

# MAINE STATE LEGISLATURE

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Senate Legislative Record  
One Hundred and Nineteenth Legislature  
State of Maine

Volume 3

First Confirmation Session  
October 14, 1999

Second Regular Session  
January 5, 2000 to April 13, 2000

Pages 1548 - 2331

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

In Senate Chamber  
Tuesday  
April 11, 2000

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

Prayer by Senator Paul T. Davis, Sr. of Piscataquis County.

**SENATOR DAVIS:** Thank you. Good morning Mr. President, my colleagues. I thank you very much for asking me to say the prayer today. It is an honor that I don't take lightly. As I was thinking about what I was going to say, I thought of a conversation that a small group of us had the other night. There were three or four of us, over at the restaurant, and at this conversation the good Senator from Washington County, Senator Cassidy, asked a question that caused me to think. His question was, "Do any of you remember during the week of last year's session what the most pressing issue was, what was most important?"

And, around the table no one could remember. No one had any idea. As I thought of that very simple question, I thought that, while the issues are very important and there are sharp differences amongst us on issues as there should be because there wouldn't be any sense of us being here if we're all alike. But what is most important, and what will be remembered the best, is how we treat each other and the respect that we show each other. As I thought about that, I thought about what I would remember. The things that came to my mind and certainly as time goes on more will come to it, but, I will certainly remember my two seat mates. To my right the good Senator from Penobscot, Senator Betty Lou Mitchell. Her kindness and her exuberance and all. Quite appropriately, to my left, the good Senator from Penobscot, Senator Murray, who has put up with me and my never ending questions about the procedures and what goes on. They've shown me great patience and, while I have thought a couple of times that perhaps he was so heavenly minded he was no earthly good, I have the utmost respect and affection for him. I'll remember others of you. And, if I'm fortunate and come back, as some of you will, you'll remember. There'll be 13 new faces here. We need to remember to treat them as we want to be treated. And I'll remember you, Mr. President, for the very fair, even manner that you've carried out your duties. There's no one here who can say that perhaps you didn't treat them with respect and fairness, because you have. And so I'd say to you as we go forward, there are going to be more differences in the next few days, but lets remember what is really important and that's how we treat each other. Let the differences be, but lets be respectful to each other.

I would like to read to you one of my favorite passages. It's found in Ephesians and it says: "Let no unwholesome word proceed from your mouth but only such a word as is good for edification, according to the need of the moment, that it may give grace to those who hear and do not grieve the holy spirit of God by whom you will see a day of redemption and let all bitterness and wrath and anger and clamor and slander be put away from

you along with all malice and be kind to one another, tenderhearted, forgiving each other as God and Christ has also forgiven you."

Thank you very much.

Reading of the Journal of Monday, April 10, 2000.

Off Record Remarks

REPORTS OF COMMITTEES

Senate

Divided Report

Eleven members of the Committee on **EDUCATION AND CULTURAL AFFAIRS** on Bill "An Act Concerning Fingerprinting and Background Checks for School Employees"

S.P. 987 L.D. 2540

Reported in Report "A" that the same **Ought to Pass as Amended by Committee Amendment "A" (S-691).**

Signed:

Senators:

BERUBE of Androscoggin  
SMALL of Sagadahoc

Representatives:

RICHARD of Madison  
WESTON of Montville  
WATSON of Farmingdale  
STEDMAN of Hartland  
DESMOND of Mapleton  
BRENNAN of Portland  
ANDREWS of York  
BAKER of Bangor  
BELANGER of Caribou

One member of the same Committee on the same subject reported that the same **Ought to Pass as Amended by Committee Amendment "B" (S-692).**

Signed:

Senator:

MURRAY of Penobscot

One member of the same Committee on the same subject reported that the same **Ought to Pass as Amended by Committee Amendment "C" (S-693).**

Signed:

Representative:  
SKOGLUND of St. George

Reports **READ**.

Senator **BERUBE** of Androscoggin moved the Senate **ACCEPT** Report "A", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-691)**.

On motion by Senator **PINGREE** of Knox, **TABLED** until Later in Today's Session, pending the motion by Senator **BERUBE** of Androscoggin to **ACCEPT** Report "A", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-691)**.

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Senate at Ease.

Senate called to order by the President.

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Off Record Remarks

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**ORDERS OF THE DAY**

**Unfinished Business**

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

The Chair laid before the Senate the following Tabled and Later (4/10/00) Assigned matter:

HOUSE REPORTS - from 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

Majority - **Ought to Pass**, pursuant to Joint Order (H.P. 1912) (8 members)

Minority - **Ought Not to Pass**, pursuant to Joint Order (H.P. 1912) (5 members)

Tabled - April 10, 2000, by Senator **LONGLEY** of Waldo.

Pending - motion by same Senator to **ACCEPT** the Majority **OUGHT TO PASS** Report, in concurrence

(In House, April 8, 2000, the Majority **OUGHT TO PASS** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED**.)

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

Senator **MILLS** of Somerset requested a Division.

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

Senator **MILLS:** Mr. President, I didn't have the experience or the pleasure of sitting on the committee that heard this Bill, but I have read it and examined it. As I understand the impact of the proposed legislation, it would subject the state to law suits, in probably both state and federal court, for any failure on the part of the state to comply with Fair Labor Standards, discrimination, age discrimination, disability, and perhaps some other categories. It seems to carry a fiscal note that the authors regard as highly speculative, but never the less, in the order of \$700,000 to \$1 million annually. While I respect the view that the state certainly should be subject to its own laws, and, perhaps, to federal law as well, I'm wondering why we would subject the state to suit, in these situations, rather than to remedy the situations administratively, which is another approach to dealing with these complaints and difficulties. Simply, in the form of a question, but as I read the Bill, I'm inclined not to support it in its present posture.

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

Senator **LONGLEY:** Thank you Mr. President. Colleagues in the Senate, the State of Maine is in this very odd situation. As you remember, last spring the U.S. Supreme Court came down with the decision related to the payment of our probation officers. It's a federal law, Fair Labor Standards. Up until last year, people thought you could go to court, state court, to get a remedy for the wrong caused; but there were pending U.S. Supreme Court decisions. To make a long story short, this case, the Maine case, landed in the U.S. Supreme Court and the U.S. Supreme Court came down and said, sorry, you have no remedy in either state court or federal court. So, as Justice Souter said in the Dissenting Opinion, for every wrong there should be a remedy. And something is very wrong here in at least one way. So, what we had before us in the Judiciary Committee was a Bill to remedy that wrong. As we did more research in U.S. Supreme Court cases, recent cases, we learned that there were other areas: age discrimination and disability in marine areas, where, again, compliments of the Maine case at the U.S. Supreme Court, state employees across the nation have no remedies for wrongs unlike citizens in any other profession or work in life. State employees have been singled out for no remedies for their wrongs. Where that fiscal note of \$700,000 to \$1 million comes from is beyond me, because in our research, we weren't finding enough cases to warrant that kind of fiscal note for any of those four areas. My last point is, it seems to me and I used to work at the U.S. Supreme Court covering cases for National Public Radio, I follow this stuff very closely and it really looks to me like U.S. Supreme Court is having turf warfare with Congress. In this case, Maine probation officers were caught in the crossfire and, in the process, others are being caught in the crossfire. This is simply our attempt to be policy makers. The Senator from Somerset makes a very good point. We decided that, on policy grounds, in those areas where we saw U.S. Supreme Court decisions allowing no remedy for wrongs that we would go down that path a few steps, but no farther than a few steps. I don't know if that answers the question. I hope so. I will be happy to answer any other questions. Thank you.

At the request of Senator **MILLS** of Somerset, Reports **READ**.

Off Record Remarks

At the request of Senator **MILLS** of Somerset a Division was had. 15 Senators having voted in the affirmative and 10 Senators having voted in the negative, the motion by Senator **LONGLEY** of Waldo to **ACCEPT** the Majority **OUGHT TO PASS** Report, in concurrence, **PREVAILED**.

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

**THE PRESIDENT:** The Chair is pleased to recognize in the chamber students from the Yarmouth China Study Project with their chaperones. The Chair would first like to apologize to the students because I know I'm going to mispronounce every one of your names but I'm going to make the best effort I possibly can. The visiting students are Ma Rong, Xu duo, Liang Ying; Zhao, Li Wei, Shang Ying, Zhang Xiao Lei, Wu Dan; and from China Zhao Jing, Li Changxing; and from the Yarmouth China Study Project chaperones Yung Mei Tang, Martha Dunlap and Lee Dionne. Would they all please rise and receive the greetings of the Senate.

Senator **HARRIMAN** of Cumberland was granted unanimous consent to address the Senate on the Record.

Senator **HARRIMAN:** Thank you Mr. President. First, ladies and gentlemen of the Senate, I want to thank you and the President for the warm welcome you've given to the students from the Yarmouth China Study Project and if I might, I'd just like to tell you a little bit about this initiative. It was started in 1999 by some Yarmouth students, parents and their teacher, Mr. BeeBe and they started this project to foster cultural exchange between the people in Yarmouth and our surrounding communities and the citizens of the People's Republic of China. In 1999, they were successful in raising enough money for 17 of our Yarmouth high school students to take this journey to China and they did so by raising funds through the generous contributions of individuals and businesses that totaled over \$23,000. Upon their return the Yarmouth students presented their experience and slides and on the Internet to business groups, community organizations and their fellow students. The fruits of that journey have resulted today in the young women who have joined us, 8 women from Xi'an University which is the foremost foreign language school in china. They are all bilingual and study in the Departments of English Education and Tourism of their school. If their visit here is successful, and I'm sure that it will be, it will be the first of hopefully an ongoing exchange between Yarmouth and Xi'an University. So it's my great pleasure, Mr. President, having the honor of representing Yarmouth, Freeport and Brunswick to add to your gracious welcome to them this morning and welcome them on behalf of the citizens of Senate District 23 and my fellow colleagues here in the Maine Senate. Thank you Mr. President.

**THE PRESIDENT:** The Chair would also apologize to the guests and the Senate. When I read their chaperones names, those were actually their Anglo sized names, not their chaperones. So the Chair apologizes.

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

SENATE REPORTS - from the Committee on **JUDICIARY** on Bill "An Act to Expand a Judge's Powers for Contemptuous Failure to Pay"

S.P. 523 L.D. 1557

Majority - **Ought to Pass as Amended by Committee Amendment "A" (S-668)** (8 members)

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

Tabled - April 8, 2000, by Senator **LONGLEY** of Waldo.

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

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

Senator **TREAT** of Kennebec requested a Division.

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

Senator **TREAT:** Thank you Mr. President. I would ask for a division and just speak briefly to this motion. I'm going to be voting Ought Not to Pass on this. I realize I have a very eloquent sponsor of the legislation in the Senator from Somerset, Senator Mills, as well as the Chair of the Committee, Senator Longley from Waldo. But I, never the less, have concerns about this piece of legislation which greatly expands the powers of judges to mete out punishments to those who are found in contempt. And it greatly expands it to do something that we've never done before, which is to give judges the authority to take away any license that someone may have, whether it's a driving license, a fishing license, a license to practice insurance, a license to practice law, a license to practice medicine, and without really any connection or nexus between that and the reason that person is in court on a contempt charge. I just didn't see the need of this. It seemed to me that it was something that we haven't seen done anywhere else in the country. That we did very, very cautiously when we moved into the area of beefing up our ability to get payments for child support. That is the premise under which this is based, that has worked very well, therefore we should expand into all kinds of other areas. I simply felt that there wasn't really the need for it. This raised many, many questions of due process and other concerns about people's right to simply make a living. I didn't feel comfortable with it. So, I don't necessarily expect to win this debate, but I felt that I wanted to make a statement on the record as to why I don't think this Bill is a very good idea.

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

Senator **MILLS**: Mr. President and men and women of the Senate. In an effort to increase your comfort level in voting with the Majority Report on this Bill, let me just say one or two things about it. At the moment, when someone fails to pay a monetary fine and is brought back into court again and again to account for the failure to pay the fine, if the judge finds that the defendant has contemptuously failed to pay; in other words has had the ability to make payment, has been working, has had access to funds, and has simply refused to allocate any money from his or her household budget to make payment on the fine, the judge is left in a quandary. All that he or she can do is to put the defendant in jail for this contemptuous nonpayment. Running up a bill at the county. Taking the person out of work, when that may be completely counterproductive to getting the fine paid. So many judges now are reluctant to impose that sanction and many of them are reluctant even to bring people in for nonpayment of fines because you're left with this very awkward decision to make about whether to punish somebody for nonpayment by putting them into jail, which seems like such an extreme sanction. This Bill, if we enact it, will enable the judge to bend over the bench and say, look, you've got the ability to pay this fine. You're simply refusing to pay. You're being contemptuous in not paying. You're working. You've got a family to support. I'm not going to put you in jail. But let me inquire, do you have a fishing license or a hunting license. If it's November, he might ask, do you have a hunting license? The fellow may say, yes, I have a hunting license. Well, today you've got two choices, you can either have the privilege of having a hunting license today or you can pay this fine. If you don't pay the fine today, I'm taking away you privileges to hunt this month. That's all, something simple like that. Ninety-nine times out of 100, or 9 times out of 10 anyway, the person's going to pay the fine because they've got the ability to pay. That's part of the judge's finding when they find them in contempt. If a truly poor person is convicted of a crime, is given a financial fine, and can't pay it, that's not contempt. You can't take away his privileges to drive, or his privileges to do things under a license from the state, and you can't put him in jail either. There are many of those cases. There are many cases where people are given a fine and they can't pay it. They genuinely can't pay and no one would think about imposing a punishment for a person's inability to pay. That would be against the Constitution of Maine and the United States. We're talking only about those folks who have the ability, but who refuse to honor the commitment; who refuse to honor the obligation, rather, to pay it. Why not give the court system an in between sanction, a more moderate sanction, to work with? All of the judges that I know endorse this Bill. I believe it was endorsed by a majority of the Judiciary Committee. It's a very modest improvement to the criminal law. I urge you to support it.

At the request of Senator **TREAT** of Kennebec a Division was had. 20 Senators having voted in the affirmative and 1 Senators having voted in the negative, the motion by Senator **LONGLEY** of Waldo to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, **PREVAILED**.

**READ ONCE.**

Committee Amendment "A" (S-668) **READ** and **ADOPTED**.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-668)**.

Sent down for concurrence.

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

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.

#### ORDERS OF THE DAY

The Chair laid before the Senate the following Tabled and Later (4/10/00) Assigned matter:

**SENATE REPORTS** - from the Committee on **HEALTH AND HUMAN SERVICES** on Bill "An Act to Establish Fairer Pricing for Prescription Drugs"

S.P. 1026 L.D. 2599

Majority - **Ought to Pass as Amended by Committee Amendment "A" (S-686)** (8 members)

Minority - **Ought to Pass as Amended by Committee Amendment "B" (S-687)** (5 members)

Tabled - April 10, 2000, by Senator **PARADIS** of Aroostook.

Pending - motion by same Senator to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-686)** Report

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

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

**Senator PARADIS:** Thank you Mr. President. Men and women of the Senate, I heartily support this legislation. I was at the forum in Madawaska when 75 people showed up on a Saturday afternoon telling us that, indeed, we have a problem. Also, I want to deal specifically with the issue of the Canadians living on the border, where we often access health care in Canada. I have been on the phone with the pharmacies every time a document comes across our desks proclaiming this and that about Canada. They can't believe what I'm asking them. They were laughing in my face. Many of our American citizens, right now, are accessing these Canadian drugs that are a lot cheaper for the same product. We have crisis on our hands. For the first time, people have conditions where there is a good medication for it and they can't afford it. That's why they have been talking to us. It is a crisis problem. We need to do something about it and this is the ideal piece of legislation. Thank you very much.

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

**Senator PINGREE:** Thank you Mr. President. Men and women of the Senate, I would like to just very briefly describe what this Bill actually does. I first want to say that none of us sponsored or cosponsored this Bill lightly. We didn't go into this in a glib or insensitive way. Many of us have been dealing with this issue for a very long time. I know it's a concern to virtually everyone in this room and that is the high cost of prescription drugs. There are many seniors and citizens in the State of Maine who, everyday, have to decide whether to go to the pharmacy and fill their prescription, or buy food, or pay their heating bill. We hear stories everywhere we go. We all get letters. We hear from our constituents who say, my doctor has prescribed a drug for me and I cannot afford it. We have had a prescription drug benefit program, in fact, in this state since 1975. Many times the legislature has voted to increase the subsidies, to increase the eligibility level, to increase the number of drugs available for that program. People have worked very hard to see if we can find more ways to make sure more people access their prescription drugs. We, in fact, are currently asking the federal government for aid. We have proposed, in the tobacco settlement, that \$10 million of that money go to an increased benefit package. We are doing a lot. But the fact is, in the last 6 years, the cost of prescription drugs has doubled. It is the highest growing cost in the rapidly growing cost of health insurance. It's the biggest part of our Medicaid shortfall that we're struggling to fund this time. It is a cost that citizens deal with and government deals with. We are all very frustrated about this. What this Bill does is it says, let's take another 18 months to work on this problem. Let's continue to do all the things we're doing. Let's think of some new ideas. Let's put more money into our benefit package. Let's do everything we can to help the citizens of the State of Maine to make their drugs affordable. But, if on October of 2001, we have not solved this problem, we have not made drugs affordable, then we will say one simple thing. We will create a Fair Pricing Board and that board will be in charge of saying to pharmaceutical companies, who want to be licensed to do business in the State of Maine, you must sell your product in Maine for the same price you do across the boarder in Canada. That's it, that's all you have to do is offer us the same price as you do Canadian citizens. Many of us have been on the road, talking to people all over the state about this. When we went up to Madawaska and up to Presque Isle, we heard from many people who said I go to

my doctor who is licensed to practice in Canada. I take the prescription. I go across the border and I buy my drug for half the price. In fact, I couldn't afford my drugs if I had to buy them in the State of Maine. We heard from practitioners who say, we don't like this. We don't like sending our patients to pharmacies across the border. It doesn't do business in the State of Maine. Sometimes it's a pharmacist who doesn't know them as well as their local pharmacists do. But, in fact, many of our patients cannot afford the price of drugs here in this state. They have to go into Canada. We heard from practitioners who said to us, you know what, I don't need any more handouts from the drug industry. I don't need these cups. I don't need these mugs. I don't need these trips to Hawaii. I don't want them to spend one-third of the cost drugs marketing them in the newspapers, telling my patients they have to have this drug or they won't do well. I just want my patients to be able to afford their drugs. I want to know when I write that prescription they will get it filled. That's all this Bill does. It says, if you can sell for this price in Canada; if you can sell for this price in England; if you can sell for this price in every other nation in the world, then why shouldn't we buy at that price in the United States. Because, in fact, what's going on is we are subsidizing the cost of drugs in virtually every other country. Canada has the second highest price of drugs in the world. We didn't go to England, where they are about one-third of the cost of our drugs. We went to Canada because it's a border state; because basically, they are selling drugs that are made in the United States, that go through our FDA process; but they're selling them for a tremendously cheaper amount. We're saying our citizens should have that benefit if you want to do business in the State of Maine. Now you're going to hear a lot of arguments. People are going to say to you, oh, the Canadians, they subsidize it, we don't want to have a Canadian Health Care Program. We're not debating the Canadian Health Care Program. We're debating a good business practice. When a provincial government sits down with an industry and says, this is what we are willing to pay. We've analyzed the cost of producing these drugs. We want to make sure you make a reasonable profit. We want to make sure that research and development continues. We want to support your industry. But, we don't want to pay a price our citizens can't afford. I can't actually read this, I have to have the good Senator Paradis, and the good Senator's from Aroostook help, but this is the Canadian Blue Book, the pricing schedule that they've got. These aren't subsidized prices. These are negotiated prices. What we want to do, if we get to the point of having a Fair Pricing Board, is we want to sit down and look at these very same prices. Look at the way the Canadians did their negotiating and say, that looks pretty good to us. They've done a pretty good job and we're willing to go along with their system. The Fair Pricing Board has a representative group of people, including pharmacists. We are very concerned that they do not bear the burden, and that they continue to get their reasonable and customary markup. We've looked at all those issues and we want to make sure when it comes time, if we have to do that, we have a representative group of people looking at this. We are not talking about a subsidized health care system. We are talking about good business negotiations.

A couple of other arguments that you're going to hear today are going to be about research and development. I think all of us have benefited, in one way or another, from the tremendous advancements in pharmaceutical research. I am very proud of the industry, the work that they've done, and I hope that we can continue that. But I do not believe, that if we pass this Bill, they will stop doing research and development. First off, 57% of the

cost of research and development is borne by all of us, the taxpayers, through credits, through tax credits, through investments. We're paying those bills already. So for them to tell us that they need all of this money to do research and development, first off, I just don't believe it. The pharmaceutical industry made about \$26 billion in profits last year. The most profitable industry in the world, in the world, the most profitable. They spent about \$24 billion in research and development and I'm very glad they did. But they had plenty left over and they had a lot of your tax dollars doing the research and development too. You can see from some of the fliers you're looking at that many of the drugs they developed weren't necessarily the ones that are keeping your brother and sister and mother and aunt alive. They're the ones that are there to make a lot of money. That part I'm not worried about. I'm not worried about us going to a Canadian system. I'm worried about us going for good business practices.

The other argument you're going to hear is that Maine can't do this alone. We can't stand out there alone and take on a big industry like this. I'm going to make a couple points about that. I would be very happy if Congress took on this issue. I would be very happy if the federal government resolved this issue. I think that Congressman Tom Allen, who provided us with many of the studies that you're seeing today, and many other Congress people from all over the country doing the same kind of studies, comparing the price of drugs in other countries, comparing the price of drugs that you can buy for your pet, which are significantly lower. All that data and research has been very helpful. They have a Bill pending in Congress. But I must say there's a tremendous effort to lobby Congress to make sure this doesn't happen. In fact, it's about \$80 million a year. We have seen, in many issues, that Congress doesn't move. That the burden is on us. That we in the states have to tackle these tough issues, whether it was the first state to go out on the tobacco settlement, or a lot of other things. We're often called laboratories of democracy. This is one of those issues where we are paying a very high price through our Medicaid program, to our Prescription Drug Program for seniors. We are already paying these bills of the cost of prescription drugs and Congress isn't helping us. Maybe, eventually, they'll pass the Medicare benefit. Maybe, eventually, they'll do some things to help us. But, in fact, they haven't got anything planned to bring down the cost and we have to do it. We haven't been working on this alone. Other legislators and I have met with leaders from throughout the New England region. Vermont has already passed this Bill in the Senate. Connecticut has looked at the Bill. New York State has a Bill put in by a conservative Republican senator in New York State that doesn't say, go to the Canadian prices. He says, charge a price no higher than any country in the world. He goes much farther than we do in this Bill. If we can have several states looking at this issue, potentially passing this Bill, we'll be in a much stronger negotiating position to say, the states are concerned; the states want to do something for their people; New England is attempting to join together.

You're going to hear some questions about the legal issues. The Commerce Clause, is this interfering with Interstate Commerce? I'm not a legal expert on this issue, but we did ask the Attorney General's Office to do an extensive review, to come to the public hearings. The Attorney General got up and said, you know there are times when I say, don't bother with this. You're not going anywhere. If this goes to the courts, you're going to be in big trouble. But that day he said, there is a legally defensible argument here about the public health and safety of

your citizens. The fact that you are doing everything you can before you take this step. This is not the first thing out of the box, and you have a legally defensible argument and this may not even interfere with the Commerce Clause. The fact is I don't think we know until we take that step. I think we owe it to our citizens to say, this is a tough issue, and we're going to do everything we possibly can. We're going to take this step for you. If it goes into the courts, we'll be there. We'll make sure we defend it and we may well win. In fact, you'll see in the fiscal note, one of the few things we've budgeted for in this Bill is for the potential legal costs down the road. I hope we don't have to go there, but if we do we are ready to look at that challenge. The fact is, in the long run, if we succeed in this, there is a very positive fiscal note in all of this. \$10 million in the State Employee Health Care Program alone would be saved if we went to the Canadian prices. The Medicaid shortfall that we are looking at and struggling with to find in the budget today would be greatly diminished. Our own Medicaid program, which is over \$100 million in the cost of prescription drugs that we currently spend, would be diminished. There is a very positive economic impact for this state. But far more importantly, this is our chance to say to senior citizens, to say to all working families in the State of Maine who have more than once taken in that script from their doctor and heard the pharmacist say, \$100, \$150, \$250, and they've had to turn around and go home without buying those drugs. It's our chance to say to them, we've heard you. We care. We're ready to take this step and we're all standing with you. I urge you to support the Majority Ought to Pass Report.

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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 took a seat on the floor.

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

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

Senator **MITCHELL:** Thank you Mr. President. Good morning ladies and gentlemen of the Senate. Everyone is concerned about this issue and as you can see by both the Majority and the Minority Reports. We all are in favor of it. We just disagree on what we need to do about it and what is the best approach. What I present to you, with the Minority Report, is we want to do something now to help seniors. And we want to expand the window of what we can do in the future by the 18-month date that the good Senator Pingree from Knox County mentioned to you earlier. What we would like to do is to do something right now and what we're doing right now is to expand the Low-cost Drug Card that our seniors, up to 185% of poverty level, currently have in hand. Whereby, they need to pay 80% of all generic drugs. We want to open this. There are only 12 areas where their card covers this cost. After listening to the people at the public hearing that day, it came to us that we needed to do something now, not 18 months from now. So what we propose is that we want to make sure that we take the 185% of poverty level of these people



and expand it. All generic drugs would be covered with this card so that they would only pay 20% instead of paying 80%, as they currently are. We also would like to address the fact, we had a lady at that public hearing who told us that her medical expenses a year for prescription drugs was \$18,000. Folks, this cost price controls, that we put into effect in 18 months, will lower the cost probably 25%. That means it would only give that lady \$4,000 and she'd still be paying \$14,000 a year for her prescription drugs. That's not realistic. What we're doing with this Minority Report is putting in the catastrophic that would, right now, in the department in the year 2001, anything over \$1,000 would be cared for and this person would see current relief. This is going to take care of the situation until, at the end of the 18 months; we can do more for those people. When I say do more, what I'd like to present to you is the Blue Ribbon Commission. This Blue Ribbon Commission, which is the Minority Report, also, in addition to helping the people now, the Blue Ribbon Commission, the Governor would appoint 3 people: one with business background, could possibly be someone from the University of Maine with research background; someone with financial management; and also someone with social services background that would look into multiple initiatives to lower the cost of drugs. We've not saying don't look at the price controls, but let's look at all alternatives. Because what's happened with some of the other states, they have looked into the price controls and found that it isn't the thing they want to get into. The President of the United States doesn't favor price controls. As you can see, our Congressman Allen concedes that his proposal is an incremental improvement but he cannot embrace price controls. The Democratic House leader from the State of Massachusetts is saying, no, we can't go that way. We're going to expand on our senior price control and put plus senior price control in so that we would be able to address a catastrophic as well as expanding. New Hampshire is doing the same thing. They're looking at a plan. Vermont passed the Senate. Their attorney general said, I'm sorry, but I can't concede to something that is not constitutional and could incur, charge costs, to our legislature and our state. When we feel, they had an economist come in and talk to them; the economist is saying to them, no, that would not be an option for us to go with price controls. There are too many other alternatives to explore. With the alternatives, what can we do in the State of Maine for alternatives? What we can do is to expand our Low Cost Drug Program and reduce the cost even more. How do we do that? We continue to work with other states and work on the local and regulation to lower the cost of drug costs, to create a multi-state buying pool whereby we could negotiate the prices. We could expand third party coverage for our drugs, including the establishment of the Medicare drug benefit, which also is due to us. The DHS could continue to pursue the Medicaid waiver. Basically, the most important thing is, we could establish a group policy where the state could underwrite this policy and add the people that are over 185% of poverty level, so that we'd be touching the people who are Medicare and the people who are not at the 185% but do not have prescription drug coverage right now. People without a card, they could have a co-pay. Also, we could acquire a federal block grant to help build us on the road to incentives on how to establish that type of a policy, so that we could expand and touch those people who are falling through the crack that are not on Medicaid but that are on Medicare. What we need to do is work closely with our delegations on a federal level. National approaches like Olympia Snowe's plan to create a federal drug benefit and Representative Tom Allen's proposal to require drug

companies to sell medicines to pharmacies at discounted prices. This is all something that we can be together on. Now, I'm not saying - not still work to look at price controls. We can still do that, but we should broaden that window so that at the end of 18 months, if price controls do not seem to be realistically what we need to follow because it could be constitutionally not what we want to do, and the \$200,000 that we're putting in to just maybe, possibly cover court charges. Do we really want to do that? If we have other alternatives and we find that's not the way to go, we could put something else in place for our state whereby we could be leaders and take care of these people that are on Medicare. The bottom line is we're all working to achieve the same purpose. We just don't agree on how to get there. But I am very concerned that we narrow that window and we only look at one direction which is just looking at the price controls. If we try to do just price controls, and something happens nationally and prohibits that from going through, we need to have something else that we should be doing. Why shouldn't we be doing it at the same time? This Blue Ribbon Commission is not just another study that isn't going to implement a plan. The Blue Ribbon Commission has got to put a report before us by April 1, of the year 2001, for implementation of a plan in the same time frame as Senator Pingree from Knox County is asking and requesting in the Bill. So what we'll look at is, if the price controls are not the way to go, we have got a plan that is the way to go. If it's a state policy that's going to care for these Medicare people and still we can be working on how are we going to reduce the costs, that would be fine.

But, when we talk about Canada. There are a couple of things I'd like to acknowledge on research and development and biotech before we get into Canada. Yes, we do have a problem. We have some businesses in our state. For example, our wholesale drug company that provides drugs to us. If we lose that company, such as what has happened in Vermont, they are saying their wholesale drug company is saying if this is implemented and price controls are implemented, they're going to leave the State of Vermont. If that happened to us in Maine, it would mean 100 jobs in the Portland area. It also would mean that we'd be getting on the buses, like the people in Canada, and we'd be going out-of-state to get some of our drugs because all of the drug companies may not make the decision to sell to us. We'd be creating delays in getting our drugs because they would have to be approved and make sure that the state had a price for that particular drug before it was released to the public. So we have to look at what we are doing to the biotech industry in our state? The biotech industry, the good news is that in Maine, over the past few years, we have 60 companies on biotech in this state with 13 research and testing laboratories that employ 4,700 Mainers at an average salary of \$35,000. IDEX, one of the nation's top 10 biotech firms, alone employs over 800 workers and other firms are typical small and mid-sized businesses. The industry reports revenues, in '98, of more than \$400 million. Do we want to shut the door on this? What's going to happen is that adverse affect on this that right now we're bringing investors to the table to spur growth in the State of Maine. If price controls are enacted, it could discourage venture capital investors in coming to Maine to build on small business. Maine has to aggressively compete in the market and, as cash flows diminish to the biotech, the cost of research goes up and the jobs come out of Maine. These capital venture investors are not going to look to Maine if we have price controls. They're going to look elsewhere.

Now, when you talk about Canada, yes, they have lower prices. But when you look at the sheet that was handed out to you, if we proceed with our low cost drug card, the drugs that you can buy in Canada are even cheaper with our low cost drug card because our department has negotiated rates, that are Medicaid, that are less than Canada's rates in some instances, especially the drugs that have been quoted. When you look at the people in Canada, and the tax situation they're faced with, what's paying for the drugs? Their tax rate. What is their sales tax rate in Canada? Three times what it is in this state? If those people, the people who came to Maine yesterday from the National Kidney Cancer Foundation, from the Maine Medical Association, from the Seniors Coalition, a national membership based organization, and the Biotechnology Association of Maine all concerned and traveled here to our state yesterday because of what they feel is going to happen to the people and what we have available to them. The people in Canada, as we learned yesterday from the people of the National Kidney Cancer Foundation, when they need surgery, where do they come? They ship them to the United States. They ship people to the hospitals in Vermont, New York and to our state. Last week I was having diner at the Comfort Inn and guess what, a busload of Canadian people were arriving here in Augusta for their radiation treatment from Dr. Giroux, who works with them both here and in Waterville. They are busing busloads of people here for their radiation treatment. So, let's be cautious. I'm not saying close the door, but let's keep the window open so that we can look at all alternatives to where we want to get without shutting the door on businesses, research, biotech industries, and the opportunities we have. Where would we be today if we didn't have that research? Look at the cancer research and the cures that have been brought into this country. We're the first ones to receive them. There are delays on people getting surgery in other countries. We are the leader in that and we don't want to go backwards for it. I think that what we'd like to have happen is let's continue to work together. There is no need to be in opposition on this great work. We're all working for the same end results and that's what we need to accomplish, people working together to get us the lowest cost drugs possible, but to do something now at the same time to give relief to the people. The reduction with price controls would not be as substantial as handing these people with Medicare a card and telling them that they're only going to pay a co-pay, or 20% of what your prescription drug costs, and we're going to take care of the catastrophic when you go over \$1,000. The department will change that each year to do more if they can, depending upon the budget availability. Let's be smarter at this and give ourselves more than one alternative and work together and not resist and have it cost the people of Maine more in the long run. Thank you.

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

**Senator AMERO:** Thank you Mr. President. Ladies and gentlemen of the Senate, I would urge you to reject the pending motion so that we can go on to consider the Minority Report which I believe offers real solutions that will work immediately and that will really address many of the issues that have been brought before this legislature. The pending motion does nothing to address those issues. It puts everything off for at least 18 months and then it ensures that we will be fighting in the courts for months, maybe years, after that. You know, I think if we look

at the approach that Massachusetts has taken, we've already gone down a very similar road to Massachusetts' in expanding coverage for people who really need coverage so they can buy prescription drugs in this state. Massachusetts has gone beyond what we have done to address catastrophic prices that some people are experiencing based on the prescription drugs that they need and based on the income that they have. The Minority Report would model, somewhat, after the Massachusetts catastrophic approach. I'd like to quote the speaker of the Massachusetts House of Representatives, Speaker Thomas Fineran when he says that, "price controls are simplistic and harmful to the very interest we hope to advance and protect." The Massachusetts model, and I would suggest that the Minority Report is similar to the Massachusetts model, has worked well and it will continue to be incrementally improved to serve those who cannot afford prescription drugs. I'd like to talk just a couple minutes about the differences between the Canadian model and the United States model. The Canadian Health Care System is quite different from the United States system. There is a much longer approval process in Canada. Medicines there go before a Price Review Board which adds additional months and years to the time when these new drugs can be bought in Canada. Each province also has a formulary committee that decides which of these prescription drugs will eventually be available in the individual provinces. Canadians, as a result, do not have access to many of the newer medicines that we have here in the United States. Particularly treatments for some very serious conditions. In fact, if you ask the Canadians themselves about their own system, 76% of the Canadians will tell you that their health care system is in crisis. I don't think we want to model our solutions to our problems after the Canadians. I hope we will look for an American solution. One that is based on market competition, innovation, and creativity. I'd like to just offer a few quotes for you from several different experts on why price controls throughout history have not worked. I'd like to go back to the year 314 A.D. and quote Lactantius writing of price controls imposed by the Roman Emperor, Diocletianus, "the people brought provisions no more to market since they could not get a reasonable price for them and this increase that dearth so much, that after many had died by it, the law itself was laid aside." And then I'd like to quote from members of the Continental Congress in 1778, "it has been found by experience that limitations upon the prices of commodities are not only ineffectual for the purposes proposed but likewise productive of very evil consequences to the great detriment of the public service and grievous oppression of individuals." And then from Ernst Berndt, Professor of the Sloan School of Management at MIT, "Uniform pricing legislation is anti-competitive and is bad public policy. The enactment of uniform pricing provisions would run counter to recent advances in making the U.S. health care market place more cost conscious. To help lower costs in today's dynamic health care marketplace, we need to encourage more pricing flexibility not less." And from Milton Friedman in The Economist, "Economists may not know much, but we do know one thing very well, how to produce surpluses and shortages. Do you want a shortage? Have the government legislate a maximum price that is below the price that would otherwise prevail." And from 565 economists in an open letter to President Clinton published in the New York Times in January of 1995, "In countries that have imposed these types of price regulations, patients face delays of months and years for surgery," which is what we find in Canada. "Government bureaucrats decide treatment options instead of doctors and patients and innovations in medical techniques and

pharmaceuticals are drastically reduced." And one last quote, and this is from the President of the American Anti Immune Related Diseases Association, "A penny wise pound foolish approach to health care reform that puts caps on drug prices won't just hurt the pharmaceutical research companies, it would profoundly affect the health and hope of some 50 million Americans with one or more serious debilitating chronic or rare diseases." I hope that we will concentrate of expanding Maine's existing drug prescription programs so that more people are covered, so that we deal with the issue of catastrophic expenses, that we work with Congress to find a solution that includes expanding Medicare that may include subsidizing premium coverage for folks based on their income. There are many plans in Congress being addressed and I know, that out of all of this interest and out of all the concern, solutions will come. But I don't believe that this Bill, as presented in the Majority Report in front of us, addresses the concerns and particularly will not address the immediate concerns that many of our citizens have. I think it would be a real disservice and, in some ways a fraud to the people of this state, to let them think that by passing this Bill that their drugs are going to become more affordable. I think there's a better solution. I hope that we can work together to find that solution. Thank you, Mr. President.

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Off Record Remarks

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

**Senator LAWRENCE:** Thank you Mr. President. Men and women of the Senate, I just don't buy it. I don't buy this argument that the Minority Report accomplishes anything. It doesn't. It just plain doesn't. In fact, we've already done most of what the Minority Report does. We did it in the tobacco Bill. We funded the money that is talked about in the Minority Report. What we are left with, in the Minority Report, is a Blue Ribbon Commission study. That's what's left. We have citizens in this state choosing between buying prescription medication and buying food. And we're talking about a Blue Ribbon Commission study. We have people in this state choosing between heating oil and prescription drugs. And we're talking about Blue Ribbon Commission study. We have people who are taking their medication and dividing it in half so that they can extend the life of their prescription. And we're talking about a Blue Ribbon Commission study. Where is the outrage at what is going on in this state to our citizens? We talk about prescription drug programs that cover only a limited aspect of our population, only certain senior citizens, and only certain medication. Where is the outrage about the young people who have to pay these prices for prescription drugs? Where is the outrage of the people in their 40s and 50s who have to pay this price? You know, as we conducted these hearings around the state, I talked to a gentleman, 50 years old. He had been the subject of downsizing in a company. He had insurance at the company. He's back in our technical college system. He went to his pharmacist to get his prescription filled. His pharmacist billed his insurance company. He went back and said, my insurance is no longer in effect, and you have to bill me directly. And the pharmacist says, you don't want me to do that because what I bill your insurance company is substantially less

than what I'd have to bill you. That's because the insurance company sits down and negotiates with the pharmaceutical industry for a lower price on the prescription drug. And the pharmaceutical industry shifts the high cost onto those people who pay for themselves. What we're talking about here is sitting down and saying, hey, somebody's going to stand up for the people of this state and sit down and negotiate a fair price for them. We're going to do it as one together and we're going to get a fair price for our constituents and it's going to be a good price because we're going to not nip around the edges of this problem. We're not going to offer a program here, a study here, deal with a few people here, and deal with a few people there. We're going to take this problem right on, right at the source of the problem, and that's the price. There's only one problem here, and it's not having another program and it's not having another study, it's the prices are just too high. You know, it's as if your neighbors went out and negotiated with their oil dealer for a lower price and you said to your oil dealer, no, charge me whatever you want to charge me, I'll pay whatever you want. That's what we're doing in this country. We're paying the pharmaceutical industry whatever they want. And all our neighbors, Canada, England, Mexico, everybody else, are negotiating smartly for a better price. Sixteen years ago, when I first ran for the legislature, I was campaigning and I delivered an absentee ballot application to a gentleman who invited me into his kitchen and I sat down at his table. He said, I want to show you something, and he said, these are my medications. They literally took up the backside of his kitchen table. He said, guess how much I pay each month for prescription medication? Two hundred dollars a month for prescription medication. That was 16 years ago. He only had Social Security at that time to pay for his prescription medication. I, on the other hand, had a prescription drug card in my pocket where I could buy those medications and only pay a small deductible. That was 16 years ago. In the last 6 years alone, the amount of money people pay for prescription drugs has doubled in this state, in the last 6 years alone. You know, people talk about the ineffectiveness of price controls. We were down in Portland at one of the hearings and we had a gentleman come in, and this one gentleman I would call an older, conservative man. I believe he was from Yarmouth. He came in and he said, I'm a Republican. You know, I've been very conservative all my life. I've never supported price controls. I like the free market. He would have loved the things the good Senator from Cumberland, Senator Amero, quoted about all these economists taking about free market and all that. He said, but you know I went through World War II. In World War II we had a crisis and we had price controls to get us through that crisis. He said, I'm a conservative Republican, we are in a crisis and we need to bring these prices down through price controls. That's what's going on out there. Congress is out of touch with what is going on in the public out there. There is absolute outrage about what they are paying for prescription drugs and Congress doesn't have a clue about what's going on. I think a Medicare drug benefit on the U.S. Congress level is a great idea. But it will only cover a certain percentage of the population. What will happen, if we don't watch out, is the pharmaceutical industry is going to charge lower prices on Medicare and zap it to everybody else who is not on Medicare. That's what they do now with insurance companies. They charge a lower price to the insurance companies and zap it to the people who don't have insurance. It's time we got tough. It's time we got a little radical. It's time we fired a shot across the bough of the pharmaceutical industry and said, you can't do this to our constituents anymore. If you want to do something

serious, we pass the Majority Report. If you want to have a study, we pass the Minority Report. It's that plain and simple. Thank you.

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

Senator **DOUGLASS:** Mr. President. It's hard to follow such a dynamic speech but I would like to say just a few words. It is time for us to bring to bear the great power of the State of Maine to promote our common welfare. I was thinking, as I listened to some of the speakers, what does our Constitution say? It says, I'd like to just read the preamble, "The Objects of Government. We the people of Maine in order to establish justice, insure tranquillity, provide for our mutual defense and promote our common welfare, secure to ourselves and our posterity the blessings of liberty." I'll end there. But further in our Constitution we have, "...that all power is inherent in the people. All free governments are founded in their authority and instituted for their benefit." Those are important rights and responsibilities and duties to remember. Does anyone doubt that cost is a barrier to use in this area of prescription drugs? I don't think so. We have a large sector of our people who are not covered by insurance. They are not covered by Medicaid. They are not covered by the Low Cost Drugs For Elderly Program. Those people are also our citizens. We must work to protect their health and welfare. That is our solemn duty. It's very clear that high drug prices lead to drugs prescriptions not being filled, which leads to sickness, hospitalization, and poor health, even death. That further leads to higher costs to our state. Sitting on the Banking and Insurance Committee, one of the issues that we treated over the past several months was access to prescription formularies. That basically means whether or not your health care provider, if you have one, should allow you to obtain any drug that your doctor prescribes. And interestingly, the Bureau of Insurance provided us with a study that showed where that access to all types of prescription drugs exists that were, in fact, lower number of prescriptions prescribed and more of them were used. There were actually lower costs. I submit to you that the better, more cost effective way for our state to treat this crises of high drug prices is to have the state step in to protect those people who are not in the large groups, who cannot protect themselves by being part of a health insurance group, because there are many of our people who are simply not in that category. The best solution, for all of our people, is to allow the companies time, the small waiting time that is in the Bill, to figure out what they will do to meet the price that is paid in Canada and to effectuate lower prices for all our citizens which, in turn, will give us better health. I urge you to vote for the Majority Ought to Pass Report.

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

Senator **GOLDTHWAIT:** Thank you Mr. President. Ladies and gentlemen of the Senate, I think one thing we can safely say about this Bill is that so far it's been very good for the paper companies. Both of the reports on this particular issue are very serious efforts to solve a very big problem. I commend the sponsors of both of them. We are fortunate to have two Senators, one from Knox and one from Penobscot, who have applied their considerable talents to this issue and both developed worthwhile programs of significant merit. We can't lose today. This is a win - win situation, whichever report passes.

But today I'm speaking in favor of the majority and I want to tell you why. The drug companies say that we can't employ price controls and that, if we do, the people in Maine may not get medications. And it may have a chilling effect on research and development in the biotechnology areas. Both of those issues are significant worries. They should not be taken lightly. If either one of those things were to happen, it would have very serious implications for the people that we are here to represent. But here's why I think that we should be thinking about whether or not we're being overcharged by the drug companies. I received a letter from a large national drug manufacturer and in this letter this company stated that their goal is access for all people to medications. That's a reasonable goal, given their business, but I would be happy to concede that they have an altruistic motivation behind that goal as well. Here's what they proposed to reach that goal of access. They say, "we've got some good ideas about how to achieve this goal. State based approaches, federal grants to the states could provide an appropriate sum of money to create drug access programs for low income residents in each of the 50 states." In other words, the feds could pay for whatever the drug companies decide to charge. "Expanded insurance alternatives. These could be developed by private insurers with subsidies for low income seniors." So private insurers could pay whatever the drug companies charge. "Tax code changes, tax credits or tax deductions to subsidize the cost of prescription drug insurance." So the government, meaning the taxpayer, could pay whatever the drug companies decide to charge. Are you picking up on the common theme here? Somebody is going to pay this cost. We're not talking about what the cost is; we're talking about how to find a way for somebody to pay that cost.

I want to talk about advertising. What is the reason, what is the reason, on God's green earth, why prescription drugs are advertised in the popular media? Why do we have TV ads for prescription drugs? Where does that lead? That leads to any one of us, none of us physicians, going in and saying to our physicians, I want that drug. Which is tantamount to practicing medicine without a license. We don't know anything that we need to know about that drug, the physiology, the side effects, the interactions with other meds. But we are being seduced by drug companies to go to our doctors and say, "I think this one looks really good, prescribe this one for me." And, believe me, patients come in with a good idea of what they want and why they want it, and it is not easy for a conscientious physician to convince them otherwise. That maybe they don't need a drug at all. So if we were to deduct the cost of this general public advertising from what it costs us to buy drugs, that alone might significantly lower the cost. Advertising to physicians, I have no problem with that. But to be advertising prescription drugs to the lay public makes absolutely no sense to me and it costs a fortune. Think about it. When you open a basic magazine off the shelf, how many of those full-page ads are for drugs and what do they cost? There is an actual column, or there used to be anyway, in a medical journal that says this is what you'll be hearing from your patients this month. They survey the popular magazines and report to the physicians on what is being promoted in public advertising so the physicians will be prepared for their patients coming in and saying, I want this medication. Here are some patient solutions to this problem. A sweet little old lady of my acquaintance is taking among other things aspirin every day and Tegretol everyday. The aspirin is pretty cheap. The Tegretol's pretty expensive. They're both white, they're both about the size of a pencil eraser, and she said, I'll just take 3 aspirin instead of 2

aspirin and 1 Tegretol because they look alike and it's a lot cheaper that way. That's one solution. Other people say, when you call that in for me, ask if I could just have 4 or 6 of them because in 2 days my social security check will come or I can call my brother or I think I can get an extra shift at the Shop 'n Save and pay for a few more days worth of these pills. That's one solution. Or people just don't get any at all. I'll call in a prescription from the ER and the person says, ask them how much it's going to cost. And when I tell them they say, never mind, I can't get it filled. So we've done a very expensive diagnostic work-up in the ER, prescribed the drug appropriate for treatment, and the patient can't take it because they can't afford it. That's one solution. I don't know if we should be paying the same amount in this country for prescription drugs as Canadians do. I have no idea whether there is a rational argument to support that or not, but I want to find out. There might be some reasons why we should. This Bill is the smack upside the head to the drug companies. This Bill says, we're not going to study it. We're not going to wait and see what the feds do. We're not going to look to the government, namely the taxpayer, to pay the cost the drug companies are now charging. We're going to ask the drug companies to justify why they are charging the prices they're charging and that's all. Thank you.

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

Senator **MITCHELL:** Thank you Mr. President. Ladies and gentlemen, a couple of ideas. The good Senator from Hancock, Senator Goldthwait, brought out some very good points and we appreciate that. But listen to what she's saying. We're not really sure if the Canadian prices are the right way to go, but let's try it. What this Bill does, in front of you, the Majority Report, doesn't allow for negotiation. It mandates the price at the Canadian level so in 18 months you're locked in to that. And right now, what we are purchasing for our people on Medicaid is less than the Canadian price. So that means if we go with the Canadian price, we are going to end up paying more and we could lose our Medicaid monies. Just one thought for you. With this Blue Ribbon Commission, it is not just a study. The study ends April 1<sup>st</sup> with a plan to be implemented, the same time frame that the Majority Report does. What it does, again, we're going to look at the price controls but it gives us more of a window to say, well, I don't know if this is really the right way to go and we're not going to be locked in to a mandate to use the Canadian level. Taxes, the taxpayer is going to pay whether we go one way or the other. If you go with the Canadian route, and you have their mandated prices and the manufacturer is negotiating with the state government for a price and the price isn't at the level we want, the taxpayer is going to pay the difference just like it does in Canada. They're paying higher taxes than we are in this country. Whereby, you've got an opportunity to negotiate here, currently, with trying to get lower prices and expand on what we're doing now with the lower prices than what is being paid in Canada. Some of the generics in Canada are higher than what our generics are in this country. So we need to look at all of the pricing in Canada. And is the drug available? Right now, their arthritis drug is only available in 3 of the 10 provinces. So, we really don't want to limit the availability of the drugs. Now, it's not true that the public tax dollars subsidize over half the cost of our new drugs. The principle source of money for development is private investment.

Another correction. And another correction, our A.G. did not do extensive review. He acknowledged that he hadn't had time to look at all of the relevant issues and he did not issue a written opinion. The Vermont A.G. did. He merely stated it's defensible. Well, any lawyer will tell you an article is defensible. That's their job. But what we have to pay attention to is the fact that it is unconstitutional, according to other A.G.'s. Now let's look at other countries again and us. Yes, we do want to negotiate and have the lowest price. We're all tired of paying higher prices. But, please, let us not see the light that we can actually accomplish here if we can put in what is the best, where we can keep the research and development. We can keep our biotech companies in this state and build on our economy more than we have now. We can continue to expand and keep the lower prices than Canada on our drug card and still negotiate for everybody else to be part of a plan under an insurance policy with federal grants and still look at the price controls and do a comparison like most businesses do. Let's compare, what is the best alternative for us. But we need to do the research first to find that out and we don't know that right now. And all this commission is going to do is work until April and tell us which is the most economical, viable, cost effective manner for us to implement the lowest prices possible but still do something now for our people who need relief. So I would encourage you to do what is going to be best for all of us. Look at price controls but also look at all of the alternatives and still come in with a report out by April 1<sup>st</sup> so we have a plan to implement on this same date. Thank you very much.

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

Senator **PARADIS:** I don't want to belabor the point. Men and women of the Senate, I can't let it go by. There is one advantage to living 300 miles north of Augusta. I never realized it until today. When the Webster Ashburton Treaty passed in 1848, separating a people, we ignored the border as much as we could and we're still ignoring the border. The elderly in the chamber reminded me about the buses. The million dollar bus ads, that we're seeing in Maine right now. Apparently all of the border states are being kept busy watching these ads on TV to the tune of millions of dollars. The ones that are coming to Maine are empty, the ones on that ad. There's a reason for that. The quality of the universal system that is in Canada should not be berated. If you have a cardiac patient in Jackman, yes, your government might spend the money to send you to Bangor for your care instead of sending you to Quebec where the center is. My husband has done the survey for years. I don't know what got him started except he probably believed in universal medical health care. But he's been asking every Canadian, do you want to change your system of health care? "No, no, no." I don't think anybody's ever said a yes. As a person who does constituent work, I'm getting a lot of calls from people wanting to reassert their Canadian citizenship because we use the hospitals in Canada a lot. A lot of our babies were born in Canada. And, now they are saying I want my dual citizenship. I want that option. So, yes indeed, they buy services from us, and we buy services from them. We were using half of the Edmondston dialysis capabilities to the point that it became an issue. The legislators, from both sides of the border, often speak about our issues we have in common. The fact that our citizens are being forced to go to Canada to buy their pharmaceuticals cannot be disputed. I haven't heard that the Canadians have not been able

to access certain medications because if they couldn't, they could do the reverse. They could come and buy that medication here. I haven't heard my Rite Aid in Madawaska being bombarded with Canadian citizens. We do have a lot of doctors on both sides of the border who dually practice. The difference is that they work at their health care issues all the time. To me, that's a quality. We, on the other hand, have been brought kicking and screaming by our constituents into this debate because we see ourselves aging and we see ourselves being deprived of very important drugs. I urge your support of this Ought to Pass Report.

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

Senator **PINGREE:** Thank you Mr. President. Men and women of the Senate, I know we've been debating this for quite a long time and I don't want to keep us from lunch forever because I know that is a very important part of our day. But I do want to correct a few things that I think I feel a little bit differently about. First, going way back, is this concern that the pharmaceutical industry will not sell in the State of Maine if we were to pass this law. I just want to say that I do not believe that's going to happen. I just do not believe that's going to happen. I think it's a threat, that I'm sorry that I've heard occasionally, but I just do not think that's going to be our biggest concern about this issue. I also think the biotech industries are not going to shut down over this particular issue. I just do not believe that's going to happen. I want to speak briefly to this letter because I think the good Senator from Cumberland, Senator Amero, mentioned that was from the Speaker of the House in Massachusetts, Speaker Finneran, and it addressed something I had mentioned earlier, the idea of New England leaders meeting regionally. We had introduced, at one of these meetings, a potential organizational structure that was something like the Dairy Compact in New England. A way to have us formalize this concern of how we make sure all New England states meet together. The Speaker of the House, in the other body, had worked on it quite a bit and I had worked on it quite a bit and we presented the language to all the members. At our last meeting in New York City, we decided to change the language. So what he's speaking about here never even happened. We didn't go ahead and use that particular language. And, in fact, one thing that did happen in that meeting, you see earlier there was a reference to Senator Kathryn Cook, what did happen in that meeting is we did pass a resolution by everyone in the room that anyone who worked for the pharmaceutical industry and sat on this board would disclose that to the rest of the group. That was one thing we all agreed on was very important as leaders from our states, if we had any financial interest in the companies, or we were paid by the companies to be there, we wanted people to make that known. Senator Cook was good enough to let us know that she was, in fact, an employee of Pfizer and we appreciated that very much that she would come forward with that. Speaker Finneran has also spoken to me about the fact that Massachusetts has quite a bit of pharmaceutical industry in his state. That's one of the reasons he felt concerned about some of the language. But Senator Mark Montigny, Senator Richard Moore, who are chairs of Ways and Means Committee, and their health care committee have been very active in this committee. They come to all the meetings when Speaker Finneran doesn't and have supported some of the language that we've been working on and, in fact, voted in favor of the resolutions that we did pass at our meeting

just a couple of weeks ago in New York City. I thought that was something that was important for you to know.

A couple other things about the Canadian system, and I think we've talked about that extensively. Once again, we are not trying to create a Canadian system. We are really looking at just their Price Review Board, that we have extensive information about. We would like to look at how they've gone ahead and negotiated those prices. Not subsidize those prices, just negotiated those prices. We want to look at that. Senator Paradis has been excellent in explaining to us how, in her neck of the woods, people go both ways across the border. In fact, I remember last year when one of the staff people from the Minority Office, the Republican Office, took his wife up to Canada to have some eye surgery. So I know many times there surgeries that are better available and cheaper up there. Our citizens go across the border not just for prescription drugs but for surgical practices. So I know it's something that we do frequently. In fact, the Canadian Government has invited some of us up this very Friday. I have a feeling I'm not going. But this very Friday to meet with them again to continue these across the border talks about if we're going up there is access prescription drugs. They're sending people down here for certain pharmaceutical procedures. What do we look at to make that easier? Senator Jeffords, from Vermont in the United States Senate, is introducing legislation to deal with this issue. How do we make it possible for people to do this without breaking the law? How do we increase our cooperation? And the reason we are doing that is because our citizens find a tremendous need to go there to buy drugs at an affordable price.

On the question of prescription drug advertising, as Senator from Hancock, Senator Goldthwait, mentioned. That was something we heard about extensively from physicians and practitioners, their frustration with all of these ads. Patients coming to them and saying, we have to have this drug, we've seen it on TV. In fact, what we hear is that about a third of the cost of the drugs you buy is going to advertising. We are the only country in the world, the only one, that allows direct-to-consumer advertising. Not that long ago, we were told we should do it because it will increase competition and lower prices. It looks like you are just paying it in your bills, now it's just added to the price.

About the issue of this not being a regulated system and these being price controls. Let's not fool ourselves; the health care industry is one of the most highly regulated systems that we deal with. Ask any doctor who deals with the Medicaid system in the State of Maine or the Medicare system. He will tell you that they are lucky to get 50% of their costs. They don't get paid the full price. They are a regulated system. We decide and the federal government decides what they will be paid. Ask any nursing home owner. They're actually out in the halls right now asking us if the state will increase the subsidies to nursing homes to take care of our senior citizens, many of whom are there because they couldn't afford their prescription drugs. So ask them if this is a regulated system. Ask your local hospital board. I'm sure the chair of the board will tell you their charity care costs are going through the roof. Their ability to operate is severely diminished by the fact that they operate in a highly regulated system. The payments from Medicaid and Medicare are not high enough. This is a regulated system virtually for everyone except the pharmaceutical industry who, in our Medicaid system, gets about 85% of cost when everybody else takes 30%, 40%, 50% of costs. So I don't buy this argument that we're not regulating the

health care system. It's just about time we regulated it for our benefit as opposed to their benefit.

One last point, Congressman Allen, who of course will be hearing from me about this little piece in the Maine Times, but I know is a small slip of the tongue on his part because, in fact, he has advocated strongly for a benefit system and price leveraging. I want to tell you today, you get the chance to do both. We have already voted on the tobacco Bill. We have already said, yes, we agree with you \$10 million more for subsidizing the cost of prescription drugs. But that only covers about 26,000 people in the State of Maine. Even with their enhanced benefit package, it's not going to cover a lot more people. We are talking today about a Bill that could help 1.2 million people, or whatever the latest census is. Everybody in the State of Maine will be helped by this Bill. I want to read to you quickly from a letter that I really appreciated from a constituent in Fairfield who said, "We've been watching the progress of this Bill for prescription drugs and are very pleased with the Bill and hopeful for its outcome. My husband and I are retired, financially middle class seniors who live simply with a second hand car, rabbit ears on the TV, no computer, no cell phone, and no cable. We are trying to stretch our savings to see us through. Although we are still active in our church and community, my husband has prostate cancer and I have rheumatoid arthritis, which is very painful and incurable. The medicine recommended to him costs \$6,000 a year. The medicine that would most benefit me costs \$13,000 a year. We are not taking those medicines due to the high cost. We are on Medicare. We do not have an insurance benefit for prescription drugs. We thank you on behalf of all the Maine people who have situations similar to ours. We are very grateful for your efforts." I know these people, I know 1.2 million people, give or take a few, in the State of Maine who will be very grateful if today we go in favor of the Majority Ought to Pass Report, give people a price benefit, and also reduce the cost both to the State of Maine and to all of our vulnerable citizens. Thank you very much.

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

Senator **CASSIDY:** Thank you Mr. President. Men and women of the Senate, I would like to pose a question through the Chair if I may.

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

Senator **CASSIDY:** Thank you Mr. President. My question is this. I also live on the border, although I can't throw a rock, I think I could shoot arrow into a foreign country up there where I live. I know, from living on the border, that there's a 15% sales tax on commodities there in New Brunswick. I also know that they have Socialized Medicine. My question would be, do we know if their Socialized government, medicine, that they have, do they subsidize these pharmacies? Is that why the cost is so cheap there? I honestly don't know and I would like to find out if somebody could answer that question. Thank you Mr. President.

**THE PRESIDENT PRO TEM:** The Senator from Washington, Senator Cassidy, has posed a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Aroostook, Senator Paradis.

Senator **PARADIS:** Thank you Mr. President. It is an excellent question from the good Senator from Washington, Senator Cassidy. They do not indeed subsidize. It is because they have universal medicine. They did it province by province by province. They have lowered the cost of medicine. For example, if I want a mammography in Edmundston, the last time I checked it was \$15. If I want a mammography in the United States, it's over \$100. They've managed to lower the cost of medicine overall. Indeed, there are no subsidies. They are maybe paying higher taxes. They want to because most of them realize that the increasing cost of insurance, \$500 a month for a family or something, that is pretty much of a wash with the type of services they are being provided. Most of them don't want to go back to the old system.

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

Senator **LONGLEY:** Thank you Mr. President. Colleagues in the Senate, when I think of prescription drugs I think of Claire in Palermo and his wife, and I think of Eileen and Paul in Islesboro. I think of sitting around their table and, as they got more and more comfortable, them divulging what it is they cannot afford and how it is they make due. It's stories we've all heard in our door to door. I'll say it one more time, giving up groceries, giving up necessities. Our proud elderly who, when they get good comfortable and are brave enough to divulge, announce that they simply don't have the money to pay for what they need.

Then my next thought is the taxpayers in Maine. In addition to all the elderly, the taxpayers, it seems like every session we shovel another bundle. It helps a few more elderly and it helps the pharmaceuticals get their money and the rest of us pay. I'm happy to pay but I wish not so much went to the pharmaceuticals. I wish more went to expanding coverage for more elderly, because that's where I want that money to go. Unfortunately, to help the elderly, I also have to help the pharmaceuticals. Each year there are checks with many zeros on them that go to the pharmaceuticals.

My third thought is, well, the commerce clause, the due process clause. So I go and do research and I know that this will be a court case. I don't harbor any illusions that portions of this won't be deemed to be unconstitutional. But I honestly think parts of it address the public health arguments and, as the court says, they do a balancing test and if the state is acting to further health safety or general welfare objectives, the court is quite likely to hold that these objectives constitute legitimate state ends. In terms of the liberty clause, the famous Justice Holmes statement, in terms of due process, saying "the court has no right to impose its own views about correct economic theory." The 14<sup>th</sup> Amendment he says he's famous for quoting in its dissent in Lochner, which eventually he became the majority, "The 14<sup>th</sup> Amendment does not enact Mr. Herbert Spencer's social status." That's his way of saying, "The Constitution is not intended to embody a particular economic theory that 'liberty' as the term is used in the 14<sup>th</sup> Amendment should be found to be violated only when a rational and fair person necessarily would admit that the statute would infringe fundamental principles." When I think of Eileen and when I think of Paul and Claire and his wife, when I think of all the elderly and I think of the fact that they are needing these medications and they aren't able to afford it, that, to me, is a fundamental principle that I want to honor. I think it's headed to court on the express train. There will be pieces that will be

knocked down, but I think, in honor of our elderly, we ought to make the fight.

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 Doorkeepers secured the Chamber.

The Secretary opened the vote.

**ROLL CALL (#379)**

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

**NAYS:** Senators: ABROMSON, AMERO, BENNETT, CASSIDY, DAVIS, HARRIMAN, LIBBY, MITCHELL, SMALL

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

23 Senators having voted in the affirmative and 9 Senators having voted in the negative, with 3 Senators being absent, the motion by Senator **PARADIS** of Aroostook to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-686)** Report, **PREVAILED**.

**READ ONCE.**

Committee Amendment "A" (S-686) **READ** and **ADOPTED**.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-686)**.

Sent down for concurrence.

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

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On motion by Senator **LAWRENCE** of York, **RECESSED** until 1:50 in the afternoon.

After Recess

Senate called to order by the President.

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**ORDERS OF THE DAY**

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

**SENATE REPORTS** - from the Committee on **EDUCATION AND CULTURAL AFFAIRS** on Bill "An Act Concerning Fingerprinting and Background Checks for School Employees"  
S.P. 987 L.D. 2540

Report "A" - **Ought to Pass as Amended by Committee Amendment "A" (S-691)** (11 members)

Report "B" - **Ought to Pass as Amended by Committee Amendment "B" (S-692)** (1 member)

Report "C" - **Ought to Pass as Amended by Committee Amendment "C" (S-693)** (1 member)

Tabled - April 11, 2000, by Senator **PINGREE** of Knox.

Pending - motion by Senator **BERUBE** of Androscoggin to **ACCEPT** Report "A", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-691)**

(In Senate, April 11, 2000, Reports **READ**.)

Senator **MURRAY** of Penobscot requested a Division.

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

Senator **MURRAY:** Thank you Mr. President. Men and women of the Senate, let me begin by first thanking you for your indulgence. I want to confess to you, in my 8 years of legislative service, this is the first time that I have taken out a Minority Report where I am the sole person taking out that report. It's not something I do. It's not something I've ever done. The reason I do that is because I think this issue is of such significance. My concern about the Majority Report was strong enough so that I felt it was something I had to do. The reason I think this issue has been very difficult is because of the passion involved with the issue that we're talking about. It's the issue of abuse against the children, the minors, in our school systems and elsewhere, quite frankly, and the passion involved when we talk about the nature of the offenses that are involved against these children. I had the privilege the last few days, as you well know, to share my 2 children with you in this Senate chamber as pages. Believe me, if I felt that the Majority Report addressed the issue of child safety for children, such as my own, who are in the public school system, adequately, clearly, in a way that was effective, I would support that approach without hesitation. My concern is that is not the way that we should go forward. That's not the approach to take to address the issue of child safety and the fingerprinting over 65,000 of our fellow citizens. That's basically what we're talking about here, ladies and gentlemen of the Senate. We're talking about the choice of whether we implement a measure that would require that over 65,000 of our fellow citizens submit themselves to a process that, in my opinion at least, doesn't get us where we need to go. If the Majority Report truly protected the children of our schools throughout the state as it purports to do, I would be supportive. There are a few reasons why I don't think that gets us where we need to be. I want to share those with you. The Majority Report, which basically reflects current law, submits



the educational personnel to these fingerprinting and background checks. But the information that is provided is limited to information that will tell us what the convictions, if they exist, are for those same individuals. It doesn't tell us anything else but conviction information, if there have been prior convictions for that individual submitted to this requirement. Why is that significant? Well, just by way of example, in the last few weeks, where the news has documented reports of a case in Portland involving a teacher at the high school there and another case involving an educational personnel person from Thomaston or South Thomaston. Those two examples, the most recent that I can recall, point out one of the most serious flaws with the approach. Namely that neither of those circumstances involved prior convictions. So had this law, that the Majority Report proposes, been in place previously, at that time, these same two individuals would not have come us as a violation, or as an issue, because the focus is merely on convictions alone. The other concern I have with the Majority Report, that requires all educational personnel to submit to these kinds of background checks, is that there is a significant number, I can't tell you what that number is or will be, but there is a significant number of educational personnel who have taken the heartfelt position, perhaps it's the right position and perhaps it's the wrong position, but it's a sincere and heartfelt position that they will not submit themselves to this kind of a background check under these circumstances. What's that tell us? Well, my initial reaction to that is well that's their decision, let them do what they want. But when you actually reflect on that a little more and recognize that is not just a bravado statement, but really a sincere belief on the part of some individuals at least, I think a significant number. It's a number of individuals who have taught within our systems and worked within the educational systems for a number of years. Those individuals are no longer going to be on the front lines of our schools. Those are the same individuals who the statistics tell us are the best source for reporting the kinds of abuse that we're trying to prevent. That's why the Majority Report is so flawed, in addition to the reason I stated previously. If we implement a system that, by its nature, has the effect of moving a significant number of personnel out of our schools, the same personnel who are going to be the ones most likely, as a mandatory reporter, to address the issues of abuse when they see it, how does that move us forward in protecting our children within the schools? I would argue it does not and, in fact, creates a serious potential harm. It's been said, in the arguments and testimony we've heard, that the proposal of the majority is an unconstitutional infringement. Well, I don't think it's an unconstitutional infringement from a legal aspect looking at it, but I do think it turns on our heads the ideas of process and procedure that we have held dear and continue to hold dear in this state. There is something unusual, to say the least, to require as a means for finding out some information, and I say some information because it's the conviction information only that we're asking to find. We're not finding out everything we want to know. But for that piece of information, we are saying the best way to do it is to require that 65,000 individuals in our educational system submit themselves to fingerprinting and background checks. It stands our process on its head. Ladies and gentlemen of the Senate, the focus of the Minority Report, that I hope we have an opportunity to deal with as an alternative to the pending motion and the Majority Report, focuses instead on where I think our resources need to be devoted, namely on the individuals within our educational system that we know the least about. There is a difference, in my mind, with the individual,

whether it's a teacher, or a cafeteria worker, or anybody else who has worked and devoted their lives, 15, 25, however many number of years in that system. That individual is different from the individual who is brand new, coming into our community as a new teacher, as a new individual employee, or as an individual employee going from one school district to another one. There is no history that the community or the school knows about that individual. It's more appropriate, in my opinion, that's the type of individual we need to focus our attention on. It's more appropriate for us as a legislative body and the State of Maine to say, that's the individual that we want to get as much information about as we can in making the decisions we need to make in this area of employment and background checks. So the report that I am proposing for your consideration does just that. It says that any new individual who is, for the first time, being subject to certification or approval or authorization by the department must submit to this background check procedure. It also says that those individuals who are first coming into a new school district as a new hire, whether they previously worked in a school somewhere else or not, when they come into that new school district the local school superintendent, or the local school hiring entity, has the right to submit that person to the same kind of background check so that the new school district can have information about whether or not there is a criminal history involved with this person. It doesn't fingerprint everyone, there's no question about that. But what it does is focus the attention and the resources where it is most appropriate to do so. It comes down to that quite simply. Obviously by doing so, the Minority Report has a far less ongoing cost, since the number involved would be far less than the 65,000 individuals that the Majority Report would impose this requirement on. Both reports fully fund the proposal, in that they both require that those who have already been subjected to this procedure be reimbursed. Both use the same standard, for those who would be subjected to this process, with regard to the criminal background check that will occur and the information that will be the basis for decision-making. The difference is, quite simply, that the Minority Report recognizes and respects the years of ongoing service that those who engage in our school and work in our schools have given to our communities. It focuses the attention where it needs to be focused, on those individuals where we know the least and need the information the most. For all these reasons, I would urge you to join with me in opposing the pending motion so that we can move on to address the Minority Report.

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

Senator **HARRIMAN:** Thank you very much Mr. President. Good afternoon ladies and gentlemen of the Senate, I rise to join my good friend from Penobscot, Senator Murray, in asking you to defeat the pending motion. I want to share with you the rationale that I've used to come to this conclusion. First, I want to say that, in the last few months, we've seen many notorious headlines exclaiming the intrusions, if you will, of people in the education system who conducted acts we all would agree were unacceptable with our children. And if this law was in effect before the headlines you have read about recently, not one of these cases you've read about would have been brought to light by the background checks or the fingerprinting. I would also suggest, Mr. President, that there are teachers who have been our system who are no longer working in a school. Maybe they've left education. Maybe they're in another educational

setting. Or maybe who, through mutual consent to resign or not renew their contract, are now teaching somewhere else. They would not have been affected if this law was in effect. I guess I'd like to go back to the belief that virtually everyone who is in the educational system today is there because they are a professional, because they deeply believe in what they're offering the future of our country by the education they offer our students. I believe that school boards and superintendents are perfectly capable of deciding who are the best people to hire, including talking with references, former employers and former colleagues. But above all that, Mr. President, I'm going to vote to defeat the pending motion on behalf of the teachers who are still teaching the in Yarmouth High school system. Ken Roberts, Becky Clifford, Doug Pride, and many others who I could go on and name, who are teaching in the Yarmouth High School system today, who are the very people who taught me, that have enabled me to have the honor of sitting in a seat in such a hallow chamber as this. And to vote for a law like this is an insult to them and I don't intend to be part of it. Thank you, Mr. President.

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

**Senator SMALL:** Thank you Mr. President. Men and women of the Senate, I want to explain to you a little bit about how we got where we are today. For some, this seemed to be something that sprung out of nowhere, didn't know it was coming, didn't know they voted on it. The beginnings of this legislation were in 1995 when we had a Bill "An Act to Provide for Record Checks for Elementary and Secondary Education Employees" and that came to the Education Committee. That one did more than just this Bill. It would have allowed background checks on teachers. It would have allowed the releasing of information the Department of Human Services had on allegations that had come before them on charges that were brought up on teachers. It would have given this information back to the local superintendents back home. The MEA came in and opposed this. We had people come in favor of it. We had people in this chamber who were cosponsors of it. What we did was we put it out to study and we got all of the interested groups which would be effected by this. We got the teachers. We had the administrators, the school board representatives, the Attorney General's Office, Department of Human Services. They got together and we told them to try to work something out so that we could try to protect children, but we would not infringe upon the rights of teachers as greatly as that Bill did. They came back the next session and they came up with a proposal that is basically what you see before us now, a fingerprinting Bill that only dealt with conviction data not unsubstantiated charges that were made against teachers. It also required the fingerprinting for teachers because that was the only way that you could get a national search on the background of teachers, through the fingerprinting. I have to say, that if we do accept the amendment, we will not be able to do a voluntary background check on local districts, case by case, because the FBI will not do background checks unless it's required by the state. They will not do voluntary background checks. So the only thing they could do is new hires. You can forget the idea that they are going to be able to do it in districts when teachers move from district to district. So we came up with the legislation and it has gone through a number of changes, transitions. We've attempted to fund it. We've put in some language that's tighten up the law. But it's been a long process, it's been since 1995, and we've voted on it time and time again,

unanimously. It has been through the Education Committee three different times and then finally, it came through us again, not even in a Bill. We just had an open piece of legislation that said, do what you want. This is what we came up with. We came up with an 11 to 1 to 1 report; 11 to keep the existing law, 1 to repeal it entirely, and 1 to do only new hires. This has been a tough decision for me, as I know it was for the good gentleman from Penobscot, Senator Murray, because we all have to try to balance the needs of our children against the infringement that this will cause to our teachers and our other personnel staff at the schools. Believe me, with a child in middle school and a child in high school, this has not been an easy decision. I understand the concerns about teachers that are going to leave. My daughter has 2 teachers that have said they will resign if they have to be fingerprinted, and they are both good teachers, one I actually had. So this has been a very, very difficult decision. So it basically comes down to, what good will this law do? No, it would not have done anything in the Malia case in Chevrus. But that case does point out that it's not new hires only that we have to be concerned about because nobody has suspected that person had been perpetrating those crimes against children for that length of time. This Bill would not have prevented that, but it does show us that it's not only new hires that we have to be concerned about. It could be someone that you have known for your whole lifetime. I don't know what a child molester looks like. I don't know what they act like. I'm not sure that anyone else does either and that would be, I think, foolish to say, well, I've known them for a long while, they couldn't possibly be. As far as forcing people to submit to this, it is difficult and, again, it's a choice that we have to weigh. But I think of all the other issues that we've had here where we've had to weigh the rights of an individual against the rights of a group. I think of Bills that we pass here routinely that take away property rights from individuals because we see some general good in protecting the environment or protecting the neighbors' rights. I think of the rights of businesses not to allow smoking, or forcing businesses not to allow smoking, or not to allow any other number of practices that go on. Because we weigh that and we decide whether that taking away of privilege, or rights, outweighs, or will compensate, for what the good will be by passing that legislation. I don't always go one way or the other on that. I have to weigh each of these issues, whether it's the seat belt law, or its environmental laws, or it's any other number of laws that we have. So, basically, I, like all of you, was faced with the decision, do I incur the wrath of my teachers back home, do risk losing some very good teachers from my school system in order to protect the children who are out there. I had to look at the numbers, the figures that we have found out so far, and weigh them in my mind. And everyone says this law really won't do any good. Well, nobody will know. But in the past 10 years, without any criminal background check, through what they call dumb luck, that's the only word you can use for it dumb luck, they have found 42 teachers and support staff and administrators who would have been disqualified from holding a license in our public schools. It's through someone reporting them, someone reading a newspaper article about a conviction out-of-state. Of those 42 individuals, 27 individuals had convictions for sexual abuse, or sexual contact with a minor child, and of those, three-quarters were long time employees of the school system. The result of those people were assaults on over 50 children. Now this is over 10 years and this is just what we've been able to find through, as we said, dumb luck. There was no process set up in order to find the out-of-state convictions, but through people telling, through

anonymous reporting, they were able to come up with those. But you have to wonder, did we get them all? Were there only 42 out there in the State of Maine? Or are there more and this is just, maybe, what we were able to catch through dumb luck. I understand that for many giving fingerprints is considered a violation. It's hard for me to understand that because I really don't have any problem with that. But I do recognize that some people have deeply held beliefs on this and I respect those. But I have to weigh the moment of time that it would take, the 15 minutes, the half-hour, the hour, that it might take to do this versus the trauma and the tragedy of a lifetime of suffering that a child might go through because of the results of a few individuals who are out there that this Bill might have a chance to take out of our school system. That's why I came to the decision I did, to stay with the other 11 members of our committee, members who are former educators, former teachers, former administrators on our committee who have been in the trenches, really wrestled with this issue as well. But they, also, with all the testimony they heard, with all the data they received, felt that, in their hearts, this was the decision that they had to make. Now each of you have to make that decision for yourselves and I will respect that decision because I know that it is an intensely personal decision and it's a very difficult one. Just as we make those decisions on gun control and on environmental laws, each of us has to weigh what the good would be versus the harm. That's how I made my decision on this. In the end, I would have loved to have had a compromise that we could have come out with unanimity in the committee that would have had the support of the teachers. But, in the end, I had to go; I guess where my conscience was. I just want to read you remarks from the 1997 testimony of the MEA legal counsel who appeared before our committee and his remarks, I will take a portion, "...where federal record checks are necessary and appropriate if the department is to carry out its existing duty to screen certification candidates for criminal convictions which may disqualify them"...and it goes on, ".....we also recognize that it is reasonable for any school employee who has access to children to be subject to the same record checks." Nothing that I've heard or seen has changed my mind from that. I understand that, perhaps, you've heard other instances of other cases. But for me, when the time came to make that decision, I just had to lean a little more on the side of children. Thank you.

**THE PRESIDENT:** The Chair recognizes the Senator from Piscataquis, Senator Davis.

Senator **DAVIS:** Thank you very much Mr. President. Men and women of the Senate, I rise this afternoon to support the good Senator from Penobscot, Senator Murray, on this amendment. As you all know, I had a long career in law enforcement and dealt with every aspect of law enforcement that I believe is possible. I must tell you, when I first learned of this proposal, it was from a teacher who called me and was concerned. I really thought somebody was pulling a joke on me. I honestly did, I didn't think that it was true, what they were proposing to do. Again, I would say that and remind you I do come from law enforcement, I have some idea how many cases are solved by using fingerprints. I really felt that to do this was an awful overreach and awful long shot to catching people who were doing things that they shouldn't be doing with children. I wanted to be fair so I decided I'd learn a little bit about it. I do want to tell you one other thing. I spent a good part of my life on a school board, helping children in a poor district. I have two children. I've got two granddaughters; I've got

a picture of the youngest one right here. Nobody here better tell me that she isn't cute because she is.

Another little story, Mr. President. I have a car phone and yesterday, when we got out of here, I got in my car and I pushed the buttons to see if I had any messages. This little voice came on, they call me "Bumpa", and the little voice said, "Bumpa, at my school we're having a hopathon". Well I'm not familiar with a hopathon, but it was for MS. I learned how her uncle, Skip, had offered her penny a hop, but she kind of felt that she loved her Bumpa so much that maybe there'd be \$5 in store for her from Bumpa. Well, she was right, there was.

At any rate, Mr. President, to give this all a fair evaluation, I decided to see what information I could find. One figure that stuck out of all the papers that come across the desks here, because it was on both sides, was the fact that 1,290 convictions occurred from 1987 to 1994 of people who were applying for first time teaching jobs. That's nationwide. If you do the math, you will find that it's 8/10ths of one person for the State of Maine per year. Well, the good Senator from Penobscot's amendment will cover that, because this is for new hires. It'll take care of that. In a report compiled by the United States Department of Health and Human Services, they're saying that 75% of the perpetrators of child abuse are the parents, we certainly wouldn't fingerprint them, 10% are relatives, 8% are unknown, 5% are non-care givers, less than 1% are care givers, 1/2% are foster parents and less than 3/10% are faculty staff. Which of course isn't all of the people who are going to be fingerprinted because we have bus drivers and cooks and janitors and everybody else who will be fingerprinted if this Bill stands. So I felt, after learning that probably it was a real small amount of people involved here anyway. Then I thought about the imposition of it all on teachers. Initially the complaints that I received were because they had to pay \$49 and I didn't have a lot of sympathy for that. That's how it happens all the time, people in professional life have to pay increased fees and everything. But then some people pointed out that they felt that it was a civil rights violation. As the good Senator from Penobscot said earlier, so eloquently, that he didn't believe it was a civil rights violation and I didn't either, but I do think it's quite an imposition on the people who have taught 20 to 30 years in places to come and in fingerprint them and do criminal background checks on them. For new people, to have to pay the fee, I don't know how it is in some districts, but in our district, we can only pay about \$20,000 a year. That allows them to get the lousiest apartment in town usually and they usually get to drive around in an old car. We're going to make them spend their money. I just didn't think it was right to do that. Lastly, Mr. President, was the cost that was going to cost the state itself. If my figures are right, from what I've learned, it was going to be about \$2 million. I really think that, perhaps, there are other places where we could spend \$2 million. I've got all kinds of suggestions, but I think we can if we really try. I just don't think that this legislation is going to do what people think or want it to do. Thank you very much.

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

Senator **CATHCART:** Thank you Mr. President. Mr. President, men and women of the Senate, I rise in opposition to the Majority Report on this legislation. I want to express my gratitude to the Senator from Penobscot, Senator Murray, for his courage in being a Minority Report of one. I also served on the Education Committee when this legislation was passed. I remember being

a lone voice questioning it and saying, why would we fingerprint all the teachers in the State of Maine just because there may be a few who abuse children. And I was told by other members of the committee that I was mistaken, that nobody was against it, the teachers weren't fighting it, the Department of Education strongly supported it and the State Police supported it. I didn't have the courage to be a minority of one and bring out my own report. I went along with the other 12 members of my committee and I've felt guilty about that. I've had calls from teachers, some of whom are close friends, others are teachers who I have met when I've visited their schools, and I've learned to respect them. They have described what it was like for them to go through this experience. They have felt like criminals. They have felt degraded. One of the teachers, from Lincoln, called me the day that she was fingerprinted. It was a crises call. I did hot-line for a battered women project for 10 years and this was a woman in crises who was describing a feeling of being violated, of being abused. This was a former regional teacher of the year recipient, a wonderful teacher. So, it's a hard question. Is it worth it? Obviously, child abuse is abhorrent to all of us and we need strong laws and we do in this state put good policy in place and put our money where our mouth is to try to protect our children. If this is important enough to be worth it and it's really going to save our children, absolutely, we should be paying for it. We owe it to our children. But, I just cannot believe that it is going to have the effect that the people on the Majority Report think it will. I'm not sure that it will save even one child, from what I've been able to learn. And is it really worth it to put 65,000 people through this kind of experience and require this fingerprinting for them? That's just one group. If we're going to do that, are teachers any more likely to abuse children than little league coaches, Boy Scout leaders, Girl Scout leaders, childcare workers? Most of those people, we all know, are good people who would never abuse a child. In any profession, there are going to be a few bad actors. I don't think this legislation is going to catch all of those people. So I really don't think it is worth it to put these people through this experience that they are describing to me that is so degrading to them. We don't respect our teachers enough. We don't pay them well. The pay is terrible. Most teachers go into the profession because they love children. They want to do good things for children and help them to grow up and live happy and productive lives and be good citizens. Yes, there are a few people who get into it because they are attracted to children and want to abuse them. We should do everything we can to catch those people and prosecute them. Unfortunately, we don't succeed very often, as the recent cases in this state have shown. But I still do not think it is worth it, to put the teachers through this. I've had calls from teachers in the past years, since I've been in public service, that have called me because they couldn't get the state to do anything to protect a child. I remember a call from one teacher's aide and she said, "we're really concerned here at the school and we've reported this several times to DHS, this little girl won't get on the school bus to go home. She clings to the teachers. She cries and she sobs. She's afraid to go home. We know the mother is not at home. The mother is at work. We know that there is a man living in the household and we know that this little child has been abused in the past. Will you please help us, Senator, to get the state to do something to protect this girl?" That's the way I see our teachers. I see them as people trying to protect our children, people who love our children. I want to honor teachers today. I'm going to support the Minority Report that does this for new hires only because I

think that way is a better way that we might protect our children. Thank you, Mr. President.

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

Senator **GOLDTHWAIT:** Thank you Mr. President. Ladies and gentlemen of the Senate, first I want to thank the many people in my district who took a lot of time helping me think through this issue. I want to apologize to them for taking so long to think about this, leaving them suspended as to what I was going to do; how I was going to vote today. But here we are. First, I want to comment on the reasons I don't think are good reasons to be promoting fingerprinting of people who work at schools. The argument that it's unconstitutional, I think that's been overturned or ruled on by courts in several states and I don't think that's an issue. The argument that good teachers will quit their jobs if we do this, that is their decision. They are free to make the choice to refuse to comply with this state law. They know what the consequences are and that's their choice to make that decision. And the fact that we are supposedly accusing all educators of being pedophiles if we do this. We're not accusing anybody of anything at all. I work in a nursery and infants are kidnapped. I wouldn't feel like people were accusing me of being a kidnapper if they said, for the safety of these babies, we want you to be fingerprinted. So, to me, none of those are the issue. The numbers from my district are not the issue, although I will say that out of 302 people that contacted me regarding this issue, of those that said yes, go ahead and fingerprint everybody, there were 3. Of those who said do new hires only, there were 16. Those who said educators and others who work in school should not be fingerprinted under any circumstances, there were 283. And yet, that's not what persuaded me to oppose the pending motion. When you're dealing with the forces of evil, and I would put anyone into that category who would have, in any way, any intention of doing harm to a child. I think you have to weigh the potential danger about what you have to give up to be safe. I would give up a lot for the safety of children, a whole lot. In fact, it gets hard to think about what one wouldn't give up for the safety of children. So, when I look at the possible efficacy of this proposal to fingerprint all school employees, as I understand it, there are two things we would learn from fingerprinting: One is that the person is actually who they say they are and the other is that they have not, or that they have had, a criminal conviction related to child abuse in the past. So those are the two things that we learn from fingerprinting school employees. My concern is that for that gain, for those cases where a person is misrepresenting their identify, or for a person who has lied on their employment application and actually does have a prior criminal conviction. I'm not sure those numbers would be very large. I think the much larger numbers have to do with a different problem. That problem goes something like this. There are probably few of us, unfortunately, who have never heard a rumor in our communities about a teacher who was allegedly posing a risk to children, or some other school employee, not just teachers. Those rumors, unfortunately, float around from time to time in our communities. There are allegations. There are suspicions. We have created a very high bar for how we deal with those rumors, allegations, and suspicions, and that's very appropriate. We don't want to be convicting people on the basis of a rumor. So it is necessary to substantiate those rumors or suspicions. That comes with the possibility of exposing a young victim, an alleged victim, to public scrutiny, public debate. It also

brings the likelihood of costly and lengthy litigation for the school unit. So it is true that in some cases something happens. Some conversation happens somewhere, that causes that school employee to simply resign and go away. Possibly to another school system. And that is a tragedy. Does it mean that our school administrators are not doing their job? Absolutely not. Probably none of you know Howard Colter. He's the superintendent in my area. You're not going to find a better man. If Howard Colter thought that anyone in his school was mistreating a child, he's a man who would be awake at night. He's a man who would have that eat him up until it was resolved. But, unfortunately, the way our legal system is structured, these things are very difficult to substantiate and sometimes that trouble gets passed from one school system to another. We have given our administrators a limited ability to deal with this situation. I don't think we've got it right in this Bill. The Department of Education, the Education Committee, teachers, parents, students, I don't think any of those groups think we have it right. I think every one of those groups is divided about what we should be doing about this. So the question for me is, given that we are willing to allocate resources to the protection of our children and that we have established a pool of resources to do that, are we getting the best benefit for those dollars by this proposal? I'm not sure that we are, because I think we are going after the smaller problem, that's a lot more black and white, rather than after the bigger problem which brings with it a lot more tough questions that we don't know how to resolve yet. So I would urge you to think about allocating our resources to the place where it's likely to do the most good for the most kids. We have to have the courage now to make a course correction. Yes, we got into this in good faith. Yes, we had the consent of the Teachers Association when this all started up until implementation time began. But it's time for a course correction. Just because we've already fingerprinted 1,200 people doesn't mean that if we think it's the wrong approach, not the most efficient approach, not the most effective approach, we should just continue because we already started it. I intend to vote against the pending motion and any other motions that require fingerprinting of school employees. I hope that you will too and that we can use these dollars to solve the bigger problem. Thank you.

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 Penobscot, Senator Mitchell.

Senator **MITCHELL:** Thank you Mr. President. Ladies and gentlemen of the Senate, in listening to the debate here today, I'm really a little concerned about why we're not listening to the people who have worked with this and who have advised us that this is the best way to do it. Our Department of Safety, our Department of Education, our Commissioners of both of these Departments, their administrative staff, our superintendents, our principals; they are all giving us a message that fingerprinting and background checks, the way the law currently exists, we should follow that guidance. The first one to be fingerprinted, I believe was our Commissioner of Education. How many children do we have currently that were all fingerprinted back when they were in grade school? How many of the existing people today have been fingerprinted. What is the big deal of putting your

finger on an ink pad if you can save even one child from being succumbed by a pedophile? Why aren't we listening to the people we are paying a substantial amount of money for their wisdom, for their guidance, on decisions to help us put the right policy into effect. We have a law in effect. Everyone supported that law at that particular time. Now, because it came to us that it was not a funded mandate and we decided to adhere to the requests of our people and fund that mandate, all of a sudden because a few teachers decided well, we don't want to be fingerprinted, they want to turn the whole thing around on a motion. We're not listening to the guidance of our commissioners, our superintendents, and principals who are telling us, "hey, we got the law we need. We don't need to have these people coming in from out of state. We don't need to be one of those minority states that do not have a law for fingerprinting." I think we should think about this strongly before we go against the guidance of all of the people who are most closely related to this, and who made a decision a few years ago, and stick to the Report of Ought to Pass as Amended.

**THE PRESIDENT:** The pending question before the Senate is the motion by the Senator from Androscoggin, Senator Berube to Accept the Majority Ought to Pass as Amended by Committee Amendment "A" (S-691) 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 (#380)**

**YEAS:** Senators: **ABROMSON, AMERO, LAFOUNTAIN, LONGLEY, MILLS, MITCHELL, O'GARA, SMALL**

**NAYS:** Senators: **BENNETT, BERUBE, CAREY, CASSIDY, CATHCART, DAGGETT, DAVIS, DOUGLASS, FERGUSON, GOLDTHWAIT, HARRIMAN, KILKELLY, KONTOS, LIBBY, MICHAUD, MURRAY, NUTTING, PARADIS, PENDLETON, PINGREE, RAND, RUHLIN, TREAT, THE PRESIDENT - MARK W. LAWRENCE**

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

8 Senators having voted in the affirmative and 24 Senators having voted in the negative, with 3 Senators being absent, the motion by Senator **BERUBE** of Androscoggin to **ACCEPT** Report "A", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-691), FAILED.**

Senator **MURRAY** of Penobscot moved the Senate **ACCEPT** Report "B", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "B" (S-692).**

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

Senator **SMALL:** Thank you Mr. President. Men and women of the Senate, since that amendment is not able to be carried out by the FBI, or at least a portion of that, should we table so that we could amend it in second reading. There are portions of that that

are not applicable to the FBI regulations for fingerprinting and I just wanted to correct that before the Bill gets too far.

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

Senator **MURRAY:** Thank you Mr. President. Men and women of the Senate, the issue, I believe, the good Senator from Sagadahoc, Senator Small, raises is one that was addressed by the policy analysts in drafting this question of allowing the local school administrative districts to request the department to undertake these checks. They undertook research involving the federal rules and regulations. He was persuaded that this approach is one that is authorized under federal law. When the issue was raised with me, again, today, I certainly suggested that if, in fact, those questions exist to point them out to me. I'd be happy to look at them. Tell me why they wouldn't work. It hasn't been suggested to me or demonstrated to me that that isn't capable of being done. I suggest we move forward with this process and if there is information that can be clarified, we can do that. But as far as the analysts and the support we have from that professional staff, that's a question they addressed and were comfortable with.

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

Senator **SMALL:** Mr. President, I did not make the motion to table. So, I don't know whether that's what the Roll Call is in answer to.

**THE PRESIDENT:** The pending question is the motion of the Senator from Penobscot, Senator Murray, to accept Report "B", Ought to Pass as Amended by Committee Amendment B.

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

Senator **LIBBY:** Thank you Mr. President. Men and women of the Senate, a question through the Chair to anyone who could respond please. I believe that this amendment, that's in front of us, continues the confidentiality clause that requires the state to hang on to the information that they receive about the criminal background check and that information would not be forwarded to the school districts. I want to know if I'm correct in making that statement.

**THE PRESIDENT:** The Senator from York, Senator Libby, poses a question through the Chair to anyone who may be able to answer. The Chair recognizes the Senator from Penobscot, Senator Murray.

Senator **MURRAY:** Thank you Mr. President. Men and women of the Senate, your understanding is correct. The information on the national background check, that would be flowing to the department, would be confidential and remain confidential. The information that a local district can now get without the fingerprinting, which is limited to state information, is information

they still could obtain themselves. But the information they'd be gaining from the fingerprint and the national background check would remain confidential.

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

Senator **LIBBY:** Thank you Mr. President. Men and women of the Senate, this is, I think, a better alternative than the first one that we looked at. That's why I voted the way I did. I'm wondering if the questions of confidentiality are the same as in the prior Report "A" that we just looked at? For example, if fingerprinting is conducted for these new employees, or potential employees, who are trying to be certified, what is it that we should think about in making the decision to prevent that information from being forwarded to a superintendent, for example, or a school board, as a part of that employee's file. I'm wondering why we need the confidentiality provision? If we're not making this retroactive, which I think that probably played a role in the last debate, I don't know. But if we're just from here on, from this point on, going to conduct fingerprinting for brand new people who are applying to get their certification, then why not take the next step and put the information that we find from that into the employee file? I wonder if anyone can respond to that?

**THE PRESIDENT:** The Senator from York, Senator Libby, poses a question through the Chair to anyone who may be able to answer. The Chair recognizes the Senator from Penobscot, Senator Murray.

Senator **MURRAY:** Thank you Mr. President. Again, men and women of the Senate, I think the reason why we don't need to do that, in that circumstance, is because if someone undergoes the background check under these circumstances and the information comes back that there is a criminal conviction, that person would then be susceptible, under current law, to have their certification revoked for one of these convictions. If, in fact, that happens, that's far more effective than the information being passed along or not passed along because they wouldn't be able to teach anyway.

**THE PRESIDENT:** The Senator from York, Senator Libby, requests unanimous consent of the Senate to address the Senate a third time on this matter. The Senator may proceed.

Senator **LIBBY:** Thank you Mr. President. Men and women of the Senate, I'm just trying to understand this in my own mind. So, for example, I guess, according to the last response to my question, what you're saying is that there are criminal convictions that would, at least by my understanding of this, not prevent somebody from being re-certified. And that's what I'm talking about, Mr. President. I'm wondering if there are convictions that will not prevent an applicant from being re-certified? If we're going to start from this day forward, why not share that information with the school system because, maybe, there's a conviction that is not a criminal conviction that would have an impact on the certification, but maybe it would play a role in the hiring decision. I'm not sure of that. If some of the legal scholars could help me with that, Mr. President. I've always been uncomfortable with this confidentiality provision anyway, but now, at this point, since we've gotten to this point where we've decided we're only going to go with possibly fingerprinting new hires, I'm

just wondering why wouldn't that information be shared with the school district, given the fact that it depends on the conviction.

**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 try to address the question, I think. On both the Majority and Minority Reports, current law spells out the type of conviction that will be relevant for the purposes of this kind of evaluation, whether it be for purposes of renewal, issuance, or revocation of a certification or approval. It spells it out fairly clearly in both reports and in this amendment. I think that's appropriate. I think it would be unusual to require information that falls outside of that type of a conviction from being shared with anybody else. If its not even relevant to the issue of certification, why would we be interested in passing the information along to anyone else? I think the Bill, in both versions; quite frankly, focuses appropriately on the type of conviction that is relevant and appropriate for consideration and that ought to be all we're all concerned about, in my opinion.

**THE PRESIDENT:** The pending question before the Senate is the motion by the Senator from Senator Murray of Penobscot to Accept Report "B", Ought to Pass as Amended by Committee Amendment "B" (S-692). 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 (#381)**

**YEAS:** Senators: ABROMSON, AMERO, BENNETT, BERUBE, CAREY, CASSIDY, CATHCART, DAGGETT, DAVIS, DOUGLASS, FERGUSON, HARRIMAN, KILKELLY, KONTOS, LAFOUNTAIN, LIBBY, MILLS, MURRAY, NUTTING, O'GARA, PARADIS, PENDLETON, PINGREE, RUHLIN, THE PRESIDENT - MARK W. LAWRENCE

**NAYS:** Senators: GOLDTHWAIT, LONGLEY, MICHAUD, MITCHELL, RAND, SMALL, TREAT

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

25 Senators having voted in the affirmative and 7 Senators having voted in the negative, with 3 Senators being absent, the motion by Senator **MURRAY** of Penobscot to **ACCEPT** Report "B", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "B" (S-692), PREVAILED.**

**READ ONCE.**

Committee Amendment "B" (S-692) **READ** and **ADOPTED.**

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "B" (S-692).**

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

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Off Record Remarks

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

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

**PAPERS FROM THE HOUSE**

**Non-Concurrent Matter**

SENATE REPORTS - from the Committee on **AGRICULTURE, CONSERVATION AND FORESTRY** on Bill "An Act to Prohibit Hunting Animals in Enclosed Areas"

S.P. 457 L.D. 1332  
(S "B" S-681 to C "A" S-655)

Majority - **Ought to Pass as Amended by Committee Amendment "A" (S-655)** (7 members)

Minority - **Ought to Pass as Amended by Committee Amendment "B" (S-656)** (6 members)

In Senate, April 8, 2000, the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-655)** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-655) AS AMENDED BY SENATE AMENDMENT "B" (S-681)** thereto.

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

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

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**Non-Concurrent Matter**

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

S.P. 1042 L.D. 2630  
(C "A" S-605)

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

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

In Senate, April 8, 2000, the Minority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-605)**.

Comes from the House, the Majority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED**, in **NON-CONCURRENCE**.

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

Senator **BENNETT** of Oxford moved the Senate **RECEDE** and **CONCUR**.

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

Senator **RUHLIN:** Thank you Mr. President. Ladies and gentlemen of the Senate, I hope you'll please vote to defeat the recede and concur motion and move on to support your action of a couple of days ago, that now seems like a month ago. We won't go back into the details. I think we all remember the information well enough. This is Maine's official representative to the Bicentennial Celebration. I hope you will support this. To do that we must defeat, first of all, the recede and concur motion, then go on to insist. Thank you.

The Chair ordered a Division. 9 Senators having voted in the affirmative and 18 Senators having voted in the negative, the motion by Senator **BENNETT** of Oxford to **RECEDE** and **CONCUR**, **FAILED**.

On motion by Senator **RUHLIN** of Penobscot, the Senate **INSISTED** and **ASKED FOR A COMMITTEE OF CONFERENCE**.

Sent down for concurrence.

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

#### **PAPERS FROM THE HOUSE**

##### **Non-Concurrent Matter**

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

S.P. 1010 L.D. 2578  
(C "B" S-659)

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

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

In Senate, April 8, 2000, the Minority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "B" (S-659)** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "B" (S-659)**.

Comes from the House, the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-658)** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-658)**, in **NON-CONCURRENCE**.

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

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

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

#### **ENACTORS**

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

##### **Emergency Measure**

An Act to Amend the Control of the Revenue Generated by Games of Chance at the Agricultural Fairs

H.P. 1756 L.D. 2462  
(C "A" H-1045; S "A" S-647)

This being an Emergency Measure and having received the affirmative vote of 28 Members of the Senate, with no Senators having voted in the negative, and 28 being more than two-thirds of the entire elected Membership of the Senate, was **PASSED TO BE ENACTED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

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##### **Emergency Measure**

An Act Concerning Technical Changes to the Tax Laws

S.P. 981 L.D. 2524  
(S "A" S-652 to C "A" S-641)

This being an Emergency Measure and having received the affirmative vote of 28 Members of the Senate, with no Senators having voted in the negative, and 28 being more than two-thirds of the entire elected Membership of the Senate, was **PASSED TO BE ENACTED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

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**Emergency Measure**

An Act to Prevent the Spread of Invasive Aquatic Plants  
H.P. 1843 L.D. 2581  
(H "B" H-1105 to C "A" H-970)

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

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**Emergency Measure**

An Act Concerning Certain Contracts Affected by Electric Industry Restructuring  
H.P. 1937 L.D. 2680

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

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**Emergency Resolve**

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

This being an Emergency Measure and having received the affirmative vote of 28 Members of the Senate, with no Senators having voted in the negative, and 28 being more than two-thirds of the entire elected Membership of the Senate, was **FINALLY PASSED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

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**Emergency Resolve**

Resolve, Regarding Legislative Review of Portions of Sections 61, 62, 63, 68 and 73 of 10-49, Chapter 5, Bureau of Elder and Adult Services Policy Manual, a Major Substantive Rule of the Department of Human Services  
H.P. 1913 L.D. 2659  
(C "A" H-1099)

This being an Emergency Measure and having received the affirmative vote of 28 Members of the Senate, with no Senators having voted in the negative, and 28 being more than two-thirds of the entire elected Membership of the Senate, was **FINALLY PASSED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

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**Mandate**

An Act to Clarify the Process for a County Bond Referendum Election  
H.P. 1706 L.D. 2412  
(H "A" H-889 to C "A" H-805)

This being a Mandate, in accordance with the provisions of Section 21 of Article IX of the Constitution, having received the affirmative vote of 29 Members of the Senate, with no Senators having voted in the negative, and 29 being more than two-thirds of the entire elected Membership of the Senate, was **PASSED TO BE ENACTED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

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**Acts**

An Act Relating to MTBE  
H.P. 11 L.D. 21  
(C "A" H-1067)

An Act to Amend the Laws Governing Municipal Elections  
S.P. 878 L.D. 2293  
(H "A" H-1104 to C "A" S-552)

An Act to Protect the Health and Well-being of a Nursing Infant of Separated or Divorcing Parents  
S.P. 888 L.D. 2307  
(C "A" S-661)

An Act to Amend Investment-related Provisions of the Maine Insurance Code  
S.P. 974 L.D. 2520  
(C "A" S-663)

An Act to Extend the Use of Emotional Disability as an Indicator in the Identification of Exceptional Children  
H.P. 1858 L.D. 2593

An Act Relating to Reporting Requirements for Political Action Committees on the Flexibility of the Commission on Governmental Ethics and Election Practices to Assess Penalties  
S.P. 1070 L.D. 2663  
(C "A" S-666)

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

An Act to Establish a Patient's Bill of Rights

H.P. 543 L.D. 750  
(C "A" H-1061)

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

An Act to Amend and Clarify the Powers and Duties of the Lake Arrowhead Community, Incorporated

S.P. 1061 L.D. 2655  
(H "A" H-1090)

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

An Act to Improve School Safety and Learning Environments

S.P. 298 L.D. 870  
(H "A" H-1102 to C "A" S-657)

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

An Act to Implement the Recommendations of the Commission to Consider the Enhancement of Fire Protection Services Throughout the State

H.P. 1940 L.D. 2685

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

An Act to Ensure the Provision of Long-term Care Services

S.P. 447 L.D. 1322  
(C "A" S-678)

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

An Act Related to Sales Tax on Vehicles Leased and Removed from the State and Watercraft Used in Interstate Commerce

S.P. 1082 L.D. 2686

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

An Act to Provide Services for Children in Need of Supervision

H.P. 1138 L.D. 1623  
(C "A" H-1103)

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

**Resolve**

Resolve, to Establish a Commission to Study Kindergarten-to-grade-12 Educator Recruitment and Retention

H.P. 1658 L.D. 2327  
(C "A" H-1097)

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

An Act to Establish a Comprehensive Electronic Claims-filing System for the Medicaid Program

S.P. 929 L.D. 2379  
(C "A" S-679)

On motion by Senator **MICHAUD** 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:

**REPORTS OF COMMITTEES**

**House**

**Divided Report**

The Majority of the Committee on **AGRICULTURE, CONSERVATION AND FORESTRY** on Bill "An Act Regarding Forest Practices"

I.B. 5 L.D. 2594

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

Signed:

An Act to Encourage Energy Efficiency in Government Facilities

H.P. 1740 L.D. 2446  
(C "A" H-1098)

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

Senators:

NUTTING of Androscoggin  
KILKELLY of Lincoln  
KIEFFER of Aroostook

Representatives:

PIEH of Bremen  
CROSS of Dover-Foxcroft  
GILLIS of Danforth  
GAGNE of Buckfield  
WATSON of Farmingdale  
GOOLEY of Farmington  
FOSTER of Gray  
CARR of Lincoln  
COWGER of Hallowell

The Minority of the same Committee on the same subject reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-1108)**.

Signed:

Representative:

VOLENIK of Brooklin

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

Reports **READ**.

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

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

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

**REPORTS OF COMMITTEES**

**House**

**Divided Report**

The Majority of the Committee on **LABOR** on Bill "An Act to Establish Consistent Requirements in Maine State Retirement System Plans for Minimum Creditable Service for Eligibility to Receive Retirement Benefits"

H.P. 1878 L.D. 2614

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-1110)**.

Signed:

Senators:

DOUGLASS of Androscoggin  
LaFOUNTAIN of York

MILLS of Somerset

Representatives:

HATCH of Skowhegan  
MUSE of South Portland  
GOODWIN of Pembroke  
FRECHETTE of Biddeford  
MATTHEWS of Winslow  
SAMSON of Jay  
DAVIS of Falmouth  
MacDOUGALL of North Berwick  
TREADWELL of Carmel

The Minority of the same Committee on the same subject reported that the same **Ought to Pass as Amended by Committee Amendment "B" (H-1111)**.

Signed:

Representative:

MACK of Standish

Comes from the House with the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1110)** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1110)**.

Reports **READ**.

On motion by Senator **DOUGLASS** of Androscoggin, the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1110)** Report **ACCEPTED**, in concurrence.

**READ ONCE.**

Committee Amendment "A" (H-1110) **READ** and **ADOPTED**, in concurrence.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1110)**, in concurrence.

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

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

**REPORTS OF COMMITTEES**

**House**

**Ought to Pass As Amended**

The Committee on **JUDICIARY** on Bill "An Act to Adopt the Model Revised Article 9 Secured Transactions"  
H.P. 1601 L.D. 2245

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (H-1109).**

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1109).**

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

**READ ONCE.**

Committee Amendment "A" (H-1109) **READ** and **ADOPTED**, in concurrence.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1109)**, in concurrence.

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The Committee on **NATURAL RESOURCES** on Bill "An Act to Improve Public Water Supply Protection"  
H.P. 1862 L.D. 2597

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (H-1106).**

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1106).**

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

**READ ONCE.**

Committee Amendment "A" (H-1106) **READ** and **ADOPTED**, in concurrence.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1106)**, in concurrence.

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

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Senate at Ease.

Senate called to order by the President.

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#### ORDERS OF THE DAY

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

Bill "An Act to Improve Oversight and Accountability of Student Loan Programs Funded with an Allocation of the State Ceiling on Private Activity Tax-exempt Bonds"

S.P. 1079 L.D. 2684

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

Pending - **PASSAGE TO BE ENGROSSED**

(In Senate, April 8, 2000, on motion by Senator **KONTOS** of Cumberland, the Majority **OUGHT TO PASS** Report **READ** and **ACCEPTED. RULES SUSPENDED, READ TWICE.**)

On motion by Senator **BENNETT** of Oxford, Senate Amendment "A" (S-694) **READ.**

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

Senator **BENNETT:** Thank you, Mr. President. Fellow members of the Senate, I present this amendment because I have concerns about the Majority Report on this Bill as we have adopted it. This Bill appears to be on a fast track and, if so, so be it. But I wanted to pause and offer just a slightly modified course before we rush down a path that I think will be fraught with peril. We are discussing, here with this Bill and with this amendment, the corporate charter of an organization called MELMAC. We've had a debate on this and I won't prolong that except to say this; MELMAC, as you know, is a private non-profit organization, which in the past has been called upon to undertake good work, with the approbation and assistance of the state. Not unlike when we call upon other non-state agencies to do work that we believe to be meritable. In this case it is to provide educational loans to students and their families at as low a rate as possible. The Bill, as it stands before us, would have the state empowered to put forward 4 members of the 7 member MELMAC Board, which I think is a matter of great concern. I understand the arguments, and they've been well hashed out in the State House. But for me, if we are to contemplate taking control, state control, effectively of a board of a not-for-profit organization, we ought to pause before we do so. In my view, it would be more sensible to do that only if we are going to be giving this organization further responsibility for the use of state bond cap monies. This organization, in the past, has received state bond cap monies without condition and they may or they may not in the future. I believe that the most sensible path is to have a minority number of members appointed by the state to the MELMAC Board and if, in the future, they do take state bond cap money, then the state has a viable and reasonable purpose in asking for a condition of that. In this case, I present the notion that if MELMAC does in the future receive state bond cap money, that we would claim, as a state, the fourth member, the controlling member, of the MELMAC Board. That's what this proposal before you does. Other issues I dealt with lately; quasi-state agencies and non-for-profit boards. One that springs to mind is the Maine State Turnpike Authority, who has gone through a lot of efforts at accountability through the legislative branch. That is a state agency. We appoint the board members to that agency. But when I, as a legislator, sought additional accountability and oversight with some of their practices, I was

told, by members of the Turnpike Authority Board, as well as by the Executive Director of the Maine Turnpike Authority, as well as by their various counsel, that they employ, including one who is a lobbyist here and apparently has a different view with respect to MELMAC that, in fact, we shouldn't be getting involved in these sorts of issues because we could disrupt the covenants that bondholders have with the Maine Turnpike Authority. I would submit to you that we offer the same peril when we start changing the rules of the game with respect to MELMAC. It currently, I understand, has about a \$400 million debt that it's servicing. That's a significant chunk of change for bondholders and they would be justifiably concerned, as the MTA bondholders and others would be, if we, in fact, start meddling too far into their work. I think that when you start talking about taking control, state control, by getting a majority of the board members of a not-for-profit charitable organization in the State of Maine, we enter into some very dangerous waters. For that reason, I offer this amendment with the hope that this remaining issue, out of the many that the Business and Economic Development Committee worked hard to come to terms on, that this remaining issue will be resolved amicably through, what I consider to be, a sensible alternative and for that reason I present this amendment and ask for your support. Thank you.

Senator **KONTOS** of Cumberland moved Senate Amendment "A" (S-694) be **INDEFINITELY POSTPONED**.

The Chair ordered a Division.

On motion by Senator **BENNETT** of Oxford, 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 (#382)**

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

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

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

20 Senators having voted in the affirmative and 10 Senators having voted in the negative, with 5 Senators being absent, the motion by Senator **KONTOS** of Cumberland to **INDEFINITELY POSTPONE** Senate Amendment "A" (S-694), **PREVAILED**.

**PASSED TO BE ENGROSSED.**

Sent down for concurrence.

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

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

**COMMUNICATIONS**

The Following Communication: S.C. 642

**STATE OF MAINE  
ONE HUNDRED AND NINETEENTH LEGISLATURE  
COMMITTEE ON TAXATION**

April 11, 2000

Honorable Mark W. Lawrence, President of the Senate  
Honorable G. Steven Rowe, Speaker of the House  
119th Maine Legislature  
State House  
Augusta, Maine 04333

Dear President Lawrence and Speaker Rowe:

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

L.D. 2426 An Act to Institute Current Use Taxation on all Agricultural Land

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

Sincerely,

S/Sen. Richard P. Ruhlin  
Senate Chair

S/Rep. Kenneth T. Gagnon  
House Chair

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

Senate at Ease.

Senate called to order by the President.

Off Record Remarks

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

Senator **BENNETT** of Oxford was granted unanimous consent to address the Senate off the Record.

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On motion by Senator **BENNETT** of Oxford, **RECESSED** until the sound of the bell.

After Recess

Senate called to order by the President.

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Senate at Ease.

Senate called to order by the President.

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

#### SENATE PAPERS

Bill "An Act to Establish Clean-up Standards for Decommissioning Nuclear Facilities"

S.P. 1084 L.D. 2688

Sponsored by Senator **KILKELLY** of Lincoln.  
Cosponsored by Representative **RINES** of Wiscasset and Senator: **CAREY** of Kennebec, Representatives: **CAMERON** of Rumford, **HONEY** of Boothbay, **MAYO** of Bath, **PIEH** of Bremen, **TRAHAN** of Waldoboro, **TRIPP** of Topsham.  
Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

**REFERRED** to the Committee on **NATURAL RESOURCES** and ordered printed.

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

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#### ORDERS OF THE DAY

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

Bill "An Act to Establish a Method of Determining Employer Contributions to the Unemployment Compensation Trust Fund"  
S.P. 1019 L.D. 2588

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

Pending - motion by Senator **MILLS** of Somerset to **ADOPT SENATE AMENDMENT "A" (S-677) TO COMMITTEE AMENDMENT "A" (S-650)** (Roll Call Ordered)

(In Senate, April 8, 2000, on motion by Senator **RAND** of Cumberland, **RECONSIDERED** whereby the Senate **FAILED** to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report. Subsequently, the Majority **OUGHT TO PASS AS AMENDED** Report **ACCEPTED**. **READ ONCE**. Committee Amendment "A" (S-650) **READ** and **ADOPTED**. Subsequently, on motion by Senator **MILLS** of Somerset, **RECONSIDERED ADOPTION** of Committee Amendment "A" (S-650). On further motion by same Senator, Senate Amendment "A" (S-677) to Committee Amendment "A" (S-650) **READ**.)

Senator **MILLS** of Somerset requested and received leave of the Senate to withdraw Senate Amendment "A" (S-677) to Committee Amendment "A" (S-650).

On motion by Senator **PINGREE** of Knox, **TABLED** until Later in Today's Session, pending **ADOPTION** of Committee Amendment "A" (S-650).

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

#### PAPERS FROM THE HOUSE

##### Non-Concurrent Matter

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

S.P. 1005 L.D. 2573  
(S "A" S-653 to C "A" S-611)

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

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

In Senate, April 8, 2000, the Minority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-611) AS AMENDED BY SENATE AMENDMENT "A" (S-653)** thereto.

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

On motion by Senator **MURRAY** of Penobscot, the Senate **INSISTED** and **ASKED FOR A COMMITTEE OF CONFERENCE**.

Sent down for concurrence.

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##### Non-Concurrent Matter

Resolve, to Create a Commission to Study and Establish Moral Policies on Investments and Purchasing by the State

H.P. 1755 L.D. 2461  
(S "C" S-690 to C "A" H-870)

In Senate, April 10, 2000, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-870) AS AMENDED BY SENATE AMENDMENT "C" (S-690)** thereto, in **NON-CONCURRENCE**.

Comes from the House, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-870) AS AMENDED BY SENATE AMENDMENT "C" (S-690) AND HOUSE AMENDMENT "A" (H-954)** thereto, in **NON-CONCURRENCE**.

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

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

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#### ORDERS OF THE DAY

The Chair laid before the Senate the following Tabled and Later (4/5/00) Assigned matter:

SENATE REPORTS - from the Committee on **TAXATION** on Bill "An Act to Improve Standards for Public Assistance to Maine Employers"

S.P. 967 L.D. 2516

Majority - **Ought to Pass as Amended by Committee Amendment "A" (S-637)** (9 members)

Minority - **Ought Not to Pass** (4 members)

Tabled - April 5, 2000, by Senator **RUHLIN** of Penobscot.

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

(In Senate, April 5, 2000, Reports **READ**.)

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

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

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

**THE PRESIDENT:** The Senator may pose her question.

Senator **GOLDTHWAIT:** Thank you. I thought I understood, at one point, that the health insurance piece of this had come out, but I believe I'm looking at it in the amendment. I wonder if anybody could explain to me how that piece fits into the Bill?

**THE PRESIDENT:** 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 Penobscot, Senator Ruhlín.

Senator **RUHLIN:** Thank you Mr. President. We do not amend committee reports until the committee report is before us. It would be at that time that we would amend and make appropriate changes. I hope that answers the question.

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

Senator **CAREY:** Thank you Mr. President. I, like the Senator from Hancock, am in a quandary. If we don't start getting some answers pretty soon I'll move indefinite postponement of this paper.

**THE PRESIDENT:** The Chair would answer. The Chair understands this is a question of procedure. The Chair would answer that such an amendment to take that provision would not be appropriately before the body until the Committee Report is accepted. The Committee Amendment is read and then an amendment could be offered to strike out the Committee Amendment. The Chair recognizes the Senator from Know, Senator Pingree.

Senator **PINGREE:** Thank you Mr. President. I would just ask everyone's indulgence in accepting the Committee Report so that we can go on to discuss the Committee Amendment. I think there are a lot of things in there that would be of interest to the members of the Senate. I would be happy to discuss them more fully if we get a chance to discuss the Committee Amendment. So I would ask for your support in acceptance of the report.

On motion by Senator **LIBBY** of York, 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 Androscoggin, Senator Douglass.

Senator **DOUGLASS:** Mr. President, I think it's important that we remember when we give business incentives to our corporations or businesses in Maine that we are benefiting them with money that is the people's money, taxpayers money. This measure goes a long way toward making sure that our contract with our people is honored. Our contract that we will, in working toward encouraging business, that we will also be sure that the businesses are doing the best they can for their employees. This is an important part of our social fabric and I hope that you will pass this measure. This measure provides for a living wage; that is one that a family can live on. One of our main functions in the State of Maine, and in society at large, is to raise children. It's an important social function and the living wage helps us to be sure that people can do that. I could go on with further details, but I think the important issue is to remember that as we have matured as a society more and more we've demanded accountability. We've demanded accountability in schools, measuring our students with the Maine Educational Assessment Test. We have demanded accountability in a number of other areas. It's time for us to pay some attention to the incentives that

we have created to encourage business, that I'm so glad of. I want to be sure that we do encourage business. But we want to be sure that it's the right kind of business. So it's time for us to make sure that we hold employers accountable for the kinds of jobs that they provide. For that reason, I hope that you'll accept the Majority Ought to Pass Report.

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

Senator **RUHLIN:** Thank you Mr. President. Ladies and gentlemen of the Senate, I hope you will go along with this motion to accept the Majority Ought to Pass as Amended Report. Now, this particular Bill came out of the Taxation Committee after a considerable amount of discussion, negotiations, and attempts to craft a bipartisan package. What has happened since that time is there have been major substantive changes to the Bill that, frankly, cannot be discussed until you get by the report part of the process, except in the report. So we purposely are holding back from a discussion of the Bill because the amendment to be offered is, what I call, major and substantive to the Bill. I think to get into major lengthy debate that this point, without having that amendment before you, would wasteful of the Senate's time. I therefore would ask that you proceed with this Bill to the point where that substantive amendment can be discussed and debated fully in the Senate. 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, this is a Bill on which I have received more mail than many others this session. It's been characterized by most employers as one of the major anti-business assaults to come before this legislature. Despite the fact that there may be amendments coming and all, I think that if this Bill passes in any form it's sending a wrong message to the small businesses in the State of Maine. For that reason, I would move that this item and all its accompanying papers be indefinitely postponed.

Senator **AMERO** of Cumberland moved the Bill and accompanying papers be **INDEFINITELY POSTPONED.**

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

Senator **LIBBY:** Thank you Mr. President. Women and men of the Senate, I hope that you'll support the motion in front of us. There are a lot of reasons for it. We're late in the session. We're looking at a huge policy change, whether it's this piece of legislation in front of us or whatever may come down the road here. For those of us who were here back when the economy was sputtering and we supported programs like BETR, for example, and we have fought for them all the way through and seen the economy turn around, these are the kinds of Bills that make us feel like we are assaulted upon. I have a hard time understanding why these kinds of Bills come to us. If the economy were the same as it was in '94 and '95, when we started making the changes we made, these Bills wouldn't be here. So why should they be here now? We have brought, I think, our economy a long way in the last 4 years. We, both parties, Republicans and Democrats, and an Independent Governor, and an Republican Governor before that, all worked

hard to get these programs in place and now people want to tinker with them. Small tinkering, a lot of tinkering like what's in front of us now, I think has the kind of impact that sends a message to business that says, look, we're going to continue to change these laws. You don't know what to expect, but we want you to come to Maine anyway. So, Mr. President, I hope that you will join me in supporting the indefinite postponement of this Bill.

**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 you will oppose the current motion. What we're talking about here is accountability for taxpayer dollars. Accountability for taxpayer dollars. In the past, there have been subsidies that have been passed out without any accountability attached. I think that Maine citizens want to know what they are subsidizing. This is a very modest proposal. I know it will be described further later. But it is not the shocking proposal that it's beginning to sound like. I can remember a few years ago, when we worked on the Bath Iron Works proposal. The accountability in that Bill was new. It was agreed to and it was a real change in the way the state had provided tax incentives. There were some tradeoffs. There was a recognition from the company that, yes, they had to follow through on an obligation. And it was a good agreement. I think that the accountability for tax dollars, in that agreement, was precedent setting and set a good standard for a Bill such as this. So I encourage you to oppose the motion on the floor.

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

Senator **PINGREE:** Thank you Mr. President. Men and women of the Senate, I do hope we get to the position where we can talk a little bit more in depth about a proposed amendment to this Bill. I think there have been some suggestions that have been made that would potentially make this better. But I do want to talk, in the big picture, about the philosophy behind this Bill. I guess it was the good Senator from Cumberland, Senator Amero, who said this was an anti-business assault and an attack on small businesses in the State of Maine. Well, I would be glad to ask the question of any member of the chamber, if, when you owned your small business in the State of Maine, would you have felt this was an attack? I'd like to tell you from my own experience, as a small business owner for 12 years before I came to this chamber. In those days, I have to tell you, I didn't understand anything about these Bills. I didn't know that there are companies receiving these kinds of benefits. If you had come to me and said, how do you feel, as someone who provides your employees with health insurance, who provides your employees with something slightly above, or as much as above, the minimum wage you can afford to go, a wage that would have qualified under here. How do you feel about tax dollars subsidizing companies who don't pay those wages? Who, in fact, have employees who are qualified for Medicaid, or perhaps for welfare benefits, or for Food Stamps. How do you feel about your tax dollars, as a small business owner, going to subsidize other companies who don't pay a living wage? My feeling is in the State of Maine, in terms of economic development, any job is welcome in the state as long as long they comply with the laws and pay minimum wage. But when you're asking me if we're going to go beyond that and take my tax dollars, as a citizen or a



small business owner, to subsidize those companies, then I think it is very reasonable to have a few standards. This Bill has some very minimal wage standards. I think that is totally appropriate. I think that it is good business. When I ran for the legislature in 1992, everybody said, "the legislature ought to act more like a business." Well, I can tell you that whether you are a CEO of a major company or a small company you need to know how your money is invested. You need to know what your return on investment is. And if you're investing the state's tax dollars in companies that aren't paying a living wage and, in fact, in companies that we are having to subsidize beyond that with our tax dollars, I don't think that's good business. I don't think we should be doing it. For that reason, I hope you will support this and for many other reasons if you'd like to hear them, I'll give you more should we keep debating.

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

Senator **LIBBY:** Thank you Mr. President. Women and men of the Senate, I'd like to hear a lot more reasons because what happens when you lump together a whole bunch of different programs, Mr. President, is that you miss the whole point of tax policy. You miss the whole point by taking TIF and BETR and all of these other programs and lumping them together. You lose the understanding of what each of them stand for. I'm not going to talk too much about TIF because, in some ways, I agree with the previous speaker who talked about subsidizing businesses. But when it comes to the BETR program, obviously somebody in this body, I would like to see think twice about calling it a subsidy. Because the BETR program is on machinery and equipment in the State of Maine and when we put the Bill in, and I went in front of the Taxation Committee several years ago and supported, it was a Governor's Bill. When we put that Bill in, we were 1 of only 14 states in the United States that even assessed a tax on machinery and equipment. The fact that we assessed that tax is the onerous part of all of this, because for every single machine you've got out there, you've got an employee running it and they're making a good wage. We understood that. That is why we tried to do what we did. Could we repeal the property tax, the personal property tax on machinery and equipment? The answer is no, because we had a mandate law that required us to get two-thirds, and do all of these other crazy things, and we just couldn't. We didn't have the votes. We didn't have the willpower and the backbone to repeal an onerous tax. That's what we should have done at the time. So ever since then people, some people, who have a different philosophy than mine obviously, have talked about the tale of the BETR program, the growing cost of the BETR program. That's because it's a rebate program. And it is not a subsidy in any way and it should not be included in a Bill like this. If you take some of these other business subsidies, if you want to call them that, like a TIF, so then I'm going to sit down and listen and agree. But when you include BETR in my opinion, there's just no understanding of what the program stands for, how we rate against other states, how we rate against southern states that not only don't have this onerous tax on machinery and equipment, but they also have lower energy costs and lower all kinds of things. We just can't compete if we're going to chip away at these great programs. This program is one heck of a great program. So for us to be always keeping business having to have a watchful eye about what the legislature does next to chip away at these programs, it hurts us because it sends the wrong message about tax policy. It sends

the wrong message. We need to be consistent. If you wanted to take one of these, TIF for example, and attack that because it is a subsidy, and we start talking about the philosophy behind that, I would understand. But when you start looking at all of this, my goodness gracious. We had a Bill similar to this in my Natural Resources Committee, and it frightens me to throw together tax policy from 5, or 6, or 7 different programs and call it all the same. I'm sure that it must frighten the Taxation Committee too. I know that there's another proposal down the line, but I just don't think that this is the year to do it. I think we ought to, first of all, separate these things out, talk about the philosophy behind each of them, one at a time, and then, you know, if you have to tinker with it I guess you have to. But I just don't understand attaching all of these conditions on a program on a tax that shouldn't even be, I think, applied in this state. 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 did want to respond a little bit to some of the commentary that we've already heard tonight. The comment was made that tacking on, as it was put, these sorts of standards sort of misses the point of our tax programs. I guess I would hope that our tax programs, that are assisting businesses, stand for more than just profits for those businesses. I would sort of assume and hope that it stands also for helping those employees that work at those businesses and, at a very minimum, making sure that employees in those businesses earn a living wage. A living wage actually is not much money. In this Bill it varies, depending on the county. It averages \$8.17 per hour statewide. It's above the minimum, but it is not really that much money. It seems to me that this is the kind of bear minimum that we can request of companies that are receiving many millions of dollars. My understanding is that the tax provisions that this would cover was about \$42 million in 1998. And that's a cost that has been increasing every year. Again, this only applies to those companies that are receiving particularly large amounts of money and the Bill sets it at \$10,000. It is an accountability measure. When I'm asked about how we're spending the taxpayer dollars and people ask me how are we dividing up the pie, what's important? They want accountability for the dollars that we are putting into corporate tax breaks. I think many people are comfortable with putting huge amounts of state dollars into that part of the budget, as long as they see some return for those dollars. Certainly one of the returns that we might ask for, that seems pretty basic, is to make sure that the people who work in those companies earn some sort of minimum level of pay that can pay the bills. Now, \$8.17 an hour, we all know actually, really doesn't pay the bills entirely if you have a couple of children, but it is a level that is higher than minimum wage and it seems to me that it's the bear minimum that we can ask of these companies. There are 36 states that have set standards on quality of the jobs that are provided by companies that receive these sorts of tax breaks and it makes sense to me that Maine join those states. I don't know if any of those states are in the south, but 36 out of 50 is actually more than half of the states in the country that do provide some kind of standard of this nature. I think it's about time that Maine join with them.

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

Senator **CATHCART**: Thank you Mr. President. Men and women of the Senate, I rise and I will be brief. It's not very late at night, by standards of the Appropriations Committee, but I'm tired and I hope that my brief remarks will make some sense. I look at this as an issue of fiscal responsibility. Now, I pretty much favor economic incentives. I'm strong on economic growth, on research and development. I usually vote for those things. But the BETR program is an important one. I think it has really brought some new jobs and encouraged our businesses to expand and grow. I am not one who has wanted to abolish that. Looking at our budget, there's another \$3 something million in the emergency supplemental budget to pay the bills that we owe to companies in the state for the BETR program. It just makes sense fiscally, to me, that if we are going to give this kind of tax incentive, we should make sure that we're giving it to companies whose employees are not also receiving Medicaid and Food Stamps and other public assistance. We shouldn't be having to pay for a living wage and a family income for the people who are working for the companies that we are giving tax subsidies to. I think this is very important. This would only apply to a few of the businesses in our state. Actually only a small percentages do receive the BETR program and most of them are ones that are paying a living wage already. Do we really want to attract more businesses who are paying people less than a minimum wage, less than a living wage and closer to a minimum wage, so that the state will have to give assistance, public assistance, to those same people who are working 40 hours a week for these companies that we're giving tax breaks to? I urge you to think about that. Thank you Mr. President.

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

Senator **BENNETT**: Thank you Mr. President. Fellow members of the Senate, the Senator from Knox, Senator Pingree, puts out a challenge and suggests that many people in this chamber have been involved in a small business. Well, I've owned and operated a small business in Oxford County. I'll tell you, it's very difficult, when you're just starting out, to be able to do everything that you want to do for your employees. It's very difficult. I'm not concerned, frankly, about the large businesses. They can take care of themselves. They make these decisions about where to locate, and all that, for a host of reasons. But the small businesses, people who start businesses here because they love this state and they want to contribute to their community, gain and earn a measure of independence. Those are the people that this Bill says, you're second class citizens, you're second class business citizens in this state if you don't pay, in Oxford County, \$7.47 per hour to every employee in your business. I find that unacceptable. I think this Bill is discriminatory against those businesses that can't afford to do that. What's flawed in the logic behind Bills such as this. It assumes our economy, our people, that our enterprise system is completely static. That businesses don't grow, that they don't do better, that they don't profit, that they don't thrive. That people stay at the same social-economic class, at the same status, forever. That's just not true. That's what's flawed about this Bill. I believe, in my experience, that business people in this state, small business people that make up the backbone of our economy, 90% of our businesses, these people want to do the best they possibly can for their employees, which often involve members of their families. They want to do the best they can. They want to try new things. They want to innovate. They want to create. But Bills like this tell them that

they are second class. For that reason, I oppose this. I oppose it vigorously and ask for you to vote for the pending motion to indefinitely postpone this Bill. Thank you.

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

Senator **CAREY**: Thank you Mr. President. Why do many of you think we got into this TIF business to begin with? It was because the economy just simply wasn't there. While I served on the Taxation Committee, I was able to finally get the Taxation Committee to start thinking that saving a job was as important as creating a new one. Those of you who seem to have forgotten history are bound to repeat the very mistakes that were made in the past. I will tell you right now, that this Bill will kill off Hathaway and its 450 jobs in Waterville. This Bill will kill off the Bates Mill that even now, in Lewiston, is trying to survive. This is the most radical thing in the 20 years that I've seen here in the legislature. I hope that this thing certainly goes down to defeat, because absolutely nothing will be gained from it. Thank you, Mr. President.

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

Senator **HARRIMAN**: Thank you very much Mr. President. Good evening ladies and gentlemen of the Senate, I've really enjoyed the discussion surrounding this Bill and the pending motion. I think, for me Mr. President, the key word that I've heard over and over this evening is the taxpayers money. You know that really is the key word that I think defines from which many of us bring our philosophies to have the honor of making decisions for the people who have sent us here to make them. The philosophy, it seems to me Mr. President, is this. If you go to the opening pages of the state budget that's printed and bound and presented to you when we first arrived in January, somewhere around page 14 or 15, I believe it is, you'll open to a series of pages, page after page after page, of what's called tax expenditures. For example: we don't collect a sales tax on prescription drugs. We don't collect a tax on hospital surgery. We don't collect a tax on most food products. And on and on I could go. The fiscal office puts a value on those, so-called, tax expenditures. They tally up, I'm sure, in the billions. My point is this, if you come here with a philosophy that all of the money circulating around the Maine economy ultimately belongs to the government and that whatever we chose, as a legislature, to return to citizens by lowering their sales tax, or creating an incentive for the programs that we are discussing here tonight, that somehow, somehow, that is a cost to government. Others come to the chamber, Mr. President, with a philosophy that I subscribe to and that is that all of the money working its way through our economy belongs to the people and their families. Whatever power this legislature chooses to exercise to take their money out of their checkbook and bring it here, is a tax on the people to sustain this wonderful experiment we call democracy. So, if you'll indulge me for just a moment, I'd like to come from the perspective of someone who believes that the money belongs to the people and not to the government. In my experience, I've seen for the most part, that most of the tax incentive programs that are put in place are a recognition by the legislature, and ultimately by the Chief Executive, that our taxes are so high in certain areas that we are not competitive. We're not competitive with other industries. We're not competitive with the ability to attract people who take the risk of creating jobs.

And, so, selectively, if you have the ability to work the legislative halls well enough, you can get tax relief. ETIFS, TIFS, BETR, you know them all perhaps as well, if not better, than I. But, ultimately, ladies and gentlemen of the Senate, it is a recognition that our taxes are too high. I agree with the goals of a livable wage that this Bill is trying to create. I think that we all, regardless of party affiliation, can take a lot of credit for what we have done together to change the attitude of this state government toward those who take the risk of creating jobs. As a result, we have seen billions and billions of dollars of capital invested. We've seen over 60,000 people find a good job, or a better job, since I've had the opportunity to be here. That's good news. We should be claiming victory, that what we do for incentives works and that we should collectively continue to simplify the cost of doing business here in Maine. We should continue to try to find ways to lower our taxes, to draw people here, to leave more money in the family checkbook. So if, for example, the living wage is \$8.17 an hour on a statewide average and if a business is going to come to town and claim incentives worth more than \$10,000, but they're only able to pay \$7.90 an hour, not the \$8.17, the message in this Bill is don't come, stay away. There are many areas of the state, ladies and gentlemen, that need our help in creating economic opportunities. I suspect that the citizens of Maine want to find a job that has opportunity, hope, and growth. Sure, if you read the Bill, there is a provision in there that says, well, we have our economic hardship provision that, if for some reason, you are unable to pay that livable wage, guess what you get to do? You get to come to the bureaucracy here in Augusta, probably fill out a bunch of forms, answer to someone who is supposedly in a position to determine whether you are worthy of a government exception to the law. If you believe in the philosophy that all the money out there in the economy belongs to the government, then this provision is probably a worthy one. It also says you must provide health insurance and you must provide the health insurance on at least a 60% cost for the employee, that the employer would pay, and at least 50% for the employee's dependents. I would submit to you, Mr. President, that, when you work the numbers, that's discrimination. In my little business, we pay for 100% of the employee's health insurance and we help them to pay for the dependent cost. If this Bill passes, it says to the employee who is working at this business with say no dependents, and their working along side of another employee who happens to have a family doing the same job making the \$8.17 an hour, the person I'm working side-by-side with is, in essence, earning more money per hour than I am. Because this Bill says you pay for just my health insurance, but you pay for my fellow employee's health insurance and half of their dependent costs. What about the employee who just has a spouse, working along side the employee who has a spouse and children. That's what the report says. I guess, for me, Mr. President, at the end of the day, we've decided that our initiatives in the past have been so successful that it's now time to put handcuffs around them, one idea after another. One of these days, we'll wake up and sub total of all of the Bills that we're being asked to consider that send such a clear message about what this legislature really thinks, we'll wonder what happened to the jobs and the increasing wages and the revenues that are coming into state government in unprecedented volumes. We'll wonder what ever happened. I hope you'll join me in supporting the Senator from Cumberland, Senator Amero, in supporting the indefinite postponement. 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, the Bill, both as drafted and as amended, if we get that far, has almost nothing to do with the small business sector. It is limited in scope and its requirements are limited entirely to those few businesses, those very large businesses, which have been fortunate enough to receive at least \$10,000 of annual tax benefit, or payments, from the State of Maine. This is not about Hathaway. The wage requirement for Kennebec County is well below the wages that are being paid at Hathaway. I know many of the people who work at Hathaway. I can tell you personally that they make \$2 or \$3 more per hour than the minimum requirements established for Kennebec County in the draft that lies before you. I've spend most of my adult life assisting other people in the making of deals, in negotiating of business transactions, in making various very significant financial arrangements in the lives of other people. Writing them down, crafting them, negotiating them and working with them. I own a small business with a dozen employees. We have, in my business, zero tax benefits that would qualify under this Bill. When I came to Augusta 6 years ago I thought I would be witness, given the dollars involved, to some fairly sophisticated crafting of tax benefits, and the like, on behalf of the State of Maine. I thought it might be a pleasure in my 50's to begin examining those and helping the people of Maine and the State of Maine to examine the systems that we have for making deals with our taxpayers and with our business sector and putting these system together in some rational and orderly and mutually productive way. I must tell you, what I have found instead is utter stupidity at almost every turn. I see the people in this chamber and the other chamber giving away money, giving away tax credits, and giving away benefits, willy-nilly without any notion, without even the slightest notion, of what they're getting back for anything that they're giving away. No rational private business person would behave in the way that this legislature has behaved over the past 6 years that I have been witness to. It's insane. This Bill is a very modest step in saying to our partners in the private sector, look, we've got a deal here. You're going to get some very, very substantial tax benefits. In this Bill you ~~will~~ get more than \$10,000 in benefits or you won't even find yourself subject to its provisions. But look, we've got to have at least something coming back. Show me the money. This is the way the real world behaves. Why, because we step into these halls, we put aside all of the business sense that we might have accumulated through 20 or 30 or 40 years of private sector dealings and say, oh well, it's tax policy so it doesn't apply. We're just running a candy store. If that's the mentality with which we, as trustees of the sales tax and the income tax, fundamentally, are coming to these negotiations with the private sector, I don't know how we can say that we are upholding the oath that we took when we first came down here. We are taxing clothing for school children. We are taxing pickup trucks. We're taxing wages at 8 1/2% on people who are just barely above poverty level, so that we can sit up here and play like we're big fellows and write checks to Wal Mart, willy-nilly, and requiring nothing back. Does that make us feel like we're important? What are we doing it for? I don't know whether these standards or a Bill like this is the answer. I suggest to you that its clearly not, but at least it's the minimum. I think it represents, in many ways, the minimum that we can ask of the business community when we offer such substantial tax benefits to them. It's just plain

common sense. It's the way the private sector operates. I think we should behave like business people ourselves and that's what this Bill is the beginning of. Thank you.

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

Senator **RUHLIN:** Thank you Mr. President. Ladies and gentlemen of the Senate, I really have tried to hold off any debate that I was going to participate in on this particular piece of legislation until a time when we got into amendments. But everybody's having such a great time, I can't resist going out and joining you. I guess we'll now get involved in a little more additional debate, regardless of the hour. Before I do that, recognizing that we are, in fact, going to get into the Bill itself in its entirety at this point, I would like to apologize to the good Senator from Hancock for being so brief with my answer to her on the amendment and just say to her, or to the Senate, that it had been my intention to discuss that more fully at the time to amend. I thought then everything would become clear, but it seems like we're going to have the debate on this Bill here and now and it's germane. Mr. President, I guess we'll just proceed and have that debate.

I hear so many people in this room come to us and say, our tax burden in the State of Maine is too high, you've got to cut it. I would remind each and every one of you that the high tax burden is a product of two things. You can have an average tax load per capita and a lower than average income per capita and your resulting effect is a high tax burden. A tax burden is the sum of the per capita tax load divided by the income that one makes. The surest way to a high tax burden is a low income. The surest way to a low income is to close your eyes to what is economically happening around you. Now I am a small businessman. I don't feel like a second-class citizen. I pay my employees good money. They earn it, by the way. I'm please to pay it to them. I feel, as I say, that they're worth it. Why should I then pay them their health benefits, then also pony up, if you will, for the person who wants to pay sub-prevailing wages in my area, keep the wages depressed, so that we have to charge a larger tax base to provide the education? That's really what state government basically is, a pass through of monies. They have to keep that tax base large, so they have to pay. Then the person who's paying less than I am to their employees comes in and expects me to take their place in the personal property tax market. I agree with the good Senator who has made comment on the effectiveness of BETR. I think everybody knows, if you've been here any length of time, BETR, I feel, is the best economic program we've had in the state. I know that makes some people shudder when I just mention it. The fact of the matter is, that's a good evaluation of it. But to not pay BETR is to increase the pressure on the property tax. To say that if you do this it's going to damage BETR is not accurate. It's not accurate at all. What you're going to do, if you pay your employees a prevailing wage, is give them enough to participate fully in their economy that they're helping to produce. By participating in that economy, they, themselves, help drive that economy. And if you're good at business and doing what you should be doing, you will also enjoy the benefits from that. So, I think, when you look at that, to pay a reasonable wage to your employees is just. It's not only just; it's good economics sense. The surest way to state imposed poverty is to pay our good workers so little that great staff, the great working quality that they have, migrates from this state and we are left with the lowest capable workers in our state. You want to

have business come into your state, you want to have a good work ethic in your workers, and you have to pay them. If you have good workers, which we've already proven, the businesses will come. You want to have good workers; you pay them the prevailing wages. And so, in the spirit of compromise, I would say to the good Senator from Cumberland, give us time. Perhaps we can amend certain parts that deal with certain health benefits as a compromise measure. Let's keep it on this discussion about wages and move forward about wages that will support our economy. That's what it's about. That's what this Bill is about. This Bill isn't about hurting BETR, I wouldn't do it. This Bill isn't about the state imposing restrictions on TIF. That's home rule, I don't want to do that either. As far as health programs being too readily available, too large, I agree. I agree. If I ever get a chance to amend that out, I'm going to do it. I can't talk about that now until the time comes. So I would ask that you go ahead and vote against the indefinite postponement motion. Move forward. Get a Bill before us that will help the workers of the State of Maine stay in the State of Maine with a living wage. That will keep a trained workforce here in the State of Maine. 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 would just like to point out, briefly, that I want everybody to at least think about, in this chamber, when they press their button the difference between the manufacturing sector and the service sector. Because, in some of the debate earlier on, not the previous speaker, but some of the debate earlier on, there was absolutely no discussion, no recognition of the difference between the way that the manufacturing sector is taxed and the way that the service sector is taxed. You can compare, for example, manufacturing of component to, for example, a law firm. That might be treading into some scary ground here tonight, but I think we maybe ought to do it. Because when you start talking about applying the taxation on machinery and equipment and the tax assessor shows up at the law firm, what does he write down? So for somebody to stand up and say, my firm doesn't get any tax benefit from this. Well, no wonder. They're not taxed. For crying out loud. I really, Mr. President, am having a hard time. But, I think what this shows is the inequities in taxation across spectrums. I don't want more of that, and that's why I wouldn't support this in a million years. Because, it takes a current inequity and twists it and makes it worse. Let's just not forget that last summer, I remember a lot of us were talking, Republican and Democrat and Independents, were talking about the potential for our paper mills to close. We were all talking about it. We feel, some of us feel like, maybe we've crossed that threshold and maybe we're okay. But next year that might not be the case. If you think about the discussion in the news last summer, last spring, about where we were in this state. Then you start talking about laws like this that will pertain, admittedly, to the larger employers, and just add that one more burden onto them. Where will we be? Where will we be in Millinocket? Where are we right now in Westbrook? So these are the kinds of things that I really feel that, if we really wanted to do something to help those big businesses and we should, we'd stop playing games with them. We'd stop rebate programs and we'd just eliminate the tax entirely because it's not applied to some of the service sector folks, so it is unfair. Mr. President, I hope that you will join me in supporting the pending motion.

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

Senator **AMERO:** Thank you Mr. President. Ladies and gentlemen of the Senate, this Bill is entitled "An Act to Improve Standards for Public Assistance to Maine Employers". It purports to be about accountability. I think we're all for accountability in the precious tax dollars that we take into the state. Remember we have a biennial budget that's now about \$4.7 billion and before we leave here this session, it will be over \$5 billion. I would like to see accountability, across the board, in how we spend all of that money. I don't think it's fair to pick on the private sector only, who receive some tax breaks or some tax incentives. Why don't we have accountability for the \$5 billion that we expend here in a two-year period of time? Look at all of the millions we expend on our schools, that we all agree to do. But shouldn't we have some accountability built in for the expenditures that go to our local schools? Shouldn't we have accountability built in for all the agencies that we support with our tax dollars? I say what's fair for one group who receives tax incentives, or tax breaks, or any money from our citizens, that if it's good for that one group, it should be the same for everybody. So where are the Bills that provide for the accountability for the rest of the tax money that is expended in this state? Thank you, Mr. President.

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

Senator **GOLDTHWAIT:** Thank you Mr. President. You may be sorry. Ladies and gentlemen of the Senate, I'm looking at a list of businesses that would actually be effected under this Bill. If I'm understanding all of this correctly, there are something in the neighborhood of 140 businesses that would qualify in that they get more than \$10,000 in the BETR breaks. Only 22 of those businesses now are paying below this calculated living wages, which is two-thirds of the average wage in that county. Of those 22, what I did, for better or for worse, was calculate the amount of money it would take to get that business up to that living wage. I haven't done it for all 22 yet, but I took the ones that had sort of the most extreme numbers and of those I calculated that Bell Manufacturing, Creative Apparel, Talk America, U.F. Stainwright and New Balance, it would take a relatively small amount of money, less than 25% of their benefit, to bring them up to that living wage. They would still get somewhere from 75% to 95% of the benefit that their getting now. In a couple of cases, including Conifer in Cumberland and Olamon in Penobscot and C.N. Brown in Oxford, the amount of money it would take to bring that company up to paying a living wage to those employees who are now below it, would be much larger than the existing benefit. I'm not sure what's wrong with that. It would take, for instance, C.N. Brown an increase of \$2.3 million of payroll to bring their 587 employees, who are now being paid less than this living wage, above that \$5.61 an hour that they are now making. If that's what that company is paying 587 people who work full-time, I think I would have to agree with the argument that says, do we want to put tax dollars into that company? So by those rather, possibly bizarre, I hope correct calculations, we are down to literally a small handful of businesses who don't pass this test. It seems to me like a rather reasonable test to apply, if I've done it right, and probably a good place to start. So I do have some concerns about the Bill in its existing form, but I'm willing to go on and

oppose the pending motion and get to where we can have a further discussion on some possible refinements to this, because, from what I see, it would hamper very few people, it would incent another dozen or so companies to bring their wages up by a relatively small amount, but up to what might be more like somebody could live on. I hope you'll join me in opposing this motion and talking a bit further about perfections to this Bill, because I think it could be a good thing for the workers in the state. Thank you.

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

Senator **PINGREE:** Thank you Mr. President. I just want to make a couple other points. I appreciate many of the things that have been brought up tonight in the debate. There's one thing that I would like to see happen; were we able to get to the amendment. That would address some of the concerns that people have had about sort of the black and white of this issue. I would suggest that an amendment to this Bill could potentially allow us an opening so that it would not involve every member of the company. That is, were a company to have some workers that didn't qualify, say entry-level workers, or a certain percentage of the workforce that didn't qualify, they would not lose all benefits. It would not be black and white. I would hope that we would give it a chance to get to that point so that we can vote on a potential amendment that would say something like that. I have been listening to the concerns that have been brought up over the last couple of weeks. I am not immune to understanding that there are some things that could be changed on this. That's why I think it would be helpful to have the opportunity to vote on an amendment. I am frustrated with those individuals in the chamber who say that they like discussing this and they would like to discuss a good possibility but, yet, are calling for roll calls and are trying to make this a black and white issue on something that we're not yet fully discussing on the floor.

The second thing I want to talk about, just briefly, is the basic principle that we're talking about here. The good Senator from Cumberland, Senator Amero, said that she would like to see more accountability in government. That she thinks that we don't have enough accountability in other sectors, and in fact, that is part of what got me interested in this very question of economic development incentives a long time ago when I came to the legislature. Because I was surprised about how little fiscal analysis went on. I said earlier, I was surprised how little we looked at Maine like a business person would look at their business and what our return was. And I was surprised, in fact, to find how little accountability there was. Now I appreciate the fact that, on the second floor right now, our colleagues in the Appropriations Committee are working very hard on the issue of accountability in education, in the departments. They are going through the budget with a fine-toothed comb bringing forward commissioners from every possible department and asking them how every dollar is spent. So, in fact, I do think we try very hard, particularly when we try to squeeze every dollar out of the budget, to do just that with our departments, with our government agencies. We try very hard to seek accountability. And, in fact, there were a couple of principles that struck me when I first came to the legislature about other areas where we ask citizens for accountability in many ways that we don't ask for in our private corporations. One of the examples that came to me was when I was looking at the principle around Estate Recovery. I found that

senior citizens who collect Medicaid in the State of Maine, you all know about this principle, the average citizen spends about 6 months in a nursing home as a private pay and then they go on Medicaid. Most of our parents, most of us, don't have enough money to pay the nursing home bills. After about 6 months, you become a Medicaid client and you may be there for 6 more months. You may be there for 2 or 3 years and chances are you've rung up a big bill. We have paid a long time and we are happy to do that because we are happy to take care of our senior citizens. But what you may not know is that, in fact, if and when you die, which most of us will someday do and many of us will do in a nursing home. If there's a bill for \$30,000, \$40,000, \$50,000, whatever, we ask for the money back. We say, by the way, we weren't really taking care of you. We want that money back. We want to sell your home. We want to take your assets, whatever it was it goes back into the Medicaid account. That we want you to understand that all of this money that we give away for economic development incentives, no matter what happens to your company, no matter if you leave after 2 years, no matter if you don't give the jobs you promised, no matter if you sell out for a tremendous amount of money, we don't get any of it back. It's a different principle here than with the average citizen. The same thing applies to somebody who receives TANF benefits, welfare benefits from the State of Maine. Let's say you had some hard times. Let's say your spouse left you. You're alone with a couple of kids and you have to come to the state for Food Stamps and welfare and whatever else we can provide you. You're going along, your scraping by, and all of a sudden you get a Workers' Comp settlement or your spouse pays that child support that had been owed for a long time. You're ready to put some money down on a new car or pay some bills or pay off your credit card debts. Guess what? It's not your money. You owe it to the state. You've got to pay back your TANF before you can see a penny of that money, no matter what kind of settlement you get. But it's not the same with these. It's a very different principle. I think we ask accountability of all kinds of segments here, of our departments, of our senior citizens, of our poor people who fall on unfortunate times. But we have a very different standard here. We don't expect accountability. As the good Senator from Somerset said earlier we don't act like a business when we're deciding how to invest this money and we don't ask anyone to pay it back, no matter what happens. Again, I ask you to vote in opposition to the indefinite postponement. When the vote is taken, I request the yeas and 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 Doorkeepers secured the Chamber.

The Secretary opened the vote.

**ROLL CALL (#383)**

YEAS: Senators: **ABROMSON, AMERO, BENNETT, CAREY, CASSIDY, DAVIS, FERGUSON, HARRIMAN, LIBBY, MITCHELL, SMALL**

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

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

11 Senators having voted in the affirmative and 20 Senators having voted in the negative, with 4 Senators being absent, the motion by Senator **AMERO** of Cumberland to **INDEFINITELY POSTPONE** the Bill and accompanying papers, **FAILED**.

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

**ROLL CALL (#384)**

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

NAYS: Senators: **ABROMSON, AMERO, BENNETT, CAREY, CASSIDY, FERGUSON, HARRIMAN, LIBBY, MITCHELL, SMALL**

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

21 Senators having voted in the affirmative and 10 Senators having voted in the negative, with 4 Senators being absent, the motion by Senator **RUHLIN** of Penobscot to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, **PREVAILED**.

**READ ONCE.**

Committee Amendment "A" (S-637) **READ**.

On motion by Senator **PINGREE** of Knox, Senate Amendment "A" (S-689) to Committee Amendment "A" (S-637) **READ**.

On further motion by same Senator, **TABLED** until Later in Today's Session, pending the motion by same Senator to **ADOPT** Senate Amendment "A" (S-689) to Committee Amendment "A" (S-637).

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

**ORDERS**

**Joint Resolution**

On motion by Senator PINGREE of Knox (Cosponsored by Representative BROOKS of Winterport and Senators: DAGGETT of Kennebec, DOUGLASS of Androscoggin, RAND of Cumberland, TREAT of Kennebec, Representatives: DUDLEY of Portland, Speaker ROWE of Portland, SAXL of Portland, SHIAH of Bowdoinham) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 214) , the following Joint Resolution:

S.P. 1085

**JOINT RESOLUTION MEMORIALIZING THE BOARD OF DIRECTORS OF BLUE CROSS BLUE SHIELD OF MAINE TO RECONSIDER THE PROPOSED SALE TO ANTHEM INSURANCE COMPANIES, INC. AND ASKING THE SUPERINTENDENT OF INSURANCE TO REVIEW THE PROPOSED SALE**

WE, your Memorialists, the Members of the One Hundred and Nineteenth Legislature of the State of Maine, now assembled in the Second Regular Session, most respectfully present and petition the Board of Directors of Blue Cross Blue Shield of Maine and the Superintendent of Insurance as follows:

WHEREAS, the State has experienced a decrease in the number of health insurance carriers writing policies in the State, and the individual health insurance market is near collapse, threatening health insurance coverage of 38,000 Maine people; and

WHEREAS, there are currently 180,000 uninsured Maine people, including 20,000 uninsured children; and

WHEREAS, Blue Cross Blue Shield of Maine was created by the 89th Maine Legislature in 1939 through a public charter; and

WHEREAS, in 1998 the Maine Legislature established Blue Cross Blue Shield of Maine's status as a charitable and benevolent institution and a public charity; and

WHEREAS, the Board of Directors of Maine's only nonprofit charitable health plan, Blue Cross Blue Shield of Maine, are guardians of a valuable health care asset in our State. This company has been providing locally developed and administered health care benefits to Maine citizens for more than 60 years; and

WHEREAS, the charitable purpose of Blue Cross Blue Shield of Maine includes a charge to address the unmet health needs of the State, particularly with regard to medically uninsured and underserved populations; and

WHEREAS, as a charitable and benevolent institution and a public charity, Blue Cross Blue Shield of Maine is responsible to the Attorney General and Maine Legislature for maintaining a charitable mission; and

WHEREAS, the proposed sale of Blue Cross Blue Shield of Maine to Anthem Insurance Companies, Inc. would convert the status of Blue Cross Blue Shield of Maine from a charitable and benevolent institution to that of a for-profit insurance company; and

WHEREAS, the sale of Blue Cross Blue Shield of Maine to an Indiana company will dramatically affect the health care system of all of Maine and will cause Maine citizens to lose control of their health care system; and

WHEREAS, a 1999 study in the Journal of the American Medical Association reported that investor-owned HMOs deliver a lower quality of care than nonprofit health plans; and

WHEREAS, Anthem Insurance Company, Inc. of Indiana has not made a commitment to continue to provide coverage for people regardless of where they live in Maine and Maine's rural citizens desperately need access to health insurance coverage; and

WHEREAS, there have been substantial questions raised concerning whether Maine citizens would receive for the charitable trust the full value of Blue Cross Blue Shield of Maine; and

WHEREAS, Blue Cross Blue Shield of Maine is now in an improved position in Maine's health insurance marketplace because it has obtained the State Employees Health Insurance Program contract and accounts from the insolvent Tufts Health Plan of New England and the ailing Harvard Pilgrim Health Care; and

WHEREAS, a for-profit company will add to the cost of health insurance for Maine subscribers the cost of both taxes and profits for shareholders; and

WHEREAS, the Maine Revised Statutes, Title 24, section 2301, subsection 9-D, paragraph E prohibits the Superintendent of Insurance from issuing final approval of a conversion plan unless the superintendent finds that the terms and conditions of the plan are fair and equitable; and

WHEREAS, the Maine Revised Statutes, Title 24, section 2301, subsection 9-D, paragraph L requires the Superintendent of Insurance, in determining whether the terms and conditions of a conversion plan are fair and equitable, to consider, among other factors, whether the conversion plan would adversely affect, in any manner, the services to be rendered to subscribers; and

WHEREAS, concerns have been raised with regard to the following:

1. The extent to which the needs of Maine's rural population will be met;
2. The long-term commitment to serve the health insurance needs of Maine citizens by Anthem Insurance Companies, Inc.;
3. The business practices of Anthem Insurance Companies, Inc. in other states;
4. The transition of health insurance coverage from a nonprofit organization to a for-profit insurer and its effect on the health insurance marketplace;
5. The significant alteration in recent months of the valuation of Blue Cross Blue Shield of Maine; and

6. The recent upheaval in the health insurance marketplace with the withdrawal of Tufts Health Plan of New England and the financial problems of Harvard Pilgrim Health Care; and

**WHEREAS**, the State retains a compelling interest in protecting its uninsured and underserved citizens; now, therefore, be it

**RESOLVED**: That We, your Memorialists, take this occasion to express our deep concern about the loss of Maine's nonprofit health insurer and to urge the Board of Directors of Blue Cross Blue Shield of Maine to reconsider its decision to sell this nonprofit, Maine-based insurance company to Anthem Insurance Companies, Inc. of Indiana; and be it further

**RESOLVED**: That We, your Memorialists, take this occasion to notify Blue Cross Blue Shield of Maine that the Legislature would support a decision of Blue Cross Blue Shield of Maine to seek alternative purchasing options if Blue Cross Blue Shield determines that alternatives are in the best interests of the citizens of Maine; and be it further

**RESOLVED**: That, if Blue Cross Blue Shield of Maine decides to go forward with the sale to Anthem Insurance Companies, Inc., We, the Members of the One Hundred and Nineteenth Legislature, take this occasion to express our deep concern about the loss of Maine's nonprofit health insurer and ask the Superintendent of Insurance to construe the requirement that the terms and conditions of the conversion plan be fair and equitable as broadly as possible to protect the interests of the citizens of Maine and especially the interests of those citizens who are uninsured or underserved and to condition any approval of a conversion on a demonstration that the needs of the uninsured and underinsured will be met; and be it further

**RESOLVED**: That the President of the Senate and the Speaker of the House immediately shall communicate this message to the Board of Directors of Blue Cross Blue Shield of Maine and that suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to the Honorable Angus S. King, Jr., Governor of Maine, the Commissioner of Professional and Financial Regulation, the Superintendent of Insurance and the Attorney General.

**READ.**

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

Senator **LAFOUNTAIN**: Thank you Mr. President. Permission to pose a question to through the Chair.

**THE PRESIDENT**: The Senator may pose his question.

Senator **LAFOUNTAIN**: Thank you Mr. President. To anyone who can answer, on page 3 of the Joint Resolution, the language says, "Resolve that we, your memorialists, take this occasion to notify Blue Cross Blue Shield of Maine that the legislature would support a decision of Blue Cross Blue Shield of Maine to seek alternative purchasing options." What does the phrase, "would support" mean? Thank you.

**THE PRESIDENT**: The Senator from York, Senator LaFountain poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Knox, Senator Pingree.

Senator **PINGREE**: Thank you Mr. President. I would be happy to do my best to answer this question and then I would like to say a little more about this, if I may. The reason that I thought the statement was important is because a part of this resolution directs the Board of Directors of Blue Cross Blue Shield to think long and hard about whether or not this is the appropriate step to take. And if, in fact, we want to turn over control of our last private insurer, our last not-for-profit insurer, to a private entity. My thinking was to suggest, without any specifics in mind, that we would support a decision that recognized the other criteria set up in this resolution. That we, as the legislature, would support a decision were the sale not to go through to the current potential buyer. Just to state further, you will see in this resolution that there are many concerns that have been addressed by many members of the legislature, by many of the advocacy groups, by many of the interests of the State of Maine who are covered by this particular insurer. I was hoping that, in this resolution, we would find a way to state our concerns about this and allow some other options were the sale to go through and also to suggest that this may not be the best possible course for the State of Maine. There have been tremendous changes in the insurance market over the last couple of years. I think all of us hear, frequently, from our small businesses, from our constituents about the rising cost of insurance, about the loss of participants in the market, and about some of the concerns about the company that is considering buying our not-for-profit insurer in the State of Maine. Many of us are worried about that. That is why I have this before you and that is what that particular statement suggests is that there would be support were they to decide that this was not the best course of action to take.

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

Senator **HARRIMAN**: Thank you very much Mr. President. Good evening, ladies and gentlemen of the Senate. Mr. President, I'm rather surprised to see this Joint Resolution before us for a couple of reasons. I'd like to just state, for the record, that I am a policyholder of Blue Cross Blue Shield of Maine. I pay my own insurance premiums with after tax money, out of my own pocket, each month. I want to state for the record that I am not, in any way, going to benefit from my comments. However, as a State Senator who sat in these chambers just a session ago when we learned that Blue Cross Blue Shield was finding themselves in a uncompetitive situation, if you will, as it relates to their ability to adjust their Medicare wraparound policies because their competition could do that at will. Blue Cross Blue Shield had to come before the Superintendent of Insurance and go through a rather arduous process. As I recall, at the time, and I admit I'm speaking from memory Mr. President, at the time the department recommended that the legislature consider changing the way Blue Cross Blue Shield formed its business organization. That has, I am sure, as many of you will recall, resulted in a rather spirited and protracted debate about the possibility of Blue Cross Blue Shield losing or changing its charitable status to a mutual company status or even a for-profit status. I say all that, Mr. President, because in the end the legislature adopted a process, going forward, where we made a very clear statement to this



company. That, if you decide to make changes in your status as a corporation here in the State of Maine, here is the procedure that you must follow. That is indeed what's happening now, Mr. President. They are following the very procedure that this legislature said, just a short time ago, for them to follow. We've come to a point where the Superintendent of Insurance, Mr. Iuppa, is literally in the midst of an eminent decision on the proposal that Blue Cross Blue Shield has put before him. This Joint Resolution, to me, could poison that responsibility that he has to, as an impartial observer, analyze all of the facts that are coming before him to make this decision as outlined by this very legislature. Now we have a Joint Resolution that sends a clear message, to me anyway, that he is to recognize that the legislature is now formally in session and it has collectively taken a position on this issue. I think that's the wrong way to go. I have absolute confidence in the people on the Banking and Insurance Committee, who worked out the legislation that he is guided by. I hope that you'll join me in letting him do his job. Thank you, Mr. President.

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

Senator **ABROMSON:** Thank you very much Mr. President. Ladies and gentlemen of the Senate, I thank the good Senator from Cumberland, Senator Harriman, for the first part of his remarks. That's fine. I'm happy he did that because I wonder, too, why we are interfering in this process. As I read through this Supplement No. 10, on page 2, I noticed it says, "Whereas Anthem Insurance Company, Inc. of Indiana has not made a commitment to continue to provide coverage for people regardless of where they live in Maine and Maine's rural citizens desperately need access to health insurance coverage..." etc. Well, ladies and gentlemen of the Senate, Blue Cross Blue Shield of Maine has the state contract and has the MEA contract, 2 of the largest groups in the State of Maine. They could not have those contracts without promising to provide the service throughout the State. Further on down it says, "Whereas Blue Cross Blue Shield is now in an improved position in Maine's health insurance marketplace because it has obtained the State Employees Health Insurance Program contract and accounts from the insolvent Tufts Health Plan of New England and the ailing Harvard Pilgrim Health Care..." etc. Well, yes, I suppose they would be in a better position. They lost \$17 million last year. They're taking over a health plan Healthsource had, in which Healthsource lost \$6 million. I suppose if you go from a loss of \$17 million to a loss of \$6 million, you're in an improved position. At the end of the Joint Resolution it says that, "We are to ask the Superintendent of Insurance to construe the requirements that the terms and conditions of the conversion plan be fair and equitable as broadly as possible to protect the interest of the citizens of Maine..." etc. Frankly, I find that insulting. To ask him to do what he's supposed to be doing. I just don't understand why we would do that. Finally, on the pink sheet, the so-called "fact sheet" that you received, it says on the back, "These organizations oppose the sale of Blue Cross Blue Shield in Maine..." Well, I have to tell you after reading those names, all I could think of is when I was back in high school and Edie Fisher sang a song called "I Never Missed Your Sweet Hello Until You Said Good Bye", because these people would come, virtually every day, before the Banking and Insurance Committee and complain about Blue Cross Blue Shield. Now they've fallen in love with them. Thank you very much, Mr. President.

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

Senator **DOUGLASS:** Mr. President. Men and women of the Senate, the Blue Cross Blue Shield insurance company is a creature of this legislature. It's a non-profit. It operates for the fundamental interests for which it was created and that is to assure people of health care. The legislature has a fundamental interest in assuring that interest continues, that the original purposes of the corporation continue. Currently, as I understand it, it's the main insurer of individuals, perhaps the only insurer. I must admit that I often have to split my time between the Labor Committee and the Banking and Insurance Committee, so I'm not absolutely sure of that fact. But I know that it performs a very important function in filling in many of the gaps in our insurance market. That is the market for those who are able to buy insurance. We have a fundamental interest in assuring ourselves that those interests continue to be served. As I understand it, some of the filings, and or testimony, in the proceedings before the Superintendent of Insurance indicate that Anthem, which proposes to buy Blue Cross Blue Shield, will not be able to guarantee that. We also have an interest in making sure that Blue Cross Blue Shield continues to be solvent. That is one of the main reasons that this sale was proposed. I think we have to agree that the health delivery system has undergone a massive transformation, particularly in the last several years. Nevertheless, as a legislature, we continue to have, as one of our fundamental interests, that the continuation of benefits to our citizens be there. I just have to step back a little because I happen to have gone, as a child, to a doctor who actually drove his horse and carriage to people's homes. Now, that was not while I was living, but I just delighted in the fact that he had once done that. Now, when I went to him, his surgery was in his big, old home. His office was in his home. We are such a different society now. We have very few sole practitioners left. We have fewer and fewer groups of doctors who practice. We have more and more corporations, more and more hospitals which employ doctors. All of these changes mean that the delivery of health services is not only more complicated, but its a lot more expensive. The only aspect that the Insurance Commissioner will be considering, or the main aspect that he is going to be considering, in his determination is whether the amount of money proposed to go into trust and whether the amount of money proposed for the sale is adequate. As I've looked at some of the orders in that matter, I am very, very concerned that, first of all there are a bazillion lawyers in the case and, as one, I think I can be a little critical of my own. I think the amount of material that has been supplied is massive. It may have obscured some of the fundamental things that need to be under consideration. One of those is the original purposes of the corporation. I think we all received the notice from the Attorney General that we could go upstairs, I think it was a couple of days ago, between 3:30 and 4:30. Well, I know I was involved in working on an amendment to a Bill and caucusing on some of the matters for which I was responsible. I simply wasn't able to get up there. I don't know if anyone else did. But this is our opportunity to express to the Blue Cross Blue Shield directors a very legitimate concern that they review all of this complicated financial matter and that they reconsider whether it still is in the fundamental interests of the corporation to go through with this sale. I say to you this is the essence of what we do here in the legislature. I do realize that because we have a law on the books, what we say is not law, it is

only a statement, but it is a very important one, and one with which I hope you will agree.

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Senator **BENNETT** of Oxford rose to a **POINT OF ORDER** and inquired whether the Senate was in violation of Senate Rule 514.

Senator **RAND** of Cumberland moved the Senate extend 15 minutes, pursuant to Senate Rule 514.

On motion by Senator **BENNETT** of Oxford, 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 (#385)**

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

NAYS: Senators: ABROMSON, AMERO, BENNETT, CAREY, CASSIDY, DAVIS, FERGUSON, HARRIMAN, LAFOUNTAIN, LIBBY, MILLS, MITCHELL, SMALL

ABSENT: Senators: BENOIT, KIEFFER, LONGLEY, MACKINNON

18 Senators having voted in the affirmative and 13 Senators having voted in the negative, with 4 Senators being absent, and 18 being less than two-thirds of the Members present and voting, the motion by Senator **RAND** of Cumberland to **EXTEND** pursuant to Senate Rule 514, **FAILED**.

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On motion by Senator **PINGREE** of Knox, **TABLED** until Later in Today's Session, pending the motion by same Senator to **ADOPT**.

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Off Record Remarks

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On motion by Senator **PINGREE** of Knox, **ADJOURNED**, until Wednesday, April 12, 2000, at 9:00 in the morning.