

# MAINE STATE LEGISLATURE

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

Volume III

Second Special Session (Continued)  
March 22, 2004 to April 30, 2004

Second Confirmation Session  
August 25, 2004

Interim Appendix

Senate Legislative Sentiments

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

In Senate Chamber  
Wednesday  
April 28, 2004

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

Prayer by Senator Neria R. Douglass of Androscoggin County.

**SENATOR DOUGLASS:** Good morning. Let us pause for a  
minute of prayer and communion with our Creator.

Oh God, You have given us this new and beautiful day. You  
have given us the challenge of difficulties and divisions. You  
have given us the opportunity to surmount our differences. Help  
us to receive Your spirit of wisdom. Help us to exercise Your  
power of good. Help us to cherish and respect one another  
throughout this day and into the night here in the Maine Senate.  
Amen.

Reading of the Journal of Tuesday, April 27, 2004.

Senator **PENDLETON** of Cumberland requested and received  
leave of the Senate for members and staff to remove their jackets  
for the duration of the Second Special Session.

Off Record Remarks

**COMMUNICATIONS**

The Following Communication: S.P. 811

STATE OF MAINE  
SUPREME JUDICIAL COURT  
142 FEDERAL STREET  
PORTLAND, MAINE 04112

OPINION OF THE JUSTICES  
OF THE SUPREME JUDICIAL COURT

GIVEN UNDER THE PROVISIONS OF  
ARTICLE VI, SECTION 3 OF THE MAINE CONSTITUTION

Docket No. OJ 04-01

QUESTIONS PROPOUNDED BY THE MAINE SENATE

AND THE MAINE HOUSE OF REPRESENTATIVES

IN A COMMUNICATION

DATED March 29, 2004

ANSWERED April 16, 2004

ANSWER OF CHIEF JUSTICE SAUFLEY,  
JUSTICE DANA,  
JUSTICE CALKINS, AND  
JUSTICE LEVY

To the Honorable Senate and House of Representatives of the  
State of Maine:

[¶1] The Senate and the House of Representatives ask us  
for an advisory opinion addressing questions related to the  
constitutionality of Initiated Bill 4, L.D. 1893 (121st Legis. 2004),  
"An Act to Impose Limits on Real and Personal Property Taxes."  
Specifically, we are asked to advise whether, if Initiated Bill 4 is  
enacted by the people, its provisions would require the  
assessment of real estate taxes in violation of Article IX, Section 8  
of the Maine Constitution.<sup>1</sup> We are also asked whether, if we  
answer the first question in the affirmative, any of the remaining  
provisions of the initiated bill would be effective by virtue of the  
severability provisions.

I. SOLEMN OCCASION

[¶2] The Maine Constitution requires the justices of the  
Supreme Judicial Court to answer the questions propounded by  
the Senate and House if they are important questions of law and  
present a solemn occasion. ME. CONST. art. VI, § 3. Because not  
all of the justices agree that a solemn occasion exists, the  
undersigned justices briefly explain why we conclude that this is a  
solemn occasion.

[¶3] A solemn occasion exists when the questions are of a  
serious and immediate nature, *Opinion of the Justices*, 2002 ME  
169, ¶ 6, 815 A.2d 791, 794; and the situation presents an  
unusual exigency, as when the Senate and the House have  
serious doubts as to action they can take, *Opinion of the Justices*,  
709 A.2d. 1183, 1185 (Me. 1997). These factors are present.

[¶4] There is no question that the concerns of the Senate  
and House are serious. Initiated Bill 4 makes a major structural  
change in the valuation of property for property tax purposes, and  
it is the property tax upon which municipalities rely for revenue.

[¶5] Immediacy and an unusual exigency are likewise  
present. The Legislature has a constitutional duty to make a  
decision regarding Initiated Bill 4. That is, it must enact the bill,  
propose a competing measure, or decide to take no action. ME.  
CONST. art. IV, pt. 3, § 18, cl. 2. The Attorney General has given

<sup>1</sup> Article IX, Section 8 of the Maine Constitution requires, in  
pertinent part: "All taxes upon real and personal estate, assessed  
by authority of this State, shall be apportioned and assessed  
equally according to the just value thereof."

the Legislature an opinion that the valuation formula in Initiated Bill 4 is unconstitutional and that the severability provisions do not save the rest of the act. The Legislature has before it an immediate issue of whether to enact Initiated Bill 4 as written or propose a competing measure.<sup>2[2]</sup> In light of these circumstances, we conclude that the requisite seriousness, immediacy and an unusual exigency exist.

[¶7] In the past, a majority of justices found that a solemn occasion existed when the House had a question about the constitutionality of an initiated bill that had not yet gone to the electorate. *Opinion of the Justices*, 623 A.2d 1258, 1261-62 (Me. 1993). There may be policy reasons in favor of amending the constitution to limit the use of advisory opinions from the justices when the questions involve an initiative, but because such amendment has not been enacted, the policy reasons do not allow us to decline to give our opinions. Former Chief Justice Emery indicated that although he considered Article VI, Section 3 of the Maine Constitution "undesirable," Lucilius A. Emery, *Advisory Opinions from Justices*, 2 ME. L. REV. 1, 1 (1908), because the provision remains in the constitution, "the Justices have no discretion in the matter. Their opinion is not 'requested'; it is 'required.' There is no suggestion that they may choose whether or not to give it." Lucilius A. Emery, *Advisory Opinion of the Justices, No. II*, 11 ME. L. REV. 15, 16 (1917).

[¶7] The members of the Maine Senate and the House of Representatives have told us that they need our opinion in order to undertake their responsibilities. We take them at their word that an opinion on the constitutionality of the initiated bill by the justices would assist and inform the Senate and House in their deliberations.

## II. RESPONSE TO QUESTION ONE

[¶8] The first question propounded by the Legislature is the following:

Question 1. If Initiated Bill 4 becomes law, would those provisions of the bill that require the calculation of property taxes based on "full-cash value" or "appraised value," as adjusted, violate the Constitution of Maine, Article IX, Section 8, which requires taxes on real and personal property to be assessed and apportioned equally and according to just value?

### A. Summary of Answer

[¶9] It is our opinion that the answer to this question is yes. For the reasons set out below, we conclude that those provisions of the initiative that base property taxes on "full-cash value" as defined by the proposed amendment to Title 36 M.R.S.A. § 351(4) (contained in Initiated Bill 4, L.D. 1893 (121st Legis. 2004)) would violate the requirement of Article IX, Section 8 of the Maine Constitution mandating that "[a]ll taxes . . . shall be

apportioned and assessed equally according to the just value thereof."<sup>3[3]</sup>

### B. Standards Applied

[¶10] Because we are asked to give our opinion on the constitutionality of a proposed law, and because that opinion must be based on a reasonable anticipation of the Law Court's conclusion, should it be called upon to rule on the constitutionality of the initiative as enacted in the context of a live controversy, we begin our analysis by addressing the Law Court's standard of review of initiated laws. In evaluating citizen initiatives, the Law Court applies the ordinary rules of statutory construction. *League of Women Voters v. Sec'y of State*, 683 A.2d 769, 771 (Me. 1996) (citing *Opinion of the Justices*, 460 A.2d 1341, 1345 (Me. 1982)). Accordingly, Initiated Bill 4 carries a heavy presumption of constitutionality, and "[b]efore [the bill] may be declared in violation of the Constitution, that fact must be established to such a degree as to leave no room for reasonable doubt." *Id.* at 771-72 (quoting *Orono-Veazie Water Dist. v. Penobscot County Water Co.*, 348 A.2d 249, 253 (Me. 1975)).

### C. Analysis

[¶11] We must determine, therefore, whether the application of the "full-cash value" definition referenced in the Question is so contrary to the requirements of fair and equal taxation as to leave no reasonable doubt that it violates the Maine Constitution.

[¶12] Full-cash value is defined in Initiated Bill 4 as follows:

4. Full-cash value. "Full-cash value" means the governmental entity's total assessed valuation of real or personal property as shown on the 1996-97 tax bill under "total value." For newly constructed or newly purchased real or personal property that changes in ownership after the 1996-97 assessment, "full-cash value" means the appraised value.

L.D. 1893 (121st Legis. 2004) (proposed as 36 M.R.S.A. § 351(4)).

[¶13] On its face, this definition creates two different bases for tax value purposes: one for property acquired by its current owner before the 1996-97 assessment and one for all property acquired after that assessment. For taxpayers who purchased before the 1996-97 assessment, property taxes would be based not on fair market value, but on an assessed value from eight years ago.

<sup>3</sup> Reaching a similar conclusion, the Attorney General advised the Legislature's Joint Standing Committee on Taxation that key provisions of Initiated Bill 4 violate Article IX, Section 8 of the Maine Constitution. Letter from G. Steven Rowe, Attorney General, to Members of the Joint Standing Committee on Taxation (March 23, 2004), at 1. In particular, the Attorney General concluded Initiated Bill 4 "will result in [property tax] assessments of similarly situated properties that vary based on how long the property has been owned and that do not reflect market value." *Id.* at 7.

<sup>2</sup> For this reason, it is unnecessary to discuss whether there is sufficient time for the Legislature to deal with the financial consequences if the initiated bill passes.

<sup>4</sup>[4] For those who acquired the property later, taxes would be based on a more recent appraised value.<sup>5</sup>[5] In other words, the bill provides for disparate treatment of property based not on the property's value but on the date of acquisition by the property's current owner.

[¶14] The Maine Constitution provides that "[a]ll taxes upon real and personal estate, assessed by authority of this State, shall be apportioned and assessed equally according to the just value thereof." ME. CONST. art. IX, § 8. In *Eastler v. State Tax Assessor*, the Law Court explained this provision as follows:

This constitutional provision establishes two requirements for a valid property tax: a valuation requirement and an apportionment requirement. Under the valuation requirement the tax-levying authority must determine the market value of the property. See *Shawmut Inn v. Town of Kennebunkport*, 428 A.2d 384, 389 (Me. 1981) ("Just value" is the equivalent of 'market value.'). Under the apportionment requirement the taxing authority must then apportion the tax equally according to the market value. The purpose of the two constitutional requirements is to equalize public burdens so that a taxpayer contributes to the entire tax burden in proportion to his share of the total value of all property subject to the tax. See *Opinion of the Justices*, 155 Me. 30, 47, 152 A.2d 81, 89 (1959).

499 A.2d 921, 924 (Me. 1985).

[¶15] Thus, property taxes must be based on market value and must be apportioned equally according to that value. It bears highlighting that these requirements are established by the unequivocal terms of the Maine Constitution. ME. CONST. art. IX, § 8. They are neither statutorily nor judicially established.

[¶16] We are of the opinion that the proposed use of the 1996-97 assessed value as the tax base for long-owned property runs afoul of the requirement that a valid property tax must be based on market value.<sup>6</sup>[6] Although flexibility in the methodology for determining market value is consistent with constitutional requirements,<sup>7</sup>[7] the end result of any methodology must be a

reasonable determination of "market value." Initiated Bill 4 creates an entire class of property owners whose taxes will not be based on market value, except in those undeterminable instances where the 1996-97 assessed value coincides by happenstance with the current market value.<sup>8</sup>[8]

[¶17] It is also apparent that, by creating two separate non-market-value bases on which taxes will be founded, the initiated bill violates the requirement of equal apportionment. The Law Court recently discussed the equal apportionment requirement as it applied to municipalities in *Delogu v. City of Portland*, 2004 ME 18, 843 A.2d 33. The Court noted that Article IX, Section 8 "prohibits municipalities from engaging in unjust discrimination in the assessment of real estate taxes or the apportionment of real estate tax burdens." *Delogu*, 2004 ME 18, ¶ 12, 843 A.2d 33, --- (citing *Ram's Head Partners, LLC v. Town of Cape Elizabeth*, 2003 ME 131, ¶ 9, 834 A.2d 916, 919). "A finding of discrimination is indicated when the municipal assessment system necessarily results in unequal apportionment." *Id.* (internal quotation marks omitted). The under or over assessment of one set of similarly situated properties will support a finding of unjust discrimination. *Id.*

[¶18] Application of the definition of "full-cash value" will result in just that—the disparate taxation of two similar or identical properties with the resulting unjust discrimination. The violation of the equal apportionment provisions of Article IX, Section 8 is clear.

#### D. Answer to Question #1

[¶19] Accordingly, we answer Question #1 in the affirmative: If Initiated Bill 4 becomes law, those provisions of the bill that require the calculation of property taxes based on "full-cash value" or "appraised value," as adjusted, would violate Article IX, Section 8 of the Constitution of Maine, which requires taxes on real and personal property to be assessed and apportioned equally and according to just value.

### III. RESPONSE TO QUESTION 2

[¶20] The Second Question propounded by the legislature is the following:

Question 2. Initiated Bill 4, in the part that proposes the Maine Revised Statutes, Title 36, section 361, proposes a severability clause. If your answer to Question 1 indicates that portions of the initiated bill are unconstitutional, would any of the initiated bill's provisions remain effective by virtue of Title 36, section 361 or Title 1, section 71, subsection 8?

#### A. Summary of Answer

determining the market value of real property: (1) the 'comparative' or 'market data' approach, (2) the 'income' or 'capitalization' approach, and (3) the 'reproduction cost less depreciation' or 'cost' approach." *Shawmut Inn v. Town of Kennebunkport*, 428 A.2d 384, 390 (Me. 1981).

<sup>8</sup> We need not determine whether the phrase "appraised value" applied to recently purchased property would also violate the requirement that taxes be based on market value.

<sup>4</sup> Although it is always possible that current fair market value and the 1996-97 assessed value may coincide, it would be mere coincidence.

<sup>5</sup> Because "appraised value" is unquestionably different from the 1996-97 assessed value, we need not determine whether appraised value means the value in the year acquired, or in each tax year.

<sup>6</sup> Similarly, the Attorney General has opined that "[b]y requiring that property be assigned either the value stated on 1996-97 tax bills or, if acquired or newly constructed after that time, the appraised value at the time of construction or acquisition, the [initiated] bill results in a significant number of properties being valued at less than market value." Letter from Attorney General to Committee on Taxation, at 5.

<sup>7</sup> The *Shawmut Inn* Court explained that "this Court has permitted the local assessors considerable leeway in choosing the method or combinations of methods to achieve just valuations. [It has] found acceptable as techniques to aid local assessors at least three standard appraisal methods of

[¶21] It is our opinion that the answer to this question is also yes. The portions of the initiated bill that are unconstitutional are severable by virtue of 1 M.R.S.A. § 71(8) (Supp. 2003) and proposed 36 M.R.S.A. § 361, and are not so integral as to invalidate the bill in its entirety. However, we express no opinion regarding whether individual provisions would be effective for the reasons set out below.<sup>9</sup>

#### B. Analysis

[¶22] The Law Court begins a severability analysis by considering Title 1, section 71(8), which states:

The provisions of the statutes are severable. The provisions of any session law are severable. If any provision of the statutes or a session law is invalid, or if the application of either to any person or circumstance is invalid, such invalidity does not affect other provisions or applications which *can be given effect* without the invalid provision or application. . . .

1 M.R.S.A. § 71(8) (emphasis added).

[¶23] In applying severability provisions, the Law Court has explained that if a provision of a statute is invalid, that provision is severable from the remainder of the statute as long as the rest of the statute "can be given effect" without the invalid provision, and the invalid provision is not such an integral part of the statute that the Legislature would only have enacted the statute as a whole. *Bayside Enters., Inc. v. Me. Agric. Bargaining Bd.*, 513 A.2d 1355, 1360 (Me. 1986); *Lambert v. Wentworth*, 423 A.2d 527, 535-36 (Me. 1980); *Town of Windham v. LaPointe*, 308 A.2d 286, 292 (Me. 1973). The Law Court considers the legislative purpose or purposes of the statute under consideration when examining questions of severability. See *Bayside Enters., Inc.*, 513 A.2d at 1360; *Lambert*, 423 A.2d at 535; see also 2 NORMAN J. SINGER, STATUTES AND STATUTORY CONSTRUCTION § 44:3, at 552 (6th ed. 2001) ("[S]eparability is to be decided according to the legislative intent.").

[¶24] Thus, there are two components to the determination of the effectiveness of the remaining provisions of Initiated Bill 4. A court would have to decide: (1) whether the invalid provisions are so integral to the initiated bill that the entire act would have to be struck down, and (2) whether, individually, the remaining provisions can function and be given effect absent the invalid provisions.

[¶25] We begin, as does the Law Court, by focusing on legislative purpose in examining severability. When the provisions of a statute "are so related in substance and object that it is impossible to determine that the legislation would have been enacted except as an entirety, if one portion offends the Constitution, the whole must fail." *LaPointe*, 308 A.2d at 292: see 2 SINGER § 44:6, at 580 ("[W]here the invalid portion was the

principal inducement for the passage of the statute, the whole statute must fail.").

[¶26] A statute's finalized legislative history ordinarily provides guidance as to its legislative purpose and whether any invalid provisions were integral to the statute's enactment. See *Bayside Enters., Inc.*, 513 A.2d at 1359; *Lambert*, 423 A.2d at 535. Typically, when the Law Court is asked to undertake a severability analysis of an existing statute, there is a legislative record, House and Senate debate, or a detailed summary attached to the bill.

[¶27] The legislative history available to us in this instance is limited to the language of the bill itself and the Summary attached to the bill. As set forth in that Summary, Initiated Bill 4 contains at least three key features: the roll-back to 1996-97 valuation for long-time owners, L.D. 1893 (121st Legis. 2004) (proposed 36 M.R.S.A. §§ 351(4), 352(1)); the limitation of "a maximum rate of 1% on the value of the property," L.D. 1893, Statement of Fact (121st Legis. 2004); and a cap on annual property value increases of 2%, L.D. 1983 (proposed 36 M.R.S.A. § 353(2)).

[¶28] These features and other tax control related measures are evident in the language of the bill itself. Viewed as a whole, the initiative contains multiple separate goals and aims at creating a variety of tax related changes. It is significant that Initiated Bill 4 contains its own severability clause in proposed section 361, which states that "[i]f any portion, word, clause or phrase of this initiative for any reason is held to be invalid or unconstitutional by a court of competent jurisdiction, the remaining portions, clauses and phrases may not be affected, but shall remain in full force and effect." L.D. 1893 (121st Legis. 2004). Given the standing presence of an existing severability provision at 1 M.R.S.A. § 71(8), this provision demonstrates a compelling intent to have the remaining sections stand on their own.

[¶29] With all of this in mind, and on the limited record available to us, we are of the opinion that the elimination of the roll-back provision and related base valuation mechanisms are not so integral to the initiative as to invalidate the bill in its entirety.

[¶30] We caution, however, that we do not opine on the individual effectiveness of each remaining provision. Absent a record of "a concrete, certain, or immediate legal problem" against which to assess each individual provision, our opinion regarding the provisions' effectiveness will be unduly speculative and hypothetical. *Wagner v. Sec'y of State*, 663 A.2d 564, 567 (Me. 1995). Because of the complex nature of Initiated Bill 4, it is impracticable to render an opinion in the abstract regarding the effectiveness of its constituent parts.

#### C. Answer to Question #2

[¶31] Accordingly, we answer Question #2 in the affirmative: If the provisions of the bill examined in Question #1 are unconstitutional as we have opined, those provisions are not so integral to the initiative as to render the entire bill invalid.

Dated: April 16, 2004

<sup>9</sup> Because we have been asked to address effectiveness in the context of the severability provisions of 1 M.R.S.A. § 71(8) (Supp. 2003) and proposed 36 M.R.S.A. § 361, we do not address the claims asserted in the briefs regarding other possible constitutional infirmities.

S/ Leigh I. Saufley  
Leigh I. Saufley  
Chief Justice

S/ Howard H. Dana, Jr.  
Howard H. Dana, Jr.  
Associate Justice

S/ Susan Calkins  
Susan Calkins  
Associate Justice

S/ Jon D. Levy  
Jon D. Levy  
Associate Justice

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ANSWER OF JUSTICE CLIFFORD,  
JUSTICE RUDMAN AND  
JUSTICE ALEXANDER

To the Honorable Senate and House of Representatives of the  
State of Maine:

[¶32] We do not concur in the opinion of our colleagues on the Court and pursuant to Article VI, Section 3 of the Maine Constitution, we, the undersigned justices of the Supreme Judicial Court, have the honor to submit our separate response to the questions propounded by the Senate and House of Representatives on March 29, 2004.

[¶33] Although we respect the seriousness of purpose and earnestness of concern by the Senate and the House of Representatives, which have caused them to propound these questions, we respectfully decline to answer the questions. Because the proposed law is yet to be voted on by the people, there is no matter of "live gravity" and no question of sufficient immediacy and seriousness to create a solemn occasion justifying our answer. It is important to distinguish between a question of live gravity and one that is of potential live gravity. Our constitution requires that we respond to the former and forbids us from responding to the latter.

[¶34] The doctrine of separation of powers, articulated in Article III of the Maine Constitution, dictates that we decline to answer questions presented by either the Legislature or the Governor regarding matters within their respective authority. ME. CONST. art. III, §§ 1-2; *Opinion of the Justices*, 2002 ME 169, ¶ 4, 815 A.2d 791, 794; *Opinion of the Justices*, 396 A.2d 219, 223 (Me. 1979). A narrow exception to this fundamental principle of separation of powers is created by Article VI, Section 3, which provides that "[t]he Justices of the Supreme Judicial Court shall be obliged to give their opinion upon important questions of law, and upon solemn occasions, when required by the Governor, Senate or House of Representatives." ME. CONST. art. VI, § 3. When we receive a request for an advisory opinion pursuant to Article VI, Section 3, we must first determine whether it is within the scope of our limited constitutional authority to provide advisory opinions only "upon important questions of law, and upon solemn occasions." *Opinion of the Justices*, 2002 ME 169,

¶ 5, 815 A.2d at 794; *Opinion of the Justices*, 682 A.2d 661, 663 (Me. 1996).

[¶35] Prior opinions of the justices of this Court have articulated certain criteria to guide our determination of whether a "solemn occasion" has been presented on "important questions of law." First, the issue on any question presented must be one of "live gravity," referring to the immediacy and the seriousness of actions that the Legislature or the Governor must take and on which they seek guidance through an advisory opinion. See *Opinion of the Justices*, 2002 ME 169, ¶ 6, 815 A.2d at 794; *Opinion of the Justices*, 709 A.2d 1183, 1185 (Me. 1997). In 1997, the justices of this Court stated that "[a] solemn occasion refers to an 'unusual exigency, such an exigency as exists when the body making the inquiry, having some action in view, has serious doubts as to its power and authority to take such action under the Constitution or under existing statutes.'" *Opinion of the Justices*, 709 A.2d at 1185 (quoting *Opinion of the Justices*, 95 Me. 564, 567, 51 A. 224, 225).

[¶36] Opinions of the Justices propounded pursuant to Article VI, Section 3 of the Maine Constitution "are not binding decisions of the Supreme Judicial Court." *Opinion of the Justices*, 673 A.2d 693, 695 (Me. 1996). Such an advisory opinion "has no precedential value and no conclusive effect as a judgment upon any party." *Opinion of the Justices*, 396 A.2d at 223. Even recognizing those limitations, such opinions are viewed as providing guidance on both present and future controversies. *Opinion of the Justices*, 2002 ME 169, ¶ 7, 815 A.2d at 795. Thus, in 2002, we observed that "the determination that a question presents a 'solemn occasion' is of significant import, and we will not find such an occasion to exist except in those circumstances when the facts in support of the alleged solemn occasion are clear and compelling." *Id.* ¶ 8, 815 A.2d at 795.

[¶37] The above principles apply to our solemn occasion analysis any time questions are propounded pursuant to Article VI, Section 3, but we must examine the solemn occasion issue with particular rigor when, before the people vote, we are asked to give an advisory opinion regarding the constitutionality of an initiated bill. Pursuant to the Maine Constitution, Article IV, Part 3, Section 18, Clause 2, an initiated bill must either be enacted by the Legislature without change or it must be submitted, as a referendum question, to a vote of the people. *Wagner v. Sec'y of State*, 663 A.2d 564, 566 n.3 (Me. 1995); *Opinion of the Justices*, 673 A.2d at 697. Although, pursuant to the Maine Constitution, Article IV, Part 3, Section 18, Clause 2, the Legislature may submit a competing measure for consideration on the ballot, the initiated bill itself may not be withdrawn from the ballot or amended in any way, even if a constitutional infirmity in the initiated bill should be identified. *Opinion of the Justices*, 673 A.2d at 697.

[¶38] Like the initiated bill at issue in *Wagner*, Initiated Bill 4 may not be enacted, and its provisions may never become effective to create a live controversy with the immediate and serious impacts proper for consideration on judicial review. Short of a live controversy with immediate and serious impacts, creating the solemn occasion justifying our answering the propounded questions, we would be interfering with the political process and the people's right of franchise by offering an opinion on the

constitutionality of Initiated Bill 4 before the electorate has expressed its view.

[¶39] The legislative findings submitted with the questions propounded to us suggest that there is an immediate and serious need for action and for our advice for the Legislature to properly consider the fiscal year 2004-2005 budget and to properly determine whether to prepare and submit to the voters a competing measure. Based on these findings, our colleagues offer a non-binding opinion on the constitutionality of Initiated Bill 4 before the voters have had a chance to address it. After addressing the critical severability issue and offering a tentative opinion, they decline to indicate which provisions may remain effective and they conclude:

Absent a record of "a concrete, certain, or immediate legal problem" against which to assess each individual provision, our opinion regarding the provisions' effectiveness will be unduly speculative and hypothetical. *Wagner v. Sec'y of State*, 663 A.2d 564, 567 (Me. 1995). Because of the complex nature of Initiated Bill 4, it is impracticable to render an opinion in the abstract regarding the effectiveness of its constituent parts.

[¶40] This supports our conclusion that there is no solemn occasion and that we shall not answer the question. Our most recent *Opinion of the Justices* stated that "we will not answer questions that are 'tentative, hypothetical and abstract.'" *Opinion of the Justices*, 2002 ME 169, ¶ 6, 815 A.2d at 795 (quoting *Opinion of the Justices*, 330 A.2d 912, 915 (Me. 1975)). Separately, justices of this Court have indicated that the questions presented must be sufficiently precise for the justices to be able to determine "the exact nature of the inquiry." *Opinion of the Justices*, 155 Me. 125, 141, 152 A.2d 494, 501 (1959).

[¶41] The questions presented here require an analysis of intersecting laws, constitutional provisions, and facts. The complexity of the varying considerations renders it impossible for us to be confident of the law and other circumstances to such a degree as to "leave no room for reasonable doubt." *League of Women Voters v. Sec'y of State*, 683 A.2d 769, 771 (Me. 1996). It would be far preferable for the constitutionality of Initiated Bill 4 to be determined in a fully litigated case.

[¶42] Should Initiated Bill 4 be enacted by the people, the first impact of its provisions would be applicable to municipal valuations for the tax year beginning April 1, 2005. 36 M.R.S.A. § 502 (Supp. 2003). If Initiated Bill 4 were enacted in early November, there would be approximately five months between its adoption by the voters and its initial impact. That would allow time to address any constitutional concerns through judicial action in a properly litigated case and through legislative action by the next Legislature, convening in December 2004.

[¶43] It is clear that any assessment resulting from the initiated bill's provisions would have no direct impact on the fiscal year 2004-2005 State budget. Establishing valuations on April 1 of any year is but the first step in the assessment and collection of property taxes. Before taxes can actually be assessed, the mill rate must be set for each municipality based on budgets adopted by municipal, school, and county authorities. Any impact on state or local budgets as a result of the enactment of Initiated Bill 4 and the valuations for April 1, 2005, would not occur until the

2005-2006 State fiscal year, impacting a budget that is the responsibility of the next Legislature.

[¶44] The need for the Legislature to know if it should submit a competing measure to the voters is insufficient justification for us to answer the questions. Otherwise we would be required to answer any question submitted pertaining to an initiated bill. The material submitted by the Senate and the House does not suggest that the Legislature is in any way prevented from preparing and submitting a competing measure to the voters, if it believes such is justified, based on its own public policy and legal analysis. The decision to submit alternative legislation is uniquely assigned to the Legislature by Article IV, Part 3, Section 18, Clause 2 of the Maine Constitution, and should not turn on a premature opinion by justices of this Court as to the constitutionality of the initiated bill before it may become law.

[¶45] Because there is no current controversy of live gravity, involving a matter with immediate and serious impacts, and because we must be particularly cautious when the matter in question must be presented to the electorate, regardless of any advice we give, we determine that a solemn occasion does not exist and we respectfully decline to answer the questions propounded to us.

Dated: April 16, 2004

S/ Robert W. Clifford  
Robert W. Clifford  
Associate Justice

S/ Paul L. Rudman  
Paul L. Rudman  
Associate Justice

S/ Donald G. Alexander  
Donald G. Alexander  
Associate Justice

**READ and ORDERED PLACED ON FILE.**

Sent down for concurrence.

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## REPORTS OF COMMITTEES

### Senate

#### Divided Report

The Majority of the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS** on Bill "An Act To Promote Economic Growth by Retaining Engineers in Maine"

S.P. 334 L.D. 993

Reported that the same **Ought to Pass as Amended by Committee Amendment "B" (S-553).**

Signed:



Senators:

CATHCART of Penobscot  
ROTUNDO of Androscoggin

Representatives:

BRANNIGAN of Portland  
MAILHOT of Lewiston  
COWGER of Hallowell  
DUDLEY of Portland  
PINGREE of North Haven  
FAIRCLOTH of Bangor  
MILLS of Cornville  
O'BRIEN of Augusta

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

Signed:

Senator:

TURNER of Cumberland

Representatives:

ROSEN of Bucksport  
MILLETT of Waterford

Reports **READ**.

Senator **CATHCART** of Penobscot moved the Senate **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report.

At the request of Senator **TURNER** of Cumberland a Division was had. 17 Senators having voted in the affirmative and 16 Senators having voted in the negative, the motion by Senator **CATHCART** of Penobscot to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, **PREVAILED**.

**READ ONCE**.

Committee Amendment "B" (S-553) **READ** and **ADOPTED**.

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

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

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

Senator **TURNER:** Thank you, Madame President, ladies and gentlemen of the Senate. I would ask that you vote against the motion before us. There is at least one graduate engineer in this chamber, there may be more, but I can tell you with some certainty that engineers do not lack for opportunity, whether it is in Maine or elsewhere. If you are interested in employing more engineers in Maine you might try trying to improve the economy of Maine so people will create jobs for them. We currently graduate a small but capable number of engineers from the university system. The latest information available to us indicates that 70% of those graduates were employed in Maine, on basis of the most recent numbers. There isn't an issue here that I think

warrants our attention. I would urge you to vote against the pending motion. Thank you.

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

Senator **CATHCART:** Thank you, Madame President, men and women of the Senate. Just a few words on the importance of this bill. There have been numerous study commissions, including the Blue Ribbon Commission on Post-Secondary Educational Attainment and the Compact for Higher Education, which is a continuing privately funded group, and the recent taskforce appointed by the President and the Speaker. Many things that I have read make me believe that loan repayment programs really work to help keep young people living and working in their home state. We think that this would not only encourage young people who are bright and want to go into engineering to stay and go to one of our fine state universities or Maine Maritime that offers engineering programs but also, thanks to the work of the Business, Research and Economic Development Committee on this bill last year, this would allow Maine students who are Maine residents who have gone out-of-state to college to come back and have some partial repayment of their college loans. I think it is very important that we pass this and I would appreciate your support for the motion. Thank you, Madame President.

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

Senator **SHOREY:** Thank you very much, Madame President, men and women of the Senate. Based on what the good Senator from Cumberland, Senator Turner, had mentioned about the 70% of engineers staying here, my question is, why don't we do this for every graduate? Every occupation? Nurses, doctors, teachers. Why are we limiting it to something that is targeted at 70% already staying here? I'll be voting against this. I don't think this encompasses enough. Thank you.

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

Senator **TURNER:** Thank you, Madame President. I think you should try to answer a question before you vote on this. That is, are those graduates from the university system and the Maine Maritime Academy the most highly compensated graduates as they walk off the campus? Are they the best able to take care of their own financial requirements that they have incurred to get their education? I think you will answer that question with a resounding 'yes'. I would repeat, this legislation is not necessary. Thank you.

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

**ROLL CALL (#417)**

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

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

ABSENT: Senator: MITCHELL

17 Senators having voted in the affirmative and 17 Senators having voted in the negative, with 1 Senator being absent, **PASSAGE TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "B" (S-553), FAILED.**

(See action later today.)

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

**SENATE PAPERS**

Bill "An Act To Provide a Consistent Deadline for Filing Regulatory Agendas" (EMERGENCY) S.P. 812 L.D. 1963

Sponsored by President DAGGETT of Kennebec. Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

Committee on **STATE AND LOCAL GOVERNMENT** suggested and ordered printed.

Under suspension of the rules, **READ TWICE** and **PASSED TO BE ENGROSSED**, without reference to a Committee.

Sent down for 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, To Create the Commission To Study the Recruitment, Training and Retention of Physicians for Rural and Medically Underserved Areas of Maine

S.P. 204 L.D. 595  
(C "A" S-549)

Comes from the House, **FAILED FINAL PASSAGE.**

On motion by Senator **GAGNON** of Kennebec, Resolve and accompanying papers **INDEFINITELY POSTPONED.**

**Act**

An Act To Encourage Cost Savings by State Employees  
S.P. 618 L.D. 1686  
(C "A" S-409; H "A" H-765)

**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:

**REPORTS OF COMMITTEES**

**House**

**Divided Report**

The Majority of the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS** on Bill "An Act Requiring Long-range Budget Planning"

H.P. 1320 L.D. 1798

Reported that the same **Ought Not to Pass.**

Signed:

Senators:  
CATHCART of Penobscot  
ROTUNDO of Androscoggin  
TURNER of Cumberland

Representatives:  
BRANNIGAN of Portland  
MAILHOT of Lewiston  
COWGER of Hallowell  
DUDLEY of Portland  
FAIRCLOTH of Bangor  
PINGREE of North Haven  
MILLS of Cornville

The Minority of the same Committee on the same subject reported that the same **Ought To Pass.**

Signed:

Representatives:

ROSEN of Bucksport  
O'BRIEN of Augusta  
MILLETT of Waterford

Comes from the House with the Majority **OUGHT NOT TO PASS**  
Report **READ** and **ACCEPTED**.

Reports **READ**.

On motion by Senator **CATHCART** of Penobscot, the Majority  
**OUGHT NOT TO PASS** Report **ACCEPTED**, in concurrence.

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

**REPORTS OF COMMITTEES**

**House**

**Divided Report**

Nine members of the Committee on **TAXATION** on Bill "An Act To  
Modernize the State's Tax System"

H.P. 1020 L.D. 1394

Reported in Report "A" that the same **Ought Not to Pass**.

Signed:

Senators:

STANLEY of Penobscot  
NASS of York

Representatives:

LEMOINE of Old Orchard Beach  
COURTNEY of Sanford  
CLOUGH of Scarborough  
PERRY of Bangor  
SIMPSON of Auburn  
McCORMICK of West Gardiner  
TARDY of Newport

Two members of the same Committee on the same subject  
reported in Report "B" that the same **Ought to Pass as**  
**Amended by Committee Amendment "A" (H-745)**.

Signed:

Senator:

STRIMLING of Cumberland

Representative:

LERMAN of Augusta

One member of the same Committee on the same subject  
reported in Report "C" that the same **Ought to Pass as**  
**Amended by Committee Amendment "B" (H-746)**.

Signed:

Representative:

SUSLOVIC of Portland

Comes from the House with Report "A", **OUGHT NOT TO PASS**,  
**READ** and **ACCEPTED**.

Reports **READ**.

On motion by Senator **STANLEY** of Penobscot, Report "A",  
**OUGHT NOT TO PASS, ACCEPTED**, in concurrence.

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

**REPORTS OF COMMITTEES**

**House**

**Divided Report**

The Majority of the Committee on **TAXATION** on RESOLUTION,  
Proposing an Amendment to the Constitution of Maine To  
Change the Assessment of Lands Used for Long-term Ownership  
H.P. 695 L.D. 938

Reported that the same **Ought Not to Pass**.

Signed:

Senators:

STANLEY of Penobscot  
STRIMLING of Cumberland

Representatives:

LEMOINE of Old Orchard Beach  
McGOWAN of Pittsfield  
SUSLOVIC of Portland  
PERRY of Bangor  
LERMAN of Augusta

The Minority of the same Committee on the same subject  
reported that the same **Ought To Pass as Amended by**  
**Committee Amendment "A" (H-740)**.

Signed:

Senator:

NASS of York

Representatives:

McCORMICK of West Gardiner  
CLOUGH of Scarborough  
COURTNEY of Sanford  
TARDY of Newport

Comes from the House, Reports **READ** and the RESOLUTION  
**SUBSTITUTED** for the Reports. Subsequently, **PASSED TO BE**  
**ENGROSSED AS AMENDED BY HOUSE AMENDMENT "A"**  
**(H-955)**.

Reports **READ**.

On motion by Senator **STANLEY** of Penobscot, **TABLED** until Later in Today's Session, pending **ACCEPTANCE OF EITHER REPORT**.

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

**ORDERS**

**Joint Order**

On motion by Senator **CATHCART** of Penobscot, the following Joint Order:

S.P. 813

ORDERED, the House concurring, that Bill, "An Act to Establish the Department of Health and Human Services," H.P. 1414, L.D. 1913, and all its accompanying papers, be recalled from the Governor's desk to the Senate.

**READ** and **PASSED**.

Sent down for concurrence.

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All matters thus acted upon, with exception of those matters being held, were ordered sent down forthwith for concurrence.

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Senate at Ease.

Senate called to order by the President.

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Off Record Remarks

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**RECESSED** until the sound of the bell.

After Recess

Senate called to order by the President.

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

**COMMUNICATIONS**

The Following Communication: S.C. 607

**121<sup>ST</sup> LEGISLATURE  
COMMITTEE ON  
APPROPRIATIONS AND FINANCIAL AFFAIRS**

April 28, 2004

Honorable Beverly C. Daggett, President of the Senate  
Honorable Patrick Colwell, Speaker of the House  
121st Maine Legislature  
State House  
Augusta, Maine 04333

Dear President Daggett and Speaker Colwell:

Pursuant to Joint Rule 310, we are writing to notify you that the Joint Standing Committee on Appropriations and Financial Affairs has voted unanimously to report the following bills out "Ought Not to Pass":

- |           |  |
|-----------|--|
| L.D. 716  | An Act To Continue Necessary State Funding of Freestanding, Nonprofit Psychiatric Hospitals for Services Provided to Indigent Patients and for Other Purposes  |
| L.D. 1249 | An Act To Amend the Laws Governing the Quality Child Care Tax Credit   |
| L.D. 1647 | An Act To Authorize a General Fund Bond Issue in the Amount of \$3,000,000 To Build a Warehouse To Stimulate and Support Maine's Manufacturing, Transportation and Harbor Industries   |
| L.D. 1707 | An Act To Authorize a General Fund Bond Issue in the Amount of \$1,000,000 To Fund Downtown Revitalization To Preserve the Heritage of Municipalities  |
| L.D. 1776 | An Act To Authorize a General Fund Bond Issue in the Amount of \$150,000,000 To Finance the Acquisition of Land and Interest in Land for Conservation, Water Access, Outdoor Recreation, Wildlife and Fish Habitat and Farmland Preservation and To Access \$50,000,000 in Matching Contributions from Public and Private Sources  |
| L.D. 1876 | An Act To Authorize a General Fund Bond Issue in the Amount of \$16,600,000 To Construct and Upgrade Water Pollution Control Facilities, To Remediate Solid Waste Landfills, To Clean Up Uncontrolled Hazardous Substance Sites, To Provide Municipal Stormwater Management Assistance, To Investigate and Remediate Municipal Brownfields, To Construct and Upgrade Public Water Systems and To Remediate Lead Paint in Low-income Households |
| L.D. 1877 | An Act To Authorize a General Fund Bond Issue in the Amount of \$20,000,000 To Sustain and Improve Maine's Economy   |

- L.D. 1878 An Act To Authorize a General Fund Bond Issue in the Amount of \$65,000,000 To Finance the Acquisition of Land and Interest in Land for Conservation, Water Access, Outdoor Recreation, Wildlife and Fish Habitat and Farmland Preservation; To Fund Capital Improvements to State Parks and Other Historic Public Areas; and To Access \$30,250,000 in Matching Contributions from Public and Private Sources
- L.D. 1888 An Act To Authorize a General Fund Bond Issue in the Amount of \$1,200,000 for the Downeast Institute for Applied Marine Research and Education
- L.D. 1894 An Act To Authorize a General Fund Bond Issue in the Amount of \$2,000,000 for Disaster Relief and To Provide Further Relief Measures
- L.D. 1928 An Act To Authorize a General Fund Bond Issue in the Amount of \$4,822,368 To Provide Funds To Repair and Upgrade Maine Army National Guard Armories and Facilities and for the Challenger Learning Center of Maine

We have also notified the sponsors and cosponsors of each bill listed of the Committee's action.

Sincerely,

S/Sen. Mary R. Cathcart  
Senate Chair

S/Rep. Joseph C. Brannigan  
House Chair

**READ** and with accompanying papers **ORDERED PLACED ON FILE**.

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 Reduce the Cost of Local Government through Increased State Education Funding and Provide Property Tax Relief

S.P. 761 L.D. 1924  
(S "A" S-550 to C "A" S-545)

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:

#### RECALLED FROM GOVERNOR'S DESK

An Act To Establish the Department of Health and Human Services

H.P. 1414 L.D. 1913  
(C "A" H-890)

(In Senate, April 27, 2004, **PASSED TO BE ENACTED**, in concurrence.)

(**RECALLED** from the Governor's Desk, pursuant to Joint Order S.P. 813, in concurrence.)

On motion by Senator **CATHCART** of Penobscot, the Senate **RECONSIDERED** whereby the Bill was **PASSED TO BE ENACTED**, in concurrence.

On further motion by same Senator, **TABLED** until Later in Today's Session, pending **ENACTMENT**, in concurrence.

Senator **DAMON** of Hancock moved the Senate **RECONSIDER** whereby the following **FAILED PASSAGE TO BE ENGROSSED AS AMENDED**:

Bill "An Act To Promote Economic Growth by Retaining Engineers in Maine"

S.P. 334 L.D. 993

(In Senate, April 28, 2004, Reports **READ**. On motion by Senator **CATHCART** of Penobscot, Majority **OUGHT TO PASS AS AMENDED** Report **ACCEPTED**. **READ ONCE**. Committee Amendment "B" (S-553) **READ** and **ADOPTED**. Under suspension of the Rules, **READ A SECOND TIME**. **PASSAGE TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "B" (S-553), 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 (#418)

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

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

ABSENT: Senator: YOUNGBLOOD

18 Senators having voted in the affirmative and 16 Senators having voted in the negative, with 1 Senator being absent, the motion by Senator **DAMON** of Hancock to **RECONSIDER** whereby the Bill **FAILED PASSAGE TO BE ENGROSSED, PREVAILED.**

Subsequently, **PASSED TO BE ENGROSSED AS AMENDED.**

Sent down for concurrence.

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

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## 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 (4/27/04) Assigned matter:

HOUSE REPORT - from the Committee on **JUDICIARY**, pursuant to the Maine Revised Statutes, Title 1, section 94, on Bill "An Act To Correct Errors and Inconsistencies in the Laws of Maine" (EMERGENCY)

H.P. 1418 L.D. 1916

Report - **Ought to Pass as Amended by Committee Amendment "A" (H-907)**

Tabled - April 27, 2004, by Senator **TREAT** of Kennebec

Pending - **ACCEPTANCE OF REPORT**, in concurrence

(In House, April 16, 2004, Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-907) AS AMENDED BY HOUSE AMENDMENTS "A" (H-923); "B" (H-946); "C" (H-947); "D" (H-950); "E" (H-952) AND "F" (H-953)** thereto.)

(In Senate, April 27, 2004, Report **READ**.)

Report **ACCEPTED**, in concurrence.

**READ ONCE.**

Committee Amendment "A" (H-907) **READ.**

House Amendment "A" (H-923) to Committee Amendment "A" (H-907) **READ** and **ADOPTED**, in concurrence.

House Amendment "B" (H-946) to Committee Amendment "A" (H-907) **READ** and **ADOPTED**, in concurrence.

House Amendment "C" (H-947) to Committee Amendment "A" (H-907) **READ** and **ADOPTED**, in concurrence.

House Amendment "D" (H-950) to Committee Amendment "A" (H-907) **READ** and **ADOPTED**, in concurrence.

House Amendment "E" (H-952) to Committee Amendment "A" (H-907) **READ** and **ADOPTED**, in concurrence.

House Amendment "F" (H-953) to Committee Amendment "A" (H-907) **READ** and **ADOPTED**, in concurrence.

On motion by Senator **PENDLETON** of Cumberland, Senate Amendment "A" (S-552) to Committee Amendment "A" (H-907) **READ** and **ADOPTED.**

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

On further motion by same Senator, Senate Amendment "B" (S-555) to Committee Amendment "A" (H-907) **READ** and **ADOPTED.**

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

On further motion by same Senator, Senate Amendment "C" (S-559) to Committee Amendment "A" (H-907) **READ** and **ADOPTED.**

Committee Amendment "A" (H-907) as Amended by House Amendments "A" (H-923); "B" (H-946); "C" (H-947); "D" (H-950); "E" (H-952); "F" (H-953) AND Senate Amendments "A" (S-552); "B" (S-555); "C" (S-559) thereto, **ADOPTED**, in **NON-CONCURRENCE.**

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-907) AS AMENDED BY HOUSE AMENDMENTS "A" (H-923); "B" (H-946); "C" (H-947); "D" (H-950); "E" (H-952); "F" (H-953) AND SENATE AMENDMENTS "A" (S-552); "B" (S-555); "C" (S-559) thereto, in NON-CONCURRENCE.**

Ordered sent down forthwith for concurrence.

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The Chair laid before the Senate the following Tabled and Later (4/16/04) Assigned matter:

Bill "An Act To Make Supplemental Appropriations and Allocations for the Expenditures of State Government and To Change Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2004 and June 30, 2005" (EMERGENCY)

H.P. 1420 L.D. 1919  
(H "Q" H-932; H "T" H-935; H "V" H-937;  
S "A" S-518; S "P" S-543 to C "A" H-904)

Tabled - April 16, 2004, by Senator **MARTIN** of Aroostook

Pending - motion by Senator **BENNETT** of Oxford to **RECONSIDER** whereby the Bill **FAILED PASSAGE TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-904) AS AMENDED BY HOUSE AMENDMENTS "Q" (H-932); "T" (H-935); "V" (H-937) AND SENATE AMENDMENTS "A" (S-518); "P" (S-543)** thereto, in **NON-CONCURRENCE**

(In House, April 15, 2004, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-904) AS AMENDED BY HOUSE AMENDMENTS "Q" (H-932); "T" (H-935) AND "V" (H-937)** thereto.)

(In Senate, April 16, 2004, **READ ONCE**. Committee Amendment "A" (H-904) **READ**. House Amendment "Q" (H-932) to Committee Amendment "A" (H-904) **READ** and **ADOPTED**, in concurrence. House Amendment "T" (H-935) to Committee Amendment "A" (H-904) **READ** and **ADOPTED**, in concurrence. House Amendment "V" (H-937) to Committee Amendment "A" (H-904) **READ** and **ADOPTED**, in concurrence. On motion by Senator **YOUNGBLOOD** of Penobscot, Senate Amendment "A" (S-518) to Committee Amendment "A" (H-904) **READ** and **ADOPTED**. On motion by Senator **CATHCART** of Penobscot, Senate Amendment "P" (S-543) to Committee Amendment "A" (H-904) **READ** and **ADOPTED**. Committee Amendment "A" (H-904) as Amended by House Amendments "Q" (H-932); "T" (H-935); "V" (H-937) AND Senate Amendments "A" (S-518); "P" (S-543) thereto, **ADOPTED**, in **NON-CONCURRENCE**. Subsequently, **FAILED PASSAGE TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-904) AS AMENDED BY HOUSE AMENDMENTS "Q" (H-932); "T" (H-935); "V" (H-937) AND SENATE AMENDMENTS "A" (S-518); "P" (S-543)** thereto, in **NON-CONCURRENCE**.)

On motion by Senator **BENNETT** of Oxford, the Senate **RECONSIDERED** whereby the Bill **FAILED PASSAGE TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-904) AS AMENDED BY HOUSE AMENDMENTS "Q" (H-932); "T" (H-935); "V" (H-937) AND SENATE AMENDMENTS "A" (S-518); "P" (S-543)** thereto, in **NON-CONCURRENCE**.

Senator **CATHCART** of Penobscot moved the Senate **SUSPENDED THE RULES**.

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 (#419)

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

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

ABSENT: Senator: **YOUNGBLOOD**

18 Senators having voted in the affirmative and 16 Senators having voted in the negative, with 1 Senator being absent, and 18 being less than two-thirds of the entire elected Membership of the Senate, the motion by Senator **CATHCART** of Penobscot to **SUSPEND THE RULES, FAILED**.

Senator **WOODCOCK** of Franklin requested a Roll Call.

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

Senator **MARTIN:** Thank you, Madame President. Let me first thank those of you who supported me when I offered my amendment, I guess it was a week ago or so. I want to just relay to you, in part, some of the things that have transpired since that time. Some of you obviously read the paper and probably are aware of the 650 people or so that showed up in Fort Kent for the hearing that took place at the University of Maine at Fort Kent. Following that, I had a discussion with the Chancellor in terms of my concern, as I obviously expressed to you in this body. We had a discussion on whether or not the plan would be in effect before the legislature was to return this coming year. Obviously, that was my concern. Interwoven with that was the fact that the Governor has created a taskforce which has yet to be named but will be. It will report, as I recall, in the middle of January of 2005. At that point, I asked the Chancellor if he was prepared, knowing those factors, to inform the legislature regarding the final draft prior to implementation of whatever might come from the Board of Trustees. As a result of that, yesterday the Chancellor indicated to me that implementation, from his knowledge, if and when it takes place, will take a long time because of the long-term process. He stated he would report to the final draft and how it would be interwoven with the Governor's report to the legislature in January, based on the Governor's K-16 taskforce recommendations. That was the whole issue behind the amendment that I offered last week. I am satisfied with the commitment that the Chancellor and some members of the board have made to me to work with the legislature and the Governor on a coordinated effort to improve the quality of the educational system in Maine. I am not going to offer another amendment because I am satisfied that the goal that I wanted has been accomplished and I am pleased to work cooperatively with the Chancellor and the board. I will be voting for enactment of the budget.

On motion by Senator **WOODCOCK** of Franklin, 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 (#420)**

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

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

ABSENT: Senator: YOUNGBLOOD

18 Senators having voted in the affirmative and 16 Senators having voted in the negative, with 1 Senator being absent, was Bill was **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-904) AS AMENDED BY HOUSE AMENDMENTS "Q" (H-932); "T" (H-935); "V" (H-937) AND SENATE AMENDMENTS "A" (S-518); "P" (S-543) thereto, in NON-CONCURRENCE.**

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 (4/27/04) Assigned matter:

HOUSE REPORTS - from the Joint Select Committee on **REGIONALIZATION AND COMMUNITY COOPERATION** on Bill "An Act To Encourage Voluntary Efficiency in Maine's School Systems and Related Costs Savings"

H.P. 1422 L.D. 1921

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-888)** (12 members)

Minority - **Ought Not to Pass** (3 members)

Tabled - April 27, 2004, by Senator **DAMON** of Hancock

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

(In House April 16, 2004, the Minority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED**.)

(In Senate, April 27, 2004, Reports **READ**.)

On motion by Senator **DAMON** of Hancock, the Majority **OUGHT TO PASS AS AMENDED** Report **ACCEPTED**, in **NON-CONCURRENCE**.

**READ ONCE.**

Committee Amendment "A" (H-888) **READ**.

On motion by Senator **DAMON** of Hancock, Senate Amendment "C" (S-558) to Committee Amendment "A" (H-888) **READ**.

**THE PRESIDENT:** The Chair recognizes the Senator from Hancock, Senator Damon.

Senator **DAMON:** Thank you, Madame President, ladies and gentlemen of the Senate. This bill came out of the Committee on Regionalization and Community Cooperation. Initially when it came to us it was a bill that was very unpalatable to the members of the committee. Thus, the committee changed it. Apparently the committee didn't change it sufficiently enough to have the members of the other Body vote for its passage. This amendment changes it further still. There were some areas that were of considerable concern to members of the legislature. Those areas included the amount of money that was to come from the GPA to fund this initiative. In this amendment that I am offering today, that money has been stripped away but for two payments, one in the first year of \$1 million and one in the second year of \$2 million. There will be no further monies committed to this effort until such time as a report is given to the legislature. That report, which was originally scheduled to be reported in 2007, has been stepped up to be reported in 2005. At that time, the legislature will determine whether or not to continue funding this effort. This particular amendment also has resulted in the consulting schools are removed from the bill and some of the other requirements that were initially in the committee bill, such as requiring 300 students in a high school, have also been removed. It is the first step in what I see as an opportunity to control some spending and control of spending is an issue that we are hearing frequently. Here is an opportunity to do it, to get the best bang for our spending dollar, and to look at providing those efficiencies. I would urge the members of the Body to adopt Senate Amendment "C" (S-558). Thank you, Madame President.

On further motion by same Senator, Senate Amendment "C" (S-558) to Committee Amendment "A" (H-888) **ADOPTED**.

Committee Amendment "A" (H-888) as Amended by Senate Amendment "C" (S-558) thereto, **ADOPTED**, in **NON-CONCURRENCE**.

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

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 Doorkeepers secured the Chamber.

The Secretary opened the vote.



**ROLL CALL (#421)**

YEAS: Senators: BRENNAN, BROMLEY, BRYANT,  
CATHCART, DAMON, DOUGLASS, EDMONDS,  
GAGNON, HALL, LAFOUNTAIN, MARTIN,  
MITCHELL, PENDLETON, ROTUNDO,  
STRIMLING, TREAT

NAYS: Senators: BENNETT, BLAIS, CARPENTER,  
DAVIS, GILMAN, HATCH, KNEELAND, LEMONT,  
MAYO, NASS, SAVAGE, SAWYER, SHOREY,  
STANLEY, TURNER, WESTON, 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,  
**PASSAGE TO BE ENGROSSED AS AMENDED BY  
COMMITTEE AMENDMENT "A" (H-888) AS AMENDED BY  
SENATE AMENDMENT "C" (S-558) thereto, in NON-  
CONCURRENCE, FAILED.**

---

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

---

Senate at Ease.

Senate called to order by the President.

---

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 Measure**

An Act To Provide a Consistent Deadline for Filing Regulatory  
Agendas

S.P. 812 L.D. 1963

Comes from the House, **FAILED PASSAGE TO BE ENACTED.**

This being an Emergency Measure and having received the  
affirmative vote of 32 Members of the Senate, with 2 Senators  
having voted in the negative, and 32 being more than two-thirds  
of the entire elected Membership of the Senate, was **PASSED TO  
BE ENACTED, in NON-CONCURRENCE**, signed by the  
President, and sent down for concurrence.

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Off Record Remarks

---

**RECESSED** until the sound of the bell.

After Recess

Senate called to order by the President.

---

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

**COMMUNICATIONS**

The Following Communication: S.C. 606

**COMMITTEE TO STUDY NEW PAYMENT MODELS  
FOR THE LOGGING INDUSTRY**

April 28, 2004

The Honorable Beverly C. Daggett, Chair  
The Honorable Patrick Colwell, Vice-Chair  
Legislative Council  
121<sup>st</sup> Maine Legislature  
115 State House Station  
Augusta, Maine 04333

Dear Senator Daggett and Representative Colwell:

Pursuant to Joint Order, House Paper 724, the Committee to  
Study New Payment Models For The Logging Industry is pleased  
to submit its final report. Copies of the report have been placed  
on file with the Law and Legislative Reference Library.

Sincerely,

S/Senator Bruce Bryant, Chair

S/Representative Linda Rogers McKee, Chair

**READ** and with accompanying papers **ORDERED PLACED ON  
FILE.**

---

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

**COMMUNICATIONS**

The Following Communication: S.C. 608

**121<sup>ST</sup> LEGISLATURE  
COMMITTEE ON  
BUSINESS, RESEARCH AND ECONOMIC DEVELOPMENT**

April 16, 2004

The Honorable Beverly C. Daggett, President of the Senate  
The Honorable Patrick Colwell, Speaker of the House  
121st Maine Legislature  
Augusta, Maine 04333

Dear President Daggett and Speaker Colwell:

We are pleased to report that all business which was placed before the Joint Standing Committee on Business, Research and Economic Development during the Second Regular and Second Special Sessions of the 121st Legislature has been completed. The breakdown of bills and papers before our committee follows:

Total Number of Bills and Papers	41
Unanimous Reports	20
Ought to Pass	5
Ought to Pass as Amended	7
Ought Not to Pass	5
Referred to Another Committee	3
Divided Reports	14
Committee Bills & Papers	2
Pursuant to Statute	2
Gubernatorial Nominations	5

Respectfully submitted,

S/Lynn Bromley  
Senate Chair

S/Nancy B. Sullivan  
House Chair

**READ and ORDERED PLACED ON FILE.**

The Following Communication: S.C. 609

**121<sup>ST</sup> LEGISLATURE  
COMMITTEE ON  
HEALTH AND HUMAN SERVICES**

April 16, 2004

The Honorable Beverly C. Daggett, President of the Senate  
The Honorable Patrick Colwell, Speaker of the House  
121st Maine Legislature  
Augusta, Maine 04333

Dear President Daggett and Speaker Colwell:

We are pleased to report that all business which was placed before the Joint Standing Committee on Health and Human Services during the Second Regular and Second Special Sessions of the 121st Legislature has been completed. The breakdown of bills and papers before our committee follows:

Total Number of Bills and Papers	49
Unanimous Reports	37
Ought to Pass	3
Ought to Pass as Amended	21
Ought Not to Pass	10
Referred to Another Committee	3

Divided Reports	9
Received by Clerk Pursuant to Joint Rule 309	1
Committee Bills & Papers Pursuant to Resolve	1
Gubernatorial Nominations	1

Respectfully submitted,

S/Michael Brennan  
Senate Chair

S/Thomas J. Kane  
House Chair

**READ and ORDERED PLACED ON FILE.**

The Following Communication: S.C. 610

**121<sup>ST</sup> LEGISLATURE  
COMMITTEE ON  
INLAND FISHERIES AND WILDLIFE**

April 16, 2004

The Honorable Beverly C. Daggett, President of the Senate  
The Honorable Patrick Colwell, Speaker of the House  
121st Maine Legislature  
Augusta, Maine 04333

Dear President Daggett and Speaker Colwell:

We are pleased to report that all business which was placed before the Joint Standing Committee on Inland Fisheries and Wildlife during the Second Regular and Second Special Sessions of the 121st Legislature has been completed. The breakdown of bills and papers before our committee follows:

Total Number of Bills and Papers	29
Unanimous Reports	20
Ought to Pass	1
Ought to Pass as Amended	9
Ought Not to Pass	9
Referred to Another Committee	1
Divided Reports	2
Gubernatorial Nominations	7

Respectfully submitted,

S/Bruce S. Bryant  
Senate Chair

S/Matthew Dunlap  
House Chair

**READ and ORDERED PLACED ON FILE.**

The Following Communication: S.C. 611

**121<sup>ST</sup> LEGISLATURE  
COMMITTEE ON  
INSURANCE AND FINANCIAL SERVICES**

April 16, 2004

The Honorable Beverly C. Daggett, President of the Senate  
The Honorable Patrick Colwell, Speaker of the House  
121st Maine Legislature  
Augusta, Maine 04333

Dear President Daggett and Speaker Colwell:

We are pleased to report that all business which was placed before the Joint Standing Committee on Insurance & Financial Services during the Second Regular and Second Special Sessions of the 121st Legislature has been completed. The breakdown of bills and papers before our committee follows:

Total Number of Bills and Papers	32
Unanimous Reports	18
Ought to Pass	1
Ought to Pass as Amended	9
Ought Not to Pass	7
Referred to Another Committee	1
Divided Reports	8
Gubernatorial Nominations	6

Respectfully submitted,

S/Lloyd P. LaFountain III  
Senate Chair

S/Christopher P. O'Neil  
House Chair

**READ and ORDERED PLACED ON FILE.**

The Following Communication: S.C. 612

**121<sup>ST</sup> LEGISLATURE  
COMMITTEE ON JUDICIARY**

April 16, 2004

The Honorable Beverly C. Daggett, President of the Senate  
The Honorable Patrick Colwell, Speaker of the House  
121st Maine Legislature  
Augusta, Maine 04333

Dear President Daggett and Speaker Colwell:

We are pleased to report that all business which was placed before the Joint Standing Committee on Judiciary during the Second Regular and Second Special Sessions of the 121st Legislature has been completed. The breakdown of bills and papers before our committee follows:

Total Number of Bills and Papers	35
Unanimous Reports	26
Ought to Pass	2
Ought to Pass as Amended	10
Ought Not to Pass	14

Divided Reports 5

Gubernatorial Nominations 4

Respectfully submitted,

S/Peggy A. Pendleton  
Senate Chair

S/William S. Norbert  
House Chair

**READ and ORDERED PLACED ON FILE.**

The Following Communication: S.C. 613

**121<sup>ST</sup> LEGISLATURE  
COMMITTEE ON LABOR**

April 16, 2004

The Honorable Beverly C. Daggett, President of the Senate  
The Honorable Patrick Colwell, Speaker of the House  
121st Maine Legislature  
Augusta, Maine 04333

Dear President Daggett and Speaker Colwell:

We are pleased to report that all business which was placed before the Joint Standing Committee on Labor during the Second Regular and Second Special Sessions of the 121st Legislature has been completed. The breakdown of bills and papers before our committee follows:

Total Number of Bills and Papers	31
Unanimous Reports	18
Ought to Pass	0
Ought to Pass as Amended	10
Ought Not to Pass	8

Divided Reports 10

Gubernatorial Nominations 3

Respectfully submitted,

S/Betheda G. Edmonds  
Senate Chair

S/William J. Smith  
House Chair

**READ and ORDERED PLACED ON FILE.**

The Following Communication: S.C. 614

**121<sup>ST</sup> LEGISLATURE  
COMMITTEE ON  
LEGAL AND VETERANS' AFFAIRS**

April 16, 2004

The Honorable Beverly C. Daggett, President of the Senate  
The Honorable Patrick Colwell, Speaker of the House  
121st Maine Legislature  
Augusta, Maine 04333

Dear President Daggett and Speaker Colwell:

We are pleased to report that all business which was placed before the Joint Standing Committee on Legal and Veterans Affairs during the Second Regular and Second Special Sessions of the 121st Legislature has been completed. The breakdown of bills and papers before our committee follows:

Total Number of Bills and Papers	29
Unanimous Reports	12
Ought to Pass	0
Ought to Pass as Amended	7
Ought Not to Pass	5
Divided Reports	13
Gubernatorial Nominations	4

Respectfully submitted,

S/Kenneth T. Gagnon                      S/Joseph E. Clark  
Senate Chair                              House Chair

**READ and ORDERED PLACED ON FILE.**

The Following Communication:      S.C. 615

**121<sup>ST</sup> LEGISLATURE  
COMMITTEE ON MARINE RESOURCES**

April 16, 2004

The Honorable Beverly C. Daggett, President of the Senate  
The Honorable Patrick Colwell, Speaker of the House  
121st Maine Legislature  
Augusta, Maine 04333

Dear President Daggett and Speaker Colwell:

We are pleased to report that all business which was placed before the Joint Standing Committee on Marine Resources during the Second Regular and Second Special Sessions of the 121st Legislature has been completed. The breakdown of bills and papers before our committee follows:

Total Number of Bills and Papers	16
Unanimous Reports	7
Ought to Pass	1
Ought to Pass as Amended	3

Ought Not to Pass                      3

Divided Reports                              6

Committee Bills & Papers                      1

Pursuant to Joint Order                      1

Gubernatorial Nominations                      2

Respectfully submitted,

S/Dennis S. Damon                      S/Thomas D. Bull  
Senate Chair                              House Chair

**READ and ORDERED PLACED ON FILE.**

The Following Communication:      S.C. 616

**121<sup>ST</sup> LEGISLATURE  
COMMITTEE ON NATURAL RESOURCES**

April 16, 2004

The Honorable Beverly C. Daggett, President of the Senate  
The Honorable Patrick Colwell, Speaker of the House  
121st Maine Legislature  
Augusta, Maine 04333

Dear President Daggett and Speaker Colwell:

We are pleased to report that all business which was placed before the Joint Standing Committee on Natural Resources during the Second Regular and Second Special Sessions of the 121st Legislature has been completed. The breakdown of bills and papers before our committee follows:

Total Number of Bills and Papers	30
Unanimous Reports	16
Ought to Pass	1
Ought to Pass as Amended	12
Ought Not to Pass	1
Referred to Another Committee	2
Divided Reports	7
Gubernatorial Nominations	7

Respectfully submitted,

S/John L. Martin                      S/Theodore Koffman  
Senate Chair                              House Chair

**READ and ORDERED PLACED ON FILE.**

The Following Communication:      S.C. 617

**121<sup>ST</sup> LEGISLATURE  
COMMITTEE ON  
STATE AND LOCAL GOVERNMENT**

April 16, 2004

The Honorable Beverly C. Daggett, President of the Senate  
The Honorable Patrick Colwell, Speaker of the House  
121st Maine Legislature  
Augusta, Maine 04333

Dear President Daggett and Speaker Colwell:

We are pleased to report that all business which was placed before the Joint Standing Committee on State and Local Government during the Second Regular and Second Special Sessions of the 121st Legislature has been completed. The breakdown of bills and papers before our committee follows:

Total Number of Bills and Papers	28
Unanimous Reports	17
Ought to Pass	3
Ought to Pass as Amended	6
Ought Not to Pass	7
Referred to Another Committee	1
Divided Reports	9
Committee Bills & Papers	2
Pursuant to Joint Order	2

Respectfully submitted,

S/Margaret Rotundo  
Senate Chair

S/Janet L. McLaughlin  
House Chair

**READ and ORDERED PLACED ON FILE.**

---

The Following Communication: S.C. 618

**121<sup>ST</sup> LEGISLATURE  
COMMITTEE ON TRANSPORTATION**

April 16, 2004

The Honorable Beverly C. Daggett, President of the Senate  
The Honorable Patrick Colwell, Speaker of the House  
121st Maine Legislature  
Augusta, Maine 04333

Dear President Daggett and Speaker Colwell:

We are pleased to report that all business which was placed before the Joint Standing Committee on Transportation during the Second Regular and Second Special Sessions of the 121st Legislature has been completed. The breakdown of bills and papers before our committee follows:

Total Number of Bills and Papers	27
Unanimous Reports	26
Ought to Pass	3
Ought to Pass as Amended	10
Ought Not to Pass	10
Referred to Another Committee	3
Divided Reports	0
Gubernatorial Nominations	1

Respectfully submitted,

S/Pamela H. Hatch  
Senate Chair

S/Ronald E. Usher  
House Chair

**READ and ORDERED PLACED ON FILE.**

---

The Following Communication: S.C. 619

**121<sup>ST</sup> LEGISLATURE  
COMMITTEE ON UTILITIES AND ENERGY**

April 16, 2004

The Honorable Beverly C. Daggett, President of the Senate  
The Honorable Patrick Colwell, Speaker of the House  
121st Maine Legislature  
Augusta, Maine 04333

Dear President Daggett and Speaker Colwell:

We are pleased to report that all business which was placed before the Joint Standing Committee on Utilities and Energy during the Second Regular and Second Special Sessions of the 121st Legislature has been completed. The breakdown of bills and papers before our committee follows:

Total Number of Bills and Papers	27
Unanimous Reports	13
Ought to Pass	1
Ought to Pass as Amended	7
Ought Not to Pass	5
Divided Reports	12
Committee Bills & Papers	2
Pursuant to Public Law	2

Respectfully submitted,

S/Christopher G. L. Hall  
Senate Chair

S/Lawrence Bliss  
House Chair

**READ and ORDERED PLACED ON FILE.**

---

The Following Communication: S.C. 620

**JOINT SELECT COMMITTEE ON HEALTH CARE REFORM**

April 15, 2004

The Honorable Beverly C. Daggett, President of the Senate  
The Honorable Patrick Colwell, Speaker of the House  
121st Maine Legislature  
Augusta, Maine 04333

Dear President Daggett and Speaker Colwell:

We are pleased to report that all business which was placed before the Joint Select Committee on Health Care Reform during the Second Regular and Second Special Sessions of the 121st Legislature has been completed. The breakdown of bills and papers before our committee follows:

Total Number of Bills and Papers	1
Received by the Clerk	1
Pursuant to Joint Rule 309	

Respectfully submitted,

S/Michael F. Brennan Senate Chair	S/Christopher P. O'Neil House Chair
--------------------------------------	--

**READ and ORDERED PLACED ON FILE.**

The Following Communication: S.C. 621

**JOINT SELECT COMMITTEE ON REGIONALIZATION  
AND COMMUNITY COOPERATION**

April 14, 2004

The Honorable Beverly C. Daggett, President of the Senate  
The Honorable Patrick Colwell, Speaker of the House  
121st Maine Legislature  
Augusta, Maine 04333

Dear President Daggett and Speaker Colwell:

We are pleased to report that all business which was placed before the Joint Select Committee on Regionalization and Community Cooperation during the Second Regular and Second Special Sessions of the 121st Legislature has been completed. The breakdown of bills and papers before our committee follows:

Total Number of Bills and Papers	3
Unanimous Reports	1
Ought to Pass	0
Ought to Pass as Amended	0
Ought Not to Pass	1
Divided Reports	2

Respectfully submitted,

S/Dennis S. Damon  
Senate Chair

S/Janet L. McLaughlin  
House Chair

**READ and ORDERED PLACED ON FILE.**

The Following Communication: S.C. 622

**121st LEGISLATURE  
COMMITTEE ON  
EDUCATION AND CULTURAL AFFAIRS**

April 16, 2004

The Honorable Beverly C. Daggett, President of the Senate  
The Honorable Patrick Colwell, Speaker of the House  
121st Maine Legislature  
Augusta, Maine 04333

Dear President Daggett and Speaker Colwell:

We are pleased to report that all business which was placed before the Joint Standing Committee on Education and Cultural Affairs during the Second Regular and Second Special Sessions of the 121st Legislature has been completed. The breakdown of bills and papers before our committee follows:

Total Number of Bills and Papers	40
Unanimous Reports	21
Ought to Pass	2
Ought to Pass as Amended	8
Ought to Pass in New Draft	1
Ought Not to Pass	9
Referred to Another Committee	1
Divided Reports	4
Committee Bills & Papers	1
Pursuant to Joint Order	1
Gubernatorial Nominations	14

Second named committee on one jointly referred bill.

Respectfully submitted,

S/Neria R. Douglass  
Senate Chair

S/Glenn A. Cummings  
House Chair

**READ and ORDERED PLACED ON FILE.**

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

**COMMUNICATIONS**

The Following Communication: S.C. 623

**121<sup>ST</sup> LEGISLATURE  
COMMITTEE ON  
CRIMINAL JUSTICE AND PUBLIC SAFETY**

April 14, 2004

The Honorable Beverly C. Daggett, President of the Senate  
The Honorable Patrick Colwell, Speaker of the House  
121st Maine Legislature  
Augusta, Maine 04333

Dear President Daggett and Speaker Colwell:

We are pleased to report that all business which was placed before the Joint Standing Committee on Criminal Justice and Public Safety during the Second Regular and Second Special Sessions of the 121st Legislature has been completed. The breakdown of bills and papers before our committee follows:

Total Number of Bills and Papers	26
Unanimous Reports	19
Ought to Pass	1
Ought to Pass as Amended	11
Ought Not to Pass	6
Referred to Another Committee	1
Divided Reports	5
Received by the Secretary Pursuant to Joint Rule 309	1
Gubernatorial Nominations	1

Respectfully submitted,

S/Ethan Strimling  
Senate Chair

S/Patricia A. Blanchette  
House Chair

**READ and ORDERED PLACED ON FILE.**

The Following Communication: S.C. 624

**121<sup>ST</sup> LEGISLATURE  
COMMITTEE ON TAXATION**

April 28, 2004

The Honorable Beverly C. Daggett, President of the Senate  
The Honorable Patrick Colwell, Speaker of the House  
121st Maine Legislature  
Augusta, Maine 04333

Dear President Daggett and Speaker Colwell:

We are pleased to report that all business which was placed before the Joint Standing Committee on Taxation during the Second Regular and Second Special Sessions of the 121st Legislature has been completed. The breakdown of bills and papers before our committee follows:

Total Number of Bills and Papers	39
Unanimous Reports	21
Ought to Pass	2
Ought to Pass as Amended	14
Ought Not to Pass	5

Divided Reports 16

Received by the Clerk & Secretary  
Pursuant to Joint Rule 309 2

Respectfully submitted,

S/Stephen S. Stanley  
Senate Chair

S/David G. Lemoine  
House Chair

**READ and ORDERED PLACED ON FILE.**

---

**ORDERS**

**Joint Orders**

Expressions of Legislative Sentiment recognizing:

Robert M. York, of Orr's Island, Harspswell, upon the honored occasion of his retirement after 47 years as Official Maine State Historian, the fifth and longest-serving scholar to fill this high distinction since its inception in 1907. A native of Wilton, Maine, he was a proud 1937 graduate of Bates College, Lewiston, and earned his Masters and PhD. degrees from Clark University. He was a United States Navy veteran of World War II, serving on the USS Morrison. He survived the sinking of that ship off Okinawa and concluded his war service with the Office of Naval History, Washington, D. C. In 1946, he joined the faculty of the University of Maine, Orono, developing the first Maine history curriculum for the University flagship campus. Appointed Maine State Historian by Governor Edmund Muskie in 1956, he helped create the Maine State Archives and the Maine Historic Preservation Commission, as well as a number of local historical societies. He retired as Professor Emeritus of History and Dean of Graduate Studies at the University of Southern Maine in 1984, and taught his final history class in 1997, capping 51 years of teaching about the intricate, illuminating and ever-unfolding history of the Pine Tree State. We salute Dr. York's dedication, diligence and delight in the education of 3 generations of Maine students across half a century, and his enrichment of and enthusiasm for Maine history, made broader and deeper by his contributions to future generations. In his career and accomplishments he was well personified the motto of his beloved State of Maine: "Dirigo" - "I guide";

SLS 692

Sponsored by Senator MAYO of Sagadahoc.

Cosponsored by Senators: TURNER of Cumberland, EDMONDS of Cumberland, President DAGGETT of Kennebec, WOODCOCK of Franklin, Representatives: ADAMS of Portland, PERCY of Phippsburg, Speaker COLWELL of Gardiner.

**READ.**

**THE PRESIDENT:** The Chair recognizes the Senator from Sagadahoc, Senator Mayo.

Senator **MAYO:** Thank you, Madame President, ladies and gentlemen of the Senate. Even at this late hour I feel it necessary to say at least a couple of words about Dr. Robert M. York. Most people who attended either the University of Maine or the University of Southern Maine had a course from Bob York. I was privileged to have a course from him, to be a grader of papers for his U.S. History course, and to assist him with numerous other chores, both there and at U.S.M. Bob is not doing well at the current time. Thanks to the good Senator from Cumberland, Senator Turner, who brought this item to our attention. We have doctored it up considerably in the last 24 hours. It gives me, and those of us who co-sponsored this particular document, a warm feeling to be able to do something to honor somebody who has given so much of his life to the State of Maine. Thank you, Madame President.

**PASSED.**

Sent down for concurrence.

---

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

## REPORTS OF COMMITTEES

### Senate

#### Divided Report

The Majority of the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS** on Bill "An Act To Authorize Department of Transportation Bond Issues in the Amount of \$18,250,000 To Match Available Federal Funds for Improvements to and Development of Highways and Bridges; Airports; Ferry Vessels, Port Facilities and Marine Infrastructure; Rail Corridors and Structures; Intermodal Facilities; and Trail and Pedestrian Facilities"

S.P. 723 L.D. 1875

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-560).**

Signed:

Senators:

CATHCART of Penobscot  
ROTUNDO of Androscoggin

Representatives:

BRANNIGAN of Portland  
MAILHOT of Lewiston  
COWGER of Hallowell  
DUDLEY of Portland  
PINGREE of North Haven  
FAIRCLOTH of Bangor

The Minority of the same Committee on the same subject reported that the same **Ought To Pass as Amended by Committee Amendment "B" (S-561).**

Signed:

Senator:

TURNER of Cumberland

Representatives:

ROSEN of Bucksport  
MILLS of Cornville  
O'BRIEN of Augusta  
MILLETT of Waterford

Reports **READ.**

Senator **CATHCART** of Penobscot moved the Senate **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-560)** Report.

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

Senator **CATHCART:** Thank you, Madame President, men and women of the Senate. Because the title of this bill is rather deceptive, I wanted to let you know that this is the bond bill, L.D. 1875, that the Appropriations Committee members chose to serve as the vehicle for four separate bonds that would appear as four bonds on the ballot in November. The title will be corrected when we get around to that phase of adopting this Committee Amendment. We feel it is a very solid bond package. The total for this year would be under \$80 million. It's very close to what was recommended in L.D.s submitted by the Chief Executive. The Appropriations Committee has worked very hard to try to reach agreement. Unfortunately, we did not reach agreement but we still hope that there will be further negotiations and that we will have a bond package for the people to vote on come November. I would really appreciate your support for this. Thank you, Madame President.

Same Senator requested a Roll Call.

On motion by Senator **WOODCOCK** of Franklin, **TABLED** until Later in Today's Session, pending the motion by Senator **CATHCART** of Penobscot to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-560)** Report. (Roll Call Requested)

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

## PAPERS FROM THE HOUSE

### Non-Concurrent Matter

Joint Order To Require a Special Election on the Initiated Bill Pertaining to Tax Reform

S.P. 803



In Senate, April 16, 2004, on motion by Senator **GAGNON** of Kennebec, **READ** and **PASSED**.

Comes from the House, **READ** and **FAILED PASSAGE**.

On motion by Senator **HALL** of Lincoln, **TABLED** until Later in Today's Session, pending **FURTHER CONSIDERATION**.

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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 Economic Growth by Retaining Engineers in Maine

S.P. 334 L.D. 993  
(C "B" S-553)

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

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

#### PAPERS FROM THE HOUSE

##### House Paper

Bill "An Act To Protect Forest Products, Loggers and Haulers"  
H.P. 1471 L.D. 1964

Committee on **LABOR** suggested and ordered printed.

Comes from the House, under suspension of the Rules, **READ TWICE** and **PASSED TO BE ENGROSSED**, without reference to a Committee.

Under suspension of the Rules, **READ TWICE**.

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

Senator **BLAIS:** Thank you, Madame President. Considering that this bill is about to be engrossed without having been before the Labor Committee, I would pose a question through the Chair please?

**THE PRESIDENT:** The Senator may pose his question.

Senator **BLAIS:** Thank you. I was hoping that perhaps one of the sponsors of the legislation could help the Senate to understand the purpose of this particular piece of legislation? As

I understand it, it's designed to refine the loggers and haulers legislation that we've seen here previously. We had three companies that were going to be affected by this legislation. I'd like know what the affect of this piece of legislation would be?

**THE PRESIDENT:** The Senator from Kennebec, Senator Blais poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Aroostook, Senator Martin.

Senator **MARTIN:** Thank you, Madame President. To respond to the question of the good Senator from Kennebec, Senator Blais, the legislation would now apply to one.

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

Senator **BLAIS:** Thank you, Madame President. May I pose a question through the Chair?

**THE PRESIDENT:** The Senator may pose his question.

Senator **BLAIS:** Would one of the sponsors be kind enough to tell us what one company we're talking about? Thank you.

**THE PRESIDENT:** The Senator from Kennebec, Senator Blais poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Aroostook, Senator Martin.

Senator **MARTIN:** Thank you, Madame President. The legislation would apply to any one company that would have more than 400,000 acres in a labor zone.

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 (#422)

YEAS: Senators: BENNETT, BLAIS, BRENNAN, BROMLEY, CATHCART, DAMON, DAVIS, DOUGLASS, EDMONDS, GAGNON, HALL, HATCH, KNEELAND, LAFOUNTAIN, LEMONT, MAYO, MITCHELL, PENDLETON, ROTUNDO, SAVAGE, STANLEY, STRIMLING, TREAT, WOODCOCK, THE PRESIDENT - BEVERLY C. DAGGETT

NAYS: Senators: BRYANT, CARPENTER, GILMAN, MARTIN, NASS, SAWYER, SHOREY, TURNER, WESTON

ABSENT: Senator: YOUNGBLOOD

25 Senators having voted in the affirmative and 9 Senators having voted in the negative, with 1 Senator being absent, the Bill was **PASSED TO BE ENGROSSED**, without reference to a Committee, in concurrence.

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

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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 Clarify Legislative Pay

S.P. 806 L.D. 1961  
(S "D" S-544)

**THE PRESIDENT:** The Chair recognizes the Senator from Piscataquis, Senator Davis.

Senator **DAVIS:** Thank you very much, Madame President. I don't want to extend this matter a great deal, but I would like to say a few things. This issue certainly has divided us here in this Body. There is no question about that. It is my opinion that this issue is a great issue. It's far greater than the 10-second sound bites that we have been hearing and are so easy to put forward, such as there is nothing like a bunch of greedy Republicans after money or I can't believe the Republicans would try to get more money when the poor are being cut from the budget. It's so easy to frame in this manner. In my opinion, it is so easy to avoid the real issue. In my opinion, the issue that has been put forward in regards to the money is probably a little more than a push-poller's dream and the material that it is made of.

I would say to you tonight that there is nothing easy about freedom. Nothing easy at all. Quite often there is nothing easy about the truth about different issues and different matters. The truth of this matter, in my opinion, is that the constitution is full of checks and balances. The power of our government is sharply divided, the Executive is separated from the legislative, the Judiciary is separate, and certainly the legislative is separate from each other by the two Bodies. All of this was done so that the power of the government would not be concentrated in the hands of a few and so that certain things involving the minority would be protected. Our constitution is clear in my opinion and in the opinion of our Attorney General that all matters regarding pay must be done by an act, not a joint order. As you all know, that wasn't the case. I said, the Attorney General made that clear in his opinion. I've been told by numerous attorneys that the Attorney General is correct. I know a lot of them and since this came about I have sought their opinion. They are people that certainly have sharper legal minds than mine. In fact, I've been told that all it would take is a mere filing in small claims court and the Plaintiff would most assuredly be awarded the money. You

all know that we have pledged not to take any money. I don't believe we are going to.

I feel bad that we couldn't have a compromise on this, that something couldn't have been worked out. I now believe that this won't go away. If we think we're going to pass a bill that affects this amount of money for 186 people who can simply go to small claims court than we are fooling ourselves. It's ironic that it has all come from the budget. Very ironic to me. I'm sorry that we are at this point. I know that it won't go away and I know we're going to be reading about it again.

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

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

Senator **TREAT:** Thank you, Madame President, men and women of the Senate. I'm too am sorry that we could not have had an agreement on this because, in fact, this legislature was presented a bill way back when, I believe it was on my birthday, January 30<sup>th</sup>. That piece of legislation, to address our legislative salaries, was not enacted. It was not enacted because there were no votes from my colleagues across the aisles. This legislation before us is also a statute. It is a statute that will correct what is a lack of clarity in the constitution and the rules that affect the legislature. I don't think that it was totally clear. In fact, what we are addressing right now is an opinion of the Attorney General's. It has not gone to court and been adjudicated. It is an opinion of the Attorney General. This legislation that we are voting on follows that opinion and follows his recommendations as to how we could correct the law that we are abiding by right now. I think it is a very appropriate thing. We would not be in this position right now if the legislature, as a whole, hadn't rejected the statutory language that was proposed some months ago.

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

### ROLL CALL (#423)

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

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

**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.

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

**PAPERS FROM THE HOUSE**

**Non-Concurrent Matter**

Bill "An Act To Make Supplemental Appropriations and Allocations for the Expenditures of State Government and To Change Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2004 and June 30, 2005" (EMERGENCY)

H.P. 1420 L.D. 1919  
(H "Q" H-932; H "T" H-935; H "V" H-937;  
S "A" S-518; S "P" S-543 to C "A" H-904)

In Senate, April 28, 2004, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-904) AS AMENDED BY HOUSE AMENDMENTS "Q" (H-932); "T" (H-935); "V" (H-937) AND SENATE AMENDMENTS "A" (S-518); "P" (S-543) thereto, in NON-CONCURRENCE.**

Comes from the House, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-904) AS AMENDED BY HOUSE AMENDMENTS "Q" (H-932); "T" (H-935); "V" (H-937); "Z" (H-958); "AA" (H-964); "BB" (H-965) AND SENATE AMENDMENTS "A" (S-518); "P" (S-543) thereto, in NON-CONCURRENCE.**

Senator **CATHCART** of Penobscot moved the Senate **RECEDE** and **CONCUR**.

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 (#424)**

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

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

ABSENT: Senator: YOUNGBLOOD

18 Senators having voted in the affirmative and 16 Senators having voted in the negative, with 1 Senator being absent, the motion by Senator **CATHCART** of Penobscot to **RECEDE** and **CONCUR**, **PREVAILED**.

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

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Senate at Ease.

Senate called to order by the President.

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

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On motion by Senator **TREAT** of Kennebec, **ADJOURNED**, to Thursday, April 29, 2004, at 10:00 in the morning.