

MAINE STATE LEGISLATURE

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Senate Legislative Record
One Hundred and Twenty-Fifth Legislature

State of Maine

Daily Edition

First Regular Session
December 1, 2010 to June 29, 2011

Pages 1 - 1494

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

In Senate Chamber
Tuesday
February 1, 2011

Senate called to order by President Kevin L. Raye of Washington County.

Prayer by Senator Elizabeth M. Schneider of Penobscot County.

SENATOR SCHNEIDER: Thank you and good morning. This morning is special in that I've been given the opportunity to pray with all of you. It just reminds me that things are always possible and working together is possible and being generous is possible. Why I am reading two prayers this morning is that I come from an Episcopal background, my father was the minister in a university setting for many years. Sometimes I feel uncomfortable here because we talk about one religious tradition, the tradition and faith that I come from. I decided to look for a prayer from the Jewish tradition as well as the Catholic tradition. I want to share those with you this morning. Let us be in the spirit of prayer.

O Lord, grant that this night we may sleep in peace and that in the morning our awakening may also be in peace. May our daytime be cloaked in Your peace. Protect us. Inspire us to think and act only out of love. Keep far from us all evil. May our paths be free from all obstacles when we go out and until we return home.

Father in heaven, bless us as we gather today for this meeting. Guide our minds and hearts so that we will work for the good of our community and help all Your people. Teach us to be generous in our outlook, courageous in the face of difficulty, and wise in our decisions. Father, we pray to You, for You are God for ever and ever. Amen.

Pledge of Allegiance led by Senator Michael D. Thibodeau of Waldo County.

Reading of the Journal of Thursday, January 27, 2011.

Doctor of the day, Kenneth Christian, MD of Holden.

COMMUNICATIONS

The Following Communication: S.C. 49

STATE OF MAINE
125TH MAINE LEGISLATURE
SENATE REPUBLICAN OFFICE

January 26, 2011

Joseph G. Carleton, Jr.
Secretary of the Senate
3 State House Station
Augusta, ME 04333

Dear Secretary Carleton:

Pursuant to our authority under Joint Rule 501, we have appointed John C. Bott, Director of Policy in the Senate Republican Office to serve as the Republican Partisan Staff Assistant for Nominations during the 125th Maine State Legislature.

Sincerely,

S/Jonathan Courtney
Senate Majority Leader

S/Debra Plowman
Assistant Senate Majority Leader

READ and ORDERED PLACED ON FILE.

The Following Communication: S.C. 51

STATE OF MAINE
125TH LEGISLATURE
SPEAKER'S OFFICE

January 28, 2011

Honorable Joseph G. Carleton
Secretary of the Senate
3 State House Station
Augusta, ME 04333

Dear Secretary Carleton,

Pursuant to my authority under Title 7, MRSA, Chapter 5, Section 125, I am pleased to appoint Representative Peter Edgecomb of Caribou to the Board of Agriculture, representing a Representative serving on the Joint Standing Committee on Agriculture, Conservation and Forestry Committee.

Please let me know if you have any questions regarding this appointment.

Sincerely,

S/Robert W. Nutting
Speaker of the House

READ and ORDERED PLACED ON FILE.

The Following Communication: S.C. 50

**STATE OF MAINE
125TH LEGISLATURE
OFFICE OF PROGRAM EVALUATION AND GOVERNMENT
ACCOUNTABILITY**

January 31, 2011

The Honorable Kevin L. Raye, President of the Senate
and Members of the 125th Maine Senate
3 State House Station
Augusta, Maine 04333

The Honorable Robert W. Nutting, Speaker of the House
and Members of the 125th House of Representatives
2 State House Station
Augusta, Maine 04333

Dear President Raye, Speaker Nutting and Members of the 125th
Legislature:

In accordance with 3 MRSA §995.4, I respectfully submit
OPEGA's Annual Report on Activities and Performance for 2010.
OPEGA's service to the Legislature as a non-partisan resource is
meant to provide support in overseeing and improving the
performance of State government. I hope that you and Maine's
citizens continue to view our efforts and results as a worthwhile
use of taxpayer dollars, as we continue working to increase our
value to you.

Sincerely,

S/Beth L. Ashcroft
Director

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

SENATE PAPERS

Bill "An Act To Authorize the Leasing of Rail Crossings"
S.P. 66 L.D. 215

Presented by Senator SAVIELLO of Franklin.
Cosponsored by Senator: TRAHAN of Lincoln.

On motion by Senator **SHERMAN** of Aroostook, **REFERRED** to
the Committee on **AGRICULTURE, CONSERVATION AND
FORESTRY** and ordered printed.

Sent down for concurrence.

Bill "An Act To Authorize a General Fund Bond Issue in the
Amount of \$50,000,000 To Fund Research and Development"
S.P. 76 L.D. 225

Presented by Senator RECTOR of Knox.
Cosponsored by Representative CAIN of Orono and Senators:
LANGLEY of Hancock, MARTIN of Kennebec, ROSEN of
Hancock, SCHNEIDER of Penobscot, WOODBURY of
Cumberland, Representatives: DOW of Waldoboro, FOSSEL of
Alna, PRESCOTT of Topsham.

On motion by Senator **ROSEN** of Hancock, **REFERRED** to the
Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS**
and ordered printed.

Sent down for concurrence.

Bill "An Act To Amend the Laws Governing Shoreland Zoning"
S.P. 70 L.D. 219

Presented by Senator SNOWE-MELLO of Androscoggin.
Cosponsored by Senators: THIBODEAU of Waldo, THOMAS of
Somerset and Senators: COLLINS of York, McCORMICK of
Kennebec, SAVIELLO of Franklin, Representatives: DAVIS of
Sangerville, MALABY of Hancock, MCKANE of Newcastle,
O'CONNOR of Berwick.

On motion by Senator **SAVIELLO** of Franklin, **REFERRED** to the
Committee on **ENVIRONMENT AND NATURAL RESOURCES**
and ordered printed.

Sent down for concurrence.

Resolve, To Prohibit Smokers from Receiving MaineCare
Benefits

S.P. 67 L.D. 216

Presented by Senator SAVIELLO of Franklin.
Cosponsored by Senators: FARNHAM of Penobscot, KATZ of
Kennebec, MARTIN of Kennebec, MASON of Androscoggin,
WHITEMORE of Somerset, Representative: KESCHL of
Belgrade.

On motion by Senator **McCORMICK** of Kennebec, **REFERRED**
to the Committee on **HEALTH AND HUMAN SERVICES** and
ordered printed.

Sent down for concurrence.

Bill "An Act To Clarify and Amend Laws Pertaining to Licenses Issued by the Department of Inland Fisheries and Wildlife"
S.P. 63 L.D. 212

Presented by Senator PLOWMAN of Penobscot.
Cosponsored by Senators: MARTIN of Kennebec, PATRICK of Oxford, TRAHAN of Lincoln, Representatives: BLACK of Wilton, CRAFTS of Lisbon, DAVIS of Sangerville, WOOD of Sabattus.

Bill "An Act To Provide Funding for the Fish Stocking Program"
S.P. 64 L.D. 213

Presented by Senator THIBODEAU of Waldo.
Cosponsored by Representative DAVIS of Sangerville and Senators: DIAMOND of Cumberland, SHERMAN of Aroostook, Representatives: BLACK of Wilton, CRAFTS of Lisbon, DUNPHY of Embden, GIFFORD of Lincoln, MALABY of Hancock, TIMBERLAKE of Turner.

Bill "An Act To Require Written Permission for Recreational Access to Cropland, Pastureland and Orchards"
S.P. 74 L.D. 223

Presented by Senator SAVIELLO of Franklin.
Cosponsored by Senator: TRAHAN of Lincoln.

On motion by Senator MARTIN of Kennebec, REFERRED to the Committee on **INLAND FISHERIES AND WILDLIFE** and ordered printed.

Sent down for concurrence.

Bill "An Act To Allow Maine Citizens To Buy Health Insurance across State Lines"

S.P. 77 L.D. 226

Presented by Senator SULLIVAN of York.
Cosponsored by Senator KATZ of Kennebec, Representative AYOTTE of Caswell and Senators: COLLINS of York, HILL of York, Representative: RICHARDSON of Warren.

On motion by Senator WHITTEMORE of Somerset, REFERRED to the Committee on **INSURANCE AND FINANCIAL SERVICES** and ordered printed.

Sent down for concurrence.

Bill "An Act To Provide Temporary Changes to the Extended Benefit Triggers in Accordance with the Federal Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010" (EMERGENCY)

S.P. 75 L.D. 224

Presented by Senator RECTOR of Knox.
Cosponsored by Representative TUTTLE of Sanford and Senator: JACKSON of Aroostook, Representative: PRESCOTT of Topsham.
Submitted by the Department of Labor pursuant to Joint Rule 204.

On motion by Senator RECTOR of Knox, REFERRED to the Committee on **LABOR, COMMERCE, RESEARCH AND ECONOMIC DEVELOPMENT** and ordered printed.

Sent down for concurrence.

Bill "An Act To Establish Governor William King Day"
S.P. 65 L.D. 214

Presented by Senator GOODALL of Sagadahoc.
Cosponsored by Representative CLARKE of Bath and Senators: BARTLETT of Cumberland, BLISS of Cumberland, Representatives: BOLDUC of Auburn, KENT of Woolwich, PRESCOTT of Topsham, SIROCKI of Scarborough, VOLK of Scarborough.

On motion by Senator THOMAS of Somerset, REFERRED to the Committee on **STATE AND LOCAL GOVERNMENT** and ordered printed.

Sent down for concurrence.

Bill "An Act To Provide for the Appointment of Division Directors in the Department of Environmental Protection"
S.P. 73 L.D. 222

Presented by Senator SAVIELLO of Franklin.
Cosponsored by Senator: TRAHAN of Lincoln.

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

On motion by Senator THOMAS of Somerset, TABLED until Later in Today's Session, pending REFERENCE.

Off Record Remarks

Bill "An Act To Require the Maine Turnpike Authority To Promote Maine Products and Businesses"
S.P. 68 L.D. 217

Presented by Senator RECTOR of Knox.
Cosponsored by Representative VOLK of Scarborough and Senators: ALFOND of Cumberland, COLLINS of York, COURTNEY of York, LANGLEY of Hancock, SAVIELLO of Franklin, SNOWE-MELLO of Androscoggin, TRAHAN of Lincoln, Representative: McKANE of Newcastle.

Bill "An Act To Improve the Safety of Minors by Collecting Data on Vehicle Collision Rates"

S.P. 69 L.D. 218

Presented by Senator SAVIELLO of Franklin.

Bill "An Act To Make Changes to the Motorcycle Inspection Sticker Requirements"

S.P. 72 L.D. 221

Presented by Senator PLOWMAN of Penobscot.
Cosponsored by Representative CEBRA of Naples and Senators: COLLINS of York, GERZOFKY of Cumberland, SULLIVAN of York, THOMAS of Somerset.

On motion by Senator COLLINS of York, REFERRED to the Committee on TRANSPORTATION and ordered printed.

Sent down for concurrence.

Bill "An Act Relating to Maine Farm Wineries"

S.P. 71 L.D. 220

Presented by Senator RECTOR of Knox.
Cosponsored by Representative RICHARDSON of Warren and Senators: LANGLEY of Hancock, President RAYE of Washington, TRAHAN of Lincoln, Representatives: DOW of Waldoboro, FITTS of Pittsfield, HERBIG of Belfast, O'BRIEN of Lincolnville, PRESCOTT of Topsham.

On motion by Senator FARNHAM of Penobscot, REFERRED to the Committee on VETERANS AND LEGAL AFFAIRS and ordered printed.

Sent down for concurrence.

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

ORDERS

Joint Resolution

On motion by Senator COURTNEY of York (Cosponsored by Speaker NUTTING of Oakland and Senators: ALFOND of Cumberland, HOBBS of York, PLOWMAN of Penobscot, President RAYE of Washington, Representatives: CAIN of Orono, CURTIS of Madison, CUSHING of Hampden, HAYES of Buckfield), the following Joint Resolution:

S.P. 78

JOINT RESOLUTION HONORING THE 100TH ANNIVERSARY OF THE BIRTH OF PRESIDENT RONALD REAGAN

WHEREAS, Ronald Wilson Reagan, the 40th President of the United States and the 33rd Governor of California, was born in Illinois on February 6, 1911 and was a graduate of Eureka College, a veteran of the United States Armed Forces and a successful actor before going on to devote his life to public service; and

WHEREAS, Ronald Reagan began his working career as an actor, first in radio, then primarily in films and later in television, appearing in over 50 movie productions and enjoying widespread success and popularity; and

WHEREAS, he served as president of the Screen Actors Guild and eventually became interested in politics, originally as a member of the Democratic Party and then switching to the Republican Party in 1962; and

WHEREAS, he served 2 terms as Governor of California and he ran for president in 1968 and 1976 before winning the presidency in 1980, and was reelected by a landslide in 1984, proclaiming it was "Morning in America"; and

WHEREAS, as President of the United States, Ronald Reagan survived an assassination attempt, implemented sweeping new political and economic initiatives and was instrumental in the ending of the Cold War; and

WHEREAS, President Reagan was known as a beacon of optimism, with his assertive enthusiasm, rallying the people during times of sorrow and crisis and also good times; and

WHEREAS, though known for his genial, open and friendly manner, President Reagan was also strong-willed and committed to his principles and enjoyed widespread popularity not only in the United States, but throughout the world, building strong relationships with other nations; and

WHEREAS, President Reagan left office after serving 2 terms in 1989, at the peak of his popularity, and soon after disclosed he had Alzheimer's disease, dying 10 years later at the age of 93; and

WHEREAS, his burial site is inscribed with the words he delivered at the opening of the Ronald Reagan Presidential Library: "I know in my heart that man is good, that what is right will always eventually triumph and that there is purpose and worth to each and every life"; now, therefore, be it

RESOLVED: That We, the Members of the One Hundred and Twenty-fifth Legislature now assembled in the First Regular Session, on behalf of the people we represent, take this opportunity on the 100th Anniversary of the birth of President Ronald Reagan, to honor the memory of a great American patriot who devoted much of his life to his Nation and who had a strong faith in the goodness of people and of the United States of America.

READ.

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

Senator **COURTNEY**: Thank you Mr. President. Men and women of the Senate, it is my honor to rise today to put forward this Joint Resolution honoring the 40th President, Ronald Regan's 100th birthday, which is February 6th. One of the things about the 40th President, regardless of where you come from in your political spectrum, I think what he did was offer some new hope and a new direction for the country. No matter what political stripe you come from he had a capacity to turn it off at 5 o'clock and work with people across the aisle. One of the most interesting books that I've ever read was Tip O'Neal's book about *Man of the House*. I think that some of the excerpts of that told how they would fight like crazy and be right in each other's face, going at it all day long, and then at night the President would invite Tip over and they'd sit down and have a beer. I think that being able to set aside political passions and maintain friendships is something I strive to work towards. It really does make this an enjoyable and honorable place to live. I think that more than anything that should be the legacy of the 40th President and with that I'm honored to sponsor this Joint Resolution.

On motion by Senator **COURTNEY** of York, the Joint Resolution was **ADOPTED**.

Sent down for concurrence.

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

ORDERS OF THE DAY

Unfinished Business

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

The Chair laid before the Senate the following Tabled and Later (1/27/11) Assigned matter:

NOMINATION - of Darryl N. Brown of Livermore Falls for appointment as the Commissioner of the Department of Environmental Protection

Tabled - January 27, 2011, by Senator **COURTNEY** of York

Pending - **CONSIDERATION**

(In Senate, January 27, 2011, Communication (S.C. 47) from the Committee on **ENVIRONMENT AND NATURAL RESOURCES**, **READ** and **ORDERED PLACED ON FILE**.)

The President laid before the Senate the following: "Shall the recommendation of the Committee on **ENVIRONMENT AND NATURAL RESOURCES** be overridden?"

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

Senator **GOODALL**: Thank you Mr. President. Men and women of the Senate, I rise today with the great challenge to explain to you why I have opposed the nominee in committee and I will do so here today, especially in light of the fact that Mr. Brown is extremely qualified, he's a gentleman, and it's my understanding, based on my limited knowledge and I have the utmost confidence in him, that he is a man of integrity. However, often we have to look at this through multiple part tests. For me, the conflict of interest that exists is too great at this time for me to support him. I understand that people have differences of opinion. I consider you all my friends. We're all great colleagues to one another. As the good Majority Leader said just minutes ago, we're going to disagree and at the end we will come together as friends. In my opinion, greater remedial action is required, such as divestiture or creation of a trust. The question has arisen as to whether or not a blind trust is truly blind because everyone, in fact, will know what is in the trust itself. The issue is that there would be a greater firewall for public perception. Not that I question Mr. Brown, but as a matter of policy. This is policy over the person, in my opinion. The requirement to create a trust that divested ownership is not something that is uncommon. In fact it is done with great regular practice and custom at the federal level. It is not codified in statute but agencies themselves require it for executive employees and/or Senate confirmation panels mandate it. We each have to make our decisions individually about this and we each have to realize that we all have conflicts of interest ourselves from time to time. It's inherent, in fact, in our legislative process. We welcome experience and we want it on jurisdictional committees. In fact I may have a conflict from time to time and if I have a direct substantial financial interest that would require me to recuse myself. In this situation I believe that we must have a higher bar, especially in the light of having someone full-time, professional, and as a regulator of a business in which he maintains stock. If he was to go as far as to create a blind trust or divest his interest I would fully support him, in fact I would be speaking for him. This is a great challenge for me to oppose this, especially in light of the fact that Mr. Brown grew up in my hometown and has many family and friends still there today. At the end of the day, for these same reasons, I voted against him in committee. I understand and respect the differences we have on this issue. I thought it was important that I explain myself to you, to my constituents, and to the people of the state of Maine. I thank you for this opportunity and I wish you the best of luck in making your decision. I thank you for the opportunity to state my opinion.

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

Senator **SAVIELLO**: Thank you Mr. President. Ladies and gentlemen of the Senate, it is interesting that the first speech that I rise to talk to you about is about my friend of almost 40 years. In fact, it's a person that I followed in his footsteps in many ways. In 1972 I came to the University of Maine at Orono and I was in the Soil Science Department working on my Masters Degree in Agronomy. I heard a lot about this guy named Darryl Brown, that Darryl Brown was a friend, was a student, was committed to his community and I had to fill big shoes in that particular case. In 1973 we actually met for the first time. I met a successful small business owner, having just started it. He had not forgotten his roots because he came back to the University to talk to us as

graduate students and he treated us as if we were his equal. Interestingly enough, some number of years later I followed his steps to the Maine State Legislature. Perhaps that was the first time he lead me astray. Twenty years ago I moved to the community of Wilton and I met Darryl Brown again. This time I met him as a community member, a person who had been the chair of the hospital board, who had been involved in economic development, and who had helped our ambulance get started. I found a friend who was always willing to help. Last week, as many of you know, Darryl endured a 5 1/2 hour hearing. Some people called it something else, but it was a hearing where 26 people testified, 22 in favor, 2 for and against, and there was one that was kind of against. Twenty-two spoke of his qualifications, his integrity, and his not rounding the corners with his applications for compliance. As they said, he followed the rules. They called him a man of character. Two did mention, as my good friend did, the conflict. I believe Mr. Brown addressed it. He removed himself from his business. He set up a board of directors. He's told us how the company will operate. In fact, I think it's hurting him financially by saying they can't have certain conversations with him, certainly on rule making. He set aside the last one when he said, "I will sell the company." To me those are pretty significant steps. Still there are concerns about perception. I can say that this is the same thing for many of us. Perception only becomes reality when it really happens. Interesting, my good friend Severin Bilodeau came in and talked a little about the history of the Board of Environmental Protection and the past Commissioners. He talked about how we've had lawyers, we've had environmentalists, we've had government employees, we've had engineers, but we have never ever had a small business owner step forward to be the Chair. Now, as he said, we hold him to a different standard. I think in the things that he said he would do he has more than passed the test to do this job. I do have one problem with Mr. Brown, that is his sanity. Why would a successful business person, who could retire today, stay home, and as my good friend Representative Knight said, he could mow the grass, plant his flowers, and play golf, be willing to take a job that pays less, works longer hours, and wants to come into the turmoil and chaos of the state government? I do, I know why. It's because Darryl Brown, the man, knows he can make a difference for the state that he lives in. I teach a leadership class. One of the things I find when I look up the definition of leadership is that it is defined as making something extraordinary happen. Darryl Brown is the leader. He will make something extraordinary happen. I ask you to support the committee vote. Thank you very much Mr. President.

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

Senator WOODBURY: Thank you Mr. President. Mr. President and Senate colleagues, there are two key criteria that would guide me in selecting a Commissioner of Environmental Protection. First and foremost, I want a passionate belief in the value of Maine's environment and natural resources, not just for its own sake but as the core of Maine's identity and positive reputation around the world. Our environment is integral to what people think about Maine, why they come to Maine, and why so many of us love living here in Maine. It is the reason why many entrepreneurs and business leaders choose Maine to operate and grow their companies and why environmental protection and conservation are so integrally connected to our economic future.

Indeed, Maine's environment is what makes me imminently optimistic about our economic prospects in a world where more jobs can be located anywhere and where of quality of place matters more than ever. I want for the DEP Commissioner a passionate belief in environmental protection and conservation. The second thing I want is an effective manager and inspirational leader to the many employees who work at DEP and who oversee our environmental resources and protections. We've all heard a great deal about the business impediments and economic costs from a regulatory attitude that is punitive rather than helpful towards compliance, procedures that are time consuming and routinely delayed rather than efficiently administered, and enforcement protocols that too often nit-pick at the trivial rather than differentiating what really matters. These impediments have real cost to business in time, money, consulting fees, aggravation, and uncertainty. These are largely, though not exclusively, management issues not environmental issues and it is why high quality management for the Department is so critical now. I want in my DEP Commissioner an effective manager and inspirational leader who can redefine the culture to one that is friendly, helpful, efficient, timely, clear, and definitive in its actions. In my limited interactions with Mr. Brown I have found him thoughtful, receptive, honest, gracious, open minded, and honorable. Based on these qualities I am comfortable supporting the committee recommendation that he be confirmed. He has also made clear that he has no intention of doing anything to harm Maine's precious environmental resources and I'm very thankful for that commitment. I look forward to working with him to be sure that this is the case. I find it somewhat unfortunate for Mr. Brown that the Phase I Regulatory Reform proposals were released at exactly the same time as his nomination is being considered. The list of proposed reforms includes changes that seem long overdue for efficient and reasonable administration of environmental protections. The list also includes proposals that would undo worthwhile advances in environmental protection and conservation from past legislatures. I look forward to Mr. Brown's counsel in helping us navigate through these proposals as we differentiate between those that make good sense for Maine and those that would compromise the very best of who we are. I look forward very much to working with him and I thank you.

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

Senator KATZ: Thank you Mr. President. Ladies and gentlemen of the Senate, I rise to address the conflict issues raised by my friend, the Senator from Sagadahoc. Ask not what your state can do for you but what you can do for your state. That call to action spoke to each of us in our decision to run for public office. When I ran and I was elected I wasn't asked to sell my interest in the law firm in which I'm partner. There are others of you who also are small business owners and none of us were required to sell our businesses as a condition of our public service. What we are required to do is follow the law that was set up in Maine statute and is set up for Executive employees as well. This is in Title 5, Section 18, "An Executive employee commits a civil infraction if he personally substantially participates in his official capacity in any proceeding in which to his knowledge in which case an organization in which he has a direct and substantial interest is involved." There is nothing in Maine statute which requires Mr. Brown or any other potential Commissioner to sell his business but what Mr. Brown is committing to do is to go way beyond what

Maine law requires to avoid even the appearance of conflict. He is saying, "I don't have to do it but I'm going to do it, I'll sell my business." It's an extraordinary decision for him to make, someone who has built up his business over four decades in the state of Maine. The question is how can this sale, which he doesn't have to do, be handled in the most ethical way that still allows Mr. Brown to have some control over his future and his own financial destiny?

His business, as I understand, is a corporation. He's the sole shareholder. He's President and CEO. He's resigned as President. He's resigned as CEO. He's out of the business. He has appointed a Board of Directors that now has complete control of the business and that has passed four resolutions. One is a resolution that totally insulates Mr. Brown from the company. He can't contact them, they can't contact him. Secondly, it prohibits this business from doing any lobbying on behalf of the firm or any of its clients with respect to any rulemaking before the Department of Environmental Protection or before this legislature. Third, to the extent the Mr. Brown will receive financial information from the business that he continues to own, it will be in aggregate form. That is that it he will not know who the clients are or the particulars of any of the contracts. Forth, and I think this is the key part, the board is empowered to negotiate a sale of this business, subject however to Mr. Brown's consent to the terms of that sale. He's not going to have any knowledge of the negotiations until it gets to that point of an offer being made. The current status, as I understand it, is that there is no current offer but no one even knows at this point what the business is even worth.

My friend, the Senator from Sagadahoc, suggests that this business be placed in a blind trust for sale. Mr. Brown has taken the last forty years of his life and that suggestion asks him to turn over all decisions about the sale of his baby to someone else. Blind trusts I think are great if you are talking about putting a stock portfolio into blind trust and the trustee would decide whether to sell General Motor stock and buy Proctor and Gamble or something where there is a stock portfolio and the values are well known and you are selling stock for cash or buying other securities. This is the sale of a business. It's a lot more complicated. There are going to have to be decisions made about whether it is going to be an asset sale or whether it's going to be a sale of stock. It is going to be all cash or is there going to be some paper taken back and if so what are the terms of that loan? Is there going to be any security for the unpaid price? What kinds of remedies are available if there is a default? How are the various portions of the sale going to be allocated for tax purposes? Selling a business is a complicated thing and would any of us want to turn over those kinds of decisions and our financial future over to a blind trust for decisions? I don't think so. With Mr. Brown I think all he is asking for is to keep some control over his own financial destiny involved with the business that he's worked on for over forty years.

What about the interim until the sale of the company? As I understand it, every application that comes to DEP will first go to the Deputy Commissioner of DEP and if Maine Land Development Consultants is involved it will never get to Mr. Brown. It won't even get to him, period. He won't be involved in any cases involving the company. He won't even hear about them. Hopefully, and I'm sure he would agree, that this would be for a very short period of time. I think these are extraordinary safeguards which he has suggested and which his company has suggested. I think unless you consider him to be a devious man,

and no one is suggesting that; unless you consider him to be a dishonest man, and no one is suggesting that, then what more can we ask for. Should we send him out and ask him to bring back the broom from the Wicked Witch of the West and deliver it to us in this chamber before we are going to approve him? Mr. Brown wants to serve his state. The Governor says he's the right person for the job and I hope you will give him that chance. Thank you Mr. President.

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

Senator **BARTLETT:** Thank you Mr. President. I rise in opposition not based on any of the policy positions that this company has taken but purely because of the conflict of interest, which I think is much more grave than has given credit to. I think it is a fundamental principle that you cannot both be a regulator and regulated. Regardless of what his plans maybe to sell the business, as of today if he is confirmed he will own the business that is regulated by DEP and he will be the chief regulator in the state.

I appreciate his willingness to speak with me and others this morning and I appreciate his commitment to recuse himself from key decisions, but it is important to remember that a cloud of suspicion will be cast over the entire department because he is the Commissioner of that department. Everybody in the Department of Environmental Protection works for the Commissioner. Simply having the Commissioner recuse himself doesn't take away that cloud of suspicion that every time an application comes before the DEP they might be given a slightly different look than others. I know that if I were seeking to have a permit approved I would love to go to a business that was owned by the Commissioner of the department because I know I would be given at least as good a shake as anyone else that is going before them. That is what concerns me. I would be happy to support this nominee if the business were sold. I would be willing to vote for this nominee if there were procedures in place for outside reviews, not done by DEP staff that report to him. That would be expensive. It would be costly. It would be very difficult to create. I simply cannot go out on a limb and support somebody to regulate themselves, essentially. The regulator should not be the regulated. To me, that does go to core qualifications. The qualifications could be improved simply by stepping away from the core interest. I think it's very different when you are talking about a Commissioner then when we are talking about a citizen legislator. We are one of many. When one of us recuses ourselves there are plenty of others here to vote and participate. We don't have direct oversight. We are not the boss of members of the Executive Branch who would be carrying out his orders. I think it is that appearance that I think would so cloud the department to make it very very difficult.

How would the process of sale go? Clearly Mr. Brown has every right to be involved in that sale and to have some understanding of where it is going and the price. There are all sorts of complications that could arise. Somebody seeking to be regulated is purchasing a business from the regulator. I'm very sorry that I cannot support this nominee who is otherwise qualified, but I do think we have to have a very high state of our Commissioners and at a minimum make sure that there is distance between a regulator and those who are coming to them for approval.

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

Senator **SCHNEIDER:** Thank you Mr. President. Men and women of the Senate, again I really didn't know if I was going to speak today on this nomination but I feel compelled to do so. I respect my colleagues on both sides for their decision to support or not to support the nominee. Clearly there are some issues with regard to the business piece that this nominee has. Personally, I think he's done his best to address it without giving up, as one put it, his baby, his child. I think that, for a business person, it is very hard for them to give up their business. I do think he's going to make a concerted effort to sell his business and I appreciate that. For me, when I look at a candidate for a Commissioner position, integrity, intelligence, thoughtfulness, openness, a willingness to listen, and a willingness to understand that there are different ways of looking at things, are all qualities that I look for in a candidate for Commissioner. Though there may be some issues with regard to scrutiny I think, frankly, that this lies on the part of the Executive and that this is his decision. When I look at this candidate I have to ask myself what I am looking for in somebody to serve the state of Maine and I think he meets these qualifications. As a result, I will be favoring the nomination. Thank you.

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

Senator **ALFOND:** Thank you Mr. President. Ladies and gentlemen of the Senate, it's very clear that we have a candidate in Darryl Brown who is a successful businessman and a successful leader. His experience is steeped in knowledge of the rules, regulations, and the environment. His real-world experience and common sense approach will certainly assist the DEP in becoming the best it can be. However today's conversation is not about experience. Last week I spoke about a nominee who was lacking experience and preparedness. That is not Darryl Brown. Today's conversation is about perception, ethical dilemmas, and, frankly, doing the right thing for Maine. The public has entrusted us, their elected leaders, to govern for the best interest of all people. We are stewards of the state of Maine. They have elected us to ensure integrity and transparency without conflicts of interest. Today we are being asked to vote on a man whose financial success is a direct result of decisions made by the DEP. In case that wasn't clear enough let me say it another way; Mr. Brown's business is dependent on the DEP to review and permit his projects. There is no gray area there. If the DEP permits his project he gets paid. Today the Governor and the Majority Party has decided the process must go on for this nominee regardless of the clear conflict of interest. There is nothing about this nomination that is about the people of Maine. Again, I am not saying that Mr. Brown is not qualified. He is, but that is not the sole consideration for hiring someone. We must also consider timing and ethics. We all have choices to continue working in the private sector or work for the people without conflict of interest and personal financial gain. Today I'm sad to see that there is a black cloud forming over the DEP and it's not because of any regulation. To support this nomination would be placing someone in the position of Commissioner who could influence the matters before him and receive financial benefit as a result. The nominee has told all of us that he is selling his company but we don't know when. It could be in six

months, it could be in a year, it could be in seven and a half years. We don't know. I'm especially concerned for the staff of the DEP. By virtue of their employment they are placed in a precarious situation. They are being forced to choose between following regulations in support of the environment or enhancing their boss's bottom line. We have a choice, we can slow down and allow Mr. Brown to sell his business and then, if he is still interested in having the job, we can reconsider his nomination or we can move ahead carelessly without regard for ethics and conflicts of interest and make Mr. Brown the DEP Commissioner. It's no wonder that the people of Maine have distrust of their elected leaders. This nomination and support of Mr. Brown reinforces the widely held belief that Augusta lives in a bubble. It is with this in mind that I will vote against the nomination of Mr. Brown to be the next Commissioner of the DEP. Thank you Mr. President.

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

Senator **TRAHAN:** Thank you Mr. President. Ladies and gentlemen of the Senate, I'm truly saddened by one comment related to the bottom line of the individual before us. I, like the representative earlier, didn't plan on speaking but I certainly now am going to speak on this. It is possible that some of that speech would relate to this candidate. The fact that the DEP regulated his business is important but for those that want a change in the direction of this state as it relates to the people effected by the regulatory structures here having a person who is experienced in dealing with those departments like the DEP is extremely important because many of these people have tried passionately to follow the law while at the same time protecting the environment. If the previous speaker had said to me that this person had violated DEP rules, polluted, or intentionally done something to hurt the environment then I would have pause to vote for this candidate. Without that information coming forward what you are saying is simply, because they interacted with the agency, there is some clouding of their judgment in making decisions. What I think is interesting about the candidates that are coming forward is their interaction with the agencies and the fact that this new Chief Executive wants that experience when choosing these candidates. For folks that are sitting here, it would be the same as the previous speaker saying to me, as a logger of 27 years, that I am unqualified to be a Commissioner simply because I worked in the industry. I ask you to think clearly about that. A person's actions matter and this individual has been responsible. As long as nobody can come forward and say that he has done something wrong in his responsible interactions with an agency then I think he deserves our vote.

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

Senator **PLOWMAN:** Thank you Mr. President. Men and women of the Senate, I have had passed out to you today the Commission on Governmental Ethics and Election Practices form which is necessary for every Executive employee of the State of Maine to fill out. Until about two years ago these were filled out and put a drawer in one of the buildings across the way and never even accessible unless you knew which person to ask and which drawer to go to. As part of reforming ethics for the State of Maine, the Legal and Veterans Affairs Committee, which is now

the Veterans and Legal Affairs Committee, thought that we should move to something more transparent and something quite a bit more explanatory of what were the holdings and what were the ways that Executive employees made their money. It was never anticipated that if you became a member of the Executive Branch that you must divest yourself of all your holdings. It was anticipated, however, that you should divulge those and reveal any conflict of interest which may come about. Mr. Brown has not only met the letter of the law but has gone above the letter of law by agreeing to be insulated from the workings of his company until the time that it is sold. Mr. Brown has also been mentioned by both sides of the aisle today as someone with a great amount of integrity and it has never been brought to my attention that he is the kind of individual who would pressure his employees, whether private or public, to do something that would be illegal. Should he do that then there are remedies, including the Whistle Blower's Protection Act, that I would assume every member of the Department of Environmental Protection would be aware of. I believe that the state of Maine has thought through what we need to do in order to bring candidates before us and not make them have to become paupers or to lose complete control of what they have worked their lives for. I can think of people in this room who when offered anything, such as a Commissioner or judgeship position, would be very hesitant to put the things that they have worked so hard on into a blind trust, especially considering it is not a requirement of the law. There are ways to meet the intent of what we would like and that is full transparency. Mr. Brown has made every attempt to come to the point of full transparency and has come to us asking for the ability to serve. He has not come to us to ask for the ability to feather his nest and take his bottom line and grow it. He understands what Maine needs and if there was ever a debate that showed the importance of a Commissioner and how deep the changes need to go into the culture of a committee or a department I see it here today. I'm pleased that the debate has brought that forward. I'm not pleased there has been any kind of castigation of Mr. Brown but I am also confident that when he goes through with this paperwork and his deal that the state of Maine will have received an incredible deal with a public servant that will serve our interests as well as that of the environment and the business community. Thank you Mr. President.

In accordance with 3 M.R.S.A., Chapter 6, Section 151, and with Joint Rule 506 of the 125th Legislature, the vote was taken by the Yeas and Nays.

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#7)

YEAS: Senators: ALFOND, BARTLETT, BRANNIGAN, GOODALL, HILL, PATRICK

NAYS: Senators: BLISS, COLLINS, COURTNEY, CRAVEN, DIAMOND, FARNHAM, GERZOFKY, HASTINGS, HOBBS, JACKSON, KATZ, LANGLEY, MARTIN, MASON, MCCORMICK, PLOWMAN, RECTOR, ROSEN, SAVIELLO, SCHNEIDER, SHERMAN, SNOWE-MELLO, SULLIVAN, THIBODEAU, THOMAS, TRAHAN, WHITTEMORE, WOODBURY, THE PRESIDENT - KEVIN L. RAYE

6 Senators having voted in the affirmative and 29 Senators having voted in the negative, and 6 being less than two-thirds of the Membership present and voting, it was the vote of the Senate that the Committee's recommendation be **ACCEPTED** and the nomination of **Darryl N. Brown** of Livermore Falls for appointment as the Commissioner of the Department of Environmental Protection was **CONFIRMED**.

The Secretary has so informed the Speaker of the House of Representatives.

THE PRESIDENT: The Chair is pleased to recognize in the rear of the chamber the Honorable Darryl Brown. Would he please step forward and accept the greetings of the Senate.

The Chair laid before the Senate the following Tabled and Later (1/27/11) Assigned matter:

Bill "An Act To Regulate the Use of Magnesium Chloride"
H.P. 127 L.D. 144

Tabled - January 27, 2011, by Senator **SAVIELLO** of Franklin

Pending - **REFERENCE, IN CONCURRENCE**

(In House, January 25, 2011, **REFERRED** to the Committee on **ENVIRONMENT AND NATURAL RESOURCES** and ordered printed.)

On motion by Senator **SAVIELLO** of Franklin, **REFERRED** to the Committee on **TRANSPORTATION**, in **NON-CONCURRENCE**.

Sent down for concurrence.

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

SENATE PAPERS

Bill "An Act To Reserve a Number of Moose Permits for the Tribes of Maine"

S.P. 79 L.D. 270

Presented by Senator **JACKSON** of Aroostook.
Cosponsored by Representative **MARTIN** of Eagle Lake and Representative: **TUTTLE** of Sanford.

Bill "An Act To Establish Standards Pertaining to the Feeding of Deer"

S.P. 80 L.D. 271

Presented by Senator JACKSON of Aroostook.
Cosponsored by Representative THERIAULT of Madawaska and Senator: PATRICK of Oxford, Representatives: MARTIN of Eagle Lake, SARTY of Denmark.

Bill "An Act To Increase the Moose Permit Allocations for Zones 2 and 3"

S.P. 83 L.D. 274

Presented by Senator JACKSON of Aroostook.
Cosponsored by Representative MARTIN of Eagle Lake and Senator: PATRICK of Oxford.

On motion by Senator MARTIN of Kennebec, REFERRED to the Committee on **INLAND FISHERIES AND WILDLIFE** and ordered printed.

Sent down for concurrence.

Bill "An Act Regarding Penalties for Opting Out of Paperless Billing"

S.P. 82 L.D. 273

Presented by Senator SULLIVAN of York.
Cosponsored by Representatives: BEAUDOIN of Biddeford, BEAVERS of South Berwick, CASAVANT of Biddeford, DRISCOLL of Westbrook, FITZPATRICK of Houlton.

On motion by Senator RECTOR of Knox, REFERRED to the Committee on **LABOR, COMMERCE, RESEARCH AND ECONOMIC DEVELOPMENT** and ordered printed.

Sent down for concurrence.

Bill "An Act To Provide Funds for Municipal Sand and Salt Storage Facilities"

S.P. 81 L.D. 272

Presented by Senator COURTNEY of York.
Cosponsored by Representative PARRY of Arundel and Senators: COLLINS of York, DIAMOND of Cumberland, SCHNEIDER of Penobscot, Representatives: GIFFORD of Lincoln, GILBERT of Jay.

On motion by Senator COLLINS of York, REFERRED to the Committee on **TRANSPORTATION** and ordered printed.

Sent down for concurrence.

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

Off Record Remarks

Senator RECTOR of Knox was granted unanimous consent to address the Senate off the Record.

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

On motion by Senator COURTNEY of York, **ADJOURNED** to Thursday, February 3, 2011, at 10:00 in the morning.