

MAINE STATE LEGISLATURE

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One Hundred and Twenty-Second Legislature

State of Maine

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First Special Session
April 4, 2005 to June 17, 2005

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

In Senate Chamber
Thursday
June 9, 2005

Senate called to order by President Beth Edmonds of
Cumberland County.

Prayer by Senator Chandler E. Woodcock of Franklin County.

SENATOR WOODCOCK: Good morning. It seems, I think, that with the passing of the years each of us begins to more fully appreciate the fragility of our existence and the true nature of our many blessings. I would offer to you this morning that it is a distinct honor to serve with each of you. Our politics may, at times, differ; our caring and concern for each other must not. Let us pray.

Lord, amidst the turmoil of life, we pause, remembering the You, alone, answer our prayers. For all that is ours, we give thanks, knowing that You will always be near. It is among the righted wrongs and wronged rights that we sense Your presence this morning. We ask forgiveness for our wanderings. Too often we glance around this chamber and notice political figures when in reality we should see children of God, for our frailty rampant, our shortsightedness common, our humanness universal, and our love expected. Bless each Senator gathered here today. Lift the burdens of live's journey. We humbly pray, Amen.

Reading of the Journal of Wednesday, June 8, 2005.

Off Record Remarks

Senator **SAVAGE** of Knox requested and received leave of the Senate that all members and staff be allowed to remove their jackets for the remainder of the Session.

Off Record Remarks

PAPERS FROM THE HOUSE

Non-Concurrent Matter

An Act To Require That the Department of Health and Human Services Include a Bureau of Elder Services
H.P. 262 L.D. 349

In House, May 11, 2005, **PASSED TO BE ENACTED.**

In Senate, June 7, 2005, on motion by Senator **MAYO** of Sagadahoc, Bill and accompanying papers **INDEFINITELY POSTPONED**, in **NON-CONCURRENCE.**

Comes from the House, that Body **INSISTED** and **ASKED FOR A COMMITTEE OF CONFERENCE.**

On motion by Senator **MAYO** of Sagadahoc, the Senate **ADHERED.**

REPORTS OF COMMITTEES

House

Divided Report

The Majority of the Committee on **HEALTH AND HUMAN SERVICES** on Resolve, Regarding Legislative Review of Chapter 101: Establishment of the Capital Investment Fund, a Major Substantive Rule of the Governor's Office of Health Policy and Finance (EMERGENCY)

H.P. 36 L.D. 33

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-636).**

Signed:

Senators:

MAYO of Sagadahoc
MARTIN of Aroostook

Representatives:

PINGREE of North Haven
WALCOTT of Lewiston
GROSE of Woolwich
WEBSTER of Freeport
MILLER of Somerville
BURNS of Berwick

The Minority of the same Committee on the same subject reported that the same **Ought To Pass as Amended by Committee Amendment "B" (H-637).**

Signed:

Senator:

ROSEN of Hancock

Representatives:

SHIELDS of Auburn
CAMPBELL of Newfield
LEWIN of Eliot
GLYNN of South Portland

(Representative SOCKALEXIS of the Penobscot Nation - of the House - supports the Majority **Ought To Pass as Amended by Committee Amendment "A" (H-636)** Report.)

Comes from the House with the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-636)** Report **READ** and **ACCEPTED** and the Resolve **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-636)**.

Reports **READ**.

Senator **MAYO** of Sagadahoc moved the Senate **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-636)** Report, in concurrence.

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

Senator **ROSEN:** Thank you, Madame President and members of the Senate. Good morning. The bill that is before you is a major substantive rule of one of the components of major healthcare policy legislation that was passed two years ago. Two years ago the legislature passed broad healthcare reform and that reform included several different components that have been going through the substantive rule process and you have been seeing them pass before you during this session as the rules have come before the Health and Human Services Committee and been refined and come before us. This one that is before us today deals with the capital investment fund. That is that fund that was created in law to define the amount of money that would be approved for capital investment in Maine's healthcare industry. You have two reports before you. Report A and Report B. Both are Ought to Pass. Report A accepts the work that came before the committee with a couple of minor adjustments and asks you to adopt it and to formalize and to put into place the capital investment fund mechanism. Report B rejects the proposal, the rule changes that came before us, and requests that we start from the beginning. This is a serious proposal because there are many flaws in these rule changes that came before the committee. I'd just like to touch on a few.

First, the lack of public involvement in the rule making process that took place. When the Healthcare Reform legislation passed, and I supported it, the expectation was that a rule making mechanism would go forward and public comment would be accepted in a broad sense. Unfortunately, in this particular example, emergency rule making was authorized and that mechanism limits the capacity and the ability of public input. The result of that, I think, is a recommendation that is before us know that is flawed, that is cumbersome, and that is not particularly useful to accomplish or helpful in accomplishing the goals that were set out in this capital investment fund. The methodology is complex and is cumbersome and it benefits by being streamlined and simplified. I'd like to point to two or three specific examples. First of all, the proposal is to use expenditure history as a mechanism for determining future need. We haven't had presented to us any logical rationale as to why history over the last five years, capital investments in medical facilities, is a logical approach to imposing the limit going forward. If you accept that premise, then we have a second flaw. The procedure that was presented to us goes on to say that selected projects will be excluded. On the one hand the proposal is to use the history of capital expenditures over the last five years, but on the other hand major projects that, in fact, are in the works or have been approved during the last five years are excluded. We either use

the history or we exclude the history, but there is a conflict in the presentation that is before us that is not particularly logical or useful.

Another requirement is that the amount of money that will go into this capital investment fund will be adjusted according to the income of Maine citizens. Again, those of us that are on Report B feel that is a flawed, illogical approach. If that goes forward you are saying that the mechanism that we will use to determine the amount of money that will be made available to invest in capital expenditures in Maine's medical facilities will be directly tied to the income level of Maine's citizens. There is no rational connection and many have argued that if, in fact, incomes decline in Maine the need for access to medical facilities may very well increase.

Another flaw that was discovered when going through this rule-making process is that the original Healthcare Reform Act says that the process of coming up with this end number, this dollar amount, will go through the rule making procedure for public comment. Steps of the process went through the rule-making procedure but then when it came time to determine the actual number, the actual dollar amount of the fund, then you go behind closed doors, the information goes into a pot, the spell is cast, and out comes a number. Typically, the number, the dollar amount, the size of the fund, would be presented for public comment. In this case that did not happen. We think that is a flaw.

In addition, we came to realize that the APA, the Maine Administrative Procedures Act, which is the mechanism that sets up this whole rule making process, doesn't apply to the legislature and the Chief Executive. The agency, the Office of Health Policy, that is moving forward with these rules acts on behalf of the Chief Executive. In this particular case, in this example, the Office of Health Policy did, in fact, to their credit, work through the rule making process even though in an emergency fashion and in an abbreviated form. We discovered that they are not obligated, and I think that is something that the legislature really has to consider seriously. The legislature grants to the Executive Branch considerable power in law. Because the implementation of this particular policy falls in the Chief Executive's Office, the APA rules state that they are exempt from this whole major substantive rule mechanism.

I hope you take the posture of the Report B seriously. As you've noticed, I'm sure, many components of the Healthcare Reform Act that have gone through this major substantive rule mechanism process came out of our committee in unanimous fashion with unanimous support. Rules dealing with the Maine Health Data Organization. Rules dealing with the Maine Quality Forum. A bill that you will see soon dealing with the Hospital Commission report. On this particular proposal, there is a difference of opinion. If you accept Report A, you formalize the recommendations that I have described. If you move on and accept Report B, then we have an opportunity to go back to the drawing board. In this particular case, ladies and gentlemen, I think that is something we must do.

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

On motion by Senator **MARTIN** of Aroostook, **TABLED** until Later in Today's Session, pending the motion by Senator **MAYO** of Sagadahoc to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-636)** Report, in concurrence. (Roll Call Ordered)

Off Record Remarks

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

COMMUNICATIONS

The Following Communication: S.C. 378

**MAINE STATE LEGISLATURE
COMMITTEE ON NATURAL RESOURCES
AUGUSTA, MAINE 04333**

May 17, 2005

Honorable Beth Edmonds, President of the Senate
Honorable John Richardson, Speaker of the House
122nd Maine Legislature
State House
Augusta, Maine 04333

Dear President Edmonds and Speaker Richardson:

Pursuant to Joint Rule 310, we are writing to notify you that the Joint Standing Committee on Natural Resources has voted unanimously to report the following bill out "Ought Not to Pass":

L.D. 99 An Act To Include Specific Bodies of Water
 within Class C Standards

We have also notified the sponsor and cosponsors of the Committee's action.

Sincerely,

S/Sen. Scott W. Cowger
Senate Chair

S/Rep. Theodore Koffman
House Chair

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

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 (5/23/05) Assigned matter:

HOUSE REPORTS - from the Committee on **MARINE RESOURCES** on Bill "An Act To Amend Laws Governing the Setting of the Sea Urchin Harvesting Season"
H.P. 354 L.D. 479

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-406)** (11 members)

Minority - **Ought to Pass as Amended by Committee Amendment "B" (H-407)** (2 members)

Tabled - May 23, 2005, by Senator **PLOWMAN** of Penobscot

Pending - motion by same Senator to **RECONSIDER** whereby the Bill and accompanying papers were **INDEFINITELY POSTPONED**, in **NON-CONCURRENCE**

(In House, May 23, 2005, the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-406)** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-406).**)

(In Senate, May 23, 2005, Reports **READ**. Senator **DAMON** of Penobscot moved to **ACCEPT** Minority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "B" (H-407)** Report, in **NON-CONCURRENCE**. On motion by Senator **MARTIN** of Aroostook, Bill and accompanying papers **INDEFINITELY POSTPONED**, in **NON-CONCURRENCE**.)

On motion by Senator **PLOWMAN** of Penobscot, the Senate **RECONSIDERED** whereby the Bill and accompanying papers were **INDEFINITELY POSTPONED**, in **NON-CONCURRENCE**

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

On motion by Senator **DAMON** of Hancock, **TABLED** until Later in Today's Session, pending the motion by Senator **MARTIN** of Aroostook to **INDEFINITELY POSTPONE** the Bill and accompanying papers, in **NON-CONCURRENCE**. (Roll Call Ordered)

The Chair laid before the Senate the following Tabled and Later (6/8/05) Assigned matter:

HOUSE REPORTS - from the Committee on **HEALTH AND HUMAN SERVICES** on Bill "An Act To Prevent Lead Poisoning of Children and Adults"

H.P. 719 L.D. 1034

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-642)** (9 members)

Minority - **Ought to Pass as Amended by Committee Amendment "B" (H-643)** (4 members)

Tabled - June 8, 2005, by Senator **MAYO** of Sagadahoc

Pending - motion by same Senator to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-642)** Report, in concurrence

(In House, June 8, 2005, the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-642)** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-642).**)

(In Senate, June 8, 2005, Reports **READ.**)

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

Senator **MAYO:** Thank you, Madame President, ladies and gentlemen of the Senate. This is not as complicated a piece of legislation as the one that we discussed a few minutes ago. Thank goodness for that. One difficult piece of legislation in an hour is enough. What you have before you, here again, is an issue dealing with lead paint and its problems with the people of the State of Maine, particularly the children in the State of Maine. We all know that our housing stock in this particular state is not as modern as it might be and that many of the dwellings in this state have lead paint, some of which presents no problem and some of which presents a major problem to the occupants of those dwellings, particularly young children who have a tendency and a likelihood to lap the woodwork, whether the paint is good or flaking. Maine has a rather unfortunate high incidence of lead paint poisoning among its youth. The bill that you have in front of you, in the majority report after a great deal of discussion in the Health and Human Service Committee, has placed a 25¢ fee on a gallon paint at either the manufacturer or the distributor level. It is anticipated that this would raise somewhere in the neighborhood of a half a million dollars a year. That money would be used to maintain an on-going educational and public informational program within the state so that people who are living within dwellings would be aware of what they should be doing and what they should not be doing so that the youth and young children in these dwellings are not placed at the type of risk that they are currently. This fund would be administered through the Department of Health and Human Services, Bureau of Health, under the guidance of Dr. Dora Mills.

The only difference between the majority and the minority reports is that the minority report makes the amount of money voluntary on the part of the manufacturer or the distributor. I would suspect that a voluntary assessment would not, in this regard, raise a great deal of money. While it sounds good and we can say it isn't an assessment or it isn't a tax because it is voluntary, the majority of the Health and Human Services Committee did not feel that a voluntary tax would raise the funds which everyone agreed are necessary to run an on-going educational and informational program to cut down on the incidents of lead poisoning in this state.

The final thing I would say at this time is that the majority report on the legislation that you have before you in no way runs up against or violates the Attorney General's agreement with the paint industry. It does not cause any problems with that particular settlement and we, as a committee, have been so instructed by the Attorney General. I would urge your support of the majority report on this legislation.

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

Senator **DOW:** Thank you, Madame President, ladies and gentlemen of the Senate. As a former chemistry teacher I intend to support the majority report on this bill. All, or most, science teachers know the dangers of lead poisoning. At the amount of 25¢ a can I don't consider it a penalty on the industry. I look at it as just a simple, on-going solution to take care of this problem until it is wiped out. It may cost you 25¢ a gallon and if you use 5 gallons of paint to redo a room in your house that is a \$1.25. I spent \$1.65 on a cup of coffee this morning. I don't consider that much of a burden on the industry to take care of a serious problem. Thank you very much.

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

Senator **ROSEN:** Thank you, Madame President, men and women of the Senate. I hope you consider the minority report. B is best. This is, as the good Senate chair from Sagadahoc, Senator Mayo, pointed out mandatory or voluntary in terms of the payment of the education program that is put forward in this bill. There is no argument that exposure to lead in any form is harmful to one's health. There is no argument that lead was in paint for years. Lead hasn't been used in paint for several years except for certain marine supplies and a couple of other very limited uses. Maine has an old housing stock and we know that lead, lead dust, and other lead exposure is a health hazard. That is a given. The Bureau of Health already has an excellent program in place and a plan to educate the public and to try to provide greater information. There is no doubt that this plan certainly could use additional resources. The resources that are targeted in this bill would go to good use. The question is whether or not we go forward with a mandatory assessment on wholesalers in the industry or whether we try to ask. We simply ask. Now that may sound a little naive on the face of it, but keep in mind that the paint that is currently on the shelf doesn't have any lead in it except for paint for very specific purposes. Paint with lead is in the housing stock in this state and the question that we wrestled with in the committee is whose responsibility, whose liability, who steps forward, and who doesn't. I think we determined that there is shared responsibility and shared liability: manufacturers from the past, retailers, homeowners, apartment owners, commercial, industrial, and private. We understand there is a problem, but the idea of the stepping out first with the stick, realizing that there is already exists a negotiated settlement with Attorney Generals across the state and the industry that already does provide some funding, is troubling. What is wrong with designing a program, like that one that sits before you in this bill, and asking the industry to step forward voluntarily and funding it? As I said, we could go after many different people, classes, or property owners. We did not do that. I think what you have is a fundamental choice. The state has the power to take. The state has the

power to demand payment. We all know that. We can go forward with that and do that any time the state chooses to do it. The minority report, Report B, asks you to consider making the request first. Thank you.

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

Senator **MAYO:** Thank you, Madame President, ladies and gentlemen of the Senate. I don't know how many in this room this morning own boats of the type that would be on salt water, but if you do the chances are very good that sometime in the last two or three years you have had the bottom of that boat painted so that it will not collect too much seaweed and live organisms. The paint that is currently used for bottom paint on boats on salt water has one of the highest, if not the highest, concentrations of lead of any paint currently being used today. Before my boat was put in the water this spring I had the bottom painted. It had been two years since it had been done previously. When this bill came up I checked with the marine company that did the painting, and to my surprise, the person who did the painting did not even wear a respirator and really had limited knowledge of the possibility of lead in this particular paint. One of the things that the majority report on this bill will do is ensure that all marine companies in the State of Maine are communicated with at least once a year, raising the issue of lead based paint, lead based bottom paint for boats, and what should be done and how that whole issue should be treated so that the person applying that particular paint does not place himself or herself in harms way.

I would repeat what I said earlier, while it would be delightful, and one of the nicest things that has happened in this session, if we could believe that we would obtain enough funding to do what this bill outlines through a voluntary contribution, but I do not believe, ladies and gentlemen of the Senate, that this will happen. Therefore, I hope that you will support the majority report, Report A. Thank you.

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

Senator **BRENNAN:** Thank you, Madame President, men and women of the Senate. Rarely do we see a dunk shot before us and this is a dunk shot. We have children in the State of Maine whose health is at risk because of lead paint. It's already been pointed out by several other people that Maine has one of the oldest housing stocks in the country. We rank somewhere within the top five. Much of that housing was done with lead paint. We have a solution here before us that will address a serious health problem that faces our children today. The committee has done a great job working on this issue and coming up with a solution. The minority report wants to quibble over how we assign responsibility but still continue to jeopardize the wellbeing and health of our children. That is why I think this is a dunk shot. It's very clear what the problem is. It's very clear what we should do. This is a good solution. I hope you will support the majority report.

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

Senator **MARTIN:** Thank you, Madame President and members of the Senate. A couple of years ago a bill trying to deal with this

issue came to the Natural Resources Committee and we looked at how we were going to try to pay for this. We knew that we might be willing to try volunteerism. That it might work. At that point the fee was to be put on gallons of paint at the retail level. Clearly, that was something that all of us, at that point, felt was not going to work because it would be too difficult to collect and too much of a problem. We didn't go with that idea. Two years later, we are now back in the situation where we haven't done it. This bill provides, whether we like it or not, an opportunity to get it done. It's always interesting to me, this is being opposed by the national lobbying group for the manufacturers. Obviously that is where the fee is going to be. It's always interesting to me, when we talk about some of these things, to think back to what it is and what American industry has a problem dealing with. That is the reality of what is wrong. I was thinking about this last night, looking at what is happening with GM and the fact that they are getting beaten by other countries' manufacturers. I started thinking about the paint industry. When the rest of the world outlawed lead paint in the 1940's, I think it was, American manufacturers of lead paint started advertising for us to use it and not suggesting, perhaps, that we ought to try something else. You know what it is like. Promotion. You know what ads are like. Tide soap. You can see it on television. Of course, I'm just the reverse. I buy something that is not advertised just because I don't want to pay for the advertising fee that's including in the advertising when I buy a product. The point here is that we have been misled. Get the message? Misled. I hope that we don't get misled today. We need to deal with it. I hope that you all have an opportunity to look at the map, which I can't show to you but you have on your desk. Look at your community. How much longer do we want children to be impacted? This is an opportunity to deal with it. I certainly hope you will accept the majority report.

THE PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Snowe-Mello.

Senator **SNOWE-MELLO:** Thank you, Madame President, ladies and gentlemen of the Senate. I'd like to pose a question through the Chair if I may?

THE PRESIDENT: The Senator may pose her question.

Senator **SNOWE-MELLO:** Thank you very much, Madame President. First of all, I have a couple of questions here. Will the 25¢ a gallon fee that we're putting on now be repealed in the future, once the lead is gone? Also, I'd like to ask what is the difference whether it is done on a wholesale or retail basis if it is still 25¢ a gallon? Shouldn't we put a sunset on this bill if we're saying that the fee would be done only as long as there is lead out there? My concern is that we're going to put a 25¢ fee on a gallon of paint indefinitely. I would think we'd like to repeal that once all the lead is gone. Could somebody answer that for me?

THE PRESIDENT: The Senator from Androscoggin, Senator Snowe-Mello poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Arrostook, Senator Martin.

Senator **MARTIN:** Thank you, Madame President. First of all, the two questions, as I understood them, I think I can respond to. The reason why it was placed at this level rather than the retail level was simply because it's going to be easier to deal with. It is

much the same way we dealt with pesticides. That is the way it is done now, rather than being collected when you go to the store to pick up the product.

The second question, I guess I don't know how long it is going to take for us to get rid of the lead in Maine homes. I don't dare answer that question. I hope it is before I leave the legislature.

THE PRESIDENT: The Chair recognizes the Senator from Waldo, Senator Weston.

Senator **WESTON:** Thank you, Madame President, men and women of the Senate. I'm going to try to address this problem. There are two areas where I have virtually no knowledge of, sports and science. If I can talk about the sports illustration first, I don't think our choice is between a dunk shot and a miss. You can have a 5' player or a 6' player, but if they both make the shot it doesn't matter how tall they are. That gets me to my science point. Whether or not the money is raised voluntarily or through a mandate, that's not science. That is an opinion. That's only an opinion. Let's get back to the question of if the 5' person can make the shot then we should be happy that he can do that and give him the chance. Thank you.

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

Senator **MARTIN:** Thank you, Madame President. I don't want to get into a sports or science issue, but I will simply say that, based on where we are in America in terms of volunteers and donations, they are dropping all the time. Frankly, I think that there are a lot more items of interest for most people to make donations to because they don't see the result and they are not going to see their name. Keep in mind that most of the money that gets donated, especially very large amounts, are given by people with a lot of money so that they get their name on something. I don't see the ability to generate that when we're talking about removing lead paint.

THE PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Nutting.

Senator **NUTTING:** Thank you, Madame President, ladies and gentlemen of the Senate. I'll be very, very brief. I just want to stand and say that I am going to be supporting the pending motion. I just also want to point out to everybody that in the year 2000 the Agriculture Committee was faced with a real crisis with our animal welfare system in Maine. It was not being funded properly. We did not have a spay and neuter program that was sufficient. We were beginning to have more and more animals just wild, wild cats and wild dogs all over the state. We looked at what other states had done. Many other states had put a wholesale tax on cat and dog food to fund their animal welfare programs. We did that in Maine in the year 2000. It's been in effect for five years. I've never seen or heard a single complaint about it. It's funded the system. I think this is set up similarly and I think it will work. I just wanted to put on the record that this isn't the first time we've looked at doing something at the wholesale level and have it help conditions here in the State of Maine. Thank you.

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

Senator **COURTNEY:** Thank you, Madame President, men and women of the Senate. May I pose a question through the Chair?

THE PRESIDENT: The Senator may pose his question.

Senator **COURTNEY:** Thank you, Madame President. It seems like there is a little expansion of these wholesale fees and taxes. I'm wondering if anybody can answer if they are included in our calculation for the tax burden in Maine?

THE PRESIDENT: The Senator from York, Senator Courtney poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Cumberland, Senator Turner.

Senator **TURNER:** Thank you, Madame President. May I pose two questions through the Chair?

THE PRESIDENT: The Senator may pose his questions.

Senator **TURNER:** Thank you, Madame President. I'm wondering, given the history of this matter, and I am directing this question to the Senators from Kennebec, Senator Cowger, and Sagadahoc, Senator Mayo, whether or not they can tell us what we have done in the past with respect to lead abatement. I do believe we've all been aware that lead is a significant problem, as is mercury, in our environment. I think what we are debating here is not whether it is a problem but whether this is the best way to pay for it. I would like to understand better what we have done to date, if that can be put into the record.

Secondly, I would like to understand whether or not, when real estate changes hands, if anyone in the chamber is aware if the status of lead paint is also disclosed to the purchaser of the home, as we have to disclose on things like radon? My sense is that it is but I don't know.

THE PRESIDENT: The Senator from Cumberland, Senator Turner poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Penobscot, Senator Schneider.

Senator **SCHNEIDER:** Thank you, Madame President. I can answer a few of those questions. One of them is about the lead paint being on a real estate form. When you transfer property you must disclose whether or not you have lead paint in your home. That I know. As far as tax calculations, my answer to if fees are taken into calculation when these nationwide surveys are done on tax rates, some do and some don't. Most of the nationwide surveys, when they take into account fees, do not calculate fees into the mix. In fact, that is why if we went to a more fee-based system we would be better off because many states depend much more on fees. Because of that, we seem like we are a higher tax state when in essence we generally aren't. A lot of that is myth. Unfortunately for us, we don't base a lot of our calculations on fees. If we did switch to a completely fee-based system, which I'm not an advocate for but I'm just saying that if we did, we actually might come out looking awfully good on these nationwide surveys. Those are the questions I can handle.

THE PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Snowe-Mello.

Senator **SNOWE-MELLO:** Thank you, Madame President, ladies and gentlemen of the Senate. I have one more question before I cast my vote and make my final decision. Why is this bill before us? Is it because we've had a cut in grants or with our funding at the federal level? Have there been fewer grants that have come into our local communities such as Lewiston/Auburn and mill towns across the state? Can you answer my question?

THE PRESIDENT: The Senator from Androscoggin, Senator Snowe-Mello 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 and members of the Senate. Let me take a stab at that even though I don't have the material here. My recollection is that there was some grant money that was used and has been used in the past that is no longer available. We also used the Department of Environmental Protection in the past. You could also apply for some grants to do that. There were some low interest loans that were available for commercial purposes by Maine State Housing a number of years ago. That is simply not there any more.

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

Senator **COWGER:** Thank you, Madame President and colleagues in the Senate. Just to try to answer some of the previous questions as well. The Natural Resources Committee has been well aware of the dangers of lead for many years. We don't have any comprehensive program in the State of Maine. This is a very important step and I'll be supporting the pending motion. All we have considered in the Natural Resources Committee before are some basic laws on the books that you shall be disposing of lead paint properly when you scrape it off and remove it from homes and businesses. There were also some recommendations, not even requirements, in statute that you should use certain removal techniques. That's all we've done for lead so far. This is a major step forward and I hope you will support it.

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

Senator **SCHNEIDER:** Thank you, Madame President. I wish to add that if we care, and I believe everybody in this body truly does care about the health of children, and I also think we care about state budgets and the amount that we spend on educating children. It is so important to protect our children from lead poisoning because it inhibits learning. It is terribly detrimental to children's learning capabilities. The other thing I wanted to mention is that if you are looking at this from a long-term perspective and how we can really save money, it's to protect people from all kinds of toxins that in the long run will be paying for in healthcare costs for many years. All of us will assume those costs. Personally, I think this is a very small price to pay and I will support the pending motion. I do hope my colleagues see that this is advantageous to all of us in this state. Thank you.

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

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

THE PRESIDENT: The Senator may pose his question.

Senator **WOODCOCK:** Thank you, Madame President. I would ask if there was ever consideration by the committee for a five year sunset on this particular proposal? I've heard the Senator from Androscoggin, Senator Nutting, mention a five year sunset in his pet program. It seems to me that the concern that is being raised is not whether or not we should address lead poisoning in paint but the funding mechanism. The funding mechanism, if it is ongoing, obviously presents a concern for some people, I believe, in that the funding doesn't always end up in the place where it originated. For instance, in the budgetary process it seems that some of the funding that was designated to certain departments was pulled for other uses. I pose the question, has a five year sunset ever been considered on this particular proposal? Thank you, Madame President.

THE PRESIDENT: The Senator from Franklin, Senator Woodcock poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Sagadahoc, Senator Mayo.

Senator **MAYO:** Thank you, Madame President. In answer to the good Senator from Franklin, Senator Woodcock's question with regard to a sunset, it was discussed but not at any great length or depth by the committee for the reason that the Senator from Aroostook, Senator Martin, stated in answer to a similar question a few minutes ago. I would add that the committee did make its feelings known to Dr. Mills that when there was no further need for this fund with regard to lead paint abatement and information and education on the problems of lead paint, the tax should be removed. We don't know whether that is five years, ten years, or twelve years out. I would hope that it would be a relatively short period of time. I would second what the good Senator from Aroostook, Senator Martin, said. I hope to be in this body at the time when we remove that particular fee.

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

Senator **BRENNAN:** Thank you, Madame President, men and women of the Senate. I want to go on the record as saying that on a basketball court in a sports context, I have never done a dunk shot. It was pointed out to me by another good Senator that this was an improbability, given my height, but I still have aspirations. I was referring to this in the terms of a political dunk shot, not a sports dunk shot.

On further motion by same Senator, **TABLED** until Later in Today's Session, pending the motion by Senator **MAYO** of Sagadahoc to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-642) Report**, in concurrence.

Senate at Ease.

Senate called to order by the President.

Off Record Remarks

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

HOUSE REPORTS - from the Committee on **MARINE RESOURCES** on Bill "An Act To Amend Laws Governing the Setting of the Sea Urchin Harvesting Season"
H.P. 354 L.D. 479

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-406)** (11 members)

Minority - **Ought to Pass as Amended by Committee Amendment "B" (H-407)** (2 members)

Tabled - June 9, 2005, by Senator **DAMON** of Hancock

Pending - motion by Senator **MARTIN** of Aroostook to **INDEFINITELY POSTPONE** the Bill and accompanying papers, in **NON-CONCURRENCE** (Roll Call Ordered)

(In House, May 23, 2005, the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-406)** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-406).**)

(In Senate, May 23, 2005, Reports **READ**. Senator **DAMON** of Penobscot moved to **ACCEPT** Minority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "B" (H-407)** Report, in **NON-CONCURRENCE**. On motion by Senator **MARTIN** of Aroostook, Bill and accompanying papers **INDEFINITELY POSTPONED**, in **NON-CONCURRENCE**.)

(In Senate, June 9, 2005, on motion by Senator **PLOWMAN** of Penobscot, the Senate **RECONSIDERED** whereby the Bill and accompanying papers were **INDEFINITELY POSTPONED**, in **NON-CONCURRENCE**.)

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#246)

YEAS: Senators: **BARTLETT, BRENNAN, BROMLEY, BRYANT, COWGER, DAMON, DIAMOND, GAGNON, HOBBS, MARTIN, MAYO, MITCHELL, NUTTING, ROTUNDO, SCHNEIDER, STRIMLING, SULLIVAN, WOODCOCK, THE PRESIDENT - BETH G. EDMONDS**

NAYS: Senators: **ANDREWS, CLUKEY, COURTNEY, DAVIS, DOW, HASTINGS, MILLS, NASS, PLOWMAN, RAYE, ROSEN, SAVAGE, SNOWE-MELLO, TURNER, WESTON**

ABSENT: Senator: **PERRY**

19 Senators having voted in the affirmative and 15 Senators having voted in the negative, with 1 Senator being absent, the motion by Senator **MARTIN** of Aroostook to **INDEFINITELY POSTPONE** the Bill and accompanying papers, in **NON-CONCURRENCE, PREVAILED**.

Sent down for concurrence.

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

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

**REPORTS OF COMMITTEES
House**

Ought to Pass As Amended

The Committee on **AGRICULTURE, CONSERVATION AND FORESTRY** on Bill "An Act To Make Revisions to the Laws Governing Agriculture"

H.P. 167 L.D. 216

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-671)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-671)**.

Report **READ** and **ACCEPTED**, in concurrence.

READ ONCE.

Committee Amendment "A" (H-671) **READ** and **ADOPTED**, in concurrence.

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

The Committee on **CRIMINAL JUSTICE AND PUBLIC SAFETY** on Bill "An Act To Improve the Collection of Restitution and Supervision Fees"

H.P. 613 L.D. 862

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-669)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-669)**.

Report **READ** and **ACCEPTED**, in concurrence.

READ ONCE.

Committee Amendment "A" (H-669) **READ** and **ADOPTED**, in concurrence.

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

Senate at Ease.

Senate called to order by the President.

Senator **BRENNAN** of Cumberland was granted unanimous consent to address the Senate off the Record.

Senator **ROTUNDO** of Androscoggin was granted unanimous consent to address the Senate off the Record.

Senator **WESTON** of Waldo was granted unanimous consent to address the Senate off the Record.

On motion by Senator **BRENNAN** of Cumberland, **RECESSED** until 4:00 in the afternoon.

After Recess

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 Pertaining to Disclosure of Prescription Drug Prices
S.P. 536 L.D. 1541
(H "A" H-639 to C "A" S-292)

This being an Emergency Measure and having received the affirmative vote of 29 Members of the Senate, with 1 Senator having voted in the negative, and 29 being more than two-thirds of the entire elected Membership of the Senate, was **PASSED TO BE ENACTED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

Emergency Measure

An Act To Prohibit the Disposal of Dangerous and Unsafe Material in Solid Waste Facilities

H.P. 1151 L.D. 1633
(C "A" H-551; H "A" H-622)

This being an Emergency Measure and having received the affirmative vote of 30 Members of the Senate, with no Senators having voted in the negative, and 30 being more than two-thirds of the entire elected Membership of the Senate, was **PASSED TO BE ENACTED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

Emergency Measure

An Act To Clarify Entities Eligible for Funding by the Maine Health and Higher Educational Facilities Authority

S.P. 628 L.D. 1683
(C "A" S-339)

This being an Emergency Measure and having received the affirmative vote of 30 Members of the Senate, with no Senators having voted in the negative, and 30 being more than two-thirds of the entire elected Membership of the Senate, was **PASSED TO BE ENACTED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

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

ENACTORS

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

Acts

An Act To Amend the Child and Family Services and Protection Act

H.P. 918 L.D. 1320
(H "A" H-656 to C "A" H-611)

An Act To Amend the Laws Governing the Powers and Duties of the Washington County Development Authority

S.P. 466 L.D. 1339
(C "A" S-296; H "A" H-623)

LEGISLATIVE RECORD - SENATE, THURSDAY, JUNE 9, 2005

An Act To Prepare Maine for Public Health Emergencies
S.P. 494 L.D. 1405
(C "A" S-336)

Honorable Joy J. O'Brien
Secretary of the Senate
122nd Legislature
Augusta, Maine 04333

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

Dear Madam Secretary:

The House voted today to adhere to its previous action whereby it accepted the Majority Ought Not to Pass Report of the Committee on INSURANCE AND FINANCIAL SERVICES on Bill "An Act To Reduce the Minimum Participation Requirements of Insurance Carriers" (S.P. 89)(L.D. 269).

Sincerely,

S/Millicent M. MacFarland
Clerk of the House

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: H.C. 285

**STATE OF MAINE
CLERK'S OFFICE
2 STATE HOUSE STATION
AUGUSTA, MAINE 04333**

June 9, 2005

Honorable Joy J. O'Brien
Secretary of the Senate
122nd Legislature
Augusta, Maine 04333

Dear Madam Secretary:

The House voted today to adhere to its previous action whereby An Act To Establish Harbor Master Standards and Training Requirements (EMERGENCY) (MANDATE)(S.P. 584)(L.D. 1603) (S. "A" S-234 to C. "A" S-207) Failed of Passage to be Enacted.

Sincerely,

S/Millicent M. MacFarland
Clerk of the House

READ and **ORDERED PLACED ON FILE.**

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

COMMUNICATIONS

The Following Communication: H.C. 286

**STATE OF MAINE
CLERK'S OFFICE
2 STATE HOUSE STATION
AUGUSTA, MAINE 04333**

June 9, 2005

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 Amend the Maine Wind Energy Act"
S.P. 477 L.D. 1379
(S "A" S-322; S "B" S-341
to C "B" S-284)

In Senate, June 7, 2005, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "B" (S-284) AS AMENDED BY SENATE AMENDMENTS "A" (S-322) AND "B" (S-341)** thereto.

Comes from the House, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "B" (S-284) AS AMENDED BY HOUSE AMENDMENT "A" (H-667) AND SENATE AMENDMENT "A" (S-322)** thereto, in **NON-CONCURRENCE.**

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

Non-Concurrent Matter

SENATE REPORTS - from the Committee on **LABOR** on Bill "An Act To Provide an Annual Cost-of-living Adjustment for Persons Receiving Workers' Compensation Benefits for Total Incapacity"
S.P. 501 L.D. 1476
(C "A" S-176)

Majority - **Ought to Pass as Amended by Committee Amendment "A" (S-176)** (8 members)

Minority - **Ought Not to Pass** (4 members)

In Senate, May 20, 2005, the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-176)**.

Comes from the House, the Minority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED**, in **NON-CONCURRENCE**.

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

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

COMMUNICATIONS

The Following Communication: H.C. 287

**STATE OF MAINE
CLERK'S OFFICE
2 STATE HOUSE STATION
AUGUSTA, MAINE 04333**

June 9, 2005

Honorable Joy J. O'Brien
Secretary of the Senate
122nd Legislature
Augusta, Maine 04333

Dear Madam Secretary:

The House voted today to adhere to its previous action whereby Bill "An Act Establishing Minimum Energy Efficiency Standards for Certain Products Sold or Installed in the State" (H.P. 999)(L.D. 1435) was **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-307) AS AMENDED BY HOUSE AMENDMENT "D" (H-549)** thereto.

Sincerely,

S/Millicent M. MacFarland
Clerk of the House

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. 380

**MAINE STATE LEGISLATURE
COMMITTEE ON TAXATION
AUGUSTA, MAINE 04333**

June 9, 2005

Honorable Beth Edmonds, President of the Senate
Honorable John Richardson, Speaker of the House
122nd Maine Legislature
State House
Augusta, Maine 04333

Dear President Edmonds and Speaker Richardson:

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

L.D. 1553 An Act To Impose a Gross Receipts Tax on "Big Box" Stores

L.D. 1634 An Act To Impose a Real Estate Transfer Tax Based on the Value of the Property

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

Sincerely,

S/Sen. Joseph C. Perry
Senate Chair

S/Rep. Richard G. Woodbury
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:

Acts

An Act To Ensure Sufficient Staffing To Properly Enforce the Laws and Rules of the Manufactured Housing Board
S.P. 87 L.D. 267
(C "A" S-114)

An Act To Ensure Adequate Health Care for Children
H.P. 357 L.D. 482
(C "A" H-641)

An Act To Allow Case Management Officers To Conduct Hearings in Divorce Court
H.P. 425 L.D. 592

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

An Act To Clarify the Definition of "Domiciled" for Maine Income Tax Purposes

H.P. 248 L.D. 325
(H "A" H-658 to C "A" H-588)

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

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

ENACTORS

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

Acts

An Act To Make Certain Changes in the Laws Concerning the Family Division of District Court

H.P. 683 L.D. 973
(H "A" H-665 to C "A" H-646)

An Act To Protect Children from Individuals Who Have Engaged in Sexual Abuse of Children in the Past

H.P. 850 L.D. 1232
(C "A" H-655)

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

An Act To Encourage the Preservation of Affordable Housing

H.P. 808 L.D. 1165
(C "A" H-634)

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

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

ENACTORS

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

Acts

An Act To Amend the Real Estate Brokerage Laws

H.P. 1072 L.D. 1525
(H "A" H-638 to C "A" H-583)

An Act To Clarify That Certain Maine Landowner Liability Protection Laws Apply to Certain Railroad Properties, Railroad Rights-of-way and Utility Corridors

S.P. 593 L.D. 1611
(H "A" H-633 to C "A" S-314)

An Act To Protect Maine Citizens from Identity Theft

H.P. 1180 L.D. 1671
(C "A" H-654)

An Act To Amend the Laws Governing Political Caucuses, Conventions and Committees

H.P. 1192 L.D. 1686

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

ORDERS OF THE DAY

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

SENATE REPORTS - from the Committee on **LABOR** on Bill "An Act To Provide an Annual Cost-of-living Adjustment for Persons Receiving Workers' Compensation Benefits for Total Incapacity"

S.P. 501 L.D. 1476
(C "A" S-176)

Majority - **Ought to Pass as Amended by Committee Amendment "A" (S-176)** (8 members)

Minority - **Ought Not to Pass** (4 members)

Tabled - June 9, 2005, by Senator **STRIMLING** of Cumberland

Pending - **FURTHER CONSIDERATION**

(In Senate, May 20, 2005, the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-176).**)

(In House, June 9, 2005, the Minority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED**, in **NON-CONCURRENCE**.)

Senator **STRIMLING** of Cumberland moved the Senate **INSIST**.

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

Senator **SNOWE-MELLO** of Androscoggin moved the Senate **RECEDE** and **CONCUR**.

On motion by Senator **STRIMLING** of Cumberland, supported by a Division of 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 (#247)

YEAS: Senators: ANDREWS, CLUKEY, COURTNEY, DAVIS, DOW, HASTINGS, NASS, PLOWMAN, RAYE, ROSEN, SAVAGE, SNOWE-MELLO, TURNER, WESTON, WOODCOCK

NAYS: Senators: BARTLETT, BRENNAN, BROMLEY, BRYANT, COWGER, DAMON, DIAMOND, GAGNON, HOBBS, MARTIN, MAYO, MILLS, MITCHELL, NUTTING, PERRY, ROTUNDO, SCHNEIDER, STRIMLING, SULLIVAN, THE PRESIDENT - BETH G. EDMONDS

15 Senators having voted in the affirmative and 20 Senators having voted in the negative, the motion by Senator **SNOWE-MELLO** of Androscoggin to **RECEDE** and **CONCUR**, **FAILED**.

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#248)

YEAS: Senators: BARTLETT, BRENNAN, BROMLEY, BRYANT, COWGER, DAMON, DIAMOND, GAGNON, HOBBS, MARTIN, MAYO, MILLS, MITCHELL, NUTTING, PERRY, ROTUNDO, SCHNEIDER, STRIMLING, SULLIVAN, THE PRESIDENT - BETH G. EDMONDS

NAYS: Senators: ANDREWS, CLUKEY, COURTNEY, DAVIS, DOW, HASTINGS, NASS, PLOWMAN, RAYE, ROSEN, SAVAGE, SNOWE-MELLO, TURNER, WESTON, WOODCOCK

20 Senators having voted in the affirmative and 15 Senators having voted in the negative, the motion by Senator **STRIMLING** of Cumberland to **INSIST**, **PREVAILED**.

Sent down for concurrence.

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

REPORTS OF COMMITTEES

Senate

Divided Report

Ten members of the Committee on **HEALTH AND HUMAN SERVICES** on Bill "An Act To Implement the Recommendations of the Commission to Study Maine's Community Hospitals" S.P. 620 L.D. 1673

Reported in Report "A" that the same **Ought to Pass as Amended by Committee Amendment "A" (S-356)**.

Signed:

Senators:
MARTIN of Aroostook
ROSEN of Hancock

Representatives:
PINGREE of North Haven
WALCOTT of Lewiston
GROSE of Woolwich
WEBSTER of Freeport
MILLER of Somerville
BURNS of Berwick
CAMPBELL of Newfield
GLYNN of South Portland

Two members of the same Committee on the same subject reported in Report "B" that the same **Ought Not to Pass**.

Signed:

Representatives:
SHIELDS of Auburn
LEWIN of Eliot

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" (S-357)**.

Signed:

Senator:
MAYO of Sagadahoc

(Representative SOCKALEXIS of the Penobscot Nation - of the House - supports Report "A", **Ought To Pass as Amended by Committee Amendment "A" (S-356)**.)

Reports **READ**.

On motion by Senator **MAYO** of Sagadahoc, Report "A", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-356) ACCEPTED**.

READ ONCE.

Committee Amendment "A" (S-356) **READ** and **ADOPTED**.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-356)**.

Ordered sent down forthwith for concurrence.

ORDERS OF THE DAY

The Chair laid before the Senate the following Tabled and Later (6/7/05) Assigned matter:

HOUSE REPORTS - from the Committee on **CRIMINAL JUSTICE AND PUBLIC SAFETY** on Bill "An Act To Amend the Laws Governing Crimes against People Who Are Homeless" (EMERGENCY)

H.P. 1170 L.D. 1659

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-595)** (11 members)

Minority - **Ought to Pass as Amended by Committee Amendment "B" (H-596)** (2 members)

Tabled - June 7, 2005, by Senator **DIAMOND** of Cumberland

Pending - **ACCEPTANCE OF EITHER REPORT**

(In House, June 7, 2005, the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-595)** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-595) AS AMENDED BY HOUSE AMENDMENT "A" (H-640)** thereto.)

(In Senate, June 7, 2005, Reports **READ**.)

On motion by Senator **DIAMOND** of Cumberland, the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-595)** Report **ACCEPTED**, in concurrence.

READ ONCE.

Committee Amendment "A" (H-595) **READ**.

House Amendment "A" (H-640) to Committee Amendment "A" (H-595) **READ**.

Senator **DIAMOND** of Cumberland moved to **INDEFINITELY POSTPONE** House Amendment "A" (H-640) to Committee Amendment "A" (H-595), in **NON-CONCURRENCE**.

At the request of Senator **BRENNAN** of Cumberland a Division was had. 16 Senators having voted in the affirmative and 18 Senators having voted in the negative, the motion by Senator **DIAMOND** of Cumberland to **INDEFINITELY POSTPONE** House Amendment "A" (H-640) to Committee Amendment "A" (H-595), in **NON-CONCURRENCE**, **FAILED**.

House Amendment "A" (H-640) to Committee Amendment "A" (H-595) **ADOPTED**, in concurrence.

Committee Amendment "A" (H-595) as Amended by House Amendment "A" (H-640) thereto, **ADOPTED**, in concurrence.

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

On motion by Senator **BRENNAN** of Cumberland, Senate Amendment "A" (S-354) **READ**.

THE PRESIDENT: The Chair recognizes the Senator from Waldo, Senator Weston.

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

THE PRESIDENT: The Senator may pose her question.

Senator **WESTON:** Thank you, Madame President. Could we have an explanation of what this does to this bill?

THE PRESIDENT: The Senator from Waldo, Senator Weston poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Cumberland, Senator Brennan.

Senator **BRENNAN:** Thank you, Madame President, men and women of the Senate. This simply removes the emergency preamble from the bill.

On motion by Senator **BRENNAN** of Cumberland, Senate Amendment "A" (S-354) **ADOPTED**.

On motion by Senator **WESTON** of Waldo, supported by a Division of 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 (#249)

YEAS: Senators: BARTLETT, BRENNAN, BROMLEY, BRYANT, COWGER, DAMON, DIAMOND, GAGNON, HOBBS, MARTIN, MAYO, MILLS, MITCHELL, NUTTING, PERRY, PLOWMAN, ROSEN, ROTUNDO, SCHNEIDER, STRIMLING, SULLIVAN, TURNER, THE PRESIDENT - BETH G. EDMONDS

NAYS: Senators: ANDREWS, CLUKEY, COURTNEY, DAVIS, DOW, HASTINGS, NASS, RAYE, SAVAGE, SNOWE-MELLO, WESTON, WOODCOCK

23 Senators having voted in the affirmative and 12 Senators having voted in the negative, was **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-595) AS AMENDED BY HOUSE AMENDMENT "A" (H-640)** thereto, **AND SENATE AMENDMENT "A" (S-354)**, in **NON-CONCURRENCE**.

Ordered sent down forthwith for concurrence.

The Chair laid before the Senate the following Tabled and Later (6/8/05) Assigned matter:

JOINT RESOLUTION - Memorializing Congress to Reject Plans to Privatize Social Security

S.P. 634

Tabled - June 8, 2005, by Senator **DAVIS** of Piscataquis

Pending - motion by Senator **GAGNON** of Kennebec, under unanimous consent on behalf of President **EDMONDS** of Cumberland, to **ADOPT**

(In Senate, June 8, 2005, on motion by Senator **GAGNON** of Kennebec, under unanimous consent on behalf of President **EDMONDS** of Cumberland, **READ**.)

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

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

Senator **PLOWMAN:** Thank you, Madame President, men and women of the Senate. I want thank you for letting me have some input into the Joint Resolution we are going to send forward. I really would have liked to have added my thoughts before it went onto paper, but now I have no choice but to add them after. It might take a while.

First of all, these are worth the paper they are written on. Second of all, I don't know where all of the statements came from, but I don't agree with them. I will enumerate. I especially like the one that asks the federal government to pay its bills before it starts something else. I think we should take our own advise before we start handing out advise. I'm not pleased with having to agree with this at all. It's a plan put forward for discussion and we appreciate that there was discussion on it. If plans were never put forward for discussion, we wouldn't have the Dirigo insurance plan. If plans weren't put forward for discussion, we wouldn't have a lot of things that we currently have. So a plan has been brought forward for discussion and comments have been made, but many of them are inaccurate. I, for one, am ready to have a discussion but I am certainly not ready to endorse the inaccuracies as put forth in this resolution. I'm a very realistic person. I understand 19 to 16 is something that happened. It will go forward, but it won't go forward without me objecting. I'm getting perturbed at us trying to get things done around here before the 15th and now we are inserting ourselves into federal matters when we're not even taking care of things here. We have many things to discuss this afternoon and I imagine we're going to discuss a lot. I recognize shots fired across the bow for what they are. I'm not sure what is coming, but that is a shot. It's certainly not something that we need right now. Go ahead, I understand 19 to 16, but I'll be sending my letter to Congress saying that I didn't endorse it. I'm sure there are a few more to go with it. Thank you for the opportunity to speak. Thank you for the opportunity to recognize the effort that you put into it. Thank you for the opportunity to recognize a shot across the bow. Now please feel free to continue.

THE PRESIDENT: The pending question before the Senate is the motion by the Senator from motion by Senator Gagnon of Kennebec, under unanimous consent on behalf of President

Edmonds of Cumberland, to Adopt the Joint Resolution. A Roll Call has been ordered. Is the Senate ready for the question?

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#250)

YEAS: Senators: BARTLETT, BRENNAN, BROMLEY, BRYANT, COWGER, DAMON, DIAMOND, GAGNON, HOBBS, MARTIN, MAYO, MITCHELL, NUTTING, PERRY, ROTUNDO, SCHNEIDER, STRIMLING, SULLIVAN, THE PRESIDENT - BETH G. EDMONDS

NAYS: Senators: ANDREWS, CLUKEY, COURTNEY, DAVIS, DOW, HASTINGS, MILLS, NASS, PLOWMAN, RAYE, ROSEN, SAVAGE, SNOWE-MELLO, TURNER, WESTON, WOODCOCK

19 Senators having voted in the affirmative and 16 Senators having voted in the negative, the motion by President **EDMONDS** of Cumberland to **ADOPT**, **PREVAILED**.

Sent down for concurrence.

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

HOUSE REPORTS - from the Committee on **HEALTH AND HUMAN SERVICES** on Bill "An Act To Prevent Lead Poisoning of Children and Adults"

H.P. 719 L.D. 1034

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-642)** (9 members)

Minority - **Ought to Pass as Amended by Committee Amendment "B" (H-643)** (4 members)

Tabled - June 9, 2005, by Senator **BRENNAN** of Cumberland

Pending - motion by Senator **MAYO** of Sagadahoc to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-642)** Report, in concurrence

(In House, June 8, 2005, the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-642)** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-642)**.)

(In Senate, June 8, 2005, Reports **READ**.)

On motion by Senator **WESTON** of Waldo, supported by a Division of 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 (#251)

YEAS: Senators: ANDREWS, BARTLETT, BRENNAN, BROMLEY, BRYANT, COURTNEY, COWGER, DAMON, DIAMOND, DOW, GAGNON, HASTINGS, HOBBS, HOBBS, MARTIN, MAYO, MILLS, MITCHELL, NASS, NUTTING, PERRY, PLOWMAN, RAYE, ROTUNDO, SAVAGE, SCHNEIDER, SNOWE-MELLO, STRIMLING, SULLIVAN, TURNER, WOODCOCK, THE PRESIDENT - BETH G. EDMONDS

NAYS: Senators: CLUKEY, DAVIS, ROSEN, WESTON

31 Senators having voted in the affirmative and 4 Senators having voted in the negative, the motion by Senator **MAYO** of Sagadahoc to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-642)** Report, in concurrence, **PREVAILED**.

READ ONCE.

Committee Amendment "A" (H-642) **READ**.

On motion by Senator **WOODCOCK** of Franklin, Senate Amendment "A" (S-358) to Committee Amendment "A" (H-642) **READ**.

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

Senator **WOODCOCK:** Thank you, Madame President, ladies and gentlemen of the Senate. This amendment places a five year sunset of July 1, 2011 on the collection of the fees which will be used to implement this program. I would urge your support of it. Thank you.

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

Senator **MAYO:** Thank you, Madame President, ladies and gentlemen of the Senate. I am even shorter than the good Senator from Franklin, Senator Woodcock. I think the amendment adds to the bill and I would hope that it would be approved.

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

THE PRESIDENT: The pending question before the Senate is the motion by the Senator from Franklin, Senator Woodcock to Adopt Senate Amendment "A" (S-358) to Committee Amendment "A" (H-642). A Roll Call has been ordered. Is the Senate ready for the question?

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#252)

YEAS: Senators: ANDREWS, BARTLETT, BRENNAN, BROMLEY, BRYANT, CLUKEY, COURTNEY, COWGER, DAMON, DAVIS, DIAMOND, DOW, GAGNON, HASTINGS, HOBBS, MARTIN, MAYO, MILLS, MITCHELL, NASS, NUTTING, PERRY, PLOWMAN, RAYE, ROSEN, ROTUNDO, SAVAGE, SCHNEIDER, SNOWE-MELLO, STRIMLING, SULLIVAN, TURNER, WESTON, WOODCOCK, THE PRESIDENT - BETH G. EDMONDS

NAYS: Senators: None

35 Senators having voted in the affirmative and no Senator having voted in the negative, the motion by Senator **WOODCOCK** of Franklin to **ADOPT** Senate Amendment "A" (S-358) to Committee Amendment "A" (H-642), **PREVAILED**.

Committee Amendment "A" (H-642) as Amended by Senate Amendment "A" (S-358) 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-642) AS AMENDED BY SENATE AMENDMENT "A" (S-358)** thereto, in **NON-CONCURRENCE**.

Ordered sent down forthwith for concurrence.

The Chair laid before the Senate the following Tabled and Later (6/8/05) Assigned matter:

HOUSE REPORTS - from the Committee on **JUDICIARY** on Bill "An Act To Protect Unborn Children from Acts of Violence" H.P. 201 L.D. 262

Majority - **Ought Not to Pass** (8 members)

Minority - **Ought to Pass as Amended by Committee Amendment "A" (H-647)** (5 members)

Tabled - June 8, 2005, by Senator **HOBBS** of York

Pending - **ACCEPTANCE OF EITHER REPORT**

(In House, June 8, 2005, the Minority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-647)**.)

(In Senate, June 8, 2005, Reports **READ**.)

Senator **HOBBS** of York moved the Bill and accompanying papers be **COMMITTED** to the Committee on **JUDICIARY**, in **NON-CONCURRENCE**.

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

Senator **PLOWMAN:** Thank you, Madame President. Point of Order, Madame President. What is the effect of this motion?

THE PRESIDENT: The bill would be sent back to the Judiciary Committee.

Senator **PLOWMAN:** Thank you, Madame President.

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

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

Senator **ANDREWS:** Thank you, Madame President, men and women of the Senate. I would ask you to vote against sending this back to committee. This is a bill that has created a lot of emotional turmoil for all of us. I think we should have the courage to deal with it, vote on it up or down. Thank you.

THE PRESIDENT: The pending question before the Senate is the motion by the Senator from York, Senator Hobbins to Committee the Bill and Accompanying papers to the Committee on Judiciary. A Roll Call has been ordered. Is the Senate ready for the question?

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#253)

YEAS: Senators: BARTLETT, BRENNAN, BROMLEY, BRYANT, COWGER, DAMON, DIAMOND, GAGNON, HOBBS, MARTIN, MAYO, MILLS, MITCHELL, NUTTING, PERRY, ROTUNDO, SCHNEIDER, STRIMLING, SULLIVAN, TURNER, THE PRESIDENT - BETH G. EDMONDS

NAYS: Senators: ANDREWS, CLUKEY, COURTNEY, DAVIS, DOW, HASTINGS, NASS, PLOWMAN, RAYE, ROSEN, SAVAGE, SNOWE-MELLO, WESTON, WOODCOCK

21 Senators having voted in the affirmative and 14 Senators having voted in the negative, the motion by Senator **HOBBS** of York to **COMMIT** the Bill and accompanying papers to the Committee on **JUDICIARY**, in **NON-CONCURRENCE**, **PREVAILED**.

Sent down for concurrence.

The Chair laid before the Senate the following Tabled and Later (6/8/05) Assigned matter:

HOUSE REPORTS - from the Committee on **JUDICIARY** on Resolve, Directing the Bureau of Health To Study the Effectiveness and Quality of Reproductive Counseling
H.P. 1057 L.D. 1512

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-664)** (10 members)

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

Tabled - June 8, 2005, by Senator **HOBBS** of York

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

(In House, June 7, 2005, the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-664)**.)

(In Senate, June 8, 2005, Reports **READ**.)

On motion by Senator **COURTNEY** of York, supported by a Division of 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 (#254)

YEAS: Senators: ANDREWS, BRYANT, CLUKEY, COURTNEY, DAVIS, DIAMOND, DOW, HASTINGS, HOBBS, MARTIN, NASS, PERRY, PLOWMAN, RAYE, ROSEN, SAVAGE, SNOWE-MELLO, TURNER, WESTON, WOODCOCK

NAYS: Senators: BARTLETT, BRENNAN, BROMLEY, COWGER, DAMON, GAGNON, MAYO, MILLS, MITCHELL, NUTTING, ROTUNDO, SCHNEIDER, STRIMLING, SULLIVAN, THE PRESIDENT - BETH G. EDMONDS

20 Senators having voted in the affirmative and 15 Senators having voted in the negative, the motion by Senator **HOBBS** of York to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence, **PREVAILED**.

READ ONCE.

Committee Amendment "A" (H-664) **READ** and **ADOPTED**, in concurrence.

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

Sent down for concurrence.

LEGISLATIVE RECORD - SENATE, THURSDAY, JUNE 9, 2005

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

The Chair laid before the Senate the following Tabled and Later (6/7/05) Assigned matter:

HOUSE REPORTS - from the Committee on **TAXATION** on Bill "An Act To Conform the Maine Tax Code with the Federal Health Savings Accounts Laws"

H.P. 146 L.D. 195

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-532)** (9 members)

Minority - **Ought Not to Pass** (4 members)

Tabled - June 7, 2005, by Senator **PERRY** of Penobscot

Pending - motion by same Senator to **ACCEPT** the Minority **OUGHT NOT TO PASS** Report, in **NON-CONCURRENCE**

(In House, June 7, 2005, the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-532) AND HOUSE AMENDMENT "A" (H-653).**)

(In Senate, June 7, 2005, Reports **READ.**)

On motion by Senator **BRENNAN** of Cumberland, **TABLED** until Later in Today's Session, pending the motion by Senator **PERRY** of Penobscot to **ACCEPT** the Minority **OUGHT NOT TO PASS** Report, in **NON-CONCURRENCE**.

Senate at Ease.

Senate called to order by the President.

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

HOUSE REPORTS - from the Committee on **TAXATION** on Bill "An Act To Conform the Maine Tax Code with the Federal Health Savings Accounts Laws"

H.P. 146 L.D. 195

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-532)** (9 members)

Minority - **Ought Not to Pass** (4 members)

Tabled - June 9, 2005, by Senator **BRENNAN** of Cumberland

Pending - motion by Senator **PERRY** of Penobscot to **ACCEPT** the Minority **OUGHT NOT TO PASS** Report, in **NON-CONCURRENCE**

(In House, June 7, 2005, the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-532) AND HOUSE AMENDMENT "A" (H-653).**)

(In Senate, June 7, 2005, Reports **READ.**)

Senator **PERRY** of Penobscot requested and received leave of the Senate to withdraw his motion to **ACCEPT** the Minority **OUGHT NOT TO PASS** Report, in **NON-CONCURRENCE**.

Same Senator moved the Senate **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence.

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

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

Senator **COURTNEY:** Thank you, Madame President, men and women of the Senate. I'd like to commend the good Chairman of the Taxation Committee for moving the majority report. This is the conformity with the health savings account. I think that when we look at how we can spend \$300,000 on a health conference, this is a very small price to pay for something that could blossom into a terrific asset to the healthcare system in our state. Thank you.

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

Senator **SULLIVAN:** Thank you, Madame President, men and women of the Senate. I will be pleased to support this. One of the things we've been working on in the Insurance and Financial Services Committee is this very thing. It will most likely be part, I can't imagine it not being, of Dirigo. Part of that \$300,000 spent probably helped us get to this place right now. Insurance is an ongoing thing. I would encourage all my colleagues to support this.

THE PRESIDENT: The pending question before the Senate is the motion by the Senator from Penobscot, Senator Perry to Accept the Majority Ought to Pass as Amended Report. A Roll Call has been ordered. Is the Senate ready for the question?

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#255)

YEAS: Senators: ANDREWS, BARTLETT, BRENNAN, BRYANT, CLUKEY, COURTNEY, COWGER, DAMON, DAVIS, DIAMOND, DOW, GAGNON, HASTINGS, HOBBS, MARTIN, MAYO, MILLS, NASS, NUTTING, PERRY, PLOWMAN, RAYE, ROSEN, ROTUNDO, SAVAGE, SCHNEIDER, SNOWE-MELLO, STRIMLING, SULLIVAN, TURNER, WESTON, WOODCOCK, THE PRESIDENT - BETH G. EDMONDS

NAYS: Senators: None

ABSENT: Senators: BROMLEY, MITCHELL

33 Senators having voted in the affirmative and no Senator having voted in the negative, with 2 Senators being absent, the motion by Senator PERRY of Penobscot to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence, **PREVAILED**.

READ ONCE.

Committee Amendment "A" (H-532) **READ** and **ADOPTED**, in concurrence.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-532)**, in **NON-CONCURRENCE**.

Sent down for concurrence.

The Chair laid before the Senate the following Tabled and Later (6/8/05) Assigned matter:

HOUSE REPORTS - from the Committee on **JUDICIARY** on Bill "An Act To Amend the Maine Tort Claims Act" H.P. 655 L.D. 936

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-657)** (10 members)

Minority - **Ought Not to Pass** (1 member)

Tabled - June 8, 2005, by Senator **DAVIS** of Piscataquis

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

(In House, June 8, 2005, the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-657)**.)

(In Senate, June 8, 2005, Reports **READ**.)

On motion by Senator **HOBBS** of York, Bill and accompanying papers **COMMITTED** to the Committee on **JUDICIARY**, in **NON-CONCURRENCE**.

Sent down for concurrence.

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

Senator **DAVIS** of Piscataquis was granted unanimous consent to address the Senate off the Record.

Off Record Remarks

Senator **BRENNAN** of Cumberland was granted unanimous consent to address the Senate off the Record.

On motion by Senator **BRENNAN** of Cumberland, **RECESSED** until 7:00 in the evening.

After Recess

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:

Act

An Act To Prevent the Manufacturing of Methamphetamine in Maine

S.P. 575 L.D. 1601
(C "A" S-334)

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

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 **HEALTH AND HUMAN SERVICES** on Bill "An Act Regarding Advertising by Drug Manufacturers"

H.P. 1141 L.D. 1618

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-661)**.

Signed:

Senators:

MAYO of Sagadahoc
MARTIN of Aroostook

Representatives:

PINGREE of North Haven
WALCOTT of Lewiston
GROSE of Woolwich
WEBSTER of Freeport
MILLER of Somerville
BURNS of Berwick
CAMPBELL of Newfield

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

Signed:

Senator:

ROSEN of Hancock

Representatives:

SHIELDS of Auburn
LEWIN of Eliot
GLYNN of South Portland

(Representative SOCKALEXIS of the Penobscot Nation - of the House - supports the Majority **Ought To Pass as Amended Report**.)

Comes from the House with the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-661) AS AMENDED BY HOUSE AMENDMENT "A" (H-675)** thereto.

Reports **READ**.

Senator **MAYO** of Sagadahoc moved the Senate **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence.

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

Senator **ROSEN:** Thank you, Madame President, men and women of the Senate. You have before you a bill that has been brought to the State of Maine by the consumer's union, those are

the nice folks who put out Consumer's Report and they are on a national campaign to try to get this legislation passed. It has been introduced in 18 states and it has been dismissed by all but three. There are still three states that are remaining that are considering, but as of yet have not passed this bill. This would be groundbreaking legislation here in the State of Maine.

Let's take a look at it and understand what it does and what it attempts to charge our state employees to perform. This is a bill that deals with clinical trials of medications, pharmaceutical and clinical trials. It has been a big issue in the news lately. You have certainly seen a variety of cases that have talked about different drugs that have been pulled off the market because some information was revealed in certain clinical trials that indicate that it wasn't as safe and effective as originally promised. This bill puts a charge on the State of Maine and our employees in state government to take control of a situation that apparently some folks feel is not being dealt with on the federal level. I would remind you that we do have a Food and Drug Administration in Washington. We do have a Justice Department. We have our loyal members of Congress. We have our own delegation that we can talk with. They are all charged with dealing with the issue of reviewing the clinical trials and testing of pharmaceutical drugs and the regulation of the pharmaceutical industry and advertising of the pharmaceutical industry on the national level. This bill is a proposal that is asking the State of Maine to take on some of these responsibilities.

First, the bill wants to have the state require that if a medicine, a pharmaceutical, is being advertised or sold in Maine then we are to have a link to a national website that will provide for us the information related to clinical trials. If you recall, there was a bill reported out of the Health and Human Services Committee just a few weeks ago, sponsored by the good Representative Mills from Farmington, that was passed that essentially does the same thing. That bill that was passed places a link on the State of Maine's website to two national websites, one that is hosted by the industry and the other one that is hosted by the federal government, to make it easier for citizens in the State of Maine to go to those sites and review information around clinical trials. The thing that is slightly different in this bill is that it says that we will have access to the national website, and in order to satisfy the requirements of the subsection, the website and the manner of posting must be acceptable to the department. This bill says that the manner of posting of this information on these national websites must be acceptable to the State of Maine.

This bill also imposes a \$1,000 fee on manufacturers of prescription drugs on an annual basis, apparently to help fund this effort. I would remind you that the bill that has already gone through the House and the Senate, and I'm assuming will meet with the Chief Executive's approval, did not have a fiscal note and provides a link to that information currently.

This bill also has the state in the business of regulating advertising. We will have the authority and will essentially assume the ability to enforce current federal law now on a state basis to make sure that advertising, internet advertising, print advertising, and electronic television and radio advertising for pharmaceutical drugs that are sold and offered in the State of Maine do provide fair and reliable information and are true to the federal law. We will have enforcement powers now to follow through.

Ladies and gentlemen, this is an ambitious proposal and we are in the midst of dealing with a very serious budget problem and we are looking for ways to deal with balancing Maine's budget.

Previous legislatures have already placed on our own Department of Health and Human Services and our Attorney General a series of very ambitious policy requirements. Last session, the legislature passed a proposal, which became law, that requires that the State of Maine collect information to provide to all the citizens information regarding the promotional efforts that take place in Maine around the sale of pharmaceutical drugs. Twice now, once last year and again this year, the Department of Health and Human Services has come before the Health and Human Services Committee and asked us to please extend the deadline for them to initiate that work because they are so overwhelmed and they have so much on their plate that they have not been able to get around to performing that function. Last year the time was extended and this year, in this session, we extended it again. They have a lot to deal with; Medicaid Part D, changes in the prescription drug program, and changes in our budget. There are other initiatives that have been very forward looking and very ambitious, some first in the nation, that have already been passed and presented to them to go forward and to implement. We all know about the work that has already taken place from the AG's Office, defending laws that we have passed dealing with pharmaceuticals, the industry, pricing, and related issues.

I ask you to not impose this burden on state government. They did not come forward and ask for this bill. The department didn't request this bill. They will do whatever we ask them to do. If, in fact, we say this is the policy of the State of Maine and this is a top priority of this state, they will put other work aside and they will step up and I'm sure they will do their best. I'm not sure it's the right thing for us to ask them to do. I would request that you reject the majority Ought to Pass report and go on to approve the minority report.

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

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

Senator **MAYO:** Thank you, Madame President, ladies and gentlemen of the Senate. I believe that this will be the last piece of legislation that the good Senator from Hancock, Senator Rosen, shall be debating today. However, I must warn you that there are a number of additional pieces of legislation, divided reports, that will be coming before us in the waning hours of this session.

This piece of legislation, L.D. 1618, An Act Regarding Advertising by Drug Manufacturers, has zero to do with the balancing of the state budget. The money raised by this particular piece of legislation, the fee levied upon the drug manufacturers, will handle whatever in total expenses involved. The department, as recent as about 5:30 or 5:45, while down in the Appropriations room when I had a chance to talk with the Commissioner, indicated that they could fulfill the functions necessary to carry out this particular piece of legislation.

What does this particular piece of legislation do? It requires drug manufacturers to disclose clinical trial information for all drugs that are advertised in the State of Maine, including adverse effects data and by posting these on a website approved by DHHS. The good Senator from Hancock, Senator Rosen, was correct when he discussed that particular issue.

The second thing it does is incorporates FDA misleading advertising standards into state law. The Attorney General was asked whether this was legal for the State of Maine to do and that answer came back to the committee that it was, in fact, legal and that other states have done this in other avenues, not on this particular piece of legislation but in other avenues dealing with drugs.

Existing law does not require that the pharmaceutical industry make public their clinical drug trial studies. I think in the last 12 months we have seen the results of that situation, particularly with the case of Vioxx and Paxil.

Yes, if this particular piece of legislation is passed and we accept the majority, which is a bi-partisan majority by the way, Ought to Pass as Amended report, Maine very well may be the first state in the nation to have adopted this piece of model legislation. I would remind the people in this body that, with regard to drug legislation, we have lived up to our motto as a state, Dirigo, I lead, and have been the leader in drug legislation in this country for a number of years. I am very proud of the fact that the state has done that and I think we all should be proud that we have done a lot with regard to prescription drugs for the citizens of the State of Maine. This is another piece of legislation that moves us along, from my perspective, that continuum.

Enacting L.D. 1618 is a critical first step to ensure that consumers of drugs in the State of Maine have basic information about a drug's safety and that advertising cannot, any longer, gloss over safety issues and mislead the consumers of drugs in this state. Ladies and gentlemen of the Senate, I urge your acceptance of the majority bi-partisan Ought to Pass committee report. Thank you.

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

Senator **BRENNAN:** Thank you, Madame President, men and women of the Senate. I just want to stand in support of many of the comments that were made by the good Senator from Sagadahoc, Senator Mayo. I was interested in the comment by the Senator from Hancock, Senator Rosen, that one of the possible problems with this is that this would be a groundbreaking piece of legislation, as if there was something wrong with that. In fact, as the Senator from Sagadahoc, Senator Mayo, has pointed out, Maine has lead the nation on issues related to prescription drugs and it is something we should be proud of and not something we should shy away from. As a result of the fact that we have embraced groundbreaking proposals, many of our citizens in this state have access to prescription drugs that they would otherwise not have. In fact, we are better off than many of our counterparts in other states that don't have similar programs and don't have access to those drugs at the costs that we are able to provide. If groundbreaking is a problem, that's a problem we should continue to pursue.

Secondly, I concur with some of the concerns that the good Senator from Hancock, Senator Rosen, raised in terms of the workload for the Department of Human Services. They clearly have a lot on their plate. There is a lot before them. The issue here is not protecting the Department of Human Services from a workload that may be too difficult, the issue here is whether or not we can provide information to people in the State of Maine that will allow them to make better healthcare choices and to protect them when they make those choices. I don't want to add a burden to the Department of Health and Human Services, but

having this information available to citizens of Maine to help them make better and more educated decisions is certainly a good thing to do.

Lastly, I would point out that within the last year there have been a number, two in particular, of medications that have been used with young people, Zoloft and Paxil, for anxiety and depression mood disorders, that many of the clinical trials that were utilized when we drugs were first tested we only done on adults. Yet these drugs became routinely prescribed for young people who were experiencing anxiety and depression. More recently, because of some of the side effects of those drugs, the FDA has now mandated there be a warning on those drugs about the potential side effects. I would argue that had those clinical trials been available to people before hand, that maybe we would have been able to avoid, in very limited situations, some of those negative side effects.

I urge you to support the majority Ought to Pass report and hope that Maine can continue to be a groundbreaking state.

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

Senator **ROSEN:** Thank you, Madame President. I'd like to just quickly respond to a couple of the points raised. They are all valid and all interesting. The groundbreaking opportunity that we have here before us was bi-passed by 15 other states, so I'm not sure that they necessarily were afraid of being the first and breaking ground. Perhaps they just chose to take a more prudent course when it came to this particular approach. Regarding access, it isn't clear to me that this particular bill enhances or improves access to medication. This bill talks to making clinical trail information available. This bill talks about regulating advertising. Many of the efforts that have taken place, that have been passed by previous legislatures, and efforts that are underway now by the State of Maine do, in fact, address issues of access. It isn't clear to me that this bill really enhances access. When it comes to protection and protecting the consumer, I think what we are saying with this bill is that we have lost faith with the FDA, with the federal government, with the Justice Department, and with the industry as a whole. I submit that there have been some very disturbing stories in the news recently and if we have concerns with the way the federal regulatory process is dealing with advertising and claims and providing information around clinical trials, then we should lend our voices to that effort. It was clear to us in the committee that the industry and the federal government are both aggressively moving ahead with improvements with both websites, that are now available, and have a mandatory link to the state's site from the previous bill that passed and are adding more information, more detail, and more backup around clinical trials which take place worldwide. I think you are seeing some dramatic improvements with the information that is being made available. Finally, cost. The idea that somehow this bill is self-funding. I don't think that is necessarily a reasonable argument to make. The fiscal note tells us that the Attorney General and the Attorney General's staff will absorb within existing resources whatever the costs are that they will confront to implement this regulatory action. Based on history, I submit to you that the potential is that those costs could be significant and that this is a diversion and they should be focusing their efforts on the work that is already ahead of them.

THE PRESIDENT: The pending question before the Senate is the motion by the Senator from Sagadahoc, Senator Mayo to Accept the Majority Ought to Pass as Amended Report. A Roll Call has been ordered. Is the Senate ready for the question?

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#256)

YEAS: Senators: BARTLETT, BRENNAN, BROMLEY, BRYANT, COWGER, DAMON, DIAMOND, GAGNON, HOBBS, MARTIN, MAYO, MILLS, MITCHELL, NUTTING, PERRY, RAYE, ROTUNDO, SCHNEIDER, STRIMLING, SULLIVAN, THE PRESIDENT - BETH G. EDMONDS

NAYS: Senators: ANDREWS, CLUKEY, COURTNEY, DAVIS, DOW, HASTINGS, NASS, PLOWMAN, ROSEN, SAVAGE, SNOWE-MELLO, TURNER, WESTON, WOODCOCK

21 Senators having voted in the affirmative and 14 Senators having voted in the negative, the motion by Senator **MAYO** of Sagadahoc to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence, **PREVAILED**.

READ ONCE.

Committee Amendment "A" (H-661) **READ**, in concurrence.

House Amendment "A" (H-675) to Committee Amendment "A" (H-661) **READ** and **ADOPTED**, in concurrence.

Committee Amendment "A" (H-661) as Amended by House Amendment "A" (H-675) thereto, **ADOPTED**, in concurrence.

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

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

Senate at Ease.

Senate called to order by the President.

Senator **PERRY** of Penobscot was granted unanimous consent to address the Senate off the Record.

Off Record Remarks

LEGISLATIVE RECORD - SENATE, THURSDAY, JUNE 9, 2005

On motion by Senator **BRENNAN** of Cumberland, **ADJOURNED**,
to Friday, June 10, 2005, at 10:00 in the morning.