

MAINE STATE LEGISLATURE

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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
Friday
March 30, 2012

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

Prayer by Senator Garrett P. Mason of Androscoggin County.

SENATOR MASON: Good morning everyone. Let us pray. Dear Heavenly Father, Lord, we thank You for this day. We thank You for who You are and what You do for us and the grace You show us every day that we are here. Lord, we have a lot on our plate today. Please let us do it with wisdom. The Bible says that if we ask for wisdom that You will give it to us. We are asking for that today, Lord. We pray that You will be with us through the weekend and that we'll get everything we need to get done today. In Your name. Amen.

Pledge of Allegiance led by Senator Barry J. Hobbins of York County.

Reading of the Journal of Thursday, March 29, 2012.

Doctor of the day, Donald Strickland, MD of Gardiner.

The President requested the Sergeant-At-Arms escort the Senator from Penobscot, Senator **PLOWMAN** to the rostrum where she assumed the duties as President Pro Tem.

The President took a seat on the floor.

The Senate called to order by President Pro Tem **DEBRA D. PLOWMAN** of Penobscot County.

Off Record Remarks

PAPERS FROM THE HOUSE

Non-Concurrent Matter

Bill "An Act To Change Document Filing Fees for County Registries of Deeds" (EMERGENCY)
H.P. 1137 L.D. 1550
(C "A" H-711)

In House, March 27, 2012, **PASSED TO BE ENACTED.**

In Senate, March 28, 2012, **FAILED ENACTMENT, in NON-CONCURRENCE.**

Comes from the House, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-711) AND HOUSE AMENDMENT "A" (H-851), in NON-CONCURRENCE.**

Senator **THOMAS** of Somerset moved the Senate **INSIST.**

Senator **ALFOND** of Cumberland moved the Senate **RECEDE and CONCUR.**

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

On motion by Senator **ALFOND** of Cumberland, **TABLED** until Later in Today's Session, pending the motion by same Senator to **RECEDE and CONCUR.** (Roll Call Ordered)

COMMUNICATIONS

The Following Communication: S.C. 801

STATE OF MAINE
ONE HUNDRED AND TWENTY-FIFTH LEGISLATURE
COMMITTEE ON HEALTH AND HUMAN SERVICES

March 27, 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 Health and Human Services has voted unanimously to report the following bill out "Ought Not to Pass":

L.D. 1700 An Act To Provide an Alternative Method of Calculating Minimum Staffing Levels in Nursing Homes (EMERGENCY)

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

Sincerely,

S/Sen. Earle L. McCormick
Senate Chair

S/Rep. Meredith N. Strang Burgess
House Chair

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

The Following Communication: S.C. 802

**STATE OF MAINE
ONE HUNDRED AND TWENTY-FIFTH LEGISLATURE
COMMITTEE ON HEALTH AND HUMAN SERVICES**

March 29, 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 Health and Human Services has voted unanimously to report the following bill out "Ought Not to Pass":

L.D. 1862 An Act To Limit Eligibility under the Municipal General Assistance Program (EMERGENCY)

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

Sincerely,

S/Sen. Earle L. McCormick
Senate Chair

S/Rep. Meredith N. Strang Burgess
House Chair

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

The Following Communication: S.C. 803

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

March 28, 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 State and Local Government has voted unanimously to report the following bill out "Ought Not to Pass":

L.D. 1881 An Act Regarding the Commercial Sale of Deeds Records

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

Sincerely,

S/Sen. Douglas A. Thomas
Senate Chair

S/Rep. H. David Cotta
House Chair

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

Senate at Ease.

Senate called to order by President Pro Tem
DEBRA D. PLOWMAN of Penobscot County.

REPORTS OF COMMITTEES

House

Ought to Pass

The Committee on **CRIMINAL JUSTICE AND PUBLIC SAFETY** on Bill "An Act To Protect Firearm Ownership during Times of Emergency" (EMERGENCY)

H.P. 1377 L.D. 1859

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

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED.**

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

Under suspension of the Rules, **READ TWICE** and **PASSED TO BE ENGROSSED**, in concurrence.

Ought to Pass As Amended

The Committee on **ENERGY, UTILITIES AND TECHNOLOGY** on Bill "An Act Regarding the Collection of Fees for Prepaid Wireless Service"

H.P. 1326 L.D. 1799

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-846)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-846)**.

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

READ ONCE.

Committee Amendment "A" (H-846) **READ** and **ADOPTED**, in concurrence.

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

The Committee on **ENERGY, UTILITIES AND TECHNOLOGY** on Bill "An Act To Implement Recommendations To Provide Additional Flexibility for Funding Infrastructure Improvements for Water Utilities"

H.P. 1342 L.D. 1820

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-852)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-852)**.

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

READ ONCE.

Committee Amendment "A" (H-852) **READ** and **ADOPTED**, in concurrence.

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

The Committee on **INSURANCE AND FINANCIAL SERVICES** on Resolve, Regarding Legislative Review of Portions of Chapter 850: Health Plan Accountability, a Major Substantive Rule of the Department of Professional and Financial Regulation (EMERGENCY)

H.P. 1396 L.D. 1893

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-849)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Resolve **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-849)**.

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

READ ONCE.

Committee Amendment "A" (H-849) **READ** and **ADOPTED**, in concurrence.

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

Off Record Remarks

Divided Report

The Majority of the Committee on **EDUCATION AND CULTURAL AFFAIRS** on Bill "An Act To Remove Inequity in Student Access to Certain Schools"

H.P. 1379 L.D. 1866

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

Signed:

Senators:

LANGLEY of Hancock
ALFOND of Cumberland

Representatives:

RICHARDSON of Carmel
EDGECOMB of Caribou
LOVEJOY of Portland
MAKER of Calais
McFADDEN of Dennysville
NELSON of Falmouth
RANKIN of Hiram
WAGNER of Lewiston

The Minority of the same Committee on the same subject reported that the same **Ought To Pass as Amended by Committee Amendment "A" (H-835)**.

Signed:

Senator:

MASON of Androscoggin

Representatives:

JOHNSON of Greenville
McCLELLAN of Raymond

(Representative SOCTOMAH of the Passamaquoddy Tribe - of the House - supports the Majority **Ought Not To Pass** Report.)

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

Reports **READ**.

Senator **LANGLEY** of Hancock moved the Senate **ACCEPT** the Majority **OUGHT NOT TO PASS** Report, in concurrence.

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

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Androscoggin, Senator Mason.

Senator **MASON:** Thank you Madame President. Men and women of the Senate, I couldn't let the opportunity go by without saying something. The bill before you is not a voucher bill. The bill before you would only add to a list of approved schools for tuition purposes. Those schools would include sectarian schools. The schools would also have meet accreditation and this would be optional. No one is forcing these schools to participate in a tuition acceptance program. That was the case before 1981. This law meets Constitutional standards. It has been talked about many, many times. Courts have ruled and they have said that it is okay for tuition dollars to go to sectarian schools. Madame President, I will not be long on this. I understand we have a lot to do today. I just have to say there is an underculture of kids in our state that are not being served. We conjure up this image of kids who go to private schools as being rich kids and they are kids of privilege. I can tell you that this is not the case, Madame President. Often these kids are not rich at all. They are kids who need special attention. They are kids who have often, and I've seen it first hand in the school that I went to, are children that have been kicked out of the public school system and have nowhere else to go. The only place that will take them is a parochial school. Madame President, we need to be very honest about we need to do with education. Are we're fighting for a system or we fighting for every Maine child? I will pose that question for members of the Body. I don't need an answer. I think it's important that we think about who we're serving. Do we want to educate every Maine child or do we need to protect a system? I would urge the members to vote against the pending motion. Thank you, Madame President.

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

Senator **ALFOND:** Thank you Madame President. Ladies and gentlemen of the Senate, I also will be brief, but to put a little context on why I think the committee voted in such a strong fashion around the Ought Not to Pass. First there are 40 states in this country that constitutionally prohibit religious funding. These are states that you might not think of; Texas, Florida, Alabama, Arkansas. You would think some of these states, if they felt this was so necessary and worthy, would probably have funding in their states. The previous speaker spoke about the underculture of kids. I would add to that comment by saying that right now, and you've heard me share this many times in this Chamber, in our biennial budget we are underfunding our public schools by \$400 million. There is also an underculture of kids that are in all of our public schools that are getting under funded. That means

programs are being cut. That means opportunities aren't there. I think what this bill would do at its root is divert money that taxpayers are paying into our public schools to religious schools. The previous speaker also mentioned about how this is Constitutional. Well, I'm sure he knows this, but just to remind the Body, there have been four decisions by our Maine Supreme Court and all four of them have affirmed that Maine's decision around funding religious schools with public money is not consistent with what our state law is. Those four cases have been talked about in this Chamber. Right now our highest court has said that this should not happen. Last session we heard three different bills around funding for religious schools. All three of them were defeated bi-partisanly by this Chamber. I don't see what has changed to do that differently today. We know when some of these religious schools came and testified that you could see, I guess, the misunderstanding when all of a sudden they heard this point of what would have to happen in their schools. They would have to remove all sectarian classes in their schools so that they abide with the First Amendment. I asked one of these schools who came up and said they'd like this change, "What would you do because you require four years of theology?" They said, "We would do nothing different." I said, "Well, then you would not be able to get public funds." They said, "Well, I guess we didn't understand the bill." I don't think even the religious schools here in Maine understand what it would take in order to receive these funds. I'm asking the Chamber to please accept the strong report out of committee. This is not the time to be diverting funds from our public schools. All students need to succeed here in Maine and every parent has a choice. They can send their student to a public school to get free and appropriate public education or they can send their student to a private school or a religious school on their own dime. Thank you, Madame President.

Off Record Remarks

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Androscoggin, Senator Mason.

Senator **MASON:** Thank you Madame President. Just a few things. The previous speaker spoke of a court decision that basically just upheld the law as written. They said, "Yup, that's what it says." It did not say anything about future Legislatures and what they will have to say on the matter. We're not bound by that. I would also talk about the separation of church and State issue again. We send millions of dollars to St. Mary's, Mercy Hospital, and Catholic Charities. Millions of state dollars go to these agencies every single day. I don't hear anything about saying that we need to keep our public dollars out of those hospitals. We try to also expand the people that we cover under our MaineCare programs. We don't ever talk about expanding the roles of public education and how we fund it. Madame President, I also, when closing my statement, would like to pose a question through the Chair.

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

Senator **MASON**: Thank you Madame President. My question, Madame President, is; is the Blaine Amendment on the books in the State of Maine?

THE PRESIDENT PRO TEM: The Senator from Androscoggin, Senator Mason 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 Madame President. Ladies and gentlemen of the Senate, I always wanted my children to get the best education possible and if that best education was in a private school and I lived in one of those towns that tuitions their schools I'd like to be able to have that choice. My son didn't do all that well in school. He didn't like it. We did send him to a private school for a while and it was hard to afford it. It seems like I can't turn around lately but I hear about the 99% and the 1%. I find it a little odd that the people who are claiming to champion the 99% are willing to deny those children, the children of the 99%, the best education they can get. I'm going to vote against the motion. Thank you.

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

Senator **ALFOND**: Thank you Madame President. I'm going to read something that the Maine Municipal Association, which came out in opposition of this, said, "Municipalities are having a hard enough time financing their public school systems with property tax dollars. If parents wish to send their children to other schools, that is their absolute right and municipalities have no quarrel with that decision. Having said, municipal officers do not support an authority that could siphon away the limited municipal financial capacity from its concentrated focus on the public schools rather than private school financing obligations." They also mentioned in their testimony Joyce v. Swans Island, which Title 38 prohibits municipalities from funding religious training. Again, there is just another case in another part of State Statute that has reaffirmed keeping public dollars from going into our religious schools. As far as making sure that our students have all the options that they want, I would encourage the entire Body to go into their public schools and look at how they are evolving. Look at the multiple pathways that they are providing for students. Look at the new opportunities that probably didn't exist when you were there or even maybe your son or daughter. I think what are public schools are doing today is transformational. It's exciting. You are going to start hearing about some of those concepts in later bills that come out probably next week. I think before we cast aspersions on our public schools we should really recognize what they are doing and how they are evolving and how teachers, principals, and administrators are all rolling up their sleeves and understanding that the schools that we all remember are not the schools that we have today. Thank you, Madame President.

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

Senator **GOODALL**: Thank you Madame President. Men and women of the Senate, I rise today in support of the Ought Not to Pass motion. I rise because the minute that this bill was introduced I, as one that graduated from Richmond High School, a school that graduates approximately 40 kids each year, saw this

as a great threat to those rural, small schools. It still takes the same amount of money to run these schools, in my schools we have 40 kids per class or 35. If you start siphoning off kids to other schools it is a great threat to these small rural schools. What we should be doing is making public schools the solution to these educational problems. We shouldn't be making them the enemy at times. We are underfunding our public schools. The public knows it. We know it. We can't take property tax dollars and State dollars away from them. We have to do better. We must do better. We have made progress. We have a long way to go. We all have core concerns about the constitutionality of this proposal. Some view that it is Constitutional. Some do not. I think you have to fall back on your bedrock principles when it comes to education, your own personal beliefs. I believe that the majority of Mainers are in line with what I think and what many of us think. We should not be sending public dollars to private or religious educational institutions. They are great institutions. I support them and I applaud the families that can send their kids to them, but if we allow student after student to take public dollars away from local schools, especially those rural schools, it threatens them significantly. We have to remember that. We need to be proposing solutions, not putting forth ideas and proposals that are going to erode public education. This bill does that. Thank you, Madame President.

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

Senator **SNOWE-MELLO**: Thank you Madame President. I stand here in opposition to the pending motion. The reason being that my district is probably one of the few districts, along with the good Senator Garrett Mason from Androscoggin, that has a considerable amount of private and religious schools. Therefore, choice to me is extremely important. We need to meet all the needs. Our children who need to be educated. In my communities we have a lot of very strong religious families that, for their children, public schools don't seem to meet their needs. Different strokes for different kids. That's my motto. Many religious institutions might now want to accept this funding, and that's fine. I'd want them to have the opportunity to receive these funds. For those who do and would like to have some help, I want to make sure that the funding is there, just as it is for our public schools. Maine has had school choice for a long time. I support this policy. I think we need to be fair to all students in this state. Thank you.

THE PRESIDENT PRO TEM: The Senator from Androscoggin, Senator Mason, requests unanimous consent of the Senate to address the Senate a third time on this matter. Hearing no objection, the Senator may proceed.

Senator **MASON**: Thank you Madame President. I would just like to point out that this bill was only for districts that have choice. This is not mandatory. This is not a voucher system. This is only for communities that have choice. It adds to the list of schools, of sectarian schools, in addition to all of the other schools, just like the town academies and the public school in the next town over. That's all this does. It is not a voucher bill. I just thought that was important to point out, Madame President. Thank you.

THE PRESIDENT PRO TEM: The pending question before the Senate is the motion by the Senator from Hancock, Senator

Langley to Accept the Majority Ought Not to Pass 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 (#409)

YEAS: Senators: ALFOND, BRANNIGAN, COLLINS, CRAVEN, DIAMOND, FARNHAM, GERZOFSKY, GOODALL, HASTINGS, HILL, HOBBS, JACKSON, JOHNSON, KATZ, LANGLEY, MCCORMICK, PATRICK, RAYE, RECTOR, ROSEN, SAVIELLO, SCHNEIDER, SHERMAN, WOODBURY

NAYS: Senators: COURTNEY, MARTIN, MASON, SNOWE-MELLO, THIBODEAU, THOMAS, WHITTEMORE, THE PRESIDENT PRO TEM - DEBRA D. PLOWMAN

ABSENT: Senators: BARTLETT, DILL, SULLIVAN

24 Senators having voted in the affirmative and 8 Senators having voted in the negative, with 3 Senators being absent, the motion by Senator **LANGLEY** of Hancock to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report, in concurrence, **PREVAILED**.

Senate

Ought to Pass As Amended

Senator SHERMAN for the Committee on **AGRICULTURE, CONSERVATION AND FORESTRY** on Bill "An Act To Authorize the Registration of Farmland in 2012 and 2013" (EMERGENCY) S.P. 548 L.D. 1649

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-500)**.

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

READ ONCE.

Committee Amendment "A" (S-500) **READ** and **ADOPTED**.

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

Ordered sent down forthwith for concurrence.

Senator MASON for the Committee on **CRIMINAL JUSTICE AND PUBLIC SAFETY** on Bill "An Act To Prohibit Verbal Sexual Solicitation of a Child" (EMERGENCY) S.P. 572 L.D. 1673

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-504)**.

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

READ ONCE.

Committee Amendment "A" (S-504) **READ** and **ADOPTED**.

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

Ordered sent down forthwith for concurrence.

Senator THOMAS for the Committee on **STATE AND LOCAL GOVERNMENT** on Resolve, Authorizing the Lease of the Guy P. Gannett House in Augusta to a Nonprofit Organization for Use as a Museum

S.P. 674 L.D. 1898

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-499)**.

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

READ ONCE.

Committee Amendment "A" (S-499) **READ** and **ADOPTED**.

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

Ordered sent down forthwith for concurrence.

Divided Report

The Majority of the Committee on **CRIMINAL JUSTICE AND PUBLIC SAFETY** on Bill "An Act To Rescue Children Who Are Being Sexually Abused and To Make Improvements to the Sex Offender Registry and the Investigation of Computer Crimes" S.P. 591 L.D. 1731

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-502)**.

Signed:

Senators:
MASON of Androscoggin
WHITTEMORE of Somerset
GERZOFSKY of Cumberland

Representatives:

PLUMMER of Windham
BLODGETT of Augusta
CLARKE of Bath
HANLEY of Gardiner
HASKELL of Portland
LAJOIE of Lewiston
MORISSETTE of Winslow
SANDERSON of Chelsea

The Minority of the same Committee on the same subject reported that the same **Ought To Pass as Amended by Committee Amendment "B" (S-503)**.

Signed:

Representatives:

BURNS of Whiting
LONG of Sherman

Reports **READ**.

Senator **MASON** of Androscoggin moved the Senate **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-502)** Report.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Androscoggin, Senator Mason.

Senator **MASON:** Thank you Madame President. I'm feeling a little bit chatty today, so I just felt like I needed to say something on this bill. I would like to thank, on the record, the Senator from Cumberland, Senator Diamond, for putting this bill forward. It's a long time coming. The Computer Crimes Unit over at the State Police Academy in Vassalboro is, I believe, one of the most important programs in our state. I think that this program has saved children from unspeakable crimes and I think that this is a good bill. It's time for this program to get the attention that it deserves. Thank you very much, to the Senator from Cumberland. Thank you, Madame President.

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

Senator **DIAMOND:** Thank you Madame President. Ladies and gentlemen of the Senate, just very briefly. I think that the Committee on Criminal Justice and Public Safety, who worked extremely hard on this bill, deserves a lot of credit. Led by Senator Mason with the assistance of Senator Gerzofsky and others who have worked long and hard. This is the bill that's a culmination of seven years of putting all the pieces together to help the Computer Crimes Unit do what they have been trying to do with virtually band-aid funding. This is the first time that a legislative committee and any Legislature has stepped forward and said, "From now on we're going to give you a continual budget line item that the committee and the Legislature can debate and fund in an appropriate way." The kind of things that are going on around us right now in this state with children being abused and being filmed while they are being sexually abused is atrocious. The only unfortunate thing, I guess one of the unfortunate things, is that Committee on Criminal Justice and Public Safety have seen these images and most other people in

this Legislature and around the state have not. What this will help do is help the public and Legislature in the future realize all the things that go on, and go on by people that we know and trust such as the top drug prosecutor working for the Attorney General, James Cameron, who was found guilty of 13 counts of possessing, selling, and receiving child pornography. Once we all realize that what is sometimes referred to as "kiddy porn" is a misnomer. Kiddy porn tends to suggest that it is something rather off color but not that serious. Child pornography has a victim in every scene and in every photograph. With the Computer Crimes Unit, they rescue these kids whenever they can and they also help arrest and prosecute those predators who do this. We have a kindergarten teacher in Jackman who was taking pictures of 5-year old kids in very provocative positions. Thousands of pictures. This person was awarded the highest educational award in the nation, the Milliken Award for Excellence. Who would suspect this person? A person in Jay who hypnotized a young girl who was there to help find ways to stop biting her fingernails and yet she was hypnotized by this person, a 37-year old. He was found guilty as well of molesting and sexually assaulting this girl. They are everywhere. It's all around us. It's not the guy standing in the shadows with a trench coat. It's the people who come to our houses and teach us and protect us and do all of this. Madame President and members of the Senate, this is a giant step forward with what this committee has done. I take my hat off this year and for every year forthwith when we are able to address these issues and rescue these kids and take the predators off the streets. Thank you, Madame President.

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

Senator **GERZOFSKY:** Thank you Madame President. Ladies and gentlemen of the Senate, I, too, rise in support of this bill. Some of the things that you haven't heard yet, and there is no reason to repeat everybody else, it's a perfect bill and it's going to fund a very important unit at the State Police. It's also done great investigations on other computer crimes that deal with our seniors being scammed by other citizens, being hurt by the internet. Years ago we were barely able to keep this unit alive in statute because we had no money to fund it. We worked on it those years in Criminal Justice, back in the early 2002 and 2003 era, because it was very important and to try to find a way to fund it. We kept finding bigger band-aids. It really wasn't getting our backlog down. It was just holding its own. With the great help of Senator Diamond, when he joined the committee, and with the committee urging leadership to try to find that funding, over the years we've patched it together and now we have a solution. I want to thank Senator Diamond because I asked him many years ago, when he was a freshman on Criminal Justice and Public Safety, to please help us with all of his years of experience. With Senator Mason this year and the preceding years, we have battled hard and long to try to do this. I stand here with great honor today to support this and to urge all support in the Senate. This is one of the major pieces of legislation in that we're going to be able to actually have a very positive effect on what bad, very bad, people do to very innocent people, who we often have in our Chamber, who we all have at home. Thank you very much, Madame President, for letting me speak.

On motion by Senator **MASON** of Androscoggin, the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-502)** Report **ACCEPTED**.

READ ONCE.

Committee Amendment "A" (S-502) **READ** and **ADOPTED**.

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

Ordered sent down forthwith for concurrence.

Divided Report

The Majority of the Committee on **TAXATION** on Bill "An Act To Restore Equity in Revenue Sharing"

S.P. 635 L.D. 1835

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-501)**.

Signed:

Senators:

COURTNEY of York
WOODBURY of Cumberland

Representatives:

KNIGHT of Livermore Falls
BENNETT of Kennebunk
BERRY of Bowdoinham
BICKFORD of Auburn
BRYANT of Windham
FLEMINGS of Bar Harbor
PILON of Saco
WEAVER of York

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

Signed:

Senator:

HASTINGS of Oxford

Representatives:

HARMON of Palermo
WATERHOUSE of Bridgton

Reports **READ**.

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

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

ENACTORS

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

Emergency Measure

An Act To Improve and Ensure Adequate Funding for E-9-1-1 Services

H.P. 1296 L.D. 1761
(C "A" H-826)

On motion by Senator **THIBODEAU** of Waldo, **TABLED** until Later in Today's Session, pending **ENACTMENT**, in concurrence.

Emergency Measure

An Act To Implement the Recommendations of the Dig Safe Work Group

H.P. 1329 L.D. 1803
(C "A" H-842)

This being an Emergency Measure and having received the affirmative vote of 31 Members of the Senate, with 1 Senator having voted in the negative, and 31 being more than two-thirds of the entire elected Membership of the Senate, was **PASSED TO BE ENACTED** and having been signed by the President Pro Tem, was presented by the Secretary to the Governor for his approval.

Ordered sent down forthwith.

Emergency Measure

An Act To Amend the Boothbay Region Water District Charter

H.P. 1354 L.D. 1834
(C "A" H-828)

This being an Emergency Measure and having received the affirmative vote of 32 Members of the Senate, with no Senators having voted in the negative, and 32 being more than two-thirds of the entire elected Membership of the Senate, was **PASSED TO BE ENACTED** and having been signed by the President Pro Tem, was presented by the Secretary to the Governor for his approval.

Ordered sent down forthwith.

Mandate

Resolve, Regarding Legislative Review of Chapter 33: Regulations Governing Timeout Rooms, Therapeutic Restraints and Aversives in Public Schools and Approved Private Schools, a Major Substantive Rule of the Department of Education

H.P. 1360 L.D. 1838
(C "A" H-820)

This being a Mandate, in accordance with the provisions of Section 21 of Article IX of the Constitution, having received the affirmative vote of 32 Members of the Senate, with no Senators having voted in the negative, and 32 being more than two-thirds of the entire elected Membership of the Senate, was **FINALLY PASSED** and having been signed by the President Pro Tem, was presented by the Secretary to the Governor for his approval.

Ordered sent down forthwith.

Acts

An Act To Promote School Attendance and Increase School Achievement

S.P. 473 L.D. 1503
(H "B" H-756 to C "B" S-378)

An Act To Require the Maine Community College System, the University of Maine System and the Maine Maritime Academy To Report the Number of Students Enrolled in Remedial Courses

S.P. 544 L.D. 1645
(C "A" S-475)

An Act Related to Specialty Tiers in Prescription Medication Pricing

H.P. 1243 L.D. 1691
(C "A" H-813)

An Act To Improve Transportation in the State

S.P. 601 L.D. 1753
(C "A" S-480)

An Act To Allow Forfeiture of Maine Public Employees Retirement System Benefits for Persons Convicted of Certain Crimes

H.P. 1351 L.D. 1831
(C "A" H-838)

An Act To Implement the Recommendations of the Office of Program Evaluation and Government Accountability and the Government Oversight Committee Regarding Quasi-independent State Entities

H.P. 1364 L.D. 1843
(C "A" H-831)

An Act To Provide a More Comprehensive Ban on the Possession of Synthetic Hallucinogenic Drugs

H.P. 1370 L.D. 1852
(C "A" H-833)

An Act Regarding the Fund for a Healthy Maine's Prevention, Education and Treatment Activities Concerning Unhealthy Weight and Obesity

H.P. 1373 L.D. 1855
(C "A" H-830)

An Act To Provide Transparency in Electricity Pricing for Maine Ratepayers

H.P. 1387 L.D. 1875
(C "A" H-827)

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

Ordered sent down forthwith.

An Act To Strengthen Maine's Economy through Improvements to the Educational Opportunity Tax Credit

H.P. 632 L.D. 835
(H "A" H-814; H "B" H-844
to C "B" H-703)

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

An Act To Restore the Deer Herd in Certain Wildlife Management Districts in Maine

H.P. 933 L.D. 1242
(C "A" H-829)

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

Resolve

Resolve, Directing the Department of Health and Human Services To Submit an Application for a Waiver from the United States Department of Agriculture

H.P. 1336 L.D. 1812
(C "A" H-817)

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

Ordered sent down forthwith.

Senate at Ease.

Senate called to order by President Pro Tem
DEBRA D. PLOWMAN of Penobscot County.

ORDERS OF THE DAY

Unfinished Business

The following matter 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 (3/28/12) Assigned matter:

Bill "An Act To Provide Tax Relief for Maine's Citizens by Reducing Income Taxes"

S.P. 252 L.D. 849
(S "C" S-443 to C "C" S-427)

Tabled - March 28, 2012, by Senator **COURTNEY** of York

Pending - **FURTHER CONSIDERATION**

(In Senate, March 19, 2012, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "C" (S-427) AS AMENDED BY SENATE AMENDMENT "C" (S-443)** thereto.)

(In House, March 27, 2012, **FAILED PASSAGE TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "C" (S-427) AS AMENDED BY SENATE AMENDMENT "C" (S-443)** thereto, in **NON-CONCURRENCE**.)

On motion by Senator **COURTNEY** of York, the Senate **RECEDED** from whereby the Bill was **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "C" (S-427) AS AMENDED BY SENATE AMENDMENT "C" (S-443)** thereto.

On further motion by same Senator, the Senate **RECEDED** from whereby it **ADOPTED COMMITTEE AMENDMENT "C" (S-427) AS AMENDED BY SENATE AMENDMENT "C" (S-443)** thereto.

On further motion by same Senator, Senate Amendment "E" (S-506) to Committee Amendment "C" (S-427) **READ**.

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

Senator **COURTNEY:** Thank you Madame President. Men and women of the Senate, this amendment, through discussions in the hall over the last few days, simply changes the amount within the forth priority of the cascade from 40% to 20%, making the tax going to the Tax Relief Fund. I think there has been some support for this around both Bodies. I appreciate the strong bipartisan vote we had on the initial bill. I think this will address some of the concerns that have been raised. Thank you, Madame President.

On motion by Senator **COURTNEY** of York, Senate Amendment "E" (S-506) to Committee Amendment "C" (S-427) **ADOPTED**.

On motion by Senator **ALFOND** 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 Lincoln, Senator Johnson.

Senator **JOHNSON:** Thank you Madame President. Ladies and gentlemen, while I appreciate that the amendment we just adopted will reduce the rate at which we push incomes onto property taxes, we still have a problem. As the press said just this morning, Augusta is looking at a tax increase and they are citing the shortfall in funding of revenue sharing as part of that problem. What L.D. 849 is still going to do is fail to reflect that property tax is 44% of the overall total state and local tax burden. We already, in this Body, voted against an amendment that would have put property tax relief first. It would have first supplied surplus to fully fund the Circuit Breaker program and municipal revenue sharing at 55% of the cost for K-12 education. If L.D. 849 is fully implemented with this change, it would not change the fact that it would ratchet down income tax to 4%. In doing so, Maine people in the bottom 20% of household income would get an average of \$1 a year of relief on income tax. Maine people in the top 1% of household income would get over \$21,000 average reduction per year in their income tax. That's the top 1% people. Yet, while that benefits the richest 1%, it hits struggling Mainers with higher property taxes. When I go door to door, and when the discussion turns to taxes, what I hear about most is property tax from people who are retired and living on limit incomes, and people who are working at low wages and having a hard time making ends meet. We know now that Maine actually had the worst improvement in the average wage of many states this past year. Their problem is getting worst. Yet, what we're doing is making that problem worse with this bill. We're thumbing our noses at people who told us that their problem is property tax and that they're having a hard time getting by. We're saying instead that we would rather give a large benefit through this bill to the top 1% earners and push more of the cost of government onto hard working people who are just trying to get by and retirees who are just trying to live out their retirement in the state of Maine, the place that they love. Maine voters voted against automatically ratcheting down taxes three times already in the polls. Maine voters voted for State funding of 55% of the total cost of K-12 education. Here we are, without a public hearing on this bill, acting in contempt of Maine people's wishes as expressed at those polls. This is the wrong thing to do. It sounds great in that you are talking about tax relief, but the reality is it is tax relief for the 1% and it is hurting people where they hurt the most. That is exactly what they tell me when we get to talking about taxes and tax burden and struggling to get by at doors. It's hurting those people the most by pushing more of our costs onto property taxes, just as the article this morning about Augusta's dilemma reflects. I stand in opposition of passage.

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

Senator **COURTNEY:** Thank you Madame President. Men and women of the Senate, I just want to clarify a couple of things. Number one, this amendment, the only thing this amendment changes from existing law under the cascade is that it takes a little bit less from some of the other pieces of the cascade and

puts more of it into the Tax Relief Fund. It puts Tax Relief on par with the other priorities of State government, albeit a very small priority when you look at the other things in the cascade. We heard about the public hearing. This bill actually did have a public hearing and through the discussion in Taxation in previous years this bill was part of what was carried over under former Senator Trahan's bill. That's the bill in front of us. The other thing that we've heard is that this is going to go to the top 1%. You know, we can play class warfare, but I'll tell you what, if we don't get the top tax rate down in this state we're never going to be competitive in attracting people to invest in the state to create jobs. I'm not afraid to cut the top tax rate. I'm not afraid to have the top tax rate in this state be 4%. I think that's good policy. It's good policy that everyone can benefit from. In addition to that point, that it benefits the top 1%, with this bill, if it goes into effect, the future revenues go into the Tax Relief Fund and then the future Taxation Committee decides where that get distributed. The only thing that we've said that has to happen is the amendment we put on the other day that requires that the first amount of the money, the first priority within that, is the Circuit Breaker. That would address the concerns that the good Senator has raised with regards to property tax. It would address the concerns of low income people with high valued property. I think it goes a long ways towards working together to put together a better product than either of us thought that we would have originally. Thank you, Madame President.

Off Record Remarks

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Lincoln, Senator Johnson.

Senator **JOHNSON:** Thank you Madame President. Ladies and gentlemen, this is not simply a matter of slightly decreasing the upper tax bracket, which is something that is already going into effect. It was enacted in the last session. This is a lot more than that because this is mindlessly ratcheting down the revenues the State has to operate on through income tax and leaving future Legislatures to deal with how the heck to balance the budget when you have less revenue to do it with. I think that we're elected to come here and make the tough decisions of how to run this government, including setting those budgets. I think that we should not be binding the hands of future Legislatures to say that we're going to ensure that they have less revenue with which to balance the budget and fulfill their obligations to operate State government as to best serve the people of the state of Maine. This bill is not supported by the Maine Municipal Association. In fact, they came out, I think, quite strongly against it, saying that it is clearly moving away from achieving a more balanced tax burden and does not advance the principles of a balanced and equitable tax policy. The Maine Women's Lobby and the Bangor Daily News said because it provides tax breaks for the people at the top of the income bracket it would cost the State an estimated \$600 million with no real plan to pay for it. It's going to affect Maine's residents. Because women are more likely to be single or custodial parents, they are more likely to experience poverty, homelessness, and food insecurity. These policies and spending decisions have a particular impact on them. If you want to talk

about class warfare, yes, this is class warfare. L.D. 849 is saying we want to throw the poor struggling people in Maine, who are trying to get by, trying to raise a family and make a living, under the bus so that we can benefit people that don't have that struggle. That's class warfare.

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

Senator **ALFOND:** Thank you Madame President. Ladies and gentlemen of the Senate, I'm going to be brief, but sometimes on this floor it's good to bring some facts and more facts to the conversation. There was actually an editorial by someone in the other Body just recently talking about why we should be talking more positively about our economy and about our entrepreneurs. In that article they referenced a national study from Erskine Young regarding the states that had the most competitive tax systems for business. Maine placed first. This was a study that was done last year that Maine placed first. Then, just later this month, I know that this counters some of the things that have been said in this Body here about our taxes, a D.C. based tax foundation released a similar study called "Location Matters" which estimates the total effect of tax rates by different types of seed corporations in each state. They sort businesses into two groups, mature and new. Without accounting for better and similar programs, Maine placed 27th for mature operations and 2nd in New England, and for new companies we ranked 20th. The idea that we need to do this now, rush it through this Body and through the other Body and through this Legislature, to help encourage more entrepreneurs to come to this state, I would counter that. I would counter that by two studies. I'm on a roll. I guess want to talk a little bit about some other studies that have come out. We are ranked 50th in the state by Forbe's again. This is under this Administration. We just recently received another national award about being 50th in the country for personal income growth. We've lost 1,300 jobs, public and private, in 2011 under this Administration. The idea that we need this bill to encourage entrepreneurship when we have studies, national studies from around the country, saying we rank first in competitive tax systems for business, we're improving. Let this statement not be sold short. We need to keep improving. This bill is not the answer. What this bill does is take a shortcut around a lot of work that's been done in this Legislature and previous Legislatures. This is the wrong approach. I hope we can not adopt this amendment and we can join the other Body and defeat this bill. Thank you, Madame President.

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

Senator **COURTNEY:** Thank you Madame President. I'm so pleased my colleague was able to outline some of the challenges that we face in this state with this Administration and the new leadership being in office for just a little over a year. I would just submit that this is a long term vision. A vision looking out to the out years that Maine and the Maine Legislature is committed to having a top tax rate of 4%. It's a long vision that can send a true message across this country that Maine is truly open for business. We want to be competitive and we're not going to accept a second class economic status to live in Maine. Thank you, Madame President.

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

Senator **WOODBURY:** Thank you Madame President. Senate colleagues, I don't think there is anybody in the room who is more convinced that our tax system, overall, is not weighted correctly. The revenues that we gain, how we get them from the various components of our tax system, I don't think we have it right at all. I agree that the income tax is over weighted. It needs to be lower. I like very much the 4% goal. The problem with this bill is that it does nothing to move those weights around. It is simply aggravating a future gap that we've already made larger in this Legislature. That just worries me. That's why I oppose this bill, but I am so supportive of whatever efforts we can create in this Body to try to reweight the system to be a better one. That's what I'd like to work towards. Thank you.

THE PRESIDENT PRO TEM: The pending question before the Senate is Adoption of Committee Amendment "C" (S-427) as Amended by Senate Amendments "C" (S-443) and "E" (S-506) thereto. 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 (#410)

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

NAYS: Senators: ALFOND, BRANNIGAN, CRAVEN, GERZOFKY, GOODALL, HILL, HOBBS, JOHNSON, PATRICK, SCHNEIDER, WOODBURY

ABSENT: Senators: BARTLETT, DILL, SULLIVAN

21 Senators having voted in the affirmative and 11 Senators having voted in the negative, with 3 Senators being absent, **COMMITTEE AMENDMENT "C" (S-427) AS AMENDED BY SENATE AMENDMENTS "C" (S-443) AND "E" (S-506)** thereto, **ADOPTED**, in **NON-CONCURRENCE**.

PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "C" (S-427) AS AMENDED BY SENATE AMENDMENTS "C" (S-443) AND "E" (S-506) thereto, in **NON-CONCURRENCE**.

Ordered sent down forthwith for concurrence.

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

PAPERS FROM THE HOUSE

Joint Resolution

The following Joint Resolution:

H.P. 1408

JOINT RESOLUTION TO HONOR VIETNAM WAR REMEMBRANCE DAY ON MARCH 30, 2012

WHEREAS, the State of Maine passed Public Law 2011, chapter 92, which established that March 30th of each year is Vietnam War Remembrance Day, to honor the service and sacrifice of those veterans of the United States Armed Forces who served during the Vietnam War; and

WHEREAS, the Vietnam War was fought in the Republic of South Vietnam from 1961 to 1975 and involved North Vietnamese regular forces and Viet Cong guerrilla forces in armed conflict with the United States Armed Forces and the Army of the Republic of Vietnam; and

WHEREAS, the United States Armed Forces became involved in Vietnam to provide direct military support for the Republic of South Vietnam to defend itself against the growing communist threat from North Vietnam; and

WHEREAS, members of the United States Armed Forces began serving in an advisory role to the Republic of South Vietnam in 1961, and, as a result of the Gulf of Tonkin incidents on August 2 and 4, 1964, the United States Congress overwhelmingly passed the Gulf of Tonkin Resolution, which provided the authority to the President of the United States to prosecute the war against North Vietnam; and

WHEREAS, in 1965, United States Armed Forces ground combat units arrived in Vietnam, and by the end of 1965 there were 80,000 United States troops in Vietnam; by 1969, a peak of approximately 543,000 troops was reached; and

WHEREAS, on January 27, 1973, the Treaty of Paris was signed, which required the release of all United States prisoners of war held in North Vietnam and the withdrawal of all United States Armed Forces from South Vietnam; and

WHEREAS, on March 30, 1973, the United States Armed Forces completed the withdrawal of combat units and combat support units from South Vietnam; and

WHEREAS, more than 58,000 members of the United States Armed Forces lost their lives in Vietnam and more than 300,000 members of the United States Armed Forces were wounded; and

WHEREAS, in 1982, the Vietnam Veterans Memorial was dedicated in the District of Columbia to commemorate those members of the United States Armed Forces who died or were declared missing in action in Vietnam; and

WHEREAS, the establishment of Vietnam War Remembrance Day is an appropriate way to honor those members of the United States Armed Forces who served in South Vietnam and throughout Southeast Asia during the Vietnam War; and

WHEREAS, we must honor the establishment of Vietnam War Remembrance Day for the millions of men and women who served with valor during the Vietnam War, those who were wounded with wounds both seen and unseen during the conflict and those who gave the ultimate sacrifice to their State and Nation; now, therefore, be it

RESOLVED: That We, the Members of the One Hundred and Twenty-fifth Legislature of the State of Maine now assembled in the Second Regular Session, on behalf of the people we represent, take this opportunity to join in the observance of Vietnam War Remembrance Day in order to honor the contributions of veterans who served in the United States Armed Forces in Vietnam during war and during peace; and be it further

RESOLVED: That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to the Department of Defense, Veterans and Emergency Management.

Comes from the House, **READ** and **ADOPTED**.

READ and **ADOPTED**, in concurrence.

Senate at Ease.

Senate called to order by President Pro Tem
DEBRA D. PLOWMAN of Penobscot County.

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

The Sergeant-At-Arms escorted the Senator from Penobscot, Senator **PLOWMAN** to her seat on the floor.

Senate called to order by President Pro Tem **GARRETT P. MASON** of Androscoggin County.

Off Record Remarks

ORDERS OF THE DAY

The Chair laid before the Senate the following Tabled and Later (2/28/12) Assigned matter:

SENATE REPORTS - from the Committee on **JUDICIARY** on Bill "An Act To Amend the Laws Governing the Deference Afforded to Agency Decisions"

S.P. 493 L.D. 1546

Majority - **Ought to Pass as Amended by Committee Amendment "A" (S-394)** (8 members)

Minority - **Ought Not to Pass** (5 members)

Tabled - February 28, 2012, by Senator **HASTINGS** of Oxford

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

(In Senate, February 28, 2012, Reports **READ**.)

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Oxford, Senator Hastings.

Senator **HASTINGS:** Thank you Mr. President. Ladies and gentlemen of the Senate, we'll now take up a bill that has been languishing on the table for some time. I will take a minute and remind you what this bill is all about. The motion before the Body is the Majority Ought to Pass Report. The subject matter deals with the law school question from Administrative Law courses as to what deference will a court in the state of Maine give to the interpretations made by an agency of its rules and the statutes governing that agency. When an agency, for instance the DEP or the Maine Revenue Services or LURC, has made a ruling and that ruling is appealed to the court system, to what extent will the courts just defer to the interpretation of the rules and statutes made by the agency or to what extent will the court actually make its own interpretation and determine if they believe that is the correct interpretation. That's the framework. The law in Maine right now has been developed not by the Legislature but by the courts. Over time the courts have issued their rulings which guide the lower courts that the agency interpretations of rules and statutes that govern the agency are to be given great deference by the courts. That's the words they use, great deference. What's the practical effect of that? The practical effect is if you believe that you have been wronged by an agency decision, that they have not correctly interpreted their rules and statutes, and you get to court and you say, "Judge, the agency was wrong in interpreting the rules." Basically what it means is the judge is going to say, "I'm not going to substitute my judgment. I'm going to make my own evaluation. The court's not going to make its own evaluation and we're going to just accept what the agency found." I think you can see that gives you very little opportunity to appeal or to have redress in the courts. One of the reasons for deference, I think over time the courts have said that if it involves an area of expertise, of the particular expertise of the agency, they ought to defer to their experience on that. It also can lead to, I guess, the other argument as it leads to uniformity of decision because no one can ever win an appeal from the agency, essentially. On the other side of this, think of it now, it gives the winner at the lower level a big club. It makes it very hard to even question an agency's interpretation of its rules. As we all know, agencies develop agendas as time goes on. If you are the citizen who has been ruled against by the agency, you've got to get to court and find out there is really nothing you can do about it. The court's going to say, "Even if I thought the agency was wrong, I have got to give the agency decision great deference and I'm not going to look into it any more." There are two types of cases. Let me back up now. What does this bill do? What the bill in front of you does, the Majority Report says not what the original bill did, which was to say that there would be no deference given to agency decisions. It simply says that the courts need not, they don't have to. We're sending a message to the courts that if they question, if they have reason to question the agency's

interpretation of its rules and statutes, that we would like them to do so. Give the citizen, the person who is in court, his true day in court and take another look at it and see if they believe the agency has done correctly.

We heard two different arguments. It's interesting, in the public hearing so people like this change and some people don't. Think about it. There were two types of cases that this would apply to. One is that big DEP or LURC case where it's very contentious. We have an applicant. We have five or six people fighting against it that were allowed, they were given standing and they are in there. They duke it out and really have a trial, a major trial, at the DEP level. Finally a ruling is made and maybe the applicant gets their permit in the end. That applicant likes the rule of deference. They have finally won this major battle and they like the idea that when they go to court when somebody appeals there is really very little likelihood of a successful appeal. We've heard the argument that this is really good for business because it's the business that finally wins that permit at the DEP level and we give them some certainty that they are not going to lose on appeal. That's one kind of case. The other kind of case, which is really the vast majority of the cases of agency determinations, is one citizen against the State of Maine. The State, perhaps on an issue of taxes or on some permit or perhaps on any number of our regulatory agencies make rulings and fine, deny, or grant permits. It's one person against the State. Think of it. If you're just that one person and you come to see me or another lawyer and say, "I want to appeal this. They just didn't pay attention. They did not interpret their statute." I'm going to tell you, "Well, we can appeal but the court, under the present rule of great deference, is just going to say that there is nothing they can do. The agency's made its rule. We have to give it deference, so you are out of luck." I came down on the side of that individual, where it's the individual against the State, to give that individual a fair shake in court. That's why we have courts. Send a message to the courts that they don't have to give great deference to the agency's decision if they have a good argument in front of them and the court independently believes that that interpretation was wrong. We are inviting them to take a second look and their own look and give the citizen a day in court. I recognize that this could maybe cause some consternation to someone who's won that hard fought battle through the DEP or LURC or the like. Darn it all, I really think that what really bothers me is this idea, this sense, and it was voiced in committee by attorneys, that if you lose at the agency level don't even bother going to court because there is really no way to win because of deference. Ladies and gentlemen, thank you very much for your attention and I urge you to support the pending motion. 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 to put what this bill does in context, hopefully in a more simplified form, to what it really does when you are talking about the boots on the ground. Ninety-five to ninety-eight per cent of people get their permits in the Department of Environmental Protection and most other land use agencies. This is the area that's this is going to impact the most. At the same time, this is the area that we are often debating about in terms of creating jobs: the MPRP project with CMP, when we're talking about a mining bill, when we're talking about a solid waste bill, when we're talking about building a highway across Maine,

the East-West Highway. All of these construction jobs acquire these permits. Paper mills require air licenses. This is bridges, roads, etcetera. This is a great impact, a negative impact, on those types of jobs. That's what we have to start with first. If 98% of those folks get their permits and their permits are often granted on many issues that are black and white, setbacks for example. We've had great debates on those setbacks, vernal pools, shoreland water fowl, bird habitat, etcetera. Now an applicant comes in and gets his or her permit; a developer, a realtor, any entity. They have gotten that permit through a long process, a process of give and take, and one they often agree upon at the end. Are they always satisfied 110%? No, of course not. They have their permit in hand and they then want to go put a shovel in the ground. What this bill does is bring more uncertainty to those projects. It will put people in a position of leaning on their shovel rather than putting it in the ground because they can't go to work because they are going to have to wait for more appeals. It's going to be easier for attorneys, people such as myself, the good Senator from Oxford, and maybe the Senator from Kennebec, I don't think he does land use work at all, to appeal these projects on behalf of clients if we have clients that are opposed to them. This is another alternative, another arrow in the quiver for attorneys to pull out and argue to the judges that the decision that was made in the agency was wrong. Attorneys, such as myself, are going to argue, "You don't need to defer to the underlying agency. The agency that has the experts in it. The agency that understands these rules. You should make your own decision. We should re-litigate the whole thing right here in court. With all due respect, Your Honor, you probably don't have all the expertise, such as air quality, such as water quality."

What does that do? It creates month after month after month of delay. Look at the Oxford Casino right now. Their DEP decision, opinion, was appealed. You know what? That Oxford Casino is arguing, I'm almost positive though I have not read the briefs, but I can almost guarantee you they are arguing to the court that they should defer to the agency decision. That's what happens in practice. We heard earlier what the standard of law is. When courts receive an appeal they look at the appeal. Lawyers are going to argue, if you are against the project, against the permit, if you want to stop people from going to work, you want to halt the project, or you want the project to go away, that the underlying agency made a error on the errors of law. They already had to look at the statute if it's argued, or the rule, but the findings were not supported by the evidence and there was abuse of discretion. The courts review this carefully because attorneys make good arguments. Attorneys are trying to slow down these projects at times.

Ultimately what's going to happen, in my opinion, is courts are still going to defer to the agencies because many of these statutes are black and white. There are statutes that allow agencies greater interpretation of how to apply the rules, but in those instances they are often working with the applicant, as well as people that may be opposed to that, to resolve the issue and issue the permit. This is a great law school argument. It has great consequences on many industries in our state. We heard the issue about taxes earlier and I believe those issues are heard de novo when they get up to the court level, meaning they are re-litigated again. They are not deferring to the agency decision. What this really impacts is the construction industry and the energy industry.

I just think it has a grave impact on the cost of projects in the future. The uncertainty, the one thing that we are all trying to lessen in this state when it comes to regulatory issues. At the end of the day, if the courts are going to ultimately defer to the agency, often because the issues are black and white, why are we going to give lawyers one more tool, one more arrow in the quiver, to get their nose under the tent and slow down these projects, projects which are granted 95% to 98% of the time. People want to go to work. We should let them go to work. We shouldn't slow up these projects. We have a good environmental land use regime in this state, meaning our regulations, ones that we often agree on unanimously in both these Bodies. Democrats and Republicans. Have there been problems with those underlying environmental statutes. Yes. Are we fixing them? Yes. Do we have to keep reviewing them? Yes. If they are inappropriate to our environment regulatory system here in the state we should change them. We shouldn't throw out what is a long precedent of cases. Currently, this bill, in my opinion, would put us in the minority in the country. There are two states in the country that have these statutes. This is what this is. We are changing the statute about deference. We hear arguments that we're one of 15 in the country. That includes case-made law, not statutes. We're putting something in law. This is a great tool for attorneys and I think it is one that we should reject. Thank you, Mr. President.

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

Senator **SAVIELLO:** Thank you Mr. President. Ladies and gentlemen of the Senate, I appreciate the effort here on this deference bill and I appreciate the information that was recently sent out. I think if you look at this Rules on Agency Deference, none of them have to do with environmental issues, which all along we've suggested that perhaps environmental should be removed from the debate and we wouldn't be having a debate today. Let me set the stage for you. As many of you know, and I've talked about this before, I was a former environmental manager Verso Mill. I am retired. I have no contact with the Verso Mill other than through the constituents that work there. Let me set the stage, because in my old job I had to administer the Clean Air Act and the Clean Water Act. I'm going to use the Clean Water Act as an example as I walk through this. The Clean Water Act sets a goal, some say it sets a policy, that by 1985, and you can see that we're a bit behind, there would be zero discharge, no discharge, from the facilities. Obviously, we can't get there and I'm setting the state for what I'm going to use as an example in a minute. When a license is issued related to the Clean Water Act. Let me step back for one second. The State of Maine is a delegated state, which means we're responsible for administering those laws of the nation. This means we have to do what the federal government tells us to do, otherwise we'll lose that delegation and that is something the industry wanted, contrary to my personal belief, years ago. When you appeal a license that is issued at the federal level the whole license is stayed. It all goes away until the court case is ended. I want to emphasize that. The whole license is stayed. At the end, if you lose the appeal, you do not go back to the beginning. You start from the day of the appeal, so any requirements that you are required to put into place to reduce pollution start the day the license or the appeal is denied or accepted or whatever. Same thing is true on the Clean Air Act.

The State of Maine is different. That's not unusual. We're different. We say that that particular item is not stayed. It's simply set aside. You still have to comply with the whole license. By the way, if you lose the appeal you better be in compliance the day that license is issued because we're going to hold you responsible for it. Shortly, I hope that you will get the information from the paper industry, but I'm not going to use the paper industry in my example. I'm going to use the Wilton Waste Water Discharge. In the State of Maine we issues 400 waste water discharge licenses. Probably maybe a dozen of them are related to the paper industry. We have over 700 air licenses. In the example I'm about to give to you I want you to just think of anything related to one of those things because this is what this bill could do to those licenses. Wilton Waste Water Discharge, under full disclosure, I am a Wilton Selectman, but this is not a true example but this is something that truly could happen. We have to negotiate our license with the department. It's a negotiation because remember the Clean Water Act's goal is to get to zero. When they put that into place they knew that technology was going to change over time to get to zero. For phosphorous, something we all know about, that causes algae blooms in lakes, the range that one might have could be from 100 pounds to 1 pound, or let's use zero. However, the technology is not to get you to zero. It might be able to get you to 50. As you work with the department, ultimately the license comes out with the 50 pounds. Somebody now appeals that license. Because there is no longer a bright line, there is no longer deference to the DEP, the judge decides, "You know what? I'd like to learn about phosphorous." So what happens? Well, the Town of Wilton now has to make a big decision. Do they go and make the technology expenditures to come in compliance with the 50 pounds, knowing at the end of the day that if this appeal is upheld they are going to have to go to 1 pound and there is no technology for it, or do they take the risk and make that investment, knowing that they might have the appeal turned the other way? What do they have to do? They have to go hire a lawyer. They have to go fight this in court and prepare a brief. Guess what the State has? The State has an expense because the Attorney General's going to be asked to come and defend that license. At the end of the day, have we gotten any further? No. I would use Wilton as an example, but I want you to think about everybody; the 400 waste water discharge licenses out there, the 700 air licenses that could be caught in the same thing. This is a bad bill. I will be voting against it. Thank you very much.

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'd like to take you back to the Maine Constitution of 1820 and the national Constitution as put forth by our founders. Our Constitution expressly recognized the powers of government and the different branches. The people who wrote these expected that, human nature being what it was, each branch would try to engross its power to enlarge it but they used the word engrossed when they are describing this. It relied on the fact that sometimes two branches could get together to take the power from another. In order to prevent that kind of thing from happening, they talked about the delicate balance between the powers as allocated by our founders to us. When we are talking about the apportionment of powers, what they decided was that one branch, the people who elect us in the Legislative Branch,

would have a branch of government that answered to them directly, that we would have an Executive Branch, and that we would have a Judiciary. We're not supposed to enlarge our powers or enlarge the powers of the other branches. The deference law enlarges the power of the Executive Branch. It takes away from the power from the courts to authoritatively decide what we, as the elected members elected by the public, are doing. It takes away the judicial review. With judicial review, they are supposed to be impartial. The Executive Branch and the agencies are not impartial. They have their interpretation which sometimes is exceeded by their mission and the rules that are written are the rules that cannot be interpreted by the court. If you are talking about certainty heads I win, tails you lose is the only certainty that deference can give you. If you don't mind, as a citizen, handing off your right to an authoritative review of what an agency has done to you, then you will like deference. If you like the certainty that you will lose because someone is deferring, someone being the court who has the expressed power in the Constitution to interpret the law, to an Executive agency over the will of the people who elected you, then you will like deference. If you think that the small business on the corner should have no say in what an agency says because a large company who negotiates has power, and it doesn't matter that you are on the same ranking as a citizen, then you will like deference. If you like the separation of powers as given to us by our forefathers, then you probably won't like deference. You won't like it at all.

A former member of the Body, who was a member of the Tax Committee and Chair of the Tax Committee, and I believe I can say his name, Senator Tom Watson, passed a piece of legislation as Chair of the committee that had to do with tax policy. When MRS chose to interpret it, he approached them and said, "That's not what we meant." Maine Revenue Service said, "It doesn't matter, it's our interpretation that counts, not what the Legislature says." They imposed their will on the citizens in the state of Maine instead of our will. Since agencies are not elected, you have no recourse except to hopefully come back before the Legislature and ask. Meanwhile, justice delayed is justice denied. It all depends on who makes the decision in deference. If a town makes a decision there is no deference given to a town. If the town makes a decision that factors into the permit and you go to court, anything the town has made that sets you back there is deference given by the court to a decision made by a municipality but not to an agency that is governed by deference under the law. Yes, you have heard, and you will hear, that there will be cases filed and there are cases filed. You just heard about one that's been filed. It's slowing down the project. In the end, there will be many, many cases filed regardless of where there is deference or not. If you take deference to the need not, then there is still deference available. The court can and should if the case says that they complied with the law as written and as interpreted by the court, who is the only dispassionate member, the only dispassionate party, to the proceedings. Why would you not want a dispassionate person to determine whether an agency has ruled according to statute or according to their mission? That's what this bill says. When you appear in court it's not heads I win, tails you lose. You stand there as a citizen with rights and your rights accrue to you by virtue of the Constitution and the ability of the court to insure that what was written in statute is actually how you should have to live and not what the interpretation by an agency determines for your life. You know what? I think we need to be able to ask the court to take back their power, to be dispassionate, to look at the case before them, and to rule on

behalf of the citizen before them with all the abilities that accrue to us as citizens with rights guaranteed by the Constitution. Thank you, Mr. President.

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

Senator **SCHNEIDER:** Thank you Mr. President. Men and women of the Senate, I just wanted to draw your attention towards a couple of paragraphs in a handout that was distributed by Senator Saviello. I just wanted to point out, it says; "For our members Lincoln Paper and Tissue, Old Town Fuel and Fiber, Sappi Fine Paper, UPM of Madison, Verso Paper, and Woodland Pulp, the most common agency rulings that get appealed to the courts are permit decisions by DEP and BEP. Most of our permit applications are very complicated and time consuming. While the process can be frustrating, after negotiating with the agency and making necessary changes, most license applications are ultimately approved. Controversial license decisions may be challenged in the courts by interested parties. If L.D. 1546 becomes law, there will be an increased uncertainty in the appeals process and a great likelihood that a permit approved will be overturned. For this reason, we are opposed to this bill, both in its original version and amended." I just want to say that I had understood from the Red Tape Commission that business after business got up and spoke that this kind of a change would be disadvantageous. I find it sort of ironic that I'm standing here saying that we need to oppose this because this would negatively impact our business climate, while my other colleague from Penobscot is arguing the other side of this issue. I want to let you know, for four years I tried to work with both sides of the aisle to pass legislation that would help the business climate with regard to a situation where originally in the state of Maine, even after permits were issued, a small group within a community could bring a petition and oppose a project and stop a project dead in its track, even after it had gotten all of its permitting. That original bill was vetoed by the previous Governor and last year we unanimously approved that bill. It took a great deal of effort, but there was compromise on all sides so for everybody, I think, it was a win. It has brought a lot more certainty to business. There is a balance between making sure that all the citizens are heard and a balance between what is fair in a process. I believe we will be making it much more difficult for business, the business community. We will be unbalancing what we have worked so hard over the last two years to make more receptive to businesses and the business community. I just believe that we're going to be taking a step backwards if we move forward with this. I urge your opposition of the pending motion. 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'll be brief. I just wanted to, since the good Senator from Penobscot brought the issue of L.D. 1, Regulatory Reform and Fairness Committee, I thought it was appropriate we just go over the history real quick. This bill was part of the Governor's Phase I proposals on that concept draft. She is right. Numerous businesses, one after another, told us that it was not a good idea and to reject it. I believe that this bill, despite some businesses having come to the table late, is one like many over the years that is slipping through the cracks and people aren't

necessarily aware of the consequences. This bill, when it was heard in L.D. 1, and I paraphrase someone from the Conservation Law Foundation who had practiced law on the private side, representing large corporations, and now is with a non-profit focused on protecting the environment and striking reasonable compromises on development projects, who said that this bill will make their life much easier. However, they are opposed to it because it is bad policy for the state of Maine. To me, I'm not sure why we want to be giving lawyers greater opportunities to appeal projects after they have gone through a long deliberative process, often involving negotiations, where, overwhelmingly, the parties that are involved are satisfied and that the environmental regulations, land use regulations, and other regulations that impact the state of Maine are upheld. Lastly, cases are overturned in courts. That's why we have appeals. They do get overturned because, using one quote from the law court in an opinion dealing with Tenants Harbor LLC, a general store dealing with gas pumps, the Chief Justice wrote, "Although we normally defer to a State agency's interpretation of a statute, statute language issued here compels a contrary interpretation." If you look further into the opinion, you will see that what they are basing their decision on says, "We construe the statute based on the plain, common, and ordinary meaning of its term and we avoid absurd, inconstant, and illogical or unreasonable results." There is no reason to pass this bill today. I urge you to reject it. Thank you, Mr. President.

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

Senator **KATZ:** Thank you Mr. President. Men and women of the Senate, there has been a great deal of talk about environmental permitting and what impact this bill might have on that. I appreciate that that's an important part of this debate, but I would remind everyone that this bill's application it is not limited to the Department of Environmental Protection. It applies to all agency decisions and rulings. I think we tend to view these things through the prism of our own experience. That's how I look at this bill. I look at clients I represented before the Department of Human Services, for instance on child support matters, where I think that they had been treated poorly by the department. Yet we couldn't win on appeal, because the judge was obligated to give great deference to the interpretation of the laws we pass to the agency. I've represented clients before the Department of Motor Vehicles who I feel were treated poorly, but yet we were not successful on appeal because the judge had to give great deference to the interpretation of the statute by that agency. I've represented people before the Maine Revenue Service, people I feel were treated poorly and were unsuccessful on appeal because the judge felt compelled, under the current law, to give great deference to the interpretation of our statutes that we wrote to the agency that's enforcing them. I think it really comes down, and I understand there is a great deal of debate here, as to whether this is going to make it easier or harder to get a permit in the state of Maine. I don't deny that that's a critically important debate to have. I look at it a little bit differently, from what is a fair judicial process. Ultimately the question is who determines what a statute means. The Legislature passes a statute. Who's going to get to say what that statute means? It's going to be one of two people, or one of two entities. Is it going to be a judge, who is well trained, who is appointed by the Governor, who is by definition expert in the law, who's been approved by this Body or

is it going to be some often faceless employee of an agency or a board that may have no legal training or may or may not have their own particular agenda? When a judge is asked to make a statutory interpretation, I've got confidence that that person is trained and impartial to do so. I don't have that same confidence about people who work for agencies. They may be very hard working people, very dedicated State employees, but they haven't had any training in interpreting statutes. When we all pass something, I'd rather had a judge interpreting it than an agency. It's for that reason that I will vote in favor of the pending motion. Thank you, Mr. President.

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

Senator **SAVIELLO:** Thank you Mr. President. Ladies and gentlemen of the Senate, I just want to clarify a few things. First of all, I don't disagree with what my brother and good Senator said just a minute ago. It is from my view and my perspective because there are about 10,000 people still working in the pulp and paper industry and I won't go on to how many are working in the forest products industry because it is significant in the state. We already have a big battle to fight. I've often suggested the best way to address this bill is to take Title 38 out, but no one seems to be interested in doing that. Let me address the small gas station that's been brought up. Let me put it to you in another perspective. Suppose that an aggrieved, I had to put that in there, individual decides to appeal that gas station tank being put in. The small Mom and Pop store will have to go get a lawyer to fight that decision. It's more than a waste water license. It's more than air licenses. My sad experience in the courts is that it's more than a heads or tails decision. They look at the procedures that were followed in the court and in the issuance of the license and the permit. At least my experience has been the question on deference often goes to the law court. The constitutionality is still there. It still can be protected. To say that it is not is not a true statement. I want to close with this e-mail that I also received from Scott Beal at Woodland. At the end of his e-mail he said, "This bill is a step backwards to me by creating an element of judiciary uncertainty," as was mentioned earlier before. Thank you very much, Mr. President.

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

Senator **PLOWMAN:** Thank you Mr. President. I'd just like to point out that the way the bill is drafted, the court will still defer to the agency's interpretation or findings and facts. We're not talking about the facts that they used to arrive at their decision, but to look at how they interpreted the law, how they wrote the rules. The case that was brought up previously, the Tenant's Harbor case, that one was so easy that I can't believe that it had to go to court. The DEP didn't even follow its own rules. They must have forgotten to read the paragraph where the directions to the business were in their own rules. It didn't take long for the court to find that they hadn't obeyed exactly what they were asking for. I don't consider that. I know the work was done for a very fine lawyer. I won't comment further. If you want your legislative intent to be how decisions are made, then you need to reserve your own power and restore the power to the judiciary. This deference idea started at the federal level where deference was accorded. At the federal level there are House Committees,

Senate Committees, Committees of Conference, letters that go back and forth, and you don't really have to question the intent of Congress. It's so clear when they get through. That's why we have the acts before us. This is a citizen legislature. We work in joint committees. The negotiations that go on regarding our intent happen in a horseshoe, back and forth, with an analyst taking notes and often times no debate on the floor. The materials that are produced may or may not be clear to an agency or to a citizen. When a citizen stands before you and an agency makes a rule, they have to live under the rule, not the law. When you live under rules, the rules are subject to interpretation. When they are subject to interpretation by the people who make them, no one ever admits they are wrong, or very rarely. They have to be very wrong. This is called the "laugh out loud" standard in some law firms. In order to overturn the agency decision, they have to have made a decision that would make you laugh out loud. The Senator from Kennebec, Senator Katz, has said that it doesn't affect only permits. It doesn't. It affects your everyday life, and that of your family, and most importantly, that of your constituents. I was asked to divide this out. I thought since when is it correct to say some people have Constitutional rights and others don't when something is being interpreted by a dispassionate court. The proposal was to make it for companies of 50 people or less. Fifty people or less would get justice because we would not defer on those kinds of decisions, no matter what they were, because they were small enough that they shouldn't have to meet some other criteria. The only criteria you have to meet is whether you deserve to have a dispassionate person look and decide if the court defer and they have the absolute power. The most incredible power that we get is the sovereign power to interpret our laws. It's sovereign. The court is the dispassionate person. If you have a company with 50 people or less should you have the benefit of flipping the coin? I didn't see that as a fair amendment. You either will decide that giving up your freedoms is more expedient and that justice doesn't need to be handed to every citizen because expediency matters, or you will decide that expediency supersedes all. That is the question here in my mind. It's not economic development. It's not whether someone negotiated to get a permit. Frankly, I don't think you should have to negotiate if it's within the law. I do feel that it is something that we owe to everyone to decide if they have the right to stand before a judge and have a chance to win without the agency having to have made someone laugh out loud. Thank you, Mr. President.

THE PRESIDENT PRO TEM: The Senator from Sagadahoc, Senator Goodall, requests unanimous consent of the Senate to address the Senate a third time on this matter. Hearing no objection, the Senator may proceed.

Senator **GOODALL:** Thank you Mr. President. Men and women of the Senate, I think that our judges in the judicial system would be quite alarmed if they thought or believed that people weren't getting justice, those that appeared in front of them. People do make arguments that the statutes are interpreted poorly and wrongly and should be overturned. They make arguments why that is the case, and the judges weigh those facts and arguments and they make a decision. Yes, there is a body of case law, a body of law developed by judges, that they do defer to experts in these areas and all agencies, land use, Health and Human Services, what have you, on the interpretation of the statute or the rule. The fact of the matter is that people are being hurt. It's not

a laugh out loud standard. Cases do get overturned. Frankly, many of the arguments I hear about individual statutes interpretations by the agencies, I think we have to look at ourselves in the mirror once in a while and see what laws we pass in here. Mistakes are made. If there are bad laws, let's change those laws. We increased oversight on the rules. Through L.D. 1 we clarified the issue about agency discretion dealing with guidance documents. This is counterproductive to the steps we've taken. Lastly, just one issue. We heard the good Senator from Penobscot talk about the facts and the courts are not going to be looking at the facts. The reality is, as a practitioner, if you go in and you make an argument to the court saying that they need not defer, you've got to ask for the entire record to be opened up most times. More facts to supplement the record in court. You are going to be re-litigating the whole issue. In essence, the court is going to be looking at whether or not a permit should be granted and a decision should be issued for whatever it may be coming out of a State agency decision. I would argue that the courts do provide justice, that they are deliberative, and that they are fulfilling a Constitutional obligation. At times we all have issues with statutes and rules and it's our responsibility to get it right. Lastly, as I said in the public hearing, we do have an issue in this state with legislative intent. We need to fix that. That's where a lot of these problems arise, I believe, and we should create a system that does create a body of legislative intent. I am more than willing to work on that with the good Senator from Penobscot. Thank you, Mr. President.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Oxford, Senator Hastings.

Senator **HASTINGS:** Thank you Mr. President. Ladies and gentlemen of the Senate, very briefly. You are being offered a very simple choice. There is no argument that the current rule of great deference makes it next to impossible to appeal. The paper companies say so. It also makes it next to impossible for that poor client of Senator Katz who has been told by the tax people that he owes a tax because they made a new interpretation of a law. We've all heard of those circumstances. Whose side do you come down on? This Majority Report will make it easier for that client of Senator Katz to make his case to the court and have the court make an independent determination. You are going to side on one group or the other. The large interests or the probably vastly larger number of individuals, small businesses, who feel aggrieved by agency rules and that are told by their attorney that they have got nothing to stand on, that they can't win. I come down on their side. I sympathize with the larger companies. I do have sympathy for their position. I have heard the term used today, throwing them under the bus. I do not feel I should be throwing the small businessman, Senator Katz client, under the bus for the benefit of other interests. Thank you very much.

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

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

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#411)

YEAS: Senators: COLLINS, COURTNEY, DIAMOND, FARNHAM, HASTINGS, HILL, KATZ, LANGLEY, MARTIN, MCCORMICK, PLOWMAN, RAYE, SNOWE-MELLO, THIBODEAU, THOMAS, WHITTEMORE, THE PRESIDENT PRO TEM - GARRETT P. MASON

NAYS: Senators: ALFOND, BRANNIGAN, CRAVEN, GERZOFKY, GOODALL, HOBBS, JACKSON, JOHNSON, PATRICK, RECTOR, ROSEN, SAVIELLO, SCHNEIDER, SHERMAN, WOODBURY

ABSENT: Senators: BARTLETT, DILL, SULLIVAN

17 Senators having voted in the affirmative and 15 Senators having voted in the negative, with 3 Senators being absent, the motion by Senator **HASTINGS** of Oxford **ACCEPT** the Majority **OUGH TO PASS AS AMENDED** Report, **PREVAILED**.

READ ONCE.

Committee Amendment "A" (S-394) **READ**.

On motion by Senator **KATZ** of Kennebec, Senate Amendment "A" (S-424) to Committee Amendment "A" (S-394) **READ**.

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

Senator **KATZ:** Thank you Mr. President. Men and women of the Senate, the action we just took was to approve a change in the law to say that the court need not give deference to agency's interpretations of statutes or their own rules. This amendment, Mr. President, narrows that change to simply indicate that the court need not give deference to the agency's interpretations of statutes. In other words, the amendment would leave the current law in place where the court would give deference to an agency's interpretation of its own rules. The reason for the amendment, from my perspective, is as follows: it has to do with who wrote what. I don't think agencies have any place interpreting or telling everyone what a statute means that they had absolutely nothing to do with passing. We pass statutes. I think decisions about what those statutes mean are appropriately left to judges. With respect to agency rules, the agency does write the rules. I do believe it's appropriate to give deference to an agency's interpretation of a rule it has written itself, not written by the Legislature. I suggest it is proper to allow an agency to give deference to a rule the agency itself writes. That's the distinction. That's the reason for the amendment. Thank you, Mr. President.

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

Senator **SAVIELLO:** Thank you Mr. President. Ladies and gentlemen of the Senate, I appreciate the good effort, but that doesn't solve the problem. Thank you.

On motion by Senator **SAVIELLO** of Franklin, 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 Sagadahoc, Senator Goodall.

Senator **GOODALL:** Thank you Mr. President. I just wanted to rise and point the irony in this amendment, especially our prior actions. We are now going to be reviewing all the rules in our committees upon every agency decision. Often many of the rules we give our legislative blessing through major substantive rule making. We've asked for more and more power, more and more power to review these rules. We are giving our endorsement. Therefore I'm just confirming what the good Senator from Franklin said, this amendment still causes problems. In fact, many areas of State laws we ask agencies to make rules rather than putting them in statute. That's the decision that we make as a Legislature. I just urge you to reject this amendment.

THE PRESIDENT PRO TEM: The pending question before the Senate is the motion by the Senator from Kennebec, Senator Katz to Adopt Senate Amendment "A" (S-424) to Committee Amendment "A" (S-394). 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 (#412)

YEAS: Senators: COURTNEY, KATZ, MARTIN, MCCORMICK, RAYE, ROSEN, THIBODEAU

NAYS: Senators: ALFOND, BRANNIGAN, COLLINS, CRAVEN, DIAMOND, FARNHAM, GERZOFKY, GOODALL, HASTINGS, HILL, HOBBS, JACKSON, JOHNSON, LANGLEY, PLOWMAN, RECTOR, SAVIELLO, SCHNEIDER, SHERMAN, SNOWE-MELLO, THOMAS, WHITTEMORE, WOODBURY, THE PRESIDENT PRO TEM - GARRETT P. MASON

ABSENT: Senators: BARTLETT, DILL, PATRICK, SULLIVAN

7 Senators having voted in the affirmative and 24 Senators having voted in the negative, with 4 Senators being absent, the motion by Senator **KATZ** of Kennebec to **ADOPT** Senate Amendment "A" (S-424) to Committee Amendment "A" (S-394), **FAILED**.

Committee Amendment "A" (S-394) **ADOPTED**.

Senator **ALFOND** of Cumberland **OBJECTED** to **SUSPENSION OF THE RULES** for the purpose of giving this Bill its **SECOND READING** at this time.

ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.

Senator **ROSEN** of Hancock was granted unanimous consent to address the Senate off the Record.

Senator **COURTNEY** of York was granted unanimous consent to address the Senate off the Record.

Senator **COLLINS** of York was granted unanimous consent to address the Senate off the Record.

Senator **LANGLEY** of Hancock was granted unanimous consent to address the Senate off the Record.

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

On motion by Senator **COURTNEY** of York, **ADJOURNED** to Monday, April 2, 2012, at 10:00 in the morning.