

MAINE STATE LEGISLATURE

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One Hundred and Twenty-Fifth Legislature
State of Maine

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

In Senate Chamber
Tuesday
February 14, 2012

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

Prayer by Rev. Jacquelyn Brannen of Aldersgate United Methodist Church in Rockland.

REVEREND BRANNEN: Good morning. Let us be in a spirit of reverence. Holy God, we come before You this morning for a solemn task, for the people of the great state of Maine have appointed us to provide for and to protect our fellow citizens. This monumental task can only be accomplished through faith. In 1945, President Franklin D. Roosevelt wrote his last speech to the United States people. He said, "The only limit to our realization of tomorrow will be our doubts of today. Let us move forward with strong and active faith." On this, February 14, 2012, we face serious issues in our state; economics, education, and the needs of our poor are just a few of those issues. We pray, Lord, for the faith to go forward in our work. We pray for Your wisdom, strength, and compassion. We pray that the gridlock which often affects governing bodies will not be seen in these halls. We pray that You will unit us in our desire to insure that our children and our grandchildren will have a better life than we have had ourselves. We pray that the choices we make this day will send our citizens the faith and hope that will propel them forward to face the future without doubts and without fear. Lord, we humbly recognize the great privilege it is to serve You and our citizens. Guide us, we pray, to be worthy of this honor and God bless the people of the state of Maine. Amen.

Pledge of Allegiance led by Senator Nichi S. Farnham of Penobscot County.

Reading of the Journal of Thursday, February 9, 2012.

Doctor of the day, Scott Kemmerer, MD of Hallowell.

Off Record Remarks

The President requested the Sergeant-At-Arms escort the Senator from Hancock, Senator **LANGLEY** to the rostrum where he assumed the duties as President Pro Tem.

The President took a seat on the floor.

The Senate called to order by President Pro Tem **BRIAN D. LANGLEY** of Hancock County.

COMMUNICATIONS

The Following Communication: S.C. 697

STATE OF MAINE
ONE HUNDRED AND TWENTY-FIFTH LEGISLATURE
COMMITTEE ON EDUCATION AND CULTURAL AFFAIRS

February 3, 2012

Honorable Kevin L. Raye, President of the Senate
Honorable Robert W. Nutting, Speaker of the House
125th Legislature
State House
Augusta, Maine 04333

Dear President Raye and Speaker Nutting:

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

L.D. 1782 Resolve, Regarding Legislative Review of Portions of Chapter 101: Maine Unified Special Education Regulation Birth to Age Twenty, Including Certain Sections and the Appendix, a Major Substantive Rule of the Department of Education (EMERGENCY)

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

Sincerely,

S/Sen. Brian D. Langley
Senate Chair

S/Rep. David E. Richardson
House Chair

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

The Following Communication: S.C. 698

STATE OF MAINE
ONE HUNDRED AND TWENTY-FIFTH LEGISLATURE
COMMITTEE ON INLAND FISHERIES AND WILDLIFE

February 7, 2012

Honorable Kevin L. Raye, President of the Senate
Honorable Robert W. Nutting, Speaker of the House
125th Legislature
State House
Augusta, Maine 04333

Dear President Raye and Speaker Nutting:

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

L.D. 274 An Act To Increase the Moose Permit Allocations for Zones 2 and 3

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

Sincerely,

S/Sen. Thomas H. Martin, Jr.
Senate Chair

S/Rep. Paul T. Davis, Sr.
House Chair

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

The Following Communication: S.C. 692

**STATE OF MAINE
ONE HUNDRED AND TWENTY-FIFTH LEGISLATURE
COMMITTEE ON INSURANCE AND FINANCIAL SERVICES**

February 3, 2012

Honorable Kevin L. Raye, President of the Senate
Honorable Robert W. Nutting, Speaker of the House
125th Legislature
State House
Augusta, Maine 04333

Dear President Raye and Speaker Nutting:

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

L.D. 1666 An Act To Guarantee Basic Preventive Dental Health Services for Children in Maine

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

Sincerely,

S/Sen. Rodney L. Whittemore
Senate Chair

S/Rep. Wesley E. Richardson
House Chair

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

The Following Communication: S.C. 693

**STATE OF MAINE
ONE HUNDRED AND TWENTY-FIFTH LEGISLATURE
COMMITTEE ON LABOR, COMMERCE, RESEARCH AND
ECONOMIC DEVELOPMENT**

February 1, 2012

Honorable Kevin L. Raye, President of the Senate
Honorable Robert W. Nutting, Speaker of the House
125th Legislature
State House
Augusta, Maine 04333

Dear President Raye and Speaker Nutting:

Pursuant to Joint Rule 310, we are writing to notify you that the Joint Standing Committee on Labor, Commerce, Research and Economic Development has voted unanimously to report the following bill out "Ought Not to Pass":

L.D. 1665 Resolve, To Direct the Department of Economic and Community Development To Convene a Task Force To Bolster and Expand Exports of Maine Products and Services (EMERGENCY)

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

Sincerely,

S/Sen. Christopher W. Rector
Senate Chair

S/Rep. Kerri L. Prescott
House Chair

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

The Following Communication: S.C. 694

**STATE OF MAINE
ONE HUNDRED AND TWENTY-FIFTH LEGISLATURE
COMMITTEE ON TAXATION**

February 1, 2012

Honorable Kevin L. Raye, President of the Senate
Honorable Robert W. Nutting, Speaker of the House
125th Legislature
State House
Augusta, Maine 04333

Dear President Raye and Speaker Nutting:

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

L.D. 1641 An Act To Ensure Equal Tax Treatment for Private-pay and MaineCare-participating Providers of Residential Care to Persons Who Are Elderly or Disabled (EMERGENCY)

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

Sincerely,

S/Sen. Jonathan T. E. Courtney
Senate Chair

S/Rep. L. Gary Knight
House Chair

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

The Following Communication: S.C. 695

**STATE OF MAINE
ONE HUNDRED AND TWENTY-FIFTH LEGISLATURE
COMMITTEE ON TRANSPORTATION**

February 3, 2012

Honorable Kevin L. Raye, President of the Senate
Honorable Robert W. Nutting, Speaker of the House
125th Legislature
State House
Augusta, Maine 04333

Dear President Raye and Speaker Nutting:

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

L.D. 1672 An Act To Allow Disabled Veterans To Receive 2 Sets of Special Designating License Plates

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

Sincerely,

S/Sen. Ronald F. Collins
Senate Chair

S/Rep. Richard M. Cebra
House Chair

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

The Following Communication: S.C. 696

**STATE OF MAINE
ONE HUNDRED AND TWENTY-FIFTH LEGISLATURE
COMMITTEE ON VETERANS AND LEGAL AFFAIRS**

February 3, 2012

Honorable Kevin L. Raye, President of the Senate
Honorable Robert W. Nutting, Speaker of the House
125th Legislature
State House
Augusta, Maine 04333

Dear President Raye and Speaker Nutting:

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

L.D. 1612 An Act Relating to the Liquor Laws Governing Off-premises Catering at Planned Public Events or Gatherings

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

Sincerely,

S/Sen. Nichi S. Farnham
Senate Chair

S/Rep. Michael G. Beaulieu
House Chair

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

Senate at Ease.

Senate called to order by President Pro Tem
BRIAN D. LANGLEY of Hancock County.

Off Record Remarks

SENATE PAPERS

Bill "An Act To Establish 'The Dirigo March' as the Official March of the State"

S.P. 627 L.D. 1815

Presented by Senator KATZ of Kennebec.
Cosponsored by Representative MALONEY of Augusta and Representatives: BLODGETT of Augusta, FOSTER of Augusta.
Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

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

Sent down for concurrence.

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

REPORTS OF COMMITTEES

House

Ought to Pass As Amended

The Committee on **TRANSPORTATION** on Resolve, To Name Route 1-A between Brewer and Ellsworth the Korean War Veterans Highway

H.P. 1198 L.D. 1593

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-693)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Resolve **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-693)**.

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

READ ONCE.

Committee Amendment "A" (H-693) **READ** and **ADOPTED**, in concurrence.

ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.

Divided Report

The Majority of the Committee on **INLAND FISHERIES AND WILDLIFE** on Bill "An Act To Reduce Deer Predation"
H.P. 298 L.D. 372

Reported that the same **Ought to Pass as Amended by Committee Amendment "B" (H-692)**.

Signed:

Senators:

MARTIN of Kennebec
PATRICK of Oxford
SAVIELLO of Franklin

Representatives:

DAVIS of Sangerville
BRIGGS of Mexico
CLARK of Millinocket
CRAFTS of Lisbon
ESPLING of New Gloucester
GUERIN of Glenburn
SARTY of Denmark
SHAW of Standish
WOOD of Sabattus

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

Signed:

Representative:

EBERLE of South Portland

Comes from the House with the Reports **READ** and the Bill and accompanying papers **COMMITTED** to the Committee on **INLAND FISHERIES AND WILDLIFE**.

Reports **READ**.

On motion by Senator **MARTIN** of Kennebec, the Bill and accompanying papers **COMMITTED** to the Committee on **INLAND FISHERIES AND WILDLIFE**, in concurrence.

Senate

Ought to Pass

Senator COLLINS for the Committee on **TRANSPORTATION** on Bill "An Act To Make Allocations from Maine Turnpike Authority Funds for the Maine Turnpike Authority for the Calendar Year Ending December 31, 2013"

S.P. 595 L.D. 1736

Reported that the same **Ought to Pass**.

Report **READ** and **ACCEPTED**.

READ ONCE.

ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.

Ought to Pass As Amended

Senator COLLINS for the Committee on **TRANSPORTATION** on Bill "An Act To Ensure the Alignment of Truck Weight Limitations on the Interstate with Those Allowed under Federal Law" (EMERGENCY)

S.P. 527 L.D. 1617

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-376)**.

Report **READ** and **ACCEPTED**.

READ ONCE.

Committee Amendment "A" (S-376) **READ** and **ADOPTED**.

ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.

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

SECOND READERS

The Committee on **Bills in the Second Reading** reported the following:

House

Bill "An Act To Preserve the Integrity of the Maine Certified Public Accountant Examination" (EMERGENCY)

H.P. 1216 L.D. 1607

READ A SECOND TIME and **PASSED TO BE ENGROSSED**, in concurrence.

House As Amended

Bill "An Act To Establish Multidistrict Online Classes in Maine"

S.P. 206 L.D. 675

(C "B" S-375)

Resolve, To Name 2 Bridges in the Town of Harmony

S.P. 525 L.D. 1615

(C "A" S-374)

READ A SECOND TIME and **PASSED TO BE ENGROSSED AS AMENDED**, in concurrence.

ENACTORS

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

Act

An Act To Enhance the Duties and Responsibilities of the Director of the Division for the Deaf, Hard of Hearing and Late Deafened
H.P. 1228 L.D. 1638

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

Senate at Ease.

Senate called to order by President Pro Tem
BRIAN D. LANGLEY of Hancock County.

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 (1/26/12) Assigned matter:

HOUSE REPORT - from the Committee on **LABOR, COMMERCE, RESEARCH AND ECONOMIC DEVELOPMENT** on Bill "An Act To Create Transparency and Accountability in Economic Development Subsidies"

H.P. 1065 L.D. 1451

Report - **REFER** to the Committee on **TAXATION**

Tabled - January 26, 2012, by Senator **COURTNEY** of York

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

(In House, January 24, 2012, Report **READ** and **ACCEPTED** and the Bill **REFERRED** to the Committee on **TAXATION**.)

(In Senate, January 26, 2012, Report **READ**.)

Report **ACCEPTED**, in concurrence.

REFERRED to the Committee on **LABOR, COMMERCE, RESEARCH AND ECONOMIC DEVELOPMENT**, in **NON-CONCURRENCE**.

Sent down for concurrence.

The Chair laid before the Senate the following Tabled and Later (2/8/12) Assigned matter:

HOUSE REPORTS - from the Committee on **STATE AND LOCAL GOVERNMENT** on Bill "An Act To Protect Legislative Intent in Rulemaking"

H.P. 426 L.D. 543

Majority - **Ought to Pass as Amended by Committee Amendment "B" (H-688)** (11 members)

Minority - **Ought to Pass as Amended by Committee Amendment "C" (H-689)** (1 member)

Tabled - February 8, 2012, by Senator **THOMAS** of Somerset

Pending - motion by same Senator to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "B" (H-688)** Report, in concurrence

(In House, February 7, 2012, the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "B" (H-688)** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "B" (H-688)**.)

(In Senate, February 8, 2012, Reports **READ**.)

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Somerset, Senator Thomas.

Senator **THOMAS:** Thank you Mr. President. Ladies and gentlemen of the Senate, I'm going to explain what this bill does. This bill would require any rules that are made, whether major substantive or minor technical, come back to the committee and they at least take a look at them. Then they could act on them or not, whatever they decided to do. They would have to look at them. They could just let them go. A lot of times we get these notices at home and they are confusing. I got one this week. It came, supposedly, from the Bureau of Motor Vehicles. When I started calling on it, it didn't come from the Bureau of Motor Vehicles at all. It came from another committee altogether. They are confusing. What this would do is require all of the bills to come back to the committee of jurisdiction for them to take a look at. Then they could act on them or not, whatever they decided.

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

Senator **SULLIVAN:** Thank you Mr. President. I stand, Mr. President, to not really object to what is here. It is better than what we had the end of the session last year, but not as good as what the bill was originally, quite frankly. This committee worked long and hard. Basically on bills, when we send them out, we think that we understand 13 members. In this case 13 members agreed unanimously with each other and we said, "Wow, this is really good." It was a matter of when we pass a bill and you come back the second session and you are looking at the bill and the whole committee is going, "This isn't what we wanted. This wasn't the intention." The old saying, when the cat's away the

mice will play. The departments would play with our bills and they would come back and, boy, would they look different. First of all I learned something in 13 years, as of last year, of having been here. We can demand that any rule made is a major rule. I never realized that. I thought it was a fancy formula, like when I retired they were going to take this number of years and multiply and divide by and subtract two and find the square root thereof and we were going to be all set. Come to find out it is as simple as saying that to your analysis and all these rules will be made major rules and they have to come back to us. We thought it was great. Then an amendment was put forth. It was passed. It was recalled from the Governor's desk afterwards and an amendment came on that said it would everything would go before the Legislative Council. It was going to go before the Secretary of State. They had it going everywhere. After a look, this bill does bring it back. The Secretary of State does go through all of the rules. I'm not happy. I voting against this because, you know what? We did darn good work in the very beginning. That committee, with 13 of us, did what we wanted it to do. We were happy with it. We felt, I felt, we all felt at first, as a Legislature, we did our job and our job is if it is Constitutional or not. That's for the Judiciary or the Executive to decide. They didn't decide this bill on that. They decided they wanted to write legislative policy. Those of you who know me will be very surprised to hear that I got my hackles up a little bit and, even though this is an okay amendment, I decided to vote against it because I think we did better work when people stayed out of job and they let both parties alone. I'll tell you, Mr. President, it's no easy chore to get the Senator from York here, Senator Sullivan, and the Senator from Somerset, who is the Chair, Senator Thomas, to agree. We were in total agreement. I know we're all going to pass this. It's okay. I still think, left alone, we did a better job than anybody else. I thank everybody for holding it. I will tell you, you people look an awful lot better than you would have all last week. Believe me. Thank you very much. Thank you, Mr. Chair, for holding this bill so I could at least feel better as I explain why I will vote for it now, but why I needed to bore you to death with speaking. Thank you.

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

Senator **BARTLETT:** Thank you Mr. President. I wish to pose a question through the Chair.

THE PRESIDENT PRO TEM: The Senator may pose his question.

Senator **BARTLETT:** Thank you Mr. President. I am just trying to understand what I heard. What I understood when the initial motion was made and the explanation was that any rule, including a routine technical rule, would come back to the committee before it took effect. I just want to understand that. I'd hate to think of delaying the implementation of a minor change for up to six months.

THE PRESIDENT PRO TEM: The Senator from Cumberland, Senator Bartlett poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Somerset, Senator Thomas.

Senator **THOMAS**: Thank you Mr. President. Ladies and gentlemen of the Senate, I do wish to answer that question. There would be no delay because if clam flats need to be closed, they need to be closed. That would be a minor technical rule if there is a reason to do that. The rules would come back to the committee for review. It's like the Senator from York said, Senator Sullivan, these bills, often times, we would put them in. The committee understands what we're going to do. Then when they come back to us they are an entirely different bill. It would give us the opportunity then to make those major substantive and to report out a bill and change it. We would be put on notice of all of the rule changes that took place while we were gone.

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

Senator **SCHNEIDER**: Thank you Mr. President. I wish to pose a question through the Chair.

THE PRESIDENT PRO TEM: The Senator may pose her question.

Senator **SCHNEIDER**: Thank you Mr. President. I'm just trying to grasp what we are doing that is different because currently, with minor technical rules, we get notices of those. We already get notices. Major substantive rules come back to the committee. Anything that the Legislature decides, as a committee and then comes back here, is a major substantive rule and we get oversight on. Minor technical rules are things as simple as, you know, changing language that was mistakenly made. My concern is, I'm not really understanding what we're trying to accomplish here. We have two levels of rules, major substantive and minor technical. If you are concerned that there is going to be shenanigans with the rules then what I would suggest is that we make it major substantive rather than minor technical. I'm really not understanding what we're doing here when we already have two levels of rules that we can adjust. Having every single minor technical rule coming back to the committee is bureaucracy massively increased. I thought this Legislature was going to be less bureaucracy. I have got to understand what we are doing here before I create additional bureaucracy for the sake of it because I'm not understanding it. Can somebody answer that question for me? What are we doing?

THE PRESIDENT PRO TEM: The Senator from Penobscot, Senator Schneider poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from York, Senator Sullivan.

Senator **SULLIVAN**: Thank you Mr. President. This is exactly some of the conversation we had at the very beginning when we did our good work last year. I might say the sponsor of this bill, from the other Body, had a bill that the Senator from Penobscot and I happened to be very familiar with called the Bottle Bill. Often times we would have a decision reached. Remember, I told you I learned something last year. That is that the committee can demand that a bill have major rule changes. It's not up to a department to decide if the rules are major or not. I never picked that little piece up. If the bill is important enough to the committee of jurisdiction, and they really want it understood a particular way, when you put right in it that these rules will be major rules. Then it must come back to the committee. Not every rule that's made.

It's when there is something that rises to that level within the committee. If you've been burnt once by the committee on a certain thing, you can now say that these are going to be major. Therefore, they need to come back to the committee after it is in. Any emergency rules, by our laws now, can be put in for 90 days or until the Legislature meets again. That's already taken care of. You can do anything; be it the clam flats, which actually is public safety and the Commissioner has the right to do that. There are plenty of ways to protect, but these are for the rules on those bills that bureaucracy manages to do. It's only when the committee demands that the rules be a major rule. I'm listening to, and I probably shouldn't do that, my seatmate is disrupting me. He's being a bad student. The truth of the matter is that we aren't doing it because we're not demanding that certain rules be major changes. We're told that formula that I went through before about the square root thereof and all of that, they just decide. I would that you just simply accept this. It is a rule that we came up with to help out committees to make sure that you get what you thought you were getting, and that we make the final decisions, not the bureaucracy, not the department that said, "Well, that was too much work to do. We're going to do it this way." No, you are going to do it the way the Legislature tells you to do it. That's basically what it comes down to.

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

Senator **BARTLETT**: Thank you Mr. President. I appreciate the debate. It's given me the opportunity to go read the committee amendment, which is always very helpful. I have no problem with the idea that the rules are reported back to committee. I thought that was happening anyways. I routinely get updates on changes that are going through the various agencies. The troubling part about this legislation, to me, is the fact that it gives every committee the authority to prolong legislation on any of those routine technical rules. That could really slow this place down and would give the committees extraordinary authority. There is lots of rule making that gets done that are fairly minor on a very wide range of issues before all of our committees. The thought that without going through Legislative Council during the second regular session you could now have 10, 20, 30, 50, or 200 bills that are introduced because of a routine technical change, some tiny changes made to deal with terminology or some tiny issue. Now the committee can go in, without going through the regular process, to report out legislation. This is an extraordinary new authority we're giving to all of our committees. I think this is going to be a major burden on the Legislature. I'm not sure why we want to go down this road of just having a legislative free-for-all based on rule making. I think it adds a lot of uncertainty to the regulatory climate. Any time a new rule is made, suddenly the Legislature can report out a bill just based on the fact that that rule came before it. It's unpredictable. I would really caution us against going down this road without a much clearer idea of the number of rules we make. Perhaps somebody could address this. How many routine technical rules can be made each year? It would be a very interesting number to know. Are we talking about 10 or 20 or are we talking about hundreds? If you are looking at 100, 200, or 300 rules that's 100, 200, or 300 new bills that the committees are going to be reporting out, potentially. I am concerned enough that I think I cannot support the pending motion without a little more understanding of the burden it is going to place on this institution.

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

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Somerset, Senator Thomas.

Senator **THOMAS:** Thank you Mr. President. Ladies and gentlemen of the Senate, do we have a government that is run by elected officials or do we have a government that is run by bureaucrats? Do bureaucrats stop and think before they issue all of these minor technical rules? How many times have you seen a minor technical rule that really was major substantive? How many times have you seen rules that have been made, supposedly you were notified, but you never saw the notification? They come in all kinds of different forms and ways that you've never seen them. All this bill does is requires the rules to come to the committee of jurisdiction. If we're issuing so many rules that all of our committees can't take a look at them then we are issuing way, way too many rules. If they are really minor technical nobody is going to say anything. We believe that this will make the bureaucrats stop and think before they make some of these rule changes, as they ought to. It will have a little bit of a chilling effect on making major changes in guise of minor technical rules. During the testimony on the bill we heard example after example. The Bottle Bill, a dental hygienist bill, and case after case where we are allowing not only bureaucrats, but sometimes committees and sometimes appointed officials, to make rules that have the effect of law. Shouldn't those rules come back to the elected officials, to the people who are elected by the people of Maine, us as their representatives, to at least look at them? We don't have to do anything about them if we agree with them. All we have to do is read them. They come back at one place, at one time, so that we know they are coming. It's call legislative oversight. That's our job. Thank you.

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

Senator **GOODALL:** Thank you Mr. President. Men and women of the Senate, I rise today in support of, frankly, many things said by many different people. I feel that this bill's underlying intent is one that we probably should pass. However, there seems to be a fatal flaw. It goes to what the good Senator from Cumberland was speaking to about bureaucracy and the potential for bringing less clarity to our regulatory environment. We do have procedural processes in place where if a rule is put into place we can act, as a legislative Body, through the Legislative Council or through a Joint Order. It seems to me that that would be a better way to proceed and keep in place rather than having each committee having the authority to potentially bring uncertainty at the political whim of a certain day's issue. It seems to me that, potentially, we should stop what we're doing in this Body and address that one issue before we go forward. If we choose not to do that, I'll find myself compelled to vote against this motion until we can appropriately address that. If we can't do that, unfortunately, despite being a co-sponsor of the bill, I'll end up opposing the entire bill. Thank you very much, Mr. President.

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

Senator **SCHNEIDER:** Thank you Mr. President. I am very concerned about what we're doing. I understand there are many occasions when I've been concerned about the rule making process. I understand where this bill came from because there have been times, especially when I served on Education and Cultural Affairs, when I did not understand how things were interpreted by the department, the way they work, because they were in direct opposition to what the intent of the legislature was. I think that this is not the way to address it. I am very concerned, and I apologize to my lobby friends out there. I think this is going to be a huge make-work bill for the lobby because they are going to have to respond for their clients ever single little minor change that occurs because there could potentially be a bill brought out with this. There is no question; this is going to increase bureaucracy. It will definitely increase the uncertainty in the business climate. One of the biggest objections that business has to us is that we constantly change rules and if we could we could just not change as many rules then they would feel that there is more certainty. I can't support this bill because I don't think that this really addresses it in the way that we perhaps want it. I don't think that this is going to get to that problem. I think it's going to create unintended consequences with this moving forward. I appreciate what the committee has done. I know that this is really hard work, but I'm not sure this is the way we want to go about this. Also, I always get rules in the mail. If I open my mail and I read them and I have questions, what I do is go ahead and call the departments and find out what is going on. I know that that takes time and effort and energy, but that's really our responsibility too. As legislators, we've got to react to what we get and what we receive about these. I've even testified at rules. I would encourage us to perhaps think carefully about what we're about to do here. Thank you.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Washington, Senator Raye.

Senator **RAYE:** Thank you Mr. President. I rise in response to a comment we heard a few moments ago here on the floor that this would be an extraordinary amount of authority to entrust to committees of jurisdiction. I would simply submit that if that is the case then the status quo entrusts an extraordinary amount of authority to an unelected bureaucracy.

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

Senator **SULLIVAN:** Thank you Mr. President. I'm beginning to think you look less welcoming after a week of being sick, but having said that, the smiles are not quite as large. The bill that we originally worked on and unanimously went through committee and this Body the first time, under the hammer, with no discussion, was changed. Here's what it was originally changed to. It was going to go back to the Chief Executive, in a circle of cabinetry, to decide on what the bill should be. That's when our whole committee, R's and D's, said, "Hold it. Why is the Chief Executive on the second floor getting together with whoever is in office and deciding what the Legislature wanted to do?" We were not talking about major versus minor. If the committee felt strongly enough, the way that we can guarantee that it comes back is to declare that the rules we're doing, the law, will become a major law. It will be up to the committee to decide if it is major

or minor. The committee can decide if it's major or minor. There is one thing that I did not want to do. That was to allow the second floor to be able to decide what the intent of the Legislature was. Not now, now in another Administration. It shouldn't happen. I voiced many of my concerns and it was not easy to be the one person to vote against it in the committee when this came back out. I voted against it, but I told you that the thing that we almost passed with nothing would have gone to the second floor to decide. At some point, we have to decide who's making the rules here. I thought the Legislative Branch did. As far as minor and major, you are all picking up on something. The only time it decides to be major is if that committee believes that their issue and their rules need to be major in order to get some oversight from that while we are gone. That's the only reason. It is not general, just willy-nilly, major or minor. It's the committee that makes the decision when they are making the rule; will these rules be major or minor. They come back and they should come back to the Legislature, they should not come back to the second floor or to a cabinet of commissioners. It's the Legislature that legislated the law. I'm in favor of that bill. I still wish it was the same. Now I wish this had never come up. Thank you.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Cumberland, Senator Diamond.

Senator **DIAMOND:** Thank you Mr. President. Ladies and gentlemen of the Senate, in defense of the good Senator of Somerset, Senator Thomas, who is my seatmate on the committee of Transportation, clearly I know what his intent was. I had every reason or every belief myself to come in today and vote for this. Then when I heard the explanation it didn't jive with what I thought he was trying to do, which is a good thing. If, in fact, this bill, as it now reads, says that all technical, minor technical, which is part of the administrative procedure, the APA says you have major and you have minor. The reason you have minor is because they are minor. If this bill is saying, which I thought the good Senator had explained, that all minor technicals will come back to the committee and then they will decide which ones are major, then that's going to be a humungous job for the committee when they are in session. For example, look at the motor vehicle minor technicals for inspections. It's probably that thick. Such things should be looked at, which Senator Thomas, I think, would agree, before they become law, but we haven't had a chance to do that. The problem that is thick. For example, the latch on the right hand door has to be different from the latch on the left hand door, passenger door. There is this whole list of those minor, minor technical changes. If we want to review all those minor technicals in that one area, and then throughout state government, then good for us. I think you will find some, I think you will hear Senator Thomas say that's a very good example as to why he wants to look at the minor technicals. We can still do that without requiring all of those minor technicals to come back to the committee. That's a huge number. In fact, in my previous life I think I remember that to be hundreds and hundreds of minor technicals. Maybe there is a way we can get at where Senator Thomas wants to do without really taking this big of a bite, because I'm not really sure we want to do that, nor do we want to put everybody else out there on hold while we're going to review all the minor technicals before anything is completed. Thank you, Mr. President.

At the request of Senator **COURTNEY** of York, Reports **READ.**

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

Senator **GOODALL:** Thank you Mr. President. Men and women of the Senate, I rise today again to join what one of my colleagues, the good Senator from Cumberland, just said at length and the examples that could occur. In addition, there is a concern about transparency because a rule can come back and then the committee would have the ability to report legislation. It's my hope and intent, and quite often it does occur, that a committee would, hopefully, hold a public hearing, but that may not happen. The committee would just have the power to report out legislation. That's after long process, when there has been a lot of public notice and people had had the ability to file comments or participate in the rule making process under the APA. In addition to that, there is an appeal process within the APA. It is one that is rarely used. Many of us don't necessarily know about it since it is used so infrequently. The reason why I assume it's used very often is because the rule goes through the process of public rule making, people have the opportunity to be heard and usually, since there are so many rules being made, overwhelmingly the rules are accepted. If there is something that is extreme, out of touch, not under the legislative intent, anyone can bring that appeal. I think we do have to remember that. I just rise to add those two points to the discussion. Thank you very much, Mr. President.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Somerset, Senator Thomas.

Senator **THOMAS:** Thank you Mr. President. Ladies and gentlemen of the Senate, I hope I don't have to get up again. I think my friend from Cumberland makes a good point. Let's, just for a second, take a look at the motor vehicle inspection laws. The purpose of those laws is to have safe vehicles on the road. We have ended up with 150 pages of oftentimes gobbledygook because they are all minor technical. When the Department of Public Safety was in the process of a major rewrite, I told them that I would like to participate a little bit. I was told that I couldn't, that those were minor technical rules, and they would take care of them and they would bring them back to us. We have a panel that makes recommendations, but this set of rules that are minor technical that are about automobile safety also now include a list of acceptable building materials for the garage that you inspect these cars in. That's how ridiculous some of these rules have been. Let's assume for a second that there are hundreds and hundreds of rules. There are 17 committees. If 20 rules come back per committee, that's 340 rules. That's hundreds of rules. How long is it going to take each committee to look at 20 or 25 different rules that were issued and say, "Yes, that is what we intended. When we passed this bill, after hours and hours of public hearings and work sessions, this is what we wanted to happen." We have that authority already, but we don't use it because most of us don't know. I've been on the Transportation Committee for 8 years now and it was only last year that I found this list of building materials. Then we find that new cars, the specifications in the inspection manual, are tougher than the manufacturer's specifications. We have written rules that are just outrageous and none of us know about them. All this would do is on February 1st each committee of jurisdiction would get a list of the rules. How long is it going to take to take a look at 25 or 30

rules? If each committee gets 30 rules, you're almost 500. That's hundreds. What's the big deal? Isn't that our job? Didn't we run so that we could be the voice of the people and make sure that the rules that we have to live by are rules that people can live with? Thank you.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from York, Senator Collins.

Senator **COLLINS:** Thank you Mr. President. Ladies and gentlemen of the Senate, there has been a lot of debate concerning this issue and I find it very interesting. The bottom line is it puts into play checks and balances as to what's going on here in the Maine Legislature. In the committees of jurisdiction, it sets up another line of review. I think that's important. I can remember my first term in the House years ago and how I saw these minor rule changes come through in the mail. I'd say, "Gee, this is a minor?" I had concerns about it. I guess there are other folks that have the same concerns. Listen, if this is going to be too cumbersome, we can change it, but I'd like to try it. I'd like to go through the process and try this extra line of checks and balances. If it adds a little bit more work at the committee level then so be it. Like I said previously, if it is too cumbersome, we can always change it. We've done that in the past here and it will continue in the future as well. I think it's a good idea and I think we should move forward with it. Thank you.

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

Senator **BARTLETT:** Thank you Mr. President. My concern here is that we may be rushing to put symbolism ahead of substance. I also think that this legislation takes a very cynical view of the role of a legislator. We all get those mailings. We all are notified of routine technical rules before our committee of jurisdiction. We're already given that notice. For some reason we don't think the legislators can be responsible enough to read it unless it's read to them at the committee level. Not only that, if you read it and there is something you don't like, that you think was too substantive or beyond the scope of the power, we don't think that we, as legislators, ought to take the responsibility to file a bill. We should back and wait for it to hit us in the face and then shoot out a bill, with or without a public hearing. To me, that just adds extraordinary uncertainty to the process. I think it will add an extraordinary burden on the committee level. If you are talking 20 or 30 new rules per committee, that is 20 or 30 bills that could be reported out, with or without a public hearing, on major subject areas. It's also, I think, a gift to the lobby because if you have minor technical rules in lots of different areas, and every major area, you don't even need to have a bill filed on it. You are just going to find a legislator on that committee and say, "Why don't we use that rules as a chance to open up the ballgame and let's go back and do something big and sensitive." They aren't initially concerned about that rule, but it's a great vehicle that we could use to do something else because we don't want to take and put in a bill that's very public up front. They're going to wait and do it at the committee level. I just don't get it. I think we, as legislators, are responsible enough to read the rules when they are sent to us. If there is something we don't like, file a piece of legislation through the ordinary course, and make our case. Why in the world do we think that we should wait and make these things be read to us? At the committee level, at the 11th hour, a

rule comes in on April 10th, right before we're getting ready to adjourn. That committee has the authority to report out legislation on a very major area with no public hearing. How is that going to work when we get back here? This is about a process, about making sure the legislators, all of us, can be part of it. It's in very poor form. It should be open to the public. I think this creates a way for a lot of back door legislating to get done in a very non-public way. I think that should be an outrage to the Maine people. We've had a process in place for a reason; to make sure that everybody is accountable, every branch of government, by having rule making and providing notice to legislators. We can hold it accountable any time we want. We can bring those agencies before our committees any time we want. We don't need this additional vehicle. If it's important enough, file a piece of legislation and address it. Don't sit back and wait until the 11th hour when it's put before your committee. Thank you, Mr. President.

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

Senator **PLOWMAN:** Thank you Mr. President. Men and women of the Senate, I think I just heard the most cynical thing about a legislator and a legislative committee. That is that we live and die by what a lobbyist tell us. I've got to tell you, at least the lobbyist has to go through the process. Someone using the regulatory agency just has to get hired. It doesn't matter what we indent a lot of times because the people who take these jobs take them because they have a passion, usually, for what they are doing or they develop an idea of what the mission of their agency is. The AFA does have an appeal process. It's often referred to by people who have dealt with it as a kangaroo court because when you appear before it the same people who made the rule look at you and say, "Seriously, you don't like what we said? Take it back to the Legislature." That's how we're supposed to do it? We're the people that were elected. We're the only accountable people in this whole process. The lobbyists aren't accountable. The staff isn't accountable. The regulatory agency is not accountable. The people elect us to make sure we do all of our homework, no matter how burdensome it is or how cynical it might appear. The APA has many problems with it. It's time we looked at the APA again. We have been ruled by agency rule for 30 years. Our job is to maintain, at every opportunity, the powers that are given to us in the Constitution. Not only do we maintain ours, but we must assure that the other branches maintain theirs. We are not allowed to grab from them, and we're not allowed to give to them. Rule making is a gift. Without proper guidance and oversight, you are giving to the Executive Branch, and I know you hate to think of this, but it is the Executive Branch, more authority than they should be allowed. Those people at that end are hired and they cannot be fired because of public policy that they set. We can. This is as basic to me as it gets. Our oversight is not supposed to be easy and it wasn't supposed to come to us without any kind of trouble. We weren't supposed to streamline this. We're supposed to guard our job and our job is important enough that the people get to throw us out. Let's go back to the basics of where we were all supposed to start and take back, to ourselves, what we're supposed to be doing. Is it inconvenient? Yes. Is it time consuming? Yes. Unless you would like to set up some other form of government, which you almost have by putting all the power in a regulatory agency, then take back what you are supposed to be doing. Thank you.

THE PRESIDENT PRO TEM: The pending question before the Senate is the motion by the Senator from Somerset, Senator Thomas to Accept the Majority Ought to Pass as Amended by Committee Amendment "B" (H-688) Report. A Roll Call has been ordered. Is the Senate ready for the question?

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#350)

YEAS: Senators: COLLINS, COURTNEY, FARNHAM, HASTINGS, HILL, JACKSON, KATZ, MARTIN, MASON, MCCORMICK, PLOWMAN, RAYE, RECTOR, ROSEN, SAVIELLO, SHERMAN, SNOWE-MELLO, SULLIVAN, THIBODEAU, THOMAS, WHITTEMORE, WOODBURY, THE PRESIDENT PRO TEM - BRIAN D. LANGLEY

NAYS: Senators: ALFOND, BARTLETT, BRANNIGAN, CRAVEN, DIAMOND, DILL, GERZOFKY, GODDALL, HOBBS, PATRICK, SCHNEIDER

23 Senators having voted in the affirmative and 11 Senators having voted in the negative, the motion by Senator **THOMAS** of Somerset to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "B" (H-688)** Report, in concurrence, **PREVAILED**.

READ ONCE.

Committee Amendment "B" (H-688) **READ** and **ADOPTED**, in concurrence.

ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.

Senator **RAYE** of Washington was granted unanimous consent to address the Senate off the Record.

Off Record Remarks

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

On motion by Senator **COURTNEY** of York, **ADJOURNED** to Tuesday, February 15, 2012, at 10:00 in the morning.