and for all Your
handiwork. Please bless all the people who choose to lead in this
state and help them to make good decisions. Keep Your hand on
each of us and mold us to Your will. Bless our families and
friends. Give us patience, and guide us to be good stewards. In
Jesus' name we pray. Amen.

Reading of the Journal of Monday, June 2, 2003.

SENATE PAPERS

Resolve, Concerning Reauthorization of a 1997 Pollution Control
Bond Issue

S.P. 583 L.D. 1628

Sponsored by Senator MARTIN of Aroostook. (GOVERNOR'S
BILL)

Cosponsored by Representative KOFFMAN of Bar Harbor.

Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS**
suggested and ordered printed.

Under suspension of the Rules, **READ TWICE**, without reference
to a Committee.

On motion by Senator **CATHCART** of Penobscot, **TABLED** until
Later in Today's Session, pending **PASSAGE TO BE**
ENGROSSED, without reference to a Committee.

REPORTS OF COMMITTEES

House

Divided Report

The Majority of the Committee on **HEALTH AND HUMAN**
SERVICES on Resolve, Regarding the Criminal Records of
Certified Nursing Assistants

H.P. 224 L.D. 281

Reported that the same **Ought to Pass as Amended by**
Committee Amendment "A" (H-542).

Signed:

Senators:

BRENNAN of Cumberland
WESTON of Waldo

Representatives:

EARLE of Damariscotta
SHIELDS of Auburn
KANE of Saco
DUGAY of Cherryfield
WALCOTT of Lewiston
CAMPBELL of Newfield
LEWIN of Eliot
LAVERRIERE-BOUCHER of Biddeford

The Minority of the same Committee on the same subject
reported that the same **Ought Not To Pass.**

Signed:

Representative:

CURLEY of Scarborough

Comes from the House with the Majority **OUGHT TO PASS AS**
AMENDED Report **READ** and **ACCEPTED** and the Resolve
PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE
AMENDMENT "A" (H-542).

Reports **READ.**

On motion by Senator **MARTIN** of Aroostook, the Majority
OUGHT TO PASS AS AMENDED Report **ACCEPTED**, in
concurrence.

READ ONCE.

Committee Amendment "A" (H-542) **READ** and **ADOPTED**, in
concurrence.

Under suspension of the Rules, **READ A SECOND TIME** and
PASSED TO BE ENGROSSED AS AMENDED, in concurrence.

ENACTORS

The Committee on **Engrossed Bills** reported as truly and strictly
engrossed the following:

Acts

An Act To Redefine "Muzzle-loading Firearm"

H.P. 867 L.D. 1170
(C "A" H-537)

An Act To Authorize the Department of Audit To Perform Other Audits and Reviews

H.P. 1048 L.D. 1429
(C "A" H-369; S "B" S-246)

PASSED TO BE ENACTED and having been signed by the President were presented by the Secretary to the Governor for his approval.

An Act To Protect Against Unfair Prescription Drug Practices

S.P. 194 L.D. 554
(C "A" S-204)

On motion by Senator **DAVIS** of Piscataquis, supported by a Division of at least one-fifth of the members present and voting, a Roll Call was ordered.

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#143)

YEAS: Senators: BRENNAN, BROMLEY, BRYANT, CATHCART, DAMON, DOUGLASS, EDMONDS, GAGNON, HALL, HATCH, LAFOUNTAIN, LEMONT, MARTIN, MAYO, ROTUNDO, STANLEY, STRIMLING, TREAT, THE PRESIDENT - BEVERLY C. DAGGETT

NAYS: Senators: BENNETT, BLAIS, CARPENTER, DAVIS, GILMAN, KNEELAND, MITCHELL, NASS, PENDLETON, SAVAGE, SAWYER, SHOREY, TURNER, WESTON, WOODCOCK

ABSENT: Senator: YOUNGBLOOD

19 Senators having voted in the affirmative and 15 Senators having voted in the negative, with 1 Senator being absent, was **PASSED TO BE ENACTED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

An Act To Protect Public Health by Reducing Human Exposure to Arsenic

H.P. 963 L.D. 1309
(C "A" H-490)

On motion by Senator **DAVIS** of Piscataquis, supported by a Division of at least one-fifth of the members present and voting, a Roll Call was ordered.

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#144)

YEAS: Senators: BRENNAN, BROMLEY, BRYANT, CATHCART, DAMON, DOUGLASS, EDMONDS, GAGNON, HALL, HATCH, LAFOUNTAIN, MARTIN, MAYO, PENDLETON, ROTUNDO, SAWYER, STANLEY, STRIMLING, TREAT, THE PRESIDENT - BEVERLY C. DAGGETT

NAYS: Senators: BENNETT, BLAIS, CARPENTER, DAVIS, GILMAN, KNEELAND, LEMONT, MITCHELL, NASS, SAVAGE, SHOREY, TURNER, WESTON, WOODCOCK

ABSENT: Senator: YOUNGBLOOD

20 Senators having voted in the affirmative and 14 Senators having voted in the negative, with 1 Senator being absent, was **PASSED TO BE ENACTED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

ORDERS OF THE DAY

Unfinished Business

The following matters in the consideration of which the Senate was engaged at the time of Adjournment had preference in the Orders of the Day and continued with such preference until disposed of as provided by Senate Rule 516.

The Chair laid before the Senate the following Tabled and Later (4/28/03) Assigned matter:

SENATE REPORTS - from the Committee on **LABOR** on Bill "An Act To Increase the Assessment on Workers' Compensation Insurance To Fund the Workers' Compensation Board Administrative Fund"

S.P. 21 L.D. 35

Majority - **Ought to Pass as Amended by Committee Amendment "A" (S-61)** (8 members)

Minority - **Ought to Pass as Amended by Committee Amendment "B" (S-62)** (5 members)

Tabled - April 28, 2003, by Senator **EDMONDS** of Cumberland

Pending - motion by same Senator to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-61)** Report

(In Senate, April 28, 2003, Reports **READ**.)

On motion by Senator **EDMONDS** of Cumberland, the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-61)** Report **ACCEPTED**.

READ ONCE.

Committee Amendment "A" (S-61) **READ.**

On motion by Senator **EDMONDS** of Cumberland, Senate Amendment "A" (S-251) to Committee Amendment "A" (S-61) **READ** and **ADOPTED.**

Committee Amendment "A" (S-61) as Amended by Senate Amendment "A" (S-251) thereto, **ADOPTED.**

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-61) AS AMENDED BY SENATE AMENDMENT "A" (S-251)** thereto.

Ordered sent down forthwith for concurrence.

The Chair laid before the Senate the following Tabled and Later (5/13/03) Assigned matter:

SENATE REPORTS - from the Committee on **UTILITIES AND ENERGY** on Bill "An Act To Establish the Locally Governed Water District Act"

S.P. 447 L.D. 1359

Majority - **Ought Not to Pass** (7 members)

Minority - **Ought to Pass as Amended by Committee Amendment "A" (S-131)** (6 members)

Tabled - May 13, 2003, by Senator **HALL** of Lincoln

Pending - **ACCEPTANCE OF EITHER REPORT**

(In Senate, May 13, 2003, Reports **READ.**)

Senator **HALL** of Lincoln moved the Senate **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED** Report.

THE PRESIDENT: The Chair recognizes the Senator from Lincoln, Senator Hall.

Senator **HALL:** Thank you, Madame President, men and women of the Senate. This is an issue that has been before this body in past years. It boils down to a single core issue; whether the legislature believes that the appropriate level of regulation of municipal water districts is at the state level or at the level of municipal elected officials. There is a great deal of ideology that is associated with that question. The approach that the minority report takes is to try to establish empirically whether local regulation will work. What the bill, as amended, will do is establish a pilot project that will last through the year 2007, under which the Public Utilities Commission will designate a small number of municipal water utilities, who have applied to participate, in a pilot program as locally-governed water utilities.

There are a number of concerns that have been expressed, both to the committee and in flyers circulated to the Senate, about what may occur. Let me try to address those by going over how the committee amended this bill. This bill, as amended, continues

the Public Utilities Committee and the Public Advocate Offices' assessments on the locally-governed water utilities. The concern that fees will be passed onto the remaining utilities is not valid. It also provides that the sale of land by a pilot project participant remains subject to oversight by the Public Utilities Commission. The amended bill also removes the provision that authorizes a pilot project participant to adopt a local appeal process. It continues to ensure the Public Utilities Commission's oversight of customer complaints concerning the denial or termination of service; the terms and conditions of service; billing, metering, or collection; and any other matters that the PUC determines is appropriate. Finally, it provides that a pilot project participant may only undertake sale and lease-back or lease and lease-back transactions if the PUC gives approval. It does remove from the PUC oversight of the billing, budgeting, and capital investment decisions of local water utilities that elected to participate and are selected for this pilot program.

As amended, this bill has been approved and supported by the Maine Municipal Association. It is supported by the Public Advocate's Office, the leading consumer advocate organization, and the PUC. It is also supported by those of us on the committee who simply believe that it is possible to test empirically whether it will be successful to govern municipal water utilities at the local level. I just want to remind the men and women of the Senate that every other municipal function is governed locally. Many municipalities combine water and sewer or sanitary functions in a single department. In those departments, the water functions are overseen by the PUC and the sanitary functions are not. Finally, I want to point out that nothing in this bill would change the oversight of drinking water quality and public health by the Department of Human Services.

In urging members' support of this minority report, Madame President, I would ask for a division.

Same Senator requested a Division.

Senator **MARTIN** of Aroostook moved to **INDEFINITELY POSTPONE** the Bill and accompanying papers.

THE PRESIDENT: The Chair recognizes the Senator from Aroostook, Senator Martin.

Senator **MARTIN:** Thank you, Madame President and members of the Senate. It is absolutely accurate that this bill has been around for a number of years. There are many districts that have wanted to be taken out of the PUC for all kinds of reasons for the last 10 or 12 years. I have always had some concerns about that. Frankly, the conclusion seems to be drawn that because sewerage districts are not part of it, we should eliminate that other side of the fence, so to speak. I disagree. If anything, we ought to consider moving sewers into the PUC, not water out of the PUC. I want to tell you why. It's clear that Maine is only one of ten states where the PUC regulates water districts. There are reasons why that is the case. In the case of Maine, water districts and their trustees are appointed in different ways in different municipalities. Some are elected, while others are appointed by the board of selectmen or the counsel. One of the arguments previously used is that hospital districts and school districts are not regulated, and therefore, it is not wise to regulate water districts. I ask any of you in this room how many people have you seen at a water district board meeting or at an annual budget meeting for the water district? Think of how many people show

up at school budget meetings when there is a controversy. They show up, for obvious reasons, because they have direct control.

Let me tell you why I really am concerned. The bill, as drafted, does not prevent special contracts. I would refer to this as inside trading. Unreasonable preferences can be given to friends, relatives, and others. You could have a potential situation where someone is simply going to be getting the contract for digging or installing equipment.

One of the concerns that I have had for many years is whether or not the PUC does its job. I can assure you that it does, based on what I have seen. If you look at last year, for example, there were 23 water districts that went in for rate increases. The rate increase requests that went in were as high as 217% in Farmington to 505% in Deer Isle. Others varied from anywhere from 13% to 60%. After it was all over, guess what? There was a substantial difference in what took place.

What this bill does, and this is my real fear and why I am concerned about it, is it is going to exclude projects. As a consumer, you will have no impact on rates. I know of one water district that in its minutes had suggested and voted that they wanted to put GIS in, and have it be paid for by the water users. This happens to be from the minutes of the Augusta Water District. This can go on and on without control. I think it's a bad precedent and that we ought to put an end to it now. People say this is local control. Well, it can be local control gone amuck. I think now is not the time to do it. I would urge you to vote for indefinite postponement.

Same Senator requested a Roll Call.

THE PRESIDENT: The Chair recognizes the Senator from York, Senator Nass.

Senator **NASS:** Thank you, Madame President, men and women of the Senate. I, too, am opposed to this proposal. I would urge you to vote for the motion of indefinite postponement that is before us. For ten years, as the Senate chair has suggested, this legislature has rejected versions of this same bill. We have something that has been consistently rejected, just in a different package. The motivation, I think, is the same. Deregulation should be popular with Republicans. It has been in the past. This version of deregulation, I think, is not going to be good. It certainly won't be good for my district. In my district, I have four small water companies. I will talk about the newest one in a minute. Currently, the PUC does effectively regulate water rates. There is a process in the rules right now that, essentially, sets up a public process not involving the PUC, for regulation of rates. If that is an issue, we do currently have a process that is outside of the PUC, or largely outside of the PUC, for rate regulation.

The Senator from Aroostook, Senator Martin, spoke of some unique circumstances in this bill. I would just like to read some of the chapter titles. This is a very interesting way to deregulate. In the bill, under Section 6204, is a long list of things that will still be regulated. They don't refer to them in any meaningful manner. They are essentially a list of section numbers that are the current regulations. In order to understand this, you have to look at the current regulations. What you see left out are some interesting titles. Let me just talk about them. Section 709 is left out. Its title is 'Insider Transactions.' Left out is another title called, 'Unreasonable Preferences.' Left out is Section 701, 'Special Privileges for Bidding.' Left out is Section 702, 'Unjust Discrimination.' Left out is Section 703, 'Rate Rebates

Discrimination.' What have we done here? We've stripped out all of the consumer protection pieces in this. I will tell you, this is important.

It was important in Alfred two years ago when we took a privately owned water district and made it a quasi-municipal district. We went through the PUC's regulations and through a process they set up. This was a small water district. It is about 100 years old. Its infrastructure was crumbling and the community needed to take it over. Also, the owner was no longer interested in running this water company. Their rates were amazingly cheap. All that was an indication of the fact that it was no longer functioning properly. The whole thing was about to fall apart. Some people in town got together. They petitioned, and were able to get the owner to essentially give them this water district for \$1. They set it up, and they are now, and have been, making substantial infrastructure improvements. Of course, the rates have increased substantially, but at least these people in Alfred now have and will have a functioning water system. Incidentally, they have been able to add a big user. The new York County Jail will become a major user on this system.

The point is, this process is not easy, and the PUC played a remarkable role. It was a fairly minor role in the whole thing, but a remarkable role. The question came for the people in Alfred, especially those people who lived outside the district, of who was going to answer their questions? Who might they trust to give them useful and truthful information? It turned out to be this person at the PUC. His name is Raymond Hammond. He's one guy. This is not a big bureaucracy. This is a guy who is familiar with engineering work on water companies throughout the state. He was able to answer questions like: what happens to the fire hydrants in this water district? Who pays for the use of the fire hydrants? It turns out that the whole municipality pays, including those people outside of the district. My point here is to say that minimal application of the current regulations for small water companies are still useful, and it's about the public trust. It's about the issues between municipal officials and the water companies. It certainly was in Alfred. It works. There is no reason to get rid of this proposal now. This is an issue that has been rejected by this legislature for ten years. We ought to reject it again. Thank you.

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

Senator **GAGNON:** Thank you, Madame President, men and women of the Senate. I guess I don't see the real evil in this bill, particularly since it is a pilot project and an experiment in trying something new. I particularly don't have a concern with it, because I do see it as an issue of local control. In my district and in my town, the directors of the water district are popularly elected. Some of them were elected 8 or 10 years ago. When they do things that are detrimental to the area or detrimental to consumers, they are simply thrown out of office, as all of us are. There have been some controversies within the district, particularly prior to them being elected. This is really the reason why, eventually, it was decided they should be elected. Many of those issues have now been resolved. They are supporting this bill, and think that it is an opportunity to do a little experimenting and try little things. If it is felt that the local districts ought to be popularly elected or they need to make sure there is accountability within that district in the issues of consumer protection and local control, they will figure that out during this

pilot project. I would encourage a vote against the indefinite postponement and allow this to move forward. Thank you.

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

Senator **TURNER:** Thank you, Madame President, ladies and gentlemen of the Senate. What is a Senator to do? You have a champion of government solutions in the good Senator from Aroostook, Senator Martin, and a champion of private enterprise and deregulation in the good Senator from York, Senator Nass. They are both on the same side of this issue. If anyone else is confused, you have company over in this corner.

It does seem to me, as the Senator from Kennebec, Senator Gagnon, has pointed out, many of us have water districts in which the trustees or the board of directors are popularly elected. I know the director of the Portland Water District, who services that portion of trade area, well. I spoke with him on the phone before this was ever an issue. I think he is very respectful of the constituents he serves, and will continue to be if we go forward and not support the motion to indefinitely postpone, but support the motion put forth initially by the good Senator from Lincoln, Senator Hall.

Please don't lose sight of the fact that the proposal before us, if we were to vote for it, is a three-year trial. We do trials because we want to test and understand whether a proposition, in fact, truly is workable. If it isn't, it will sunset in three years. I would encourage you to vote against the motion currently before us, which is indefinite postponement, so we can go on and accept the good Senator from Lincoln, Senator Hall's motion. Thank you very much.

THE PRESIDENT: The Chair recognizes the Senator from Lincoln, Senator Hall.

Senator **HALL:** Thank you, Madame President, men and women of the Senate. Without wishing to prolong this debate indefinitely, may I just read, briefly, the remarks of the Public Advocate on this minority report?

'My office has opposed previous versions of this proposal in two past sessions, but testified in support of this measure for two reasons. First, we have confidence that the PUC will pick pilot project participants that represent a wide variety of water districts, and therefore, will generate a broad range of results from a short-term cessation of PUC oversight. Secondly, we have confidence that PUC recommendations to the 123rd Legislature as to deregulation will be based on the actual experience, good and bad, of pilot project participation. In short, we do not believe that the ultimate result of the minority report is a forgone conclusion, nor do we believe that the concept identified in the title is so. Rather, we believe that the merits of such an outcome depend entirely on facts to be identified in the pilot program. The question of whether to exempt water districts from ongoing PUC oversight is an empirical one, justifying close analysis, both of the PUC and in the 123rd Legislature.'

Finally, I would urge the good Senator from Aroostook, Senator Martin, and the good Senator from York, Senator Nass, that if the water districts in Alfred or Eagle Lake have serious problems with this concept, that they should not apply to participate in the pilot program. I urge rejection of the indefinite postponement motion. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Franklin, Senator Woodcock.

Senator **WOODCOCK:** Thank you very much, Madame President, ladies and gentlemen of the Senate. I have come to conclude over my years in public service, that two of the most feared words for local government are pilot project. What happens with a pilot project is it becomes a definitive project after a while. For those who are in favor of local control of water districts, the words pilot project should strike fear in your heart. I'm supportive of the motion to indefinitely postpone. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from York, Senator Nass.

Senator **NASS:** Thank you, Madame President, men and women of the Senate. Currently, only ten participants of a water district need to get together to file a complaint with the PUC. This proposal appears to strip that out and take it away. Some of these water districts are very small. What that leaves, for those few people in a water district, is only Superior Court. How in the world are ten people who are at the end of the line and are having problems with water pressure, which is one of the biggest complaints, effectively going to do anything about it if their only redress is the Superior Court? The expense, the difficulty, the fact that it is a civil case, and the lengthy litigation will certainly discourage them. The PUC currently deals with complaints submitted by a minimum of ten people. We're going to lose that. We're going to lose one of the ways that people can get redress for water issues, and there are a lot of them currently in front of the PUC. I would urge, again, that you vote in favor of indefinite postponement.

THE PRESIDENT: The Chair recognizes the Senator from Aroostook, Senator Martin.

Senator **MARTIN:** Thank you, Madame President. I need to comment briefly on the comments of the good Senator from Cumberland, Senator Turner. The fact that two of us are correct in different spectrums, obviously means that we are correct. Let me point out one additional fact. I want to repeat, again, that this bill eliminates prohibition against special contracts, inside transactions, and preferences given. That, to me, ought to send fear to anyone who believes in the free enterprise system, and believes in competitiveness when applying for projects. At least when you know you have to put something out to bid, someone is going to give you a better price than if you simply work out a deal with someone. Just imagine what can happen in small towns, because apparently this is going to be aimed at smaller towns. The assumption is that at some point here today, we're going to talk about only one large district. Think of what can happen in those instances. I urge you to vote for indefinite postponement.

THE PRESIDENT: The Chair recognizes the Senator from Franklin, Senator Woodcock.

Senator **WOODCOCK:** Thank you very much, Madame President, ladies and gentlemen of the Senate. If my recollection serves me correctly, in the 120th Legislature the good Senator from Aroostook, Senator Martin, had a cautionary note for all of us who were involved in the opposite side of an issue that he was usually for. I am most pleased to hear him arguing for a free

enterprise system this morning. I would urge him to hold that for future reference. Thank you, Madame President.

On motion by Senator **MARTIN** of Aroostook, supported by a Division of at least one-fifth of the members present and voting, a Roll Call was ordered.

THE PRESIDENT: The pending question before the Senate is the motion by the Senator from Aroostook, Senator Martin to Indefinitely Postpone the Bill and accompanying papers. A Roll Call has been ordered. Is the Senate ready for the question?

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#145)

YEAS: Senators: BENNETT, BRENNAN, BRYANT, CARPENTER, CATHCART, DAVIS, DOUGLASS, EDMONDS, GILMAN, HATCH, MARTIN, MAYO, MITCHELL, NASS, SHOREY, STANLEY, STRIMLING, TREAT, WESTON, WOODCOCK

NAYS: Senators: BLAIS, BROMLEY, DAMON, GAGNON, HALL, KNEELAND, LAFOUNTAIN, LEMONT, PENDLETON, ROTUNDO, SAVAGE, SAWYER, TURNER, THE PRESIDENT - BEVERLY C. DAGGETT

ABSENT: Senator: YOUNGBLOOD

20 Senators having voted in the affirmative and 14 Senators having voted in the negative, with 1 Senator being absent, the motion by Senator **MARTIN** of Aroostook to **INDEFINITELY POSTPONE** the Bill and accompanying papers, **PREVAILED**.

Sent down for concurrence.

The Chair laid before the Senate the following Tabled and Later (5/30/03) Assigned matter:

An Act Regarding Wrongful Discharge

H.P. 820 L.D. 1117
(H "A" H-527 to C "A" H-265)

Tabled - May 30, 2003, by Senator **BLAIS** of Kennebec

Pending - **ENACTMENT**, in concurrence

(In Senate, May 29, 2003, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-265) AS AMENDED BY HOUSE AMENDMENT "A" (H-527)** thereto, in concurrence.)

(In House, May 30, 2003, **PASSED TO BE ENACTED**.)

PASSED TO BE ENACTED and having been signed by the President, was presented by the Secretary to the Governor for his approval.

The Chair laid before the Senate the following Tabled and Later (5/30/03) Assigned matter:

An Act To Restrict Fingerprinting of Educational Personnel to New Applicants for Certification, Authorization or Approval

H.P. 667 L.D. 890
(C "A" H-520)

Tabled - May 30, 2003, by Senator **TREAT** of Kennebec

Pending - motion by Senator **BENNETT** of Oxford to **INDEFINITELY POSTPONE** the Bill and accompanying papers, in **NON-CONCURRENCE** (Roll Call Requested)

(In Senate, May 29, 2003, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-520)**, in concurrence.)

(In House, May 30, 2003, **PASSED TO BE ENACTED**.)

Senator **BENNETT** of Oxford requested and received leave of the Senate to withdraw his request for a Roll Call.

On motion by Senator **MARTIN** of Aroostook, supported by a Division of at least one-fifth of the members present and voting, a Roll Call was ordered.

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#146)

YEAS: Senators: BENNETT, BLAIS, BRENNAN, CARPENTER, GILMAN, LAFOUNTAIN, LEMONT, MARTIN, MITCHELL, PENDLETON, ROTUNDO, SAWYER, SHOREY, STANLEY, TURNER, WESTON

NAYS: Senators: BROMLEY, BRYANT, CATHCART, DAMON, DAVIS, DOUGLASS, EDMONDS, GAGNON, HALL, HATCH, KNEELAND, MAYO, NASS, SAVAGE, STRIMLING, TREAT, WOODCOCK, THE PRESIDENT - BEVERLY C. DAGGETT

ABSENT: Senator: YOUNGBLOOD

16 Senators having voted in the affirmative and 18 Senators having voted in the negative, with 1 Senator being absent, the motion by Senator **BENNETT** of Oxford to **INDEFINITELY POSTPONE** the Bill and accompanying papers, **FAILED**.

On motion by Senator **BENNETT** of Oxford, supported by a Division of at least one-fifth of the members present and voting, a Roll Call was ordered.

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#147)

YEAS: Senators: BROMLEY, BRYANT, CATHCART, DAMON, DAVIS, DOUGLASS, EDMONDS, GAGNON, HALL, HATCH, KNEELAND, MAYO, NASS, SAVAGE, STRIMLING, TREAT, WOODCOCK, THE PRESIDENT - BEVERLY C. DAGGETT

NAYS: Senators: BENNETT, BLAIS, BRENNAN, CARPENTER, GILMAN, LAFOUNTAIN, LEMONT, MARTIN, MITCHELL, PENDLETON, ROTUNDO, SAWYER, SHOREY, STANLEY, TURNER, WESTON

ABSENT: Senator: YOUNGBLOOD

18 Senators having voted in the affirmative and 16 Senators having voted in the negative, with 1 Senator being absent, was **PASSED TO BE ENACTED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

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

ENACTORS

The Committee on **Engrossed Bills** reported as truly and strictly engrossed the following:

Act

An Act to Ensure that Maine's Unemployment System is Responsive to the Needs of Today's Workforce

H.P. 195 L.D. 240
(H "A" H-528 to C "A" H-482)

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

Senator **BLAIS:** Thank you, Madame President, men and women of the Senate. I fear that in this piece of legislation we have yet another pilot project. This one provides part-time unemployment and family medical leave. It adds additional enormous costs to our unemployment system. This being a pilot project, those costs are sunsetted in 2005, so they are going to go away. I suspect that this will be a definitive project and that those costs will not be going away.

The last time we discussed this matter in this chamber, I brought to your attention a grave concern that I had about the unmanageability of this piece of legislation, especially pertaining to the family medical leave provision. This provision says that a participant in the unemployment insurance program can avail themselves of this family medical leave if they are able and available for and actively seeking only part-time work because of the illness or disability of an immediate family member or because of limitations necessary for the safety or protection of the

individual or individual's immediate family member. The concern that I had with the way that this language is written is who is to determine what constitutes an illness or disability. I would point out that the majority report on this piece of legislation leaves out, in respect to part-time unemployment, a significant good cause provision that exists in current law under full-time unemployment provisions. Those good cause provisions include or require that the claimant take all reasonable precautions, and I'm reading from Public Law 1193, to protect the claimant's employment status by promptly notifying the employer of the reasons for the absence and by promptly requesting re-employment when again able to resume employment. It also requires that the claimant make all reasonable efforts to preserve their employment. These good cause clauses are missing from the majority report with respect to family medical leave and part-time unemployment benefits.

Same Senator requested a Roll Call.

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

Senator **EDMONDS:** Thank you, Madame President, men and women of the Senate. I won't take up too much of your time, but I was very careful to investigate this particular portion of the law. I don't think of it as family medical leave. That is a separate law altogether. This is a good cause provision, and I have had lengthy discussions with the department. The portion of the bill that this references refers to existing law. It is a good cause provision for the traditionally full-time worker to collect under this provision through the illness or disability of a family member. The worker would first have to request the employment be reduced to part-time. If the employer cannot accommodate this request and the worker has to quit, he or she might be eligible for unemployment so long as he or she actively seeks work for the amount of hours he or she can work. The employer would not be charged for benefits paid out under these conditions. I think it has actually been talked about, thought through, and well understood by the unemployment insurance folks. I respectfully ask for enactment. Thank you.

On motion by Senator **BLAIS** of Kennebec, supported by a Division of at least one-fifth of the members present and voting, a Roll Call was ordered.

THE PRESIDENT: The pending question before the Senate is Enactment. A Roll Call has been ordered. Is the Senate ready for the question?

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#148)

YEAS: Senators: BRENNAN, BROMLEY, BRYANT, CATHCART, DAMON, DOUGLASS, EDMONDS, GAGNON, HALL, HATCH, LAFOUNTAIN, MARTIN, MAYO, PENDLETON, ROTUNDO, STANLEY, STRIMLING, TREAT, THE PRESIDENT - BEVERLY C. DAGGETT

NAYS: Senators: BENNETT, BLAIS, CARPENTER, DAVIS, GILMAN, KNEELAND, LEMONT, MITCHELL, NASS, SAVAGE, SAWYER, SHOREY, TURNER, WESTON, WOODCOCK

ABSENT: Senator: YOUNGBLOOD

19 Senators having voted in the affirmative and 15 Senators having voted in the negative, with 1 Senator being absent, was **PASSED TO BE ENACTED** and having been signed by the President was presented by the Secretary to the Governor for his approval.

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

PAPERS FROM THE HOUSE

Joint Order

The following Joint Order:

H.P. 1208

ORDERED, the Senate concurring, that Bill, "An Act To Improve Enforcement of the State's Natural Resource Protection, Timber Theft and Trespass Laws," H.P. 1059, L.D. 1447, and all its accompanying papers, be recalled from the Governor's desk to the House.

Comes from the House, **READ** and **PASSED**.

READ and **PASSED**, in concurrence.

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

ENACTORS

The Committee on **Engrossed Bills** reported as truly and strictly engrossed the following:

Emergency Resolve

Resolve, Directing the Department of Inland Fisheries and Wildlife To Conduct a Programmatic Review within Certain Areas of the Department

S.P. 52 L.D. 129
(C "A" S-125)

This being an Emergency Measure and having received the affirmative vote of 34 Members of the Senate, with no Senators having voted in the negative, and 34 being more than two-thirds of the entire elected Membership of the Senate, was **FINALLY PASSED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

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

ENACTORS

The Committee on **Engrossed Bills** reported as truly and strictly engrossed the following:

Act

An Act To Promote Energy Conservation

S.P. 92 L.D. 233
(C "A" S-145)

On motion by Senator **CATHCART** of Penobscot, placed on the **SPECIAL APPROPRIATIONS TABLE**, pending **ENACTMENT**, in concurrence.

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

PAPERS FROM THE HOUSE

Joint Resolution

The following Joint Resolution:

H.P. 1207

JOINT RESOLUTION IN MEMORY OF UNITED STATES ARMY PRIVATE FIRST CLASS LORI ANN PIESTEWA, THE FIRST AMERICAN WOMAN SOLDIER KILLED IN ACTION IN THE IRAQ WAR

WHEREAS, United States Army Private First Class Lori Ann Piestewa was the first American woman to fall in combat during the recent war with Iraq and she died a hero's death when her unit was ambushed by enemy troops; and

WHEREAS, Lori Ann Piestewa was a 23-year-old Hopi Indian, a native of Arizona, a mother of 2 young children, a sister, a daughter, an aunt and a friend to many and her untimely death has created a void in the lives of those loved ones who survive her; and

WHEREAS, Lori Ann Piestewa grew up in Lower Moenkopi, Arizona and had been a leader in the Tuba City Unified School District Junior ROTC program and was the daughter of a Vietnam War veteran and granddaughter of a veteran of World War II and she joined the United States Army 4 1/2 years ago; and

WHEREAS, Lori Ann Piestewa exemplified the spirit of sacrifice, honor, trust and commitment and her ultimate sacrifice will not be forgotten by her grateful nation; now, therefore, be it

RESOLVED: That We, the Members of the One Hundred and Twenty-first Legislature now assembled in the First Regular Session, on behalf of the people we represent, take this opportunity to express our sincere condolences to the loving family of Private First Class Lori Ann Piestewa; and be it further

RESOLVED: That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to the Piestewa family and the Hopi Tribal Council with our deepest gratitude and respect for her sacrifice on behalf of the People of the State of Maine and the Penobscot Nation and with our best wishes and appreciation.

Comes from the House, **READ** and **ADOPTED**.

READ and **ADOPTED**, in concurrence.

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

ENACTORS

The Committee on **Engrossed Bills** reported as truly and strictly engrossed the following:

Act

An Act To Fund Municipal Collection of Household Hazardous Waste

H.P. 1135 L.D. 1549
(H "A" H-526 to C "A" H-494)

On motion by Senator **CATHCART** of Penobscot, placed on the **SPECIAL APPROPRIATIONS TABLE**, pending **ENACTMENT**, in concurrence.

ORDERS OF THE DAY

The Chair laid before the Senate the following Tabled and Later (5/21/03) Assigned matter:

SENATE REPORTS - from the Committee on **BUSINESS, RESEARCH AND ECONOMIC DEVELOPMENT** on Bill "An Act To Improve the State's Returnable Bottle Law and Adjust Handling Fees"

S.P. 326 L.D. 985

Majority - **Ought to Pass as Amended by Committee Amendment "A" (S-217)** (8 members)

Minority - **Ought to Pass as Amended by Committee Amendment "B" (S-218)** (5 members)

Tabled - May 21, 2003, by Senator **BROMLEY** of Cumberland

Pending - motion by same Senator to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-217)** Report

(In Senate, May 21, 2003, Reports **READ**.)

On motion by Senator **BROMLEY** of Cumberland, the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-217)** Report **ACCEPTED**.

READ ONCE.

Committee Amendment "A" (S-217) **READ**.

On motion by Senator **GAGNON** of Kennebec, Senate Amendment "B" (S-250) to Committee Amendment "A" (S-217) **READ**.

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

Senator **GAGNON**: Thank you, Madame President, men and women of the Senate. I present this amendment because we have probably the most advanced and forward-looking redemption program in the country. In fact, as we've talked about how Maine goes, so goes the nation, this is probably one of the areas where we are a real leader. In fact, there is equipment being developed right here in the State of Maine that, hopefully, will be a boom to our state in terms of equipment that would be sold to redemption centers.

The goal of this bill, and what I think should be our goal, is to modernize the redemption centers and to provide greater efficiencies to them. This could move them to another level, to another plain, in order to get over that hump in what has become a very labor intensive and fairly simply process of sorting bottles simply for the sake of accounting purposes. We know that progress has already been made with reverse vending operations and reverse vending machines. What this bill does is encourage the industry and provide some incentives for the redemption centers to move in that direction, so we can promote and further our bill as a whole.

This amendment has been worked on for quite some time by a number of different people. I'm pleased to report, in consultation with the good chair of this committee and through her tremendous help, this bill and amendment is now accepted by the organization that represents the redemption centers, the people who represent the beer and wine distributors, and the people who represent the soda bottlers in the State of Maine. If, in fact, we can put this co-mingling issue in law and start moving forward with the agreement of all of them, it is a wonderful day in the legislature for us. I would encourage your support of this amendment. Thank you very much.

On motion by Senator **GAGNON** of Kennebec, Senate Amendment "B" (S-250) to Committee Amendment "A" (S-217) **ADOPTED**.

Committee Amendment "A" (S-217) as Amended by Senate Amendment "B" (S-250) thereto, **ADOPTED**.

Under suspension of the Rules, **READ A SECOND TIME**.

On motion by Senator **HATCH** of Somerset, Senate Amendment "A" (S-245) **READ**.

THE PRESIDENT: The Chair recognizes the Senator from Somerset, Senator Hatch.

Senator **HATCH**: Thank you, Madame President, ladies and gentlemen of the Senate. I rise today to let you know that I've submitted an amendment that would give the redemption centers

a 2¢ increase on the handling fee. There are many reasons for this. First, I appreciate all the work that went into the bill by the commission that met on it. Four years ago, a bill went in regarding the redemption centers not making enough money to pay for their supplies. Over the course of the last couple of years, apparently they worked on a bill, with the input of all the committee members, which has a 1/2¢ float. If the distributors agree to the co-mingling, they get that 1/2¢. The redemption centers get nothing.

Costs for the redemption centers, because of the cost of the handling and so forth, has increased over the last 10 or 15 years. They still get the same amount. I put this in so that they could buy bags, that used to be \$9 a box and are currently \$28 a box, and pay their expenses, which include electricity and everything else that we all have to have when we are in business. Even the overhead on these redemption centers has gone up in the last few years. I would ask that you please accept this, so that the redemption centers can receive some pay. I don't know how the redemption centers, especially the smaller ones, would buy extra supplies and whatnot in the next few years. In my area, we have only small redemption centers. There are no big ones. They employ 8 or 10 people, because of the volume that comes into these small redemption centers. Just to pay those people takes most of the money that comes in.

I would ask you to look favorably on this amendment. Thank you.

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

Senator **GAGNON:** Thank you, Madame President, men and women of the Senate. I would encourage you to vote against the amendment. In all due respect to the good Senator from Somerset, Senator Hatch, who I have a great deal of respect and affection for, I think that what we are accomplishing with the amendment that we talked about previously will provide some incentives or money for the redemption centers. There will certainly be areas or categories of products where they will not be co-mingling. It would not be cost effective, at least not in the short run. They will be seeing a 1/2¢ increase in those areas.

The second thing is that we think that the out-of-state people who are providing products to the big Super Wal-Marts and places like that are not going to participate in any co-mingling agreement, because they haven't participated in the past. There will also be a 1/2¢ on that.

Again, the good Senator from Somerset, Senator Hatch, is correct. There are a lot of small redemption centers. The difficulty is that we need to get over that hump. We need to get them modernized. We need to get some equipment into their facilities so they can do this more efficiently. That will ultimately save them money. That is what the amendment was trying to do. If the industries that are involved do not go at this in an aggressive way, then the legislature would be more sympathetic to this type of amendment. I would encourage you to vote against the pending motion.

Same Senator requested a Division.

THE PRESIDENT: The Chair recognizes the Senator from Washington, Senator Shorey.

Senator **SHOREY:** Thank you, Madame President, men and women of the Senate. After looking at this problem for the past five years, I think the amendment that the good Senator from Somerset, Senator Hatch, has brought forth is very well meaning, but it will not provide a solution. Having talked to my local redemption centers, one of their fears is that, as you add more money to the bottling and to the return fee, more redemption centers will pop up. This is a volume business. There are 200 or 300 redemption centers right now. You don't want to see 600 or 700. That would not work. It would put people out of business. The biggest thing we heard, and what the study commission heard, was co-mingling. That is a way to reduce the cost. I think that if this does not work with the current amendment that the good Senator from Kennebec, Senator Gagnon, put in, we may look at this. I think right now we should proceed on course and reject this amendment. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Somerset, Senator Hatch.

Senator **HATCH:** Thank you, Madame President, ladies and gentlemen of the Senate. I rise again to ask you to support this amendment. There has been no talk in any of the discussions saying that we shouldn't support this. Currently in the state, there is what they call a float that goes back to the distributors of between \$1 million and \$2.9 million. They receive this back because not all the bottles are returned. Out of this float they could afford to pay these small redemption centers an extra 2¢. The reason they had the commission study this was because there was not a lot of redemption center people who could attend these hearings. They were working, sorting these cans and bottles for all of us in this state. They do a great job. The distributors could attend. They had the lobbyists there. They had everyone there. I agree that one lobbyist for the redemption centers probably was sufficient. I would encourage you to vote for this 2¢ for those redemption centers. The money is already there. It doesn't have to be raised. Nobody's going to go broke. We are already paying for those cans and bottles that aren't returned in our landfills anyway. I would encourage you to do this. It won't cost the distributors anything. Thank you.

At the request of Senator **GAGNON** of Kennebec a Division was had. 11 Senators having voted in the affirmative and 23 Senators having voted in the negative, the motion by Senator **HATCH** of Somerset to **ADOPT** Senate Amendment "A" (S-245), **FAILED**.

PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-217) AS AMENDED BY SENATE AMENDMENT "B" (S-250) thereto.

Sent down for concurrence.

All matters thus acted upon were ordered sent down forthwith for concurrence.

The Chair laid before the Senate the following Tabled and Later (5/27/03) Assigned matter:

HOUSE REPORTS - from the Committee on **LABOR** on Bill "An Act To Provide Collective Bargaining Rights to Certain Forest Products Workers"

H.P. 972 L.D. 1318

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-440)** (8 members)

Minority - **Ought Not to Pass** (5 members)

Tabled - May 27, 2003, by Senator **EDMONDS** of Cumberland

Pending - motion by same Senator to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence

(In House, May 23, 2003, the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-440).**)

(In Senate, May 27, 2003, Reports **READ**.)

On motion by Senator **EDMONDS** of Cumberland, Bill and accompanying papers **COMMITTED** to the Committee on **LABOR**, in **NON-CONCURRENCE**.

Sent down for concurrence.

All matters thus acted upon were ordered sent down forthwith for concurrence.

Senate at Ease.

Senate called to order by the President.

The Chair laid before the Senate the following Tabled and Later Today Assigned matter:

Resolve, Concerning Reauthorization of a 1997 Pollution Control Bond Issue

S.P. 583 L.D. 1628

Tabled - June 3, 2003, by Senator **CATHCART** of Penobscot

Pending - **PASSAGE TO BE ENGROSSED**, without reference to a Committee

(Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS** suggested and ordered printed.)

(In Senate, June 3, 2003, **RULES SUSPENDED** and **READ TWICE**, without reference to a Committee.)

On motion by Senator **CATHCART** of Penobscot, Senate Amendment "A" (S-252) **READ** and **ADOPTED**.

PASSED TO BE ENGROSSED AS AMENDED BY SENATE AMENDMENT "A" (S-252), without reference to a Committee.

Ordered sent down forthwith for concurrence.

Senate at Ease.

Senate called to order by the President.

Senator **TREAT** of Kennebec was granted unanimous consent to address the Senate off the Record.

Senator **WOODCOCK** of Franklin was granted unanimous consent to address the Senate off the Record.

RECESSED until 1:00 in the afternoon.

After Recess

Senate called to order by the President.

Off Record Remarks

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

ENACTORS

The Committee on **Engrossed Bills** reported as truly and strictly engrossed the following:

Acts

An Act To Regulate the Delivery and Sales of Tobacco Products and To Prevent the Sale of Tobacco Products to Minors
H.P. 910 L.D. 1236
(C "A" H-538)

PASSED TO BE ENACTED and having been signed by the President was presented by the Secretary to the Governor for his approval.

An Act To Authorize the Deorganization of the Town of Centerville
H.P. 1201 L.D. 1624
(H "A" H-540)

On motion by Senator **CATHCART** of Penobscot, placed on the **SPECIAL APPROPRIATIONS TABLE**, pending **ENACTMENT**, in concurrence.

Senator **GAGNON** of Kennebec was granted unanimous consent to address the Senate off the Record.

An Act To Change the Name of the Augusta Mental Health Institute to "Riverview Psychiatric Center"

S.P. 525 L.D. 1562
(C "A" S-208)

On motion by Senator **GAGNON** of Kennebec, **ADJOURNED** to Wednesday, June 4, 2003, at 10:00 in the morning.

On motion by Senator **TREAT** of Kennebec, the Senate **SUSPENDED THE RULES**.

On further motion by same Senator, the Senate **RECONSIDERED** whereby the Bill was **PASSED TO BE ENGROSSED AS AMENDED**, in concurrence.

On further motion by same Senator, the Senate **SUSPENDED THE RULES**.

On further motion by same Senator, the Senate **RECONSIDERED** whereby it **ACCEPTED** Report "A", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-208)**, in concurrence.

Same Senator moved the Senate **ACCEPT** Report "C", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "C" (S-210)**, in **NON-CONCURRENCE**.

On further motion by same Senator, **TABLED** until Later in Today's Session, pending the motion by same Senator to **ACCEPT** Report "C", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "C" (S-210)**, in **NON-CONCURRENCE**.

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

ENACTORS

The Committee on **Engrossed Bills** reported as truly and strictly engrossed the following:

Resolve

Resolve, To Protect High and Moderate Value Waterfowl and Wading Bird Habitats

H.P. 908 L.D. 1234
(H "A" H-506; H "B" H-539 to C "A" H-372)

On motion by Senator **CATHCART** of Penobscot, placed on the **SPECIAL APPROPRIATIONS TABLE**, pending **FINAL PASSAGE**, in concurrence.

Senate at Ease.

Senate called to order by the President.