

MAINE STATE LEGISLATURE

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Legislative Record
House of Representatives
One Hundred and Twenty-Fourth Legislature
State of Maine

Volume III

Second Regular Session

March 24, 2010 - April 12, 2010

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House Legislative Sentiments
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Pages 1215-1836

ONE HUNDRED AND TWENTY-FOURTH LEGISLATURE
SECOND REGULAR SESSION
35th Legislative Day
Tuesday, April 6, 2010

The House met according to adjournment and was called to order by the Speaker.

Prayer by Reverend Tim Wilcox, Fairfield and Fairfield Center United Methodist Churches.

National Anthem by Franklin County Fiddlers, Mt. Blue Regional School District, Farmington.

Pledge of Allegiance.

Doctor of the day, Alisa M. Roberts, D.O., Bangor.

The Journal of yesterday was read and approved.

COMMUNICATIONS

The Following Communication: (S.C. 758)

**MAINE SENATE
124TH MAINE LEGISLATURE
OFFICE OF THE SECRETARY**

April 5, 2010

Honorable Millicent M. MacFarland

Clerk of the House

2 State House Station

Augusta, ME 04333

Dear Clerk MacFarland:

Please be advised the Senate today insisted to its previous action whereby it accepted the Majority Ought Not to Pass Report from the Committee on Education and Cultural Affairs on Bill "An Act To Allow the Town of Wells and the Town of Ogunquit To Amend the Terms of Their Cost-sharing Agreement for Their Community School District and To Provide Each Town the Ability To Withdraw from the Wells-Ogunquit Community School District" (S.P. 670) (L.D. 1747).

Sincerely,

S/Joy J. O'Brien

Secretary of the Senate

READ and ORDERED PLACED ON FILE.

ORDERS

On motion of Representative MAGNAN of Stockton Springs, the following Joint Resolution: (H.P. 1323) (Cosponsored by Senator ALFOND of Cumberland and Representatives: BERRY of Bowdoinham, BLODGETT of Augusta, BRIGGS of Mexico, CAIN of Orono, CAMPBELL of Newfield, CELLI of Brewer, CHASE of Wells, CONNOR of Kennebunk, CROCKETT of Augusta, EATON of Sullivan, EVES of North Berwick, FLAHERTY of Scarborough, FLEMINGS of Bar Harbor, GIFFORD of Lincoln, GILBERT of Jay, HARVELL of Farmington, HASKELL of Portland, HAYES of Buckfield, HUNT of Buxton, JOHNSON of Greenville, JONES of Mount Vernon, KNIGHT of Livermore Falls, LAJOIE of Lewiston, McCABE of Skowhegan, MITCHELL of the Penobscot Nation, MORRISON of South Portland, O'BRIEN of Lincolnville, PERCY of Phippsburg, PETERSON of Rumford, PRATT of Eddington, SANBORN of Gorham, SAVIELLO of Wilton, SCHATZ of Blue Hill, STUCKEY of Portland, SUTHERLAND of Chapman, TILTON of Harrington, TRINWARD of Waterville, WRIGHT of Berwick) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 214)

**JOINT RESOLUTION MEMORIALIZING THE UNITED STATES
DEPARTMENT OF EDUCATION TO SUPPORT THE
PRESERVATION OF THE TRADITION IN MAINE OF LOCAL**

**SCHOOL BOARDS SELECTING THE EDUCATIONAL
MATERIALS TO BE USED BY THEIR PUBLIC SCHOOL
STUDENTS**

WE, your Memorialists, the Members of the One Hundred and Twenty-fourth Legislature of the State of Maine now assembled in the Second Regular Session, most respectfully present and petition the Secretary of the United States Department of Education, the Honorable Arne Duncan, as follows:

WHEREAS, local school boards in the State of Maine have always selected textbooks and other curriculum materials to provide the best education possible for the children in the public schools of Maine; and

WHEREAS, local school boards choose curriculum materials with the guidance of the Maine Learning Results; and

WHEREAS, a number of states have statewide school boards that select the educational materials for all of their students and publishers of textbooks and educational materials often gear the content of their educational materials to those states; and

WHEREAS, federal education standards require all states to adopt common core standards and we in Maine are confident in the Maine Learning Results and want to apply our own methods to meet the federal education standards in order to preserve the integrity of the decision-making process in Maine; and

WHEREAS, the State of Maine has just approved the so-called Common Core of educational standards and wishes to maintain the tradition of selecting textbooks and materials to make certain the standards of education are met; and

WHEREAS, our belief is that textbook and curriculum materials are best selected by local school boards using the guidance of the Maine Learning Results and the rigorous academic scrutiny of curriculum specialists; now, therefore, be it

RESOLVED: That We, your Memorialists, on behalf of the people we represent, take this opportunity to urge and request that Maine's Commissioner of Education uphold and support the tradition of academic independence and integrity exercised by local school boards in the State of Maine in selecting appropriate textbooks and materials for their school districts; and be it further

RESOLVED: That We, your Memorialists, urge and request that the United States Department of Education respect and support the integrity of the Maine State Legislature in its decision to uphold the tradition of local school boards' selecting curriculum materials for the instruction of their public school students; and be it further

RESOLVED: That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to the Honorable Arne Duncan, United States Secretary of Education, to Maine's Commissioner of Education and to each Member of the Maine Congressional Delegation.

READ.

The SPEAKER: The Chair recognizes the Representative from Stockton Springs, Representative Magnan.

Representative **MAGNAN**: Thank you, Madam Speaker. The wording of this Resolution is simple, but there's kind of a depth and quality of what we're trying to do here that isn't as obvious. I stand to present this Resolution today which celebrates the tradition of local school boards selecting the textbooks and materials for local school children. The euphemistically labeled "Race to the Top", a reformation of "No Child Left Behind", is a deadly competition for scarce funds for children with educational needs.

The State of Maine and this Legislature have made great concessions to the federal Department of Education so that Maine might be eligible for some of these highly competitive funds. In less than two years Maine has given the federal

government: personal information of our children including their social security numbers, adoption of a Core of Common Standards possibly to replace our Maine Learning Results, and allowed an evaluation process for teachers and principals that must be selected from suggested evaluation packages provided by the Federal Government. All of these components have point value in the quest for the money. Yet even with these concessions, there is no guarantee that money will be provided. The contest goes on.

And so this Resolution is just a request to recognize that Maine has educational traditions and that one of these is selecting textbooks and it's not negotiable. The consolidation of school districts and the concessions listed above are all part of the movement toward a state school system, with a state school board and eventually state school board selection of textbooks and materials.

Interestingly enough, last night at 11:30, when I finally got around to looking at the *New York Times* headlines, there was an article, "Governors Protesting the Race to the Top", and it talked about Race to the Top funds that were in competition by states that had done every single thing they had to do to get some money, and only two states, Delaware and Tennessee, got the bucks. And the governor of Colorado said it has forced a rural and union alliance, which he found interesting. But the governors were very active about the inscrutable scoring and the anonymous judges and the fact that there was no way to go about doing this any other way. They viewed the contest as a federal intrusion.

So I hope that the pendulum of consolidation comes to a halt or even slips back toward more local control. Until then we have to hold on to whatever local control we have. I know I'll be glad to go door to door this summer and when asked, be able to say I support local education, I introduced this Resolution and signed it to that effect. Thank you.

The SPEAKER: The Chair recognizes the Representative from North Berwick, Representative Eves.

Representative **EVES**: Thank you, Madam Speaker. Madam Speaker, Ladies and Gentlemen of the House. The genesis of this Resolution was in part motivated by a conversation I had with a constituent who was concerned about the possibility of the selection of our educational textbooks being dictated by outside influences, which do not meet the rigorous standards of scholarship we have applied in selecting textbooks in the past.

When it comes to education, Maine lives up to its state motto - "Dirigo." We consistently rank among the top five states in education quality. Our expenditures on education are usually among the top twenty states, even though we rank about 40th in population and about 41st in total personal income. In short, Mainers have demonstrated to the nation how much they care about giving their children a high quality education.

And what is a high quality education? Educating requires more than just filling our children's heads with rote instructions and facts. The ultimate goal of education is to give our children the intellectual training they need to find happiness and build a strong and just society. We educate our children first to be good people and good citizens.

In order to provide that education, we have been committed to providing our children and teachers with materials that contain reliable statements of fact, statements provided by those who have committed their careers to understanding and communicating the subjects we teach our children. And we give our teachers the freedom to use those materials to build arguments on sound logic and thus give our children a sound education. Only by giving our children access to such high

quality materials and teachers can we give them a chance to become happy and productive adults.

Recently, the Texas School Board set out its standards for teaching US history. Just as with its earlier standards for biology, the Texas School Board's standards are quite controversial and show a desire to emphasize teaching young Texans a particular vision of American history over a history based in sound scholarship. Some of the more shocking aspects of the new Texas standards include eliminating teaching students about the Enlightenment and Thomas Jefferson, despite the fact that the vast weight of accepted scholarship has shown both to be vital elements of the American Revolution and the formation of our democracy.

You may wonder why the fascination with Texas? Because Texas is the second most populous state in America, its standards can dictate the content of textbooks for the entire nation by the simple laws of economics. Here, sadly, quantity trumps quality. In short, Maine may someday be forced to purchase American history textbooks that fall short of the quality that we have been committed to giving our children for so long.

In this Resolution we make a statement that we cannot accept the imposition of such a flawed and skewed vision of history on Maine's students. We have to speak now, and speak loudly, to both Texas and the nations schoolbook publishers that Maine will not accept any textbook that adheres to such a standard that places ideological agendas over sound scholarship. Thank you.

Subsequently, the Joint Resolution was **ADOPTED**.
Sent for concurrence.

SPECIAL SENTIMENT CALENDAR

In accordance with House Rule 519 and Joint Rule 213, the following item:

Recognizing:

Cheryl L. Rust, of Wiscasset, on the 10th anniversary of the Maine Health Access Foundation. Ms. Rust is the chair of the foundation's board of trustees. Since its inception, the Maine Health Access Foundation has been committed to advancing health reform and promoting patient-centered and family-centered health care. We applaud Ms. Rust and the Maine Health Access Foundation for the foundation's 10 years of hard work and send our best wishes for success in all future endeavors;

(HLS 1136)

Presented by Representative FOSSEL of Alna.

Cosponsored by Senator TRAHAN of Lincoln.

On **OBJECTION** of Representative FOSSEL of Alna, was **REMOVED** from the Special Sentiment Calendar.

READ.

On motion of the same Representative, **TABLED** pending **PASSAGE** and later today assigned.

The following items were taken up out of order by unanimous consent:

SENATE PAPERS

Non-Concurrent Matter

An Act To Provide Predictable Benefits to Maine Communities That Host Wind Energy Developments

(S.P. 582) (L.D. 1504)

(C. "A" S-501)

PASSED TO BE ENACTED in the House on April 2, 2010.

Came from the Senate **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-501) AS**

AMENDED BY SENATE AMENDMENT "C" (S-516) thereto in **NON-CONCURRENCE**.

On motion of Representative PIOTTI of Unity, **TABLED** pending **FURTHER CONSIDERATION** and later today assigned.

Non-Concurrent Matter

Bill "An Act To Encourage the Use of Models in the Collection and Use of Student Achievement Data" (EMERGENCY)

(S.P. 704) (L.D. 1799)

PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-483) AND HOUSE AMENDMENT "A" (H-813) in the House on March 31, 2010.

Came from the Senate **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-483) AS AMENDED BY SENATE AMENDMENT "A" (S-515)** thereto **AND HOUSE AMENDMENT "A" (H-813)** in **NON-CONCURRENCE**.

Representative PINGREE of North Haven moved that the House **RECEDE AND CONCUR**.

Representative TARDY of Newport **REQUESTED** a roll call on the motion to **RECEDE AND CONCUR**.

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

The **SPEAKER**: A roll call has been ordered. The pending question before the House is Recede and Concur. All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 357

YEA - Adams, Beaudette, Beaulieu, Beck, Berry, Blanchard, Blodgett, Boland, Bolduc, Bryant, Cain, Carey, Cohen, Connor, Crockett P, Dill, Dostie, Driscoll, Duchesne, Eaton, Eves, Flaherty, Flemings, Flood, Fossil, Gilbert, Haskell, Hayes, Hill, Hinck, Hunt, Innes Walsh, Jones, Lajoie, Legg, Lovejoy, Magnan, Martin JR, Martin JL, Mazurek, McCabe, Miller, Nass, Nelson, O'Brien, Peoples, Percy, Perry, Peterson, Pieh, Pilon, Piotti, Plummer, Priest, Rankin, Richardson D, Rotundo, Russell, Sanborn, Saviello, Shaw, Smith, Stuckey, Sutherland, Theriault, Treat, Trinward, Valentino, Van Wie, Wagner J, Wagner R, Watson, Webster, Welsh, Wheeler, Wright, Madam Speaker.

NAY - Austin, Ayotte, Beaudoin, Bickford, Briggs, Browne W, Burns, Butterfield, Campbell, Casavant, Cebra, Celli, Chase, Clark H, Clark T, Cleary, Cotta, Crafts, Cray, Crockett J, Curtis, Cushing, Davis, Eberle, Edgecomb, Finch, Fitts, Fletcher, Gifford, Greeley, Hamper, Hanley, Harlow, Harvell, Hogan, Johnson, Joy, Kaenrath, Knapp, Knight, Kruger, Langley, Lewin, MacDonald, McFadden, McKane, Millett, Morrison, Nutting, Pendleton, Pinkham, Prescott, Richardson W, Sarty, Schatz, Sirois, Stevens, Strang Burgess, Sykes, Tardy, Thibodeau, Thomas, Tilton, Tuttle, Weaver, Willette.

ABSENT - Cornell du Houx, Giles, Goode, Kent, McLeod, Pratt, Robinson, Rosen.

Yes, 77; No, 66; Absent, 8; Excused, 0.

77 having voted in the affirmative and 66 voted in the negative, with 8 being absent, and accordingly the House voted to **RECEDE AND CONCUR**.

Non-Concurrent Matter

Bill "An Act To Amend the Tax Laws"

(H.P. 1084) (L.D. 1540)

PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-754) in the House on April 1, 2010.

Came from the Senate **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-754) AS**

AMENDED BY SENATE AMENDMENT "A" (S-514) thereto in **NON-CONCURRENCE**.

The House voted to **RECEDE AND CONCUR**.

COMMUNICATIONS

The Following Communication: (H.C. 300)

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

April 6, 2010

Honorable Hannah M. Pingree

Speaker of the House

2 State House Station

Augusta, Maine 04333

Dear Speaker Pingree:

Pursuant to Joint Rule 310, the following Joint Standing Committee has voted unanimously to report the following bills out "Ought Not to Pass":

Appropriations and Financial Affairs

L.D. 1594 An Act To Restore Longevity Pay (EMERGENCY)

L.D. 1748 An Act To Authorize a General Fund Bond Issue To Purchase and Upgrade Trackage of the Montreal, Maine and Atlantic Railway

L.D. 1761 An Act To Authorize a General Fund Bond Issue To Create a New Electronic Medical Records Infrastructure and To Establish the Electronic Medical Records Infrastructure Program

L.D. 1816 An Act To Authorize a Bond Issue for Ratification by the Voters for the June 2010 Election To Create Jobs in the State

The sponsors and cosponsors have been notified of the Committee's action.

Sincerely,

S/Millicent M. MacFarland

Clerk of the House

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

REPORTS OF COMMITTEE

Divided Report

Majority Report of the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-825)** on Bill "An Act To Make Administrative Changes to Tax Laws To Maintain a Balanced Budget"

(H.P. 1321) (L.D. 1830)

Signed:

Senators:

DIAMOND of Cumberland

CRAVEN of Androscoggin

Representatives:

CAIN of Orono

MARTIN of Eagle Lake

ROTUNDO of Lewiston

MILLER of Somerville

CONNOR of Kennebunk

WEBSTER of Freeport

Minority Report of the same Committee reporting **Ought Not to Pass** on same Bill.

Signed:
 Senator:
 ROSEN of Hancock

Representatives:
 MILLETT of Waterford
 FLOOD of Winthrop
 ROBINSON of Raymond
 NUTTING of Oakland

READ.

Representative CAIN of Orono moved that the House **ACCEPT** the Majority **Ought to Pass as Amended** Report.

The SPEAKER: The Chair recognizes the Representative from Orono, Representative Cain.

Representative **CAIN**: Thank you, Madam Speaker. Madam Speaker, Men and Women of the House. Very often in the Legislature and very often for politicians generally, we are accused of not thinking ahead. We are often accused of being too reactive rather than proactive. LD 1830 is an example of an opportunity to defy that stereotype. LD 1830 is a responsible, fiscal and legal policy that delays all of the effective dates of the tax reform package currently before the voters for repeal by one year to allow for a complete implementation of the law, as it was intended, should the repeal effort be unsuccessful in June. It only becomes effective, the language in LD 1830 only becomes relevant and effective if the people's veto is not successful.

What are the consequences if we do not pass LD 1830 today? First, because the original law was intended to be implemented over the course of more than a year, not half of a year, without LD 1830, we are putting Maine businesses in jeopardy of having to make changes to their sales tax systems right in the middle of the summer tourist season. And secondly, a full year of income tax reduction would go into effect with only a few months of the offsetting sales tax revenue to pay for it. This would lead to a more than \$50 million hole in Maine's state budget in the middle of the summer, which was never the case or the result of the original bill. Having just come through a very difficult budget process, I cannot imagine having \$50 million less to balance that budget, nor do I want to imagine the chaos of having to do it later this year. LD 1830 simply maintains the original intent of the bill: to be enacted as a package. It does not amend any substantive portion of the bill. It simply includes contingency language that moves all of the effective dates by one year into the future. The constitutional authority of the people to suspend a bill and put it to a vote cannot be changed, nor can it be overruled by the Legislature, and the substance of the legislation subject to a people's veto cannot be amended before the people have had a chance to vote on the bill. LD 1830 does not change any substantive portion of the legislation, just the effective dates to keep the law consistent with its original form. It does so across the board, evenhandedly, to mirror the original bill. If anything, let this be a lesson to all of us that, as we move forward in this time of people's vetoes and where the public is so engaged in the discussion, perhaps in the future, Madam Speaker, we should enact bills that say, for example, they will become effective the January following the effective date of the law, instead of a date certain with the year. Perhaps we can all learn from that as we go forward. I hope you will join me in passing this technical fix which is fiscally responsible and which will do a lot to make sure that this summer, should the people's veto not be successful, we will not be putting businesses in a position of great strife in the middle of the tourist season. Thank

you, Madam Speaker. Thank you, Men and Women of the House.

The SPEAKER: The Chair recognizes the Representative from Waterford, Representative Millett.

Representative **MILLETT**: Thank you, Madam Speaker. Madam Speaker, Ladies and Gentlemen of the House. I'd like to explain my vote on this Divided Report and, in so doing, explain my thinking as well as to commend the good House chair for her explanation of the issue. The issue came to the Appropriations Committee about three weeks ago. We totally unanticipated this issue being surfaced and opted not to put it in the budget because it has some legal, fiscal and political implications and consequences. I think the issue of what caused the issue to arise, the circumstances, has been explained fully by Representative Cain and I don't disagree with her translation. Namely that if the voters choose to reject the people's veto and allow the bill from last year to become effective 30 days after the vote is declared, there will be an out of sync situation relative to the adjustments to both income and sales taxes, creating a hole within the fiscal '11 period.

The legal part of it, we had a good discussion on mic with the attorney general yesterday, and while it is not crystal clear in my mind, I don't disagree with her interpretations that the law does not prevent us from doing a post vote enactor that would not be in conflict with the people's veto constitutional language. There are some old court cases that were referred to that seem to suggest that what we're being asked to do here today is not violative of the constitutional language. There will still be a fiscal note either way this question goes, whether the voters choose to repeal LD 1495 from last year or they reject that repeal. There will be a cost and it is not fully covered by the bill before us. I'm kind of coming down on the consequence side of influencing the people's decision. I prefer to see this play out in the campaign, pro and con, and let voters make their decisions without us interfering with it. Having said that, I understand that the consequences are large, the fiscal hole is significant, and I would not argue with the need to plan on looking down the road for correction at this time and certainly down the road. But I can't interject myself into the political discussion that will take place, and that is the reason why I'm on the opposite side. Madam Speaker, I would request when the vote is taken that we take the vote by yeas and nays.

Representative MILLETT of Waterford **REQUESTED** a roll call on the motion to **ACCEPT** the Majority **Ought to Pass as Amended** Report.

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

The SPEAKER: The Chair recognizes the Representative from Livermore Falls, Representative Knight.

Representative **KNIGHT**: Thank you, Madam Speaker. Madam Speaker, Ladies and Gentlemen of the House. I've heard the comments of the good Representative from Orono as well as my good friend to the left of me. I wonder, in light of the discussion that we've heard, if we could get a ruling from the Chair as to the pertinence of whether or not this is in fact a competing measure under the law. Thank you.

Representative KNIGHT of Livermore Falls asked the chair to **RULE** if this Bill is in fact a competing measure under the law.

The SPEAKER: The Chair would answer that that is not a matter for the Chair to decide on. If the question is whether it's constitutional for or how it will play out as a competing measure, that is a question I believe is best left up to the courts. So I believe that your vote coming up will be your decision about whether or not to make this decision.

Subsequently, the Chair **RULED** that this is not a matter for the Chair to decide, it is a question best left up to the Court.

The **SPEAKER**: The Chair recognizes the Representative from Orono, Representative Cain.

Representative **CAIN**: Thank you, Madam Speaker. That's a wonderful question that's been brought before the body, and I will say the Appropriations Committee had a very thorough and in-depth conversation with the attorney general yesterday. She was very clear that, as I stated in my earlier testimony, that you cannot amend the substance of the bill, but that this contingency language does not amend or even influence any substantive portion of the bill. It simply moves the effective dates by one year and it is contingent language, so it is dependent on the outcome of the vote in June, as whether it would need it or not. Thank you, Madam Speaker. I hope that that at least helps.

The **SPEAKER**: The Chair recognizes the Representative from Bath, Representative Watson.

Representative **WATSON**: Thank you, Madam Speaker. Madam Speaker, Ladies and Gentlemen of the House. I don't want to prolong this, but just recall, please, that if we don't pass this bill and the people's veto fails in June and this, and Chapter 382 in fact goes into effect, we are going to have to come back in special session. There's absolutely no other way we can fill the \$15 million hole. Besides creating the hole immediately, the sales tax increases, the sales tax broadening will go into effect as soon as the law is effective, 30 or 60 days after the veto fails, which means that businesses without any notice, without any preparation will be immediately tasked to start collecting sales tax in areas that they've never done before. That is patently unfair on our businesses. So for those two reasons, the pressure this will put on our businesses and the fact that we will need to explain to the State of Maine somehow why we have to come back into special session at \$100,000 or so a day to correct a bill that we can correct this morning. Thank you, Madam Speaker.

The **SPEAKER**: A roll call has been ordered. The pending question before the House is Acceptance of the Majority Ought to Pass as Amended Report. All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 358

YEA - Adams, Beaudette, Beaudoin, Beck, Berry, Blanchard, Blodgett, Boland, Bolduc, Briggs, Bryant, Butterfield, Cain, Campbell, Carey, Casavant, Cleary, Cohen, Connor, Cornell du Houx, Crockett P, Dill, Dostie, Driscoll, Duchesne, Eaton, Eberle, Eves, Finch, Flaherty, Flemings, Gilbert, Hanley, Harlow, Haskell, Hayes, Hill, Hinck, Hogan, Hunt, Innes Walsh, Jones, Kaenrath, Kruger, Lajoie, Legg, Lovejoy, MacDonald, Magnan, Martin JR, Martin JL, Mazurek, McCabe, Miller, Morrison, Nelson, O'Brien, Pendleton, Peoples, Percy, Perry, Peterson, Pieh, Pilon, Piotti, Priest, Rankin, Rotundo, Russell, Sanborn, Schatz, Shaw, Sirois, Smith, Stevens, Stuckey, Sutherland, Theriault, Treat, Trinward, Tuttle, Valentino, Van Wie, Wagner J, Wagner R, Watson, Welsh, Wheeler, Willette, Wright, Madam Speaker.

NAY - Austin, Ayotte, Beaulieu, Bickford, Browne W, Burns, Cebra, Celli, Chase, Clark H, Clark T, Cotta, Crafts, Cray, Crockett J, Curtis, Cushing, Davis, Edgecomb, Fitts, Fletcher, Flood, Fossil, Gifford, Greeley, Hamper, Harvell, Johnson, Joy, Knapp, Knight, Langley, Lewin, McFadden, McKane, Millett, Nass, Nutting, Pinkham, Plummer, Prescott, Richardson D, Richardson W, Robinson, Sarty, Saviello, Strang Burgess, Sykes, Tardy, Thibodeau, Thomas, Tilton, Weaver.

ABSENT - Giles, Goode, Kent, McLeod, Pratt, Rosen, Webster.

Yes, 91; No, 53; Absent, 7; Excused, 0.

91 having voted in the affirmative and 53 voted in the negative, with 7 being absent, and accordingly the Majority **Ought to Pass as Amended Report was ACCEPTED.**

The Bill was **READ ONCE. Committee Amendment "A" (H-825) was READ by the Clerk and ADOPTED.**

Under suspension of the rules the Bill was given its **SECOND READING WITHOUT REFERENCE** to the Committee on **Bills in the Second Reading.**

Under further suspension of the rules the Bill was **PASSED TO BE ENGROSSED as Amended by Committee Amendment "A" (H-825)** and sent for concurrence. **ORDERED SENT FORTHWITH.**

**ENACTORS
Acts**

An Act To Replace the Maine Limited Liability Company Act
(H.P. 1118) (L.D. 1580)
(C. "A" H-819)

Reported by the Committee on **Engrossed Bills** as truly and strictly engrossed, **PASSED TO BE ENACTED**, signed by the Speaker and sent to the Senate.

Resolves

Resolve, To Review the Waste Motor Oil Disposal Site Remediation Program
(H.P. 1314) (L.D. 1827)
(C. "A" H-822)

Reported by the Committee on **Engrossed Bills** as truly and strictly engrossed, **FINALLY PASSED**, signed by the Speaker and sent to the Senate.

By unanimous consent, all matters having been acted upon were **ORDERED SENT FORTHWITH.**

UNFINISHED BUSINESS

The following matters, in the consideration of which the House was engaged at the time of adjournment yesterday, had preference in the Orders of the Day and continued with such preference until disposed of as provided by House Rule 502.

Bill "An Act To Amend the Laws Governing the Knowing Misclassification of Construction Workers"
(H.P. 1102) (L.D. 1565)
(H. "A" H-762 to C. "A" H-746)

TABLED - March 30, 2010 (Till Later Today) by Representative **PIOTTI** of Unity.

PENDING - **PASSAGE TO BE ENGROSSED.** (Roll Call Ordered)

On motion of Representative **MARTIN** of Eagle Lake, the rules were **SUSPENDED** for the purpose of **RECONSIDERATION.**

On further motion of the same Representative, the House **RECONSIDERED** its action whereby **Committee Amendment "A" (H-746) as Amended by House Amendment "A" (H-762) was ADOPTED.**

On further motion of the same Representative, the rules were **SUSPENDED** for the purpose of **FURTHER RECONSIDERATION.**

On further motion of the same Representative, the House **RECONSIDERED** its action whereby **House Amendment "A" (H-762) to Committee Amendment "A" (H-746) was ADOPTED.**

On further motion of the same Representative, **House Amendment "A" (H-762) to Committee Amendment "A" (H-746)** was **INDEFINITELY POSTPONED**.

The same Representative **PRESENTED House Amendment "C" (H-826) to Committee Amendment "A" (H-746)** which was **READ** by the Clerk.

The **SPEAKER**: The Chair recognizes the Representative from Eagle Lake, Representative Martin.

Representative **MARTIN**: Thank you, Madam Speaker. Madam Speaker, Members of the House. I do want to thank a number of groups for participating in discussions for the past three weeks. The Carpenters Union, the Associated Contractors of Maine, and ABC, who were all involved in discussions throughout the last three weeks and yesterday afternoon, about four o'clock, there was agreement reached by all parties that this amendment, which I am presenting today, is acceptable to all of the parties involved. This amendment basically does a number of things that the House Amendment and the bill did not do. It increases the notice period for a hearing on a possible stop-work order from 48 hours to three business days. It states that the decision at the hearing regarding a stop-work order would constitute final agency action allowing for an immediate appeal to the court if so desired. It would allow for a stay of a stop-work order if the contractor obtained compensation for workers whose status was in question. It provides also that a contractor obtaining insurance would not constitute evidence of a violation. And it also removes misrepresentation of one or more employee status as an immediate trigger to the stop-work order. It allows also that if there were to be a penalty, that the penalty can be done on the basis of a payment agreement rather than having to be paid in one lump sum in order to move forward and for the contractor to continue work. The one thing that I am the happiest about, quite frankly, is that if in fact the contractor wants to continue working and the subcontractor has moved away, for example, does not have coverage, the contractor can then carry workers' comp on those people, that the work will be not be interrupted. I think that this is a vast improvement from our present condition, and I'm pleased to report that all three groups, quite frankly, have been involved and all of that, and are in agreement, and I met with all three groups yesterday afternoon about 5:30 or so, so they personally could, because most of the time, I was not present at the negotiations whatsoever. It was basically negotiating between the groups and collectively. I think that in the final analysis, this worked well to achieve, I think, an issue that was very contentious and I hope will be satisfactory for the members of the House.

The **SPEAKER**: The Chair recognizes the Representative from Sanford, Representative Tuttle.

Representative **TUTTLE**: Thank you, Madam Speaker. Madam Speaker, Men and Women of the House. I'd like to congratulate Representative Martin for getting these groups together. It's not always easy on the Labor Committee, but I think particularly with extending notice hearings from the 48 hours to the three business days. We had a lot of concerns about that, a lot of the contractors talked about that. So I'm glad in this amendment we do that. Also, we have included, in the amendment it defines what a knowing violation is, which is really a concern of mine, Representative Cushing and members of the committee. So I would thank Representative Martin for bringing us together on this issue, and I encourage your support.

Subsequently, **House Amendment "C" (H-826) to Committee Amendment "A" (H-746)** was **ADOPTED**.

Committee Amendment "A" (H-746) as Amended by House Amendment "C" (H-826) thereto was **ADOPTED**.

Representative **TARDY** of Newport **REQUESTED** a roll call on **PASSED TO BE ENGROSSED as Amended**.

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

The **SPEAKER**: A roll call has been ordered. The pending question before the House is Passed to Be Engrossed as Amended. All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 359

YEA - Adams, Ayotte, Beaudette, Beaudoin, Beck, Berry, Blanchard, Blodgett, Boland, Bolduc, Briggs, Bryant, Butterfield, Cain, Campbell, Carey, Casavant, Clark H, Cleary, Cohen, Connor, Cornell du Houx, Crockett P, Dill, Dostie, Driscoll, Duchesne, Eaton, Eberle, Eves, Finch, Flaherty, Flemings, Flood, Fossel, Gilbert, Hanley, Harlow, Haskell, Hayes, Hill, Hinck, Hogan, Hunt, Innes Walsh, Jones, Kaenrath, Kruger, Lajoie, Legg, Lovejoy, MacDonald, Magnan, Martin JR, Martin JL, Mazurek, McCabe, Miller, Morrison, Nelson, O'Brien, Pendleton, Peoples, Percy, Perry, Peterson, Pilon, Piotti, Priest, Rankin, Richardson D, Rotundo, Russell, Sanborn, Saviello, Schatz, Shaw, Sirois, Smith, Stevens, Stuckey, Theriault, Treat, Trinward, Tuttle, Valentino, Van Wie, Wagner J, Wagner R, Watson, Welsh, Wheeler, Willette, Wright, Madam Speaker.

NAY - Austin, Beaulieu, Bickford, Browne W, Burns, Cebra, Celli, Chase, Clark T, Cotta, Crafts, Cray, Crockett J, Curtis, Cushing, Davis, Edgecomb, Fitts, Fletcher, Gifford, Greeley, Hamper, Harvell, Johnson, Joy, Knapp, Knight, Langley, Lewin, McFadden, McKane, Millett, Nass, Nutting, Pieh, Pinkham, Plummer, Prescott, Richardson W, Robinson, Sarty, Strang Burgess, Sykes, Tardy, Thibodeau, Thomas, Tilton, Weaver.

ABSENT - Giles, Goode, Kent, McLeod, Pratt, Rosen, Sutherland, Webster.

Yes, 95; No, 48; Absent, 8; Excused, 0.

95 having voted in the affirmative and 48 voted in the negative, with 8 being absent, and accordingly the Bill was **PASSED TO BE ENGROSSED as Amended by Committee Amendment "A" (H-746) as Amended by House Amendment "C" (H-826)** thereto and sent for concurrence. **ORDERED SENT FORTHWITH**.

SENATE DIVIDED REPORT - Majority (9) Ought Not to Pass - Minority (4) Ought to Pass as Amended by Committee Amendment "A" (S-354) - Committee on TAXATION on Bill "An Act To Reduce Income Tax to 4.5% and Remove Low-income Families from Taxation"

(S.P. 460) (L.D. 1279)

- In Senate, Majority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED**.

TABLED - March 22, 2010 (Till Later Today) by Representative **WATSON** of Bath.

PENDING - Motion of same Representative to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report.

The **SPEAKER**: The Chair recognizes the Representative from Bath, Representative Watson.

Representative **WATSON**: Thank you, Madam Speaker. The present motion has been made so I won't belabor that. This bill was carried over in the Taxation Committee, it was recognized to be clearly a competing measure to the tax cut package that was eventually voted out by this House and the other body, signed by the Chief Executive. We kept it around as a vehicle. It's a nice theory. What the bill would do, for those of you who don't know, would be draw off all General Fund revenue created in 2010, adjusted for the population growth factor, and set that aside and

use it to lower the income tax. It's a nice idea; however, it carries a \$600 million fiscal note, and at this point in time, it clearly runs counter to the citizen's veto effort on the tax cut package. Therefore, it would probably be unconstitutional for us to pass it in any event. So those two reasons, a \$600 million fiscal note and the fact that it raises a significant question with regard to a matter before the people in June, I encourage you to support the Ought Not to Pass Report. Thank you, Madam Speaker.

Representative TARDY of Newport **REQUESTED** a roll call on the motion to **ACCEPT** the Majority **Ought Not to Pass** Report.

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

The **SPEAKER**: A roll call has been ordered. The pending question before the House is Acceptance of the Majority Ought Not to Pass Report. All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 360

YEA - Adams, Ayotte, Beaudette, Beaudoin, Beck, Berry, Blanchard, Blodgett, Boland, Bolduc, Briggs, Browne W, Bryant, Butterfield, Cain, Campbell, Carey, Casavant, Clark H, Cleary, Cohen, Connor, Cornell du Houx, Crockett P, Dill, Dostie, Driscoll, Duchesne, Eaton, Eberle, Eves, Finch, Flaherty, Flemings, Flood, Gilbert, Hanley, Harlow, Haskell, Hayes, Hill, Hinck, Hogan, Hunt, Innes Walsh, Jones, Kaenrath, Kruger, Lajoie, Legg, Lovejoy, MacDonald, Magnan, Martin JR, Martin JL, Mazurek, McCabe, Millett, Morrison, Nelson, O'Brien, Pendleton, Peoples, Percy, Perry, Peterson, Pieh, Pilon, Piotti, Priest, Rankin, Richardson D, Rotundo, Russell, Sanborn, Schatz, Shaw, Sirois, Smith, Stevens, Stuckey, Sutherland, Theriault, Treat, Trinward, Tuttle, Valentino, Van Wie, Wagner J, Wagner R, Watson, Welsh, Wheeler, Willette, Wright, Madam Speaker.

NAY - Austin, Beaulieu, Bickford, Burns, Cebra, Celli, Chase, Clark T, Cotta, Crafts, Cray, Crockett J, Curtis, Cushing, Davis, Edgecomb, Fitts, Fletcher, Fossel, Gifford, Greeley, Hamper, Harvell, Johnson, Joy, Knapp, Knight, Langley, Lewin, McFadden, McKane, Nass, Nutting, Pinkham, Plummer, Prescott, Richardson W, Robinson, Sarty, Saviello, Strang Burgess, Sykes, Tardy, Thibodeau, Thomas, Tilton, Weaver.

ABSENT - Giles, Goode, Kent, McLeod, Miller, Pratt, Rosen, Webster.

Yes, 96; No, 47; Absent, 8; Excused, 0.

96 having voted in the affirmative and 47 voted in the negative, with 8 being absent, and accordingly the Majority **Ought Not to Pass** Report was **ACCEPTED** in concurrence.

By unanimous consent, all matters having been acted upon were **ORDERED SENT FORTHWITH**.

The House recessed until 2:00 p.m.

(After Recess)

The House was called to order by the Speaker.

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

Expression of Legislative Sentiment recognizing Cheryl L. Rust, of Wiscasset.

(HLS 1136)

Which was **TABLED** by Representative **FOSSEL** of Alna pending **PASSAGE**.

The **SPEAKER**: The Chair recognizes the Representative from Alna, Representative Fossel.

Representative **FOSSEL**: Thank you, Madam Speaker. Madam Speaker, Ladies and Gentlemen of the House. There are people out there who, every time you turn around, they're there doing more than you thought they could possible do, and then you turn around and there they are again doing even more. Cheryl is one of those people and I am in awe of her, and the people of the State of Maine are very lucky to have her as one of our citizens. So thank you.

Subsequently, the Sentiment was **PASSED** and sent for concurrence.

Under suspension of the rules, members were allowed to remove their jackets.

The following items were taken up out of order by unanimous consent:

ENACTORS
Resolve Pursuant to the Constitution
Public Land

Resolve, Authorizing Certain Land Transactions by the Department of Conservation, Bureau of Parks and Lands and the Department of Inland Fisheries and Wildlife and Directing the Initiation of Negotiations Regarding Easements on Certain Land

(H.P. 1291) (L.D. 1803)
(C. "A" H-723; S. "B" S-509; H. "A" H-824)

Reported by the Committee on **Engrossed Bills** as truly and strictly engrossed. In accordance with the provisions of Section 23 of Article IX of the Constitution, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 121 voted in favor of the same and 0 against, and accordingly the Resolve was **FINALLY PASSED**, signed by the Speaker and sent to the Senate. **ORDERED SENT FORTHWITH**.

Resolves

Resolve, Directing the Department of Corrections To Coordinate Review of Due Process Procedures and To Ensure Transparency in Policies Regarding the Placement of Special Management Prisoners

(H.P. 1139) (L.D. 1611)
(C. "A" H-763)

Was reported by the Committee on **Engrossed Bills** as truly and strictly engrossed.

On motion of Representative TARDY of Newport, was **SET ASIDE**.

The same Representative **REQUESTED** a roll call on **FINAL PASSAGE**.

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

The **SPEAKER**: A roll call has been ordered. The pending question before the House is Final Passage. All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 361

YEA - Adams, Beaudoin, Beck, Berry, Blanchard, Blodgett, Boland, Bolduc, Briggs, Butterfield, Cain, Campbell, Carey, Casavant, Cohen, Connor, Cornell du Houx, Crockett P, Dill, Dostie, Duchesne, Eaton, Eberle, Eves, Flaherty, Flemings,

Gilbert, Goode, Harlow, Haskell, Hayes, Hill, Hinck, Hogan, Hunt, Innes Walsh, Jones, Lajoie, Legg, Lovejoy, MacDonald, Magnan, Martin JR, McCabe, Miller, Morrison, Nelson, O'Brien, Percy, Perry, Pieh, Pilon, Piotti, Priest, Rankin, Rotundo, Russell, Sanborn, Schatz, Sirois, Stevens, Strang Burgess, Stuckey, Sutherland, Theriault, Treat, Trinward, Tuttle, Valentino, Van Wie, Wagner J, Wagner R, Watson, Webster, Welsh, Wheeler, Wright, Madam Speaker.

NAY - Austin, Ayotte, Beaudette, Beaulieu, Bickford, Browne W, Bryant, Burns, Cebra, Celli, Chase, Clark H, Clark T, Cleary, Cotta, Crafts, Cray, Crockett J, Curtis, Cushing, Davis, Driscoll, Edgecomb, Finch, Fitts, Fletcher, Flood, Fossil, Gifford, Greeley, Hamper, Hanley, Harvell, Johnson, Joy, Kaenrath, Knapp, Knight, Kruger, Langley, Lewin, Mazurek, McFadden, McKane, McLeod, Millett, Nass, Nutting, Pendleton, Peoples, Peterson, Pinkham, Plummer, Prescott, Richardson D, Richardson W, Robinson, Sarty, Saviello, Shaw, Sykes, Tardy, Thibodeau, Thomas, Tilton, Weaver, Willette.

ABSENT - Giles, Kent, Martin JL, Pratt, Rosen, Smith.

Yes, 78; No, 67; Absent, 6; Excused, 0.

78 having voted in the affirmative and 67 voted in the negative, with 6 being absent, and accordingly the Resolve was **FINALLY PASSED**, signed by the Speaker and sent to the Senate. **ORDERED SENT FORTHWITH.**

REPORTS OF COMMITTEE

Divided Report

Majority Report of the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS** reporting **Ought Not to Pass** on Bill "An Act To Establish a New Method of Determining the State Budget"

(H.P. 659) (L.D. 957)

Signed:

Senators:

DIAMOND of Cumberland
CRAVEN of Androscoggin

Representatives:

CAIN of Orono
WEBSTER of Freeport
ROTUNDO of Lewiston
MILLER of Somerville
CONNOR of Kennebunk
FLOOD of Winthrop

Minority Report of the same Committee reporting **Ought to Pass as Amended by Committee Amendment "A" (H-827)** on same Bill.

Signed:

Senator:

ROSEN of Hancock

Representatives:

MARTIN of Eagle Lake
MILLETT of Waterford
ROBINSON of Raymond
NUTTING of Oakland

READ.

Representative CAIN of Orono moved that the House **ACCEPT** the Majority **Ought Not to Pass** Report.

The SPEAKER: The Chair recognizes the Representative from Crystal, Representative Joy.

Representative **JOY**: Thank you, Madam Speaker. Madam Speaker, Ladies and Gentlemen of the House. This is a bill that was designed to make things a lot easier for any freshman legislator that was coming down, so that they would not have to be here a short time, be assigned to a committee, and then have a series of department budgets thrown at them. I would question very strongly the fiscal note that is put on this Minority Report, which I won't discuss because it's now the Majority Report. I would hope that this body will not approve the Majority Report and that you'll turn around and try a chance at the Minority Report. The big problem that we have in budgeting is when a freshman legislator comes down, that has no experience in it, they have budgets thrown at them that they don't have a clue of what's going on. After being here for eight terms, I see this happening time and time again. You have budgets like the DHS budget. It had 169 lines. Can you image having freshman legislators on that? They learned very well this year, this session, but even so, it's a formidable task facing any legislator that comes down to have something like that staring them in the face.

This bill, it's the second time in two terms that I've put it in. Last term it was carried over and then was killed in the last few days of the session. This time it was carried over and a group worked on it. At the last work session that we had on this and this is why I would contest any fiscal note on it, it was decided and recommended by Commissioner Low that we do this on a three year proposal. That way you would get that odd year in there that would allow this, any new legislator coming in would have one year that they didn't have to develop that year's budget. It would give them a year to work with the departments and find out what's going on so that they would know where all the spending was going. I think it would make a much more efficient method of doing the budget and it certainly would give new legislators time to learn a little bit about the budget process before they had something thrown at them. Also, for a new chief executive coming in, he wouldn't have to have all that stuff in place by the end of January to give to the Legislature for a proposed balanced budget, and it would make the whole practice a lot easier.

One of the questions that came up during one of the hearings or work sessions on this was how did we ever get into this situation where we did the budget starting the first year and then having it be a two-year budget. If you think back to when this state was formed, travel was not very easy and the Legislature only met one year. So that's why they had to have the budget done in that particular year. It lasted two years and only in the most dire emergencies did they meet during that second year. It wasn't all that long ago that the Legislature starting having a second session. So I would hope sincerely that you will overturn this is the guise or manner do that new legislators would some day down the road not have to come in and face developing a budget. It would seem to me that it's high time that we changed that archaic practice that puts a tremendous strain on everybody and makes it very, very difficult for any new legislators, and some of the older legislators that go from one committee to another and, all of the sudden, they've got to be adapted to a different type of budget. So I hope that we will vote down this motion and go on to Accept the Minority Report. Madam Speaker, I request a roll call.

Representative **JOY** of Crystal **REQUESTED** a roll call on the motion to **ACCEPT** the Majority **Ought Not to Pass** Report.

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

The SPEAKER: The Chair recognizes the Representative from Waterford, Representative Millett.

Representative **MILLETT**: Thank you, Madam Speaker. Madam Speaker, Ladies and Gentlemen of the House. The Representative from Crystal has very carefully and accurately prescribed the purposes of his bill, and its repeat in production, and its carryover status. We had the same bill in front of us in the 123rd. It would have made some sense at that time to try to work it through because we were in the middle of the current Chief Executive's second term, and there would have been less of a learning curve in that regard. But we carried it over last year, and we had a work committee and a work session on the bill back in late January. I think there is a new awareness that not only would this be an advantage to freshman legislators, but to a freshman chief executive as well. Given the known cliff that we will be facing in the next session, it felt like it was timely. But then we ran into this problem of having to begin to prepare a budget in September and with an outgoing administration doing much of the work that an incoming chief executive would face, it seemed out of touch or out of time this time around as well. So we came up with the alternative of having the incoming chief executive submit one biennial budget and then a one year budget and then get on the two year cycle so that for incoming legislators and in the future for incoming chief executives, they would have an opportunity with one session under their belt, to be better prepared to develop a biennial budget. We felt and I still feel that the Second Regular Session, if started with hearings in late December, could very easily handle a biennial budget and probably handle it more efficiently than we do now with a late January startup and a high learning curve. So I completely agree with Representative Joy, and I think it deserves your consideration. Thank you.

The **SPEAKER**: The Chair recognizes the Representative from Somerville, Representative Miller.

Representative **MILLER**: Thank you, Madam Speaker. Madam Speaker, Men and Women of the House. I worked on that subcommittee to look at this idea, and the good Representative from Crystal, Representative Joy, has been persistent and honest in his attempt to get us to shift. It's a very attractive idea, and I think we all considered it very seriously on this work committee. I think the timing issues struck us as difficult and not the least of which is a very large fiscal note. We have a very expensive computer system that creates this budget and tracks this budget and the thousands of lines in this budget, and we were all struck by a very large fiscal note that would take to just create a one year budget and then shift again to a two year budget. We felt at this time, in this fiscal climate, that it's a good idea to make the shift but, like many other good ideas you all have presented to us, we don't have the money to do it, and that was, for me, I almost raised my hand on the Minority Report, but the fiscal note is the fiscal note and we can argue it even if it's half, it was a \$480,000 fiscal note. You know, take a tenth of it. We're throwing bills out with \$30,000 fiscal notes downstairs. So this was just a big one to swallow right now and I still would love to talk about it next session. Thank you.

The **SPEAKER**: A roll call has been ordered. The pending question before the House is Acceptance of the Majority Ought Not to Pass Report. All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 362

YEA - Adams, Beaudette, Beaudoin, Beck, Berry, Blanchard, Blodgett, Boland, Bolduc, Briggs, Bryant, Butterfield, Cain, Campbell, Carey, Casavant, Clark H, Cleary, Cohen, Connor, Cornell du Houx, Crockett P, Dill, Dostie, Driscoll, Duchesne, Eaton, Eberle, Eves, Flaherty, Flemings, Flood, Gilbert, Goode, Hanley, Harlow, Haskell, Hill, Hinck, Hogan, Innes Walsh, Jones, Kaenrath, Kruger, Lajoie, Legg, Lovejoy, MacDonald, Martin JR,

Martin JL, Mazurek, McCabe, Miller, Morrison, Nelson, O'Brien, Pendleton, Peoples, Percy, Perry, Peterson, Pieh, Pilon, Piotti, Priest, Rankin, Rotundo, Russell, Sanborn, Schatz, Shaw, Stevens, Stuckey, Sutherland, Theriault, Treat, Trinward, Tuttle, Van Wie, Wagner J, Wagner R, Watson, Webster, Welsh, Wheeler, Willette, Wright, Madam Speaker.

NAY - Austin, Ayotte, Beaulieu, Bickford, Browne W, Burns, Cebra, Celli, Chase, Clark T, Cotta, Crafts, Cray, Crockett J, Curtis, Cushing, Davis, Edgecomb, Finch, Fitts, Fletcher, Fossil, Gifford, Giles, Greeley, Hamper, Harvell, Hayes, Hunt, Johnson, Joy, Knapp, Knight, Langley, Lewin, Magnan, McFadden, McKane, McLeod, Millett, Nass, Nutting, Pinkham, Plummer, Prescott, Richardson D, Richardson W, Robinson, Sarty, Saviello, Sirois, Strang Burgess, Sykes, Tardy, Thibodeau, Thomas, Tilton, Valentino, Weaver.

ABSENT - Kent, Pratt, Rosen, Smith.

Yes, 88; No, 59; Absent, 4; Excused, 0.

88 having voted in the affirmative and 59 voted in the negative, with 4 being absent, and accordingly the Majority **Ought Not to Pass Report was ACCEPTED** and sent for concurrence. **ORDERED SENT FORTHWITH.**

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

An Act To Provide Predictable Benefits to Maine Communities That Host Wind Energy Developments

(S.P. 582) (L.D. 1504)

(C. "A" S-501)

Which was **TABLED** by Representative PIOTTI of Unity pending **FURTHER CONSIDERATION.**

On motion of Representative FITTS of Pittsfield, the House voted to **RECEDE.**

On further motion of the same Representative, the House **RECONSIDERED** its action whereby **Committee Amendment "A" (S-501)** was **ADOPTED.**

The same Representative **PRESENTED House Amendment "A" (H-829)** to **Committee Amendment "A" (S-501)**, which was **READ** by the Clerk.

The **SPEAKER**: The Chair recognizes the Representative from Pittsfield, Representative Fitts.

Representative **FITTS**: Thank you, Madam Speaker. Madam Speaker, Ladies and Gentlemen of the House. The other body adopted an amendment last night which was Senate Amendment "C" and this amendment is virtually identical to that, but for the addition of the ability of an applicant to appeal a fee. My discussions with those who were concerned, they felt that was justified and it does simplify the process for an applicant and cleanup, what I think could have been a problem for some. Thank you.

Subsequently, **House Amendment "A" (H-829)** to **Committee Amendment "A" (S-501)** was **ADOPTED.**

Committee Amendment "A" (S-501) as Amended by **House Amendment "A" (H-829)** thereto was **ADOPTED.**

The Bill was **PASSED TO BE ENGROSSED** as Amended by **Committee Amendment "A" (S-501)** as Amended by **House Amendment "A" (H-829)** thereto in **NON-CONCURRENCE** and sent for concurrence.

By unanimous consent, all matters having been acted upon were **ORDERED SENT FORTHWITH.**

The House recessed until 3:30 p.m.

(After Recess)

The House was called to order by the Speaker.

The following items were taken up out of order by unanimous consent:

ENACTORS

Acts

An Act To Amend the Tax Laws

(H.P. 1084) (L.D. 1540)
(S. "A" S-514 to C. "A" H-754)

An Act To Make Administrative Changes to Tax Laws To Maintain a Balanced Budget

(H.P. 1321) (L.D. 1830)
(C. "A" H-825)

Reported by the Committee on **Engrossed Bills** as truly and strictly engrossed, **PASSED TO BE ENACTED**, signed by the Speaker and sent to the Senate.

An Act To Encourage the Use of Models in the Collection and Use of Student Achievement Data

(S.P. 704) (L.D. 1799)
(S. "A" S-515 to C. "A" S-483; H. "A" H-813)

Was reported by the Committee on **Engrossed Bills** as truly and strictly engrossed.

On motion of Representative TARDY of Newport, was **SET ASIDE**.

The same Representative **REQUESTED** a roll call on **PASSAGE TO BE ENACTED**.

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

The SPEAKER: The Chair recognizes the Representative from Lyman, Representative Wagner.

Representative **WAGNER**: Thank you, Madam Speaker. Madam Speaker, Ladies and Gentlemen of the House. A few days ago, the Representative from Buckfield, Representative Hayes, was providing me with some instruction on the use of a software program. In doing so, she demonstrated one of the absolute essentials of a teacher, the patience of a saint. This quality is also helpful in dealing with education reforms.

I stand in support of LD 1799. First, as the Representative from Chapman, Representative Sutherland, has mentioned, the Department of Education is directed to develop models that can be modified. They do not have to be put in place as is by school districts. LD 1799 calls for multiple means of measurement not just one test, standardized or otherwise. It might be best to advise the Department of Education in its work on this to consider maybe doing longitudinal studies as well. How do the students fair in the future? Do they go off to college? Do they get degrees? Are they employed? But in doing so, there are variables that are beyond our control. A recession may prevent someone who is well educated, skilled from getting a job. Illness may force someone out of school, financial considerations as well. The discussion boils down to three things: grades, students, and teachers. It may be ironic, it may be cynical for others that those who dole out grades are a bit reticent about being graded themselves. I think that's because teachers know how subjective grades can be. Sometimes they do not fully reflect the understanding a student has of particular reading material, particular matter.

I serve as a reader scoring essays for the ETS, for advanced placement essays, and in that there is a strict rubric that each one of us must follow. We calibrate the seven people at the table. We test over and over again to make sure we're all literally on the same page. But time and again, we have to recalibrate as our judgment, as to what scores appoint and what doesn't, strays a bit. Time and again, we'll have an essay where it is pretty clear that the student understands the concept, but talks and writes around it, therefore no point. Other instances, there is essentially gibberish, but there's a phrase there that is right, is correct, close enough and that person gets the point.

If teachers were asked to take a fill in the blank test and have the following questions, blank grades, I think many would say weighted grades. The idea of that was to encourage students to challenge themselves, take the upper level courses because there would be an enhancement to the grades that they received. What has resulted is the situation where you have on a 4.0 scale, students with 5.0 or better. Now what does that express, something beyond perfection? If the question was grade blank, I think many teachers would say grade inflation. Long ago they did away with the standard scale that I grew up with. In the 60s that's a D, 70s C. Now for an A it's maybe 93 or better. The kids didn't adjust; the teachers did by adjusting the grades.

As for the students, in the words of Pete Townshend, the kids are alright. Generally, they still are the same, still the same at heart. They want a sense of acceptance. They want to feel that they're good at something. But over the course of 25 years, things have indeed changed in my career as a teacher, things that generations past could count on. The basic stability of the family, that's not necessarily the case anymore. Back in the 50s and 60s there was so much talk about how television, the boob tube, the idiot box was going to dumb us down so much. Now the distractions are mobile, they are more visual. They are harder to compete with. And developmentally, I think there is data that does indicate that humans are growing up physiologically faster by just anecdotally, I don't think they're keeping pace with respect to emotional maturation. Ask teachers about that. There's a phrase "the disinterested learner". What I've come to find, at times, I've come across a militant, belligerent degree of ennui that's hard to penetrate. It's like preparing a meal, trying to have an appreciation for the tastes of the customer, placing it out there and have the person push it away, or spitting in it, looking at you and smiling. Go ahead, do something about it. What do you do? You go back to the drawing board, you prepare for the next day's class and you soldier on, again and again.

As for the teachers, what qualities are we trying to measure? How do you measure enthusiasm? How do you measure the desire that the person wants to be there in front of those kids? Another quality is knowing you stuff, having confidence in the content of the material, being able to communicate the complex indigestible portions. In terms of assessment, one of the best teachers I had was my landscape foreman, Phil Chicarelli, who would punctuate every sentence with "you follow me?" "Joe, got a shovel here, you follow me?" "Over there, wheelbarrow, you follow me?" I always knew what the lesson plan was, what the end result was going to be. Phil was a good teacher. The best compliment that I ever received was a short note that just said, Mr. Wagner, thanks for pushing us.

In my classroom, I have a number of quotations on parchment paper in calligraphy done by a former student. On the walls you'll see "politics is the art of the possible", Alexis de Tocqueville. From that great philosopher and Yankee manager, Casey Stengel, "you could look it up". And my favorite comes from a CBS news director, Fred Friendly. The quotation reads

"My job is to make the audience so uncomfortable that the only way that they can find relief is to think". Now to see those and more, you'll have to stop on by Room A106 at McAuley down in the Portland.

I don't get a lot in the way of classroom observation. There are some years at other schools where no one stopped on by to evaluate. Yes I was doing okay. Often times I think we all wish folks who complain about our performance would come by and pay us a visit, shadow us one day and find out a little bit more of what it's all about. Now the National Conference of State Legislatures had something called the Legislators Back to School Program. I encourage us all to take a look at it and participate and not just pay one visit but make periodic visits to the schools in our districts. Then we can better have a sense of how to measure the performance of educators and we can have a better appreciation for the all the variables over which we have little control. Thank you, Ladies and Gentlemen. Thank you, Madam Speaker.

The SPEAKER: The Chair recognizes the Representative from Waterford, Representative Millett.

Representative **MILLETT**: Thank you, Madam Speaker. May I pose a question through the Chair?

The SPEAKER: The Representative may pose his question.

Representative **MILLETT**: Thank you, Madam Speaker. I have a question that I would like to pose to a member of the Education and Cultural Affairs Committee, specifically the chair from Chapman, Representative Sutherland, if she would choose to respond, and that is to get the committee's attitude about the amendment adopted in the other body, I believe yesterday, and I believe it's under filing number S-515 to the Committee Amendment, that according to the emails I've been receiving and what I've read in the press would impose a requirement that once these models are adopted by the workgroup, that no local school system could modify its own evaluation place without coming back to the Legislature for adoption. I find that terribly restrictive of the local control options and traditions that we have in Maine for school boards and their administrators, and I'm wondering if the chair would confirm whether or not that is a proper interpretation of the amendment adopted by the other body.

The SPEAKER: The Representative from Waterford, Representative Millett has posed a question through the Chair to the Representative from Chapman, Representative Sutherland. The Chair recognizes that Representative.

Representative **SUTHERLAND**: Thank you, Madam Speaker. I appreciate the question. My understanding of the amendment is the same as that of the gentleman who asked the question. I would expect that because it is a local choice and I would expect, and I know one cannot predict what will happen in a future session of the Legislature, that that whole component may be looked at. But yes, it very specifically says that if a school administrative unit wants to include student assessments as part of its teacher evaluations, that school administrative unit must use one of the models developed by the Department of Education and the stakeholder group. Thank you, Madam Speaker.

The SPEAKER: The Chair recognizes the Representative from Greenville, Representative Johnson.

Representative **JOHNSON**: Thank you, Madam Speaker. Madam Speaker, Ladies and Gentlemen of the House. I'm against this current amendment because I believe it is overly restrictive to the local school districts. It basically says that the school districts may select one of these models and if it is to use assessment data from the students then it has to be one of the approved models by the stakeholders group, and I would remind all of the people that desire to serve on the stakeholder groups

that they do not possess all of the intelligence in the world. Local school districts are perfectly capable of figuring this out for themselves.

The SPEAKER: The Chair recognizes the Representative from Harrison, Representative Sykes.

Representative **SYKES**: Thank you, Madam Speaker. Madam Speaker, Ladies and Gentlemen of the House. Most of my professional career was involved with teacher evaluation. I have sat in conferences with hundreds of teachers, some excellent teachers, one of the them who sits in this chamber. The town of Cape Elizabeth, at the high school, MSAD 61, Lake Region High School, and Lewiston High School, where I served as an administrator, three unique and very different school districts. Those school districts, as they developed and I was involved with the development and the modification of teacher evaluation models in each of those, those school districts had different needs, different resources and different goals, all of them very unique to their particular situation. Student achievement data, I believe, should be available for use if so desired but not necessarily all in the same way, and certainly student achievement data is only one small factor in an evaluation model. In those three school districts, the individual models, in one a very important factor was actually work beyond the contract. In another one, continuing education was critical. In one a math proficiency test was used. If we pass this bill the way its been amended, we are going to take away from the local school district those options to develop what they need based upon what their resources, their goals and their unique situation happens to be. There's an axiom that I think makes a lot of sense in a situation like this. Those who use should choose. Thank you.

The SPEAKER: The Chair recognizes the Representative from Fairfield, Representative Finch.

Representative **FINCH**: Thank you, Madam Speaker. Madam Speaker, Ladies and Gentlemen of the House. I think this is a pretty good example of what we see happening a lot in these last few days, as amendments and as bills bop back and forth between the two chambers, sometimes a simple amendment can put a different light on a bill than existed previously. Also, we sometimes, I think, fall victim to the expression "well, they made a compromise, therefore it must okay, therefore I'm going to vote for it". Sometimes we do that without actually reading it. The good Representative from Waterford referred to this, the exact number is S-515. Had he not asked the question, I was going to stand up and read what it actually says. This is what the amendment language says: If a school administrative unit wants to include student assessments as part of teacher evaluations, that school administrative unit must use one of the models developed pursuant to subsection 1. That's the language that is currently in the bill that's before us. I don't know if any of you have ever been on a school board and been a teacher simultaneously, I have, and this gets into a very ticklish area of educational policy. It's always been the accepted way in Maine. Policy is determined locally by your local school board. Is this a huge chink in that amour? No, frankly I don't think so. The local unit doesn't have to adopt one of these things if they don't want to. But if they do, they can't design their own, they have to use a model developed by this five person stakeholder group.

My feelings on this bill right along is that it was unnecessary, that it was crafted in what I confident a futile attempt to get Race to the Top money which, in my opinion, is not going to show anyway. I am still opposed to this bill. I will be voting no because I don't think the potential mischief that this bill can cause is worth the rather dubious possibility of getting something from the

bureaucrats in Washington.

The **SPEAKER**: The Chair recognizes the Representative from Augusta, Representative Crockett.

Representative **CROCKETT**: Thank you, Madam Speaker. Madam Speaker, Ladies and Gentlemen of the House. I did support this bill because I thought it was important for us to be able to have the opportunity to at least have a chance to get deferral money, but this amendment that's on this bill now appears to remove the ability of the local citizens, the citizens that know their people the best, to have control. I think that's wrong. I'd also like to pose a question, Madam Speaker.

The **SPEAKER**: The Representative may pose her question.

Representative **CROCKETT**: In the process of the stakeholders group, could somebody tell me how the members of this group are selected? Thank you.

The **SPEAKER**: The Representative from Augusta, Representative Crockett has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Chapman, Representative Sutherland.

Representative **SUTHERLAND**: Thank you, Madam Speaker. In answer to the question, each group would identify a person. These are all professional organizations. For example, the Maine Principals Association, their executive board, whatever process they have. They do this often. They assign people to serve on various commissions or studies. And again, it may be by a process of whose interested and then they would appoint somebody, but it would be an appointment from the professional organization of the specific group.

The **SPEAKER**: The Chair recognizes the Representative from Bowdoinham, Representative Berry.

Representative **BERRY**: Thank you, Madam Speaker. I rise in favor of the Enactment of this bill with the current amendment, and I do so in part because what we have done so far is to open the door. Our previous action in this chamber was to open a door wide to the use of testing in teacher evaluation. I'm a teacher; I've been a teacher for 20 years. I've been evaluated in the schools of New York City and I've been evaluated back home here in Maine, and I voted for the bill on our previous vote with some trepidation, with concern over the possibility that teachers and, by extension, their students would be judged only on the basis of short-term standardized testing, which says something about what a student has learned or not learned, but in the big picture very little.

The **SPEAKER**: Will the Representative please defer. For what purpose does the Representative rise?

Representative **ROBINSON**: Point of Order, Madam Speaker.

The **SPEAKER**: The Representative may proceed.

Representative **ROBINSON**: Would you please ask the speaker to address his remarks to the Chair, not the body? Thank you.

On **POINT OF ORDER**, Representative ROBINSON of Raymond asked the Chair to remind Representative BERRY of Bowdoinham to address the Speaker and not turn to the rest of the House.

The **SPEAKER**: The Chair would remind all members that when making remarks to the House, you should point them towards the Speaker, address your remarks towards the Speaker.

The Chair reminded Representative BERRY of Bowdoinham to address his comments toward the Speaker.

The **SPEAKER**: The Chair recognizes the Representative from Bowdoinham, Representative Berry.

Representative **BERRY**: Thank you and I appreciate the reminder. Madam Speaker, Men and Women of the House, we

have opened a door wide to the possibly that standardized testing and standardized testing alone will be used to evaluate teachers. Testing for longitudinal purposes over time as part of how we evaluate is not unreasonable. But currently, there are no school administrative units that are using testing for this purpose, so all that is before us in the amended version that we would vote to enact is a restriction. I won't describe it has minor or major, but a restriction on how that additional means of evaluating teachers might be used. I just want to clarify because the bill before us has been represented as an erosion of local control and I think that's unfair. If we remember, if we remind ourselves that we have thrown open a door very wide to a new approach, and all that we would say now is that the new approach would be restricted to certain circumstances, to certain models that would be developed by stakeholders. We can always go forward and extend the freedom further in a future Legislature, but I think that we need to be cautious about how we go forward and extend these new alternatives to schools boards, to principals, to teachers because, ultimately, this comes down to student learning. I'm not concerned for teachers that are already in the schools and how they'll be evaluated or for principals and how they'll be evaluated. This is really about the teachers of the future, it's about the students, how we view and evaluate their progress, what we value in our educational system. And I think we need to be cautious, I think we need to be very cautious about what we value. If we want to throw the door wide open to standardized testing being the only method by which students are evaluated, then fine, vote down the enactment of this bill. But if you think that there is something more in our schools, something in the heart, something that lasts beyond the semester that we should also have in our minds as we evaluate our teachers and our students and their learning, then please vote in favor of the enactment of this bill. Thank you.

Representative MILLETT of Waterford moved that the House **RECONSIDER** its action whereby the Bill was **PASSED TO BE ENGROSSED as Amended by Committee Amendment "A" (S-483) as Amended by Senate Amendment "A" (S-515) thereto and House Amendment "A" (H-813)**.

Representative BERRY of Bowdoinham **REQUESTED** a roll call on the motion to **RECONSIDER** whereby the Bill was **PASSED TO BE ENGROSSED as Amended by Committee Amendment "A" (S-483) as Amended by Senate Amendment "A" (S-515) thereto and House Amendment "A" (H-813)**.

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

The **SPEAKER**: A roll call has been ordered. The pending question before the House is to Reconsider whereby the Bill was Passed to be Engrossed as Amended by Committee Amendment "A" (S-483) as Amended by Senate Amendment "A" (S-515) thereto and House Amendment "A" (H-813). All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 363

YEA - Austin, Ayotte, Beaulieu, Bickford, Browne W, Burns, Butterfield, Campbell, Casavant, Cebra, Chase, Clark T, Cleary, Cotta, Crafts, Cray, Crockett J, Crockett P, Curtis, Cushing, Davis, Eaton, Eberle, Edgecomb, Fitts, Fletcher, Flood, Fossil, Gifford, Giles, Greeley, Hamper, Harlow, Harvell, Innes Walsh, Johnson, Joy, Kaenrath, Knapp, Knight, Lajoie, Langley, Lewin, MacDonald, McFadden, McKane, McLeod, Millett, Morrison, Nass, Nutting, Pieh, Pinkham, Plummer, Prescott, Richardson D, Richardson W, Robinson, Sarty, Saviello, Stevens, Strang Burgess, Sykes, Tardy, Thibodeau, Thomas, Tilton, Van Wie, Weaver, Welsh.

NAY - Adams, Beaudoin, Beck, Berry, Blanchard, Blodgett, Boland, Bolduc, Briggs, Bryant, Cain, Carey, Clark H, Cohen,

Connor, Cornell du Houx, Dill, Dostie, Driscoll, Duchesne, Eves, Finch, Flaherty, Flemings, Gilbert, Goode, Hayes, Hill, Hinck, Hogan, Hunt, Jones, Kruger, Legg, Lovejoy, Magnan, Martin JR, Martin JL, Mazurek, McCabe, Miller, Nelson, O'Brien, Pendleton, Peoples, Percy, Perry, Peterson, Pilon, Piotti, Priest, Rankin, Rotundo, Russell, Sanborn, Schatz, Shaw, Sirois, Stuckey, Sutherland, Theriault, Treat, Trinward, Tuttle, Valentino, Wagner J, Wagner R, Watson, Webster, Wheeler, Willette, Wright, Madam Speaker.

ABSENT - Beaudette, Celli, Hanley, Haskell, Kent, Pratt, Rosen, Smith.

Yes, 70; No, 73; Absent, 8; Excused, 0.

70 having voted in the affirmative and 73 voted in the negative, with 8 being absent, and accordingly the motion to **RECONSIDER** whereby the Bill was **PASSED TO BE ENGROSSED as Amended by Committee Amendment "A" (S-483) as Amended by Senate Amendment "A" (S-515) thereto and House Amendment "A" (H-813) FAILED.**

The SPEAKER: The Chair recognizes the Representative from Waterford, Representative Millett.

Representative **MILLET**: Thank you, Madam Speaker. Madam Speaker, Ladies and Gentlemen of the House. Having been denied the common courtesy on a straight party vote of reconsidering an action which, if we were in the other corner, we would not deny to those of you who feel obliged to take a partisan position on a matter of public policy, I will ask your indulgence in voting against the Enactment of this bill, in order to give those of us who have a concern about the direction you're taking an opportunity to be heard. I would appreciate your consideration.

The SPEAKER: The Chair recognizes the Representative from New Gloucester, Representative Van Wie.

Representative **VAN WIE**: Thank you, Madam Speaker. I think I share some of the Representative from Waterford's frustration in that I don't like the corner we've been painted into. I do favor the use of student assessment data and the models and the multiple measures that were in the original bill. And I also support the repeal of the prohibition on the use of assessment data, I think that's the heart of it. The question is once you repeal that prohibition, what are you now facing, and the question then is do the school boards get to do anything they want, which is some people fear the outcome of that, or do we try to create some better guided models that ensure that we have multiple measures in place? As a former school board member I certainly understand and appreciate the desire to be able to have the local control, but I would like to have the opportunity to use assessment data and I'm afraid that we are headed down a path where we're going to be able to do neither. I would like to be able to have an opportunity to be sure we vote on this in a way where we all know what it is that we're doing. Thank you, Madam Speaker.

The SPEAKER: The Chair recognizes the Representative from Harrington, Representative Tilton.

Representative **TILTON**: Thank you, Madam Speaker. Madam Speaker, Ladies and Gentlemen of the House. It just seems to me that it's ironic that we first introduced this bill because it was felt that we needed it in order to be able to compete for funds from a federal program that are awarded to states who are creative and innovative and can achieve excellence within their schools, yet we would only allow our local schools limited, cautious, incremental ability to develop tools that are very important for measuring the success of that creative and innovation. I guess I would have to concur with previous speakers that, with this posture, our prospects for success with this federal program and with encouraging creativity and excellence in our schools is pretty grim. Thank you.

The SPEAKER: The Chair recognizes the Representative from Portland, Representative Harlow.

Representative **HARLOW**: Thank you, Madam Speaker. Madam Speaker, Ladies and Gentlemen of the House. I agree with the good Representative Finch. I wonder if we're ever going to get any money from this. There have been two application deadlines. In February, 40 states applied, the State of Maine didn't, and only two states got any kind of money at all. Sixteen were put at the head of the list. The next time you can apply is in June and we haven't made any application at all yet. I think it's going to cost us money because we're going to have to hire consultants to help with the materials, and I don't think we're going to get any money because there are 16 people already ahead of us. I think this is a fool's errand. This is not the race to the top; it's the race to the bottom. Thank you very much, Madam Speaker.

The SPEAKER: The Chair recognizes the Representative from Boothbay, Representative MacDonald.

Representative **MacDONALD**: Thank you, Madam Speaker. I rise against the motion on the floor. I am sorry that we did not get a chance to reconsider. I feel the need to share a short piece of experience of my own as a teacher in the long ago past, and that is as a teacher who had AP courses in high school and was able to teach the brightest and the best if I wanted to and I did, but I and another colleague looked at what was happening to kids in the so-called shop and general courses, that were happening in our elite suburban Boston high school. They were getting shipped off to Vietnam at the time I was teaching and at the time I'm talking about, and we felt the need to move into that area, develop some curriculum for these kids and try to get them interested in books and learning, and we developed some film courses that I think had some great merit in terms of helping kids who didn't come from homes where there wasn't a whole lot of books and a whole lot of reading, getting them interested in that kind of thing. I dare say, though, that is these kids were tested, if they had standardized test results on these kids, they would probably not have improved greatly over what they would have done, even given the courses that we were providing for them. My point is this, that is you want to have good teachers teaching kids who are not well endowed with what they come with into the schools from their home life was, you'll put that in jeopardy by setting up a system in which standardized tests are used. Standardized tests are bias; it's well known that they're bias. They are not a proper method for evaluating student progress and I dare say that you'll discourage good teachers from moving into the realm of working with kids who have difficulties in school, if schools are given the opportunity to use standardized tests as a measure of their success. Measuring student achievement is very difficult and using alternative methods like, for example, whether a student actually made a good film as a result of the courses that we were teaching. That would be very difficult to use that. It's very difficult to judge students achievement in art through their portfolios. School systems will, as my good colleague from Portland just used the term, we'll race to the bottom, by which I mean they will use standardized tests if they get the chance to do it, I believe, and I think that they are a diminished small, narrow method by which student achievement is measured and they are resulting in the diminishment of the curriculum in our schools as well. This bill was I think a bad bill when it came to us at first and I voted against it because I think it was going to move student achievement tests into the front and center of teacher evaluations. It's an even worse bill when it comes back now from the other body, where it takes away even local control over how those assessments will be used. I think on two counts this is a bad bill and I urge you my colleagues,

Madam Speaker, to vote against it. Thank you.

Representative TARDY of Newport moved that the Bill and all accompanying papers be **INDEFINITELY POSTPONED**.

The SPEAKER: The Chair recognizes the Representative from Newport, Representative Tardy.

Representative TARDY: Thank you, Madam Speaker, Members of the House. Madam Speaker, my purpose in this motion is to send a care package down to the other chamber and to invite them to continue working on the substance of a very important policy issue. So that is why I am moving Indefinite Postponement and I urge the members of this body to follow my light. Thank you.

The SPEAKER: The Chair recognizes the Representative from Unity, Representative Piotti.

Representative PIOTTI: Thank you, Madam Speaker. Madam Speaker, Men and Women of the House. We obviously had a little bit of confusion over some procedural motions, a little bit of misunderstanding. I think a lot of it stems from the fact that we actually voted on a Recede and Concur motion on this, this morning. Maybe that happened a little fast and people didn't really understand what was going on. Anyway, what the Representative from Newport, Representative Tardy, has offered is a way for us to send it back, in essence non-concurrence to the other body, and let them review it and potentially make some tweaks or insist on their actions and send it back here. But at least then the messages will be clear, we will know what we'll be talking about, and that might make it easier for some people in this chamber to make the decision they want to make. If you are in favor and I'm going to make it hopefully very clear, if you are in favor of the amendment that the other body put on, then you would vote presumably no on the Indefinite Postponement motion. If you are uncomfortable with that amendment and you want to see them work on this some more, then you would vote yes on the Indefinite Postponement measure. We often think of Indefinite Postponement as killing something. In this case, it will not have that effect. It will simply send it back to the other body in non-concurrence. Thank you.

The SPEAKER: The Chair recognizes the Representative from Chapman, Representative Sutherland.

Representative SUTHERLAND: Thank you, Madam Speaker. Madam Speaker, Ladies and Gentlemen of the House. I hope that I rise for the last time to speak about LD 1799. There's been a lot of serious heartburn about this amendment and this is an opportunity for it to have some more work. I encourage you if you like it, as our good Representative just said, then you'll want to vote no. However, if you would like to see it worked on some more, you can follow my light. I will be voting for Indefinite Postponement so that there is more work to be done on it.

The SPEAKER: The Chair recognizes the Representative from Cumberland, Representative Strang Burgess.

Representative STRANG BURGESS: Thank you, Madam Speaker. Sorry, I've been wanting to jump into this, but I'm not sure that I'm going to add particularly much at this moment in time except to say, in just a few minutes talking to people, there is a lot of confusion and I hope that people are perhaps becoming a little bit more crystal clear about what we want to do. There are none that wants this bill in its original format more than I do. We worked for the last four years to get education moving in the right direction. This amendment absolutely ties the hands and binds our local control issue, which is something that's very important to everybody here, and the original bill simply allows the use of different kinds of ways to evaluate your teachers. So lots more on all of that, but I hope everybody is clear and sort of we're back, if we can rewind the clock in our heads to this morning and

start fresh. Thank you, Madam Speaker, for your cooperation.

The SPEAKER: The Chair recognizes the Representative from Lewiston, Representative Wagner.

Representative WAGNER: Thank you, Madam Speaker. I agree with Representative Strang Burgess on this, but I have a question and that is, is it guaranteed that this will come back to us in some form or can the other body just completely kill it and we never see it again? Thank you, Madam Speaker.

The SPEAKER: The Chair would answer that question that if we move to Indefinitely Postpone it and that was successful and the other body did the same, the bill would no longer, it would be dead. The same thing would be true if had we, we were about to take a final enactment vote. If that had failed and it had failed in the other body, the bill would also be dead. But there is hope, I will not comment on the substance of this debate. You've heard it from either side.

The Chair ordered a division on the motion to **INDEFINITELY POSTPONE** the Bill and all accompanying papers.

A vote of the House was taken. 130 voted in favor of the same and 4 against, and accordingly the Bill and all accompanying papers were **INDEFINITELY POSTPONED** in **NON-CONCURRENCE** and sent for concurrence. **ORDERED SENT FORTHWITH.**

ENACTORS
Acts

An Act To Amend the Laws Governing the Misclassification of Construction Workers

(H.P. 1102) (L.D. 1565)
(H. "C" H-826 to C. "A" H-746)

Was reported by the Committee on **Engrossed Bills** as truly and strictly engrossed.

On motion of Representative McKANE of Newcastle, was **SET ASIDE**.

The same Representative **REQUESTED** a roll call on **PASSAGE TO BE ENACTED**.

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

The SPEAKER: The Chair recognizes the Representative from Newcastle, Representative McKane.

Representative **McKANE**: Thank you, Madam Speaker. I understand that this bill is a compromise and it is not as bad as it originally was, but I still think it is unnecessary and unprecedented new power to a state government entity. It's two new positions, it's \$161,000 a year. It's about stopping work, it's not about starting business and I just want to say I don't think it's what Maine needs at this time. I think we need to be thinking in the opposite direction. I just wanted to make those points before we vote on Enactment. Madam Speaker, thank you very much.

The SPEAKER: The Chair recognizes the Representative from Bath, Representative Watson.

Representative **WATSON**: Thank you, Madam Speaker. Madam Speaker, Ladies and Gentlemen of the House. This bill is not about stopping work and slowing business and paying fines. This is about preventing injuries and, in the event of injuries, ensuring that that injured worker is taken care of by the workers' compensation system and not in the emergency room, which means you and I pay that bill. This is a very important matter for the safety of Maine's workers and the protection of Maine's employers. Thank you, Madam Speaker.

The SPEAKER: A roll call has been ordered. The pending question before the House is Passage to be Enacted. All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 364

YEA - Adams, Ayotte, Beaudette, Beaudoin, Beck, Berry, Blanchard, Blodgett, Boland, Bolduc, Briggs, Bryant, Butterfield, Cain, Campbell, Carey, Casavant, Clark H, Cleary, Cohen, Connor, Cornell du Houx, Crockett P, Dill, Dostie, Driscoll, Duchesne, Eaton, Eberle, Eves, Finch, Flaherty, Flemings, Gilbert, Goode, Hanley, Harlow, Haskell, Hayes, Hill, Hinck, Hogan, Hunt, Innes Walsh, Jones, Kaenrath, Kruger, Lajoie, Legg, Lovejoy, MacDonald, Magnan, Martin JR, Martin JL, Mazurek, McCabe, Miller, Morrison, Nelson, O'Brien, Pendleton, Peoples, Percy, Perry, Peterson, Pilon, Piotti, Priest, Rankin, Richardson D, Rotundo, Russell, Sanborn, Saviello, Schatz, Shaw, Sirois, Stevens, Stuckey, Sutherland, Tardy, Theriault, Treat, Trinward, Tuttle, Valentino, Van Wie, Wagner J, Wagner R, Watson, Webster, Welsh, Wheeler, Willette, Wright, Madam Speaker.

NAY - Austin, Beaulieu, Bickford, Browne W, Burns, Cebra, Chase, Clark T, Cotta, Crafts, Cray, Crockett J, Curtis, Cushing, Davis, Edgecomb, Fitts, Fletcher, Flood, Fossel, Gifford, Giles, Greeley, Hamper, Harvell, Johnson, Joy, Knapp, Knight, Langley, Lewin, McFadden, McKane, McLeod, Millett, Nass, Nutting, Pieh, Pinkham, Plummer, Prescott, Richardson W, Robinson, Sarty, Strang Burgess, Sykes, Thibodeau, Thomas, Tilton, Weaver.

ABSENT - Celli, Kent, Pratt, Rosen, Smith.

Yes, 96; No, 50; Absent, 5; Excused, 0.

96 having voted in the affirmative and 50 voted in the negative, with 5 being absent, and accordingly the Bill was **PASSED TO BE ENACTED**, signed by the Speaker and sent to the Senate. **ORDERED SENT FORTHWITH.**

Acts

An Act To Provide Predictable Benefits to Maine Communities That Host Wind Energy Developments

(S.P. 582) (L.D. 1504)

(H. "A" H-829 to C. "A" S-501)

Reported by the Committee on **Engrossed Bills** as truly and strictly engrossed, **PASSED TO BE ENACTED**, signed by the Speaker and sent to the Senate.

The SPEAKER: The Chair recognizes the Representative from Belfast, Representative Giles, who wishes to address the House on the record.

Representative **GILES**: Thank you, Madam Speaker. Madam Speaker, Ladies and Gentlemen of the House. If I had been present for Roll Call No. 361, on LD 1611, I would like to be recorded as having voted nay. Thank you.

By unanimous consent, all matters having been acted upon were **ORDERED SENT FORTHWITH.**

On motion of Representative McCABE of Skowhegan, the House adjourned at 5:30 p.m., until 9:00 a.m., Wednesday, April 7, 2010 in honor and lasting tribute to Phillis Weiner Russakoff, of Skowhegan.