

MAINE STATE LEGISLATURE

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State of Maine

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

In Senate Chamber
Wednesday
April 12, 2000

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

Prayer by Senator Georgette B. Berube of Androscoggin County.

SENATOR BERUBE: Let us ponder together the words of the prayer of St. Francis of Assisi:

Lord, let us be an instrument of Your peace. Where there is hatred, let us so love. Where there is doubt, faith. Where there is despair, hope. Where there is darkness, light. And where there is sadness, joy. Grant that we may not so much seek to be consoled as to console; to be loved as to love, and to be forgiven as to forgive. Amen.

Reading of the Journal of Tuesday, April 11, 2000.

PAPERS FROM THE HOUSE

Non-Concurrent Matter

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

H.P. 1657 L.D. 2326

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

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

Abstained - (1 member)

In House, April 8, 2000, the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1078)**.

In Senate, April 10, 2000, the Minority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED**, in **NON-CONCURRENCE**.

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

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

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

Non-Concurrent Matter

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

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

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

In Senate, April 10, 2000, the Minority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED**.

Comes from the House, the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-685)**, in **NON-CONCURRENCE**.

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

Non-Concurrent Matter

Bill "An Act to Implement the Recommendations of the Task Force to Review Solid Waste Management Policy"
S.P. 1000 L.D. 2565
(C "A" S-628)

In Senate, April 3, 2000, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-628)**.

Comes from the House, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-628) AS AMENDED BY HOUSE AMENDMENT "A" (H-1113)** thereto, in **NON-CONCURRENCE**.

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

Joint Order

The following Joint Order: H.P. 1944

ORDERED, the Senate concurring, that the Joint Standing Committee on Banking and Insurance report out, to the House, in the Second Regular Session of the 119th Legislature, an emergency bill to:

1. Require the Superintendent of Insurance to develop and submit, before January 15, 2001, recommendations for legislation to establish a state plan or other legislative options for guaranteeing access to and availability of health care coverage for all residents of the State affected by recent changes in the

market, including the withdrawal of Tufts Health Plan, the financial problems of Harvard Pilgrim Health Care and the proposed sale and conversion of Blue Cross Blue Shield of Maine; and

2. Authorize the Joint Standing Committee on Banking and Insurance to report out legislation to the First Regular Session of the 120th Legislature based on the recommendations of the Superintendent of Insurance.

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

READ.

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

REPORTS OF COMMITTEES

Senate

Divided Report

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

S.P. 661 L.D. 1883

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

Signed:

Senator:

RUHLIN of Penobscot

Representatives:

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

The Minority of the same Committee on the same subject reported that the same **Ought to Pass as Amended by Committee Amendment "B" (S-698)**.

Signed:

Senators:

DAGGETT of Kennebec
MILLS of Somerset

Representative:

GREEN of Monmouth

Reports **READ**.

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

On further motion by same Senator, **TABLED** until Later in Today's Session, pending the motion by same Senator to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report.

ENACTORS

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

Emergency Measure

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

H.P. 1927 L.D. 2673
(S "A" S-674)

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

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

PAPERS FROM THE HOUSE

House Paper

Bill "An Act to Allow the St. Agatha Sanitary District to be Dissolved and Combined with the Town of St. Agatha" (EMERGENCY)

H.P. 1945 L.D. 2689

Committee on **UTILITIES AND ENERGY** suggested and ordered printed.

Comes from the House, under suspension of the rules, **READ TWICE** and **PASSED TO BE ENGROSSED**, without reference to a Committee.

Under suspension of the Rules, **READ TWICE** and **PASSED TO BE ENGROSSED**, without reference to a Committee, in concurrence.

Under suspension of the Rules, ordered sent forthwith to the Engrossing Division.

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

COMMUNICATIONS

The Following Communication: H.C. 424

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

April 11, 2000

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

Dear Madam Secretary:

The House voted today to adhere to its former action whereby it indefinitely postponed Bill "An Act to Prohibit Persons Under 21 Years of Age from Purchasing Handguns"
(S.P. 1005) (L.D. 2573)

Sincerely,

S/Joseph W. Mayo
Clerk of the House

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

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

PAPERS FROM THE HOUSE

Non-Concurrent Matter

Bill "An Act to Clarify the Authority of Maine Game Wardens to Stop Motor Vehicles"

H.P. 1627 L.D. 2274
(S "A" S-592 to C "A" H-800)

In House, March 9, 2000, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-800) AS AMENDED BY HOUSE AMENDMENT "C" (H-852)** thereto.

In Senate, April 10, 2000, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-800) AS AMENDED BY SENATE AMENDMENT "A" (S-592)** thereto, in **NON-CONCURRENCE.**

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

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

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 Provide for the Year 2000 Allocations of the State Ceiling on Private Activity Bonds

S.P. 1010 L.D. 2578
(C "A" S-658)

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

Mandate

An Act to Improve Public Water Supply Protection

H.P. 1862 L.D. 2597
(C "A" H-1106)

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

Acts

An Act to Adopt the Model Revised Article 9 Secured Transactions

H.P. 1601 L.D. 2245
(C "A" H-1109)

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

An Act to Amend the Liquor Laws to Create a New Category of License for Pool Halls and Exempt Certain Facilities from the Prohibition Against Smoking

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

Senate at Ease.

Senate called to order by the President.

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

An Act to Implement the Land Use Recommendations of the Task Force on State Office Building Location, Other State Growth-related Capital Investments and Patterns of Development
S.P. 1027 L.D. 2600
(C "A" S-660)

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

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
(C "A" H-1110)

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

An Act to Provide Equal Treatment for State Employees under Certain Federal Employment Laws
H.P. 1939 L.D. 2682

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

ORDERS OF THE DAY

Unfinished Business

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

Senator **BENNETT** of Oxford moved the Senate remove from the **TABLE** the following:

SENATE REPORTS - from the Committee on **LEGAL AND VETERANS AFFAIRS** on Bill "An Act to Regulate Push Polling"
S.P. 420 L.D. 1257

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

Minority - **Ought to Pass as Amended by Committee Amendment "B"** (S-502) (6 members)

Tabled - February 22, 2000, by Senator **DAGGETT** of Kennebec.

Pending - motion by same Senator to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report

(In Senate, February 22, 2000, Reports **READ**.)

Senator **PINGREE** of Knox requested a Division.

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

Senator **BENNETT:** Thank you Mr. President. I brought this motion before you today because it's interesting that, late in session, there are issues which start piling up on our desks. The ones that are always most interesting to me are the ones that are in the low numbers under unfinished business. If you look at the dates on which items have been tabled, it tells an interesting tale, usually, about the session and where we're heading and where we've been. The item before this is the funding for fingerprinting for school employees and volunteers. That was tabled by the Senate on February 8th. Now the present debate is over whether we should take off the table item number 2, which was tabled February 22nd, nearly two months ago. I'm concerned because this Bill was before us.

THE PRESIDENT: The Senator will defer. We've checked Mason's Manual of Procedure and a motion to remove from the table is not debatable.

Senator **BENNETT:** I'm sorry, Mr. President. I was misinformed by the Chair yesterday. Thank you.

THE PRESIDENT: The Chair was misinformed as well.

At the request of Senator **PINGREE** of Knox a Division was had. 10 Senators having voted in the affirmative and 12 Senators having voted in the negative, the motion by Senator **BENNETT** of Oxford to **REMOVE** from the **TABLE**, **FAILED**.

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.

On motion by Senator **AMERO** of Cumberland, **RECESSED** until the sound of the bell.

After Recess

Senate called to order by the President.

Off Record Remarks

Senate at Ease.

Senate called to order by the President.

Off Record Remarks

ORDERS OF THE DAY

The Chair laid before the Senate the following Tabled and Later (3/29/00) Assigned matter:

Resolve, Authorizing Certain Members of the Sullivan Family to Bring Suit Against the State

S.P. 605 L.D. 1728

Tabled - March 29, 2000, by Senator **MURRAY** of Penobscot.

Pending - **ADOPTION OF COMMITTEE AMENDMENT "B" (S-601)**

(In Senate, March 29, 2000, **READ A SECOND TIME**. On motion by Senator **MURRAY** of Penobscot the Senate **RECONSIDERED ADOPTION** of **COMMITTEE AMENDMENT "B" (S-601)**.)

On motion by Senator **DAGGETT** of Kennebec, Senate Amendment "B" (S-646) to Committee Amendment "B" (S-601) **READ**.

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

Senator **LONGLEY:** Thank you Mr. President and colleagues in the Senate. Two years ago, July 2, 1998, a Waldo County sheriff chose to pass on a hill and he had a head-on collision with the Sullivan family. We just got introduced to Jack Sullivan and his daughter-in-law, Kristen. What happened at the top of the hill? They were heading to put their sailboat in, July 2 heading for July 4th fun. Next thing you know, it's a head-on collision, allegedly at high speed. Jack is driving. He gets crushed, his hip is gone, his chest gets bent in, he loses an eye, there's bleeding. Basically, he now has one eye. He was crushed and had to be, basically, sawed out. He had one heart attack while he was waiting, maybe two. Nobody thought he was going to live. His son was a woodcutter. As an example of the speed at impact, he was there in his boots. They were high-tie boots, boots that tied high up and they were all tied. Next you know, he's thrown out the front window, hits the sheriff's car, bounces 50 feet. His boots remained, still tied, on the floor of the passenger front seat. It was the force of the impact. Kristen and Sean, 8-year-old Sean, found their heads up against the engine. They'd been in the back seat. Eventually, the granddad, Jack, came to and mumbled something. And Kristen said, "We've been in a terrible accident, stay calm." He put his hand up to his eye and said, "Oh my God, I think I've lost an eye." She managed to find a towel or

something, don't ask me how, to help cover his eye. Eventually they sawed him out. He's been in a wheelchair and a hospital bed since then. Right now, 8-year-old Sean, he's been having headaches all the time, severe headaches. He's increasingly losing sight in his right eye. When he covers his good eye, he can't see the top line of the eye chart. His mom thinks she's going to have to keep him back in 3rd grade this year because he doesn't seem to be doing well. Most sadly, Damaine, the dad, and the son are in the van sleeping. The family has been going through hell as we've tried to figure out how to help. Many of you have been very helpful and I'm very appreciative. For me, what's almost symbolic is Sean. He came today because they couldn't find a sitter. It was a half-day at school but at school they were having Spirit Day. Sean cried all the way in. He had to miss Spirit Day. For me, everything I'm saying today is to try to give this family some spirit. So, the amendment that's been put before you, I'm asking you to oppose. And I'm asking you to support the unanimous committee report. Where the committee acknowledged they've never seen anything like this and the family is very badly hurt. They said, "But we've told counties they only need to insure up to \$300,000." My paraphrasing of what I heard the committee say, "...And for us to impose a higher cost on them now isn't what we want to do. We have told them they only need to insure for \$300,000 and that's what they did. But we think there has been serious damage and we want to help." So the state will help, I'm asking you to support the Committee Amendment. The amendment before you says, we would have to prove, if the Sullivan's were to go to court, the Sullivan's would have to prove state liability. We all know it's not state liability; it's the state trying to help. It's the state realizing we are at least, in part, responsible. So I am asking you to vote against this amendment and I'm asking you to honor the unanimous committee report. I'm asking you to realize that this family has been really badly hurt and we're trying to help the best way we know how. We have explored every option imaginable and the unanimous committee report was, "We're going to hold the County liable up to \$300,000 and we'd like the state to help". Maybe the state number is high by some of our standards, but if you were Jack Sullivan right now and your life was your hospital bed and your wheelchair, contrary to all of our mobility and all the things that we still have because we weren't in that car, it might be easy for us to say. But I ask you to put yourselves in the shoes of the Sullivan family and I'm asking for your help because I think, as citizens of this state, I know we want to help and the committee report, unanimous committee report was an attempt. I ask you to give it your vote of approval and in the process vote down the pending amendment which will only put us exactly back to that accident scene where we could go to court and sue for up to \$300,000. That's what the law says. If you vote for this amendment, you haven't helped one bit. Thank you for listening. It's a very awful case and I think you are capable of saying that we can do something to make this awful case less awful. Thank you.

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

Senator **DAGGETT:** Thank you Mr. President. Members of the Senate, I hope that you will be supporting the amendment that I have put forward. I am going to make an effort to try to explain the purpose of that amendment. First, I would like to say that I don't believe that there is any lack of agreement that this accident was an absolute tragedy. And I would also like to say

that the advocacy of the Senator from Waldo, Senator Longley, has been extraordinary. This has been a very difficult issue. Certainly nowhere near as difficult for the committee as it has been for the Sullivan family. However, we find ourselves constrained by certain points of law in the way that we are able to deal with issues that come in front of us. The one change between the committee report and the amendment in front of you is described in a letter that I have passed out. On the bottom of the front page, it says, "However, another problem remains with the Bill. It retroactively changes the rules on Waldo County and its employees by depriving them of the legal defenses normally afforded by the Maine Tort Claims Act in any civil action". That is the only change in the amendment. It restores, or it does not take away, those normal legal defenses under the Maine Tort Claims Act. My understanding is the committee did not wish to do that and that is the purpose of the amendment. It allows the cap to stay in place for Waldo County and permits the suit against the state, similar to the report from the committee. It only restores the employee's legal defenses. That is the only difference between the amendment, that I am offering now, and the committee Bill. I hope that you will vote with me for the amendment, to allow this Bill to move through and eventually end up on the Appropriations Table where there can be further discussions and perhaps some negotiations regarding the final outcome. Thank you.

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

Senator **GOLDTHWAIT:** Thank you Mr. President. Ladies and gentlemen of the Senate, I rise to ask you to defeat the pending motion and to just say a few words about my position on this issue. Again, I have absolutely no dispute with the fact that this is a devastating incident in the lives of this family. However, as I understand the facts of the case, there is absolutely no state involvement here. It wasn't a state vehicle. It wasn't a state employee. This had nothing to do with the State of Maine. Although anyone's heart would go out to this family and these circumstances, we are not in a position to decide to spend taxpayers money to attempt to address what is clearly the great need of this family, given the numbers of families in our state with needs of a similar magnitude. People who have had accidents, people who have suffered illnesses, events entirely beyond their control, whose lives are in a state of complete chaos and to whom money would be most welcome in improving those lives under the circumstances. But I cannot agree that it is the business of this state to be making decisions in issues where there is not only no culpability, but no involvement. To be taking taxpayers money and giving it to one family simply because our hearts do go out to them. It makes all kinds of sense in a humane and compassionate way. It makes absolutely no sense in the public policy way. I hope you will join me in opposing the pending motion.

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

Senator **MILLS:** Mr. President and men and women of the Senate, I must frankly share the analysis by the Senator from Hancock. As I understand the amended Resolve before us, it does not purport to say that the state has any involvement or that the state is responsible for this casualty, for this tragedy, that the state has any responsibility in the matter. Nor could it. It seems

to me that if we had a Bill in front of us that suggested that we should use taxpayer dollars to compensate for these tragic losses, it would probably be unconstitutional. There is a case, called the Nadeau case, from some years ago that says, quite plainly, that it is not our purview, our province, as a legislature to collect tax dollars and appropriate those dollars to a specific person, or family, if there's no legal or moral obligation on the part of the state to do so. In this respect, it seems to me that this case involving the Sullivan family is distinguished from say the Wrendy Hayne matter, where the State of Maine was in direct custody of Wrendy Hayne. The state had a responsibility for her well being. The state had deprived her of her freedom. She was in residence at AMHI and the state had a moral, and arguably a very legal, obligation to provide a safe haven for her because of her unfortunate mental condition and the state failed. So, in that instance, for us to appropriate funds to compensate the family for that tragedy was at least within our province. It was at least something constitutional for us to do. If the County Commissioners of Waldo County, or the voters of Waldo County, wish to make a similar decision with respect to the Sullivan family, I suggest that they are free to do so. It does seem out of place for us, as a state, to step into a situation where we had no involvement. The Deputy Sheriff, who was the other party to this accident, was an employee of the county not of the state. He was not operating under any color of authority from the state that I'm familiar with. The amendment that lies before you simply suggests that the state should permit itself to be sued, but it doesn't say that it should permit itself to be liable. It seems to me that if we pass this amendment, we would be processing a meaningless piece of paper that would hold out, perhaps, false hopes to a family which has already encountered too many. Thank you.

The Chair ordered a Division.

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

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

Senator **MILLS:** Mr. President, because the amendment, in my view, is preferable to the Bill, I may find myself voting for the amendment. But I think, with the chamber's understanding, that I reserve my right to vote against the Bill. That will be my position in any case.

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

Senator **LONGLEY:** Thank you Mr. President. Well, if that is the good Senator's position, I should add that there is competing constitutional issue, or case law, and it's not Nadeau, it's the Brann case. Basically, what it says is we can do a specific unique circumstances law if the general law just doesn't seem applicable. For whatever reason, we've never been in this situation. Hopefully, we'll never be in it again. And so there is, at least, competing case law. Secondly, I would add that a very important piece of what this amendment is trying to do is to allow the county's insurers to argue that the sheriff's decision to pass on a hill came within his discretionary function. And third, and most important point, this wording. Of all of the resolves that

have ever come into this chamber, or any chamber here, or the house, or into this legislature, there's never been a resolve that narrowed the "notwithstanding" language like this one, so it's unprecedented. I encourage you to vote against this amendment. Thank you.

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

Senator **DAGGETT:** Thank you Mr. President. Members of the Senate, I'd like to respond to the issue of the unprecedented language. Regularly, when a Bill comes in front of the Legal and Veterans Affairs Committee asking for a suit against the state, it is when there is no right for a suit, when the party is not allowed to sue the state. Therefore, the language that came out in the Bill was language that comes out under that circumstance. In this particular case, as has been mentioned earlier, there is the right to sue Waldo County, right now, up to the \$300,000 cap. The "notwithstanding" language for the employee is protection, etc., are not necessary in this case, because there already is the right to sue with a vehicular accident. That's already an exception under the Tort Claims Act. I feel that I'm not explaining this very well. So that's why that language is not necessary. That's why that language is not necessary. I do hope you will support the amendment. The language came out because that is the typical language that is used when a suit is not allowed. If there's a question, I hope someone will ask me, but I feel I haven't done a very good job. I do feel the amendment is necessary. A vote on the amended Bill, is certainly anyone's option. But I feel that it is appropriate to put this on which is why I am trying to do it. Thank you very much.

THE PRESIDENT: The pending question before the Senate is the motion by the Senator from Kennebec, Senator Daggett to Adopt Senate Amendment "B" (S-646) to Committee Amendment "B" (S-601). 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 (#386)

YEAS: Senators: ABROMSON, AMERO, BENNETT, DAGGETT, DAVIS, HARRIMAN, KONTOS, LAFOUNTAIN, LIBBY, MILLS, MITCHELL, PENDLETON, RAND, SMALL

NAYS: Senators: BERUBE, CAREY, CASSIDY, CATHCART, DOUGLASS, FERGUSON, GOLDTHWAIT, KILKELLY, LONGLEY, MICHAUD, MURRAY, NUTTING, O'GARA, PARADIS, PINGREE, RUHLIN, TREAT, THE PRESIDENT - MARK W. LAWRENCE

ABSENT: Senators: BENOIT, KIEFFER, MACKINNON

14 Senators having voted in the affirmative and 18 Senators having voted in the negative, with 3 Senators being absent, the motion by Senator **DAGGETT** of Kennebec to **ADOPT** Senate Amendment "B" (S-646) to Committee Amendment "B" (S-601), **FAILED**.

On motion by Senator **MURRAY** of Penobscot, **TABLED** until Later in Today's Session, pending **ADOPTION** of Committee Amendment "B" (S-601).

Senate at Ease.

Senate called to order by the President.

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

Resolve, Authorizing Certain Members of the Sullivan Family to Bring Suit Against the State

S.P. 605 L.D. 1728

Tabled - April 12, 2000, by Senator **MURRAY** of Penobscot.

Pending - **ADOPTION OF COMMITTEE AMENDMENT "B" (S-601)**

(In Senate, April 12, 2000, on motion by Senator **DAGGETT** of Kennebec, Senate Amendment "B" (S-646) to Committee Amendment "B" (S-601) **READ** and **FAILED ADOPTION**.)

On motion by Senator **MURRAY** of Penobscot, Senate Amendment "A" (S-603) to Committee Amendment "B" (S-601) **READ**.

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

Senator **MURRAY:** Thank you Mr. President. Men and women of the Senate, I'm offering this amendment as an amendment from the Committee on Bills in the Second Reading. That committee has never had such excitement as it has had with this Bill. My understanding of this amendment is that it merely adds the words "Waldo County and" to the committee amendment in the area making reference to whom suit can be filed against.

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

Senator **DAGGETT:** Thank you Mr. President. Members of the Senate, I understand the purpose of this technical amendment, which would not have taken place had my amendment been accepted. So the issue of the technical amendment is not a particular concern of mine. My concern is the current posture of the Bill, in the way it has been left. With that in mind, I would move indefinite postponement of this Bill and all of its accompanying papers.

Senator **DAGGETT** of Kennebec moved the Bill and accompanying papers be **INDEFINITELY POSTPONED**.

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

Senator **LONGLEY**: Thank you Mr. President. Colleagues in the Senate, I urge you to vote against indefinite postponement. I'm sure we are capable of better and so I finally ask for a Roll Call.

Senator **LONGLEY** of Waldo requested a Roll Call.

The Chair advised the Senate the pending motion was the motion by Senator **MURRAY** of Penobscot to **ADOPT** Senate Amendment "A" (S-603) to Committee Amendment "B" (S-601). The motion to **ADOPT** takes precedence over the motion to **INDEFINITELY POSTPONED** the Bill and accompanying papers.

Senator **LONGLEY** of Waldo requested and received leave of the Senate to withdraw her request for a Roll Call.

The Chair ordered a Division. 26 Senators having voted in the affirmative and 1 Senators having voted in the negative, the motion by Senator **MURRAY** of Penobscot to **ADOPT** Senate Amendment "A" (S-603) to Committee Amendment "B" (S-601), **PREVAILED**.

At the request of Senator **GOLDTHWAIT** of Hancock a Division was had. 14 Senators having voted in the affirmative and 13 Senators having voted in the negative, Committee Amendment "B" (S-601) as Amended by Senate Amendment "A" (S-603) thereto, **ADOPTED**.

Senator **DAGGETT** of Kennebec moved the Bill and accompanying papers be **INDEFINITELY POSTPONED**.

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

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#387)

YEAS: Senators: **ABROMSON, AMERO, BENNETT, DAGGETT, DAVIS, GOLDTHWAIT, HARRIMAN, KONTOS, LAFOUNTAIN, LIBBY, MILLS, MITCHELL, O'GARA, SMALL**

NAYS: Senators: **BERUBE, CAREY, CASSIDY, CATHCART, DOUGLASS, FERGUSON, LONGLEY, MICHAUD, MURRAY, NUTTING, PARADIS, PENDLETON, PINGREE, RAND, RUHLIN, TREAT, THE PRESIDENT - MARK W. LAWRENCE**

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

14 Senators having voted in the affirmative and 17 Senators having voted in the negative, with 4 Senators being absent, the motion by Senator **DAGGETT** of Kennebec to **INDEFINITELY POSTPONE** the Bill and accompanying papers, **FAILED**.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "B" (S-601) AS AMENDED BY SENATE AMENDMENT "A" (S-603)** thereto.

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

Off Record Remarks

The Chair laid before the Senate the following Tabled and Later (4/11/00) Assigned matter:

JOINT RESOLUTION - relative to 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
S.P. 1085

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

Pending - motion by same Senator to **ADOPT**

(In Senate, April 11, 2000, on motion by Senator **PINGREE** of Knox, **READ**.)

THE PRESIDENT: 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 already had considerable debate about this last night and I will not reengage in the same debate. I just wanted to review some of my concerns and reasons for thinking that this was a valuable thing for all of us to consider and to put forward. The sale of Blue Cross Blue Shield is an irreversible event. I felt very strongly that I wanted to have the opportunity, and make sure that my colleagues had the opportunity, to put some of our concerns, certainly my concerns, on record. This particular resolution, as you know, does not change statute. It does not change the process. It merely is a statement of how I certainly feel and I think others feel as well, about our concerns, about a major change in the insurance market in this state. I think it is our responsibility, at this time I think it's our right, but I also think it's our responsibility, to make a statement about this issue. We are asking the Superintendent of Insurance to consider some things. We are asking the Board of Blue Cross Blue Shield to consider some things. They may, or may not, choose to do so, but I feel it's important for us to make that statement. One of the concerns, from the hearings with the interveners, was the statement from Anthem refusing to make a commitment that they always provide coverage to the people of Maine, no matter where they live. I am very concerned about the loss of insurers in the market, and about people who live in rural communities, and their ability to access. I am concerned about the loss of the last not-for-profit insurer in the State of Maine. Because we've had the opportunity to have Blue Cross Blue Shield in this state, which is a not-for-profit, we can hold it accountable through its charitable mission. We've had the

opportunities to require certain things: that they provide health insurance in the individual market; that they provide statewide coverage. Once there is a sale to a for-profit, we will no longer have that opportunity and that concerns me. I know there are many people who feel that this is a critical event right now, that we need the infusion of capital. I am not convinced that this is the only opportunity for us to make sure that we have stability in our health care insurers in the State of Maine. I am not convinced that there are not other opportunities. While I am not the person making the decision, I just want to make sure that we've stated that. There are options that should be considered, that will be considered as part of the process, and that we've looked at them all before we lose our last not-for-profit insurer in the State of Maine. There has been an impressive list of organizations, who have been doing far more work on this than myself, who have been in a position of reading documents that I haven't had a chance to read, and who have come forward and said to us, "If this is a good deal now it'll be a good deal in a few weeks." We do not need to rush into this. New information has come forward. We should make sure there's time to consider that. We should make sure that we know that we are doing the right thing before we take this major, major step in the State of Maine. Some of those organizations include the Maine Medical Association, the doctors of the State of Maine, the Maine Osteopathic Association, another group of doctors in the State of Maine, Consumers for Affordable Health Care, Maine Ambulatory Care Coalition. You have the list in front of you. It is long. I am just asking us to heed their warning so that we do not find ourselves in 6 months, or 9 months, or 12 months saying, gosh, I wish we'd given a little more consideration to that information. I just ask you to join with me in making this statement and hope that you will vote in favor of this particular item.

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

Senator LAFOUNTAIN: Thank you Mr. President. Men and women of the Senate, I rise to encourage you to oppose the pending motion. I have been fortunate to Chair the Banking and Insurance Committee now for two sessions, sharing in the 118th and the 119th. In the 118th we were presented with a Bill, toward the end of the session, called L.D. 1849, "An Act to Clarify the Charitable Status and Nonprofit Hospital and Medical Service Organizations". I was fortunate to have serving on that committee with me the good Senator from Cumberland, Senator Abromson, and the Senator from Penobscot, Senator Murray. The committee worked very hard on that issue, and gave it a lot of time and effort. As a result, we passed out a Bill that went through this chamber under the hammer and went through the other chamber under the hammer and was signed into law and became Public Law 1997, Chapter 344. The law clearly defined the regulatory roles of the Attorney General and the Bureau of Insurance over an anticipated transaction that would convert Blue Cross Blue Shield of Maine to a for-profit company. It's that new law that now governs the proposed sale to Anthem by Blue Cross Blue Shield. Last evening, distributed to your desks, was a fuchsia colored sheet, which has now been watered down to pink, which appears on your desk today, which lists the number of the organizations that oppose the sale of Blue Cross Blue Shield of Maine. Reading through that list, I can tell you, a number of these organizations were present when the committee heard L.D. 1849, and their concerns were taken into consideration. Such groups that were present included the

Maine Council of Senior Citizens, Consumers for Affordable Health Care, the Maine Medical Association, the Maine Peoples Alliance, the Maine Osteopathic Association, and, I believe, the AFL-CIO. It is my understanding that everyone walked away from that committee process happy with the process that we had developed. As a result of the law, which is currently in effect and which governs the Anthem and Blue Cross proposed sale, the AG's Office, the Attorney General himself, went throughout the state late fall - early winter conducting public hearings. Once that was completed, the Bureau of Insurance began the adjudicated process for its role in overseeing this conversion. It scheduled public hearings through the state during the month of January and it began its hearing, its adjudicatory hearing earlier this month. The main parties to that action are Blue Cross Blue Shield of Maine and Anthem. But the Superintendent of Insurance has granted intervener status to the following additional parties: the Attorney General, Central Maine Health Care Corporation, Maine Medical Association, Maine Health Alliance, Maine Ambulatory Care Coalition, the Maine Peoples Alliance, Maine Council of Senior Citizens, and Consumers for Affordable Health Care. Now last evening, under Supplement No. 10, which probably most of you have thrown away, which appears now under the Orders of the Day as number 14, so you probably don't have in front of you - the entire resolution. There are certain things in here that concern me. The first is on page 3, which is one of the resolves. I asked the question last evening, what does the phrase "would support" mean in that paragraph? I'll read you the paragraph, "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 if Blue Cross Blue Shield determines that alternatives are in the best interest of the citizens of Maine." The problem is I don't understand clearly what the phrase "would support a decision" means. I think we're all clear that no one legislature can bind another legislature. By that terminology used there, does that mean that we are going to be ready and willing next session to appropriate funds to Blue Cross Blue Shield because of a loss of money, or revenue, as a result of this sale falling through? It is my understanding that, at this point in time, Blue Cross Blue Shield has expended roughly \$10 million toward this transaction. I think one needs only to go down to Gardiner to the Bureau of Insurance and walk into one of the rooms where some of the analysis is being done to see the reams of papers that have been generated and the number of experts hired by the Bureau of Insurance that are being paid for by Blue Cross Blue Shield to oversee the finances in this transaction. If it's our intent to be there with an open purse next year, then we should have that on the record. I don't think that's what we mean by "would support a decision". I am also concerned with the second resolve. It's buried somewhere in that paragraph and it says, "that the legislature will ask the Superintendent of Insurance to construe the requirement...". The problem I have here is that we are in the middle of an adjudicatory hearing. This would be like the Judiciary Committee passing out a Bill that directs a certain judge, who is involved in a certain case, to take a look at certain evidence, and to come to a certain conclusion. We just don't do that in the legislature. The Banking and Insurance Committee has been very careful throughout the last year when it discussed Blue Cross Blue Shield and Anthem in the committee room. We've had numerous briefings on it. But there is always one individual who is never in attendance, and that is the Superintendent of Insurance. Whenever the issue comes up, he

leaves the room. His spokesperson, who represents the Bureau of Insurance, Commissioner Longley from the Office of Professional and Financial Regulation, has made it perfectly clear that he does not want to receive information or input that way. We can get involved in this process, and we have been involved in the process and that's through our intervener. Our intervener is the Attorney General. If we want to prepare a joint resolution, this resolution should be going to the Attorney General to present evidence on behalf of the legislature at the hearing process, not directly to the Superintendent. As I indicated, the Attorney General has gone statewide for his public hearings and also was in attendance in this building on Saturday to receive public comment from members of this legislature. It is my understanding that at least 15 legislators presented testimony up in the Banking and Insurance Committee Room and that, actually, the sponsor of this resolution gave written comment. I, myself, gave him comments. As a result of the comments received last Saturday, our Attorney General drafted a 3-page letter to the Superintendent of Insurance, to be presented through the formal process, addressing the concerns of the legislature. He outlined 5 specific areas, which I won't go into detail but I'll just indicate to you what those are. Number 1: Insufficient opportunity for parties and the public to absorb and react to evidence. Number 2: Scope and reach of services under Anthem, which basically expresses the concerns raised in the resolution. Number 3: Concerns about Anthem's business and consumer practices. Number 4: Valuation of Blue Cross and Blue Shield of Maine. Number 5: Loss of Maine's only non-profit health insurer. As a result of our concerns raised on Saturday and throughout the process, the Attorney General also submitted through the formal process a document that is entitled Attorney General's Motion for Extension of Deadline for Submission of Closing Arguments and for Additional Public Comment Period. I submit to you again that what we are doing here, if we pass this joint resolution, is setting bad precedent. We are getting involved in an administrative hearing with an individual who should remain neutral until his final decision is made and should receive information only through the formal process. Frankly, I don't actually think that this joint resolution will actually be seen by the Superintendent of Insurance prior to his decision being made because there is no formal mechanism to get it before him. I suggest then that if you want to raise these concerns, continue to discuss this issue with the Attorney General, or revise the Joint Resolution to have him be the one who is receiving the document directly with our concerns. Thank you.

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

Senator MILLS: Mr. President and men and women of the Senate. Blue Cross goes back a long way in the history of this state. When my father was in the House of Representatives in 1939, as a 28 year old newly graduated lawyer from law school, he was part of the legislature that incorporated Blue Cross 61 years ago. Three or 4 years ago, when it became apparent that Blue Cross was looking for affiliation with larger entities and it became likely that they were going to convert to be a stock company, or a mutual company, and thus change form and lose their then current structure, I was one of the several legislators who took a very active role in writing a piece of legislation that would define the procedure that they are now following. I think it's useful to reflect on the fact that that legislation, and that

procedure, in this instance, if the sale goes forward will yield for the people of Maine something in the order of \$80 million or \$85 million in a trust fund for charitable and beneficent purposes to aid the uninsured and promote health care in this state. It was a major, I think a major achievement, for those who were involved. Last summer, when it came to my attention that Blue Cross had made a decision, through a very deliberate process of its Board of Directors, to propose, in essence, selling the company to Anthem, I thought a great deal about that. In October, I put a Bill in which would propose simply to stop the sale and, in the process, redefine entirely the mission of Blue Cross. The Bill would also require the state and its subdivisions to purchase all of their insurance through Blue Cross, so that Blue Cross would have a large captive market that it could not lose money on. And I thought of a series of things that Blue Cross could do perhaps to relieve the plight of the uninsured in this state. It was a rather grand scheme that I abandoned before cloture for one reason or another. No matter what you do for Blue Cross, at this juncture, somebody has to come up with something in the order of \$30, or \$40, or \$50 million in fresh capital in order to keep the company afloat and in order for the company to be entitled to call itself a Blue Cross affiliate. The right to use the Blue Cross name, which is copyrighted, that right is not owned by Blue Cross of Maine. It's owned by a national charitable franchise that has certain underwriting standards. The national franchise has the right to pull the plug on the Blue Cross label, or its use, if it finds that Blue Cross doesn't have adequate capital, or resources, to underwrite all the risks that it is encountering. It has fairly, as one might understand, rigid specifications. After all they don't want companies by the name of Blue Cross going under, or having to seek special assistance, or reorganization from the Superintendent of Insurance, in any state. It damages the name. It's bad for business. My understanding is that Blue Cross was able to bid on the state contract, and became successful in bidding, only because of the pending arrangement with Anthem. That, in the absence of having Anthem available to supply capital and to step in, Blue Cross would not have been eligible to take on the 27,000 lives, or so, which are associated with writing state health insurance. So they could not expand and they cannot expand their underwriting base. They are already overextended in terms of the capital that they have. They've lost money in the last several years, not so much because of their own fault but because Tufts came in, and undercut the market dreadfully, and committed suicide, economic suicide in this state, and nearly dragged down Blue Cross with it, and nearly dragged down Harvard Pilgrim with it. Two of the survivors are so large that it didn't matter so much to them that they lost comparable amounts of money. Etna U.S. Health Care, and Signa Health Source both survived because they had huge, national capital resources. Maine is a tiny piece of their market. Maine is the market for Blue Cross. So when Blue Cross loses \$15 or \$20 million, it's not the same thing as Signa or Etna losing \$20 or \$30 million. To Blue Cross it's nearly everything. We have a situation right now that's been pending for 10 months. It has been the subject of special features in all of the major newspapers. I, as a legislator, was on notice of the pending sale last summer and fall. I made the decision, at some juncture, to put a Bill in and then withdrew it. We've all had parallel opportunities to get involved in this transaction at a very early stage. It seems to me that if the hospitals in this state are now opposed to the sale, let them come up with the capital to go purchase the company, make a competing offer. Maybe the Maine Medical Association and the 4 major hospitals in this state should get together and see if they

can come up with the many millions of dollars necessary to make a responsible competing offer. Then they'll have their captive insurance company and it will be a nice little Maine company still. Or, the Appropriations Committee can take something in this \$350 million surplus, take 10% of it and go out and supply publicly the capital that is necessary to keep this company in business. Maybe then the state can appoint people to the board of directors and it would become a public company. We have at least some precedent for doing that in this legislature already, without adding capital. In any case, it seems to me, we've had plenty of time to dip our oar in this water and to pass a resolution at this juncture asking the Board of Directors of this company to reconsider, 10 months later, a decision that they came to with some pain during the late spring and early summer of 1999, it seems to me is out of place. For that reason, I would join with the Senator from York in requesting that you vote against the pending motion and resolve.

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

Senator **MURRAY:** Thank you Mr. President. Men and women of the Senate, I did, in fact, throw out the supplement from last night as part of my protocol of trying to keep my desk as clean as possible. But I did read it last night before I threw it away. I rise to express some concerns I have, similar to the concerns, at least in part, that were raised by the Senator from York, Senator LaFountain. I did serve on the committee a couple of years ago when that process was put in place. I am troubled by the references in the Joint Order before us that direct the Superintendent to do certain things, or consider certain things, or in any way it may be interpreted to affect the standard that he is supposed to apply in making his analysis and decision. I think, at a minimum, that creates confusion, if not muddying up the pending proceedings to the point where it could be challenged. For those reasons for so long as the references to memorializing the Superintendent, or directing the Superintendent, remain in this proposal, I couldn't support it. I don't have a problem with us memorializing Blue Cross Blue Shield, basically putting forth the request that they reconsider the issue based upon whatever changed circumstances, or circumstances that have come to light through the process. It's appropriate and, as I say, I could support a measure directing them to, at least, reconsider or consider again the question of whether it's the best for that company, as well as the citizens of Maine, that this proceed. If that were to change, and the measure be limited to that, it could have my support. Without it, as drafted, I'd have to vote against it.

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 not want to prolong the debate, but there are a couple things I felt I must say. First to the good Senator from Somerset, Senator Mills, I do not pretend to be an expert. I've never served on the Banking and Insurance Committee and I will admit I have not been a lengthy participant in this process. But I, too, had a Bill that I proposed earlier in this session, and it may come as a surprise to my colleagues, but I actually was not able to get it through the Legislative Council and so was not able to present the Bill and get engaged in the issue a little earlier. And I would not, in fact, have been looking at this issue today were I

not concerned, had I not been getting a lot of questions about it and found myself unable to answer some of those questions as regards the current process. I also want to address the Senator from York, Senator LaFountain, and say that my resolution here truly suggests no disrespect for the Banking and Insurance Committee, or the long process they've engaged in, or the Bill that they passed in 1997. I really appreciate the hard work they did on this issue and I appreciate the sentiment in 1997, when that Bill was passed. My concerns are not with the process that they set up, and I truly have not been trying to interfere with that process. But the fact is, when that Bill was written, it was written assuming the conversion would take place. Assuming that our only option, and perhaps our best option, was to convert to a for-profit entity. We were in a situation where that was going to be the best way to resolve the concerns in the insurance market. I have to say that I am surprised at how quickly the health care system has changed. How much has changed in my tenure and how much it has changed in the last 2 years. We have lost for-profit insurers. The market is not the same way it looked in '97. We have a growing population of uninsured. Prices have increased tremendously, and we hear that from our constituents all the time. I think it's a slightly different picture and I am now concerned. I apologize for bringing this in at the last moment, but I feel compelled to say I am concerned and I want the Board of Directors of Blue Cross to understand that I am concerned about a for-profit conversion. The good Senator from Somerset, Senator Mills, also mentioned if there are any other good ideas out there let them come up with the capital to make a completing offer. In many ways, what I am saying here is I'm asking the company and the process to give us some time and look if that option is out there. Ask the company to reconsider whether or not a for-profit conversion is, in fact, the best thing to have happen. Again, I will say, I think I've said it about 6 times now, I'm not an expert, here but I did pick up the phone yesterday, just to get a little better educated myself, and called one of the entities that I felt was a potential competing offer and I had heard was. I was interested to hear that there are other entities out there that are not-for-profit that have other ideas that perhaps have, or have not, I guess have made competing offers that were not chosen to be accepted by the company. But there are other ways, not necessarily the legislature putting in the money to resolve the current funding crisis, but, perhaps, bridge loans, other not-for-profits who could join this entity. I don't want to get in a long debate about this. I'm sorry to be dragging this out, but I just want to say that many of the concerns that people have expressed with my bringing this forward. I have been thinking about it. I do think there are other options. All I am trying to state here is that I hope, in this decision making process, we, again, don't look back in a year and say, gosh, that was the best idea in '97, but it wasn't the best idea in the year 2000, and I'm sorry we didn't have a chance to put that on the record. I still hope that you will support this resolution.

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

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

Senator **DOUGLASS:** Mr. President. Men and women of the Senate, I rise as a member of the Banking and Insurance Committee, a new member, simply to say that there are

differences of opinion among members who are in that committee and to say that this memorialization is a way in which we can speak to the Blue Cross Blue Shield Board and ask for review of the consideration and review of the Superintendent of Insurance. I see it as something that's far less than the meddling that has been suggested by some of those who have spoken before me. I see it as a call to be very certain, to be very thorough, to be very sure that all of the considerations that are laid out in the resolution are met. I think that's certainly why we're here. To promote public purposes, such as the one that I think this resolution points toward, which is when a corporation that provides so much health care to the citizens of our state is in the financial circumstances that Blue Cross Blue Shield finds itself, to be very sure of where they are going. It's very hard to turn around and say, I should have done that. What's more important is to look forward and make sure that your plans for the future are solid. I think that's what the proposal is here, that we ask those directors to be very, very sure that what they propose for the State of Maine is solidly positive. I also just want to speak to the process, because I have not discussed the process that was put in place in 1997. I wasn't a member of this body at that time. I do understand that the best thoughts possible were put into creating that legislation. I don't think that the review process that was put into place then requires us to be mute. I think it still provides a mechanism that was well thought out for review by the Superintendent of Insurance. But it's a one-time occurrence. The Bill was created specifically for Blue Cross Blue Shield. We won't be able to go back and say, well it's too bad if it didn't work well. Really, it's our only opportunity now to have some say in the matter. I hope you will consider that this resolution is really very tame. It's one way of communicating, as a body, with the directors of Blue Cross and Blue Shield. I think it simply sets out all the considerations that they presumably have taken into their minds. Let's just remind them. I think that's a good thing to do.

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

Senator **LAFOUNTAIN:** Thank you Mr. President. Men and women of the Senate, I'm not suggesting that this legislature remain mute on the issue. Rather I am suggesting that you address your comments of concerns directly to the AG's Office since he is our intervener in this matter.

THE PRESIDENT: The pending question before the Senate is the motion by the Senator from Knox, Senator Pingree to Adopt the Joint Resolution. 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 (#388)

YEAS: Senators: CATHCART, DAGGETT, DOUGLASS, KILKELLY, LIBBY, LONGLEY, MITCHELL, NUTTING, O'GARA, PARADIS, PINGREE, RAND, TREAT

NAYS: Senators: ABROMSON, AMERO, BENNETT, BERUBE, CAREY, CASSIDY, DAVIS, FERGUSON, GOLDTHWAIT, HARRIMAN, KONTOS, LAFOUNTAIN, MILLS, MURRAY, PENDLETON, RUHLIN, SMALL, THE PRESIDENT - MARK W. LAWRENCE

ABSENT: Senators: BENOIT, KIEFFER, MACKINNON, MICHAUD

13 Senators having voted in the affirmative and 18 Senators having voted in the negative, with 4 Senators being absent, the motion by Senator **PINGREE** of Knox to **ADOPT, FAILED.**

Off Record Remarks

On motion by Senator **PINGREE** of Knox, **RECESSED** until 2:00 in the afternoon.

After Recess

Senate called to order by the President.

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

REPORTS OF COMMITTEES

House

Ought to Pass

The Committee on **EDUCATION AND CULTURAL AFFAIRS** on Bill "An Act to Implement the Recommendations of the Task Force to Review the Educational Program and the Governance System of the Governor Baxter School for the Deaf" H.P. 1946 L.D. 2690

Reported that the same **Ought to Pass**, pursuant to Joint Order H.P. 1587.

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

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

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

Under suspension of the Rules, ordered sent forthwith to the Engrossing Division.

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

COMMUNICATIONS

The Following Communication: S.C. 643

**THE SENATE OF MAINE
OFFICE OF THE PRESIDENT
3 STATE HOUSE STATION
AUGUSTA, MAINE 04333**

April 12, 2000

Joy J. O'Brien
Secretary of the Senate
3 State House Station
Augusta, Maine 04333

Dear Secretary O'Brien:

Please be advised that I have appointed the following Senators to the Committee of Conference on L.D. 2630 "An Act to Support Maine's Only Representative to the Nation's Capital Bicentennial Celebration":

Senator Robert E. Murray, Jr. of Penobscot
Senator Richard P. Ruhlin of Penobscot
Senator Norman K. Ferguson, Jr. of Oxford.

If you have any questions, please see me.

Sincerely,

S/Mark W. Lawrence
President of the Senate

READ and ORDERED PLACED ON FILE.

ORDERS OF THE DAY

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

HOUSE REPORTS - from the Committee on **LABOR** on Bill "An Act Raising the Minimum Wage"

H.P. 253 L.D. 357

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-918)** (9 members)

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

Tabled - April 8, 2000, by Senator **PINGREE** of Knox.
Pending - motion by same Senator to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence

(In House, April 7, 2000, the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-918)**.)

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

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

On motion by Senator **LAFOUNTAIN** of York, 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 (#389)

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

NAYS: Senators: **ABROMSON, AMERO, BENNETT, CASSIDY, DAVIS, FERGUSON, GOLDTHWAIT, HARRIMAN, KILKELLY, LIBBY, NUTTING, O'GARA, SMALL**

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

18 Senators having voted in the affirmative and 13 Senators having voted in the negative, with 4 Senators being absent, the motion by Senator **PINGREE** of Knox to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence, **PREVAILED**.

READ ONCE.

Committee Amendment "A" (H-918) **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-918)**, in concurrence.

Under suspension of the Rules, ordered sent forthwith to the Engrossing Division.

The Chair laid before the Senate the following Tabled and Later (4/11/00) 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 11, 2000, by Senator **PINGREE** of Knox.

Pending - **ADOPTION OF COMMITTEE AMENDMENT "A" (S-650)**

(In Senate, April 11, 2000, Senator **MILLS** of Somerset withdrew Senate Amendment "A" (S-677) to Committee Amendment "A" (S-650).)

On motion by Senator **DOUGLASS** of Androscoggin, Senate Amendment "B" (S-696) to Committee Amendment "A" (S-650) **READ**.

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

Senator **DOUGLASS:** Mr. President. Women and men of the Senate, I wanted to just state, for the record, that when the Senator from Somerset, the good Senator Mills, presented an amendment, he was so kind as to speak with me and with various other interested parties. We have come to a resolution of our differences and believe he is in agreement that this is the resolution. I hope you will agree and pass this measure.

On further motion by same Senator, Senate Amendment "B" (S-696) to Committee Amendment "A" (S-650) **ADOPTED**.

Committee Amendment "A" (S-650) as Amended by Senate Amendment "B" (S-696) thereto, **ADOPTED**.

Under suspension of the Rules, **READ A SECOND TIME and PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-650) AS AMENDED BY SENATE AMENDMENT "B" (S-696)** thereto.

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

Senate at Ease.

Senate called to order by the President.

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

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

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

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

Tabled - April 12, 2000, by Senator **PINGREE** of Knox.

Pending - **FURTHER CONSIDERATION**

(In Senate, April 10, 2000, the Minority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED**.)

(In House, April 11, 2000, the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-685)**, in **NON-CONCURRENCE**.)

Senator **DOUGLASS** of Androscoggin moved the Senate **RECEDE** and **CONCUR**.

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

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

Senator **MILLS:** Mr. President. Just to remind the members of the body what this Bill is about. The title is only half of what it's about. It's not only the rangers at Baxter State Park. It's also the people who are assigned to, essentially, desk jobs at the Attorney General's Office who do investigative work. In regard to the rangers, my memory of the situation is that the Park Rangers at Baxter State Park are already in the 1998 special plan. The very narrow question presented by this Bill request was whether we should back date the payments, for some of them, a couple of years to 1998, because at present, I think, they go in effect only this year. There would be a price tag for paying for that. A year ago, when this was before us, we wrote to the Baxter State Park Authority, who pays these folks, and said, if you want them backdated so it will enhance their retirement benefits, will you pay for it because you pay their payroll, you pay other things. And the Trustees of the Baxter State Park Authority decided not to pay for this. So then it came back down to us. The rangers presented themselves to us and the issue was whether the state should pay for the backdating of their benefit change. The group that would be affected is a group of 5 or 6 of them, who are all in their 50s, who were vested before 1991, when we made the substantial cuts in the benefit system. These folks can retire anytime they want to with a 2.25% per year discount. They've got the benefit of that old law that makes it so easy to retire early if you wish, because you take very, very little discount on your benefit. You may recall that for those who are vesting since 1991, the newer state employees and others, you take a 6% discount per year that is a very substantial decrease in your pension. These 5 or 6 people, who are in their 50s and who are close to retirement, have a superb pension system, already, because they were all vested long before we made the changes in the early 1990s. The Bill that lies before you for consideration would add more money to their benefit system. It would cost us, I forget what the fiscal note is, but whatever it is it would be used exclusively to benefit a group of people who are already very well taken care of. For that reason, 6 of us on the committee thought that the Bill was completely unnecessary. There is another group or very new rangers, who've only been hired in the last few years, that are in the special plan as well. But they're in now and, because they are going to be working for 20 or 30 years before they retire, they're going to have plenty of time to earn the benefits that they need. There is no reason to backdate a couple years to add to their benefit package. The Bill, in my view, was totally unnecessary.

The other group of employees, and again it's a handful of people, are the investigators who work out of the Attorney

General's Office who do, as far as I could tell, paperwork 98% of the time. They are very intelligent people, I'm sure. But it doesn't seem to me that the job required any more physical exertion than being an Assistant Attorney General does, for instance, being a lawyer, or being anybody else who does primarily paperwork for a living. For that reason, again, 6 of us felt very strongly that we should not be expanding this 1998 special plan that allows for early retirement just to add in any group that comes down and asks. Because, if we pass this Bill, that would be the new standard. If you want to retire at age 55 rather than age 62, all you have to do is come down and ask the Labor Committee and we'll put a rubber stamp on it and send it on down to the Appropriations Committee and wish you the best. That ought not to be the standard for this special plan. That's not what we created it for. In my view, this Bill ought to fail and for that reason, I ask you to vote against the pending recede motion so that we can go on to adhere. Thank you.

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

Senator LAFOUNTAIN: Thank you Mr. President. Men and women of the Senate, I agree with the comments of the good Senator from Somerset, Senator Mills, and just want to remind this body that, as a result of this Bill and another Bill that we debated recently, there were a number of other groups that tried to get in under the special plan, but were not successful at the committee level. That included Marine Resource Wardens, Inland Fisheries Wildlife Wardens, Fire Investigators, Airplane Pilots, etc. Thank you.

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

Senator DOUGLASS: Mr. President. Women and men of the Senate, I rise just to be clear about a few points with regard to the committee's recommendation of this Bill to you. The Senator from Somerset, the good Senator Mills, suggested that if you want to get into the Maine State Retirement System, you should just come on down and you'll get out the rubber stamp. I think that I have to object to that on the part of the committee because that is not the situation here. It's true the fiscal note on this matter is small, because a small number of employees are involved. It's only 6 at the Wardens Service, the Baxter State Park Rangers, and most of them already are in the earlier plan that is of more benefit to them than even the '98 special plan. This matter was considered with much thought at the Labor Committee, as was the matter of the investigators for the Attorney General. As I mentioned on the record when we first debated this Bill, they carry guns, they're trained at the Criminal Justice Academy. They're sworn police officers and they perform the functions that other law enforcement personnel perform. But they were, inadvertently, left out of the '98 special plan when that was created by the legislature to apply to all law enforcement personnel. I'm sure it's because they are a small unit. I think it's only fair that they be included. I do understand that we had an earlier vote on this, but I want to be clear that the Labor Committee considered these matters duly, with great respect for what occurs in the areas these folks practice in. We recommend this Bill to you. Thank you.

At the request of Senator **LAFOUNTAIN** of York a Division was had. 12 Senators having voted in the affirmative and 16 Senators having voted in the negative, the motion by Senator **DOUGLASS** of Androscoggin to **RECEDE** and **CONCUR**, **FAILED**.

On motion by Senator **AMERO** of Cumberland, the Senate **ADHERED**.

The Chair laid before the Senate the following Tabled and Later (4/11/00) Assigned matter:

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)

Tabled - April 11, 2000, by Senator **RAND** of Cumberland.

Pending - **ENACTMENT**, in concurrence

(In Senate, April 8, 2000, on motion by Senator **PENDLETON** of Cumberland, **RECEDED** and **CONCURRED** to **PASSAGE TO BE ENGROSSED AS AMENDED BY HOUSE AMENDMENT "A" (H-1090).**)

(In House, April 11, 2000, **PASSED TO BE ENACTED.**)

Senator **DAGGETT** of Kennebec moved to **SUSPEND THE RULES** for the purpose of **RECONSIDERATION**.

At the request of Senator **LIBBY** of York a Division was had. 13 Senators having voted in the affirmative and 16 Senators having voted in the negative, the motion by Senator **DAGGETT** of Kennebec to **SUSPEND THE RULES** for the purpose of **RECONSIDERATION**, **FAILED**.

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

The Chair laid before the Senate the following Tabled and Later (4/11/00) Assigned matter:

Bill "An Act to Improve Standards for Public Assistance to Maine Employers"

S.P. 967 L.D. 2516

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

Pending - motion by same Senator to **ADOPT SENATE AMENDMENT "A" (S-689) TO COMMITTEE AMENDMENT "A" (S-637)**

(In Senate, April 11, 2000, motion by Senator **AMERO** of Cumberland to **INDEFINITELY POSTPONE** Bill and accompanying papers **FAILED**. Subsequently, on motion by Senator **RUHLIN** of Penobscot, the Majority **OUGHT TO PASS AS AMENDED** Report **ACCEPTED. 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 motion by Senator **PINGREE** of Knox, Senate Amendment "A" (S-689) to Committee Amendment "A" (S-637), **ADOPTED.**

Committee Amendment "A" (S-637) as Amended by Senate Amendment "A" (S-689) thereto, **ADOPTED.**

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-637) AS AMENDED BY SENATE AMENDMENT "A" (S-689)** thereto.

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

Senate at Ease.

Senate called to order by the President.

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

Bill "An Act to Implement the Recommendations of the Task Force to Review Solid Waste Management Policy"
S.P. 1000 L.D. 2565
(C "A" S-628)

Tabled - April 12, 2000, by Senator **RAND** of Cumberland.

Pending - **FURTHER CONSIDERATION**

(In Senate, April 3, 2000, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-628).**)

(In House, April 11, 2000, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-628) AS AMENDED BY HOUSE AMENDMENT "A" (H-1113)** thereto, in **NON-CONCURRENCE.**)

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

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

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

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

After Recess

Senate called to order by the President.

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

PAPERS FROM THE HOUSE

Non-Concurrent Matter

Bill "An Act to Implement a Maine Meat and Poultry Inspection Program"

S.P. 1083 L.D. 2687

In Senate, April 10, 2000, **PASSED TO BE ENGROSSED.**

Comes from the House, **PASSED TO BE ENGROSSED AS AMENDED BY HOUSE AMENDMENT "A" (H-1119)**, in **NON-CONCURRENCE.**

On motion by Senator **PINGREE** of Knox, the Senate **RECEDED** and **CONCURRED.**

Under suspension of the Rules, ordered sent forthwith to the Engrossing Division.

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

COMMUNICATIONS

The Following Communication: H.C. 425

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

April 12, 2000

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

Dear Madam Secretary:

The Speaker appointed the following conferees to the Committee of Conference on the disagreeing action of the two branches of the Legislature on Bill "An Act to Support Maine's Only Representative to the Nation's Capital Bicentennial Celebration" (EMERGENCY) (S.P. 1042) (L.D. 2630)

Representative FISHER of Brewer
Representative POVICH of Ellsworth
Representative PERKINS of Penobscot

Sincerely,

S/Joseph W. Mayo
Clerk of the House

READ and ORDERED PLACED ON FILE.

Off Record Remarks

On motion by Senator **ABROMSON** of Cumberland,
ADJOURNED, until Thursday, April 13, 2000, at 9:00 in the morning.