

MAINE STATE LEGISLATURE

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

In Senate Chamber
Monday
April 10, 2000

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

Prayer by Senator Chellie Pingree of Knox County.

Senator **PINGREE**: I'll start the prayer with a little confession to my fellow colleagues. I only thought about the prayer as I was walking in the door this morning. So first, I'm going to pray for some pretty good ideas real fast. Could we all be in the spirit of prayer?

I'd like to say a little bit about what I think about when I'm sitting here thinking of a battle that we have to take on, or a difficult situation that we're about to be in, or a challenge ahead of us. Here are the thoughts that go through my mind.

I pray for the courage that I'm able to do what's right. I pray that I'm going to have the compassion to care about those who count on us to remember them. I pray that I'm going to have the strength to survive one more day without enough sleep. I pray for faith, for hope, for humor, and mostly I pray that I will remember to be grateful for the tremendous blessings that all of us, especially I, have been given. That we're here in this room. That we have the privilege to serve others. That we wake up every morning healthy and alive and with tremendous blessings in front of us. Amen.

Pledge of Allegiance led by Senator Paul T. Davis, Sr. of Piscataquis County.

Reading of the Journal of Saturday, April 8, 2000.

Off Record Remarks

REPORTS OF COMMITTEES

House

Ought to Pass As Amended

The Committee on **LEGAL AND VETERANS AFFAIRS** on Bill "An Act to Create a New Category of Liquor License and to Exempt Pool Halls, Bowling Alleys and Off-track Betting Facilities from the Prohibition Against Smoking"

H.P. 1807 L.D. 2533

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (H-1004)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1004)**.

Report **READ**.

On motion by Senator **PINGREE** of Knox, **TABLED** until Later in Today's Session, pending **ACCEPTANCE OF THE REPORT**.

Divided Report

The Majority of the Committee on **EDUCATION AND CULTURAL AFFAIRS** on Bill "An Act to Authorize Portland College to Grant Degrees" (**EMERGENCY**)

H.P. 1657 L.D. 2326

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-1078)**.

Signed:

Senator:
BERUBE of Androscoggin

Representatives:
RICHARD of Madison
WESTON of Montville
STEDMAN of Hartland
DESMOND of Mapleton
BRENNAN of Portland
ANDREWS of York
BELANGER of Caribou
SKOGLUND of St. George

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

Signed:

Senator:
MURRAY of Penobscot

Representatives:
WATSON of Farmingdale
BAKER of Bangor

(Senator **SMALL** of Sagadahoc Abstained)

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-1078)**.

Reports **READ**.

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

Divided Report

The Majority of the Committee on **JUDICIARY** on Bill "An Act to Provide Equal Treatment for State Employees under Certain Federal Employment Laws"

H.P. 1939 L.D. 2682

Reported that the same **Ought to Pass**, pursuant to Joint Order (H.P. 1912).

Signed:

Senators:

LONGLEY of Waldo
TREAT of Kennebec

Representatives:

THOMPSON of Naples
LaVERDIERE of Wilton
BULL of Freeport
MITCHELL of Vassalboro
NORBERT of Portland
JACOBS of Turner

The Minority of the same Committee on the same subject reported that the same **Ought Not to Pass**, pursuant to Joint Order (H.P. 1912).

Signed:

Senator:

BENOIT of Franklin

Representatives:

PLOWMAN of Hampden
MADORE of Augusta
WATERHOUSE of Bridgton
SCHNEIDER of Durham

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

Reports **READ.**

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

Senate

Divided Report

The Majority of the Committee on **HEALTH AND HUMAN SERVICES** on Bill "An Act to Establish Fairer Pricing for Prescription Drugs"

S.P. 1026 L.D. 2599

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-686).**

Signed:

Senators:

PARADIS of Aroostook
BERUBE of Androscoggin

Representatives:

KANE of Saco
BROOKS of Winterport
FULLER of Manchester
QUINT of Portland
DUGAY of Cherryfield
WILLIAMS of Orono

The Minority of the same Committee on the same subject reported that the same **Ought to Pass as Amended by Committee Amendment "B" (S-687).**

Signed:

Senator:

MITCHELL of Penobscot

Representatives:

LOVETT of Scarborough
BRAGDON of Bangor
SNOWE-MELLO of Poland
SHIELDS of Auburn

Reports **READ.**

Senator **PARADIS** of Aroostook moved the Senate **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-686)** 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 BY COMMITTEE AMENDMENT "A" (S-686)** Report.

Divided Report

The Majority of the Committee on **TAXATION** on Bill "An Act to Ensure that Certain Land Transfers Accomplished through Stock Transfers are not Exempt from the Transfer Tax"

S.P. 1053 L.D. 2643

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

Signed:

Senator:
RUHLIN of Penobscot

Representatives:
DAVIDSON of Brunswick
COLWELL of Gardiner
STANLEY of Medway
LEMONT of Kittery
MURPHY of Berwick
BUCK of Yarmouth
CIANCHETTE of South Portland
GAGNON of Waterville
LEMOINE of Old Orchard Beach

The Minority of the same Committee on the same subject reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-688)**.

Signed:

Senator:
MILLS of Somerset

Representative:
GREEN of Monmouth

Reports **READ**.

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

ENACTORS

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

Acts

An Act to Require Rules on Temporary Campgrounds to be Major Substantive Rules
S.P. 1077 L.D. 2681

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

An Act to Stimulate Job Creation and Investment in Maine by Amending the Income Tax Apportionment Formula
S.P. 360 L.D. 1064
(C "A" S-544)

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

An Act to Reduce the Release of Mercury into the Environment from Consumer Products

S.P. 734 L.D. 2084
(C "A" S-648)

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

An Act Regarding the Solid Waste Hauling and Disposal Industry
H.P. 1736 L.D. 2442
(C "A" H-1086)

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

An Act to Establish Criteria for Tax Incentive Programs
H.P. 1754 L.D. 2460
(H "A" H-1055 to C "A" H-1021)

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

An Act to Establish the Council on Children and Families and to Ensure the Continuation of the Governor's Children's Cabinet
S.P. 1076 L.D. 2679

On motion by Senator **CATHCART** of Penobscot, placed on the **SPECIAL APPROPRIATIONS TABLE**, pending **ENACTMENT**, in 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 Prohibit the Importation of Milfoil into State Waters"
H.P. 1843 L.D. 2581
(C "A" H-970)

In Senate, March 30, 2000, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-970)**, in concurrence.

Comes from the House, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-970) AS AMENDED BY HOUSE AMENDMENT "B" (H-1105)** thereto, in **NON-CONCURRENCE**.

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

Senate at Ease.

Senate called to order by the President.

ORDERS OF THE DAY

Unfinished Business

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

The Chair laid before the Senate the following Tabled and Later (3/31/00) Assigned matter:

HOUSE REPORTS - from the Committee on **CRIMINAL JUSTICE** on Resolve, to Create a Commission to Study the Regulation of Firearms in Maine

H.P. 1780 L.D. 2494

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

Minority - **Ought to Pass as Amended by Committee Amendment "A" (H-923)** (5 members)

Tabled - March 31, 2000, by Senator **PINGREE** of Knox.

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

(In House, March 30, 2000, Reports **READ** and Bill and accompanying papers **INDEFINITELY POSTPONED**.)

(In Senate, March 31, 2000, Reports **READ**.)

Senator **PINGREE** of Knox requested and received leave of the Senate to withdraw her motion to **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED** Report, in **NON-CONCURRENCE**.

Senator **MURRAY** of Penobscot moved the Senate **ACCEPT** the Majority **OUGHT NOT TO PASS** Report.

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 first by thanking the good Senator from Knox, Senator Pingree, for her graciousness in withdrawing the previous motion so that we can debate the pending motion, which is Ought Not to Pass. This Bill, if you haven't had an opportunity to look at it recently, deals with a proposal to establish a study for the regulation of firearms in the State of Maine. It's a little difficult, at times, to talk about a study Bill and

whether or not we should oppose it. I think some of us feel sometimes that, if we're talking about just a study, what's the harm? Why not go forward and see what we can learn? And if you're of that mind and that philosophy and basically are prepared at any given moment to support a study, I suspect that you'll be inclined to support this one as well. I'm not always convinced that a study is always appropriate, always helpful, and even worse, sometimes a study may cause some harm. In this case in particular, I was not convinced that the proposal, as it was presented to us to study the issue of firearms, was the right answer on this issue. In fact, I felt it is appropriate that the wiser course for us to take is to vote against this proposal. And I do so for the following reasons: the issue presented on this Bill to study firearm regulation, as all of us know from previous debate on some of the issues we've had this year, and obviously, in previous years. The issue of gun regulation and Second Amendment rights, and the rights under the Maine Constitution to hold firearms is obviously a deeply held belief. It's one that causes great concern, group controversy, and that in and of itself, isn't enough to not study it, but it's something we have to keep in mind when we're talking about a proposal that would study issues such as gun regulation.

The types of things that I think are most successful putting to study are issues that are particularly complicated, that need a great deal of data looked at by a group that has the time to distill it. Issues that look at a particular, discreet issue that needs more attention than can be given at a legislative committee level. That's not what is being proposed in the Bill before you, in my opinion. What's being proposed before you is a very broad suggestion that the issue of guns in general, the laws in Maine, and the laws on the federal level regarding guns in general, what kinds of things dealing with gun safety or gun education or the principles of appropriate gun ownership. This is the kind of language that's in this Bill that suggests it ought to be studied, or needs to be studied by a group charged with doing so. I think that on an issue like this, that kind of a charge, those kinds of duties are doomed to failure. It's flawed to suggest that a group of people given this kind of a charge can distill what are the appropriate issues that ought to be presented back to a legislature for legislative consideration, in my opinion. So the breadth and duties that are proposed in this Bill is one of the flaws of this Bill, and I think it's a significant flaw. The second flaw, I think, in the Bill that's presented is the makeup or composition of this study, and quite frankly, I think the membership is flawed too much in favor of one side of the issue as opposed to the other. That obviously is something that could be tinkered with, but it presents the underlying problem of what kind of a makeup should a study like this include.

I, quite frankly, don't know the answer to that. That was one of the issues discussed in committee. It's one that I didn't feel comfortable coming up with a valid answer. If we were going to charge a group so broadly to deal with an issue like this, who would we make in charge of that daunting task? I couldn't come up with the answer. I do feel fairly confident that the proposal before you doesn't fairly reflect the players that ought to be involved. Finally, ladies and gentlemen of the Senate, I think that what we have talked about for the last few days with regard to the other Bills dealing with gun issues demonstrates the real reason, or perhaps the most important reason, why I don't think this approach that's proposed in the study Bill is the way to go. I, quite frankly, was quite proud of the debates that we have had over the last few days, and weeks on the other gun related Bills that were presented to us. I think that demonstrated, at least it

demonstrated to me and I hope it demonstrates to you as well, that this legislature through the process it has is the appropriate body to deal with issues as they come up on an issue by issue basis, as it relates to guns. I think we are quite capable, through the committee process and through the legislative process on the floor of the House and Senate, to discern what is the best approach to take as we deal with these particular issues. We don't need to hand that duty off to a study commission to do what we have in this Bill proposed that they do. So for all of these reasons I would ask you to join with me and the majority of the committee in voting Ought Not to Pass in support of the pending motion. Thank you.

Off Record Remarks

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

Senator PINGREE: Thank you Mr. President. Colleagues in the Senate, first I want to say, while I was happy to withdraw my motion, I'm going to ask you to vote in opposition to the Majority Ought Not to Pass Report. I want to thank my good friend and colleague from Penobscot County, Senator Murray, for his comments and must say that on this issue, he and I have a serious disagreement. Although I really appreciated his hard work on these difficult issues on other days we've been debating them on the floor. I am going to be brief myself as well, but I do want to talk a little bit about the way I see this issue, which is somewhat different.

I think it is very common in this legislature that we take a contentious and difficult issue and decide to study it. We study it because we want to bring desperate parties to the table, because we want to bring people of different beliefs to sit around the same table and talk about it, sometimes outside of the committee process. We study because we want to gather all the information we possibly can to help ourselves make a good decision. I just quickly took a look at this Special Study Table that is before us right now, which is small compared to what I am sure it will be at the end of this session and what it is at the end of many sessions. We're going to have the committees discuss and study school based health care services, to study the furtherance of criminalizing the criminal laws of Maine, to look at access to health care, to study bomb threats in Maine schools, to look at gasoline and fuel prices. We study things frequently and do things for the reasons that I have said. I found in earlier debates, or in earlier Bills about gun safety that I have presented to the Criminal Justice Committee, there were many times that committee members, or my colleagues here on the floor, have said, do we have enough information on this issue? Do we know enough information about how many teens possess guns? About how often domestic violence is committed by someone who has a concealed weapons permit? We've been asking ourselves many questions and I think it would be entirely appropriate to have a study commission look at some of these issues.

Now I must concur, there may be problems with the wording of this. I was not the sponsor of this Bill so I did not sit through lengthy hearings about the exact wording of this law. I think that was part of the committee process that had the committee

chosen to resolve it, they could have. We often change the membership of a study committee. While we're working in committee process, we often change the mission. And if those, in fact, were the issues regarding this, I would have been more than happy to see an amendment to change this. What I am concerned about is that we may potentially make the decision not to study this issue at all.

Last, I just want to call your attention to a piece of literature that I've had distributed that I just had a chance to see myself over the weekend. It was a news release from April 13th put out by the Open Society Institute, which as you know is sponsored by George Soros. They did a study looking at the United States and how states rank on their gun safety laws. Now I often say when we debate these Bills, I am not in favor of gun control that takes away everyone's right to bear arms, that takes away everyone's right to go hunting, that takes away access to guns for law abiding citizens for their appropriate use. But I do think it is appropriate to study gun safety, to study children's access to guns, to study appropriate use of guns by the people who should have them in their hands. If you look over this study, you will find that Maine is ranked the worst. We're given a rating of minus 10 in our gun safety laws. And the fact is, here we are told by a national survey published last week that we have some of the least restrictive, least successful gun safety laws of any state in the country. In fact, the worst rating in the country, and we are going to decide not to study this. I hope you will vote in opposition of the Majority Ought Not to Pass Report. Mr. President, when the vote is taken I request the yeas and the nays.

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.

THE PRESIDENT: The Chair recognizes the Senator from Washington, Senator Cassidy.

Senator CASSIDY: Thank you Mr. President. Men and women of the Senate, this seems like déjà vu. I guess every time we turn around it seems as though we're discussing guns and the right to own guns, and studies of everything you can imagine here in the State of Maine. Just some of the statistics I can remember from some of our other debates is that Maine is one of the largest gun owner states per capita in our nation. We have the smallest crime per capita for violent crime with weapons in our nation. Remember last week during the debate, I think it was announced that we had 25 murders in our state in 1999, 14 of which were from domestic violence, and unfortunately, we had another one just within the last week. And how sad those are. I hope that someday we can see that we have zero and those, only it's quite unlikely. The point is; here we do live in a state that has a long tradition of hunting, with families, with sports shooting, and all those kinds of things. I think it would just be sort of a waste of taxpayers' money to have yet another study, and decide what we need to do here in the state. I think we have tremendous laws. We also have laws that the young folks need to pass a hunter safety course before they can get their first license. I think it is at age 16 or 10 or whatever the age is. So we do have laws in place, we have people that respect the right to own guns. We have an amendment in our constitution that says we have a right to bear arms. I would hate to see us do anything here in this chamber that would take away those rights

and I hope that you will vote for the pending motion. Thank you, Mr. President.

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

Senator O'GARA: Thank you Mr. President. Ladies and gentlemen of the Senate, first of all, about the membership. Obviously, as the Senator from Penobscot himself acknowledged, the membership itself can always be revised. There may be reasons someone might decide to vote against this, but please don't vote against it because the membership appears to be flawed. And especially talking about the word flawed. I've been here a long time, Mr. President and members of the legislature. We have sent out a lot of Bills that have been flawed and had to have them adjusted as we go along, but we do the very best we can. I think we tried very hard on this piece of legislation.

The Senator from Knox mentioned how brief the study committee list is, but I would just mention a couple that are on that very brief list. One is the Joint Study Committee to Study Bomb Threats in Maine schools, certainly very important. Another is a Joint Order to Establish a Committee on Gasoline and Fuel Prices. Now while those are both very important, no question about it, I can't imagine that anyone would think that a commission to just look at the laws that exist in the State of Maine, and that's all this does. This Bill only proposes that there be an in-depth study of our gun laws. It doesn't change a single solitary law.

The Senator from Knox has already said it. You've heard me say it. I would never support a piece of legislation that I thought had the slightest attempt behind it to limit someone's ability to have a gun. Any law abiding citizen to own, sell, collect, or whatever, guns. Secondly, this study, I believe, could lay the groundwork to improve record keeping that we don't have now. Law enforcement officers will tell you that. To collect the type of statistics that are lacking in the current debate. We just don't have numbers and that's why people are so vague when they get up and make the comment. Whether they are for the Bill or against the Bill. It's because we don't have really good data. The fact that unanimity either does exist now, or in the minds of some, won't exist when the study committee begins its work is hardly a reason for not having a study commission. We have had many study commission in this state, whether it's on the widening of the turnpike or environmental issues, or whatever it might be. The parties that came together at first were about as far apart as they could go, or could be, and slowly but surely plodding along, airing their differences, they began to find that, in fact, there were some areas that they could come together on, and did. Many of those resulted in laws.

Finally, Mr. President and members of the Senate, it is true that we have some of the numbers that the Senator from Washington just mentioned, but the fact of the matter is, I suspect that in other states when they began taking a look at their gun laws they may have felt the same way. I think we should address the issue of gun control now and look at our gun laws. See where they are strong, see where they are weak, see where they could be shored up, before we have a major issue, not after. I urge you to defeat the pending motion so that we can go on and accept the Minority Ought to Pass Report. Thank you, Mr. President.

THE PRESIDENT: The pending question before the Senate is the motion by the Senator from Penobscot, Senator Murray to Accept the Majority Ought Not to Pass Report. A Roll Call has been ordered. Is the Senate ready for the question?

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#368)

YEAS: Senators: ABROMSON, AMERO, BENNETT, BERUBE, CAREY, CASSIDY, CATHCART, DAGGETT, DAVIS, FERGUSON, HARRIMAN, KILKELLY, KONTOS, LIBBY, MICHAUD, MILLS, MITCHELL, MURRAY, NUTTING, PARADIS, PENDLETON, SMALL, THE PRESIDENT - MARK W. LAWRENCE

NAYS: Senators: DOUGLASS, LAFOUNTAIN, LONGLEY, O'GARA, PINGREE, RAND, TREAT

ABSENT: Senators: BENOIT, GOLDTHWAIT, KIEFFER, MACKINNON, RUHLIN

23 Senators having voted in the affirmative and 7 Senators having voted in the negative, with 5 Senators being absent, the motion by Senator **MURRAY** of Penobscot to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report, **PREVAILED**.

Off Record Remarks

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

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

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.

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

REPORTS OF COMMITTEES

Senate

Ought to Pass

Senator NUTTING for the Committee on **AGRICULTURE, CONSERVATION AND FORESTRY** on Bill "An Act to Implement a Maine Meat and Poultry Inspection Program"
S.P. 1083 L.D. 2687

Reported that the same **Ought to Pass**, pursuant to Resolve 1999, chapter 68, section 2.

Report **READ**.

On motion by Senator **NUTTING** of Androscoggin, Report **ACCEPTED**.

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

Sent down for concurrence.

ORDERS OF THE DAY

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

Bill "An Act to Prohibit the Importation of Milfoil into State Waters"

H.P. 1843 L.D. 2581
(C "A" H-970)

Tabled - April 10, 2000, by Senator **RAND** of Cumberland.

Pending - **FURTHER CONSIDERATION**

(In Senate, March 30, 2000, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-970)**, in concurrence.)

(In House, April 8, 2000, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-970) AS AMENDED BY HOUSE AMENDMENT "B" (H-1105)** thereto, in **NON-CONCURRENCE**.)

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

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

SENATE REPORTS - from the Committee on **TAXATION** on Bill "An Act to Ensure that Certain Land Transfers Accomplished through Stock Transfers are not Exempt from the Transfer Tax"
S.P. 1053 L.D. 2643

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

Minority - **Ought to Pass as Amended by Committee Amendment "A" (S-688)** (2 members)

Tabled - April 10, 2000, by Senator **RAND** of Cumberland.

Pending - **ACCEPTANCE OF EITHER REPORT**

(In Senate, April 10, 2000, Reports **READ**.)

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

On motion by Senator **RAND** of Cumberland, the Senate **RECONSIDERED** whereby it **ACCEPTED** the Majority **OUGHT NOT TO PASS** Report.

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

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

Senator **MILLS:** Mr. President. Men and women of the Senate, as the only member of this body who opposes the present motion on the report of the committee, may I explain, just briefly, that this Bill was the product of extensive study this past summer and fall on the issue of whether we are missing out on the Real Estate Transfer Tax. Whether we are missing out on collecting a large amount of it because of the fact that so many of these transactions area taking place as stock transfers, exchanges of stock, instead of direct purchases of land.

I believe it is the committee's analysis that we are indeed missing out on a great deal of the revenue that ought to be collected through this tax, and in essence, only the large, well financed, land owners are evading the tax. The only people paying the tax are you and me, and those who buy homes, second homes, and odd tracts of land. All of the small purchasers and sellers of real estate are paying this tax. But those who can afford to do so have a number of ways of evading the payment of it through creating corporate ownership, or partnership arrangements, in which control over the land is shifted by changing the control over the corporate, or partnership, that owns the land.

The Bill that lies before you is the best effort of the committee to put a stop to this practice and begin taxing these shifts in control as well as outright transfers of land. And for that reason, I voted to pass the Bill. I think it is fair to say that those who oppose the Bill feel that the issue is a little bit complicated, too difficult to grapple with in this special session. I disagree with that. I think that we should put something on the books and if it needs improvement in the next legislature, so be it. But we should get started now on enabling the Bureau of Revenue Services and the counties to collect taxes, which is being evaded by the wealthiest landowners in our state, routinely evaded. Thank you, Mr. President.

Off Record Remarks

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

Senator **RUHLIN:** Thank you Mr. President. Ladies and gentlemen of the Senate, I think perhaps it's well to go back and review the genesis of this particular piece of legislation and where it is that we wanted to go. We've had several large land transfers in the State of Maine that many people, myself included, felt there should have been a transfer tax laid upon. That transfer tax, to remind you, goes 10% to the counties, the remainder is split 50/50 between the Maine Housing Authority, a very good cause, and the other 50% to the General Fund. Maine, as 45, just stop to think 45 other states, does not tax the transaction of the sale. In sales tax, we tax the transaction, but in real estate transfer tax, we don't tax the transaction. We tax the deed. That's important to note here, because the transfer of the property is done by deed, and when the deed is filed that's when the tax is levied, and it's levied on that transfer price. Now, so far, so good. What a lot of corporations do to, and I don't know if it's evade it, I just don't say evade. Makes no difference. But what many corporations do when they buy land, they form a land holding company, and they do it through shares of stock. I'm going to take over company A and company A is going to form company B, and I'm going to own 50% of their stock. So that you don't get a transfer of deeds. Consequently, you have nothing to tax.

This Bill, which I feel is well intentioned, that I support in principle, was brought before the Taxation Committee last year. I was pleased to co-chair the study committee that met all summer and fall trying to work out a way that would clearly tax that transfer of land when it involved stocks. Lo-and-behold, if you have a parent company merging, or taking on a subsidiary; we'll say you have a bank that's joining with another bank, you have all these various forms of transferring property that doesn't change its management or its direction. I have yet to see, and I struggled with it, some way to get at a clear tax and a clearly enunciated policy that would truly tax, that everybody could see, the transfer of land itself for another purpose. We have been unable to do that. It's really opening up one can of worms.

I am sure of two things. Sure that we need to continue this effort in the future. I also am sure that there's a reason 45 states have stayed this way, and that's because it's an extremely difficult thing to accomplish. One state, Washington, we used as a study model back in the fall. They spent more time in court trying to fight their law and defend their law than they have in administering the law. A neighboring state, so far, has had almost no results that can be compared, and they are in legal trouble. So I got to thinking about it. We've tried to work on it throughout the session. We've been busy, but we've tried to put good quality time into this. About a week ago, after having high hopes that we could come up with a Bill, I finally had to ask myself a question as an individual Senator. Did I want to go to the Senate of the State of Maine and stand up and plead for a Bill that I could not explain? Speak for a Bill that had so much unintended potential for so many unintended consequences that I really would be defenseless against questions that were pointed. Did I want to have the Taxation Committee go on record officially, or a majority of that committee, before this body advocating a policy - the end result of which we know not because of the potential unintended consequences? I decided that as much as I want to see a policy carried out that gives equity, that the corporations should pay the tax on transfer as much as a private individual should, but I don't want to open that door. I don't want

to open that door when you don't know how many horses are going to come charging through it.

Consequently, and after lengthy discussion as recent as, I think, last Thursday or Friday, the Taxation Committee said that they felt the same way. We're not competent enough in the proposals, as being presented, to go forward with them at this time. I, therefore, urge this Senate to utilize caution, to be aware that the situation exists and needs to be addressed, and hopefully the Taxation Committee of the 120th will carry on the work. We've done a tremendous body of work and research that will be made available to them. For that reason, I ask that you support the overwhelming majority of Ought Not to Pass.

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

The President retired from the Chamber.

The Senate called to order by President Pro Tem **ROBERT E. MURRAY, JR.** of Penobscot County.

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

Senator **NUTTING:** Thank you Mr. President. Ladies and gentlemen of the Senate, first, I'm standing up today asking you to oppose the pending motion. Both the good Senator from Penobscot, Senator Michaud, and myself had the same exact Bill in last year. He filed his before mine, and I became a co-sponsor on his. I want to thank the Taxation Committee for all their hours of hard work on this issue. Hard work that was attended by many, many large landowners lobbyists.

I want to disagree with the good chair of the committee. I do think, throughout their work, that Committee Amendment "A" does address the situation. What's happening is these large landowners are forming land-holding companies and when they sell their land they're not changing the deed. They're changing ownership through stock options. When the Bureau of Revenue Services asked them why they were doing this, the one reason the Bureau of Revenue Services received in response was: "we're doing this to avoid paying the Real Estate Transfer Tax," period. Now, if you sell your home, all homeowners, pay the Real Estate Transfer Tax. In fact, when the Nature Conservancy bought 185,000 acres, they chose to pay the Real Estate Transfer Tax. Some large landowners, in recent purchases, have paid the Real Estate Transfer Tax. Three have chosen to go around the barn, so to speak, and have avoided paying the Real Estate Transfer Tax. To me that hurts the funding of county government, hurts the Maine State Housing Authority, and to me, it's just basically unfair that the average homeowner has to pay it, the average small landowner has to pay it, but if you've got a really sharp group of attorneys you don't.

Now, our sister state of New Hampshire, I think it should be noted, has taken steps in the matter very, very similar to what's contained in Committee Amendment "A", as supported by the good Senator from Somerset, Senator Mills. To say that if you create a land-holding corporation in order to change ownership by stock options, that you're still going to pay a Real Estate

Transfer Tax, and that simply is what this amendment does. I feel, for reasons of fairness, it needs to be supported. That's why I'll be voting against the pending motion. I urge you to do the same. Thank you very much.

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

Senator **DAGGETT:** Thank you Mr. President. Members of the Senate, I wish to record my position here. Unfortunately in the haste, perhaps, of the committee getting this Bill out last Friday, and I was busy doing confirmation hearings in my own committee, I did not have an opportunity to sign this report. If I had been there and were signing it, I would have been signing the Ought to Pass as Amended by Committee Amendment "A" Report. As has been mentioned before, this has to do with an issue of ownership of land and the way it's transferred. As a corporation owns property, if the corporation comes under different ownership, that does not affect the owner of record. Therefore, these properties escape the Real Estate Transfer Tax. That's simply what this Bill attempts to do. I will be voting against the pending motion and hope that you will consider supporting the Minority Report. Thank you.

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

Senator **FERGUSON:** Thank you very much Mr. President. Ladies and gentlemen of the Senate, I would side with the good Senator from Penobscot, the Chairman of the Taxation Committee, on this particular item. I think he has made some good points. In regards to corporations, stock may be changing all of the time. It may be on the big board, being bought and sold. When does ownership really change. If someone gets 50% plus 1 share of stock ownership they've got control of the corporation. Does that mean that we're going to go out and assess a transfer tax when that occurs. I think this is a very difficult thing to administer. As the good Senator pointed out to us, he initially thought it was a good idea himself, but as he delved into the matter, he discovered that it would be very difficult to administer. I would urge the body to accept the Majority Report. This looks like a 10 to 3 report Ought Not to Pass, if the good Senator from Kennebec would have signed the Ought to Pass as Amended Report. But it's a complicated issue and I would urge the body to go along with the Majority Ought Not to Pass Report. Thank you, Mr. President.

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

Senator **GOLDTHWAIT:** Thank you Mr. President. May I pose a question through the Chair?

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

Senator **GOLDTHWAIT:** Thank you. To anyone who can answer it, I may be a bit more confused than usual. The calendar states that the Committee Amendment is 688. That Committee Amendment states that it's the majority amendment but the Majority Report is Ought Not to Pass. It also states that this will have an insignificant net affect on revenue generated. If the whole purpose of this is to collect the tax that is not currently

being collected, how can it have a negative impact on revenue? So I guess that was more than one question but if anyone could answer those, I'd appreciate it. Thank you.

THE PRESIDENT PRO TEM: The Senator from Hancock, Senator Goldthwait poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Androscoggin, Senator Nutting.

Senator **NUTTING:** Thank you very much Mr. President. I'm able to answer the first half of the good Senator from Hancock's question. Previous to the vote that we're seeing here on item number 5-5, and previous to that vote, a majority of the committee did vote for S-688. Then they took another vote after that. I believe that's why, although incorrectly, the amendment is labeled the Majority Report because for a while it was. As to why it would have an insignificant net affect, we've lost millions of dollars already, so I really don't agree with that being on there, and I don't know why it is. Thank you.

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

Senator **MILLS:** Mr. President, it's not uncommon to require two senators to answer just one question from the good Senator from Hancock. So I think I can deal with the other half. We had tremendous discussion in the committee about the ramifications of raising taxes in an environment where we have so much surplus revenue here that we still can't decide how to spend it. In order to get what, at one time, was a significant majority of the committee, onto this Bill, we agreed to reduce the Real Estate Transfer Tax from \$2.20 per buyer and seller per \$1,000 down to \$2.00. The Bureau of Taxation felt that the revenue increase that we would see from capturing corporate transactions would more than offset the tax decrease. We asked them to give us a conservative projection as to what added revenue would come in by virtue of passing this expansion of the tax. Then we took the revenue and used it to diminish the tax so that homeowners and small land owners, who now pay the tax, would be paying a smaller tax because the base of the tax would be spread to capture these corporate transactions that are currently escaping entirely. It wouldn't capture just open land transactions.

The way we framed this Bill is that it would capture transactions that involve any form of real estate transfer when a majority of the shares that control the holding company are transferred. That's the trigger. It is the shifting of control. It isn't something that happens day-to-day in the New York Stock Exchange, or the NASDAQ, or whatever. The thing that triggers the obligation to pay the tax is when some entity, or person, gains control over 51% of the holding company, or the corporation, or the partnership that owns the land. When you have that kind of shift in control, as we have seen happen repeatedly in this state, then that would trigger the obligation for the parties to pay the tax. Thank you, Mr. President.

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

Senator **RUHLIN:** Thank you Mr. President. In response to the good Senator from Somerset, this might be a good time to point out what I mean by unintended consequences, and what really concerned myself and at least 9 other members of the Taxation Committee. We talked about controlling a corporation. If you

have corporation A that owns 40% market share in an area, and corporation B that owns say 60% market share in a different location. They say, gee, this will work out good if we get together. Different locations, so nobody can come up and say hey, they're a monopoly. It's in different locations. They say, we can pair our operations and become much more effective and more competitive and we'll help everybody involved with both corporations, so lets merge. The two corporations merge, and guess what? The way 688, Amendment "A", is written, a transfer happens on the entire merger, the entire merger, unless they care to go to court.

I don't know, I like attorneys personally, Mr. President, but I don't see any reason for this state to be supporting any more than we have to. I just look at this; when you start down the road of unintended consequences, that's exactly where you're headed. I just thought I should explain that to the body. Thank you.

On motion by Senator **RUHLIN** of Penobscot, 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 (#369)

YEAS: Senators: **ABROMSON, AMERO, BENNETT, BERUBE, DAVIS, FERGUSON, HARRIMAN, KONTOS, LAWRENCE, LIBBY, MITCHELL, O'GARA, PARADIS, RUHLIN, SMALL, THE PRESIDENT PRO-TEM - ROBERT E. MURRAY, JR.**

NAYS: Senators: **CAREY, CASSIDY, CATHCART, DAGGETT, DOUGLASS, GOLDTHWAIT, KILKELLY, LAFOUNTAIN, LONGLEY, MICHAUD, MILLS, NUTTING, PENDLETON, PINGREE, RAND, TREAT**

ABSENT: Senators: **BENOIT, KIEFFER, MACKINNON**

16 Senators having voted in the affirmative and 16 Senators having voted in the negative, with 3 Senators being absent, the motion by Senator **RUHLIN** of Penobscot to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report, **FAILED**.

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

On motion by Senator **RAND** of Cumberland, **TABLED** until Later in Today's Session, pending **ACCEPTANCE** of the Minority **OUGHT TO PASS AS AMENDED** Report. (Roll Call Ordered)

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 Penobscot, Senator **MURRAY** to his seat on the floor.

Senate called to order by the President.

The Chair laid before the Senate the following Tabled and Later (4/8/00) Assigned matter:

SENATE REPORTS - from 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

Majority - Ought to Pass as Amended by Committee Amendment "A" (S-685) (7 members)

Minority - Ought Not to Pass (6 members)

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

Pending - motion by Senator **DOUGLASS** of Androscoggin to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report (Roll Call Ordered)

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

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

Senator **MILLS:** Mr. President, the title of this Bill doesn't tell you exactly what it's about, and for that reason it deserves just a moment of explanation. There are about a half a dozen senior rangers up in Baxter State Park and then a few junior ones. As I recall the provisions of this Bill, it would add them to the so-called special plan. It's not a costly provision. But, one the other hand, it was my judgment at least, and that of 5 other members of the committee that the Bill did essentially nothing to enhance, in any material way, the value of the pensions for these folks.

The senior people in Baxter State Park have very substantial rights under the old pension law, which was a very liberal law, and to enact the change that's being proposed here would simply add frosting on the cake that's already full of calories, as far as I was concerned. The part that's not in the title is another small group, consisting again of half a dozen or so, maybe 8 or 10 people at most, who are the investigators in the District Attorney's Office. These are folks that do some white-collar criminal investigative work. They work hand-in-hand with the Assistant Attorney General. They do accounting work. They investigate certain forms of crime. They investigate other police officers, and other police departments if there's a problem with crimes being alleged against public officials. It's very much a white-collar job. There's some fieldwork involved, but it did not strike me as the kind of work that would be difficult for someone to perform at the age of 55.

As you may recall, the 1998 special plan was created a couple of years ago. The purpose of the plan is to give people the opportunity to retire a little earlier if they're doing work that requires physical vigor. A classic example would be the law enforcement people, the people that manage our prisons, the Warden Service, the Maine State Police, and the like. The jobs

that we had described to us, and the work requirements for the investigators in the Attorney General's Office did not strike me as having those physical requirements. With all due respect to these people, it seemed to me that they didn't fit the eligibility for the 1998 special plan. For that reason, I and others on the committee voted not to include either one of these groups in the 1998 special plan. I hope I've characterized the Bill fairly. Its been several weeks since I've seen it. In any case, I would urge you to vote against the pending motion. Thank you.

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

Senator DOUGLASS: Mr. President. Women and men of the Senate, this Bill applies to 16 individuals and 2 different sets of law enforcement groups. The first are 6 employees of the Baxter State Park system. They were inadvertently left out of the so-called 1998 special plan, which was formed for law enforcement personnel and others who enforce our laws. There was some correction made in 1999 to include them in the 1998 special plan effective January 1, 2000. That has begun. But, in terms of administration that plan began June 1st of 1998. The first part of this Bill would, for the price of \$14,000, put these individuals into the 1998 plan as of its initial date. The second group is included only prospectively, and that is because they also were left out of the 1998 special plan. I say to you that, that was an inadvertent mistake because there are only 10 individuals in it. That is the Attorney General's Special Investigative Unit.

I believe the Senator from Somerset, the good Senator Mills, indicated they help District Attorneys. That is part of what they do, but they are out of the Attorney General's department. What they do is investigate police corruption, medicaid fraud, hate crimes, elder exploitation, and a variety of other crimes. They attend the Maine Criminal Justice Academy, they make arrests, and they carry firearms. The majority of the committee decided that they ought to be treated just as other law enforcement personnel in this state are treated. I hope you will agree with the majority, and vote that this pass. I hope that you will vote green Majority Ought to Pass as Amended by Committee Amendment "A" Report.

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#370)

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

NAYS: Senators: ABROMSON, AMERO, BENNETT, BERUBE, CASSIDY, DAVIS, FERGUSON, GOLDTHWAIT, HARRIMAN, LAFOUNTAIN, LIBBY, LONGLEY, MILLS, MITCHELL, MURRAY, NUTTING, SMALL

ABSENT: Senators: BENOIT, KIEFFER, MACKINNON

15 Senators having voted in the affirmative and 17 Senators having voted in the negative, with 3 Senators being absent, the motion by Senator DOUGLASS of Androscoggin to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, **FAILED**.

Minority **OUGHT NOT TO PASS** Report **ACCEPTED**.

Sent down for concurrence.

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

HOUSE REPORTS - from the Committee on **EDUCATION AND CULTURAL AFFAIRS** on Bill "An Act to Authorize Portland College to Grant Degrees" (EMERGENCY)

H.P. 1657 L.D. 2326

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-1078)** (9 members)

Minority - **Ought Not to Pass** (3 members)

Abstained - (1 member)

Tabled - April 10, 2000, by Senator **RAND** of Cumberland.

Pending - **ACCEPTANCE OF EITHER REPORT**

(In House, April 8, 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-1078).**)

(In Senate, April 10, 2000, Reports **READ**.)

Senator **BERUBE** of Androscoggin moved the Senate **ACCEPT** the Minority **OUGHT NOT TO PASS** Report, in **NON-CONCURRENCE**.

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

Senator BERUBE: Mr. President. Ladies and gentlemen of this chamber, when we heard this Bill at public hearing I had questions in my mind, and then we had several work sessions. At the work session we took the vote. Up to the minute I voted, I had no idea how I would vote. However, I was influenced and impressed by the fact that the State Board of Education unanimously endorsed this program. The team that had been set up to review the fiscal aspect unanimously said things were A-okay. We were told that the million dollar line of credit would be unnecessary. Based on those three facts, I voted Ought to Pass, although I had qualms about unanswered questions and certain conflicting statements. Because of that, I wanted you to know why I was changing my position. Thank you very much.

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

Senator AMERO: Thank you Mr. President. Ladies and gentlemen of the Senate, I hope that you will reject the Minority Ought Not to Pass Report. Having served for 5 years as a member of the State Board of Education, I know the rigorous and very in-depth study that the State Board of Education does. Any request that comes before them for permission to grant degrees, any institution that comes forward with a proposal receives very careful scrutiny by the State Board of Education. In fact, during my tenure on the State Board, we rejected proposals that came before us because they did not meet the very difficult standards that the State Board requires.

This project for Portland College came before the State Board of Education not just once, but twice, and met all of the standards. I don't believe that this legislature should be in the position of second guessing a group like the State Board of Education, which is appointed by the Governor, receives the confirmation of this Senate, and a board that takes its responsibility very seriously. Also, I don't understand why people could be against a proposal which is going to make it easier for working adults to get a college degree. We've identified as one of the major problems for increasing per capita income in the state as being the number of adults lacking a college degree. Here is another opportunity for our citizens to be able to get the degrees that they need in order to get a decent paying job. You know, I think people who are going to vote against this proposal today are voting against education. They're voting against technology, and they're voting against business. All in one vote. I don't understand, other than for partisan reasons, why people are objecting to this proposal. 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 I understand the situation with Portland College, they are going to exist whether the State of Maine recognizes them or not. They are in the process of obtaining degree-granting authority from a number of other states. In fact, as I understand it, that authority has already been granted. This is not the same thing as accreditation, which is an internal procedure, and a very rigorous procedure. That is something that one must undergo, or an institution must undergo, after obtaining degree-granting authority. This state has granted authority to a number of institutions like Beal College, Mid-State College, and some other institutions that operate on a for-profit basis that haven't become accredited and aren't likely to become accredited. But Portland College has much higher aspirations than that. They will be seeking accreditation from appropriate accrediting institutions later on after they get our approval to issue degrees. They satisfied all members of the Board of Education, unanimously, that they were highly qualified to be issuing degrees. It seems to me that for us to override the considered decision of the Board, which we asked the Board to do a thorough work-up on these situations, and to have the decision of the Board overridden here, when they've gone to so much trouble and so much work to satisfy the rigorous standards the Board imposes. I just think it is a travesty. This institution has satisfied the requirements of our law and it seems to me that we shouldn't, for political reasons, be overriding the considered judgment of the administrative board that we have created and asked to do the investigation for us. For that reason, I urge that we oppose the pending motion.

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

Senator MURRAY: Thank you Mr. President. Men and women of the Senate, I rise today to explain to the members of the Senate the reason I am on the Minority Ought Not to Pass Report, and hopefully, to address some of the comments and questions that have been raised so far by some of the previous speakers. Let me back up a little bit and explain a bit about the process involved here so we understand why this issue is before us, and what it is precisely we're being asked to evaluate and then vote on it. To begin with, as the good Senator from Somerset has indicated to you, any business can offer courses and academic programs if they so choose, and can do it without our blessing. I suspect that happens from time to time. May well happen with this entity that's in front of us today. But the question is, do we as the State of Maine give blessing and our approval to grant such an entity the ability to grant a degree to an individual who seeks that kind of an academic program or education? It is specifically the legislature that has been given that task, to give degree-granting authority, because it's a serious issue. And it's not the Board of Education who has been given that task. The statute specifically requires that a specific act of the legislature is required before any of these entities, persons, individuals, companies who want to have degree-granting authority, be allowed to do so. So it is entirely appropriate for this issue, not only, to be reviewed by the board, but also, then be evaluated by this body, this legislature, because that's what the law requires. If it only required the Board of Review, the statute would say so and we would not be here to evaluate that process, as well as the other issues that are presented. The Board of Education, as part of its review under the required rules, has a series of standards that they are required to look at in deciding whether it's an appropriate thing for a business, such as Portland College, to be granted degree-granting authority. Those standards they look at include academic standards, organizational structure, faculty questions, library resources, physical facilities, those things that, perhaps in part anyway, would not be pertinent to an on-line college, but some of the things that the Board is required to look at.

Also, they are required to look at financial resources available to this new entity that's now coming to the state seeking this particular type of authority. The Board of Education did review this proposal and when it first reviewed this proposal, it concluded that the standard dealing with financial resources had not been met. I just want to read for you what that standard is so you're aware of it. Specifically under the rules the standard dealing with financial resources says, "The Institution can document that it has the financial resources necessary to support its purposes, implement its program, maintain its continuity for at least 5 years by providing its most recently audited financial statement, and evidence of long range financial planning." That's the specific standard that the Board of Education, when first presented with this proposal, concluded had not been met. Now I'm not going to speculate entirely on why it hadn't been met, but I know that part of the reason it hadn't been met is because the information wasn't completely forthcoming in what was presented to the Board of Education. So the Board made that conclusion and recommendation.

The Board, again on its initial review, also raised concerns and questions about some of the other standards that I alluded to earlier, but gave a conditional type approval, if you will, to the proposal. That's how it came to the Education Committee.

When the Education Committee was presented with this Bill, it was given some additional information about the financial resources of this proposed Portland College. Part of those financial resources, and the picture that was presented, I think we need to understand and make clear to you because it has to be part of our evaluation as well. It became very clear to those of us on the Education Committee, when presented this Bill, that the financial resources of Portland College are directly tied to the financial resources of MES, Maine Education Services, which we've heard a fair amount about this session with regard to other matters that have been before us. I handed out this chart which, before I become accused of stealing it from somewhere else, I'll admit to that, I think that it was handed out previously. It does show the flow and interrelationship between MES and Intelligent Learning System, which is partially owned and related in the extent of Board members who have been serving on both, and Portland College, which is a wholly owned subsidiary of Intelligent Learning Corporation. The reason it's important to know that is because one of the standards that we are called upon to look at is the financial resources, and viability of this new proposed entity. The reason that is important is because we are the ones who are called upon to protect, and at least evaluate the viability of an entity that's prepared, and given the blessing of the State of Maine to grant college degrees here in this state. I suspect the reason the financial resources provision of the rules are written the way they are is for that reason. The State of Maine does not want to be in a position of degree-granting authority to an entity that is not financially viable, and cannot demonstrate that for a period of at least 5 years. That's what the rules say, that's the standard.

Now let me go back to the history of the process. The good Senator from Cumberland, Senator Amero, is correct in that she said to you that this Board of Education reviewed this matter twice. The reason they did that is because the Education Committee, once it received the information it had with regard to financial resources, wanted to have the Board of Education review the issue with that information that they didn't have previously. The Education Committee asked the Board to do two things. It asked them to look at the specific financial information that was presented to the Education Committee. That information included, let me just highlight a little bit of the following so you know the information, it described in greater detail what the relationship between MES and Portland College is. It includes the following: MES holds a 10% ownership interest in the entity that we're talking about, actually it owns the 10% ownership in Intelligent Learning Corporation, which wholly owns Portland College. MES also has entered into a contract with this entity, whereby this entity would receive \$1.4 million in exchange for providing services to MES relating to the student loan bond issues that MES is involved with. That we've heard about with regard to other matters. So there is \$1.4 million flowing through a service contract. MES has also guaranteed a line of credit for Portland College for the purposes of its activities, and MES is the guarantor of that line of credit. Again, this is all relevant for purposes of establishing this standard of financial viability and financial resources.

I apologize for having to digress with such detail, but I think it's important. So now the Board, on its second review had the information that it could look at a second time. The second thing that the Education Committee asked the Board to do, was not only look at just the raw data and the raw financial relationship, it asked the Board to comment on this relationship with MES, and what its thoughts were with regard to what might be the viability

of Portland College if MES' fortunes changed, or changes were made with regard to how MES was involved in its bond relationship. Now, what the good Senator from Cumberland, Senator Amero, did not tell you is that the Board was not comfortable commenting on that second question. Perhaps for good reason. That's not really the Board's job to look into the crystal ball and make those kind of speculations. It's something the Education Committee was certainly interested and curious about. But the Board didn't comment on it. What the good Senator from Cumberland, Senator Amero, also failed to tell you is that, although looking at the raw numbers and data and answering the question, "if these numbers are there, does that satisfy you and your financial question?" The Board said, "yes" the second time. But it also said "yes, but we think we need to look at this again in two years from now." Well, I don't know why the Board said that, but all I can tell you, because I asked the question myself when it was brought back to us, is that the Board has never done that before. In the context of a degree-granting request the Board has never said, "yeah, we'll give it, but we want to look again in two years." That suggests to me that this legislature isn't second-guessing the Board. That suggests to me that, in a way, the Board was second-guessing itself by saying, "well, based on what I can look at and what I'm allowed to look at, I want say yes." That suggests to me there was some degree of queasiness about whether to go forward, and how to go forward without having an opportunity to look again. Well, we've never given that opportunity to look twice before. That suggests to me that that's the job we have to play in making sure that our comfort level is sufficient to meet the standards of the Board and the requirements of this statute.

Again, I repeat for you, the standards are that we have to make sure that there is a continuity of financial resources for at least 5 years. Again, the reason we have that is a perfectly legitimate reason, because we don't want to have students of this state giving their hard earned money, seeking this alternative education, thinking that there will be a degree they can hope to attain, and that there will be some entity, some educational institution, behind it in the future that they can be proud of. If there are financial resources that aren't there to make it continuing for at least 5 years, I think we have failed to do our job as the legislature in analyzing these questions. These are the very questions we are asked to analyze. There was one other thing that I found somewhat contradictory. This again relates to this financial resource question and its viability. It is something that it appears the Board relied upon in its decision the second time around to say the financial resource section has been met. It relates to the service contract that I referred to a minute ago. Again, let me refresh your memory. Portland College, through Intelligent Learning Corporation, its parent company, has a \$1.34 million contract where the money flows from MES down through Intelligent Learning Corporation to Portland College. So that's obviously a valuable resource for Portland College in determining whether it has the financial resources it needs to exist, to thrive, and to accomplish what it's supposed to accomplish. The Board, in its approval the second time around, on that one standard in part said, "The Board also believes there's a reasonable probability that a contract with MES in subsequent years could be obtained." So part of what the Board was saying in deciding that it's going to have the resources it needs for 5 years is the conclusion that Portland College will be able to continue to maintain these contracts with MES, so the money can continue to flow from MES to Portland College. At the same time the Board reaches the conclusion, we have documents from Portland

College itself, and these were statements, which were also made in front of the committee, saying it wants to sever its relationship with MES. It doesn't want these contracts with MES because it admits it's beyond the scope of what it needs to, and should be doing. I think somebody has circulated a letter from Portland College on this point. I quote from that letter, "...to that end, providing MES with marketing services for student loans is not in keeping with our long-term strategic objectives. As new revenue sources are developed, we'll shift our initiatives accordingly, thereby substantially reducing and or eliminating the current contractual relationship between MES and ILC."

So on the one hand, we have the Board basing its decision to say the financial part has been met. They're relying on the fact that there'll be ongoing contracts with MES because that's all they're concerned about. They're looking at the dollars and how those dollars will flow. And, at the same time, you've got Portland College itself saying, we want to sever that relationship, we don't want these contracts, not only because we'd like to be independent, but these kinds of contracts go outside of what we ought to be doing as part of Portland College. So I think, despite what the conclusion in the bare letter of the Boards recommendation may say about the financial resources being met. It was met with very contradictory ideas of how those dollars would flow, and it was also expressly met with the specific condition that we look again 2 years from now. That's something that has never been done before when the Board has been asked to look at one of these degree-granting requests. That suggests fairly clearly to me, ladies and gentlemen of the Senate, that the Board had some serious questions about what it ought to be doing with regard to this proposal before it.

So, in conclusion, ladies and gentlemen of the Senate, I can say very clearly that the reasons I've reached the decision I reached in supporting the Minority Report was based upon the standards that are in statute, that are in the rules, and that are in common sense. I did not base my decisions on anything else dealing with the other MES relationships, and issues that have been talked about with regard to other Bills and bond questions, and the appropriateness of that course of conduct. Nor is my basis based upon a partisan point of view. My basis and my decision are based on the facts. I would urge you to do the same in your evaluation, and join with me in supporting the pending motion.

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

Senator **CAREY:** Thank you Mr. President. Members of the Senate, first I would like to commend the good Senator from Sagadahoc, Senator Small, for realizing that she did have at least a potential of a conflict, if not a true conflict, and I congratulate her for making her comments. I listened to the good Senator from Cumberland, Senator Amero, who said something about do not second-guess the different boards and commissions that we have, especially the Board of Education. I don't believe that we're second-guessing them. If we didn't have the opportunity to actually vote on whatever came from that board, in this particular instance, then it wouldn't be coming before us. I look at it not as second-guessing, but as giving us, as individuals, the chance to make the value judgment of exactly what the Board came up with, and is it, in fact, what we, as individual legislators, would like to see. That's why we have individual votes when we sit here. I am one who does not believe that we should be using tax-exempt money to fund for profit corporations. It is just against

my nature to even think of doing that. There simply is no arms length transaction. Otherwise, if we really want to pay the gentleman who is in charge of MES, then maybe we can get a line put into the state budget which would authorize him to draw \$4 million from the state treasury, and that would be a lot cleaner than the way this thing is going. If you don't think there has been some money spent here, there is obviously a proliferation of people going from one board to another, serving on several boards. I'm in possession of a letter dated the 6th of April, which was signed by the former Governor Ken Curtis and Richard Pushard, the President and CEO of whatever organization this is. There's a statement made that a minority of MES Board members served on the Intelligent Learning System's Board of Directors. That sounds very nice, but isn't it a fact that a minority of MES members really make up a majority on the ILC Board? They don't address that point. There's been some money spent, as I had started to say, and there's been some real high-powered lobbying. I checked with the Government Ethics Commission to make sure that everybody that has spoken to me, anyway, was in fact registered. Roy Lenardson is representing the Intelligent Learning Corporation. The principle officer is Richard Pushard. Under number 3, which lists the names of the lobbyist associates, Richard Pushard's name happens to show up. There are several that have hired the firm Doyle and Nelson. Jon Doyle is representing Maine Education Loan Authority. He's reporting to Walter Moulton. Jon Doyle of Doyle and Nelson is with Maine Education Loan Marketing Corporation and he represents and reports to a person who we all knew here only a few years ago, Wendy Ault, who is the President. Jon Doyle is also listed as representing Intelligent Learning Corporation. He does that for Richard Pushard, who is the President. He has listed Craig Nelson, who is also a member of his firm, as a lobbyist. Debby Hart of Hart Public Policy represents MES foundation. She reports to Richard Pierce. Debby Hart is with Intelligent Learning Center, who reports to Richard Pushard. Public Affairs Group, Maine Education Services, they have both Jim Mitchell and Joe Mackey reporting to Richard Pierce. Intelligent Learning Corporation, Joe Mackey and Jim Mitchell. They report to Richard Pierce. Intelligent Learning Corporation, Joe Mackey and Jim Mitchell, they report to Richard Pushard. Intelligent Learning Corporation, Richard Pushard is the name of the person authorized by the employer to sign registration and reports. That's interesting because I've been trying to get hold of some of the financial statements, and for some reason or other they seem to melt in the air when you ask a question. Richard Pushard is the one who is responsible for these registrations and reports. If you don't think that this is not a high powering lobbying organization, then I'm sitting in the wrong chamber. Thank you Mr. President.

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

Senator **PENDLETON:** Thank you Mr. President. Men and women of the Senate, "oh what a tangled web we weave." I'm standing before you this afternoon to speak in opposition of the Ought Not to Pass motion for many reasons, but, basically, because I believe in education. I believe in lifelong learning and that's what this is about. I never before have heard debate in the Senate that listed off lobbyists. Nor have we gone through the financial background of any entity that we are talking about, discussing, or studying, Mr. President. This would be Maine's first on-line college, a degree-granting college. You could

choose to go there if you wanted to and be on-line, or you could choose to go to any other college in the state. An on-line college would allow a person to be in their own home to take college courses. I don't imagine they would be any of the other students that I just went to college with last semester. They were young people who were interested in sports. They were interested in the social part of college in addition to the learning. We're not going to be competing with those folks. They are not interested. They fit in those tiny little desks that I could hardly squeeze myself into. So you would choose your degree. You would choose Portland College as your site for your degree status. Portland College would not be competing with other on-line efforts of other schools in our state because the degree would be from Portland College. I think we should let them have their chance to prove themselves. It has already been mentioned that the state board is planning on taking another peek at this in two years and education entities do change. I graduated from a nursing program that doesn't even exist anymore. It's part of Husson College now. I think we should let them have their chance. I think we should let the people of the State of Maine have their chance. When I was Chair of the Education Committee, not this time but last session, the one thing we talked about over and over again was accessibility. Well, men and women and Mr. President, this is accessibility. What is our goal, our goal is to make sure that as many people in our state have courses available to them as need be. I hope that you will vote with me against this Ought Not to Pass motion, so that we can move on and give this college a chance. Thank you.

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

Senator LIBBY: Thank you Mr. President. Men and women of the Senate, I rise, but I do so hesitantly to get involved in this long, drawn out battle. This is the first time I've stepped forward to say anything about it and I would just as soon stay out of it. There are just a couple of things I want to say that I thought were important to me in me making my decision. First of all, a lot of you know that I taught at St. Joseph's College for 8 years before I came here. So some of the information that I received from that college along the way, during this debate, has been tough for me to digest. I was looking, for example, at a letter that was courtesy of Senator O'Gara, the Senator from Cumberland. I noticed that the new president, who is there since I left, is definitely opposed to this Portland College. I took the time to listen to him. He talked to me today. I really tried to listen hard because I'm stretched both ways on this particular issue. I notice in the letter that he wrote, which is dated January 25, that he and St. Joseph's College, and by the way he's speaking on behalf of the Maine Independent College Association, they oppose using public funds for the direct or indirect funding of a for-profit venture. This is dated January 25th, so it was at the very beginning of this session. Today somebody handed me the Report to the Maine State Board of Education from the visiting team, which went in and took a look at whether or not Portland College should be recommended as for the state designation. I noticed on it that the Dean of Continuing Education at St. Joseph's College signed it. I don't know why there's a conflict, but at some point in the two months following this letter from St. Joseph's College, a high official at St. Joseph's College decided, as a member of the visiting team, that this college should go forward. That was one thing that I looked at and I thought, well, maybe we need to take a really close look, and maybe they

should go forward. A second thing that really kind of helped me to make up my mind was that I was here and remember really well the debate, I think it was 2 years ago, on research and development. I know that we were all very interested, as a body, in trying to beef up our expenditures related to research and development. I think we did so. I think we did a very good job at it. But, if I remember right from that debate, it seems to me that one of the highlights of the whole debate was the fact that at the University of Maine at Orono some of the research that was happening at the campus involved spin-offs that became for-profit ventures. If we're going to stop doing that, maybe we should look at all of them. I'm not against that by the way. I am not against some kind of a committee to study whether or not we should really be involved at the state level. At looking at the spin-offs in the private ventures. I am troubled. I want everybody in here to know that I am troubled by some of the financing issues that I see here. I am troubled by them. But, I also know that we've had these other occurrences and they've actually worked out for the better. The final thing that really helped me to make up my mind, and I just made it up today by the way, was the fact that I was involved in the Education Committee as a member of the other body, Mr. President, for two years. We took up the whole issue of, at that time I think it was called EDNET, and it's now UNET, at the University of Maine System. I remember a group of people who were strongly opposed to that, and I was actually one of them at first. I mean I was a faculty member for all those years and I really value the direct contact between the professor and the student. I think there's something lost when, I truly believe this, you take courses and they're only over the Internet for example, or even over ITV. But I think I was wrong back then and I don't mind admitting it. This past fall, for the first time in my life, I got to take one of those UNET courses, Mr. President, and I took it at two different sites actually. I used to show up sometimes in Saco and sometimes in Sanford, wherever I could make it depended on where I was that day I guess. I had the flexibility of doing that and it was taught by Professor Charlie Lyons, who is now the President of the University of Maine in Fort Kent. I got a tremendous amount out of that course. I couldn't get over it. I thought to myself how wrong I was, and maybe how wrong we were, those of us that opposed the whole EDNET, UNET idea. How does that relate to this today? It does because those monies that go toward UNET are public funds and they're undercutting the things that are being done, for example, at St. Joseph's College. When I worked at St. Joseph's College, for a couple of years I was employed by their Continuing Ed Department that offers these courses, mostly through video, but also through mailing arrangements. Now I understand they're getting more involved in the computerized aspect of it. I could see the direct interrelationship, and actually the competitive conflict between public money and private money. I know it's frustrating for the people that are presidents, administrators, and faculty at these private colleges. I also graduated from a Maine college. Nasson College, that closed similar to the good Senator from Cumberland, Senator Pendleton's, college. So I guess all of those things considered, I really was, I have to be honest, I was leaning against this measure. But all of those things considered, I have decided that I'll be supporting the Majority Report and not the Minority Report, just because I think that we might be letting an opportunity go by. Do I think it should end here? No I don't, I think that we should take a much closer look at the financing arrangement here. We probably ought to have some kind of a study committee. It ought to be looked at in the 120th. It ought to be dealt with. The people that are voting with me today but do

not believe that. Those who think that should be the end of it, I don't agree with them. I just don't think that we ought to be preventing this arrangement from happening. There are some great Internet colleges in other states. I can think of one in Minnesota that has a very strong reputation. I'm afraid that if we don't get moving on this stuff, we're going to be left behind. So, while there are irregularities, I'm going to suggest that we look into them, but move forward from this point. I thank you for your time, Mr. President.

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

Senator **HARRIMAN:** Thank you very much Mr. President. Good afternoon, Mr. President, ladies and gentlemen of the Senate. Mr. President, I have been spending most of my time over the last three weeks on another committee and have been unable, for the most part, to weigh in on most of the debates that have been going on, only to join you for votes. Admittedly, I don't bring much detailed knowledge of this issue. I certainly have respected the committee process and have learned from those who are involved in the committee what the gist of the legislation is before us. It is from that prospective, if I might, Mr. President, I'd like to speak for just a moment. Some of my colleagues, who have presented their comments on the record earlier, suggested that the degree-granting authority by the State Board of Education and aptly, as a result of that, ultimately this body came to the conclusion that this new college ought to have to go through this process by the State Board of Education twice. Suggesting that there must be something wrong, or that the underpinnings of the entity may not be strong enough to carry out its goals. I would just say, Mr. President, that first of all, we have given degree-granting authority to the university, an outstanding institution, I'm sure you all would agree. They don't have to go back to this legislature to offer another degree. In fact, we've entrusted that privilege to the Board of Trustees. We don't have to vote in this chamber if the university decides to offer another degree. It seems to me that if the Board has suggested that Portland College ought to appear before them twice, it's probably, at least logically in my view, because it is a new college deploying a brand new concept. The race to globalization or digitization, if you will, has taken over our economy and our culture, and indeed, our way of life in a way in which we could not have imagined even just 5 years ago. So I don't buy the premise that there must be something wrong because the Board wants to take a look at this new college, delivered in a revolutionary new way, a second time. Mr. President, I heard comments earlier in our discussion on this Bill that this relationship between MES, Intelligent Learning Systems, and Portland College in some form or fashion. The suggestion was that there must be something sinister, there must be something wrong, there must be something underfoot that we don't know about or worse. Along the way of the debate numerous documents have been placed on our desks. One that I received is an opinion from a law firm that says, in part, regarding the transactions between MES and Intelligent Learning Systems, first that "they do not violate Maine law." "It is clear, clear that the above described transactions," and I'm quoting from the letter, "between MES and ILC do not violate any provisions of Maine law." The statutes that we are sworn to uphold specifically authorize and I quote again, "a non-profit, non-stock corporation such as MES to engage in the very type of transactions which it has conducted with ILC." It further goes on to say, and I quote, "including the exchange of certain of

its property of like value for shares of stock from a for-profit corporation, such as ILC." That suggests to me, Mr. President, that if there was something wrong, illegal, corrupt, or unfair, it would certainly have been brought to our attention long before this Bill reached the floor of the Senate. If we were to apply the standard that some have mentioned here previously, that we shouldn't allow non-profit organizations to own stock in for-profit companies, and if you agree with the law I've just cited, which is section 1001 of Title 13B of our Revised Statutes, then we should tell the University of Maine that the Research and Development money that we, the taxpayers have given them, which are being invested in for-profit ventures, should cease. We should see an amendment come onto the floor in some form or another that is germane to these statutes and pass a law that says non-profit corporations cannot be in any way connected with a for-profit venture because our state law says it's okay. I also heard comments, Mr. President, regarding the relationship between MES and ILC. Remarks contained in some of the literature that I've received on my desk regarding the plan for them to separate. ILC separating its relationship with MES within the next 24 months, seems to me to make a lot of sense. It makes sense to me because of the financial relationship that MES has created to empower Portland College to come to life should end for several reasons. Apparently, it's not the core services of MES. Second, it has met the goal of trying to create even more educational opportunities for Maine citizens. And certainly, at least if I were in their shoes, to unleash it from the partisan arena that it now finds itself in. I also asked, well, who are these people? Who are these people involved in this new digital college? What I've discovered, Mr. President, is that they're all Maine people who graduated from our high schools, Bangor High School, Rumford High School, Medomac Valley, Georges Valley, Edward Little, Chevrus, Dexter Regional High School and Yarmouth High School. These are all Maine people who helped bring this new idea to life. We would often talk in this chamber about having Maine be a place to come to not a place to be from, and that we want this to be a place where people can come in and build a business and raise a family. So, we're telling the very people who have taken the journey to graduate from our schools, who want to come here, stay here, build a business in this new digital revolution. If this pending motion passes, Mr. President, it's going to say, no thanks, head south, to the very people who we have educated in this state, and have tried to send the message that we want you to stay. It seems to me that if the pending motion passes, what have we accomplished? We've accomplished sending some negative messages. We've said if you've designed a new way to teach people, we're against you. If you're going to employ technology, we're against you. If you're going to start a new business, we're against you. At the end of the day, when it's all said and done, Mr. President, if we accept the pending motion, the server that contains the opportunities that this Bill will create will leave its current location and it will end up in some other state. Will be paying taxes in that state, while our Maine citizens can still access it and sign up for the college courses. I for one, Mr. President, want to stand up and speak up for the small business people in this state who are willing to take the risk, who found access to capital in a legal way to put Maine on the map as a virtual college. I can't understand why you would be opposed to that. Thank you, Mr. President.

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

Senator **NUTTING**: Thank you Mr. President. Ladies and gentlemen of the Senate, I'll be brief. I wasn't going to speak on this issue but the good Senator from Cumberland, Senator Amero, and the good Senator from Cumberland, Senator Harriman, have both kind of asked the question, how could anyone vote against this plan? This plan to take tax exempt bond money, given to a non-profit by the state, and use it to make a profit. I'm not going to condone it. Why? My constituents, hard working parents, and students have had to pay more money in interest than they otherwise would have, in my opinion, so that profits can be generated by non-profits. They've called me loud and clear after they've got the glitzy nice brochures with false information from MES and asked me to vote against the very organization that sent them all these mailings. I'm going to vote for the pending motion. To me this Majority Report, on a personal level, borders on money laundering and I'll have nothing to do with it. Thank you.

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

Senator **AMERO**: Thank you Mr. President. Ladies and gentlemen of the Senate, certainly this body does have the final say on whether Portland College will receive its degree-granting authority from the State of Maine. But, I hope we'll make an informed decision. The good Senator from Penobscot, Senator Murray, questioned why the State Board of Education would ask for a review of Portland College a year or two years down the road. I think the State Board of Education was acting very responsibly. This is the first time they have been asked to grant degree authority to a completely Internet college. It's a first. I think they are very responsible to ask for a review. I don't think that they were asking for that review because they had questions. They just wanted to see what the progress was of this new venture. Remember, the state board voted unanimously to recommend that we grant degree-granting authority to Portland College. I don't believe that they would have voted unanimously if they had lingering doubts about this college. I guess the bottom line is, do we want to make more educational opportunities available for people in the State of Maine or don't we? Certainly Portland College, in some form, will go forward with degree-granting authority from another state, and then Maine has totally lost oversight over this new Internet college. If that's what you want, then vote for the Minority Ought Not to Pass Report. Maine will then have no ability to control, or to ask for reviews of what's happening with this for-profit venture. I hope that reasonable people will think about their vote very hard. I hope that we won't make our decision based on who's lobbying for which side because you know any business in this state should have the ability to hire whoever they want to represent them as long as they make reports as required. We have high-powered lobbyists working on both sides of a lot issues, and that's certainly their right. Finally, I guess I want us to think hard before we throw out an opportunity here that is meeting a need that is so deeply unmet in this state, and that's for working adults to be able to get courses toward degrees that will make a difference for them in their lives, and in their ability to earn greater incomes. Thank you, Mr. President.

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

Senator **CAREY**: Thank you Mr. President. I'm not against education. I'm not against Portland College. What I'm saying is this is certainly not the outfit to be put in charge of going through the Internet and be trusted. I have a real problem with someone, who somehow or other, has been able in the last 7 years to receive over \$27 million in fees without any of it ever going out to bid. In my town, if we're putting out something over \$1,000 we have to go out to bid. \$27 million is somewhat bigger than what we do in our town. We have a process statewide that we are responsible for public money, and somehow or other, there are some of us who take that rather lightly. I do not.

On motion by Senator **MURRAY** of Penobscot, 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 Sagadahoc, Senator Small.

Senator **SMALL**: Thank you Mr. President. Men and women of the Senate, as the good Senator from Kennebec, Senator Carey, said earlier, I will be requesting in a moment to exempt myself, or excuse myself, from voting on this issue. But I did want to apprise the good Senators in this chamber of how we came to be where we are today. Because, I can tell you when I began work on Portland College two summers ago, I never dreamed that the battle would be fought in the Senate. I told them then that the real battle would be before the State Board of Education and the Review Team because in the 12 or 14 years that I've spent on Education Committee, I didn't ever recall a time when the legislature overruled a recommendation of the State Board of Education that came out on colleges. So I felt if they were successful in the State Board of Education, that it would be something that would go under the hammer. If they were not successful in getting their approval of degree-granting authority, that it would be wise to just withdraw the Bill. So I really thought that there would never be an opportunity for me to have to vote on this Bill. Unfortunately or fortunately, depending upon which side you are, this has become more of an issue than what I had anticipated.

THE PRESIDENT: The Chair would ask the Senator to defer. Senate will be at ease. Would the Senator please approach the rostrum?

Senate at Ease.

Senate called to order by the President.

THE PRESIDENT: The Senator from Sagadahoc, Senator Small, may proceed.

Senator **SMALL**: Thank you very much Mr. President. As I was saying at the time that I took this assignment, I did not believe that this would be something that would be coming up for debate in front of the Senate. And, again, I guess past precedent, or past knowledge, is not always all seeing and all knowing. Because this is going to be voted on in a roll call vote before the body, I will be requesting permission to excuse myself. I do not

currently work for the college, and I am simply a plan legislator now. But, because I did work on that concept proposal, and because right now it is a matter up for actual debate and vote, I will be requesting leave of the Senate to excuse myself from voting. I understand that is usually when it just pertains to one individual, but I also looked in the Mason's Manual of Legislative Procedure and they did say that it's more or less left up to the individual. Because there may be questions, a perceived conflict, I will be requesting the President to excuse me from voting. Thank you very much.

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

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

Senator **RUHLIN:** Thank you Mr. President. Point of order. Minor point of order but a point of order.

THE PRESIDENT: The Senator may pose his point of order.

Senator **RUHLIN:** Point of clarification. I believe when we get ready to take the Roll Call, sir, that we will be voting on the Motion of Senator Berube of Androscoggin.

THE PRESIDENT: Yes, did the Chair say it incorrectly? It should be the Senator from Androscoggin, Senator Berube's motion to accept the Minority Ought Not to Pass Report.

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

Senator **MILLS:** Mr. President, I hadn't earlier been familiar with this issue very much. I hadn't had an opportunity to study it back and forth. I've been listening, with some greater intensity than usual, to the discussion that has flowed back and forth across the surface of the chamber. It seems to me that the quarrel that people have with this proposal is that they are unhappy with the way in which MES, which is the legal not-for-profit corporation, has been able to accumulate certain resources, capital or access to capital or credit. I must confess I have not heard one word of quarrel with the notion that this isn't a good idea for the State of Maine, that it isn't appropriate, somehow, for an on-line college to be established here, based here, that it wouldn't be good for the people of Maine as well as for the people of other states who may subscribe. Maybe people from Europe will subscribe. After all the Internet is worldwide. I've heard no criticism of the underlying proposal. I've heard misgivings, doubts, and reservations about the manner in which MES has achieved its success in the last decade or so. But no word of legitimate criticism of the foundation of this college, which is the only issue here before us, it seems to me. If there are those in this chamber who have some reason to quarrel with how MES has managed to be successful over the past decade or so, then it seems to me that's an issue for another day, another forum, another place. Indeed, I think most of us are aware that, that is an issue in another forum, another place, and in another committee. But the

narrow issue before us is whether Intelligent Learning Systems, or the company that's presenting this proposal for an on-line college has a good idea, and does it have adequate financial backing. It appears that it does. It has adequate financial backing. That it is a good idea. That it will be beneficial to Maine students and it will be beneficial to this economy. For that reason, I've made my decision to oppose the pending motion so that we can go on to approve the decision, the unanimous decision, of the Board of Education.

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

Senator **CAREY:** Thank you Mr. President. May I pose a question through the Chair?

THE PRESIDENT: The Senator may pose his question.

Senator **CAREY:** To anyone who may answer. If, in fact, we do vote for this proposal and against the motion of the good Senator from Androscoggin, Senator Berube, then we are, in fact, in my mind, ratifying the position of the Commission on Education. Is there anybody who has a different answer to that? Which means, then, they having given the consent to the Portland College idea and the people who have brought it up, then wouldn't that automatically go without any further comment to the MES group, Intelligent Learning, and MELA, and whatever have you?

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 Somerset, Senator Mills.

Senator **MILLS:** Mr. President, if I understand the question, it would seem to me that the only thing we're voting on is whether to give permission to this corporation to grant degrees. I think that's a rather simple issue. I intend to give them that right if it's within my power. Thank you.

THE PRESIDENT: The pending question before the Senate is the motion by the Senator from Androscoggin, Senator Berube to Accept the Minority Ought Not to Pass Report. A Roll Call has been ordered. Is the Senate ready for the question?

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#371)

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

NAYS: Senators: ABROMSON, AMERO, BENNETT, CASSIDY, DAVIS, DOUGLASS, FERGUSON, HARRIMAN, LIBBY, MILLS, MITCHELL, PENDLETON

ABSENT: Senators: BENOIT, KIEFFER, MACKINNON,
MICHAUD

EXCUSED: Senator: SMALL

18 Senators having voted in the affirmative and 12 Senators having voted in the negative, with 4 Senators being absent and 1 Senator being excused, the motion by Senator **BERUBE** of Androscoggin to **ACCEPT** the Minority **OUGHT NOT TO PASS** Report, in **NON-CONCURRENCE, PREVAILED**.

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 (4/5/00) Assigned matter:

HOUSE REPORTS - from the Committee on **STATE AND LOCAL GOVERNMENT** on Resolve, to Create a Commission to Study and Establish Moral Policies on Investments and Purchasing by the State

H.P. 1755 L.D. 2461

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-870)** (7 members)

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

Tabled - April 5, 2000, by Senator **PINGREE** of Knox.

Pending - motion by Senator **PENDLETON** of Cumberland to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence (Roll Call Ordered)

(In House, March 23, 2000, the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Resolve **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-870).**)

(In Senate, March 27, 2000, Reports **READ**.)

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

Senator **PENDLETON:** Thank you Mr. President. Men and women of the Senate, I hope you will vote for the Majority Ought to Pass Amended Report. Actually the title of the Bill has even been changed to "A Resolve to Create a Commission to Study Economically and Socially Just Policies on Investment and Purchasing by the State". There were some people who had a lot of anxiety over the Bill, and so I worked very hard to try to get an amendment, and I wasn't able to do that. However, one of my colleagues has, I think, come up with an amendment that may cause less anxiety and maybe get to where we're trying to get with this particular piece of legislation. It comes from the "Clean Clothes" efforts that have been undertaken in Bangor and in

Biddeford. It would be a commission to study and raise consciousness on unethical practices in international marketplaces. I hope that you will allow us to pass this so that you can hear about the amendment. Thank you.

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

Senator **KILKELLY:** Thank you Mr. President. Men and women of the Senate, I too would urge you to allow this Bill to get past its first reading so that I can, in fact, present an amendment and discuss that amendment. At that time I believe it would resolve some of the concerns that many of us had raised about the previous draft. Thank you.

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#372)

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

NAYS: Senators: AMERO, BENNETT, CASSIDY, FERGUSON, HARRIMAN

ABSENT: Senators: BENOIT, KIEFFER, MACKINNON, MICHAUD

26 Senators having voted in the affirmative and 5 Senators having voted in the negative, with 4 Senators being absent, the motion by Senator **PENDLETON** of Cumberland to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence, **PREVAILED**.

READ ONCE.

Committee Amendment "A" (H-870) **READ**.

On motion by Senator **KILKELLY** of Lincoln, Senate Amendment "C" (S-690) to Committee Amendment "A" (H-870) **READ**.

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

Senator **KILKELLY:** Thank you Mr. President. Men and women of the Senate, I offer this amendment today as a way of coming up with a compromise on the legislation that's before us. It seemed that the intent of the legislation was, in fact, to look at foreign purchases and foreign investments by the state and to assure that, when we're making those purchases, or making those investments, that we have an understanding of the conditions that folks are being faced with that are, in fact, creating these goods and services. One of the things that we've asked in this report is to look at what the economic impact is of

foreign purchases on our Maine businesses. I think that's a very appropriate thing for us to do. So I would urge you to support this amendment that would, in fact, create this commission that would look at the practice of purchasing and investing in foreign companies, and what that impact is on our businesses here in the state. Thank you very much.

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

Senator **LONGLEY:** Thank you Mr. President. Colleagues in the Senate, I'll be happy to support this measure. I would just ask that, in addition to keeping track of when businesses in Maine are negatively effected, everyone also on the commission keep track that the fact that a case very similar to this is happening at the U.S. Supreme Court level where they're deciding what are the state's rights in this regard. Just to keep an eye open for what the U.S. Supreme Court finally decides. I'll appreciate that. Thank you.

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

Senator **FERGUSON:** Thank you very much Mr. President. I don't seem to have the amendment in my possession, 693, did I hear correctly?

THE PRESIDENT: 690, it's Senate Amendment C, filing number 690.

Senator **FERGUSON:** Thank you very much Mr. President. I do have that.

On motion by Senator **KILKELLY** of Lincoln, Senate Amendment "C" (S-690) to Committee Amendment "A" (H-870) **ADOPTED.**

Committee Amendment "A" (H-870) as Amended by Senate Amendment "C" (S-690) thereto, **ADOPTED**, in **NON-CONCURRENCE.**

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-870) AS AMENDED BY SENATE AMENDMENT "C" (S-690)** thereto, in **NON-CONCURRENCE.**

Sent down for concurrence.

Off Record Remarks

Senator **DOUGLASS** of Androscoggin was granted unanimous consent to address the Senate on the Record.

Senator **DOUGLASS:** Mr. President, I wish to be recorded as having voted "yea" on the Minority Ought Not to Pass vote on item 5-2, L.D. 2326, Bill "An Act Authorizing Portland College to Grant Degrees". I have written notes that tell me if minority moved, vote green. But I must admit, as I looked at the Board

when the vote had closed, I saw a red light next to my name, which tells me that my finger pushed the wrong button.

Senator **KILKELLY** of Lincoln was granted unanimous consent to address the Senate off the Record.

On motion by Senator **PINGREE** of Knox, **RECESSED** until 6:30 in the evening.

After Recess

Senate called to order by the President.

ORDERS OF THE DAY

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

SENATE REPORTS - from the Committee on **TAXATION** on Bill "An Act to Ensure that Certain Land Transfers Accomplished through Stock Transfers are not Exempt from the Transfer Tax" S.P. 1053 L.D. 2643

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

Minority - **Ought to Pass as Amended by Committee Amendment "A" (S-688)** (2 members)

Tabled - April 10, 2000, by Senator **RAND** of Cumberland.

Pending - **ACCEPTANCE** of the Minority **OUGHT TO PASS AS AMENDED** Report (Roll Call Ordered)

(In Senate, April 10, 2000, Reports **READ.** The Majority **OUGHT NOT TO PASS** Report **ACCEPTED.** Subsequently, on motion by Senator **RAND** of Cumberland, **RECONSIDERED.** Motion by Senator **RUHLIN** of Penobscot to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report, **FAILED.**)

THE CHAIR RULED THE MATTER NOT PROPERLY REPORTED OUT OF COMMITTEE AND DIRECTED THE SECRETARY TO RETURN THE BILL AND ACCOMPANYING PAPERS TO THE COMMITTEE ON TAXATION.

The Chair laid before the Senate the following Tabled and Later (4/8/00) Assigned matter:

HOUSE REPORTS - from the Committee on **LABOR** on Bill "An Act to Ensure Just Cause Termination in Employment" H.P. 1503 L.D. 2147

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-1024)** (6 members)

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

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

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

(In House, April 7, 2000, Reports **READ** and Bill and accompanying papers **INDEFINITELY POSTPONED**.)

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

Senator **LAFOUNTAIN** of York requested a Division.

The same Senator moved the Bill and accompanying papers be **INDEFINITELY POSTPONED**, in concurrence.

On motion by Senator **HARRIMAN** 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 (#373)

YEAS: Senators: **ABROMSON, AMERO, BENNETT, BERUBE, CAREY, CASSIDY, CATHCART, DAGGETT, DAVIS, FERGUSON, GOLDTHWAIT, HARRIMAN, KILKELLY, LAFOUNTAIN, LIBBY, LONGLEY, MILLS, MITCHELL, MURRAY, NUTTING, PARADIS, PENDLETON, PINGREE, RUHLIN, SMALL, TREAT, THE PRESIDENT - MARK W. LAWRENCE**

NAYS: Senator: **RAND**

ABSENT: Senators: **BENOIT, DOUGLASS, KIEFFER, KONTOS, MACKINNON, MICHAUD, O'GARA**

27 Senators having voted in the affirmative and 1 Senator having voted in the negative, with 7 Senators being absent, the motion by Senator **LAFOUNTAIN** of York to **INDEFINITELY POSTPONE** the Bill and accompanying papers, in concurrence, **PREVAILED**.

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

SENATE REPORTS - from the Committee on **NATURAL RESOURCES** on Bill "An Act to Implement the Land Use Recommendations of the Task Force on State Office Building Location, Other State Growth-related Capital Investments and Patterns of Development"

S.P. 1027 L.D. 2600

Majority - **Ought to Pass as Amended by Committee Amendment "A" (S-660)** (10 members)

Minority - **Ought Not to Pass** (3 members)

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

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

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

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

Senator **TREAT:** Thank you Mr. President. Men and women of the Senate, please vote with me in support of the Majority Ought to Pass Report, which is a 10 person, bipartisan, majority report of the Natural Resources Committee. This legislation is the product of several months of work of a task force that was 13 members of a variety of different committees including Taxation, Natural Resources, Marine Resources, State and Local Government, Transportation, Agriculture and Forestry, Education, and Economic Development. This task force collectively agreed to the legislation that is before you, which was then refined by the Natural Resources Committee, to deal with various issues that came up. This Bill addresses the issue that we will call smart growth or land use planning. The fiscal impacts of sprawl that have been so noticeable in our state.

Essentially the task force came up with 3 pieces of legislation. Two of those have already been enacted by this body and sit on the Appropriations Table, I believe. One dealing with transportation impacts of land use development, the other dealing with taxation policies that we would propose to address a variety of concerns. The legislation before you focus on a couple of different, very important policies. One policy is to maintain our agricultural and natural resource lands and economy. Just over the last couple of days, in my own district, I've been dealing with the potential closure of the second largest apple orchard in the State of Maine. I spent much of Sunday meeting with a variety of people, our congressmen, our state Commissioner of Agriculture and others, focusing on what we can do help our farms. A big part of what we can do is to focus on fiscal policies that this state has which perhaps, inadvertently, makes it difficult for farmers to have productive farms that can be profitable. This legislation addresses that.

The second thing the legislation focuses on is to revitalize our downtowns and our service centers. Perhaps coincidentally, I also represent a number of communities that have what we might call old mill towns. Beautiful downtowns, old historic buildings, gorgeous storefronts that could be a thriving downtown, yet there's just something missing. This legislation would attempt to address that through a variety of things that I'll mention briefly.

The third area that this legislation focuses on is kind of the middle. You've got the rural areas, you have the downtown areas, some of the older communities, and there's a whole lot of fast growing suburbs in between. These are the Windhams for example, that's so frequently mentioned because of the pressures on the school system that they're facing right now. This Bill also has something for them. It addresses the needs that they have to get a handle on the development that seems to be overwhelming them and gives them both fiscal and planning tools to help them deal with that. Finally it focuses specifically on the actions of the state government. We build a lot of buildings, rent buildings, and lease buildings here in the State of Maine for

our state government. We have discovered over the years that often the decisions made by the state are inconsistent with the decisions that a local community has about what their comprehensive plan would look like, and where buildings should be located. Indeed, in the last couple of years, we've had a number of instances where communities have begged for the state to locate, whether it is a court, whether it is a Department of Labor building, begged them to locate those buildings in a downtown service center area, and yet they went out into what had previously been farmland or perhaps even wetlands.

So this legislation is to address all of these concerns. It does a number of things, but the bottom line really is that it tries to direct our state fiscal policies in a way that do not inadvertently promote very wasteful patterns of land development, and that do not inadvertently go against the wishes of what communities want to do in their own communities.

So, just briefly, some of the things that it does. It focuses on giving some one-time money to communities for planning purposes. There are quite a few communities that would like to do comprehensive plans, but we have no money to assist them in that. At the current level of funding, it would be the year 2025 before these communities would have an opportunity to complete a comprehensive plan. And, again, this is not a mandatory thing. This is something that these towns would like to do, but have not been able to access the resources for it. Secondly, it would assist communities in piloting some smart growth strategies. Coming up with projects that would assist their downtowns, or maybe deal with some transportation issues on a regional basis. Trying to do some things, in perhaps, a little more innovative way that we could model to other communities in our state. In addition, it would focus on establishing a downtown center, probably a grandiose name for what is actually a single individual who will reside over at the Department of Economic and Community Development. One of the things that was most supported by the people who came before us was the development of this one position to assist communities in coming up with proposals, putting together grants, and accessing federal money that would help redevelop their downtowns. Also on the downtown theme, the Bill incorporates a preference for putting state office buildings in areas that are downtown or service center locations. It also provides a little bit of money to assist in making those buildings ready for state offices. What I have heard in my own district, and also in discussions about why state offices did not go in say downtown Lewiston/Auburn, and instead went out on the outskirts of town is they said there's inadequate parking, or the buildings are old and they don't meet ADA standards, or they are historic but there's code problems. The purpose of this fund is to help bring those buildings up to code so that we can help revitalize our downtowns, and make sure that our state uses our resources in ways that really support what our communities want to do and doesn't go against, not only their comprehensive plans, but their visions for their downtowns and their revitalization of those communities. So that's very important, and there are many, many things in here. I don't want to bore you with a list of them. There are things in the housing area where the Bill will encourage the Maine State Housing Authority to expand a wonderful program that is only right now in Portland and Bangor. A federal program that helps redevelop buildings in the downtown for apartments. This legislation will say, lets do that statewide. There's no reason why Fort Kent, Gardiner, Winthrop, and Calais cannot benefit from this program. It should not just be a Bangor and Portland program. That's another thing that's in this legislation. So, in essence, it is legislation, it is based on

incentives. It is designed to focus our state fiscal policies in a way that support what communities want to do, that discourages wasteful land use patterns such as sprawl, that are, indeed, very, very expensive policies for the State of Maine and for the communities that are burdened with this. It also provides some needed assistance, as I said, to those fast growing communities. Part of this is to provide funding for the Windhams that have already done comprehensive plans. But what they need to do is the next step of the implementing ordinances, and they have a vision for their community. But, basically, you know the development is outstripping their ability as a community to carry that vision forward. This legislation essentially gives them the tools that they will need to do just that. It's a really good piece of legislation.

I just want to mention that not only did this task force, which was a bipartisan geographically diverse task force, not only did we support this, but we had strong input from many, many organizations. Not only the Maine Municipal Association, but some partners you might not suspect. When you have the realtors and the Sierra Club both coming forward and saying, this is a great proposal, and that's what happened here. I passed out some literature from the Maine Realtors just to give you a flavor of what they were saying and it's very similar to what the task force put forward. They are just one of many groups that came to us. In addition, the Governor had a sub-cabinet group focus on this issue headed by Commissioner Melrose of the Department of Transportation. Again, the recommendations that came out of that group were very similar to what the task force ended up supporting. So, it's a really interesting confluence of many different organizations, and parts of government that ended up supporting some very progressive things. It doesn't solve these problems. There are a number of continuing studies that are part of this proposal, but it's a very big first step, and I strongly encourage you to vote for this Majority Ought to Pass Report.

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

Senator LIBBY: Thank you Mr. President. Men and women of the Senate, I rise today to oppose the pending motion. I think we have, in committee, spent an awful lot of time working on this issue, and I think there are some good elements of this Bill. I'd just like to point out some of the parts of the Bill that make it difficult for me to support it today.

First of all, the positions. There is a position that's added in this Bill. There wasn't too much discussion about it, but it establishes a Statewide Geographic Information System Coordinator position at a rate of about \$50,000 per year plus some additional expenses. There's also a General Fund appropriation of a quarter of a million dollars to establish a director position to oversee the Maine Downtown Center, a quarter of a million dollars. The ideas behind, I think, the planning grants are very good. What I'd rather see, I think in general, in the State of Maine Planning Office and the good work that they do, is simply provide technical help to the towns and cities on an individualized basis.

See, the problem with this particular Bill and this Committee Amendment that I have in front of me is that it's a one size fits all. Mr. President, the difficulty with that is that, when you live in a rural town or you represent rural towns like I do that don't have a lot in common with Windham, South Portland, and Scarborough or even Waterville and Presque Isle and others. When you have towns that just don't have that much in common, what you end up

with is being kind of herded into, or forced into, making planning decisions that really don't fit your town. That's exactly what has happened in terms of this Bill with me. I like the idea, frankly, of getting some planning grants out to commissions, in my area it's the Southern Maine Regional Planning Commission, which does a pretty good job. But I don't want to force it onto people, force a philosophy onto people, about growth in their area. I'd rather have the local control that does not come along with this particular proposal.

So, just in general, it's more of a philosophical reason why I'm opposed to this Bill. There are some big fiscal implications. Total appropriation on this Bill is \$3.835 million. I heard one person in my own caucus, that I really felt was an inappropriate comment, and I don't usually criticize, but that would be, oh I'll vote for this because I know it will die on the Appropriations Table. I don't think that's leadership at all. So I have a problem with that. But, in terms of the Bill itself, I think this thing probably is going to pass today and, if it does, I think there are some pretty good reasons for that. But, I don't think that's one of them. I'd rather see us take the time to step back from something like this and talk about establishing technical services out of the State Planning Office. Simple technical services on a request basis. Maybe some planning grants, maybe some block grants similar to what we do already, and take it from there. Let the towns take advantage of these situations without biasing it by only locating state buildings, for example, in certain areas. Overall, Mr. President, I really like the idea behind it but I just see some problems in terms of the differences between my rural towns and some of the more suburban towns. Thank you.

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

Senator DAGGETT: Thank you Mr. President. Members of the Senate, I had the opportunity to serve on this task force that met last fall, that had the very long name, but we all referred to as the Sprawl Task Force. It truly was one of the most exciting areas that I've had a chance to look at over a period of years. In fact, writing in the Maine Times, Peter Cox referred to this as one of the most significant pieces of legislation and issues that this legislature has to deal with. This is a question of major public policy, and a major shift in the direction that we have been heading in over a period of years. I think one of the parts of this that concerns me the most, and I think should concern us, is that as we have public policy, as we develop that, we don't always see the results immediately. A lot of what we do here does not have an immediate effect, and it's only over a period of years that we begin to see the results of some of the things we've done. Unfortunately, over a period of years, what we've seen is state policies that have discouraged growth taking place in areas that traditionally have been developed for growth, and that is our downtowns. That's where the services are. That's where the infrastructure is, sewer and water services. Because we have discouraged that, we have seen growth moving into the rural areas. While, I primarily represent an area that has a downtown, when I have talked with people about the issue of sprawl over the past few months one of the things I've put a particular emphasis on is sprawl. There is a handout that actually addresses this and it talks about agriculture and sprawl.

Unless we find some way to discourage sprawl into the rural areas, we risk those rural areas. We risk the traditional rural quality of our state. I'm just going to read a couple of sentences here, "The costs of sprawl to agriculture are high and ultimately

may cost us a future as we know it. Already there are parts of the state where little agriculture exists and communities are struggling to save the last farm." That precisely is what this Bill is about, saving the rural quality of our state and having growth directed in the areas where it belongs and where those areas can support it. Over the course of the task force, we had an opportunity to see a presentation from the State Planning Office that addressed the great American neighborhood. I think we all were very surprised to find that today our zoning regulations prevent us from establishing the kind of great American neighborhood that we all think of, as far as our country and our state is concerned. The kinds of zoning regulations prevent that from happening. They tend to prevent infill, they tend to prevent the neighborhoods with the tree-lined streets that many of us remember fondly. This Bill is an effort to begin to address some of those things. Sure it has a price tag. When things are important to you, they have a price tag. I think the price is very small compared to what this Bill looks to do. Again, it is a beginning.

When I was thinking about doing this, I was thinking about the graying of America. I'm not talking about people getting older. One of the problems that we've seen is the paving of America, turning green space into gray space. Right now we're looking to try to revitalize downtown Augusta. One of the huge issues is parking. As long as it is easier and cheaper to pave over a farm, to pave over green space, that is where the development will take place. We need to be very careful that does not happen. So I urge your support of this Bill. Help us see that growth takes place where each Maine community chooses it to take place. Not just a random spot that's cheaper and easier, but that helps to preserve the kind of rural quality of life that we have here, and that we cherish so much. I urge you to support the pending motion.

THE PRESIDENT: The Chair recognizes the Senator from Washington, Senator Cassidy.

Senator CASSIDY: Thank you Mr. President. Men and women of the Senate, the previous speaker, the good Senator from Kennebec, Senator Daggett, I think she made a good statement when she said the cost of the money of this Bill is not so great. I can agree with her when I think of the cost of the loss of the people who live in this state in their freedom and their right to own land. The problem I see with this Bill is this. We have over 20 million acres of land in this state. We have 1.2 million people. In my district alone, from one end to the other, Route 1 is 152 miles. I have 35,000 people who live in that district. I don't see us turning into New York City, Long Island, Boston, or anyplace else right away here. What I see with this Bill is the state, big brother, taking local control away from communities. We've spent thousands of dollars and we've mandated communities to come up with comprehensive plans, which I think is a tremendous idea. Many, many municipalities have done that.

I agree with the good Senator from York, Senator Libby, who earlier spoke about some grant money that would be allowed for communities, and help the communities to develop smart growth, if that's the term we want to use. But that should be up to those individual communities. The people that have the fantasy today that we're going to have main streets be like they were in the 1950's are living in a dream world. What's happened with retail today, we all know the big firms of the Sams, the Wal-Marts, K-Marts, and everything else. I know many of you don't like them, but I guarantee that every one of you sitting here have

been in them and shopped in them. That's the way of life today because people look at volume and mark-up and that sort of thing. I can remember as a kid going down the street on a Saturday evening and watching the people go by. People would do their weekly shopping, come in from all the little rural towns and those days are gone. It's not going to happen. That's not to say that we can't use those buildings and have some real practical use on those main streets. There are many small communities that have implemented regulations and incentives to have that happen. There are some beautiful main streets in this state.

The other thing that was mentioned earlier by the good Senator from York, Senator Libby, this is a Bill that we're saying, one size fits all. I think about my own community and, hopefully, you've had an opportunity to go through Calais or visit Calais. Geographically, in a sense, we're sort of a peninsula. We're surrounded by the St. Croix River. In a lot of your communities you have a radius where can have the center of that community, you have an equal radius. In our community, we have a half a circle because when we get to the border half of that river, we're going into another foreign country. It would be a real hardship to force some kinds of buildings on the main street. As you mentioned earlier, we don't have the parking like you have in some communities. You just can't pass a law that makes every community be the same. If we had these kinds of sprawl Bills back when this country was formed, I think we'd still have 13 colonies. I don't know if people would ever have heard of an Oregon Trail. I just fought too hard over the years for people to have local control, and for people to have rights to live in this country and make decisions. If farmers today decide they want to sell off pieces, or parcels of their lands or woodlots, if that community so allows it. Big deal. You know people have a right to buy land, to live where they want to live. If they want to drive 5 miles to their home, that's their business. I just can't imagine us taking the rights away from people, and big brother telling communities what to do. I just can't imagine supporting this Bill, and I hope you will join me in opposing the pending motion. Thank you, Mr. President.

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

Senator **CAREY:** Thank you Mr. President. Mr. President and members of the Senate, I've been reading up on sprawl. I was a city boy, I lived on a lot 52 feet wide by 100 feet deep. Had city water with all of its additives. Had absolutely no garage. Had absolutely no land. Had absolutely no privacy because our neighbors were 15 feet away on either side of the house, so they might as well have been involved in our conversations. Now, I've made my fortune in life. I have good, clean well water. I have no neighbors that I can really spit at, they're too far away. My conversations with my wife are now private. And, finally, I've been able to put a two-car garage on the lot that I have. So I read this book on sprawl put out by the State Planning Office. I think it's wonderful. A lady named Holly Dominique was a big contributor to it and spoke about no sprawl, don't move out in the country, don't do anything. I looked her up and I found that she lives in Readfield, a thriving metropolis. All in all, I'm going to vote against this Bill.

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

Senator **NUTTING:** Thank you Mr. President. Ladies and gentlemen of the Senate, I rise to support the pending motion. I've heard a couple of times this evening that this Bill is a one size fits all. I've just looked through the 10 member majority Committee Amendment again. There's parts of the Bill that are trying to help revitalize downtown areas so they don't look so bad, so people don't want to move out of them. There are parts in there that effect suburbs. There are parts in there that effect rural lands and agriculture. To me, this is not a one size fits all Bill. To me, the vast majority of the Bill is optional. We're trying to empower local communities to make the right decisions in planning so that you can have development in rural areas that doesn't effect the agricultural use of the land. On a personal level, one of my busiest constituent demands that makes the phone ring at the house in the summer, is the ever-increasing conflict between agricultural use of the land and the neighbors non-agricultural use of the land. It's getting worse and worse and worse.

Yes, there is funding, one time funding, in this Bill. But to me, the reason why I voted for this Bill is sprawl is costing us money. Our school population in the inner cities is going down. Our school population in the suburbs is going up. We have some schools that aren't full and we're building. We just built a brand new high school in Turner for Turner, Leeds and Green. Why? Because the growth has occurred out there, and in many cases, forcing agriculture out and it's costing the state more and more money in school construction costs. We're still fighting the school construction battle to try to even catch up with the demand and much of the demand is because of uncontrolled growth. People are wanting to leave the downtowns because it doesn't look good, because the downtown hasn't been able to access grants. Part of this money is for grants to make our downtowns look more attractive. I think this is not a one size fits all Bill. I think it's a Bill to give local communities the option, if they choose, to help them plan for growth so it's organized. I urge support of the pending motion. Thank you.

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

Senator **LIBBY:** Thank you Mr. President. Men and women of the Senate, I won't take too long. Just so I can give an example of the one size fits all that everyone keeps denying is in the Bill. Then I'll be finished. The example, I guess, that I would use would be the newly constructed multi-family rental housing. That's the example I want to use. So, for example, if you have the possibility of bringing in low-income, multi-family rental housing subsidized by the state and the by the feds. Something down in my area that might be handled by York-Cumberland Housing for example. What we're saying in this Bill is that this kind of development must take place in the downtown section. In my district, lets take the Town of Limington, it's a good example because it's going on right now. That town, in their own way planning for their own future, is not interested in putting that there. They want multi-family housing, but they don't want it in the downtown. They've told me this specifically. We're working on a project right now that's exactly this. Again, just so you understand, the planning that goes on in a suburb like Scarborough is important. I see sprawl. I don't like it. I look in South Portland. I used the example during the public hearing of South Portland in the mall area. When I was a kid I used to drive down Running Hill Road. It's a huge overlook, and you could see not very much development in the South Portland area. Now, if

you go to the top of Running Hill Road, you see nothing but spread out sprawl. I agree that it's there. My point in the public hearing was that it's too bad that a city like South Portland couldn't try to talk about initiatives that would help build it up instead of out. That's what is happening. All of the land is being used, but with two-story types of buildings of all sizes, industrial, commercial, residential, and it's just going out. To that extent, I think the expertise of the State Planning Office could be used to help it grow up instead of out and keep that open green space. That, I think, is really important.

But in the Town of Limington, that's not our problem. Some of the adjoining towns like Cornish, Limerick, and some of those that I represent, they don't want this. They want to be able to locate multi-family, low-income residential housing, for example, in a location of their choice. They don't want to be dictated to. So that's the problem that I have with the Bill. The Bill also refers, almost all the way through it, to sewer lines and public infrastructure. Well, hey. Out my way you put in a well, you got your septic tank out back, and you're on your own. It is just that way because we don't have public infrastructure. We just don't fall under the aspects that are developed in this Bill. This Bill is good for some towns. It's not good for really any of mine, so that makes it tough. You have to understand the differences between the towns in order to understand why people would oppose this Bill. Do I think we should go forward with some of these ideas? I do. Do I think we should go forward with all of these ideas? Too much dictating from you know, the top, from the state. So I appreciate you listening today, and I really feel it's an important issue. I hope that you understand the difference. Thank you.

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

Senator **TREAT:** Thank you Mr. President. Men and women of the Senate, I just wanted to clarify a couple of things about the Bill that you may be confused by, based on the previous discussion. This Bill only applies to state investments. A community that wants to have multi-family housing out in the middle of a gorgeous field can do that. It is about state money going into projects and it is not limited to downtowns. In fact, the Bill makes it clear that downtowns, growth areas, areas served by sewer, census trust. A number of areas that are located in most communities will qualify for this state investment. So it is not limiting what towns can do, and what private entities can do. I think it is quite interesting that this part of the Bill is very much supported by the realtors. It's very much supported by the homebuilders. I have some beautiful glossy brochures that the National Association of Homebuilders has put out about smart growth. They're very much in favor of it. One of the concerns that they have, and that realtors have as well, is that they would like to redevelop lots that are within a city, let's say. But state policies, effectively because of the fiscal implications and the way that we really have inadvertently subsidized, putting things farther and farther from the downtowns, have really encouraged them to go elsewhere. They would like to have some infill development, but right now our state policies are not even. What this Bill really does is it puts those more downtown areas on more even fiscal footing. At the same time, though, it focuses very directly on assisting farms, agricultural land, and those pieces, particularly the tax policies which are in other legislation, go hand-in-hand with this particular legislation here. This is not about limiting community choice. It's really about making sure that those communities have control over their own destiny because they

have the tools. Whether there are technical assistance or fiscal assistance, that they need to really carry out their plan for the future. We even went so far for those towns that don't have a downtown. I represent, for example, a number of communities that you would be hard pressed to figure out where the downtown is, but we did actually put a provision in there that says if a community really wants to develop a downtown, they can so designate that in their comprehensive plans. For example, West Gardiner, that I represent, didn't use to have a downtown but, actually, in the last couple of years they've put the local school across from the fire station, that is next to the town hall, that is across the road from the little convenience store. I think you've got the beginnings of a downtown. They could designate that, in a comprehensive plan, as their downtown if they wanted to.

So, this Bill really, you know, in some ways perhaps doesn't go as far as many people would like us to go. But it's a very sensible first step to start to look at these issues, and to think about where we're spending the state dollars. I think it's a very reasonable approach, and I do encourage your vote in support of the current motion.

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

Senator **MITCHELL:** Thank you Mr. President. I would like to propose a question through the Chair to anyone who might answer.

THE PRESIDENT: The Senator may pose her question.

Senator **MITCHELL:** We have been hearing about the realtors and the construction people or constructors who are supporting this. I would like know if there's any input as to the feedback we're getting on the reaction from superintendents regarding school construction, and from their municipal officials. What is their reaction to this, please?

THE PRESIDENT: The Senator from Penobscot, Senator Mitchell, poses a question through the Chair to anyone who may be able to answer. The Chair recognizes the Senator from Kennebec, Senator Treat.

Senator **TREAT:** Thank you Mr. President. I would be happy to answer the question of the Senator from Penobscot. I was looking for the piece of paper I had that specifically addressed this school question, which is now a part of the Bill that was actually drafted by the Maine School Management Association as well as the Maine State Board of Education. They're very comfortable with that. I actually had a fax from the School Board that had written a very lengthy letter expressing a lot of concern about the original Bill. That language is completely out of the Bill that's before you, which merely asked the School Board to take a look at issues of location of school buildings and come back to the legislature with proposed regulations. That language is completely acceptable to the schools. It is language that was, in fact, developed by them and accepted by the committee, many members of whom would have liked to have gone a lot farther on that. We also did have a lot of input from the Maine Municipal Association that worked very hard with us. They had some concerns about additional money for comprehensive planning, but they are very comfortable with our taking a look at those issues of how the Growth Management Act might be revisited over the next several months. They will be part of a study to look

at some of those issues between now and next November, and to come back with recommendations. There are a number of provisions of this that they were very strongly in support of, which very much clarified the authority of communities to really control their own destiny. I would say that the feedback we're getting is quite positive from both of those sides. I do know that the original Bill did raise some concerns on the school front, but I don't think that the current version does at all.

The Chair ordered a Division. 15 Senators having voted in the affirmative and 8 Senators having voted in the negative, the motion by Senator **TREAT** of Kennebec to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, **PREVAILED**.

READ ONCE.

Committee Amendment "A" (S-660) **READ** and **ADOPTED**.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-660)**.

Sent down for concurrence.

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

HOUSE REPORT - from the Committee on **LEGAL AND VETERANS AFFAIRS** on Bill "An Act to Create a New Category of Liquor License and to Exempt Pool Halls, Bowling Alleys and Off-track Betting Facilities from the Prohibition Against Smoking" H.P. 1807 L.D. 2533

Report - **Ought to Pass As Amended by Committee Amendment "A" (H-1004)**

Tabled - April 10, 2000, by Senator **PINGREE** of Knox.

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

(In House, April 8, 2000, Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1004)**.)

(In Senate, April 10, 2000, Report **READ**.)

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 and men and women of the Senate, over the last several years, the Health and Human Services Committee has put in hundreds of hours, I suspect, on reviewing the entire issue of what public places ought to be permitted to have smoking and what ought not to have. It is, I think, particularly appropriate that the Health and Human Services Committee review this important public policy issue. It

is, after all, the Human Services Committee that has the opportunity to administer a \$1.2 billion annual Medicaid budget, which the authorities tell us is, in some measure at least, driven by expenses arising from exposure to smoking, to second hand smoke, and to chewing tobacco, as well, I might add. In any case, after deliberating rather extensively on Bills that were presented to that committee in the past several years, they formulated a well-crafted law last year. As you will recall it passed, went into effect in September. It banned smoking in restaurants. It's interesting to reflect that there are, I am told, about 40,000 places of business in the State of Maine. With the passage of the restaurant smoking Bill last year, it left only a few hundred businesses in Maine where smoking is still permitted.

It seems that we've come a long way in the last decade or so. Remember 10 years ago, or thereabouts, there was such a controversy about banning smoking in airlines, and one can easily imagine that. It was banned first in domestic flights and then the FAA took the rather large step of determining that it was appropriate to ban smoking on international and transoceanic flights as well. Weighing the detriment to the public against the inconvenience to those who must smoke. In my mind, that probably was a very large step, a very controversial one. But it's one that has faded into history. One that, I think, the public has come to accept. I think no one would retreat from that measure and from the others that have been passed in the past decade. It is simply true that smoking is not permitted in any businesses in this state with very, very few exceptions. The Bill last year left a few exceptions. I have had a number of comments from restaurant owners in my district who are concerned that we left any exceptions at all. Their thought was that we should have simply gone the distance and said, look, the few hundred remaining businesses where smoking is permitted it is time, finally, that indoor smoking in public places simply be prohibited. It is 99.5% prohibited in this state and in many other jurisdictions. Why not go the extra distance and clean up the law and make one uniform standard. That way businesses can get on with the process of adjusting economically, financially, and the clientele can get on with adjusting, and we can proceed. This year, as you all know, several of these business interests came forward. They managed to obtain jurisdiction over the issue in the Legal and Veterans Affairs Committee, which does not have the history of dealing with this issue year-after-year-after-year as has the Health and Human Services Committee. As a result we have the Bill that lies before you this evening that would do essentially three things. Roll back some of the provisions in regard to the restaurant smoking ban. Number 2, ease back on the restrictions against smoking in bowling alleys, some of which have been in place since 1994. My understanding is that in bowling alleys, some of them have taken advantage of the generic exception that is allowed in our law, has been allowed for some years, and that is there's nothing wrong with setting aside a separate room for people to smoke in. The only restriction on that room is that the employees may not be required to serve any customers in that area. The major reason, the fundamental purpose of the smoking Bill, has been to avoid exposing employees, restaurant help, waiters, waitresses, exposing them to working in places where there is atmospheric smoke. So any business, and I don't think it's limited to just bowling alleys and pool halls, any business that wishes to may set aside a separate room where the only restriction is that you can't serve patrons in there. Employees may not be required to serve customers in this separate room. My understanding is that most of the bowling alleys that are doing business have accommodated themselves

by using this very reasonable alternative so that smoking is allowed indoors. It's just allowed in an indoor space that is not part of the public service area. My belief is that most of the bowling alleys have done very well to accommodate themselves in that respect.

The third element in this Bill is a retrenchment on the licenses for pool halls, and to permit a new licensing category, really, for pool halls where smoking would be permitted. I think it's a shame that we take these steps in retreat after having made so much progress over the past 10 years. At the risk of repeating myself, roughly 99.5% of all businesses in Maine now abide by the commonly accepted rule that indoor smoking is prohibited. It is prohibited in this chamber. If we had come to this chamber 30 years ago, or even 20 years ago, at this time of night, the place would be a blue haze. There would already be smoking scars on the new desks. The rug would have its burns in it already, after a couple of months. And you know what, we probably all would probably have just accept it. That was the environment that we lived in 20 years ago. But if you came into this chamber today, given the changed conditioning that we've all undergone in the last 20 years, and you suddenly noticed that there was a blue haze in here, and 10 or 15 of us were smoking away, and there were cigarettes going in ashtrays, we would all walk out. Because we have gotten ourselves use to the idea that clean air is great stuff. I travel occasionally, I go to Europe, walk in to some of the bars over there. You know you come home and can't wait to get to a dry cleaners. But 20 years ago I would have thought nothing about it.

We have succeeded, through public legislation, in completely changing the atmosphere in which we do business in this country. It's really remarkable. Not the most remarkable thing that ever happened in the last part of the 20th century, but one of the more remarkable things. For us, now three months, four months into the new millennium, to retreat from the gains that we made is really a shame. I think in deference to the work, the very hard work of the Health and Human Services Committee that has studied this issue year after year, we should reject the pending Bill and vote against what I believe to be the present motion, which is to adopt the Committee Report. Thank you.

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

Senator **DAGGETT:** Thank you Mr. President. Members of the Senate, I appreciate the good comments of my colleague from Somerset, Senator Mills, and find myself in a somewhat awkward position standing here defending what's been referred to as a smoking Bill. This is not a smoking Bill. Smoking has been allowed in bars and taverns over time. This was not changed last year except for bars that happen to be attached to a restaurant. This Bill, which is, I might add, a unanimous committee report, allows those bars that are attached to a restaurant, but are yet separate, self-contained rooms, to allow smoking and allow minors in the restaurant, which is the way the Bill was crafted last year created, somewhat of an anomaly. It would require a bar that was attached to a restaurant, if they wished to allow minors in that restaurant, to run two sets of books, have two kitchens, two sets of bathrooms, and essentially be two separate businesses. This simply corrects that inequity as far as the restaurants are concerned.

There has been some discussion about committee of jurisdiction. I think that is kind of an interesting issue because, in fact, the Legal and Veterans Affairs Committee, in fact, is the

committee that does liquor licensing. That is precisely what the smoking ban was tied to, licensing. I think licensing is entirely within our province to look at, so I would reject that as a smokescreen. Pardon the pun. It has been mentioned that there were very few exceptions to this law. There are 12 exceptions. There are a number of exceptions. There have been exceptions. There were exceptions left in last year, somewhat interesting ones. Some of the information that's out indicates this is a repeal or partial repeal. I would submit to you it's a repeal of nothing. There is nothing in the Committee Amendment that has the work repeal. There's no repeal here. Earlier this year, there was a Bill in front of the Health and Human Services Committee that asked for that uniform standard that was mentioned earlier. If a uniform standard was what was wanted the opportunity was there, and it was rejected unanimously, rejected unanimously. So if this committee, the Health and Human Services Committee, wanted a uniform standard the opportunity was clearly there and it was rejected. This does not roll back provisions. It does not make significant changes. It addresses the licensing issues because serving liquor is attached to licensing, and we do not allow spirits, beer or wine to be served without food being served. Businesses that were called restaurants for the purposes of licensing, got brought into this. That's where the pool halls came in. They were licensed as restaurants. Somewhat interesting, a member of the committee actually said, I would never take my wife to a pool hall for dinner because pool halls are not restaurants. But when the licensing thing became somewhat confused, it was left to our committee to sort it out. It was a unanimous report and, in fact, a lot of the opposition to this began to increase, directly proportional to the time the Bill had been reported out of Committee.

So I hope you'll take the time to understand exactly what the Bill does. It repeals nothing. It allows those restaurants, those businesses, that happen to have a bar attached to their restaurant, an appropriate license. It allows the pool halls to have appropriate licensing. It doesn't mandate any smoking anywhere. Every business in this state has the right to be non-smoking if they so choose. So I hope you will support this Unanimous Committee Report.

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

Senator **LIBBY:** Thank you Mr. President. Women and men of the Senate, I just rise briefly to explain to you some of the testimony that took place in this public hearing. I was there for the testimony as a co-sponsor of one of two Bills that pretty much did the same thing. The original Bill that I had signed onto only pertained to pool halls. The reason for this is because the pool halls in various parts of the state have come under a great deal of financial strain because of the new smoking ban. In my district there's a very large pool hall in the town of Limington, just over the line from Standish. It's located really close to the high school. If you go to that pool hall on any afternoon after school's over, what you'll find is a really tremendously clean operation, just as clean as the building that we're sitting in now. You'll see young teenagers go into the pool hall, with their parents, to play some rounds of pool. It's really a tremendous opportunity to get these kids off the streets. I voted for the smoking ban last year. I think that people are concerned about the health effects of the smoking ban, are rightly concerned about that. I have no qualm with that. But, to put these pool halls out of business, I think, is going a little bit beyond what we really need to do in order to

appropriately effect public policy. What has happened to the pool halls is that, and they all came to the committee and testified, basically they were being bled to death and put out of business. 30%, 40%, 45% of their business being taken away from them because they couldn't have smokers in at the same time as the young people. What this does is, it still allows smoking and it allows young people. But if you look at the last line of the summary, it says "under this amendment pool halls are exempt from the ban on smoking as long as minors are prohibited from the premises," so it allows them to set up "either or" that they need to set up.

I hope that you'll give that some thought because it's really important for these pool hall owners. They came from all over the state. They testified one-after-another-after-another. There were two that came that had already gone out of business. One in Westbrook, that I went to as a kid. I felt really bad that the guy couldn't stay in business. But he couldn't because if 30% of your business is young people, and 30% or 40% or 50% of your business is smokers, and the rest are somewhere else, what are you going to give up here. It really has an incredible impact. We had some amendments last year that really, and I believe they were from the Senator from Cumberland, Senator Harriman, predicted that this would happen and sure enough it did. Unfortunately, those amendments didn't pass, but it was close. Now that we've seen the impact, this Bill that's in front of us now gives us a chance to right the wrongs before it's too late. Especially in my district. We've got a couple of tremendous establishments for kids. It gets them off the streets, which is what we need to do. These kids need something to do. Pool is like golf or anything else. Any kind of activity is a tremendous amount of fun, and I don't think we ought to be taking that away from these kids. So, thanks a lot.

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

Senator **PARADIS:** Thank you Mr. President. Men and women of the Senate, make no bones about this. This is a health issue and that's why the Health and Human Services Committee came at it from that angle. One person everyday dies from smoking related disease, even when they're not smokers. From being exposed, and usually at work. The restaurant employees are the ones that came to testify last year in droves because they were reading about their friends, or they were seeing their friends, die from second hand smoke. It is a classic carcinogen. It is the most toxic form of cancer causing chemicals. As you know from the statistics we've heard all year, this state is number one in the country for heart disease, lung cancer, chronic lung disease such as emphysema, asthma, and then, of course, in our babies low birth weight, childhood ear infections etc., etc., etc. So our committee always approached it from the health perspective. This very piece of legislation you are looking at is what the Restaurant Association fought very vociferously against because it would not be a level playing field. We have not heard from our restaurants because it has been working well. Their revenues are up at least 5%. Pool halls' revenues are also up according to our revenue service. I urge you to vote against this report so that next year, if people really want, we can take the time and look at this before we change something that has worked so well. The reason the Bureau of Health was at the hearings from the very beginning was to point out that we, indeed, had not overlooked these issues, but that we very much cared about these issues. But we were busy with that \$1.2 billion Medicaid budget. That is

absolutely obscene to expect the taxpayers of this state to be footing the bill for something that many, many cases could have been easily avoided. Because now we are more sophisticated, we have the information to better protect our people. 77% of our adults in this state are non-smokers. That's why you're showing the numbers of people eating out are going up. They are not going to be exposed to second hand smoke. I urge your voting no on this motion.

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

Senator **SMALL:** Thank you Mr. President. Men and women of the Senate, I suppose I should start off by saying that I did spend two summers waitressing, and I hope that won't, in any way, flavor your thoughts on my testimony. But I do want to talk about what this will mean, specifically, to the restaurants in my town, my town of Bath. I have two restaurants that are almost side-by-side. They are old time restaurants. They did not go out of the city, but chose to stay in the city and refurbish buildings that are in the city, which are double level. They have a basement and they have an upstairs. Both of those restaurants have a bar downstairs and a restaurant upstairs. Always had it that way. Then we passed the smoking ban that precluded smoking in a restaurant. They had the option, as did every other restaurant, to stay a restaurant or to become a lounge, in which case they allow smoking in the entire building. Don't be fooled that by passing this restaurant smoking ban, that we made restaurants necessarily smoke free. I've gone into a number of what I thought were restaurants only to learn afterwards, when I was in a cloud of smoke, that they became a lounge so that they could allow smoking, not just in one area, but in the whole restaurant. So I was a little surprised by that. But the two restaurants in my community, one chose to become a lounge and he has the smoking downstairs in his bar. But upstairs in his restaurant, he chose to have that smoke free. So, one would say, well, that's great. That allows patrons to come in and have a smoke free environment while they eat their dinner and then if they want to go down into the bar they can go downstairs and choose the smokier atmosphere. The only problem is adults can go into that restaurant, but minors cannot because it is a lounge, even though it is smoke free upstairs. So, my daughter, when she goes to the senior prom this year, will not be able to eat in that restaurant unless I go along with her, and she has already ruled that option out, as did her boyfriend. But all the other students in my community now have to find another option of going to one of the favorite restaurants in our community because they opted to keep their lounge a smoking lounge. Understand, there are separate entrances. They don't have to pass through the lounge. They go into the restaurant and the restaurant is smoke free, but they cannot go in without an adult. This legislation would allow them to have the upstairs accessible to minors because it is a smoke free restaurant and would not have the affects of the smoke.

Now the other restaurant down the street did just the opposite because they have a lot of after school students that come in the upstairs part. It's a deli with a very nice lounge downstairs. They went entirely smoke free because they wanted to be able to have the students come in the afternoon. Their so-called restaurant revenues are up, I believe, 12%. But in the downstairs part, the bar, they're losing \$100 a day in loss revenues. Now these aren't people who decided to stay home because his bar is smoke free. These are people who have

walked down the street to another bar that opted, because they are just a bar anyway, to have smoking. So what he did was lose his business to other bars. So there wasn't a level playing field that we talked about where some restaurants don't have smoking and others do. He lost his clientele to a smoking bar and will continue to lose those clientele. So he now has an option. Perhaps the only way to save that business will be to turn the entire business into a smoking one, which, again, will rule the children out from the upstairs. Perhaps he'll have smoking in the upstairs since he's going to have to put it in the downstairs. I don't know, but he certainly is not going to be able to continue losing \$100 a day. It was a significant portion of his profits, a gist of his livelihood, and so he's just managing to scrape by.

So what this amendment would do, would allow him to have the downstairs part, which is a bar, to be smoking like all the other bars in our community are. The other gentlemen could continue having his downstairs bar be smoking and the upstairs restaurant. Nobody has to go through the bar to get to those, they have a separate entrance, and he would be able to have minors come in and enjoy a meal in a smoke free environment. Maybe this wasn't an unintentional consequence, but it certainly was when I voted for the legislation last time. I really regret that I almost put one business out of business, and that I forced a number of young people to seek alternatives, either elsewhere in Bath or out-of-town. I hope that we can correct this, go ahead and support the unanimous Committee Report. I was going to ask for an emergency clause so that we could do it by prom time, but I guess I would be pushing my luck. I would be happy if you would just support the unanimous Committee Report. Thank you.

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

Senator **GOLDTHWAIT:** Thank you Mr. President. Ladies and Gentlemen of the Senate, we could probably take a break now and just run the video from last years debate on this issue because the arguments haven't changed a bit. There are no new reasons to allow smoking in public places and there are no new reasons to ban smoking in public places. I have a ton of restaurants on the island where I live. I think the statistic is that we've got 25% of all the restaurants in the State of Maine. They asked me three things when we were discussing this originally. They said, we want the ban to happen, we want you to do it, and we want a level playing field. This Bill begins to erode the progress that we made last year. Some people say that the business should be able to decide whether they are a smoking establishment or not. I don't agree. Second hand smoke is an extremely dangerous chemical and affects a lot of people besides the smoker. We all know that now. One of the provisions in this Bill would be to allow smoking in pool halls when unaccompanied minors under 18 are not present.

I don't know about you, but I've had the misfortune of having to stay in a smoking motel room because there weren't any more non-smoking rooms left. How does that go, "the song is gone but the melody lingers on." It is quite obvious that the smoke is not gone when the smoker is. It's a very uncomfortable situation when you've got to be exposed to the smoke in the carpets, the bed clothing, and the curtains for a night. Some people say that this hurts business. I don't agree. We have a lot of data that suggests that, far from injuring businesses, business in the prime industry related to this issue are up, including a 4 ½% increase in restaurant business in the State of Maine in the last quarter of '99

versus '98. If you buy this argument, that we're hurting businesses by the smoking ban, what are you going to say next year when we are back in the midst of one of the biggest points of debate from the last time around about the small convenience stores with lunch counters. We were predicting doom and disaster for those businesses.

I am sure that if we remove this portion of the smoking ban that they will all be back next year saying it's hurting my business too, you should make an exemption for us. I don't think that's healthy for the people of Maine. We're going to be back at the beginning if we do this bit-by-bit. If we chip away at these protections year after year after year. We'll be starting all over again. Smoking is bad for you. There is no dispute about that. Second hand smoke is bad for you. There is no dispute about that. Asthma is rampant in the State of Maine. It's at epidemic proportions. It's a debilitating disease that causes lost work time. It causes lost school time. About \$18 million in Maine's medicaid costs are directly attributable to tobacco related diseases. Maine has taken a strong stand on smoke exposure. Don't lose your courage now. Don't back away from this. It's the right thing to do, and I would encourage 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'd like to make a couple of corrections to comments by previous speakers. In regard to the Health and Human Services Committee having jurisdiction over tobacco products, it seems to me that the Legal and Veterans Affairs Committee, historically, has taken care of this topic. I just wanted to point that out. I know when I was chair of that committee in the 117th, we had several tobacco issues that were before the committee. In regard to this Bill, as far as lounges and restaurants are concerned, I can't see for the life of me where we're weakening it in any manner. We are not eroding the progress that we've made. What we are doing though, we're allowing people to smoke in pool halls. People who are over 21. We do give an option to the owners whether they want to allow smoking or not allow smoking. Now when minors are present, smoking is not allowed. We have defined pool halls, and they have to have at least 6 pool hall tables and derive 50% of its gross income from the sale of games of pool or rentals of pool tables. Essentially that's all we've done here. There was plenty of evidence presented to the committee that these people that own pool halls have lost a tremendous amount of business. We thought it was a reasonable approach. In that particular area, I will admit, we have gone backwards a little. But what I'd like to see, I'd like to see that we prohibit smoking in all public facilities. Then we would really have a level playing field. But, in the interim, where we do allow smoking in lounges, now it seems to me that this is a reasonable solution to a problem that has occurred. It is a unanimous Committee Report, and I would hope that the Senate would go along with that. The arguments have been laid out pretty good by preceding speakers and I'm not going to dwell upon it. But it is a unanimous Committee Report and I would hope that you would support that. I thank you very much. I'll sit down at this point.

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

Senator **DOUGLASS**: Mr. President. Women and men of the Senate, I was hoping that I could refrain from speaking on this matter, but I really can't. I hope I never have to vote for a measure that connects smoking to a license. I hope I never have to allow someone to do something that is so extremely bad for their health. We, in Maine, have the worst incidence of young people smoking. We have the worst incidence of adults who smoke. It's a terrible habit. It's an addiction. It's an addiction I can remember, I may have given this example when I spoke on this matter before, but I can remember as a young girl seeing the man, who is our farmer, smoking through his tracheotomy because he was addicted and no longer had the use of his mouth. I urge you to vote against allowing smoking in any new category of restaurant or public place where pool, or bowling, or betting is allowed. I can only imagine that if someone desperately wants to continue this addiction, they will put in a pool hall just to be able to effectuate allowing smoking. That's the wrong direction to go for our state. We need to spend a lot of time and attention to helping people who have become addicted, get off. We need to send the message to our young people that the state is not encouraging smoking. For that reason, I hope you will accept or vote against the report. I believe that the Majority Report is Ought to Pass, and I hope you will vote against that report.

THE PRESIDENT: The pending question before the Senate is **ACCEPTANCE of the OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1004)** Report, in concurrence. 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 (#374)

YEAS: Senators: AMERO, BENNETT, CAREY, CASSIDY, DAGGETT, DAVIS, FERGUSON, HARRIMAN, KILKELLY, KONTOS, LIBBY, MICHAUD, MITCHELL, O'GARA, PENDLETON, SMALL

NAYS: Senators: ABROMSON, BERUBE, DOUGLASS, GOLDTHWAIT, LAFOUNTAIN, LONGLEY, MILLS, MURRAY, NUTTING, PARADIS, PINGREE, RAND, RUHLIN, TREAT, THE PRESIDENT - MARK W. LAWRENCE

ABSENT: Senators: BENOIT, CATHCART, KIEFFER, MACKINNON

16 Senators having voted in the affirmative and 15 Senators having voted in the negative, with 4 Senators being absent, the **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1004)** Report, **ACCEPTED**, in concurrence.

READ ONCE.

Committee Amendment "A" (H-1004) **READ.**

On motion by Senator **MILLS** of Somerset, Senate Amendment "A" (S-669) to Committee Amendment "A" (H-1004) **READ.**

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

Senator **MILLS**: Mr. President. Senate Amendment "A" would remove from the provisions of the Bill those newly created exceptions for restaurants and lounges. It would leave in place the provisions for bowling alleys and pool halls but would eliminate the changes to the law in regard to restaurants and lounges. Thank you.

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

Senator **DAGGETT**: Thank you Mr. President. Men and women of the Senate, I hope that you will oppose the amendment that's in front of us. I haven't read through it, but I'm assuming that the good Senator from Somerset, Senator Mills, has represented it accurately. I find it somewhat ironic that the amendment in front of you deals with the particular section of the Bill that, in fact, doesn't substantively change anything. As previous testimony has indicated, the only change really has to do with the pool halls. So I hope that you will oppose the amendment that is in front of you.

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

Senator **MILLS**: Mr. President and men and women of the Senate, the reason why the restaurant provisions contained in the Committee Amendment is a roll back of current law is that it would permit a single license facility to require its employees to work in a smoking environment. It would require waitresses and waiters to serve patrons in the area where smoking is permitted. There are no ventilation provisions in the law that would require the space to be separately ventilated. It simply says there has to be a door between the smoking area and the non-smoking area, a door that might be open or not. It, essentially, contains no safeguards. It just says if you build a separate room, if you're rich enough, and if you're big enough, and if your restaurant has enough revenue to justify creating two different dining rooms, well, we'll let you permit smoking. On the other hand, if you're too small, or not rich enough to do that, if you're one of the poorer restaurants, or if you're just struggling to get by then you don't have that choice with that option. This is the very provision that was stoutly resisted by the Maine Restaurant Association 3 years ago when a Bill that would have done something like this was under consideration before the Health and Human Services Committee. Now this is truly a roll back of present law. The amendment presented to you here, the Senate Amendment that's on the floor now, would remove that provision from the committee's Bill. Thank you.

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

Senator **SMALL**: Thank you Mr. President. I'd like to pose a question through the Chair.

THE PRESIDENT: The Senator may pose her question.

Senator **SMALL**: Thank you Mr. President. My question is, don't the restaurants now have that option to simply change from a restaurant to a lounge and expose those very same employees to that smoke that we're concerned about should this happen?

THE PRESIDENT: The Senator from Sagadahoc, Senator Small poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Somerset, Senator Mills.

Senator **MILLS**: They do, but they have to pay the extra fee that is associated with being a lounge, number one. Number two, minors are not permitted in the space, and it has to be really a free standing licensed facility. The Committee Amendment would allow one licensed facility to have it both ways without any particular penalty. Mr. President, while I'm up may I request a roll call on this amendment?

On further motion by same Senator, 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 Oxford, Senator Ferguson.

Senator **FERGUSON**: Thank you very much Mr. President. For the life of me, once again, I can't see why this would impact the folks. You have a smoke free restaurant. You have a licensed to operate a restaurant that's smoke free and if you have a lounge that allows smoking, in my judgment, the employees aren't going to be exposed any more one way or the other. For that reason I would hope that you would vote against the pending amendment. In regard to testimony that we heard at the committee, there was a gentleman, I believe Senator Small's constituent, who came in. He has over 100 employees and out of 106 employees, 100 of them smoke. They'll be standing outside in January and February in the cold weather, smoking. So, you know, there's not too much evidence that we didn't hear in the committee that employees were being impacted by people that had a lounge and there was smoking going on there. At least there wasn't any evidence before our committee. So I would hope you would vote against the pending amendment. Thank you.

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

Senator **GOLDTHWAIT**: Mr. President. Ladies and gentlemen of the Senate, one of the impacts, unless this amendment is supported, will be that smaller restaurants, who don't have the opportunity to create a separate room for smoking, will not be able to take advantage of this exemption and will once again unlevel this playing field. Although it wasn't perfect in the last go-round, we tried very hard to make it level. Now we're going to make an exception that allows some restaurants to have a provision for smoking and others, by virtue of not being big enough for a separate enclosed area, not. So this amendment, as I see it, is an improvement on a bad Bill. Thank you.

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

Senator **DAGGETT**: Thank you Mr. President. Members of the Senate, I just want to remind people there is nothing that I know

of that's happening that allows restaurants to allow people in restaurants to smoke. I continue to hear that and I just want to clarify. This is about bars and smoking in bars, not smoking in restaurants. Again, I hope you'll oppose the amendment. As the good Senator from Sagadahoc mentioned earlier, the option still stays with the business as far as whether the employees are exposed to the smoking by virtue of the license that they choose. This at least allows them to have a minimalist amount of smoking as opposed to the way the licensing situation was done previously. So I encourage you to oppose the pending motion.

THE PRESIDENT: The pending question before the Senate is the motion by the Senator from Somerset, Senator Mills to Adopt Senate Amendment "A" (S-669) to Committee Amendment "A" (H-1004). 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 (#375)

YEAS: Senators: ABROMSON, AMERO, BERUBE, CAREY, CATHCART, DAVIS, DOUGLASS, GOLDTHWAIT, LAFOUNTAIN, LONGLEY, MICHAUD, MILLS, MURRAY, NUTTING, O'GARA, PARADIS, PINGREE, RAND, RUHLIN, TREAT, THE PRESIDENT - MARK W. LAWRENCE

NAYS: Senators: BENNETT, CASSIDY, DAGGETT, FERGUSON, HARRIMAN, KILKELLY, KONTOS, LIBBY, MITCHELL, PENDLETON, SMALL

ABSENT: Senators: BENOIT, KIEFFER, MACKINNON

21 Senators having voted in the affirmative and 11 Senators having voted in the negative, with 3 Senators being absent, the motion by Senator **MILLS** of Somerset to **ADOPT** Senate Amendment "A" (S-669) to Committee Amendment "A" (H-1004), **PREVAILED**.

On motion by Senator **GOLDTHWAIT** of Hancock, 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 (#376)

YEAS: Senators: ABROMSON, AMERO, BENNETT, BERUBE, DAGGETT, DAVIS, FERGUSON, KILKELLY, KONTOS, LIBBY, LONGLEY, MILLS, MITCHELL, MURRAY, O'GARA, PENDLETON, RUHLIN, THE PRESIDENT - MARK W. LAWRENCE

NAYS: Senators: CAREY, CASSIDY, CATHCART, DOUGLASS, GOLDTHWAIT, HARRIMAN, LAFOUNTAIN, MICHAUD, NUTTING, PARADIS, PINGREE, RAND, SMALL, TREAT

ABSENT: Senators: BENOIT, KIEFFER, MACKINNON

18 Senators having voted in the affirmative and 14 Senators having voted in the negative, with 3 Senators being absent, Committee Amendment "A" (H-1004) as Amended by Senate Amendment "A" (S-669) thereto, **ADOPTED**, in **NON-CONCURRENCE**.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1004) AS AMENDED BY SENATE AMENDMENT "A" (S-669)** thereto, in **NON-CONCURRENCE**.

(See action later today.)

Senate at Ease.

Senate called to order by the President.

Senator **LONGLEY** of Waldo was granted unanimous consent to address the Senate on the Record.

Senator **LONGLEY**: Thank you Mr. President. Like my colleague from Androscoggin earlier in the day, I misunderstood and voted the wrong way and would like to know if I can change my vote.

THE PRESIDENT: The Chair would answer in the negative but the Senator may state on the record how she would have voted if she had voted correctly.

Senator **LONGLEY**: On the record, I would have voted against the Bill as amended.

The Chair laid before the Senate the following Tabled and Later (3/14/00) Assigned matter:

HOUSE REPORTS - from the Committee on **INLAND FISHERIES AND WILDLIFE** on Bill "An Act to Clarify the Authority of Maine Game Wardens to Stop Motor Vehicles"
H.P. 1627 L.D. 2274

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-800)** (10 members)

Minority - **Ought Not to Pass** (3 members)

Tabled - March 14, 2000, by Senator **PINGREE** of Knox.

Pending - **ACCEPTANCE OF EITHER REPORT**

(In House, March 9, 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-800) AS AMENDED BY HOUSE AMENDMENT "C" (H-852)** thereto.)

(In Senate, March 14, 2000, Reports **READ**.)

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

At the request of Senator **RAND** of Cumberland a Division was had. 28 Senators having voted in the affirmative and no Senators having voted in the negative, the motion by Senator **KILKELLY** of Lincoln to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence, **PREVAILED**.

READ ONCE.

Committee Amendment "A" (H-800) **READ**.

House Amendment "C" (H-852) to Committee Amendment "A" (H-800) **READ**.

Senator **KILKELLY** of Lincoln moved House Amendment "C" (H-852) to Committee Amendment "A" (H-800) be **INDEFINITELY POSTPONED**, in **NON-CONCURRENCE**.

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

Senator **RUHLIN**: Thank you Mr. President. Ladies and gentlemen of the Senate, I voted to allow this particular Bill to come this far. I don't want it to go much further without giving you some warnings. Fly some red flags if I may. This particular Bill is a very dangerous Bill that, indeed, threatens our Fourth Amendment rights. I think you should be aware of that. This is the time to discuss that, here and now. This Bill proposes to give game wardens the ability to stop vehicles, using their discretion in an arbitrary manner that flies in the face of the Constitution. I'm not going to spend a lot of time at this point going into it. But the courts have clearly stated that a law enforcement officer, when stopping someone, must have a constrained sense of discretion. They must, in fact, be random. Making a predetermined; and I'm going to emphasize predetermined, mathematical or random method. You may set up a roadblock and stop every car, that's what that says. Or you may predetermine and stop every other car or every 5th car or every 10th car. But that officer doing that cannot use discretion as such. There's a reason for that. Because he may decide that he doesn't like the way you've got your hair cut today or he may decide that he just doesn't like this or that about you. That officer may decide, as you're going down through a woods road and you're wearing an orange hat, that you've been hunting. I'm just going to stop that person. You can't do that. That's allowing what they call unconstrained discretion and the courts have been very, very loud about that, very distinct.

The point I want to make to you tonight is that, I for one, and I'm sure every member of the Fish and Wildlife Committee, I'm sure every member of this Senate, want to see our fish and game laws in the state thoroughly and completely enforced. To do that

you should have a policy that will withstand a constitutional challenge. You should spend your time trying to enforce the law rather than going to court to defend a faulty procedure. That's what we've started down here toward this, a faulty procedure. Originally, when the Bill first came out as Committee Amendment "A", I was Ought Not to Pass. However, when I saw House Amendment "C", which amended it to do this, to allow the warden force to draw up a policy that would pass a Fourth Amendment test. Well, hold it. To draw up a policy, take a year, and bring it back. Because it's major and substantive, you're dealing with the Constitution. It's major and substantive rule. Set up your policy. Bring it back to the people's representative, the legislature. That's where policy is made. Major policy is determined here. If you've got something major to do, step up to the plate, pick your chin up, look at the world and say: this is major, it is substantive, it does involve the Fourth Amendment and, yes, I would just as soon bring it back to the people's representative and let them judge it. When you do that, you give those people's representatives a chance to look at it through their Judiciary Committee, through their Criminal Justice Committee, as well as the Fish and Wildlife Committee and then go to all of us to make such that we have, in fact, established a policy that will be friendly to the Constitution. That will be effective and capable, and that we'll spend our resources protecting our environment and our game laws that we should rather than spending all the time in court. Because of that, I hope you will go against the motion to Indefinitely Postpone what I would consider the very friendly House Amendment "C" which requires a policy come back to this, the people's body. I hope you will vote against the pending motion. Thank you.

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

Senator **KILKELLY:** Thank you Mr. President. Men and women of the Senate, I hope you'll join me in indefinitely postponing House Amendment "C". This amendment requires major substantive rulemaking on vehicle stops. One of the things we've heard about tonight is the Constitution. Well, there's another part of the Constitution that concerns me, and that has to be with separation of powers. In page 13 of your register, one of the things you'll notice is that there is article 3, The Distribution of Powers: "No person or persons belonging to one department shall exercise powers belonging to either of the others except as expressly directed or permitted." And then we look into section 12, part 5, 1st part, section 12 in Executive Power: "The executive shall enforce the laws, the governor shall take care that the laws be faithfully executed." I think we are going down an incredibly slippery slope when we start taking internal policies, internal procedures of a department, and ask that they come back to us as major substantive rules. This concerns me as the Legislative Full Employment Act of the Year 2000, because what are we going to do next? How many of us have had complaints about tax audits that have taken place, or about caseworkers who, in fact, have removed children from homes, or DEP site reviewers who maybe have stopped a business from operating, or maybe the State Policy, or a Fire Marshall, or someone else. There are a lot of departments in state government that, in fact, have internal procedures on how they deal with the public in a particular situation. If we start taking responsibility tonight for looking at all of those internal procedures of how they implement the policy that's before them, then we're going to be here full-time, full year, dealing with management. I don't believe that's

our job. I don't believe that's what we were asked to be here to do. If you will provide an opportunity for this House Amendment to be indefinitely postponed, there is another amendment that does talk about a review of policy and I would urge you to listen to that. Please join me in indefinitely postponing this amendment so that we don't start reviewing the entire management structure and how all state employees deal with the public in every case, because that's where we're headed.

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

Senator **CAREY:** Thank you Mr. President. Mr. President and members of the Senate, when term limits came about, one of the things that people were saying was, "oh, gee, the lobbyists are going to run the place." I predicted then, and its being proven every single day that we sit here, correct when I say, don't worry about the lobbyists, you got to worry about the bureaucrats because they're going to be here a long time after we're gone. That's where rule making comes in. Substantive rule making has to come to us. So it is, in fact, a proven fact that the lobby is a safe place to go, but the bureaucrats are not exactly the people to believe in much of this. Thank you, Mr. President.

On motion by Senator **RUHLIN** of Penobscot, 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 (#377)

YEAS: Senators: ABROMSON, BERUBE, CASSIDY, DAGGETT, DAVIS, DOUGLASS, FERGUSON, GOLDTHWAIT, HARRIMAN, KILKELLY, KONTOS, LAFOUNTAIN, LONGLEY, MILLS, MITCHELL, MURRAY, NUTTING, O'GARA, PARADIS, PENDLETON, PINGREE, SMALL, TREAT, THE PRESIDENT - MARK W. LAWRENCE

NAYS: Senators: AMERO, BENNETT, CAREY, CATHCART, LIBBY, RAND, RUHLIN

ABSENT: Senators: BENOIT, KIEFFER, MACKINNON, MICHAUD

24 Senators having voted in the affirmative and 7 Senators having voted in the negative, with 4 Senators being absent, the motion by Senator **KILKELLY** of Lincoln to **INDEFINITELY POSTPONE** House Amendment "C" (H-852) to Committee Amendment "A" (H-800), in **NON-CONCURRENCE, PREVAILED.**

On motion by Senator **KILKELLY** of Lincoln, Senate Amendment "A" (S-592) to Committee Amendment "A" (H-800) **READ** and **ADOPTED.**

Committee Amendment "A" (H-800) as Amended by Senate Amendment "A" (S-592) thereto, **ADOPTED**, in **NON-CONCURRENCE.**

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-800) AS AMENDED BY SENATE AMENDMENT "A" (S-592)** thereto, in **NON-CONCURRENCE**.

Sent down for concurrence.

18 Senators having voted in the affirmative and 13 Senators having voted in the negative, with 4 Senators being absent, the Bill was **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1004) AS AMENDED BY SENATE AMENDMENT "A" (S-669)** thereto, in **NON-CONCURRENCE**.

Sent down for concurrence.

On motion by Senator **LONGLEY** of Waldo, the Senate **RECONSIDERED** whereby it **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1004) AS AMENDED BY SENATE AMENDMENT "A" (S-669)** thereto, in **NON-CONCURRENCE**, the following:

Bill "An Act to Create a New Category of Liquor License and to Exempt Pool Halls, Bowling Alleys and Off-track Betting Facilities from the Prohibition Against Smoking"

H.P. 1807 L.D. 2533
(S "A" S-669 to C "A" H-1004)

(In House, April 8, 2000, Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1004)**.)

(In Senate, April 10, 2000, Report **READ** and **ACCEPTED**, in concurrence. Committee Amendment "A" (H-1004) **READ**. On motion by Senator **MILLS** of Somerset, Senate Amendment "A" (S-669) to Committee Amendment "A" (H-1004) **READ** and **ADOPTED**. Committee Amendment "A" (H-1004) as Amended by Senate Amendment "A" (S-669) thereto, **ADOPTED**, in **NON-CONCURRENCE**. Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1004) AS AMENDED BY SENATE AMENDMENT "A" (S-669)** thereto, in **NON-CONCURRENCE**.)

On motion by Senator **LONGLEY** of Waldo, 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 (#378)

YEAS: Senators: **ABROMSON, AMERO, BENNETT, CASSIDY, CATHCART, DAGGETT, DAVIS, FERGUSON, KILKELLY, KONTOS, LIBBY, MITCHELL, MURRAY, O'GARA, PENDLETON, RUHLIN, SMALL, THE PRESIDENT - MARK W. LAWRENCE**

NAYS: Senators: **BERUBE, CAREY, DOUGLASS, GOLDTHWAIT, HARRIMAN, LAFOUNTAIN, LONGLEY, MILLS, NUTTING, PARADIS, PINGREE, RAND, TREAT**

ABSENT: Senators: **BENOIT, KIEFFER, MACKINNON, MICHAUD**

Off Record Remarks

On motion by Senator **PINGREE** of Knox, **ADJOURNED**, until Tuesday, April 11, 2000, at 9:00 in the morning.