

MAINE STATE LEGISLATURE

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Senate Legislative Record
One Hundred and Nineteenth Legislature
State of Maine

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October 14, 1999

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**STATE OF MAINE
ONE HUNDRED AND NINETEENTH LEGISLATURE
SECOND REGULAR SESSION
JOURNAL OF THE SENATE**

In Senate Chamber
Saturday
April 8, 2000

Senate called to order by President Mark W. Lawrence of York County.

Prayer by Senator Judy A. Paradis of Aroostook County.

SENATOR PARADIS: Merci Monsieur de President. Prions
Dear God, give us patience, discernment, courage and
understanding in the waning hours of the 119th Legislature. Be
with us as we reintegrate with our families and constituents.
Merci Dieu pour notre vie, pour nos collègues, pour votre
inspiration, pour votre support, et pour liberté. Amen

Reading of the Journal of Friday, April 7, 2000.

Off Record Remarks

Out of order and under suspension of the Rules, on motion by
Senator PINGREE of Knox, the following Joint Order:
S.P. 1080

ORDERED, the House concurring, that when the House and
Senate adjourn they do so until the call of the President of the
Senate and the Speaker of the House respectively when there is
a need to conduct business.

READ and PASSED.

Under suspension of the Rules, ordered sent down forthwith for
concurrence.

Off Record Remarks

PAPERS FROM THE HOUSE

Non-Concurrent Matter

SENATE REPORTS - from the Committee on **INLAND
FISHERIES AND WILDLIFE** on Bill "An Act to Provide an Angling
Season for Atlantic Salmon" (EMERGENCY)

S.P. 1011 L.D. 2579
(C "A" S-590)

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

Minority - **Ought to Pass as Amended by Committee
Amendment "A" (S-590)** (5 members)

In Senate, April 6, 2000, the Minority **OUGHT TO PASS AS
AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED
TO BE ENGROSSED AS AMENDED BY COMMITTEE
AMENDMENT "A" (S-590)**.

Comes from the House, Reports **READ** and Bill and
accompanying papers **INDEFINITELY POSTPONED**, in **NON-
CONCURRENCE**.

Senator **RUHLIN** of Penobscot moved the Senate **INSIST** and
ASK FOR A COMMITTEE OF CONFERENCE.

At the request of Senator **KILKELLY** of Lincoln a Division was
had. 17 Senators having voted in the affirmative and 3 Senators
having voted in the negative, the motion by Senator **RUHLIN** of
Penobscot to **INSIST** and **ASK FOR A COMMITTEE OF
CONFERENCE, PREVAILED**.

Under suspension of the Rules, ordered sent down forthwith for
concurrence.

Off Record Remarks

COMMUNICATIONS

The Following Communication: S.C. 633

**STATE OF MAINE
ONE HUNDRED AND NINETEENTH LEGISLATURE
COMMITTEE ON BUSINESS AND ECONOMIC
DEVELOPMENT**

April 7, 2000

The Honorable Mark W. Lawrence
President of the Senate of Maine
119th Maine Legislature
State House
Augusta, Maine 04333-0003

Dear Mr. President:

In accordance with 3 M.R.S.A., Section 157, and with Joint Rule
505 of the 119th Maine Legislature, the Joint Standing
Committee on Business and Economic Development has had
under consideration the nomination of John Murphy of Fort Kent,
for appointment to the Maine Educational Loan Authority.

After public hearing and discussion on this nomination, the
Committee proceeded to vote on the motion to recommend to the
Senate that this nomination be confirmed. The Committee Clerk
called the roll with the following result:

LEGISLATIVE RECORD - SENATE, SATURDAY, APRIL 8, 2000

YEAS Senators 2 Kontos of Cumberland,
MacKinnon of York
Representatives 8 O'Neal of Limestone, Bolduc
of Auburn, Bowles of
Sanford, Clough of
Scarborough, Marvin of Cape
Elizabeth, Shorey of Calais,
Tripp of Topsham, Usher of
Westbrook
NAYS 0
ABSENT 3 Sen. Longley of Waldo, Rep.
Mendros of Lewiston, Rep.
Sirois of Caribou

Ten members of the Committee having voted in the affirmative and none in the negative, it was the vote of the Committee that the nomination of John Murphy of Fort Kent, for appointment to the Maine Educational Loan Authority be confirmed.

Signed,

S/Carol A. Kontos
Senate Chair

S/Gary L. O'Neal
House Chair

READ and ORDERED PLACED ON FILE.

On motion by Senator **PINGREE** of Knox, Nomination **TABLED** until Later in Today's Session, pending **CONSIDERATION**.

The Following Communication: S.C. 634

**STATE OF MAINE
ONE HUNDRED AND NINETEENTH LEGISLATURE
COMMITTEE ON BUSINESS AND ECONOMIC
DEVELOPMENT**

April 7, 2000

The Honorable Mark W. Lawrence
President of the Senate of Maine
119th Maine Legislature
State House
Augusta, Maine 04333-0003

Dear Mr. President:

In accordance with 3 M.R.S.A., Section 157, and with Joint Rule 505 of the 119th Maine Legislature, the Joint Standing Committee on Business and Economic Development has had under consideration the nomination of Bruce N. Schatz of Augusta, for appointment to the Maine Educational Loan Authority.

After public hearing and discussion on this nomination, the Committee proceeded to vote on the motion to recommend to the

Senate that this nomination be confirmed. The Committee Clerk called the roll with the following result:

YEAS Senators 2 Kontos of Cumberland,
MacKinnon of York
Representatives 8 O'Neal of Limestone, Bolduc
of Auburn, Bowles of
Sanford, Clough of
Scarborough, Marvin of Cape
Elizabeth, Shorey of Calais,
Tripp of Topsham, Usher of
Westbrook
NAYS 0
ABSENT 3 Sen. Longley of Waldo, Rep.
Mendros of Lewiston, Rep.
Sirois of Caribou

Ten members of the Committee having voted in the affirmative and none in the negative, it was the vote of the Committee that the nomination of Bruce N. Schatz of Augusta, for appointment to the Maine Educational Loan Authority be confirmed.

Signed,

S/Carol A. Kontos
Senate Chair

S/Gary L. O'Neal
House Chair

READ and ORDERED PLACED ON FILE.

On motion by Senator **PINGREE** of Knox, Nomination **TABLED** until Later in Today's Session, pending **CONSIDERATION**.

The Following Communication: S.C. 635

**STATE OF MAINE
ONE HUNDRED AND NINETEENTH LEGISLATURE
COMMITTEE ON BUSINESS AND ECONOMIC
DEVELOPMENT**

April 7, 2000

The Honorable Mark W. Lawrence
President of the Senate of Maine
119th Maine Legislature
State House
Augusta, Maine 04333-0003

Dear Mr. President:

In accordance with 3 M.R.S.A., Section 157, and with Joint Rule 505 of the 119th Maine Legislature, the Joint Standing Committee on Business and Economic Development has had under consideration the nomination of Michael L. Finnegan of Edgecomb, for appointment as the Executive Director of the Maine State Housing Authority.

LEGISLATIVE RECORD - SENATE, SATURDAY, APRIL 8, 2000

After public hearing and discussion on this nomination, the Committee proceeded to vote on the motion to recommend to the Senate that this nomination be confirmed. The Committee Clerk called the roll with the following result:

YEAS	Senators	1	Kontos of Cumberland
	Representatives	9	O'Neal of Limestone, Bolduc of Auburn, Bowles of Sanford, Clough of Scarborough, Marvin of Cape Elizabeth, Mendros of Lewiston, Shorey of Calais, Tripp of Topsham, Usher of Westbrook
NAYS		0	
ABSENT		3	Sen. Longley of Waldo, Sen. MacKinnon of York, Rep. Sirois of Caribou

Ten members of the Committee having voted in the affirmative and none in the negative, it was the vote of the Committee that the nomination of Michael L. Finnegan of Edgecomb, for appointment as the Executive Director of the Maine State Housing Authority be confirmed.

Signed,

S/Carol A. Kontos
Senate Chair

S/Gary L. O'Neal
House Chair

READ and ORDERED PLACED ON FILE.

On motion by Senator **PINGREE** of Knox, Nomination **TABLED** until Later in Today's Session, pending **CONSIDERATION**.

The Following Communication: S.C. 636

**STATE OF MAINE
ONE HUNDRED AND NINETEENTH LEGISLATURE
COMMITTEE ON BUSINESS AND ECONOMIC
DEVELOPMENT**

April 7, 2000

The Honorable Mark W. Lawrence
President of the Senate of Maine
119th Maine Legislature
State House
Augusta, Maine 04333-0003

Dear Mr. President:

In accordance with 3 M.R.S.A., Section 157, and with Joint Rule 505 of the 119th Maine Legislature, the Joint Standing Committee on Business and Economic Development has had under consideration the nomination of Margaret S. Haynes of Freeport to the Maine State Housing Authority.

After public hearing and discussion on this nomination, the Committee proceeded to vote on the motion to recommend to the Senate that this nomination be confirmed. The Committee Clerk called the roll with the following result:

YEAS	Senators	3	Kontos of Cumberland, Longley of Waldo, MacKinnon of York
	Representatives	9	O'Neal of Limestone, Bolduc of Auburn, Bowles of Sanford, Clough of Scarborough, Marvin of Cape Elizabeth, Mendros of Lewiston, Shorey of Calais, Tripp of Topsham, Usher of Westbrook
NAYS		0	
ABSENT		1	Rep. Sirois of Caribou

Twelve members of the Committee having voted in the affirmative and none in the negative, it was the vote of the Committee that the nomination of Margaret S. Haynes of Freeport to the Maine State Housing Authority be confirmed.

Signed,

S/Carol A. Kontos
Senate Chair

S/Gary O'Neal
House Chair

READ and ORDERED PLACED ON FILE.

On motion by Senator **PINGREE** of Knox, Nomination **TABLED** until Later in Today's Session, pending **CONSIDERATION**.

The Following Communication: S.C. 637

**STATE OF MAINE
ONE HUNDRED AND NINETEENTH LEGISLATURE
COMMITTEE ON BUSINESS AND ECONOMIC
DEVELOPMENT**

April 7, 2000

The Honorable Mark W. Lawrence
President of the Senate of Maine
119th Maine Legislature
State House
Augusta, Maine 04333-0003

Dear Mr. President:

In accordance with 3 M.R.S.A., Section 157, and with Joint Rule 505 of the 119th Maine Legislature, the Joint Standing Committee on Business and Economic Development has had under consideration the nomination of Elizabeth Horning of Richmond to the Maine State Housing Authority.

After public hearing and discussion on this nomination, the Committee proceeded to vote on the motion to recommend to the Senate that this nomination be confirmed. The Committee Clerk called the roll with the following result:

YEAS	Senators	3	Kontos of Cumberland, Longley of Waldo, MacKinnon of York
	Representatives	9	O'Neal of Limestone, Bolduc of Auburn, Bowles of Sanford, Clough of Scarborough, Marvin of Cape Elizabeth, Mendros of Lewiston, Shorey of Calais, Tripp of Topsham, Usher of Westbrook

NAYS 0

ABSENT 1 Rep. Sirois of Caribou

Twelve members of the Committee having voted in the affirmative and none in the negative, it was the vote of the Committee that the nomination of Elizabeth Horning of Richmond to the Maine State Housing Authority be confirmed.

Signed,

S/Carol A. Kontos
Senate Chair

S/Gary O'Neal
House Chair

READ and ORDERED PLACED ON FILE.

On motion by Senator **PINGREE** of Knox, Nomination **TABLED** until Later in Today's Session, pending **CONSIDERATION**.

The Following Communication: S.C. 638

**STATE OF MAINE
ONE HUNDRED AND NINETEENTH LEGISLATURE
COMMITTEE ON BUSINESS AND ECONOMIC
DEVELOPMENT**

April 7, 2000

The Honorable Mark W. Lawrence
President of the Senate of Maine
119th Maine Legislature
State House
Augusta, Maine 04333-0003

Dear Mr. President:

In accordance with 3 M.R.S.A., Section 157, and with Joint Rule 505 of the 119th Maine Legislature, the Joint Standing Committee on Business and Economic Development has had under consideration the nomination of James E. Cassidy of Turner to the Maine State Housing Authority.

After public hearing and discussion on this nomination, the Committee proceeded to vote on the motion to recommend to the Senate that this nomination be confirmed. The Committee Clerk called the roll with the following result:

YEAS	Senators	3	Kontos of Cumberland, Longley of Waldo, MacKinnon of York
	Representatives	9	O'Neal of Limestone, Bolduc of Auburn, Bowles of Sanford, Clough of Scarborough, Marvin of Cape Elizabeth, Mendros of Lewiston, Shorey of Calais, Tripp of Topsham, Usher of Westbrook

NAYS 0

ABSENT 1 Rep. Sirois of Caribou

Twelve members of the Committee having voted in the affirmative and none in the negative, it was the vote of the Committee that the nomination of James E. Cassidy of Turner to the Maine State Housing Authority be confirmed.

Signed,

S/Carol A. Kontos
Senate Chair

S/Gary O'Neal
House Chair

READ and ORDERED PLACED ON FILE.

On motion by Senator **PINGREE** of Knox, Nomination **TABLED** until Later in Today's Session, pending **CONSIDERATION**.

The Following Communication: S.C. 639

**STATE OF MAINE
ONE HUNDRED AND NINETEENTH LEGISLATURE
COMMITTEE ON LEGAL AND VETERANS AFFAIRS**

April 7, 2000

The Honorable Mark W. Lawrence
President of the Senate of Maine
119th Maine Legislature
State House
Augusta, Maine 04333-0003

Dear Mr. President:

In accordance with 3 M.R.S.A., Section 157, and with Joint Rule 505 of the 119th Maine Legislature, the Joint Standing Committee on Legal and Veterans Affairs has had under consideration the nomination of Joseph E. Tinkham II of South Gardiner, for appointment as the Adjutant General/Commissioner of Defense, Veterans and Emergency Management.

After public hearing and discussion on this nomination, the Committee proceeded to vote on the motion to recommend to the Senate that this nomination be confirmed. The Committee Clerk called the roll with the following result:

YEAS	Senators	3	Daggett of Kennebec, Carey of Kennebec, Ferguson of Oxford
	Representatives	9	Tuttle of Sanford, Chizmar of Lisbon, Fisher of Brewer, Gagne of Buckfield, Heidrich of Oxford, Labrecque of Gorham, Mayo of Bath, McKenney of Cumberland, O'Brien of Lewiston

NAYS 0

ABSENT 1 Rep. Perkins of Penobscot

Twelve members of the Committee having voted in the affirmative and none in the negative, it was the vote of the Committee that the nomination of Joseph E. Tinkham II of South Gardiner, for appointment as the Adjutant General/Commissioner of Defense, Veterans and Emergency Management be confirmed.

Signed,

S/Beverly C. Daggett
Senate Chair

S/John L. Tuttle Jr.
House Chair

READ and ORDERED PLACED ON FILE.

On motion by Senator **PINGREE** of Knox, Nomination **TABLED** until Later in Today's Session, pending **CONSIDERATION**.

Under suspension of the Rules, all matters thus acted upon were ordered sent down forthwith for concurrence.

REPORTS OF COMMITTEES

House

Divided Report

Eight members of the Committee on **BANKING AND INSURANCE** on Bill "An Act to Establish a Patient's Bill of Rights"

H.P. 543 L.D. 750

Reported in Report "A" that the same **Ought to Pass as Amended by Committee Amendment "A" (H-1061)**.

Signed:

Senators:

LaFOUNTAIN of York
DOUGLASS of Androscoggin

Representatives:

SAXL of Bangor
RICHARDSON of Brunswick
DUDLEY of Portland
O'NEIL of Saco
SULLIVAN of Biddeford
PERRY of Bangor

Three members of the same Committee on the same subject reported in Report "B" that the same **Ought to Pass as Amended by Committee Amendment "B" (H-1062)**.

Signed:

Representatives:

JONES of Pittsfield
NUTTING of Oakland
GLYNN of South Portland

Two members of the same Committee on the same subject reported in Report "C" that the same **Ought to Pass as Amended by Committee Amendment "C" (H-1063)**.

Signed:

Senator:

ABROMSON of Cumberland

Representative:

MAYO of Bath

Comes from the House with Report "A" **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1061)** READ and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1061)**.

Reports **READ**.

Senator **PINGREE** of Knox moved the Senate **ACCEPT** Report "A" **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1061)**, in concurrence.

On further motion by same Senator, **TABLED** until Later in Today's Session, pending the motion by same Senator to **ACCEPT** Report "A" **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1061)**, in concurrence.

Divided Report

The Majority of the Committee on **LABOR** on Bill "An Act Raising the Minimum Wage"

H.P. 253 L.D. 357

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-918)**.

Signed:

MUSE of South Portland
GOODWIN of Pembroke

Senators:

DOUGLASS of Androscoggin
LaFOUNTAIN of York
MILLS of Somerset

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

Signed:

Representatives:

HATCH of Skowhegan
MUSE of South Portland
GOODWIN of Pembroke
FRECHETTE of Biddeford
MATTHEWS of Winslow
SAMSON of Jay

Senator:

MILLS of Somerset

Representatives:

TREADWELL of Carmel
DAVIS of Falmouth
MacDOUGALL of North Berwick
MACK of Standish

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

Comes from the House with the Reports **READ** and Bill and accompanying papers **INDEFINITELY POSTPONED**.

Signed:

Reports **READ**.

Representatives:

TREADWELL of Carmel
DAVIS of Falmouth
MacDOUGALL of North Berwick
MACK of Standish

Senator **PINGREE** of Knox moved the Senate **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in **NON-CONCURRENCE**.

Comes from the House with the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-918)**.

On further motion by same Senator, **TABLED** until Later in Today's Session, pending the motion by same Senator to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in **NON-CONCURRENCE**.

Reports **READ**.

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

On further motion by same Senator, **TABLED** until Later in Today's Session, pending the motion by same Senator to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence.

Senate

Refer to Committee

Pursuant to Joint Order S.P. 1022

Senator **KONTOS** for the Committee on **BUSINESS AND ECONOMIC DEVELOPMENT** on Bill "An Act to Enhance Economic Development in the State of Maine"

S.P. 1078 L.D. 2683

Divided Report

The Majority of the Committee on **LABOR** on Bill "An Act to Ensure Just Cause Termination in Employment"
H.P. 1503 L.D. 2147

Reported that the same be **REFERRED** to the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS**, pursuant to Joint Order S.P. 1022.

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-1024)**.

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

Signed:

REFERRED to the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS**.

Senator:

DOUGLASS of Androscoggin

Sent down for concurrence.

Representatives:

HATCH of Skowhegan
MATTHEWS of Winslow
SAMSON of Jay

Ought to Pass As Amended

Senator DAGGETT for the Committee on **LEGAL AND VETERANS AFFAIRS** on Bill "An Act Relating to Reporting Requirements for Political Action Committees on the Flexibility of the Commission on Governmental Ethics and Election Practices to Assess Fines"

S.P. 1070 L.D. 2663

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (S-666)**.

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

READ ONCE.

Committee Amendment "A" (S-666) **READ** and **ADOPTED**.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-666)**.

Sent down for concurrence.

Divided Report

The Majority of the Committee on **JUDICIARY** on Bill "An Act to Expand a Judge's Powers for Contemptuous Failure to Pay"
S.P. 523 L.D. 1557

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-668)**.

Signed:

Senators:

LONGLEY of Waldo
BENOIT of Franklin

Representatives:

THOMPSON of Naples
BULL of Freeport
LaVERDIERE of Wilton
JACOBS of Turner
MITCHELL of Vassalboro
SCHNEIDER of Durham

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

Signed:

Senator:

TREAT of Kennebec

Representatives:

NORBERT of Portland
PLOWMAN of Hampden
MADORE of Augusta
WATERHOUSE of Bridgton

Reports **READ**.

Senator **LONGLEY** of Waldo moved the Senate **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report.

On further motion by same Senator, **TABLED** until Later in Today's Session, pending the motion by same Senator to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report.

Under suspension of the Rules, 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 Provide Assistance in the Cleanup of the Plymouth Waste Oil Site

H.P. 1672 L.D. 2339
(C "A" H-1040)

This being an Emergency Measure and having received the affirmative vote of 24 Members of the Senate, with no Senators having voted in the negative, and 24 being two-thirds of the entire elected Membership of the Senate, was **PASSED TO BE ENACTED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

Emergency Measure

An Act to Correct the Inadvertent Repeal of the Abandoned Property Disposition Process for Municipalities

H.P. 1845 L.D. 2582
(C "A" H-1000; H "A" H-1085)

This being an Emergency Measure and having received the affirmative vote of 24 Members of the Senate, with no Senators having voted in the negative, and 24 being two-thirds of the entire elected Membership of the Senate, was **PASSED TO BE ENACTED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

Emergency Measure

An Act to Clarify the Enforcement Authority of the Manufactured Housing Board

S.P. 1059 L.D. 2650
(C "A" S-649)

This being an Emergency Measure and having received the affirmative vote of 24 Members of the Senate, with no Senators having voted in the negative, and 24 being two-thirds of the entire elected Membership of the Senate, was **PASSED TO BE ENACTED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

Emergency Measure

An Act Regarding Lifetime Hunting and Fishing Licenses
H.P. 1924 L.D. 2670
(H "A" H-1064)

This being an Emergency Measure and having received the affirmative vote of 25 Members of the Senate, with no Senators having voted in the negative, and 25 being more than two-thirds of the entire elected Membership of the Senate, was **PASSED TO BE ENACTED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

Emergency Mandate

An Act to Revise the Salaries of Certain Kennebec County Officers
H.P. 1933 L.D. 2677

This being an Emergency Measure and having received the affirmative vote of 24 Members of the Senate, with no Senators having voted in the negative, and 24 being two-thirds of the entire elected Membership of the Senate, was **PASSED TO BE ENACTED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

Emergency Resolve

Resolve, to Improve the Quality of Long-term Care Services
H.P. 33 L.D. 42
(C "A" H-1089)

On motion by Senator **CATHCART** of Penobscot, placed on the **SPECIAL APPROPRIATIONS TABLE**, pending **FINAL PASSAGE**, in concurrence.

Emergency Resolve

Resolve to Promote Maine's Dairy Industry
H.P. 1696 L.D. 2402
(S "A" S-562 to C "A" H-858)

This being an Emergency Measure and having received the affirmative vote of 26 Members of the Senate, with no Senators having voted in the negative, and 26 being more than two-thirds of the entire elected Membership of the Senate, was **FINALLY PASSED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

Emergency Mandate

Resolve, for Laying of the County Taxes and Authorizing Expenditures of Kennebec County for the Year 2000
H.P. 1934 L.D. 2678

This being an Emergency Measure and having received the affirmative vote of 27 Members of the Senate, with no Senators having voted in the negative, and 27 being more than two-thirds of the entire elected Membership of the Senate, was **FINALLY PASSED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

Senate at Ease.

Senate called to order by the President.

Acts

An Act to Limit Mandatory Overtime
H.P. 729 L.D. 1019
(S "A" S-630 to C "A" H-893)

An Act to Improve the School Administrative District and Community School District Budget Development and Approval Process
H.P. 949 L.D. 1346
(C "A" H-1079)

An Act Regarding Oil Storage Facilities and Groundwater Protection
H.P. 1731 L.D. 2437
(H "A" H-1049 to C "A" H-877)

An Act to Revise the Law Protecting Farmers' Right to Farm and to Provide for Nutrient Management Plans to be Confidential
H.P. 1861 L.D. 2596
(C "A" H-1069)

An Act to Require Nutrient Management Plans for Fish Hatcheries Except for Aquaculture
S.P. 1052 L.D. 2642
(H "A" H-1051 to C "A" S-629)

An Act Relating to Eligibility for the Elderly Low-cost Drug Program
H.P. 1900 L.D. 2644
(C "A" H-1088)

An Act to Repeal Certain Inactive Boards and Commissions and to Amend Certain Laws Governing Boards and Commissions
H.P. 1932 L.D. 2676
(H "A" H-1091)

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

An Act to Enhance the Enforcement of Civil and Criminal Violations

H.P. 182 L.D. 260
(C "A" H-1056)

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

An Act to Establish the Child Ombudsman Office and Improve Child Protective Procedures

H.P. 397 L.D. 528
(C "A" H-1080)

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

An Act to Amend the Franchise Law

S.P. 681 L.D. 1931
(S "A" S-642 to C "A" S-554)

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

An Act to Expand Pretrial Services for the Bail and Supervision of Criminal Defendants Statewide

H.P. 1446 L.D. 2067
(C "A" H-1070)

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

An Act Concerning Eligibility Requirements for State Employees, Teachers and Participating Local District Employees to Purchase Military Service Credit

H.P. 1649 L.D. 2318
(C "A" H-1075)

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

An Act Regarding Length of Service, Retirement Age and Retirement Benefits for State Police Officers and Certain Other State Employees

S.P. 911 L.D. 2363
(C "A" S-643)

On motion by Senator **O'GARA** of Cumberland, placed on the **SPECIAL HIGHWAY TABLE**, pending **ENACTMENT**, in concurrence.

An Act to Generate Economic Development Through Community Service and Education

H.P. 1761 L.D. 2467
(C "A" H-1083)

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

An Act to Provide Payment for Overtime Amounts Due and to Reimburse for Costs Incurred in an Action to Recover those Amounts

H.P. 1803 L.D. 2530
(C "A" H-1076)

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

An Act to Implement the Recommendations of the Blue Ribbon Commission to Establish a Comprehensive Internet Policy

S.P. 995 L.D. 2557
(C "A" S-632; H "A" H-1050)

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

An Act to Implement the Recommendations of the Court Unification Task Force

H.P. 1829 L.D. 2563
(C "A" H-1081)

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

An Act to Clarify the Tuition Waiver Program for Persons Who Resided in Foster Care as Children

H.P. 1909 L.D. 2657
(H "A" H-1073)

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

Resolves

Resolve, to Require the Board of Environmental Protection and the Maine Land Use Regulation Commission to Adopt Consistent Rules Regarding Cutting and Removal of Vegetation

H.P. 1868 L.D. 2604
(C "A" H-1072)

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

Resolve, to Provide Temporary Relief from the Excise Tax on Diesel Fuel

H.P. 1832 L.D. 2568
(H "A" H-912 to C "A" H-901)

On motion by Senator **CATHCART** of Penobscot, placed on the **SPECIAL APPROPRIATIONS TABLE**, pending **FINAL PASSAGE**, in concurrence.

Under suspension of the Rules, all matters thus acted upon were ordered sent down forthwith for concurrence.

ORDERS OF THE DAY

Unfinished Business

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

The Chair laid before the Senate the following Tabled and Later (2/18/00) Assigned matter:

Bill "An Act to Provide Equity in the Taxation of Public Pensions"
S.P. 989 L.D. 2542

Tabled - February 18, 2000, by Senator **PINGREE** of Knox.

Pending - **PASSAGE TO BE ENGROSSED**

(In Senate, February 18, 2000, **READ A SECOND TIME.**)

Senator **RUHLIN** of Penobscot moved the Bill and accompanying papers be **INDEFINITELY POSTPONED**.

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

Senator **RUHLIN:** Thank you Mr. President. Ladies and gentlemen of the Senate, there are basically two proposals brought before this Senate dealing with giving fair income tax treatment to public pensions. Suggestions were made to improve that so it also included private pensions. The Senate, I believe, very wisely acted in overwhelming bipartisan manner to move that issue forward to the Appropriations process. That having been done, everything that was in that legislation, which now sits on the Appropriations Table, was also included in this. So, it's my feeling, and I believe would be the feeling of any student of the issue, that this legislation is no longer needed and is now superfluous. And that is the meaning and the reason for indefinite postponement, not against the issue. We no longer need this vehicle for the process and I would appreciate your support. Thank you.

On motion by Senator **RUHLIN** of Penobscot, Bill and accompanying papers **INDEFINITELY POSTPONED**.

Sent down for concurrence.

Under suspension of the Rules, all matters thus acted upon were ordered sent down forthwith for concurrence.

The Chair laid before the Senate the following Tabled and Later (4/7/00) Assigned matter:

SENATE REPORTS - from the Committee on **BUSINESS AND ECONOMIC DEVELOPMENT** on Bill "An Act to Provide for the Year 2000 Allocations of the State Ceiling on Private Activity Bonds" (EMERGENCY)

S.P. 1010 L.D. 2578

Majority - **Ought to Pass as Amended by Committee Amendment "A" (S-658)** (7 members)

Minority - **Ought to Pass as Amended by Committee Amendment "B" (S-659)** (6 members)

Tabled - April 7, 2000, by Senator **RAND** of Cumberland.

Pending - **ACCEPTANCE OF EITHER REPORT**

(In Senate, April 7, 2000, Reports **READ.**)

Senator **KONTOS** of Cumberland moved the Senate **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "B" (S-659)** Report.

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

Senator **KONTOS**: Thank you Mr. President. Men and Women of the Senate, before you should be a pink sheet that will help you understand my remarks. To give you a little bit of background information. Every year, as we are allowed to do by the federal government, the State of Maine divides up a \$150 million allocation in tax exempt bonds among the entities that you see listed on the left hand column. Those include the Maine Municipal Bond Bank, the Maine State Housing Authority, the Finance Authority of Maine, MELA which is the Maine Education Loan Authority, MELMAC which is the Maine Educational Loan Marketing Corporation. That \$150 million is distributed by an Issuers' Group which is represented by each of those members plus a representative from the Governor's Office. Every year the committee of jurisdiction, in this case Business and Economic Development, is asked to submit a Bill that reflects the decisions made by that Issuers' Group. What you have before you, in this Bill, is a minor difference between the Minority and the Majority Reports. Frankly, the difference that you'll see is under the MELA column of about \$10 million in calendar year 2001. The reason for that difference is based on a whole lot of work that the committee's done over the last 2 years dealing with our understanding and efforts to reconfigure the Student Lending Association's entities in Maine. As many of you know, and you're aware from articles in the media and probably lobbying efforts in the hallway, these are very challenging issues. My efforts to try to simplify it today may actually confuse you further. So I speak with some anxiety here in my attempt to help you understand what the committee's worked on for 2 years.

In a nutshell, we've been advised to look at this \$150 million allocation and divide it among those entities that deal with issuing bonds for public purposes. The Maine Municipal Bond Bank deals with those public infrastructure projects like sewers and water districts. The Maine State Housing Authority, as you know, deals with housing issues. FAME's bonding in this capacity is for businesses for commercial loans. MELA and MELMAC deal with student lending. All have important public purposes and the committee is then asked to review the Issuers' recommendations and advance those recommendations to both bodies for support. What you see is the allocation for year 2000 and 2001 on the sheet before you. For 2000, for those of you who may not have the sheet in front of you, there is no difference between the 2 reports. All of the members of the committee agree with the Issuers' Group that the Maine Municipal Bond Bank should receive, of that \$150 million tax exempt allocation, \$10 million in each of those 2 calendar years. If you continue reading, the same is true on the next line for the Housing Authority. You'll notice that the reason that the Housing Authority has a larger percentage, a larger share of these tax exempt bonds, is because the Issuers' understand that this is where the private market needs more support from the public issuers'. The crunch right now is on lending for housing rather than some of the other purposes that are identified by these groups. So if you read across with me in that column for calendar year 2000, both reports recommend that \$90 million in the year 2000 and \$40 million of the bond cap in 2001 be allocated to the Housing Authority to issue its bonds. You'll see the same is true for the Finance Authority of Maine for their issuance for business loans; \$25 million for each of those 2 years, 2000 and 2001. If you look down to the next column, you see where the 2 reports differ. I'm asking you to support the Minority Report which gives \$10 million, as is recommended in the Majority Report for the year 2000. In 2001 is where the difference occurs. So, but for that \$10 million, both reports are identical. The reason those of us who signed

onto the Minority Report withheld our approval of that second \$10 million is because in the committee, on another matter that will come before this body, we're looking at restructuring student loan entities. I'm going to ask your support for some very significant reforms in that regard. Based on that, and some concern about a \$10 million carry forward that was decided by the committee for calendar year 1999, it was the judgment of the minority of the committee, 6 members, that we wait another year until we see how these student lending entities have been reorganized and what their demands are. I can go on into greater detail about my rationale for supporting the Minority Report, but at this time of the morning, I think maybe I'll wait and see where there might be questions, Mr. President, and urge you, in the meantime, to support the Minority Report.

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

Senator **MACKINNON**: Thank you Mr. President. Women and Men of the Senate, I rise today to ask you to please defeat the Minority motion and go on to accept the Majority. The good Senator from Cumberland, Senator Kontos, has stated the differences very nicely. I think that we do agree that we should have money going to education. In the background of this is do we give the money to a program up front to guarantee that we can get student loans, or are we going to hold money aside and hope that we get that. Now let me explain that a little bit and I'll try not to go into too much detail. As you know, we have been discussing the very complicated issues of dividing and putting some rules and regulations to make some accountability to certain identities in the state. The report, which we had commissioned from our group, came back and was going to give a loan to the Lenders Program of \$10 million. We had supported that, put money aside for that. That had to be spent by March 15, which is nobody's fault, as much as mine, or anybody else because I did not look at the date and go out and do that. Unfortunately, at this particular time \$10 million is held in question of where it can go. FAME had put this aside. It's looking at it right now to see, legally, if it can be still used for educational purposes. I would like to see and make sure that we have at least \$20 million for the MELA Program for loans to students. If you look at the allocation which we have no control over, my preference obviously is to give more to education, but it's not there. I go along with what they agree to because they are the people who are in the trenches doing this program. What I'm afraid of is if we start bonding out \$10 million only, that we're going to get a lower interest rate. I'm not going to bore you by 8 and 6 and tell you that it's 2% points. But, what we have done is we have taken MELA, set it aside and had a group study this for a year to see if it should go under FAME or not. One of the problems with this is going to be that MELA now has to be self-sufficient and they have to be able to have the money for the running of that program based on their 6 to 8%, or 2%, gain of what they get for their bid process on their bonds. \$10 million is an awful lot to us. To bond banks \$10 million is not an awful lot. We do have a guarantee that we hope will come through that we will be able to get this done at this rate. People that I have talked to in the bond industry have told me that, "Yes, you may get that, but it may come back a lot higher later." What I'm worried about is, if we don't fund this up front, that we may lose the money. The bond allocation group may get together and decide the money should not go to education loans. We're already going on a downward trend for loans to education. I'm afraid if we do this

and it doesn't come forth, which the Minority Report hopes it does. Don't get me wrong. That if that doesn't come through, we've lost \$10 million to the allocation process. There is money set aside at the bottom that can be reallocated. But, if we look at the priorities of the allocation at this particular time, education was not a high priority at that time. In 6 months, in 5 months, I'm not sure what's going to change people's minds to make it a high priority. So I would ask you, at this time, to please defeat that Minority Report, go on to support the Majority Report to put the \$20 million aside as a guarantee. In the Majority Report it says if the \$10 million is given back to FAME, then the money that was allocated will go away. So it is not asking for \$10 million as a back door to trying to get an extra \$10 million. I'm trying to keep this simple, but I'm sure I'm complicating it and making it much more difficult than it is. Please. Thank you.

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

Senator **LONGLEY:** Thank you Mr. President. Colleagues in the Senate, if I can I'll try to simplify it even further for you. A law professor once said write out a law exam like you were writing to a dumb friend. With all due respect, this is a case like when we were kids getting our allowance. There were times when we were being docked that allowance and, in this case, the Featherman Commission all summer looked at and said we recommend zero. We have accountability issues here. And then there are others who say they wanted \$20 or \$25 million. As you can see, the Majority and Minority amendment are competing in between. The Majority amendment says lets give them \$10 million now. We'll be back in January. We can review everything then and take it from there. That's simply what the Majority Report does. It says \$10 million now, even though we have reason to give them nothing, and we'll be back in January. Thank you. So I encourage you to vote for the Majority Report.

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

Senator **MACKINNON:** Thank you Mr. President. Women and men of the Senate, let me just say one more thing on this. The money is going to education. It is not a flow through to one group or another group. This is going in, which it has for 2 years. No money is going to MELMAC from here. So this money is going to go out directly to students on a new process, a new bid process. So it's not holding money back from people who have been bad, or whatever your view is on this. The idea is that we're holding money back from students at this particular time. Thank you.

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

Senator **KONTOS:** Thank you Mr. President. Men and women of the Senate, with all due respect to the good Senator from York who has been extraordinarily helpful on this issue. I would respectfully disagree that either of the proposals does anything to endanger money available for student lending. In fact, one of the details that I didn't mention to you earlier, but I will now, is in the 1999 allocation, student lending received a \$20 million bond cap. Interestingly enough, we learned, just a couple of weeks ago, that of that \$20 million, they only needed to use \$14 million. They reallocated the remaining \$6 million from MELA to MELMAC without any public discussion. No one has demonstrated to me,

and I believe I speak for others on the committee, that there is a risk of not having enough money available for student lending. My suggestion is, in fact, just the opposite. There is a surplus of money available in this process for student lending. So when you support the Minority Report, as I'm suggesting that you do, I want you to do without any fear that anyone could ever accuse you of being opposed to the adequate amount of money for student lending. That simply is not the case. Thank you, Mr. President.

The Chair ordered a Division.

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

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#355)

YEAS: Senators: BERUBE, CAREY, CATHCART, DAGGETT, DOUGLASS, GOLDTHWAIT, KILKELLY, KONTOS, LAFOUNTAIN, LONGLEY, MICHAUD, MURRAY, O'GARA, PARADIS, PENDLETON, PINGREE, RAND, RUHLIN, TREAT, THE PRESIDENT - MARK W. LAWRENCE

NAYS: Senators: ABROMSON, AMERO, BENNETT, BENOIT, DAVIS, FERGUSON, HARRIMAN, LIBBY, MACKINNON, MILLS, MITCHELL, SMALL

ABSENT: Senators: CASSIDY, KIEFFER, NUTTING

20 Senators having voted in the affirmative and 12 Senators having voted in the negative, with 3 Senators being absent, the motion by Senator **KONTOS** of Cumberland to **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "B" (S-659)** Report, **PREVAILED**.

READ ONCE.

Committee Amendment "B" (S-659) **READ** and **ADOPTED**.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "B" (S-659)**.

Sent down for concurrence.

Under suspension of the Rules, all matters thus acted upon were ordered sent down forthwith for concurrence.

The Chair laid before the Senate the following Tabled and Later (4/7/00) Assigned matter:

Mandate

An Act to Clarify Responsibilities for the Maintenance of Veterans' Grave Sites

S.P. 302 L.D. 873
(H "A" H-995 to C "A" S-581)

Tabled - April 7, 2000, by Senator LIBBY of York.

Pending - **ENACTMENT**, in concurrence

(In House, April 6, 2000, **PASSED TO BE ENACTED.**)

(In Senate, April 7, 2000, on motion by Senator GOLDTHWAIT of Hancock, **RULES SUSPENDED, RECONSIDERED PASSAGE TO BE ENGROSSED AS AMENDED**, in concurrence. On further motion by same Senator, **RULES SUSPENDED, RECONSIDERED ADOPTION OF COMMITTEE AMENDMENT "A" (S-581) AS AMENDED BY HOUSE AMENDMENT "A" (H-995)** thereto, in concurrence. On further motion by same Senator, Senate Amendment "A" (S-665) to Committee Amendment "A" (S-581) **READ** and **FAILED ADOPTION**. Committee Amendment "A" (S-581) as Amended by House Amendment "A" (H-995) thereto, **ADOPTED**, in concurrence. Subsequently, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-581) AS AMENDED BY HOUSE AMENDMENT "A" (H-995)** thereto, in concurrence.)

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

Senator **GOLDTHWAIT:** Thank you Mr. President. Ladies and gentlemen of the Senate, I would simply say that if we believe all the things we said about our veterans last night, that we should be funding this mandate. Thank you.

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

On further motion by same Senator, **TABLED** until Later in Today's Session, pending **ENACTMENT**, in concurrence. (Roll Call Ordered)

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

Mandate

An Act to Clarify Responsibilities for the Maintenance of Veterans' Grave Sites

S.P. 302 L.D. 873
(H "A" H-995 to C "A" S-581)

Tabled - April 8, 2000, by Senator **RAND** of Cumberland.

Pending - **ENACTMENT**, in concurrence (Roll Call Ordered)

(In House, April 6, 2000, **PASSED TO BE ENACTED.**)

(In Senate, April 7, 2000, on motion by Senator **GOLDTHWAIT** of Hancock, **RULES SUSPENDED, RECONSIDERED PASSAGE TO BE ENGROSSED AS AMENDED**, in concurrence. On further motion by same Senator, **RULES SUSPENDED, RECONSIDERED ADOPTION OF COMMITTEE AMENDMENT "A" (S-581) AS AMENDED BY HOUSE AMENDMENT "A" (H-995)** thereto, in concurrence. On further motion by same Senator, Senate Amendment "A" (S-665) to Committee Amendment "A" (S-581) **READ** and **FAILED ADOPTION**. Committee Amendment "A" (S-581) as Amended by House Amendment "A" (H-995) thereto, **ADOPTED**, in concurrence. Subsequently, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-581) AS AMENDED BY HOUSE AMENDMENT "A" (H-995)** thereto, in concurrence.)

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#356)

YEAS: Senators: AMERO, BENNETT, BERUBE, CAREY, CATHCART, DAGGETT, DOUGLASS, FERGUSON, KILKELLY, KONTOS, LAFOUNTAIN, LIBBY, MICHAUD, MITCHELL, MURRAY, NUTTING, PARADIS, PENDLETON, PINGREE, RAND, RUHLIN, SMALL, TREAT, THE PRESIDENT - MARK W. LAWRENCE

NAYS: Senators: ABROMSON, BENOIT, DAVIS, GOLDTHWAIT, HARRIMAN, LONGLEY, MACKINNON, MILLS, O'GARA

ABSENT: Senators: CASSIDY, KIEFFER

This being a Mandate, in accordance with the provisions of Section 21 of Article IX of the Constitution, having received the affirmative vote of 24 Members of the Senate, with 9 Senators having voted in the negative, and 24 being 2-thirds of the entire elected Membership of the Senate, was **PASSED TO BE ENACTED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

Under suspension of the Rules, all matters thus acted upon were ordered sent down forthwith for concurrence.

Off Record Remarks

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

NOMINATION - of John Murphy of Fort Kent, for appointment to the Maine Educational Loan Authority.

Tabled - April 8, 2000, by Senator **PINGREE** of Knox.

Pending - **CONSIDERATION**

(In Senate, April 8, 2000, Communication (S.C. 633) from the Committee on **BUSINESS AND ECONOMIC DEVELOPMENT**, **READ** and **ORDERED PLACED ON FILE**.)

The President laid before the Senate the following: "Shall the recommendation of the Committee on **BUSINESS AND ECONOMIC DEVELOPMENT** be overridden?"

In accordance with 3 M.R.S.A., Chapter 6, Section 151, and with Joint Rule 506 of the 119th Legislature, the vote was taken by the Yeas and Nays.

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#357)

YEAS: Senators: None

NAYS: Senators: ABROMSON, AMERO, BENNETT, BENOIT, BERUBE, CAREY, CATHCART, DAGGETT, DAVIS, DOUGLASS, FERGUSON, GOLDTHWAIT, HARRIMAN, KILKELLY, KONTOS, LAFOUNTAIN, LIBBY, LONGLEY, MACKINNON, MICHAUD, MILLS, MITCHELL, MURRAY, NUTTING, O'GARA, PARADIS, PENDLETON, PINGREE, RAND, RUHLIN, SMALL, TREAT, THE PRESIDENT - MARK W. LAWRENCE

ABSENT: Senators: CASSIDY, KIEFFER

No Senator having voted in the affirmative and 33 Senators having voted in the negative, with 2 Senators being absent, and none being less than two-thirds of the Membership present and voting, it was the vote of the Senate that the Committee's recommendation be **ACCEPTED** and the nomination of **John Murphy** of Fort Kent, for appointment to the Maine Educational Loan Authority was **CONFIRMED**.

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

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

NOMINATION - of Bruce N. Schatz of Augusta, for appointment to the Maine Educational Loan Authority.

Tabled - April 8, 2000, by Senator **PINGREE** of Knox.

Pending - **CONSIDERATION**

(In Senate, April 8, 2000, Communication (S.C. 634) from the Committee on **BUSINESS AND ECONOMIC DEVELOPMENT**, **READ** and **ORDERED PLACED ON FILE**.)

The President laid before the Senate the following: "Shall the recommendation of the Committee on **BUSINESS AND ECONOMIC DEVELOPMENT** be overridden?"

In accordance with 3 M.R.S.A., Chapter 6, Section 151, and with Joint Rule 506 of the 119th Legislature, the vote was taken by the Yeas and Nays.

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#358)

YEAS: Senators: None

NAYS: Senators: ABROMSON, AMERO, BENNETT, BENOIT, BERUBE, CAREY, CATHCART, DAGGETT, DAVIS, DOUGLASS, FERGUSON, GOLDTHWAIT, HARRIMAN, KILKELLY, KONTOS, LAFOUNTAIN, LIBBY, LONGLEY, MACKINNON, MICHAUD, MILLS, MITCHELL, MURRAY, NUTTING, O'GARA, PARADIS, PENDLETON, PINGREE, RAND, RUHLIN, SMALL, TREAT, THE PRESIDENT - MARK W. LAWRENCE

ABSENT: Senators: CASSIDY, KIEFFER

No Senator having voted in the affirmative and 33 Senators having voted in the negative, with 2 Senators being absent, and none being less than two-thirds of the Membership present and voting, it was the vote of the Senate that the Committee's recommendation be **ACCEPTED** and the nomination of **Bruce N. Schatz** of Augusta, for appointment to the Maine Educational Loan Authority was **CONFIRMED**.

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

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

NOMINATION - of Michael L. Finnegan of Edgecomb, for appointment as the Executive Director of the Maine State Housing Authority.

Tabled - April 8, 2000, by Senator **PINGREE** of Knox.

Pending - **CONSIDERATION**

(In Senate, April 8, 2000, Communication (S.C. 635) from the Committee on **BUSINESS AND ECONOMIC DEVELOPMENT**, **READ** and **ORDERED PLACED ON FILE**.)

The President laid before the Senate the following: "Shall the recommendation of the Committee on **BUSINESS AND ECONOMIC DEVELOPMENT** be overridden?"

LEGISLATIVE RECORD - SENATE, SATURDAY, APRIL 8, 2000

In accordance with 3 M.R.S.A., Chapter 6, Section 151, and with Joint Rule 506 of the 119th Legislature, the vote was taken by the Yeas and Nays.

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#359)

YEAS: Senators: None

NAYS: Senators: ABROMSON, AMERO, BENNETT, BENOIT, BERUBE, CAREY, CATHCART, DAGGETT, DAVIS, DOUGLASS, FERGUSON, GOLDTHWAIT, HARRIMAN, KILKELLY, KONTOS, LAFOUNTAIN, LIBBY, LONGLEY, MACKINNON, MICHAUD, MILLS, MITCHELL, MURRAY, NUTTING, O'GARA, PARADIS, PENDLETON, PINGREE, RAND, RUHLIN, SMALL, TREAT, THE PRESIDENT - MARK W. LAWRENCE

ABSENT: Senators: CASSIDY, KIEFFER

No Senator having voted in the affirmative and 33 Senators having voted in the negative, with 2 Senators being absent, and none being less than two-thirds of the Membership present and voting, it was the vote of the Senate that the Committee's recommendation be **ACCEPTED** and the nomination of **Michael L. Finnegan** of Edgecomb, for appointment as the Executive Director of the Maine State Housing Authority was **CONFIRMED**.

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

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

NOMINATION - of Margaret S. Haynes of Freeport to the Maine State Housing Authority.

Tabled - April 8, 2000, by Senator **PINGREE** of Knox.

Pending - **CONSIDERATION**

(In Senate, April 8, 2000, Communication (S.C. 636) from the Committee on **BUSINESS AND ECONOMIC DEVELOPMENT, READ and ORDERED PLACED ON FILE.**)

The President laid before the Senate the following: "Shall the recommendation of the Committee on **BUSINESS AND ECONOMIC DEVELOPMENT** be overridden?"

In accordance with 3 M.R.S.A., Chapter 6, Section 151, and with Joint Rule 506 of the 119th Legislature, the vote was taken by the Yeas and Nays.

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#360)

YEAS: Senators: None

NAYS: Senators: ABROMSON, AMERO, BENNETT, BENOIT, BERUBE, CAREY, CATHCART, DAGGETT, DAVIS, DOUGLASS, FERGUSON, GOLDTHWAIT, HARRIMAN, KILKELLY, KONTOS, LAFOUNTAIN, LIBBY, LONGLEY, MACKINNON, MICHAUD, MILLS, MITCHELL, MURRAY, NUTTING, O'GARA, PARADIS, PENDLETON, PINGREE, RAND, RUHLIN, SMALL, TREAT, THE PRESIDENT - MARK W. LAWRENCE

ABSENT: Senators: CASSIDY, KIEFFER

No Senator having voted in the affirmative and 33 Senators having voted in the negative, with 2 Senators being absent, and none being less than two-thirds of the Membership present and voting, it was the vote of the Senate that the Committee's recommendation be **ACCEPTED** and the nomination of **Margaret S. Haynes** of Freeport to the Maine State Housing Authority was **CONFIRMED**.

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

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

NOMINATION - of Elizabeth Horning of Richmond to the Maine State Housing Authority.

Tabled - April 8, 2000, by Senator **PINGREE** of Knox.

Pending - **CONSIDERATION**

(In Senate, April 8, 2000, Communication (S.C. 637) from the Committee on **BUSINESS AND ECONOMIC DEVELOPMENT, READ and ORDERED PLACED ON FILE.**)

The President laid before the Senate the following: "Shall the recommendation of the Committee on **BUSINESS AND ECONOMIC DEVELOPMENT** be overridden?"

In accordance with 3 M.R.S.A., Chapter 6, Section 151, and with Joint Rule 506 of the 119th Legislature, the vote was taken by the Yeas and Nays.

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#361)

YEAS: Senators: None

LEGISLATIVE RECORD - SENATE, SATURDAY, APRIL 8, 2000

NAYS: Senators: ABROMSON, AMERO, BENNETT, BENOIT, BERUBE, CAREY, CATHCART, DAGGETT, DAVIS, DOUGLASS, FERGUSON, GOLDTHWAIT, HARRIMAN, KILKELLY, KONTOS, LAFOUNTAIN, LIBBY, LONGLEY, MACKINNON, MICHAUD, MILLS, MITCHELL, MURRAY, NUTTING, O'GARA, PARADIS, PENDLETON, PINGREE, RAND, RUHLIN, SMALL, TREAT, THE PRESIDENT - MARK W. LAWRENCE

ABSENT: Senators: CASSIDY, KIEFFER

No Senator having voted in the affirmative and 33 Senators having voted in the negative, with 2 Senators being absent, and none being less than two-thirds of the Membership present and voting, it was the vote of the Senate that the Committee's recommendation be **ACCEPTED** and the nomination of **Elizabeth Horning** of Richmond to the Maine State Housing Authority was **CONFIRMED**.

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

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

NOMINATION - of James E. Cassidy of Turner to the Maine State Housing Authority.

Tabled - April 8, 2000, by Senator **PINGREE** of Knox.

Pending - **CONSIDERATION**

(In Senate, April 8, 2000, Communication (S.C. 638) from the Committee on **BUSINESS AND ECONOMIC DEVELOPMENT, READ and ORDERED PLACED ON FILE.**)

The President laid before the Senate the following: "Shall the recommendation of the Committee on **BUSINESS AND ECONOMIC DEVELOPMENT** be overridden?"

In accordance with 3 M.R.S.A., Chapter 6, Section 151, and with Joint Rule 506 of the 119th Legislature, the vote was taken by the Yeas and Nays.

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#362)

YEAS: Senators: None

NAYS: Senators: ABROMSON, AMERO, BENNETT, BENOIT, BERUBE, CAREY, CATHCART, DAGGETT, DAVIS, DOUGLASS, FERGUSON, GOLDTHWAIT, HARRIMAN, KILKELLY, KONTOS, LAFOUNTAIN, LIBBY, LONGLEY, MACKINNON, MICHAUD, MILLS, MITCHELL, MURRAY, NUTTING, O'GARA, PARADIS, PENDLETON,

PINGREE, RAND, RUHLIN, SMALL, TREAT, THE PRESIDENT - MARK W. LAWRENCE

ABSENT: Senators: CASSIDY, KIEFFER

No Senator having voted in the affirmative and 33 Senators having voted in the negative, with 2 Senators being absent, and none being less than two-thirds of the Membership present and voting, it was the vote of the Senate that the Committee's recommendation be **ACCEPTED** and the nomination of **James E. Cassidy** of Turner to the Maine State Housing Authority was **CONFIRMED**.

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

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

NOMINATION - of Joseph E. Tinkham II of South Gardiner, for appointment as the Adjutant General/Commissioner of Defense, Veterans and Emergency Management.

Tabled - April 8, 2000, by Senator **PINGREE** of Knox.

Pending - **CONSIDERATION**

(In Senate, April 8, 2000, Communication (S.C. 639) from the Committee on **LEGAL AND VETERANS AFFAIRS, READ and ORDERED PLACED ON FILE.**)

The President laid before the Senate the following: "Shall the recommendation of the Committee on **LEGAL AND VETERANS AFFAIRS** be overridden?"

In accordance with 3 M.R.S.A., Chapter 6, Section 151, and with Joint Rule 506 of the 119th Legislature, the vote was taken by the Yeas and Nays.

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#363)

YEAS: Senators: None

NAYS: Senators: ABROMSON, AMERO, BENNETT, BENOIT, BERUBE, CAREY, CATHCART, DAGGETT, DAVIS, DOUGLASS, FERGUSON, GOLDTHWAIT, HARRIMAN, KILKELLY, KONTOS, LAFOUNTAIN, LIBBY, LONGLEY, MACKINNON, MICHAUD, MILLS, MITCHELL, MURRAY, NUTTING, O'GARA, PARADIS, PENDLETON, PINGREE, RAND, RUHLIN, SMALL, TREAT, THE PRESIDENT - MARK W. LAWRENCE

ABSENT: Senators: CASSIDY, KIEFFER

No Senator having voted in the affirmative and 33 Senators having voted in the negative, with 2 Senators being absent, and none being less than two-thirds of the Membership present and voting, it was the vote of the Senate that the Committee's recommendation be **ACCEPTED** and nomination of **Joseph E. Tinkham II** of South Gardiner, for appointment as the Adjutant General/Commissioner of Defense, Veterans and Emergency Management was **CONFIRMED**.

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

The Chair laid before the Senate the following Tabled and Later (4/7/00) Assigned matter:

SENATE REPORTS - from the Committee on **LABOR** on Bill "An Act to Establish a Method of Determining Employer Contributions to the Unemployment Compensation Trust Fund"
S.P. 1019 L.D. 2588

Majority - **Ought to Pass as Amended by Committee Amendment "A" (S-650)** (8 members)

Minority - **Ought to Pass as Amended by Committee Amendment "B" (S-651)** (5 members)

Tabled - April 7, 2000, by Senator **RAND** of Cumberland.

Pending - motion by same Senator to **RECONSIDER** whereby the Senate **FAILED** to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-650)** Report

(In Senate, April 7, 2000, motion by Senator **LAFOUNTAIN** of York to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-650)** Report **FAILED**.)

On motion by Senator **RAND** of Cumberland, the Senate **RECONSIDERED** whereby it **FAILED** to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-650)** Report.

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

THE PRESIDENT: The Chair recognizes the Senator from Somerset, Senator **Mills**.

Senator **MILLS:** Mr. President. Men and women of the Senate, just as a quick reminder of the issues we debated or discussed at some length last evening. The difference between the 2 reports is largely in the existence of a sunset in Report "A", the one that lies before us in the current motion. The sunset would mean that the rather automatic feedback mechanism, that is contained within this very intelligently thought out law, would remain operative for only one year and then be dismissed and no longer brought into play unless the legislature, in another year, enacted a new law. The legislature certainly will meet next year and if there is a change that seems to be necessary to this highly

refined and very well thought out proposal, then certainly the next legislature may develop the competence to address the need for alteration or amendment. But to say that the system, which is designed to be a permanent system to be used from year to year to year; to say that we should enact this system for one year only and let it self-destruct, with the idea that, maybe, the next legislature, in its wisdom, will figure out what to do, to either reenact it or to do what have you, is really folly. There has been a tremendous amount of work that's gone into designing this system. This is the final piece of it. If it needs amendment in future years, future legislators certainly can develop the expertise to address it. It is for that reason that I argued yesterday and argue again this morning that we should oppose the pending motion, vote no so that we can adopt Report "B" which has no sunset in it. Thank you.

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

Senator **DOUGLASS:** Mr. President. Men and women of the Senate, yesterday we did discuss the facts of this report, Report "A". They are that the Majority Report incorporates the recommendation of the Department of Labor. It is true that many long days, in fact months, were spent by the department in setting forth a proposal and that is the proposal that is incorporated in the Majority Report. The good Senator from Somerset, Senator **Mills**, suggested that there wasn't much difference between the 2 reports other than a sunset provision. I must vehemently disagree with that characterization and tell you that if you look at the reports you will see right there, on page 2 of each report, that the scenarios are, in fact, different. I tried my very best to make this simple. It is still difficult to do that. But I can tell you that in the case of a recession, the Majority Report is the one that will ask the least increase from employers while the Minority Report will, in fact, up the rates for those employers. And that's just one of at least 3 different aspects of the mechanism that was analyzed by the Department of Labor. Another one is how well funded the loan system is and a variety of other measures. It was their final recommendation that was incorporated into the Majority Report. I think I will leave it at that and ask you to vote for the Majority Report.

THE PRESIDENT: The pending question before the Senate is the motion by the Senator from Androscoggin, Senator **Douglass** to Accept the Minority Ought to Pass as Amended by Committee Amendment "A" (S-650) 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 (#364)

YEAS: Senators: **BERUBE, CAREY, CATHCART, DAGGETT, DOUGLASS, KILKELLY, KONTOS, LAFOUNTAIN, LONGLEY, MICHAUD, MURRAY, NUTTING, O'GARA, PARADIS, PENDLETON, PINGREE, RAND, RUHLIN, TREAT, THE PRESIDENT - MARK W. LAWRENCE**

NAYS: Senators: ABROMSON, AMERO, BENNETT, BENOIT, DAVIS, FERGUSON, GOLDTHWAIT, HARRIMAN, LIBBY, MACKINNON, MILLS, MITCHELL, SMALL

ABSENT: Senators: CASSIDY, KIEFFER

20 Senators having voted in the affirmative and 13 Senators having voted in the negative, with 2 Senators being absent, motion by Senator **LAFOUNTAIN** of York to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-650)** Report, **PREVAILED**.

READ ONCE.

Committee Amendment "A" (S-650) **READ** and **ADOPTED**.

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

On motion by Senator **MILLS** of Somerset, the Senate **RECONSIDERED** whereby it **ADOPTED** Committee Amendment "A" (S-650).

On further motion by same Senator, Senate Amendment "A" (S-677) to Committee Amendment "A" (S-650) **READ**.

THE PRESIDENT: The Chair recognizes the Senator from Somerset, Senator Mills.

Senator **MILLS:** Mr. President. The amendment that lies before you does only one thing to the Committee Amendment that we have just adopted. It strikes out the sunset provisions. It would leave in the feedback mechanism that the good Senator from Androscoggin has said is superior to the one contained in Report "B". It leaves in that system which, is true, was the recommendation from the Department of Labor. We could argue. It's a very arcane argument, to get into a discussion about whether one feedback system is superior to the other. But it is true that the feedback system that is in Report "A", which we've just adopted, does impose softer impacts on the economy, fewer decreases in tax as the economy improves; fewer increases in the tax as the economy goes down. There are some merits to that system. So if you vote yes on the pending Senate Amendment, all that it will do will be to acknowledge the report which the Senator from Androscoggin has praised and get rid of the sunset. Now, some of you may ask why is there any sunset in this Bill at all? What is going on here? The reality of the situation is that there's a sunset that's imposed in order to reopen the entire Unemployment Compensation System next year, to explore whether there should be benefit shifts, benefit changes, or restructuring of the benefit system. Now that can be done. We can address proposed benefit changes, just as we address every year proposed benefit changes in the Workers Compensation System. Just as we address proposed benefit changes in many other areas of the law, health insurance and the like. But it isn't necessary to hold the entire system hostage in order to have an intelligent conversation and debate about what benefits ought to be adjusted, or changed, or altered.

The history of this Bill is this. A year ago, in order to get this system fixed; in order to repair this fractured system that had been in hopeless deadlock for 20 years, labor did come to the table and they made at least 3 benefit concessions, that I'm

aware of, that reduced the cost of the system slightly. They were benefit concessions, I suggest, that they could afford to give up because they were the least easy to defend, I would suggest to you. But, business also came to that table and acknowledged their willingness to be taxed at a rate, that they acknowledged an increase of tax, or they went along with an increase of tax, that far outstripped the cost of the benefit changes that were made. So, in order to make the system solvent, the business side of the equation contributed roughly twice as much, if not more, than was conceded on the labor side with benefit concessions. All I'm trying to point out is that both sides have come to the table to try to put this system on an even keel and float it out there so that it can be left alone to work for the decades that come in this millennium that we've just entered into. So that we won't have to revisit the fundamental structure of this system. Now, we can address benefits without changing the whole structure of the system. And if people have benefit changes to propose, as they surely will in the next legislature, we can have a discussion about those. But we should not have that discussion in the context of trying to hold the whole system hostage to that dialogue. So by voting yes on the Senate amendment that's before you, it will go along with the Majority Report in terms of setting the kinds of feedback system that we should have as a permanent feature, or permanent element, of the structure of this system, but it would also make it permanent until changed by another legislature. It will set the system afloat and remove the sunset provision that will only require us to revisit this entire painful subject in another legislature with less informed people, I might suggest, than those that we have today. For that reason, I urge you to vote yes on the pending Senate Amendment. Thank you.

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

Senator **DOUGLASS:** Mr. President. Women and men of the Senate, I urge you to defeat the pending motion and ask for a division when it is appropriate. The Senator from Somerset, the good Senator Mills, suggested that the sunset provision on this, the Majority Report, would hold us hostage. I find that word to be quite inappropriate. It is certainly not what is intended by the Majority Report and it is not, in effect, what will happen. Instead, the provision allows for review, in the year 2002, of what happens under the unemployment compensation solvency laws that we worked on so diligently for the last 2 years. This particular part of the unemployment compensation laws relates only to the number of months of payments that are collected and to the maximum amount that is collected from employers. It does not relate to other aspects of the unemployment compensation laws. It's very appropriate to step back and look at that system in the year 2002, or as we approach it, because for 6 years this fund was in very deep trouble. The Unemployment Division of our Department of Labor worked very hard to make sure that their solutions, and the solutions that the legislature adopted, would solve the problems that the Unemployment Compensation Fund was having. I think that worked. That the laws we passed will do that. Nevertheless, we ought to guarantee that by looking at the measure again. This is a checkpoint. It's a matter of confidence for us. If we take the time to address the issue again, that is, in fact, a very positive thing to do. I urge you to defeat the pending motion.

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

Senator **RAND**: Thank you Mr. President. Men and women of the Senate, I urge you to reject this amendment. I base that on the fact that I have been looking at, or involved with, this particular problem since I first came to the legislature 14 years ago. One of the major problems, one of the major reasons, why our Unemployment Compensation Fund got into the mess it was in, and it still now is, well, it's a lot better than it was, but it's still a little shaky. One of the main reasons was the legislatures refusal to address this issue. In good times there's a great deal of political pressure, needless to say, that comes from all the parties involved here and the legislature, in past years, has refused to act until the situation reached the crisis point it did a year or 2 ago. The arguments are that in good times for employment, and for business, and for economic improvement, there is no need because unemployment is very low. There's no need to address the problem. And, then in bad economic times the hue and cry, and I have to say it is probably in many instances justified, the hue and cry is, "Oh, we can't address this issue right now even though the fund is in perilous shape and we have to lay off workers because we cannot afford a higher tax to be put into this fund." I believe the sunset was an extremely wise move. It forces the legislature to look at something that, quite frankly, is a political hot potato, especially during bad economic times. Well, we have no guarantees. God willing and hopefully the economic improvements we've seen will continue and, hopefully, even improve. And unemployment, not only in the southern part of the state, will remain low but the unemployment figures will be addressed in the rest of the state. That is all of our hope. But the fact is, because this is such a politically delicate issue to deal with, I think the wisest thing the 119th Legislature can do is to build in this mechanism, this sunset, to force the legislature to look at this situation in the year 2003. I urge you to reject this amendment. Thank you.

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

Senator **DOUGLASS**: Mr. President. Women and men of the Senate, there was one point that I forgot to mention in my earlier remarks to you and that is, in this body, a piece of paper was circulated by various business entities. I think the Maine Chamber of Commerce; NFIB, National Federation of Independent Businesses, and a variety of other groups circulated a paper urging you not to accept the Majority Report. That paper suggested that there were benefit increases in the Majority Report. That is absolutely not true. I just wanted to make sure that the record is very clear on that matter and that you are clear on that as well. And I do, again, urge you to defeat the pending motion.

The Chair ordered a Division.

On motion by Senator **PINGREE** of Knox, supported by a Division of at least one-fifth of the members present and voting, a Roll Call was ordered.

On further motion by same Senator, **TABLED** until Later in Today's Session, pending the motion by Senator **MILLS** of Somerset to **ADOPT** Senate Amendment "A" (S-677) to Committee Amendment "A" (S-650). (Roll Call Ordered)

The Chair laid before the Senate the following Tabled and Later (4/6/00) Assigned matter:

SENATE REPORTS - from the Committee on **CRIMINAL JUSTICE** on Bill "An Act to Prohibit Persons Under 21 Years of Age from Purchasing Handguns"

S.P. 1005 L.D. 2573

Majority - **Ought Not to Pass** (7 members)

Minority - **Ought to Pass as Amended by Committee Amendment "A" (S-611)** (6 members)

Tabled - April 6, 2000, by Senator **PINGREE** of Knox.

Pending - motion by Senator **MURRAY** of Penobscot to **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED** Report

(In Senate, April 6, 2000, motion by Senator **MURRAY** of Penobscot to **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED** Report **FAILED**. Subsequently, the Majority **OUGHT NOT TO PASS** Report **ACCEPTED**. On motion by Senator **DAGGETT** of Kennebec, **RECONSIDERED ACCEPTANCE** of the Majority **OUGHT NOT TO PASS** Report. On further motion by same Senator **RECONSIDERED** whereby the Senate **FAILED** to **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED** Report.)

Senator **AMERO** of Cumberland requested a Division.

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

Senator **MURRAY**: Thank you Mr. President. Men and Women of the Senate, very briefly. As you may recall from the other evening, this is the Bill dealing with juveniles and the sale of handguns to juveniles. I had mentioned to you, the other day, that I have drafted an amendment that I hope I have an opportunity to present to you. I would ask that we accept the pending motion to accept the Ought to Pass Report so that we'll have an opportunity to present an amendment and discuss its merits. So I would urge you to vote "yes".

At the request of Senator **AMERO** of Cumberland a Division was had. 21 Senators having voted in the affirmative and no Senators having voted in the negative, the motion by Senator **MURRAY** of Penobscot to **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED** Report, **PREVAILED**.

READ ONCE.

Committee Amendment "A" (S-611) **READ**.

On motion by Senator **MURRAY** of Penobscot, Senate Amendment "A" (S-653) to Committee Amendment "A" (S-611) **READ**.

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

Senator **MURRAY**: Thank you Mr. President. Men and women of the Senate, let me begin by thanking all of you for your indulgence and providing me the opportunity to present this amendment. As you may recall, briefly, from the other day, when we discussed this matter, initially the Bill that was reported out of the committee is aimed at focusing on the unlawful transfer of handguns to juveniles by either a federally licensed dealer, or anyone else. I described to you, at that time, that the Bill, if adopted by the State of Maine, would mirror the federal law precisely, which currently makes that conduct of transferring a handgun unlawful. And I also pointed out at that time that there were exceptions in both federal law and in state law that we were proposing to allow for the transfer of handguns for the purposes of hunting and target practice, if the permission of the parents were granted. All those exceptions still remain. It was brought to my attention by an individual in the Senate, the good Senator from Penobscot, Senator Ruhlin, who had concerns about how unclear that exception was. I thank him for pointing out the issue that was of concern to him. The proposed amendment, that is now before us, is meant to strengthen and clarify that exception to the law that we would be adopting. Specifically, the exception that now exists in federal law makes reference to this transfer for these purposes of either hunting, etc.. It includes the word "temporary transfer" in the federal law and this amendment would take out that word "temporary" to make it clear that any transfer by an individual that falls within these exceptions would remain an exception under the state law. The amendment before you also takes out some references, again which appear in the federal law, that deal with the transport of an unloaded handgun in a locked container. It really doesn't effect, or have any real meaning, to put this in the law that deals with the conduct we're really looking at, which is the unlawful sale or transfer of these handguns. So it doesn't make much sense to include this provision dealing with how you transport an unloaded handgun. The amendment before us does those two things, it removes the word "temporary" as it relates to the transfer and it also removes the provision dealing with how you transport an unloaded handgun in a locked container. Again, I think it strengthens the exception and makes it very clear what we're talking about here. I think it's a good amendment and yet it doesn't, in any way, gut what we are attempting to do, which is to mirror the federal law in making the conduct of selling or transferring a handgun to be unlawful when we're talking about a sale to a juvenile. So I would urge your adoption of this amendment so that we can move on and adopt the Bill as amended. Thank you.

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

Senator **RUHLIN**: Thank you Mr. President. Ladies and gentlemen of the Senate, first of all I want to thank the sponsor, or the presenter, of the Bill, the chair of the committee, the good Senator from Penobscot, for listening to the concerns and trying to address those in this amendment. I just want to put on the record, very briefly, that it is my understanding, from helping to bring up the concerns in this amendment and reading the amendment and comparing it to both state and federal law, that this, and I do want it clear in the record, does not impinge, nor does it negatively impact on, existing possession rights of minors within the State of Maine to possess a side arm for the purposes of two cases. One case, to buy themselves for the purposes of hunting, target shooting, employment etc.; and the other being that possession with consent from their parent or guardian.

That's my understanding. I believe the amendment does that. I am pleased to support the amendment and the amended Bill because of that. Thank you.

On motion by Senator **BENNETT** of Oxford, **TABLED** until Later in Today's Session, pending the motion by Senator **MURRAY** of Penobscot to **ADOPT** Senate Amendment "A" (S-653) to Committee Amendment "A" (S-611).

Off Record Remarks

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

REPORTS OF COMMITTEES

House

Ought to Pass

The Committee on **EDUCATION AND CULTURAL AFFAIRS** on Bill "An Act to Extend the Use of Emotional Disability as an Indicator in the Identification of Exceptional Children" H.P. 1858 L.D. 2593

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.

The Committee on **HEALTH AND HUMAN SERVICES** on Resolve, Regarding Legislative Review of Chapter 1: Rights of Recipients of Mental Health Services Who are Children in Need of Treatment, Section A-VII, Rights to Due Process With Regard to Grievances and Section A-IX, Confidentiality of and Access to Mental Health Records, a Major Substantive Rule of the Department of Mental Health, Mental Retardation and Substance Abuse Services (EMERGENCY) H.P. 1910 L.D. 2658

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

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

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

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

The Committee on **UTILITIES AND ENERGY** on Bill "An Act Concerning Certain Contracts Affected by Electric Industry Restructuring" (EMERGENCY)

H.P. 1937 L.D. 2680

Reported that the same **Ought to Pass**, pursuant to Public Law 1997, chapter 316, section 12.

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.

Under suspension of the Rules, all matters thus acted upon were ordered sent down forthwith for concurrence.

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

REPORTS OF COMMITTEES

House

Ought to Pass As Amended

The Committee on **EDUCATION AND CULTURAL AFFAIRS** on Resolve, to Establish a Commission to Study Teacher Recruitment and Retention

H.P. 1658 L.D. 2327

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (H-1097)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Resolve **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1097)**.

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

READ ONCE.

Committee Amendment "A" (H-1097) **READ** and **ADOPTED**, in concurrence.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1097)**, in concurrence.

The Committee on **HEALTH AND HUMAN SERVICES** on Resolve, Regarding Legislative Review of Portions of Sections 61, 62, 63, 68 and 73 of 10-49, Chapter 5, Bureau of Elder and Adult Services Policy Manual, a Major Substantive Rule of the Department of Human Services (EMERGENCY)

H.P. 1913 L.D. 2659

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (H-1099)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Resolve **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1099)**.

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

READ ONCE.

Committee Amendment "A" (H-1099) **READ** and **ADOPTED**, in concurrence.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1099)**, in concurrence.

The Committee on **UTILITIES AND ENERGY** on Bill "An Act to Encourage Energy Efficiency in Government Facilities"

H.P. 1740 L.D. 2446

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (H-1098)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1098)**.

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

READ ONCE.

Committee Amendment "A" (H-1098) **READ** and **ADOPTED**, in concurrence.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1098)**, in concurrence.

Under suspension of the Rules, all matters thus acted upon were ordered sent down forthwith for concurrence.

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

PAPERS FROM THE HOUSE

Non-Concurrent Matter

Bill "An Act to Amend and Clarify the Powers and Duties of the Lake Arrowhead Community, Incorporated" (EMERGENCY)
S.P. 1061 L.D. 2655

In Senate, April 5, 2000, **PASSED TO BE ENGROSSED.**

Comes from the House, **PASSED TO BE ENGROSSED AS AMENDED BY HOUSE AMENDMENT "A" (H-1090).**

On motion by Senator **PENDLETON** of Cumberland, the Senate **RECEDED** and **CONCURRED.**

Non-Concurrent Matter

HOUSE REPORTS - from the Committee on **NATURAL RESOURCES** on Bill "An Act to Eliminate the Use of MTBE in Maine"

H.P. 11 L.D. 21
(C "B" H-1068)

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-1067)** (9 members)

Minority - **Ought to Pass as Amended by Committee Amendment "B" (H-1068)** (4 members)

In House, April 6, 2000, the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1067)** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1067).**

In Senate, April 7, 2000, the Minority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "B" (H-1068)** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "B" (H-1068), in NON-CONCURRENCE.**

Comes from the House, that Body **ADHERED.**

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

Under suspension of the Rules, all matters thus acted upon were ordered sent down forthwith for concurrence.

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

REPORTS OF COMMITTEES

House

Divided Report

The Majority of the Committee on **CRIMINAL JUSTICE** on Bill "An Act to Amend the Unlawful Sexual Contact Penalties"
H.P. 1926 L.D. 2672

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

Signed:

Senators:

MURRAY of Penobscot
O'GARA of Cumberland
DAVIS of Piscataquis

Representatives:

SHERMAN of Hodgdon
TOBIN of Dexter
POVICH of Ellsworth
PEAVEY of Woolwich
MUSE of South Portland

The Minority of the same Committee on the same subject reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-1101).**

Signed:

Representative:

FRECHETTE of Biddeford

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

Reports **READ.**

On motion by Senator **PINGREE** of Knox, the Majority **OUGHT NOT TO PASS** Report **ACCEPTED**, in concurrence.

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

REPORTS OF COMMITTEES

House

Divided Report

The Majority of the Committee on **LABOR** on Bill "An Act to Change the State Retirement System from a Defined Benefit Plan to a Defined Contribution Plan"

H.P. 1484 L.D. 2124

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

Signed:

Senators:

DOUGLASS of Androscoggin
LaFOUNTAIN of York
MILLS of Somerset

Representatives:

HATCH of Skowhegan
GOODWIN of Pembroke
MATTHEWS of Winslow
SAMSON of Jay
DAVIS of Falmouth

The Minority of the same Committee on the same subject reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-1094)**.

Signed:

Representatives:

TREADWELL of Carmel
MacDOUGALL of North Berwick
MACK of Standish

Comes from the House with the Reports **READ** and Bill and accompanying papers **INDEFINITELY POSTPONED**.

Reports **READ**.

On motion by Senator **DOUGLASS** of Androscoggin, the Majority **OUGHT NOT TO PASS** Report **ACCEPTED**.

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

REPORTS OF COMMITTEES

House

Divided Report

The Majority of the Committee on **TAXATION** on Bill "An Act to Modify Adjustments in Property Valuation" (EMERGENCY)
H.P. 1887 L.D. 2626

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-1095)**.

Signed:

Senators:

RUHLIN of Penobscot
MILLS of Somerset
DAGGETT of Kennebec

Representatives:

GAGNON of Waterville
DAVIDSON of Brunswick
COLWELL of Gardiner
STANLEY of Medway
LEMOINE of Old Orchard Beach

LEMONT of Kittery
MURPHY of Berwick

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

Signed:

Representative:

CIANCHETTE of South Portland

Comes from the House with Reports **READ** and Bill and accompanying papers **INDEFINITELY POSTPONED**.

Reports **READ**.

Senator **RAND** of Cumberland moved the Senate **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in **NON-CONCURRENCE**.

Senator **MILLS** of Somerset moved the Bill and accompanying papers be **INDEFINITELY POSTPONED**, in concurrence.

THE PRESIDENT: The Chair recognizes the Senator from Somerset, Senator Mills.

Senator **MILLS:** Mr. President. As I recall, and I am open to correction by any other member of the committee, but this was a Bill passed to accommodate the City of Westbrook. The committee received a letter from the City of Westbrook saying that there had been an unexpected and highly favorable development in the balance of their Property Assessment Account for this year and thus the legislation, which we overwhelmingly endorsed in their behalf, is no longer necessary. You will note the action of the other body in this regard as well. For that reason, on behalf of the committee, I move that this Bill and all of its papers be Indefinitely Postponed.

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

Senator **RAND:** Thank you Mr. President. I appreciate the explanation of the good Senator from Somerset, Senator Mills, and urge you to support his motion.

THE PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator O'Gara.

Senator **O'GARA:** Only briefly, just in case there's any question, I certainly endorse the motion. We are very happy that they were willing to consider us, but we don't need them any more. Thank you.

On motion by Senator **MILLS** of Somerset, Bill and accompanying papers **INDEFINITELY POSTPONED**, in concurrence.

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

REPORTS OF COMMITTEES

Senate

Ought to Pass As Amended

Senator PARADIS for the Committee on **HEALTH AND HUMAN SERVICES** on Bill "An Act to Ensure the Availability of Home-based Care"

S.P. 447 L.D. 1322

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (S-678)**.

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

READ ONCE.

Committee Amendment "A" (S-678) **READ** and **ADOPTED**.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-678)**.

Sent down for concurrence.

Senator PARADIS for the Committee on **HEALTH AND HUMAN SERVICES** on Bill "An Act to Eliminate the Discriminatory Tax on the Electronic Filing of Prescription Drug Reimbursement"

S.P. 929 L.D. 2379

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (S-679)**.

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

READ ONCE.

Committee Amendment "A" (S-679) **READ** and **ADOPTED**.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-679)**.

Sent down for concurrence.

Under suspension of the Rules, all matters thus acted upon were ordered sent down forthwith for concurrence.

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

ORDERS

Joint Resolution

On motion by Senator FERGUSON of Oxford (Cosponsored by Representative CAMPBELL of Holden and Senators: BENOIT of Franklin, CASSIDY of Washington, GOLDTHWAIT of Hancock, MacKINNON of York, RUHLIN of Penobscot, Representative: GAGNE of Buckfield), the following Joint Resolution:
S.P. 1081

JOINT RESOLUTION RECOGNIZING CITIZENS OF SCOTTISH DESCENT

WHEREAS, the contributions of Maine's citizens of Scottish descent to the history, culture and prosperity of the State are numerous and widespread; and

WHEREAS, it is entirely appropriate that Maine's Scottish-Americans, past and present, be recognized annually for the vital roles they play and have played throughout the history of the State; and

WHEREAS, the month of September, during which the Scots under William Wallace asserted their independence by defeating the British at Stirling Bridge in 1297, is an especially appropriate time to celebrate Scottish-American heritage; now, therefore, be it

RESOLVED: That We, the Members of the One Hundred and Nineteenth Legislature now assembled in the Second Regular Session, hereby designate the month of September 2000 as Scottish-American Heritage Month and urge the citizens of Maine to reflect on and celebrate the manifold contributions of Scottish-Americans to the strength and vitality of the State; and be it further

RESOLVED: That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to the Saint Andrew's Society of Maine.

READ.

THE PRESIDENT: The Chair recognizes the Senator from Oxford, Senator Ferguson.

Senator **FERGUSON:** Thank you very much Mr. President. Ladies and gentlemen of the Senate, a couple of days ago some of you may have heard some bagpipe music around the State House and in the rotunda. The St. Andrews Society of Maine was here. The President of the Society, Warren Blake, asked me if I would be willing to sponsor this Joint Resolution. I'm very please to do that. I'm of Scottish descent myself, as maybe some of you know. In any event, here it is and I hope that it will be approved. Thank you very much.

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

Senator **BENOIT:** Thank you Mr. President. May it please the Senate. Je m'appelle John Benoit. You probably wonder why a Frenchman would want to sign on to a sentiment of Scottish descendants. There is a method to my madness, Judy and I are both avid golfers. A week from today, picture us at Bay Tree in North Myrtle Beach on the first tee. In order to go to Scotland, which we plan to do sometime, and play St. Andrews, you notice

the resolve mentioned St. Andrews, you have to make a tee time a whole year in advance. When they get this resolution with my name on it there'll be no problem. Thank you.

ADOPTED.

Sent down for concurrence.

Under suspension of the Rules, all matters thus acted upon were ordered sent down forthwith for concurrence.

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

Senator **CAREY** of Kennebec was granted unanimous consent to address the Senate off the Record.

Off Record Remarks

Senator **BENOIT** of Franklin was granted unanimous consent to address the Senate off the Record.

Off Record Remarks

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

On motion by Senator **RAND** of Cumberland, **RECESSED** until 1:15 in the afternoon.

After Recess

Senate called to order by the President.

ORDERS OF THE DAY

The Chair laid before the Senate the following Tabled and Later (4/7/00) Assigned matter:

Bill "An Act to Prohibit Hunting Animals in Enclosed Areas"
S.P. 457 L.D. 1332

Tabled - April 7, 2000, by Senator **RUHLIN** of Penobscot.

Pending - **ADOPTION OF COMMITTEE AMENDMENT "A" (S-655)**

(In Senate, April 7, 2000, the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED. READ ONCE.** Committee Amendment "A" (S-655) **READ.**)

On motion by Senator **KILKELLY** of Lincoln, Senate Amendment "B" (S-681) to Committee Amendment "A" (S-655) **READ** and **ADOPTED.**

Committee Amendment "A" (S-655) as Amended by Senate Amendment "B" (S-681) thereto, **ADOPTED.**

PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-655) AS AMENDED BY SENATE AMENDMENT "B" (S-681) thereto.

Under suspension of the Rules, ordered sent down forthwith for concurrence.

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

HOUSE REPORTS - from the Committee on **BANKING AND INSURANCE** on Bill "An Act to Establish a Patient's Bill of Rights"

H.P. 543 L.D. 750

Report "A" - **Ought to Pass as Amended by Committee Amendment "A" (H-1061)** (8 members)

Report "B" - **Ought to Pass as Amended by Committee Amendment "B" (H-1062)** (3 members)

Report "C" - **Ought to Pass as Amended by Committee Amendment "C" (H-1063)** (2 members)

Tabled - April 8, 2000, by Senator **PINGREE** of Knox.

Pending - motion by same Senator to **ACCEPT** Report "A", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1061)**, in concurrence

(In House, April 7, 2000, Report "A", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1061)** **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1061).**)

(In Senate, April 8, 2000, Reports **READ.**)

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

Senator **LAFOUNTAIN:** Thank you Mr. President. Men and women of the Senate, today is an important day in this chamber for the consumers of health insurance in Maine. While Congress continues to disagree about what to include in a Federal Patient Bill of Rights, Maine has the opportunity today to establish

greater protection and provisions that assist consumers of health insurance. Thirteen months ago the Banking and Insurance Committee commenced hearings on 7 bills dealing with the issues of external review, Patient Bill of Rights, and protections for health care consumers in Maine. Public hearings were held on this issue in Augusta, in Bangor, in Biddeford, and in Lewiston, and numerous work sessions were held by the committee to discuss this important piece of legislation. A credible Bill has been crafted by the majority of the committee that, in my opinion, restores the doctor-patient relationship which has become increasingly severed by insurance companies with a primary motivation of profit. Health care has changed during this quarter-century, creating new structures and relationships, both financial and personal. In today's market, doctors no longer charge patients. Patients no longer pay doctors. And, unfortunately, neither determines what is medically necessary. There is a Majority Report before you which I ask your support for. While novel to Maine, it is not novel to other parts of this country. Many states have adopted provisions similar to what you have before you today with no adverse consequences to their health care delivery system. Today is the day for Maine to shift control and take control by restoring the importance of the doctor-patient relationship lost so many years ago.

As I indicated to you, the committee worked very hard and we actually had a consensus, a unanimous consensus, that a Patient Bill of Rights was necessary in Maine. All 13 people believed, as you can see from your calendar, all 13 support an Ought to Pass, but we do have some minor differences. There were essentially 15 issues that were discussed by the committee as a result of the 7 Bills that were presented. Some we dismissed as not being plausible, or fitting into, what we want to craft as a Patient Bill of Rights. What you have before you are the 10 issues that the majority believed were important to include. Of those 10, there are 9 issues that everyone on the committee agreed to. The last, the difference being, the Right to Sue. Many things that we included in the Majority Report are actually already in existence in Maine through what we call the Bureau of Insurance Rule 850. We have taken that from rule and placed that into statute. In addition, the committee addressed the issue of clinical trials and have placed in the Majority Report an aspect that includes insurance coverage for individuals, who are suffering from some life threatening conditions, access to important clinical trials. We also address the issue of formularies, and we believe that doctors out there in the networks, that you and other people in Maine subscribe to, should have input into what drugs are included on a formulary. One of the most important things that this Bill does is create a process whereby you and I and the consumers of Maine of health insurance can receive a fair shot if an insurance carrier denies coverage to you for any certain condition. Under current law, if an insurance carrier denies you coverage in a certain area you can appeal internally and the insurance company will review the situation and advise you one way or the other. If they do not rule in your favor, you're entitled to a second appeal internally with the insurance carrier. They'll review the situation again and if they deny you, you have no place else to go. What we have crafted is a process known as external review. Actually external review is sweeping the nation and is what we saw in our public hearing. I believe two of our insurance carriers, HMOs, in Maine, have already instituted provisions dealing with external review. What that calls for is: once an insurance carrier has denied you in your two internal appeals, you have the right to have someone independent of the insurance carrier examine your situation and

rule one way or the other. And that process will be developed through rules by the Bureau of Insurance. This is a first for Maine consumers. You now have someplace else to go once you are denied by your carrier. The most controversial piece that you will see in the Majority Report, and I'm sure others will talk about it and try to convince you that it's not necessary, is the provision known as the Right to Sue. The committee addressed this issue closely and we felt that if we were going to create a Right to Sue, we also want to make sure that we really limited who actually got to that stage. We did not want someone denied at a first level by their insurance carrier walking to the courthouse steps in Cumberland County, or York County, or where else and filing a lawsuit against their insurance carrier. What we crafted was a Bill that requires you to exhaust any appeals, or any process that is in Maine law, prior to going to the courthouse. In other words, if you are denied by your insurance carrier once, you must be denied a second time. You then must go to the external body independent of the insurance carrier to request coverage and if you are denied at that level, then you have a right to access the courthouse.

We also believed that we should limit damages and not include punitive damages. You will not find that in the Majority Report. However, we did believe, that in the best interest of Maine, that we do impose a cap. And, although I am not a great fan of caps, I do understand the reality in this situation of imposing a cap. And what we are asking is that we impose a cap of \$400,000. You might be thinking to yourself, where does that number come from? Well, I'll tell you, it's not chosen arbitrarily. In Maine law today, we currently have a cap of \$400,000 in the Maine Tort Claims Act. We also have sitting on the Appropriations Table today a Bill whose title I actually don't recall the exact title of it, but it deals with the Wrongful Death Statute. And what that cap looks at now is a cap of \$400,000. We also believe that the Statute of Limitations should be consistent with what else you find in Maine law. We chose 3 years, it's not arbitrary. We chose it because that's currently what you'll find in statutes dealing with med. malpractice. So if you look at the Majority Report, you will see that there are parallels between that report and other areas of Maine law.

There was a handout passed out last night, I believe it's blue in copy and it actually was distributed by the Senator from Aroostook, Senator Kieffer, and I'd like to address a few issues in there. The attempt is to persuade you to not support the Majority Report based on a number of reasons. And the first cites a Report done by the Barons Group that estimated that plan liability provisions could raise premiums from 2.7% to 8.6%. Well, in my research, it's my understanding that the Barons Group was actually hired by the insurance industry themselves to evaluate the federal plan, not the plan that's before you today. So I ask you to dismiss that argument because it's not relevant to what you're looking at. You are also told that Maine would be 1 of only 5 states to adopt plan liability. Although there are only a few states that do have plan liability, it is proposed in many states throughout the country this legislative session.

I have distributed to you a letter from Texas, which you should have on your desk, in reference to the Patient Bill of Rights. I had the opportunity to meet with the Commissioner of Insurance from Texas to discuss with him the impact of Patient Bill of Rights in the State of Texas. If you will review his letter, he will tell you that the external review process has been highly successful in that state, and actually, some consumers have won. In fact, he will tell you that as of today, External Review has handed down 817 decisions. In 3,786 cases or 46%, the external

review upheld the HMOs decision. Patients won 385 decisions or 47%, and 56 cases or 7% resulted in split decisions. Again, under the Maine framework that we are proposing through the Majority Report, we are suggesting that consumers go to external review before the Right to Sue. In the next paragraph, he goes on to tell you about the Texas experience with the Right to Sue and he will tell you that there have been less than a handful of lawsuits that have been filed. And it's my understanding that out of a population of 4 million people in Texas that there have been 4 lawsuits. Also on that blue sheet you received last evening there is a discussion there about this draft, the Minority Report, containing several mandates including access to clinical trials of medications and a mandate that a carrier pay for drugs outside its formulary even if the drug is investigational. I'm actually kind of surprised by some of the people who signed this letter, some of the industry people, because they tell us that they already do that as far as clinical trials at some of these insurance companies and also their policies as far as the formulary. You're also asked not to support this because carriers will be required to provide telecommunication devices, interpretive services, large type or Braille materials for handicapped enrollees seeking review of medical determinations. Just think about that. Is that really that bad, that we're going to provide the hearing impaired community and those who do not have sight with the services so they can actually understand what their rights and benefits are. In closing, I just want to remind everyone here that what you have before you today was not taken lightly. The committee gave it a lot of attention and a lot of consideration. I have been in the legislature for 6 years now and this Bill has probably occupied most of my time compared to any other Bill that I have handled. I had been involved in the genetics Bill that the Banking and Insurance Committee handled last year, some very contentious issues that the Labor Committee had carried over, but this is one that all 13 people worked very hard on, sought input from numerous people, traveled a good portion of central Maine, south, and I say that for the benefit of the Senator from Aroostook, Senator Paradis. And I apologize that we were not able to get up to Aroostook County. But it was not taken lightly. So I encourage you when you vote to press the green button and support the Majority Report. Vote for protection for the consumers of Maine and give them the Right to Sue if they have exhausted all appeals. Thank you.

The President requested the Sergeant-At-Arms escort the Senator from Knox, Senator **PINGREE** 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 **CHELLIE PINGREE** of Knox County.

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

Senator **DOUGLASS:** Madam President. Men and women of the Senate, I rise to applaud the work of the Senator from York, Senator LaFountain, and what he managed to do with the Banking and Insurance Committee. We have an important opportunity to address the health and well-being of our citizens. When the

HMOs, Health Maintenance Organizations, were first put into effect 20 years ago, they were given immunity. Think what other groups have immunity, the king had immunity, the state has immunity, but virtually no other entity does. I think it's very important as you consider today's vote to remember that in almost all areas of our life we hold both individuals and corporations accountable. We should do so today. I won't go into further detail about the many provisions of this Bill which the good Senator from York, Senator LaFountain, has explained in such detail, but we need to pass this legislation and I urge you to accept the Majority Report.

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

Senator **LAWRENCE:** Thank you Madam President. Men and women of the Senate, as the good Senator from York, Senator LaFountain, said this is an historic day in the State of Maine because we are going to be reversing a difficult trend, if we pass this legislation, that has been going on in healthcare. And that's families, patients and doctors losing control of health care decisions. That is what has been happening in recent years in this state. One of the most important provisions in this Bill, and what separates it from the other reports, is the Right to Sue. That right is critical to giving people a meaningful Patients Bill of Rights. I say that not because we want to encourage suits, because actually, as the good Senator from York, Senator LaFountain, said, it does not encourage suits, but, in fact, it is the threat of suits that leads insurance companies to do the types of things they have to internally do to prevent mistakes, errors, intentional decisions affecting your and my health care. I'll give you one example, and I apologize if it's a graphic example, but I've given this at press conferences and I've given this when I've talked to members. There was a gentleman in Alabama who had cancer, and the remedy for his cancer was a shot which cost him \$400 to get. \$400 for each shot. His employer changed the person managing the health insurance plan, and the new manager came in and said "This shot is no longer covered, you must now pay a deductible." That was \$180 per shot for him. He lived in a mobile home and he did not have a lot of assets, did not have a lot of resources. He said "I simply can't pay this, for the number of times I have to get this shot I simply cannot pay this." He went to his doctor and he said "what are the options" and the doctor said "you have no option. Other than getting the shot, your only other option is castration." He went to the hospital and was castrated. When he came home from the hospital, he received a letter from the insurance company manage care organization, that said they had made a mistake and the shot was covered. Now people have said he doesn't have the Right to Sue on the federal level. Actually there is a very limited Right to Sue on the federal level, extremely limited. Because the business was self-insured under ERISA, he had the Right to Sue. But his only remedy on the federal level, after going through years of litigation, would have been to get the shot, which he no longer needed, or the value of the shot, the \$400. That was his only remedy. We need this Right to Sue because it will put the pressure on insurance companies to self-manage themselves so that these errors of omission, these errors of negligence, and intentionally making decisions that adversely affect your and my health care are not done, and that we put the health care of families, of patients, and the decisions of doctors first again in health care. Thank you.

On motion by Senator **PINGREE** of Knox, Report "A" **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1061) ACCEPTED**, in concurrence.

READ ONCE.

Committee Amendment "A" (H-1061) **READ.**

On motion by Senator **ABROMSON** of Cumberland, Senate Amendment "A" (S-675) to Committee Amendment "A" (H-1061) **READ.**

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

Senator **ABROMSON:** Thank you Madam President. I want to join the good Senator from Androscoggin, Senator Douglass, in complimenting the chair of the Banking and Insurance Committee, Senator LaFountain of York. He's absolutely correct. We worked very hard to come up with this Patients Bill of Rights. He did an excellent job of explaining it. I have very few exceptions with Committee Amendment "A" and suggest that we accept Senate Amendment "A", which has these changes. One, of course, is the Right to Sue, but I believe in that right. What I am suggesting in the amendment is that the cap be \$150,000. If we go by the Barons Report that was mentioned earlier, that would be a 2.7% increase versus the 8.6% increase that was suggested. Now I don't know if the Barons Report is right, if it was done on the basis of some federal investigation. But we all know that if we allow any Right to Sue, the insurance companies are going to have to reserve for that Right to Sue and it's going to cost something. I'm not sure how much it is, but I would like to limit as much as possible, how much that would be. If we use the Barons Report and if we use, for example, the latest quote that I heard on an individual family policy from Blue Cross Blue Shield at nearly \$1,000 per month. That would add something like \$27 a month versus \$86 a month. That is one of the changes, that is the lowering of the cap. It's a question of taking into account the patients and taking into account the policy holders. Obviously, what I would like to do is take into account both of them. Patients that have been wronged and can prove it by going to court, all the best, and policy holders if we can keep down their premiums. I think the latest figure that I've heard is 85,000 in the state that are uninsured. It concerns me that premiums go too high. In trying to fine tune this, I don't know where that point is that would cause an employer to say "I just can't afford it any more, I'm not going to supply, or offer as a benefit, health insurance." Or say "I've been paying it all, I'm going to have to ask you to pay half." I just don't know where that point is. So that's the reason for the cap.

Another change is, and again this is to enable some sort of reserve by the insurance companies, changing from the Majority Report which has a 3 year statute of limitations. My amendment goes back to a 1 year statute of limitation, so that they can try to, year to year, set up a reserve for what judgments maybe against them.

A final difference from the Majority Report is with respect to what's called the "sole and exclusive remedy." The effect of that language is to preclude any common law claims by an enrollee against the carrier. I should point out that there are 3 areas of insurance that contain similar language as to the statutory cause of action being the exclusive remedy. That is workers' compensation, liquor liability, and tort claims against the state. I may be slightly out of my element. If you look at the last 3

speakers, all of whom are attorneys. I am not standing here urging you to allow a Right to Sue for the Maine Trial Lawyers Association. I am urging you to allow the Right to Sue because I think it's the right thing to do. I would just like to proscribe that right to try to keep it in balance with, perhaps, what policy holders can afford to pay. So I urge adoption of Senate Amendment "A". Thank you.

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

Senator **LAFOUNTAIN:** Thank you Madam President. I urge you to defeat the proposed amendment. Again, I'd like to remind the chamber that the Barons Group Report was paid for by the American Association of Health Plans. So in my mind, it's easy to question their independence on this issue. Also they were addressing the proposed federal legislation, not the legislation that's proposed before you today. I ask you to again look at the letter that I distributed earlier from the Commissioner of Insurance in Texas about the Texas experience. Obviously a paramount interest of his, as with any patient protection bills, was what it would do to the industry and how would it effect the consumers in his state. As he indicates, there has been adverse consequences as a result of this patient protection, in fact, its made it a healthier place. In reference to the statute of limitations, we're asking for 3 years. We're paralleling med. malpractice law. If you take a look through the Maine Statutes, you'll see that there are a number of different statutes of limitations in civil cases. With most corporations, if you choose to sue them, it's probably going to be a 6 year limitation. So the issue of having insurance companies reserve funds for the possibility of a law suit would be unique to that industry only. We wouldn't expect the same of IBM, or MacDonalds, or even the guy who might operate a plumbing business down the street from you. He, himself, may be subject to a law suit but we're not telling him that he can just hold his breath for one year and then be absolved from any law suit. With most of those people, as I have indicated, it's roughly a 6 year statute. So we're asking you to parallel med. mal-practice to be consistent in law in the area of health. Thank you.

The same Senator requested a Division.

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

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#365)

YEAS: Senators: **ABROMSON, AMERO, BENNETT, BENOIT, DAVIS, FERGUSON, GOLDTHWAIT, HARRIMAN, LIBBY, MACKINNON, MITCHELL, NUTTING, SMALL**

NAYS: Senators: BERUBE, CAREY, CATHCART, DAGGETT, DOUGLASS, KILKELLY, KONTOS, LAFOUNTAIN, LAWRENCE, LONGLEY, MICHAUD, MILLS, MURRAY, O'GARA, PARADIS, PENDLETON, RAND, RUHLIN, TREAT, THE PRESIDENT PRO-TEM - CHELLIE PINGREE

ABSENT: Senators: CASSIDY, KIEFFER

13 Senators having voted in the affirmative and 20 Senators having voted in the negative, with 2 Senators being absent, the motion by Senator **ABROMSON** of Cumberland to **ADOPT** Senate Amendment "A" (S-675) to Committee Amendment "A" (H-1061), **FAILED**.

Committee Amendment "A" (H-1061) **ADOPTED**, in concurrence.

Senate at Ease.

Senate called to order by President Pro Tem
CHELLIE PINGREE of Knox County.

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

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

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#366)

YEAS: Senators: BERUBE, CAREY, CATHCART, DAGGETT, DOUGLASS, GOLDTHWAIT, KILKELLY, KONTOS, LAFOUNTAIN, LAWRENCE, LONGLEY, MICHAUD, MILLS, MURRAY, O'GARA, PARADIS, PENDLETON, RAND, RUHLIN, TREAT, THE PRESIDENT PRO-TEM - CHELLIE PINGREE

NAYS: Senators: ABROMSON, AMERO, BENNETT, BENOIT, DAVIS, FERGUSON, HARRIMAN, LIBBY, MACKINNON, MITCHELL, NUTTING, SMALL

ABSENT: Senators: CASSIDY, KIEFFER

21 Senators having voted in the affirmative and 12 Senators having voted in the negative, with 2 Senators being absent, the Bill was **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1061)**, in concurrence.

Senator **LONGLEY** of Waldo requested and received leave of the Senate for members and staff to remove their jackets for the remainder of this Session.

Under suspension of the Rules, all matters thus acted upon were ordered sent down forthwith for concurrence.

The President Pro Tem requested the Sergeant-At-Arms escort the Senator from York, Senator **LAWRENCE** to the rostrum where he resumed his duties as President.

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

Senate called to order by the President.

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

REPORTS OF COMMITTEES

Senate

Ought to Pass

Senator **RUHLIN** for the Committee on **TAXATION** on Bill "An Act Related to Sales Tax on Vehicles Leased and Removed from the State and Watercraft Used in Interstate Commerce"
S.P. 1082 L.D. 2686

Reported that the same **Ought to Pass**, pursuant to Joint Order S.P. 1065.

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

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

Sent down for concurrence.

Under suspension of the Rules, all matters thus acted upon were ordered sent down forthwith for concurrence.

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

REPORTS OF COMMITTEES

House

Ought to Pass

The Committee on **CRIMINAL JUSTICE** on Bill "An Act to Implement the Recommendations of the Commission to Consider the Enhancement of Fire Protection Services Throughout the State"

H.P. 1940 L.D. 2685

Reported that the same **Ought to Pass**, pursuant to Resolve 1999, chapter 65, section 8.

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 **HEALTH AND HUMAN SERVICES** on Bill "An Act to Provide Services for Children in Need of Supervision" H.P. 1138 L.D. 1623

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (H-1103)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1103)**.

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

READ ONCE.

Committee Amendment "A" (H-1103) **READ** and **ADOPTED**, in concurrence.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1103)**, in concurrence.

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

COMMUNICATIONS

The Following Communication: H.C. 422

**STATE OF MAINE
HOUSE OF REPRESENTATIVES
AUGUSTA, MAINE 04333**

April 8, 2000

Honorable Joy J. O'Brien
Secretary of the Senate
119th Legislature
Augusta, Maine 04333

Dear Madam Secretary:

The House voted today to adhere to its previous action whereby it indefinitely postponed Bill "An Act to Provide an Angling Season for Atlantic Salmon" (EMERGENCY)
(S.P. 1011) (L.D. 2579)

Sincerely,

S/Joseph W. Mayo
Clerk of the House

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

Under suspension of the Rules, all matters thus acted upon were ordered sent down forthwith for concurrence.

Off Record Remarks

ORDERS OF THE DAY

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

Bill "An Act to Prohibit Persons Under 21 Years of Age from Purchasing Handguns"
S.P. 1005 L.D. 2573

Tabled - April 8, 2000, by Senator **BENNETT** of Oxford.

Pending - motion by Senator **MURRAY** of Penobscot to **ADOPT** Senate Amendment "A" (S-653) to Committee Amendment "A" (S-611)

(In Senate, April 8, 2000, the Minority **OUGHT TO PASS AS AMENDED** Report **ACCEPTED. READ ONCE.** Committee Amendment "A" (S-611) **READ.** On motion by Senator **MURRAY** of Penobscot, Senate Amendment "A" (S-653) to Committee Amendment "A" (S-611) **READ.**)

On motion by Senator **MURRAY** of Penobscot, Senate Amendment "A" (S-653) to Committee Amendment "A" (S-611) **ADOPTED.**

Committee Amendment "A" (S-611) as Amended by Senate Amendment "A" (S-653) thereto, **ADOPTED.**

PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-611) AS AMENDED BY SENATE AMENDMENT "A" (S-653) thereto.

Under suspension of the Rules, ordered sent down forthwith for concurrence.

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

PAPERS FROM THE HOUSE

Non-Concurrent Matter

Bill "An Act to Clarify the Process for a County Bond Referendum Election"

H.P. 1706 L.D. 2412
(C "A" H-805)

In Senate, March 15, 2000, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-805), in NON-CONCURRENCE.**

Comes from the House, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-805) AS AMENDED BY HOUSE AMENDMENT "A" (H-889) thereto, in NON-CONCURRENCE.**

On motion by Senator **PENDLETON** of Cumberland, the Senate **RECEDED** and **CONCURRED**.

Non-Concurrent Matter

Bill "An Act to Improve School Safety and Learning Environments"

S.P. 298 L.D. 870
(C "A" S-657)

In Senate, April 6, 2000, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-657).**

Comes from the House, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-657) AS AMENDED BY HOUSE AMENDMENT "A" (H-1102) thereto, in NON-CONCURRENCE.**

On motion by Senator **RAND** of Cumberland, the Senate **RECEDED** and **CONCURRED**.

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

PAPERS FROM THE HOUSE

Non-Concurrent Matter

Bill "An Act to Amend the Laws Governing Municipal Elections"

S.P. 878 L.D. 2293
(C "A" S-552)

In Senate, March 23, 2000, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-552).**

Comes from the House, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-552) AS AMENDED BY HOUSE AMENDMENT "A" (H-1104) thereto, in NON-CONCURRENCE.**

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

On motion by Senator **BENNETT** of Oxford, **TABLED** until Later in Today's Session, pending the motion by Senator **RAND** of Cumberland to **RECEDE** and **CONCUR**.

Under suspension of the Rules, all matters thus acted upon were ordered sent down forthwith for concurrence.

Senate at Ease.

Senate called to order by the President.

ORDERS OF THE DAY

The Chair laid before the Senate the following Tabled and Later (4/7/00) Assigned matter:

HOUSE REPORTS - from the Committee on **NATURAL RESOURCES** on Bill "An Act to Establish Minimum Environmental Compliance Standards for Subsidized Employers" H.P. 1799 L.D. 2526

Majority - **Ought Not to Pass** (7 members)

Minority - **Ought to Pass as Amended by Committee Amendment "A" (H-1066)** (6 members)

Tabled - April 7, 2000, by Senator **TREAT** of Kennebec.

Pending - motion by same Senator to **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED** Report, in **NON-CONCURRENCE**

(In House, April 6, 2000, the Majority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED**.)

(In Senate, April 7, 2000, Reports **READ**.)

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

Senator **NUTTING:** Thank you very much Mr. President. I hope that you'll oppose the pending motion so we can go on to accept the Majority Ought Not to Pass Report. I'll tell you why this Senator voted Ought Not to Pass on this particular Bill. I have noted in the past to make some changes to the BETR program. I think there are some Bills this session that concern the BETR program that have some merit. I particularly don't feel this Bill does have merit. This Bill proposes that if you have a criminal

violation for any environmental crime, you would lose your BETR tax reimbursement. Now, at first blush, this may sound like a fair thing to do. But the more and more the committee worked on this Bill in public hearing and in more than one work session, the more and more scenarios kept being brought up that really caused the sponsors of this Bill to put forth before the Natural Resources Committee about 5 or 6 different drafts of this Bill. The Bill got smaller and smaller and smaller. I think the best way for me to explain my opposition to the Bill is to just point out an example or two.

You have two businesses producing the same product. One, in the last year, has had a major expansion and has used the BETR program. One has not. They both have the same environmental problem. If this Bill passes, they are going to end up paying altogether different fines for the same environmental violation because the one business that has used the BETR program is going to pay their fine and lose their BETR reimbursement on top of it. The business that hasn't had the expansion and hasn't used the BETR program will just pay their fine.

Now, this particular Bill pointed out that there has been very few cases in Maine where there have been willful environmental violations. I think the industry and the DEP, as I've said in earlier debate on an earlier Bill, are self-reporting. Everybody is doing, I think, a better job than they have ever done in the past. In the case of HoltraChem, they have had several, in the past, very bad environmental violations. They ended up with an \$800,000 fine. To me, the current system is working where someone can pay penalties of up to \$50,000 per day and have jail time for up to 5 years.

I think the other thing that is in point number 4 of what I just handed out. So you fire somebody. On their last day on the job they do something to some of your environmental equipment. We've had instances in Maine where that has happened. The judgment, if it goes to court, is not against the individual. The judgment is against the business and can cost you your BETR reimbursement. I think that's just an unfair situation. I encourage you to read the other points on the orange or salmon talking point sheet that I've had handed out. I do think there are some other changes we can make in the BETR program this year. I don't feel this is one of them. I urge your opposition to the pending motion so we can go on and accept the Majority Ought Not to Pass Report. Thank you.

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

Senator **CAREY:** Thank you Mr. President. Mr. President, as I read this, it would appear that in multi-state or multi-national corporations if some division of a mill, for instance, in West Virginia is breaking an environmental law, and they have a branch mill run by different manager altogether up here in Maine, regardless of what the guy in Maine did, that company is going to be penalized and they are going to lose their BETR program because of something that was done in another state. I prefer to make sure that things go well in Maine and not necessarily what happens in West Virginia. So I would like to pose a question through the chair if I may.

THE PRESIDENT: The Senator may pose his question.

Senator **CAREY:** To anyone who might be able to answer. Thank you, Mr. President. When Plum Tree first came to Maine,

and I'm only using them as an example, they were having problems out west and they couldn't satisfy the environmental people, who are pretty difficult to satisfy to begin with anyway. They were buying in Maine, there was all kinds of advanced publicity that this outfit was simply no good, would not do the job, and, lo and behold, environmentalists have been tremendously surprised at what Plum Tree has done here. If there was a mill in West Virginia, which is simply another division of a particular company, that has some criminal action taken against it and that company had a plant in Maine, would then the plant in Maine be penalized because one of their divisions has committed a criminal act? Thank you, Mr. President.

THE PRESIDENT: The Senator from Kennebec, Senator Carey poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Kennebec, Senator Treat.

Senator **TREAT:** Thank you Mr. President. Men and women of the Senate, I would be happy to answer the question posed by the Senator from Kennebec, Senator Carey. Indeed, the Bill before us is written very carefully to avoid that very scenario. The Bill itself, in the amendment which is now down to a 5 line piece of legislation, makes it very clear that only the laws administered by the Department of Environmental Protection here in Maine, specifically Title 38 of the Maine Revised Statutes Annotated, would apply. So if it was Title 38 of the West Virginia Statutes Annotated, it wouldn't be effected. Title 38 of North Carolina Statutes Annotated, wouldn't apply. Only violations here in Maine.

While I'm on my feet, if I might continue, Mr. President. I would like to explain this Bill and why those of us who voted for it, which did include both chairs of the committee. And some very thoughtful people on the committee, do support this piece of legislation. As I mentioned, it is a fairly narrow Bill at this time. The title of the Bill is "An Act to Establish Minimum Environmental Compliance Standards for Subsidized Employers", and I would submit to you that these are, indeed, the minimum standards. The standard is merely that a company not be convicted of a criminal violation of Title 38 of the Maine Environmental Statutes. That's it. It is a standard for receiving BETR, not a penalty for violating the law. This provision makes it clear that what you get is a 1 year suspension of receiving BETR. Now keep in mind that BETR, right now unless we do something to change it, provides 12 years of reimbursement. This Bill proposes to withhold 1 year following the date of conviction only. This seems to me to be a minimal standard, but perhaps, the minimum that we should require at least. If we are giving away millions of dollars in reimbursement funds, at the very minimum, companies should commit to not engaging in criminal behavior.

Now, we did ask these questions of the DEP. Is there a lot of criminal law violations out there? What are these violations? Are they common? How many have there been? I have the records going back 3 years, 1996 through 1999. There have been 3 criminal convictions over that time. They were merely hazardous waste violations. Our law in Maine is quite strict in the way it has been interpreted. The Maine courts have interpreted our environmental criminal laws to require evidence of intent. You must prove that someone intended to do a criminal act. This really is not the situation that was raised earlier of the rogue employee. We hear a lot about the rogue employee in various scenarios. You know, the employee that wakes up on the wrong side of the bed one day, goes into work, destroys a piece of

equipment. That is not the person that's going to be charged with a criminal violation of the environmental law. They might be charged with something else, like destruction of corporate property, but it's not going to be an environmental crime where the company intended to violate the hazardous waste laws, and got its employee to do it. The original Bill actually covered a whole range of economic development and tax incentive programs. The committee looked at these very carefully and quite thoughtfully. The argument was made on many of these that it was inappropriate to have these standards. In fact, the Department of Economic and Community Development made a very clear case that most of these other laws have some sort of minimum standards. They said, in fact, that all of our tax incentive and other economic development incentive laws have performance standards, including BETR. So the committee asked what is the performance standard for BETR? Is there some minimum number of employees that you have to hire or some level of environmental protection? Let us say that you have committed to achieve something with equipment you purchased. What is the standard? They said that the standard is you buy the equipment, you get the money. That's the standard. That was one reason the committee looked at the BETR program and said, well, this is a program that really doesn't have performance standards. You simply get reimbursed. This is one where, given the vast amount of money, we think the state should have some minimum standards. At a very minimum, that standard should be that you do not go out and intentionally violate the law and get convicted of that criminal offense. At the very least, it should simply be suspended. That is what this Bill does. I've heard all kinds of crazy scenarios that people have come up with that would somehow get someone rolled up in this so they would lose all their BETR money. It does not do that. It is very narrowly drafted. I think it's a very sensible Bill. It's a very modest Bill in terms of what it does. I encourage you to support the pending motion which is the Ought to Pass motion.

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

Senator **LIBBY:** Thank you Mr. President. Good afternoon, women and men of the Senate. I rise today to oppose the pending motion. We did have a great deal of thoughtful discussion in committee, and when it came right down to it a lot of us relied on the opinion of our current Commissioner of the Department of Environmental Protection.

Now here we have, it's my understanding anyway, a Bill that effects, apparently, according to the sponsors, our environment in a very positive way. Yet our Commissioner of Environmental Protection is against this Bill. Why are they against the Bill? Why would the department be against the Bill? Simple answer to that question. The answer is that we are enforcing the laws now with a fine system that allows for equal protection under the law. When this new draft came in front of our committee, I thought at first, that this isn't bad. You have to have committed a crime and it makes a little bit of sense. But the problem is, if you lose BETR, you lose BETR. There is no appeals process. There is no equal protection under the law. That's why I'm a little bit confused as to how some thoughtful lawyers might be able to support something like this. It corrupts the enforcement process, when you think of it. There are going to be some companies out there that have BETR that are getting a rebate through the BETR program, and there are going to be other companies out there that are not getting any kind of rebate through the BETR

program. They won't be penalized, and the company that is will lose the entire amount. How do we know that the amount is the correct amount that these folks should be fined for committing a Class E crime, I believe it is. We don't. So the Department of Environmental Protection does not support this Bill. I think we should respect that. They already have the tools that they need to enforce compliance with our environmental laws.

I think the concept behind this Bill isn't a bad concept. We talked about trying to reduce the Bill. The original Bill had a laundry list of economic development incentives. We got away from that. I guess what the sponsor of this Bill thought was that maybe if we just got down to one program, the BETR program, maybe we'd have a better chance. But the fact is that, that's not really the way to craft a Bill like this. You have to be able to make it fair. It has to have an appeal process. It has to make sense. There is just no way this makes sense. I would urge you to oppose the pending motion so that we can go on. Thank you.

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

Senator **RUHLIN:** Thank you Mr. President. Ladies and gentlemen of the Senate, first of all, I'd like to point out, if I may, a comment by the very good Senator from York, my friend, who said that this corrupts the enforcement process. It corrupts more than the enforcement process. It corrupts the judicial system. When do we, as a state, take a good public policy and go forward and substitute tax law, tax policy, for the court system of this state?

We presently have a court system. If it's a minor crime, the fine is minor. If it's a major crime with a major impact on society, the fine is major. But here, all of a sudden, we've a tax law that's successful. Certain people can't seem to live with it. We have a fine tax law that's working and is effective. Instead they say, well we'll use this with the fine and if it's minor, it's a full fine process. You lose all of that year's BETR, whether it's \$10,000, \$100,000 or \$100. You lose it. If it's a major offense, it's the same amount. This way we can substitute tax policy for our judicial policy. I don't think this is the right thing to do. If somebody breaks our environmental laws in the State of Maine, let the court system handle it. That's the way our system works. Go to court. Sometimes the damages can be trouble, let them be trouble. I'm a staunch protector of our environment, always have been. I'm pleased to. I'm also just as staunch a defender of our constitution. If you break the law, go to court. That's the remedy. We make the policies, the courts do the judicial aspects of that. So, let's keep that in mind. I hope you will join with me and vote for the Majority, bi-partisan, Ought Not to Pass Report.

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

Senator **BEHOIT:** Thank you Mr. President. May it please the Senate. It's Bills like this that wake me up at 2:00 in the morning, and I can't get back to sleep for 2 hours. I hope that members of the chamber have had an opportunity to look at Senator Nutting's sheet of talking points. To me, these talking points, and what I've heard as well from others, point out the gross unfairness of this situation. I want to say this respectfully, because I consider myself to be an environmentalist. In May, Judy and I will do something on the environmental line that we've done for years up where we live. We will go for 5 miles along Route 4, picking up litter. I will load up my Dakota pick-up truck twice, I'll bet you

anything, as I've done in the past. My agenda is not opposed to environmentalists, but you know the environmentalists often are their own worst enemy. This measure tends to prove it. It's such an extreme situation. Just to show you an example, as Senator Nutting points out, 2 wood lot owners, convicted of environmental crimes, each receives a fine of \$10,000. One of them pays a fine. The other is a paper company receiving a BETR fund and they are going to lose millions of dollars. It just doesn't make sense. This whole thing puts a chilling effect upon what we have now in the law that's working. For heaven's sake, if something is broke fix it. But if something isn't broke, fix something else. Now I hope that you will take to heart the talking points of Senator Nutting and will strike this out so that tonight at 2:00 I can remain asleep. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Knox, Senator Pingree.

Senator **PINGREE:** Thank you Mr. President. Men and women of the Senate, I just want to speak very briefly on this issue to talk about what, I think, is the fundamental principle of this Bill. That is the question of what standards we set when we invest the taxpayer's dollars. I think that this is a very reasonable standard. To say that if a company has received a criminal penalty, they have committed a criminal environmental violation. That we will make this decision to withhold property tax refunds under the BETR program for one year. I think that is completely reasonable and it is, in fact, our responsibility as the people who decide how to invest the taxpayer's dollar best in the Maine economy. It is our responsibility to take that position. I also want to correct what I think was an error by the Senator from York, Senator Libby. That was that the DEP opposes this. It's my understanding that they did not, that they took no position on this Bill. But I hope you will support the Minority Ought to Pass as Amended Report.

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

Senator **AMERO:** Thank you Mr. President. Ladies and gentlemen of the Senate, this Bill reminds me of a game called Double Jeopardy. Seems that if you commit the crime, you're not only going to get punished once, you're going to get punished twice. It does meet, what I believe, the fairness test. So, Mr. President, when the vote is taken, I request the yeas and nays.

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

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

Senator **MURRAY:** Thank you Mr. President. Men and women of the Senate, I have struggled, mightily, with this proposal because it's an interesting one and it's one that's troubling on both sides. Ultimately, I looked at this, somewhat, with the eye of the Criminal Justice Committee, in the back of my head anyway. I guess that would be the front of my head, if it's my eye. But ultimately what I see this Bill as doing is establishing something that creates a minimum mandatory penalty. That is something that I've always been very troubled with. You see that proposal all the time when we're presented with Bills in front of the Criminal Justice Committee, where if there is a violation and a

conviction, people so often want to say we've got to have a minimal mandatory sentence. I resisted that because I feel that, in circumstances where convictions are found, we have left with the judiciary the discretion of deciding what the appropriate punishment ought to be, and needs to be in a case by case basis. That's why minimum mandatory fines or penalties in the criminal setting are very offensive to me. I've ultimately concluded that's basically what this Bill is proposing to do. It is say, in essence, with the mere conviction of the crime, even though it's odious and reprehensible. We're saying thou shalt have a minimum mandatory being the suspension of these BETR tax benefits. If the Bill before us were something that authorized a court to consider this as part of the components of the penalty, I would have no problem supporting it. If the Bill before us was to create a mechanism to allow some agency to consider this, whether that be the tax folks or the DEP folks, as part of the penalty, I would have no problem with that. However, my understanding of the way this Bill is structured, it creates a minimum mandatory sentence. One that I don't feel is the proper direction to take, even though the type of conduct we're talking about may well be offensive, and may well deserve that type of a penalty, in a case by case basis. That's not what we have before us today. That's why I'm in a position where I feel I must oppose the pending motion.

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

Senator **TREAT:** Thank you Mr. President. Women and men of the Senate, I would like to address a couple of concerns and issues that have just been raised. I probably cannot change the mind of the Senator from Penobscot, Senator Murray, but I did want to particularly address the concern that he raised. I guess I view it in a very different way. The concern raised by the Senator from Penobscot and others is that this is some sort of additional penalty for bad behavior. I guess I view it differently. If someone is convicted of some crime and they go out and apply for certain positions, they may not get those positions because the criteria for having those positions is that you have not been convicted of this type of crime. It's more of an eligibility criteria. Because it's in the nature of suspending for only one year, it actually is more like a probationary behavior really. To me, that is the difference. It's not an additional penalty.

Every year we dole out these millions of dollars, or hundreds of thousands of dollars, or whatever it is. In the case of this particular company, there is an eligibility criteria, and that is that you have not gone out and violated our laws intentionally, and have been convicted of a crime. We chose the term "convicted of a crime" because it was a clear-cut thing. It was something that was intentional. It was narrow, and it did not actually involve a whole lot of value judgments on the part of the Department of Environmental Protection or any other state agency. I did want to address whether or not the department opposed this Bill. I have the department's testimony in front of me. It somewhat interestingly fails to take a position on the Bill, neither for nor against. The Department of Economic and Community Development actually was the lead agency testifying before our committee. The department merely submitted a letter. The letter addresses the multitude of administrative and complicated issues involved with trying to administer the Bill that came before the committee, which is not the Bill that you're being asked to vote on. The Bill that you're being asked to vote on eliminates the subjective judgments, the certifications, all of those things, and

keeps it very simple. I cannot speak for the department to say that they now support it or oppose it, but their letter was limited to talking about the complexities and difficulties of implementing that particular Bill. They even go on to mention some existing tax laws we have right now that they think really ought to have some more standards dealing with such things as the Pollution Control Equipment Bill. That was the case with a number of testifiers. The Maine Municipal Association, for example, although they opposed the original Bill, very specifically said that they could support environmental standards for criteria for economic development incentives for businesses under some circumstances. They suggested that a section of the Bill that was very similar to this one, that was kind of if you violate the law 3 times then you no longer had eligibility, would be one way to go. Again, the committee listened to that testimony. We took it into account. The Minority Report incorporates those types of concerns into our final Bill to make it something that is fair and appropriate, easy to administer, yet meets the goals that we were trying to accomplish. Which is really an eligibility standard. It's not a lifetime ban. It simply says one year suspension. Again, I think this is a very fair and appropriate piece of legislation. I do encourage you to support the pending motion.

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

Senator **NUTTING:** Thank you Mr. President. Ladies and gentlemen of the Senate, I'll be very brief. The whole subject of what the various departments' positions has come up a few times here in debate. I just want to clarify that. Yes, as the good Senator from Kennebec, my seat mate, said. It was the Department of Economic and Community Development that was the lead agency in this Bill's public hearing. They testified in opposition. Reading from the letter that DEP forwarded, on the second page it says, "in fact we do not believe the department should have a role in determining eligibility for tax or monetary subsidy programs that were developed for reasons other than environmental protection." I talked to and specifically asked Deputy Commissioner Brook Barnes of the DEP, less than one hour ago, what their position was on this Bill as it's currently drafted. He informed me that their position was one of opposition. Thank you.

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

Senator **LIBBY:** Thank you Mr. President. Women and men of the Senate, to follow up my good friend, the previous speaker, I just want to make sure that people know, and they understand exactly what happened in that hearing. Some people may have gone in and out of the hearing, but I stayed for that entire hearing. I had to have my memory jogged a little bit on this. I remember, now, for a fact that the commissioner of the Department of Economic and Community Development said that "I speak on behalf of the entire Executive Branch when I say we oppose this Bill." Everyone on the DEP who was sitting there nodded in agreement. There was no disagreement with that. I want to make sure that I clarify something I heard from the good Senator from Knox, that the department's not opposed to the Bill. The department is opposed to this Bill. They are also opposed to the new draft. They are opposed. To misconstrue the conversation, I think, would be wrong. That's my understanding.

I'm 99.9% sure, I might not be 100% there, but my understanding is they oppose this Bill that's in front of us now.

THE PRESIDENT: The Chair recognizes the Senator from Franklin, Senator Benoit

Senator **BENOIT:** Thank you Mr. President. May it please the Senate. I rise for a second time only because the therapist I've lined up for counseling after the session is over has advised me that it's good therapy to get my frustrations out while I'm here. Looking at this handout from Senator Nutting; I want to say to the good Senator, I'm not easily impressed, but I sure am impressed by this handout. It indicates that virtually any environmental violation potentially can be prosecuted by the state as a criminal violation. A mere environmental violation can lead to multi-million dollar penalties even though the criminal fine might be small. In other words, we're going to be using a hammer at the court for the criminal matter, and a sledge hammer as a penalty for something on the civil side, as I see it. I just feel that this is such an unfortunate Bill that really doesn't say a whole lot in a positive way about the environmental agenda. Thank you.

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

Senator **LONGLEY:** Thank you Mr. President. May I pose a question through the chair.

THE PRESIDENT: The Senator may pose her question.

Senator **LONGLEY:** I've heard what the good Senator from Penobscot says about allowing for judicial digression in this matter, and I really don't know how that would be or how we would put the BETR program into Title 17 and allow for that digression. Thinking beyond, I also heard the Senator from Franklin talk about minor criminal issues. That a lot of what's disputed is potentially criminal and that could be anything from the minor to the major. I guess I'd be interested in examples of you backing up your point, which is the minor criminal violations.

THE PRESIDENT: The Senator from Waldo, Senator Longley poses a question through the Chair to anyone who may wish to answer. The pending question before the Senate is the motion by the Senator from Kennebec, Senator Treat to Accept the Minority 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 (#367)

YEAS: Senators: CATHCART, DAGGETT, DOUGLASS, GOLDTHWAIT, KILKELLY, KONTOS, LONGLEY, PENDLETON, PINGREE, RAND, TREAT, THE PRESIDENT - MARK W. LAWRENCE

NAYS: Senators: ABROMSON, AMERO, BENNETT, BENOIT, BERUBE, CAREY, DAVIS, FERGUSON, HARRIMAN, LAFOUNTAIN, LIBBY, MACKINNON, MICHAUD, MILLS, MITCHELL, MURRAY, NUTTING, O'GARA, PARADIS, RUHLIN, SMALL

ABSENT: Senators: CASSIDY, KIEFFER

12 Senators having voted in the affirmative and 21 Senators having voted in the negative, with 2 Senators being absent, the motion by Senator **TREAT** of Kennebec to **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED** Report, in **NON-CONCURRENCE**, **FAILED**.

The Majority **OUGHT NOT TO PASS** Report **ACCEPTED**, in concurrence.

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

Bill "An Act to Amend the Laws Governing Municipal Elections"
S.P. 878 L.D. 2293
(C "A" S-552)

Tabled - April 8, 2000, by Senator **BENNETT** of Oxford.

Pending - motion by Senator **RAND** of Cumberland to **RECEDE** and **CONCUR**

(In Senate, March 23, 2000, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-552)**.)

(In House, April 8, 2000, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-552) AS AMENDED BY HOUSE AMENDMENT "A" (H-1104)** thereto, in **NON-CONCURRENCE**.)

On motion by Senator **RAND** of Cumberland, the Senate **RECEDED** and **CONCURRED**.

Under suspension of the Rules, all matters thus acted upon were ordered sent down forthwith for concurrence.

The Chair laid before the Senate the following Tabled and Later (3/30/00) Assigned matter:

SENATE REPORTS - from the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS** on Bill "An Act to Support Maine's Only Representative to the Nation's Capital Bicentennial Celebration" (EMERGENCY)

S.P. 1042 L.D. 2630

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

Minority - **Ought to Pass as Amended by Committee Amendment "A" (S-605)** (5 members)

Tabled - March 30, 2000, by Senator **RUHLIN** of Penobscot.

Pending - motion by same Senator to **RECONSIDER** whereby the Senate **FAILED** to **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED** Report

(In Senate, March 30, 2000, Reports **READ**. Motion by Senator **MICHAUD** of Penobscot to **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED** Report **FAILED**.)

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

Senator **RUHLIN**: Thank you Mr. President. Rather than prolong debate or anything else today, because we have so much more before us, I'd go back and point out to the members of the Senate that this Bill is to support, not a home town band as the name says, a band that represents the entire State of Maine that is localized in the central Maine area. This band is to represent us, very successfully I am sure and very well, at our Nation's Bicentennial. I hope you will join me with sending this policy forward. Thank you.

The Chair ordered a Division. 19 Senators having voted in the affirmative and 7 Senators having voted in the negative, the motion by Senator **RUHLIN** of Penobscot to **RECONSIDER** whereby the Senate **FAILED** to **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED** Report, **PREVAILED**.

At the request of Senator **BENNETT** of Oxford a Division was had. 18 Senators having voted in the affirmative and 10 Senators having voted in the negative, the motion by Senator **MICHAUD** of Penobscot to **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED** Report, **PREVAILED**.

READ ONCE.

Committee Amendment "A" (S-605) **READ** and **ADOPTED**.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-605)**.

Sent down for concurrence.

Under suspension of the Rules, all matters thus acted upon were ordered sent down forthwith for concurrence.

On motion by Senator **MICHAUD** of Penobscot, the Senate removed from the **SPECIAL APPROPRIATIONS TABLE** the following:

Resolve

Resolve, Authorizing the Commissioner of Administrative and Financial Services to Sell or Lease the Interests of the State in the Maine State Prison in Thomaston

H.P. 1650 L.D. 2319
(C "A" H-862)

Tabled - March 27, 2000, by Senator **MICHAUD** of Penobscot.

Pending - **FINAL PASSAGE**, in concurrence

(In Senate, March 22, 2000, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-862)**, in concurrence.)

(In House, March 23, 2000, **FINALLY PASSED**.)

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

On motion by Senator **MICHAUD** of Penobscot, the Senate removed from the **SPECIAL APPROPRIATIONS TABLE** the following:

An Act to Increase the Penalty for Leaving the Scene of a Motor Vehicle Accident

S.P. 942 L.D. 2472
(C "A" S-615)

Tabled - April 6, 2000, by Senator **CATHCART** of Penobscot.

Pending - **ENACTMENT**, in concurrence

(In Senate, April 3, 2000, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-615)**.)

(In House, April 5, 2000, **PASSED TO BE ENACTED**.)

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

On motion by Senator **MICHAUD** of Penobscot, the Senate removed from the **SPECIAL APPROPRIATIONS TABLE** the following:

Emergency Measure

An Act to Enter Into the International Emergency Management Assistance Compact

S.P. 1058 L.D. 2648
(C "A" S-631)

Tabled - April 6, 2000, by Senator **CATHCART** of Penobscot.

Pending - **ENACTMENT**, in concurrence

(In Senate, April 3, 2000, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-631)**.)

(In House, April 5, 2000, **PASSED TO BE ENACTED**.)

This being an Emergency Measure and having received the affirmative vote of 29 Members of the Senate, with no Senators having voted in the negative, and 29 being more than two-thirds of the entire elected Membership of the Senate, was **PASSED TO BE ENACTED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

On motion by Senator **MICHAUD** of Penobscot, the Senate removed from the **SPECIAL APPROPRIATIONS TABLE** the following:

Emergency Measure

An Act to Implement the Recommendations of the Commission to Propose an Alternative Process for Forensic Examinations for Sexual Assault Victims

H.P. 1927 L.D. 2673

Tabled - April 6, 2000, by Senator **CATHCART** of Penobscot.

Pending - **ENACTMENT**, in concurrence

(In Senate, April 4, 2000, **PASSED TO BE ENGROSSED**, in concurrence.)

(In House, April 5, 2000, **PASSED TO BE ENACTED**.)

On further motion by same Senator, under suspension of the Rules, the Senate **RECONSIDERED** whereby the Bill was **PASSED TO BE ENGROSSED**, in concurrence.

On further motion by same Senator, Senate Amendment "A" (S-674) **READ** and **ADOPTED**.

PASSED TO BE ENGROSSED AS AMENDED BY SENATE AMENDMENT "A" (S-674), in **NON-CONCURRENCE**.

Under suspension of the Rules, ordered sent down forthwith for concurrence.

Under suspension of the Rules, all matters thus acted upon were ordered sent down forthwith for concurrence.

The Chair laid before the Senate the following Tabled and Later (4/7/00) Assigned matter:

HOUSE REPORTS - from the Committee on **HEALTH AND HUMAN SERVICES** on Bill "An Act to Establish the Maine Council on Aging"

H.P. 1365 L.D. 1963

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-1044)** (7 members)

Minority - **Ought Not to Pass** (6 members)

Tabled - April 7, 2000, by Senator **RAND** of Cumberland.

Pending - **FURTHER CONSIDERATION**

(In House, April 4, 2000, the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1044).**)

(In Senate, April 5, 2000, the Minority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED**, in **NON-CONCURRENCE**.)

(In House, April 6, 2000, that Body **ADHERED**.)

Senator **BERUBE** of Androscoggin moved the Senate **ADHERE**.

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

Senator **PARADIS:** Thank you Mr. President. Men and women of the Senate, I would urge you to vote against this motion so that we can go on to accept an amendment to the original Bill. The major concern seemed to be the cost of this legislation. I have a new amendment that I'd like to consider later that would bring the cost down to \$30,000, and doing more with \$30,000, by doing more with volunteers. I can't stress enough the fact that this was an issue that was supported. Our file is about an inch thick on this Council. All the major elderly groups have requested that we do this. This would be an umbrella organization that we don't have right now. Every group we have has a certain little piece they do. This would give us the planning that we need for the future. Not so much for the elderly today, because as you know, we've all worked very hard to make sure our elderly today have their needs met. This is for the next round of baby boomers that are coming up. We need to do the research and the work that the Committee on Aging has done over the years. Let me remind you that they were the ones that had come up with the home based care. Everybody fought them on it. This has saved the state millions and millions of dollars. We don't know what our aging population is going to look like or what the services are going to look like in the future. We definitely need to be reviewing this. We don't have an entity right now that is charged to do this. This council would definitely do it. So I urge your defeating this motion so we can go on.

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

Senator **MITCHELL:** Thank you Mr. President. Ladies and gentlemen of the Senate, I would ask you to please stay with your prior vote because with the explanation that the good Senator Berube and I gave you on the prior testimony, we do have something that is working now and working well. For us to micromanage, and not give these people the incentive to continue the good work with all of the programs they have in place, and to applaud the Bureau Director of Elder and Adult Services for what they have put into place to address these needs, and the legislation that you've seen before you today and prior days of this session addressing all of the elderly services, I think, it would be very unfair and unjust. Let's give these people a chance. The Ombudsmen are working diligently, as are the various other agencies that we have in place, and the people in

the Bureau of Elder and Adult Services certainly need our support. We are paying them well to do a job that they are doing very sufficiently. So, I would ask you again to oppose the present motion on the floor and stay with our original plan. Thank you very much.

The Chair ordered a Division. 22 Senators having voted in the affirmative and 8 Senators having voted in the negative, the motion by Senator **BERUBE** of Androscoggin to **ADHERE, PREVAILED**.

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

HOUSE REPORTS - from the Committee on **NATURAL RESOURCES** on Bill "An Act to Eliminate the Use of MTBE in Maine"

H.P. 11 L.D. 21
(C "B" H-1068)

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-1067)** (9 members)

Minority - **Ought to Pass as Amended by Committee Amendment "B" (H-1068)** (4 members)

Tabled - April 8, 2000, by Senator **PINGREE** of Knox.

Pending - **FURTHER CONSIDERATION**

(In House, April 6, 2000, the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1067)** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1067).**)

(In Senate, April 7, 2000, the Minority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "B" (H-1068)** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "B" (H-1068)**, in **NON-CONCURRENCE**.)

(In House, April 7, 2000, that Body **ADHERED**.)

On motion by Senator **TREAT** of Kennebec, the Senate **RECEDED** and **CONCURRED**.

Under suspension of the Rules, all matters thus acted upon were ordered sent down forthwith for concurrence.

Off Record Remarks

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

REPORTS OF COMMITTEES

Senate

Ought to Pass As Amended

Senator DOUGLASS for the Committee on **LABOR** on Bill "An Act to Amend the Laws Governing the Designation of a Beneficiary of Maine State Retirement System Benefits"
S.P. 625 L.D. 1790

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (S-684)**.

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

READ ONCE.

Committee Amendment "A" (S-684) **READ** and **ADOPTED**.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-684)**.

Sent down for concurrence.

Under suspension of the Rules, all matters thus acted upon were ordered sent down forthwith for concurrence.

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

REPORTS OF COMMITTEES

Senate

Divided Report

The Majority of the Committee on **BUSINESS AND ECONOMIC DEVELOPMENT** on Bill "An Act to Improve Oversight and Accountability of Student Loan Programs Funded with an Allocation of the State Ceiling on Private Activity Tax-exempt Bonds"
S.P. 1079 L.D. 2684

Reported that the same **Ought to Pass**, pursuant to Public Law 1999, Chapter 433, Section 15.

Signed:

Senators:
KONTOS of Cumberland
LONGLEY of Waldo

Representatives:

MENDROS of Lewiston
O'NEAL of Limestone
SIROIS of Caribou
USHER of Westbrook
BOLDUC of Auburn
TRIPP of Topsham

The Minority of the same Committee on the same subject reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-683)**, pursuant to Public Law 1999, Chapter 433, Section 15.

Signed:

Senator:
MacKINNON of York

Representatives:

CLOUGH of Scarborough
BOWLES of Sanford
MARVIN of Cape Elizabeth
SHOREY of Calais

Reports **READ**.

Senator **KONTOS** of Cumberland moved the Senate **ACCEPT** the Majority **OUGHT TO PASS** Report.

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

Senator **MACKINNON:** Thank you Mr. President. I would like to ask the men and women of the Senate to please vote very carefully and think about this as we go on in this report, and please go along to accept the Minority Report at this time. I will tell you that, as we know, this has been a 2 year process. It has been about looking at accountability for groups for which we did not have accountability in this state. I hope that you will look and see that the one difference is between the board members on MELMAC, 3 or 4 public appointments. There has been a negotiated process down the road. It came from 2 to 3, now to 4.

I believe and I think the simple part of this is, that it is either we have control by the state or it's going to be controlled by MELMAC itself. I think this has been a situation where there has been a lot of scrutiny in the press. Obviously both the Minority and Majority Report members have had a chance to have an intense lobbying effort on this. I hope that you'll please look at this. I would hope that you would please think about the actions your are going to take. Does this mean that we're now taking over anything from public things, from Boy Scouts to whatever we may take, and to put these numbers on. Think about it. 4 versus 3 versus 4 is the major difference in this. I think the committee has worked long and hard on this. We are actually still speaking. I hope that we continue that way. I think that the idea is we have different philosophies of where we want to go and what's going to help students the most, and where it can get the best amount of money for students, without hopefully, causing the least amount of litigation. Thank you.

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

Senator **KONTOS**: Thank you Mr. President. Men and women of the Senate, you heard a bit about this issue on an earlier Bill in today's session. When I talked to you then, through the President, I was suggesting to you that much of the debate that this committee has dealt with in the last 2 years had to do with student lending. There is full agreement on the committee of three basic principles. One, that we wanted to take action that would improve public accountability of the student lending structure. Two, that we wanted to improve public oversight of the entities involved with student lending. And three, we wanted to guarantee that all the benefits of these tax exempt bonds were fully restored and returned to the student lending programs. I'm happy to tell you that there was unanimous support for those proposals, and with only one exception. Unanimous support on the committee for legislative changes that would accomplish those goals.

As the good Senator from York has indicated, the one difference that we ended up with after these many months of work involved the configuration of the MELMAC Board. As I think, it was the Senator's comment in committee, if we could divide that 7th position in half, we probably would have had a unanimous report. Quite simply, what those of us who signed on to the report want you to agree with us about is this; we believe in order to assure you, our constituents, the bond bank, student borrowers, and their families, that there is full public oversight of what is a half billion dollar portfolio in student lending. We believe there should be at least 4 of the 7 members of the board appointed by the Governor and confirmed by the Senate. Sadly, that's the only point on which we disagree. Happily, that's the only point on which we disagree because those of you who have paid attention to this issue in the media, and have heard those of us on the committee talking about it, and know that we carried the Bill over, and know that we had a very high profile commission work on this issue during the summer, and know that our efforts have involved a number of bond council recommendations. The Chief Executive's designees, a number of people from the private lending community, as well as credit unions and banks, know how many players have been involved in helping us make our decisions. And you need to know that this goes back for a long time.

These are structures that have been allowed to take shape over nearly 15 years. And it's time for us, given the size of the portfolio, to improve the accountability that both the Senator from York and I have mentioned to you. I know that either of us are happy to answer your questions. I know that it's been a complicated issue. I know that you've been subject to extraordinary lobbying, that you've been sort of plummeted by misinformation, inflammatory rhetoric, in some cases, and what we bring to you today is, for all intense and purposes as close to a unanimous report as just about any committee will get. With the exception of that one appointment, the committee finally was in agreement on a number of issues about interlocking boards, RFP process, competitive bidding, public reporting to committees of jurisdiction, and so on. So with that in mind, and with thanks to the good Senator from York and the Senator from Waldo for their contributions to this effort, I'll sit down for now and ask you to support the Majority Report.

The Chair ordered a Division.

The Senator from Sagadahoc, Senator **SMALL**, requested and received leave of the Senate to be excused from voting pursuant to Senate Rule 401.3.

17 Senators having voted in the affirmative and 10 Senators having voted in the negative, the motion by Senator **KONTOS** of Cumberland to **ACCEPT** the Majority **OUGHT TO PASS** Report, **PREVAILED**.

Under suspension of the Rules, **READ TWICE**.

On motion by Senator **BENNETT** of Oxford, **TABLED** until Later in Today's Session, pending **PASSAGE TO BE ENGROSSED**.

ORDERS OF THE DAY

The Chair laid before the Senate the following Tabled and Later (4/7/00) Assigned matter:

HOUSE REPORTS - from the Committee on **TRANSPORTATION** on Joint Study Order to Establish a Committee on Gasoline and Fuel Prices
H.P. 1774

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-957)** (7 members)

Minority - **Ought Not to Pass** (6 members)

Tabled - April 7, 2000, by Senator **RAND** of Cumberland.

Pending - **FURTHER CONSIDERATION**

(In House, March 31, 2000, the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Joint Study Order **PASSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-957)**.)

(In Senate, April 3, 2000, the Minority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED**, in **NON-CONCURRENCE**.)

(In House, April 6, 2000, that Body **ADHERED**.)

Senator **O'GARA** of Cumberland moved the Senate **RECEDE** and **CONCUR**.

Senator **BENNETT** of Oxford requested a Division.

On motion by Senator **PINGREE** of Knox, placed on the **SPECIAL STUDY TABLE**, pending the motion by Senator **O'GARA** of Cumberland to **RECEDE** and **CONCUR**.

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

REPORTS OF COMMITTEES

Senate

Divided Report

The Majority of the Committee on **LABOR** on Bill "An Act Regarding the Retirement Plan for Rangers in the Law Enforcement Bargaining Unit at Baxter State Park"
S.P. 386 L.D. 1165

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-685)**.

Signed:

Senator:
DOUGLASS of Androscoggin

Representatives:
HATCH of Skowhegan
MUSE of South Portland
FRECHETTE of Biddeford
MATTHEWS of Winslow
SAMSON of Jay
DAVIS of Falmouth

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

Signed:

Senators:
MILLS of Somerset
LaFOUNTAIN of York

Representatives:
GOODWIN of Pembroke
MacDOUGALL of North Berwick
MACK of Standish
TREADWELL of Carmel

Reports **READ**.

Senator **DOUGLASS** of Androscoggin moved the Senate **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report.

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

On motion by Senator **PINGREE** of Knox, **TABLED** until Later in Today's Session, pending the motion by Senator **DOUGLASS** of Androscoggin to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report.

Off Record Remarks

On motion by Senator **PINGREE** of Knox, **RECESSED** until the sound of the bell.

After Recess

Senate called to order by the President.

Off Record Remarks

ORDERS OF THE DAY

The Chair laid before the Senate the following Tabled and Later (4/7/00) Assigned matter:

HOUSE REPORTS - from the Committee on **JUDICIARY** on Bill "An Act Concerning Previous Passamaquoddy Indian Territory Legislation"
H.P. 1871 L.D. 2607

Majority - **Ought Not to Pass** (10 members)

Minority - **Ought to Pass as Amended by Committee Amendment "A" (H-1071)** (3 members)

Tabled - April 7, 2000, by Senator **RAND** of Cumberland.

Pending - **ACCEPTANCE OF EITHER REPORT**

(In House, April 6, 2000, the Minority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1071)**.)

(In Senate, April 7, 2000, Reports **READ**.)

Senator **LONGLEY** of Waldo moved the Senate **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED** Report, in concurrence.

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

Senator **LONGLEY:** Thank you Mr. President. I simply move this because of what happened in this in the early 1990s. There was a Bill before the legislature and it was passed overwhelmingly. It had, what in many other situations we would call, a minor error. Those minor errors are errors that we normally catch in the Errors and Inconsistency Bill. What was then a minor error has now turned into a major error. It was a simple date error where, in one provision, they changed the date in one line and somehow managed to forget to change the date in a few lines down. This date had to do with the acquisition of land by the Passamaquoddy Tribe.

On this land, which was once a farm, the Tribe has pursued the gambling issue. That's where emotions have gone all over the place and it's really hard for everyone to keep their focus. In my opinion, what we do with this amendment is simply put the Tribe back to where we all thought we were putting them in the

early 90's. In this Bill, what we deleted was the retroactive piece which would have allowed them to then have the LURC permit to do their gambling. This isn't a gambling Bill. It's been confused, understandably, as a gambling Bill. In my opinion, to keep it an intelligent legal focus, it's simply a Bill to allow what we allow several times in many years, which is updating and allowing for an extension of time for the acquisition of land. I'm sorry it's become such an emotional issue. It is. What this amendment simply does is put them back in '92; doesn't make it retroactive. So they would have to reapply for any permits if they so choose. I hope that makes sense and I'll be happy to answer any questions. Thank you.

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

Senator **BENOIT:** Thank you Mr. President. May it please the Senate. Of the Bills we have before us at this session, this is in the top 10 in importance. It may be in the top 5, because resting upon our decision here on this measure is the life or death of Albany, Maine. That's how important this is. As to the final bottom line situation. Now the Senator from Waldo, the good Senator Longley, made an indication that this was a minor error that occurred back in 1992. Call it minor, call it major, doesn't matter. It's not a matter of semantics.

At that time, the Passamaquoddy Tribe came to the legislature with the language we enacted. We did not fudge with it. We did not tinker with it. We enacted it. Members of the Tribe claimed there was a mistake made in the Revisor's Office. It's easy to pass the buck to somebody else, isn't it. At the hearing before Judiciary not one screed of testimony went toward showing there was a mistake in the Revisor's Office in 1992. They took their language. They held onto their language. They were pleased with it until 1997. They then took their language to LURC. They said to LURC, "look, we want to take this 18 acres in Albany, we want you to rezone it, and we want you to allow us to build a high-stakes bingo situation." They still saw their language as the language they wanted. The language we gave them, that we didn't tinker with. LURC approved their request. Then the Albany folks sued the Tribe and LURC in Superior Court. They said, "this is not Indian territory." number one. Second they said, "LURC erred in rezoning and in allowing this high stakes bingo situation." They won their case. The Tribe, still thinking they had good language, appealed to the highest court of the state. With their lawyers, the language they had was fine, was what they wanted. They went to the law court, still advancing their language, and they lost again. They lost in February of this year. In that decision, the Maine Supreme Court said of the 1992 law "it is not ambiguous, it is not a mistake, it is not a nullity. It is clear language." It's their language. It would be nice if we could follow a sentence in the Tribe lawyer's memo to the Judiciary Committee in a work session and let this thing lie there. Live with the result. Because the lawyer says "the state is bound by the law court decision as much as the Tribe." I'd sit down now if that were the case, but the Tribe is back with this Bill that's before us now. They're not going to be bound are they? It would be nice if they would be because their lawyer says "the state is bound." So they're in with the Bill. The Judiciary Committee votes it out 10 to 3.

Before us now is the Minority Report that I oppose, respectfully. I want to take you back to '92. This is very important. I'm holding the bi-laws of MITSC, the Maine Indian Tribal State Commission. MITSC, I'll use that shorthand. Here

are there bi-laws. In '92, their bi-laws required them, with the '92 proposal, to go public with it, to issue a notice about it to the people of the State of Maine, including Albany people, to allow people to make a comment back to the commission and a public hearing to be held on the proposal. It didn't happen. Now, if you're going to kick somebody in the teeth, first, please show them due process. We have people who are given a death sentence. That's a pretty good kick in the teeth, but we give them due process. We'd better and we do. The bi-laws of the commission that we put in place to take care of issues between the state and the Tribe and the Nation did not comply with their bi-laws. They came rushing to the legislature in '92 for the Bill that they made a mistake with. I say that piece of legislation is flawed for 2 reasons. First of all, they made a mistake in the Bill, they say. Don't put it to the Revisor. They made no mistake, Mr. President, at the Revisor's Office. They did not follow their rules and regulations in their bi-laws. They were supposed to. Their bi-laws indicate, and by the way, these bi-laws, approved in December of '85, are the product of 4 representatives of the state and 4 representatives of the Indian Tribe and Nation. These bi-laws are not just a product of citizens of the State of Maine other than the Tribal Nation. They're the bi-product of the Indian Tribes, the Passamaquoddy, the Penobscot Nation, our representatives, and they're good bi-laws. They're fair bi-laws. They give notice. They allow people to be heard. Due process is here. It starts right off by saying "no lands held or required by or in trust for the Tribes or Nation other than those described in," and then it mentions the law provision where this language ended up. This language was not in the law that is mentioned here in '92, and therefore, had to go through this process public notice and hearing. The commission was supposed to contact the tribe and get their input, contact Albany people and get their feedback, and it did not happen. Here's a letter from the Chair of the Commission given to the Judiciary Committee indicating that, Cushman Anthony, Chair. The Secretary has, I don't want to use a word to be out of place here, the Secretary says that that was an inadvertent mistake in not following their bi-laws.

Ladies and gentlemen of this august chamber, the day that due process is inadvertent is a sad day for the people of the State of Maine. And, in order for you to approve the Minority Report, you're going to have to deny the people of Maine and Albany due process of law. It's as simple as that. But, I'm not done yet. There's a trail of error here that is absolutely scary. Absolutely scary. Lets bring us up to the present time and this Bill. Another letter, a letter now March 14th this year, given to the Judiciary Committee. The 4 members of the commission we put in place to do business with the Tribe, the Nation, and the people of the state, those 4 people want to hold a public hearing on this Bill. They want to do their job, and in order to vote for the Minority, and you can do it, you're going to be saying to these people; "ah, we don't care about your bi-laws and you want to do your job. We'll do your job for you". State Representatives, the 4 of the 9, believe the law court decision invalidated the steps previously taken by the state to include certain lands within Albany Township as Indian Territory. The legislation before you, this Bill, represents a new proposal. It is, its got a new date. This is not something old being repeated. It's new and they recognize it. It's a new proposal by the Tribe to include Albany Township in Indian Territory that addresses the law court findings. We believe this legislation should be addressed by MITSC.

Due process is what they want. That's what they're asking for, due process. Let us have some fairness. Let us do it according to our bi-laws. Bless their heart. Isn't it good to find

public servants who want to work and do their job. You vote against their doing their job if you want to. It's a free country. I'm not going to do it. The State Representatives believe they write to the committee that the provisions of the settlement clearly intend that no land outside the areas defined in the settlement be included in Indian Territory until MITSC, the commission, has an opportunity to fully consider the proposal. To this end, the bi-laws of MITSC establish a process to inform the public of specific proposals and provide opportunity for public comment. Now this is a sad final paragraph. To me, they're pleading with us to allow them to do their job. I mentioned earlier that following the law court decision in February, the Tribe rushed in with this Bill. Unfortunately, they write, the proposal under consideration, this Bill, was brought to the commission on March 10 of this year which gave insufficient time for MITSC to follow the established process for making recommendations on the matter. The State Representatives to MITSC believe this proposal should receive full consideration by the commission in accordance with its bi-laws, before they make a recommendation to the Judiciary Committee. In order to approve the Minority Report, you have got to cast aside the commission members who want to do their job. And for the second time, you will kick in the teeth the people in Albany and the people in the State of Maine without due process. Again, if you want to kick somebody in the teeth, at least show due process, okay. Seems to me that's a fair thing to do. If you believe, as I do, in due process, and frankly, when I think of due process, I realize that 10 of the members of the Judiciary Committee, the report, 5 are lawyers and 5 aren't. Sometimes I think we lawyers live too close to due process. We're too used to it. We're too used to casting it aside as something else we work with. To put it aside.

You walk down the street of any town or city in Maine and you ask people what they think about due process and they will give you a definition. It won't sound like a lawyer, but it will talk about fairness. That's due process. To conclude, Mr. President, something happened in '92, when the Tribe came here and asked us to enact something for them, which we did, didn't tinker with it. They held onto it, fought it through two court proceedings. Eight years this situation has existed and in court for many years. Twice, not once, twice the people of the State of Maine, the people of Albany Township have been denied due process. Now, if you have in mind what due process is, you will not approve the Minority Report, you can't. Because it's going to tell the people of the State of Maine that this commission we put in place with its bi-laws does not need to be followed. Oh well, what are the bi-laws worth. Remember now, this is the commission we have in place, the only one, to do business between the state, the Tribe, and the Nation. They want to work on this. They haven't. They recognize that. Please recognize that due process should be honored and not support the Minority Report. Thank you.

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

Senator **LONGLEY:** Thank you Mr. President. I would like to respond. I guess the most tactful response is, reasonable people differ. Due process is something that all of us value. I would just say that, in response, reasonable people differ about whether we respect a due process. I've been one to cause quite a stir around here when I felt I couldn't give adequate notice to people about Bills. That's a very important piece. So to have it suggested that anyone on the Minority Report is somehow not

honoring due process, I think my response is reasonable people differ. I will simply say that it's reasonable to decide that, given the fact that this wasn't put out for public hearing by MITSC in the early 90's. You can decide that's a denial of due process. I have decided it was not, for the simple reason that it went through the process of a public hearing at the legislature on this Bill, and people came and had a chance to air their gripes. I've been told that this gripe wasn't aired and that's why I have decided that this isn't a denial of due process. Again, I'll end by saying it's a very important piece to me to honor due process across the board. The suggestion that I might not be, I take exception to, and just say reasonable people can differ on this point. Thank you.

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

Senator **CATHCART:** Thank you Mr. President. Mr. President, men and women of the Senate, I rise to speak in favor of the Minority Report and urge you to join me in supporting that. I think it's regrettable that an error was made in the law that we passed in the legislature in 1992. I hope that we can make that right today by our votes. As you know, I represent the Penobscot Nation in this Senate, and they have a legal standing in how this amendment to the implementing act is treated in this legislative body. They're watching with great concern as to whether or not the state will honor our agreement and see if there is integrity in the process.

The Penobscot Nation fear the same thing could happen to them in the distant, or not so distant future, if the state fails to honor its agreement. The effect of our not passing this legislation would be to alienate the other Tribal Governments who were parties to the Lands Claim Settlement Act also. I served on the Judiciary Committee when I was in the House in 1992. I remember the Bill well that came before us to amend the Land Claims Settlement Act and to make this land in Albany Township Indian Territory. That Bill went through all the stages that we require in this legislature to pass a new law. We had a public hearing, we had work sessions in the committee to which the public were welcome. We had, of course, because it was a proposal to amend a treaty that the state had made with our Indian Tribes. We had to have involvement. The Attorney General and the Governor's legal staff were involved as well. It was not a simple process and everyone had to agree before this became law. The Bill went through the Judiciary Committee unanimously and went through the House and Senate without a single dissenting vote, and was signed by Governor McKernan then without question. It was a committee that had high caliber people. I probably won't name all of them to you. I was on that committee, Paul Gauvreau was the Senate Chair, Pat Paradis was the House Chair, Senator Berube was a member as were Susan Farnsworth, Andrew Ketterer, David Ott, Jack Richards, and several other people that many of us here know and respect. So I think that the error that was made in the date was not the fault of our committee except that it was overlooked. I think that the problem here is that there was an error made and we have a chance to correct that error today. We certainly all agreed without any doubt that we had made that parcel of land in Albany Township into Indian territory. That was the intent of that legislature. Then recently the process was challenged, as I understand it, and the Maine Supreme Court vacated the Land Use Regulatory ruling on the technicality that the date by which the trust land could be acquired was not changed. This Minority Report would change that date, and it would keep the faith that

we had when we made the amendment to the Land Claims Treaty in 1992. It would not take things back to before the LURC ruling on whether or not the Tribe could offer gambling on that land. That would have to go through the whole process again. So this, to me, is not really a question about gambling at all, but that seems to be the reason behind the big controversy about it.

The people in Albany Township are concerned that the Passamaquoddy Tribe wishes to have gambling in that beautiful township. I can appreciate their concerns. I would probably be concerned too. However, that really has nothing to do with the act of the legislature in 1992, and I hope that we can set that aside. We have debated gambling here several times during this session. Whether you can charge horse racing bets over your telephone. We advertise our lottery every day on television throughout the state. We're not really very pure in Maine when it comes to gambling. So to go against this and to try to say that the law passed in 1992 was invalid because we fear today that gambling will come back up as an issue just seems to be unreasonable to me. I hope that you will do what I urge you to do and vote for the Minority Report because of the concern about the gambling, and because there's fear that this law, if we pass it, would override the LURC jurisdiction. I plan to offer, on the second reading of this Bill, if it gets that far, an amendment which would absolutely state in statute that the land would be subject to LURC jurisdiction and that the Tribe would have to get permission of LURC in order to use this for whatever purpose. I think, that it would be fitting to do that. But I urge you to realize that this is a treaty that we are altering here and that was amended in 1992. This is a symbol of the trust that was worked out when the Land Claims Settlement Act was passed by the legislature, the state and agreed to by the Indian Tribes. I hope that we will not violate that trust today and please support the Minority Report. Thank you, Mr. President.

THE PRESIDENT: The Chair recognizes the Senator from Somerset, Senator Mills.

Senator MILLS: Mr. President. Men and women of the Senate, as Dale Bumper said when he was defending President Clinton on the floor of the U.S. Senate, "when they keep telling you that it's not about money, oh, it's about money" and when people keep telling you that it's not about gambling, you can bet your bippy it's about gambling. That's what this Bill is all about. Now, if it had been about gambling back in 1992, when this small 18 acre farm in Albany was added to the Indian Trust territory, and if it had been added as Indian territory with some public hearing over the issue of whether high stakes beano ought to be conducted in the middle of this rural community, wow, then there could have been due process, a rational discussion. But it never came through that way.

Everything you've seen down to date came slipping through, in the dark of night, without discussion. Apparently, without due process. Without knowledge or notice to the people whose lives and fortunes and properties were at stake, whose homes are at stake. Today we have a black and white choice. We pass some version of the Minority Report and that is tantamount to saying 3 years from now, after the litigation is over, go ahead and put a high stakes beano parlor in the middle of downtown Albany, such as it is, and destroy the community in the same way that those poor, unfortunate communities in Connecticut have been virtually eroded, destroyed, and corrupted by those palaces that have been erected on sovereign territory, so called sovereign territory. That isn't responsive to the police power of the surrounding town,

it isn't responsive to their powers of taxation, it isn't responsive to the need to build the roads that lead to these palaces. The Tribes are being manipulated by money people from New York who have only one interest at stake and that's making a profit off Maine people who want to gamble there. That's all that's at stake here. This is pure and simple. Let's cut through all the paperwork and the sophistry and the attempts of subversion. This is a plain and simple issue. If we vote to approve the Minority Report, we are in essence, granting a license without due process or hearing for the good people of Albany, to some people from New York to go build a casino using the Tribes as their caspar for that purpose. It's offensive to me. The process is offensive to me. The idea that this little 18 acre farm, as it was represented in this legislation, the pink copy of which you have on your desks, was added to Indian territory and then later the attempt was made to convert from Indian Trust land to Indian territory without any public hearing as to the consequences of that event. That's the grotesque violation of due process that we have been witness to in the last decade, and we shouldn't perpetuate it. I urge you to vote against the pending motion.

THE PRESIDENT: The Chair recognizes the Senator from Oxford, Senator Ferguson.

Senator FERGUSON: Thank you very much Mr. President. Ladies and gentlemen of the Senate, I represent Albany Township in the Maine State Senate. Albany Township is in western Maine very close to the New Hampshire border. Back in 1938 and 1939, a large portion of Albany Township was acquired by the National Forest. They deorganized at that time. They gave up their Charter and became an unorganized territory.

This land in question is 18 acres of land that was owned by a Passamaquoddy member, a gentleman by the name of Fred Meader. I know Fred Meader, I knew him very well. He used to come into our County Commissioner's meeting on occasion. Before he passed on, he passed on a few years ago, I happened to be at a hearing in Albany Township where Mr. Meader was present and several other people. Several of my constituents are in the room here today that were at that very meeting. Mr. Meader stood up, and he had tears in his eyes, and he said "if I ever knew the grief that I was causing my neighbors, I never would have transferred this land to the Passamaquoddy." Make no mistake about this, this is high stakes beano, that's the issue. You can talk about Tribal Treaties or anything else that you want to. The main issue here is high stakes beano. That's the main issue and I do have before me, which has been distributed by my colleague, Senator Mills, who preceded me, and I'll read the statement of fact. It says "this Bill allows the Passamaquoddy Tribe to place into trust a small farm that the Tribe acquired from a member of the Passamaquoddy Tribe in 1988," that was Mr. Meader. The Tribal member and the members of the family continue to live on the property, which is located in Albany Township, Oxford County. This high stakes beano is financed by a New York investor. It sits on the banks of the Crooked River, which is one of the prime salmon spawning streams for Sebago Lake. Several of the towns around Albany Township are opposed to this. I've had communications from Bethel, Stoneham, and Lovell. Several individuals have called me. They are all opposed to this high stakes beano establishment going forward, and ladies and gentlemen, that is the issue here today. That is the issue. And as my good colleagues the good Senator Benoit from Franklin County, the good Mills from Somerset County mentioned, due process was

not adhered to. The very first step in due process, the Tribal State Commission, by their own bi-laws are suppose to advertise and hold a public hearing. This was not done. So I urge you here today to join me in defeating the Minority Report and go on and accept the report, which is a 10 to 3 report Ought Not to Pass. I thank you very much for your indulgence. Thank you.

The Chair ordered a Division. 6 Senators having voted in the affirmative and 19 Senators having voted in the negative, the motion by Senator **LONGLEY** of Waldo to **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED** Report, in concurrence, **FAILED**.

THE PRESIDENT: The Chair recognizes the Senator from Oxford, Senator Bennett.

Senator **BENNETT:** Thank you Mr. President. Fellow members of the Senate, I first want to talk about this question of the mistake, and then I'd like to make a statement. Hopefully it will be brief. I was here in 1992. I was a member of the other Body. I remember the debate about this issue and it was tremendously important. Tremendously important to me and the other people from our area. The reason that the Bill, back in 1992, went through without descent, and believe me it wouldn't have if this were the expected outcome. I was told that because of the dates contained in this Bill that there was never a chance of having a gaming facility in Albany Township. It was because of that that this went through without descent. In fact, an attorney for the Tribe, in a different lawsuit against the Tribe by Forrest's associates, said on the record, and I quote, to the question, and this is the question that I quote. "Did you tell Mr. Forrest that from a public relations standpoint it would be prudent to hold off from proceeding with the development of the bingo project so as not to draw public attention to the trust process, to the process of putting that land in trust?" The Tribe's attorney in response said, and I quote, "I can't recall a specific conversation along those lines, but I do recall thinking that the process of getting it taken into trust would be easier if it weren't a public issue about how it would be used." There was no mistake. It was an understanding in that Bill, at that time, that this would not happen. And I will tell the Senate that, that was the single greatest mistake I've ever made in 7 years. Some may differ with that. But I believe it to be the single greatest mistake I've ever made in 7 years of legislative service because of the way that that Bill has been misused and misrepresented.

Here it is again today. I speak today understanding my limitations. Senator Benoit, the good Senator from Franklin, has addressed the legal issues extremely well. The good Senator from Oxford, Senator Ferguson, has talked about this history. The good Senator from Somerset, Senator Mills, has talked about the effect of gambling. But I rise here today because of all 35 members of this Senate, I may be the one who will be most affected by the vote here today. You see I live about 4 miles from Albany Township. This proposed gambling center would be in my community. Nearly in my neighborhood. The people here, those that you've been hearing from, are my neighbors. Now I have a confession to make, the confession is this, I actually like each and every member of this Senate. I have great respect and affection for every one of you. I don't expect to always be reciprocated, but there it is. I believe my affection and respect is based on my belief that every member of this Senate shares 2 fundamental qualities. The first is empathy. You are all a caring people. You're a loving people. You are touched by the joy and

the pain of others. I know you've met my daughter, Abigail. Mr. President, you've been good enough to relinquish your gavel to her control. Upon the birth of my son, Nathaniel, I received your warm wishes and genuine heart-felt affection. In many ways my son, my daughter, my wife, and I are a typical family in the greater Albany community. And I must say, we will feel devastated if this most unwelcomed of events, the building and operation of a gambling facility, comes about in our community. It will alter our lives fundamentally and forever. We, like every one of the 230 families in Albany and nearly everyone else in our community, oppose this Bill and oppose it strenuously. I implore you to listen, and more than that to feel, to feel the anguish of those of us who will have to live in the shadow of this gaming operation. Secondly, I know that each and every one of you share a bedrock belief in the principle of self-determination and its operational manifestations, the rule of law.

The people of my community have not experienced the right of self-determination with respect to this issue. The rule of law has been abrogated because of a failure in due process. The avenues for expression of self-determination in this case, specifically the rules and statutes surrounding the operation of MIDSIC, were not followed. The people of Albany and the people of my community were shut out and their voices cut off. Many are represented here today in the rear of our chamber, hoping and praying that their voices will be heard here today in the Maine Senate. Please do not believe that we can address today 400 years of injustice by committing another injustice. Please do not believe that yanking this issue out of the hands of the Supreme Court will contribute to justice, will yield a happy outcome. And I beseech you, please do not force this facility upon my community, my neighborhood, and my family. I implore you, please. This issue is of great importance and I ask you to reject the pending motion. Thank you.

Majority **OUGHT NOT TO PASS** Report **ACCEPTED**, in **NON-CONCURRENCE**.

Sent down for concurrence.

Under suspension of the Rules, all matters thus acted upon were ordered sent down forthwith for concurrence.

Off Record Remarks

Senator **BENOIT** of Franklin was granted unanimous consent to address the Senate off the Record.

On motion by Senator **PINGREE** of Knox, **ADJOURNED**, pursuant to the Joint Order, until Monday, April 10, 2000, at 12:00 in the afternoon.