

MAINE STATE LEGISLATURE

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Senate Legislative Record
One Hundred and Twentieth Legislature
State of Maine

Volume 2

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May 24, 2001 to June 22, 2001

First Confirmation Session
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Second Confirmation Session
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Second Regular Session
January 2, 2002 to April 1, 2002

Pages 912 - 1844

**STATE OF MAINE
ONE HUNDRED AND TWENTIETH LEGISLATURE
FIRST REGULAR SESSION
JOURNAL OF THE SENATE**

In Senate Chamber
Thursday
May 31, 2001

Senate called to order by President Michael H. Michaud of Penobscot County.

Prayer by Reverend Bruce Felt of the Augusta Baptist Church in Augusta.

REVEREND FELT: Prior to reading, I'd like to share a portion of the Book of Proverbs. 'I, wisdom, dwell together with prudence. I possess knowledge and discretion. To fear the Lord is to hate evil, to hate pride and arrogance, evil behavior, and perverse speech. Council and sound judgment are mine. I have understanding and power. I make kings reign and rulers make laws that are just. I make princes govern and all nobles who rule on earth.' Let us pray.

Our Father, we pray that in accordance with the wisdom ordered by You this deliberative body may accomplish Your will and Your work today. Guide each one accordingly and we will thank You in Jesus' name. Amen.

Doctor of the day, Russell Radcliffe, M.D., Central Maine Medical Center in Lewiston.

Reading of the Journal of Wednesday, May 30, 2001.

Off Record Remarks

PAPERS FROM THE HOUSE

COMMUNICATIONS

The Following Communication: S.P. 640

**STATE OF MAINE
120TH LEGISLATURE**

May 30, 2001

Hon. Kevin L. Shorey, Senate Chair
Hon. John Richardson, House Chair
Joint Standing Committee on Business and
Economic Development
120th Legislature
Augusta, ME 04333

Dear Senator Shorey and Representative Richardson:

Please be advised that Governor Angus S. King, Jr. has nominated Bruce N. Schatz of Augusta for reappointment as a member of the Maine Educational Loan Authority.

Pursuant to Title 20-A, M.R.S.A. §11415, this nomination will require review by the Joint Standing Committee on Business and Economic Development and confirmation by the Senate.

Sincerely,

S/Michael H. Michaud
President of the Senate

S/Michael V. Saxl
Speaker of the House

READ and REFERRED to the Committee on **BUSINESS AND ECONOMIC DEVELOPMENT**.

Sent down for concurrence.

REPORTS OF COMMITTEES

House

Divided Report

The Majority of the Committee on **HEALTH AND HUMAN SERVICES** on Bill "An Act to Make Active Public Health Investigation Records Confidential"

H.P. 1027 L.D. 1384

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-591)**.

Signed:

Senators:

MARTIN of Aroostook
TURNER of Cumberland

Representatives:

FULLER of Manchester
DUDLEY of Portland
LAVERRIERE-BOUCHER of Biddeford
KANE of Saco
LOVETT of Scarborough
NUTTING of Oakland

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

Signed:

Senator:

LONGLEY of Waldo

Representatives:

BROOKS of Winterport
DUGAY of Cherryfield
O'BRIEN of Augusta
SHIELDS of Auburn

Comes from the House with the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-591)**.

Reports **READ**.

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

Divided Report

The Majority of the Committee on **LABOR** on Bill "An Act to Require That Certain Employees Be Paid on a Weekly Basis" H.P. 48 L.D. 57

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

Signed:

Senators:

TURNER of Cumberland
SAWYER of Penobscot

Representatives:

CRESSEY of Baldwin
DAVIS of Falmouth
MacDOUGALL of North Berwick
TREADWELL of Carmel
BUNKER of Kossuth Township
TARAZEWICH of Waterboro

The Minority of the same Committee on the same subject reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-351)**.

Signed:

Senator:

EDMONDS of Cumberland

Representatives:

HUTTON of Bowdoinham
NORTON of Bangor
SMITH of Van Buren

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

Reports **READ**.

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

Divided Report

Pursuant to Joint Order

The Majority of the Committee on **LEGAL AND VETERANS AFFAIRS** on Bill "An Act Regarding the Use of Tokens or Tickets for Games of Chance at Agricultural Fairs" (EMERGENCY) H.P. 1359 L.D. 1814

Reported that the same **Ought Not to Pass**, pursuant to Joint Order (H.P. 1332).

Signed:

Senators:

DOUGLASS of Androscoggin
BROMLEY of Cumberland

Representatives:

CHIZMAR of Lisbon
COTE of Lewiston
ESTES of Kittery
O'BRIEN of Lewiston
PATRICK of Rumford
MAYO of Bath

The Minority of the same Committee on the same subject reported that the same **Ought to Pass**, pursuant to Joint Order (H.P. 1332).

Signed:

Senator:

WOODCOCK of Franklin

Representatives:

LABRECQUE of Gorham
TUTTLE of Sanford
HEIDRICH of Oxford
DUNCAN of Presque Isle

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

Reports **READ**.

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

Senate

Divided Report

The Majority of the Committee on **BANKING AND INSURANCE** on Bill "An Act to Provide Health Insurance Coverage for General Anesthesia and Associated Facility Charges for Dental Procedures for Certain Vulnerable Persons"

S.P. 127 L.D. 403

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-300)**.

Signed:

Senators:

LaFOUNTAIN of York
DOUGLASS of Androscoggin
ABROMSON of Cumberland

Representatives:

DUDLEY of Portland
SMITH of Van Buren
O'NEIL of Saco
SULLIVAN of Biddeford
CANAVAN of Waterville
MARRACHE of Waterville

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

Signed:

Representatives:

MICHAEL of Auburn
YOUNG of Limestone
MAYO of Bath
GLYNN of South Portland

Reports **READ**.

On motion by Senator **LAFOUNTAIN** of York, the Majority **OUGHT TO PASS AS AMENDED** Report **ACCEPTED**.

READ ONCE.

Committee Amendment "A" (S-300) **READ** and **ADOPTED**.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-300)**.

Sent down for concurrence.

Divided Report

The Majority of the Committee on **HEALTH AND HUMAN SERVICES** on Bill "An Act to Offer Greater Financial Incentives Promoting Quality Child Care"

S.P. 48 L.D. 216

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-291)**.

Signed:

Senators:

LONGLEY of Waldo
MARTIN of Aroostook

Representatives:

FULLER of Manchester
BROOKS of Winterport
DUDLEY of Portland
LAVERRIERE-BOUCHER of Biddeford
KANE of Saco
O'BRIEN of Augusta
SHIELDS of Auburn

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

Signed:

Senator:

TURNER of Cumberland

Representatives:

LOVETT of Scarborough
NUTTING of Oakland

Reports **READ**.

Senator **MARTIN** of Aroostook moved to **TABLE** until Later in Today's Session, pending **ACCEPTANCE OF EITHER REPORT**.

Same Senator requested and received leave of the Senate to withdraw his motion to **TABLE** until Later in Today's Session, pending **ACCEPTANCE OF EITHER REPORT**.

On further motion by same Senator, the Majority **OUGHT TO PASS AS AMENDED** Report **ACCEPTED**.

READ ONCE.

Committee Amendment "A" (S-291) **READ** and **ADOPTED**.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-291)**.

Sent down for concurrence.

ENACTORS

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

Emergency Resolve

Resolve, to Create the Commission to Study Privacy Laws
H.P. 672 L.D. 872
(C "A" H-606)

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

Act

An Act to Increase the Homestead Property Tax Exemption from \$7,000 to \$10,000

H.P. 116 L.D. 120
(C "A" H-600)

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

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

ORDERS OF THE DAY

Unfinished Business

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

The Chair laid before the Senate the following Tabled and Specially (5/25/01) Assigned matter:

Bill "An Act to Encourage Savings for Higher Education "
S.P. 579 L.D. 1757
(S "A" S-298)

Tabled - May 30, 2001, by President Pro Tem **BENNETT** of Oxford

Pending - **PASSAGE TO BE ENGROSSED AS AMENDED BY SENATE AMENDMENT "A" (S-298)**

(In Senate, May 30, 2001, the **OUGHT TO PASS** Report from the Committee on **EDUCATION AND CULTURAL AFFAIRS** **READ** and **ACCEPTED. RULES SUSPENDED. READ TWICE.** On motion by Senator **SMALL** of Sagadahoc, Senate Amendment "A" (S-298) **READ** and **ADOPTED.**)

PASSED TO BE ENGROSSED AS AMENDED BY SENATE AMENDMENT "A" (S-298).

Sent down for concurrence.

The Chair laid before the Senate the following Tabled and Later (5/30/01) Assigned matter:

Bill, "An Act to Facilitate the Implementation of the Enhanced 9-1-1 Emergency System"

H.P. 1098 L.D. 1467
(C "A" H-442; S "A" S-252;
S "B" S-292)

Tabled - May 30, 2001, by Senator **DAGGETT** of Kennebec

Pending - **PASSAGE TO ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-442) AND SENATE AMENDMENTS "A" (S-252); "B" (S-292), in NON-CONCURRENCE** (Roll Call Ordered)

(In House, May 17, 2001, **PASSED TO BE ENACTED.**)

(In Senate, May 30, 2001, on motion by Senator **MARTIN** of Aroostook, **RECONSIDERED PASSAGE TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-442)**, in concurrence. On further motion by same Senator, Senate Amendment "A" (S-252) **READ** and **ADOPTED**; Senate Amendment "B" (S-292) **READ** and **ADOPTED.**)

On motion by Senator **SMALL** of Sagadahoc, **TABLED** until Later in Today's Session, pending **PASSAGE TO ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-442) AND SENATE AMENDMENTS "A" (S-252); "B" (S-292), in NON-CONCURRENCE.** (Roll Call Ordered)

Off Record Remarks

Senate at Ease.

Senate called to order by the President.

Off Record Remarks

Senator **SMALL** of Sagadahoc was granted unanimous consent to address the Senate off the Record.

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

Senator **SAWYER** of Penobscot was granted unanimous consent to address the Senate off the Record.

RECESSED until the sound of the bell.

After Recess

Senate called to order by the President.

Off Record Remarks

ORDERS OF THE DAY

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

HOUSE REPORTS - from the Committee on **HEALTH AND HUMAN SERVICES** on Bill "An Act to Make Active Public Health Investigation Records Confidential"

H.P. 1027 L.D. 1384

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-591)** (8 members)

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

Tabled - May 31, 2001, by Senator **MARTIN** of Aroostook

Pending - **ACCEPTANCE OF EITHER REPORT**

(In House, May 30, 2001, 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-591)**.)

(In Senate, May 31, 2001, Reports **READ**.)

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

Senator **LONGLEY:** Thank you, Mr. President. I move the Ought to Pass as Amended by Committee Amendment "A" Report and would like to simply add that if you see me on the other side it's because there's been a development and we're all happy campers and we can all vote together on the first vote. Thank you.

On motion by Senator **LONGLEY** of Waldo, the Majority **OUGHT TO PASS AS AMENDED** Report **ACCEPTED**, in concurrence.

READ ONCE.

Committee Amendment "A" (H-591) **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-591)**, 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 Today Assigned matter:

HOUSE REPORTS - from the Committee on **LEGAL AND VETERANS AFFAIRS** on Bill "An Act Regarding the Use of Tokens or Tickets for Games of Chance at Agricultural Fairs" (EMERGENCY)

H.P. 1359 L.D. 1814

Majority - **Ought Not to Pass**, pursuant to Joint Order (H.P. 1332) (8 members)

Minority - **Ought to Pass**, pursuant to Joint Order (H.P. 1332) (5 members)

Tabled - May 31, 2001, by Senator **BROMLEY** of Cumberland

Pending - **ACCEPTANCE OF EITHER REPORT**

(In House, May 30, 2001, the Minority **OUGHT TO PASS** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED**.)

(In Senate, May 31, 2001, Reports **READ**.)

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

At the request of same Senator a Division was had. 11 Senators having voted in the affirmative and 20 Senators having voted in the negative, the motion by same Senator **ACCEPT** the Majority **OUGHT NOT TO PASS** Report, in **NON-CONCURRENCE**, **FAILED**.

The Minority **OUGHT TO PASS** Report **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:

ORDERS

Joint Order

On motion by President Pro Tem **BENNETT** of Oxford, the following Joint Order:

S.P. 641

ORDERED, the House concurring, that when the House stands Adjourned it does so until Monday, June 4, 2001, at 9:00 in the morning and the Senate Adjourns until Monday, June 4, 2001, at 10:00 in the morning.

READ and PASSED.

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

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

COMMUNICATIONS

The Following Communication: S.C. 328

**120TH LEGISLATURE
SENATE OF MAINE
OFFICE OF THE PRESIDENT**

May 31, 2001

The Honorable Joy J. O'Brien
Secretary of the Senate
120th Legislature
Augusta, ME 04333

Dear Secretary O'Brien:

Please be advised that I have appointed the following conferees to the Committee of Conference on the disagreeing action between the two branches of the Legislature on the Bill, "An Act to Require Certain Employers to Provide Certification for Employees Who Dispense Medications." (H.P. 603) (L.D. 758)

Senator Kevin Shorey of Washington
Senator Edward Youngblood of Penobscot
Senator Peggy Pendleton of Cumberland

Sincerely,

S/Michael H. Michaud
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 (5/30/01) Assigned matter:

RESOLUTION, Proposing an Amendment to the Constitution of Maine to Require a 2/3 Vote for the Maine Government Facilities Authority to Issue Securities

H.P. 1298 L.D. 1767

Tabled - May 30, 2001, by President Pro Tem **BENNETT** of Oxford

Pending - motion by Senator **TREAT** of Kennebec to **RECONSIDER** whereby the Resolution and accompanying papers were **COMMITTED** to the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS**, in concurrence

(In House, May 25, 2001, Reports **READ** and Resolution and accompanying papers **COMMITTED** to the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS**.)

(In Senate, May 29, 2001, Reports from the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS READ** and on motion by Senator **GOLDTHWAIT** of Hancock, the Resolution and accompanying papers **COMMITTED** to the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS**, in concurrence.)

Senator **TREAT** of Kennebec requested and received leave of the Senate to withdraw her motion to **RECONSIDER** whereby the Resolution and accompanying papers were **COMMITTED** to the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS**, in concurrence.

The Chair laid before the Senate the following Tabled and Later (5/30/01) Assigned matter:

HOUSE REPORTS - from the Committee on **LABOR** on Bill "An Act to Ensure that the Annual Inflation Adjustment for Partial Compensation for Injuries occurring Prior to November 20, 1987 is Fully Recognized and Paid "

H.P. 723 L.D. 943

Majority - **Ought to Pass As Amended by Committee Amendment "A" (H-616)** (7 Members)

Minority - **Ought Not To Pass** (6 Members)

Tabled - May 30, 2001, by Senator **EDMONDS** of Cumberland

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

(In House, May 29, 2001, 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-616)**.)

(In Senate, May 30, 2001, Reports **READ**.)

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

Senator **EDMONDS:** Thank you, Mr. President, women and men of the Senate. This is an important bill. It's not simple. I'd like to walk you through what it does and what it hopes to remedy. The amendment actually replaces the bill and it has to do with those folks who sustained work injuries between 1972 and 1987 and were receiving benefits under Workers' Compensation. At that point in time, the law required a COLA provision for those partially disabled. In 1987, that COLA, Cost of Living Adjustment,

was removed prospectively. Promises and reassurances were given to all those workers between 1972 and 1987 that their benefits that they had been honestly receiving would not be changed and that the COLA that they had been receiving would not be changed prior to 1987. Those promises were reiterated in 1991 and in 1992. Hearing officers within the Workers' Compensation system had been calculating peoples' benefits based on those understandings. In January of this year, there was a case before the court that basically challenged this, and in a 5 to 4 decision, the court basically took away that understanding. But in its dissenting opinion, it was very clearly laid out that those dissenting were saying the legislation needs to make this clear in order for us to proceed. So I am here to ask you to make this clear. If we can't do this, I need to remind you of what it will actually mean to people. If you are a worker who was injured during those years and you've been receiving disability benefits for partial incapacity, you've organized your life, your family's life, your savings, your home ownership, everything on this understanding that you would have this benefit and this COLA would remain. If we don't change this, if we leave the court decision the way it is, those people will have, in some cases, their benefits halved. They could have them removed. We've heard reports in the public hearing that there are already people receiving letters saying that their benefits are now being recalculated. We, as a legislature, in years past made promises to people that I don't feel like we can go back on. Now, you may hear people say that this is going to cost the insurance companies a lot of money. I guess my simple response to that is they've been paying based the earlier understandings all along. Those payments have been made to people, they've been part of insurance company budgets. If we don't change it today, then a huge windfall, actually, will come to insurance companies because they won't be required to honor the promises that were made to those workers. To me this is a very clear situation where we need to stand by people who, through no fault of their own, were hurt while they were working. This is not anybody trying to get anything for nothing. This is somebody who was working hard at their job and was hurt and was given their rightful benefit. All understandings that they've had included this COLA. I don't think I want to be any part of going back on that promise. I hope you don't want to be part of that as well. I urge you to join me in the Majority Ought to Pass as Amended Report. Thank you.

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

Senator DOUGLASS: Men and women of the Senate, I'd like to try to explain to you why the interpretation of the COLA that existed in our Workers' Compensation law is not a good interpretation. It comes down to this. If you were making \$100 in 1960 and you're making \$100 today, are they the same? Are those dollars the same? I'd argue to you that they are not. They are about as different as some of the other currencies, the Euro dollar might be comparable to the American dollar or the Canadian dollar to the American dollar. That's where some of the confusion, I think, arose in the case that came down from our law court in January. What they did in interpreting the formula that they say is the way we drew up the law is to subtract today's dollars from yesterday's dollars before any inflation factor is taken into account. The reason that is really mathematically not the right thing to do is because they are not the same. Today's dollars are, in fact, worth quite a lot more than yesterday's and it's

penalizing the person who is injured. I hope that you will agree that we here understand that today's dollars are, in fact, of higher value than those from, as in the case that was decided there, 7 years earlier because that's the only fair way to actually go about establishing a neutral principle for compensation. If you don't do that, you're really penalizing the people who were injured longest ago and the longer ago their injury was, the greater the penalty. That can't be fair. I don't think that's what this legislature intended. I do understand how the lower court came to that conclusion. They looked at the words 'weekly compensation' and decided that that was sort of the first calculation that had to be made. I don't think you need to go too much further than this though. It's not fair to subtract the wage that an injured worker is able to make today from the wages that he was making earlier because today's values are higher. What this resolution would do is adjust that earlier, yesterday's dollars, up to today's dollars and then subtract what the injured worker is making. That's the fair thing to do. I hope that you will join me in voting with the Majority Ought to Pass Report.

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

Senator TURNER: Thank you, Mr. President, ladies and gentlemen of the Senate. The dispute here, as has been articulated by two of our good Senators, is not whether a worker was injured. That's clearly recognized by all parties. As the good Senator from Androscoggin, Senator Douglass, tries to walk you through the math. It's not necessarily easy to follow. What we're dealing with essentially is two different ways of calculating an adjustment. One that the hearing officers in Workers' Comp decided was the appropriate way to calculate. When the proper case came forward that was adjudicated in the courts and the courts indicated that the hearing officers were incorrect and that a different calculation had to be done. That is the essence. There have been suggestions that there is no money involved in this, that reserves have been set aside years ago on the basis of these calculations. What the heck, it's only insurance company money anyway and these workers do deserve the money as it was originally calculated by the hearing officer. I think what the worker does deserve is what the law says. The law has been interpreted by the court differently than the hearing officer's. So that is the law. We do have an opportunity, as has been stated earlier, to change that law and we can go back and retroactively change what the intent of the legislation was by voting for this particular motion on the floor. I think that's the wrong thing to do. We will, in my judgment, withdraw from Maine's economy anywhere from \$50 to \$100 million if this bill is enacted. You can say that's deserved by the worker who was injured. I think what the worker who was injured deserves is the calculation as it has been adjudicated. Now some will tell you that, well, it's the big guy who's self-insured. We have a few large employers in Maine that some in this body and the other body love to hate. I think you have to set aside who the employer is. You also have to consider that many of our self-insured are small employers. They will bear the brunt of that expense. In my opinion, it is not an expense they should bear. Further, in my opinion, the calculation that many have benefited from based on hearing officer interpretation, while generous, was an incorrect calculation. So I would ask you to not vote in favor of the pending motion. Thank you very much.

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

Senator **EDMONDS:** Thank you, Mr. President, men and women of the Senate. I don't usually rise a second time, but I feel I must to say that I want to be very clear that I have no bad feelings or disrespect for any insurance company. But I also want to make it very clear that I think we can't have any disrespect of any injured worker who has already paid, in the situation that they're in. I just feel very strongly that we have to honor the understandings and promises given to people.

Senator **EDMONDS** of Cumberland requested a Roll Call.

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

Senator **DOUGLASS:** Mr. President, women and men of the Senate, I think it's important to remember that the law court interprets legislative intent. If I could bring you back to 1993, when we decided to do something about the rising cost of Workers' Compensation. Part of the resolution, at that time, was to leave certain portions of the existing system in place and to radically change it from that point forward. I agree with that. It was a necessary thing to do. However, this particular bill involves only the law that was in place prior to that compromise and to that change. The law court's decision was based, and was in fact determined, on legislative intent. I argue to you that we, sitting here today, should not be changing the intent of the legislature at a time when that compromise was worked out, but should instead be honoring the agreement that was made and moving forward from it. I hope you will do that by voting for the Majority Ought to Pass Report.

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

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

Senator **TURNER:** Thank you, Mr. President, ladies and gentlemen of the Senate. Not being an attorney, and even if I were I'm not sure I would try to take on the good Senator from Androscoggin, Senator Douglass, but I do have a copy of the court's opinion. If you will bear with me, let me see if I can read pieces of this to you. 'Workers' Compensation law is uniquely statutory and employee's entitlement to an adjustment of benefits for inflation is governed by and limited by expressed statutory language, not legislative intent.' The legislative intent is my words, not the law court's. 'Our legislature has chosen to specifically address the issue of inflation by statutory enactment. Both former sections expressly provided for an adjustment of an employee's weekly compensation, not the employee's pre-injury and post-injury wage except for the exceptional case of varying rate compensation where the Arnold formula maybe applied. The inflation factor must be applied to the weekly compensation, not the pre or post injury wages. It goes on to talk about the application of the Arnold formula in more cases would result in a compensation rate that better accounts for the effects of inflation. The plain language of the statute does not provide for a broad use of the Arnold formula and the legislature has not seen fit to change that language.' Not intent, it's language. So I need to

make sure you clearly understand we're not trying to reach back into history and change legislative intent, we are reaching back into history to change the language. So we are setting a precedent for all time, reaching back and retroactively applying benefit increases. I object to that and I hope that you would as well. I urge you to vote against the pending motion. Thank you.

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

Senator **MILLS:** Mr. President, men and women of the Senate, the interpretation of the law that this bill would reinforce and reestablish has been in place for about 29 years. There are not hundreds but thousands of insurance adjusters, insurance actuaries, attorneys, claims representatives, hearing officers, and members of the Workers' Compensation Board who have all operated for 29 years under one set of assumptions about how to calculate this very fundamental benefit that applies to people who are partially disabled, some of them with very significant partial disabilities under the Workers' Compensation system. There have been hundreds of cases, perhaps thousands of cases, where rates of benefits have been negotiated by agreement because of an operating assumption about what the rules are that apply to a given case. There are hundreds, I'm not sure there are thousands anymore, I think there are probably only a few hundred people left who are still receiving partial benefits under the law that existed prior to 1987. In every case, they have a permanent and significant disability or they wouldn't be part of this system any longer. Almost everyone of these people is moving along in years into their 50's and 60's and 70's. I would say almost everyone of them has been subject to some sort of review process or give and take with the insurer, they've been involved in litigation, and somehow or other over the past 15 or 20 years there has been an accommodation reached that these people should be out there on a given level of support, existing on that level of support, with some annual adjustment permitted by the law from year-to-year. A lot of expectations have been created on the basis of a set of assumptions that people have been living with for 29 years. It is no understatement to say that the rug was completely pulled out from under these folks with the decision that was made just a couple of months ago by the Maine Supreme Court with 2 members descending, the decision was a 5 to 2 I think, in actuality. The issue isn't really where the money is coming from or where the money is going, it's what sort of reliable expectations do these folks have and are we prepared to take somebody, I'll give you 2 classic examples. A woman insured in 1976 has a profound permanent disability with a 75% disability rating. A person who will, if you let this thing go without amendment, she's got basically a check coming of a couple hundred dollars a week. Shoe worker by history. Without this bill passing, she will drop to \$14.57. Another fellow who was a very substantial wage earner. A fellow that had a great earning capacity. An electrician by trade. Significant and profound back injuries with multiple surgeries. No capacity really for work but said, you know I like to putter around, I like to do things without having a camera looking over my shoulder. I really do have some capacity to work with my hands and my arms even though my back is shot. I have no capacity to go back to the construction site and do anything meaningful, pull cable and that sort of thing. But he said, you know for my own peace of mind, I would like to accept a 75% disability rating so that the carrier will leave me alone and I will leave them alone and I will have continuing medical benefits on into my retirement, which the law

entitles me to, and we will just make our peace on this issue of what my check should be week-to-week. If we fail to pass this law, he drops to about \$87 a week from his current level, something I assure you he cannot live on at his present age, which is age 60. Where's the money coming from? It's coming from several sources. The self-insured entities have come down and said we represented 40% of the market before 1987. The self-insured people in that market were, by in large, the very large companies, often the paper companies, the wealthier companies in this state, not typically the small businesses or medium sized businesses. Many of them have reinsurance arrangements. Many of these old cases are deep into the reinsurance program. The money is coming out of Switzerland or London or some darned place. But it's not necessarily coming, any longer, out of even the shareholders of the paper companies that have the initial obligation. About 60% of that old market was the insurance industry itself. They were insured losses and they are insurance companies. A couple of those insurers, almost all of those insurers, left this state in the late 1980's for reasons that many of us are painfully familiar with. A couple of them have come back, many of them have not. But I don't think it's accurate to say that passing this bill will take some millions of dollars out of the Maine economy. It will take it out of the pockets of mostly insurance companies, many of those do not do business here in our Workers' Compensation setting anymore. I'm not trying to justify the law on that basis. That's not the way that we should be doing business. But I can guarantee you that if we fail to pass this law it will take those millions of dollars out of the pockets of people who spend the money here every single day to survive. Thank you very much.

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

Senator **NUTTING:** Mr. President, ladies and gentlemen of the Senate, I've struggled with this issue. I think, like most of you here, the lobbying has been intense. But I was struck by the family that came to visit me at the farm. The gentleman had been hurt at a young age prior to 1987 and hadn't been earning much money at the time he was injured. He now has a house and a mortgage and a couple of kids. My understand, after being extensively lobbied on this issue, is that if we don't pass this, what is going to happen, once this gentleman earns today what he was earning back then, he will receive almost nothing. \$210 a week today doesn't buy very much. Am I frustrated that there wasn't some type of compromise broached in the committee to set some type of a level where this bill would kick in and where it wouldn't? Yes, I am. But faced with what I have before me today on the first reading, I have to come down in support of this bill. It's just too drastic a change for the people in Maine that were injured pre-1987 that maybe weren't happening to earn a lot of money at that time, were young. Now 14 years later at least, their lives are changed, their family budgets have been built, children have been had, mortgages have been taken out. It's just too radical a change, I think, to just totally pull the plug out from families of this type. So I've struggled with this, but after a lot of soul searching, I've come down and I'm going to be supporting this today. Thank you.

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

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#99)

YEAS: Senators: BROMLEY, CARPENTER, CATHCART, DAGGETT, DOUGLASS, EDMONDS, FERGUSON, GAGNON, GOLDTHWAIT, KILKELLY, LAFOUNTAIN, LEMONT, LONGLEY, MARTIN, MCALEVEY, MILLS, NUTTING, O'GARA, PENDLETON, RAND, ROTUNDO, SAWYER, TREAT, YOUNGBLOOD, THE PRESIDENT - MICHAEL H. MICHAUD

NAYS: Senators: BENNETT, DAVIS, KNEELAND, SAVAGE, SHOREY, SMALL, TURNER, WOODCOCK

ABSENT: Senators: ABROMSON, MITCHELL

25 Senators having voted in the affirmative and 8 Senators having voted in the negative, with 2 Senators being absent, the motion by Senator **EDMONDS** of Cumberland to **ACCEPT** Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence, **PREVAILED**.

READ ONCE.

Committee Amendment "A" (H-616) **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-616)**, in concurrence.

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

REPORTS OF COMMITTEES

House

Ought to Pass As Amended

The Committee on **CRIMINAL JUSTICE** on Bill "An Act to Amend the Laws Governing DNA Testing" H.P. 1250 L.D. 1698

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (H-647)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-647)**.

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

READ ONCE.

Committee Amendment "A" (H-647) **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-647)**, in concurrence.

The Committee on **HEALTH AND HUMAN SERVICES** on Bill "An Act to Provide Residential and Community-based Services Through the Children's Mental Health Program"
H.P. 493 L.D. 633

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (H-646)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-646)**.

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

READ ONCE.

Committee Amendment "A" (H-646) **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-646)**, in concurrence.

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

REPORTS OF COMMITTEES

House

Ought to Pass As Amended

The Committee on **EDUCATION AND CULTURAL AFFAIRS** on Bill "An Act to Address Maine's School Facilities Needs"
H.P. 1294 L.D. 1762

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (H-645)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-645)**.

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

READ ONCE.

Committee Amendment "A" (H-645) **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-645)**, in concurrence.

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

Off Record Remarks

ORDERS OF THE DAY

The Chair laid before the Senate the following Tabled and Later (5/30/01) Assigned matter:

HOUSE REPORTS - from the Committee on **LABOR** on Bill "An Act to Require that Benefits for Total Disability be Continued During a Period of Vocational Rehabilitation under the Workers' Compensation Act"

H.P. 883 L.D. 1175

Majority - **Ought to Pass As Amended by Committee Amendment "A" (H-365)** (7 Members)

Minority - **Ought Not To Pass** (6 Members)

Tabled - May 30, 2001, by Senator **EDMONDS** of Cumberland

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

(In House, May 29, 2001, 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-365)**.)

(In Senate, May 30, 2001, Reports **READ**.)

The Chair ordered a Division. 17 Senators having voted in the affirmative and 16 Senators having voted in the negative, the motion by Senator **EDMONDS** of Cumberland to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence, **PREVAILED**.

READ ONCE.

Committee Amendment "A" (H-365) **READ**.

On motion by Senator **EDMONDS** of Cumberland, Senate Amendment "A" (S-302) to Committee Amendment "A" (H-365) **READ**.

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

Senator **EDMONDS**: Thank you, Mr. President. I just wanted to speak briefly to my amendment. This is an amendment just to clarify a piece that was heretofore not so clear. The amendment addresses that concern raised by opponents by changing the amendment from section 212 to section 213. If you're familiar with Workers' Compensation legislation, 212 refers to those folks who are under total incapacity and 213 refers to people with basically all disabilities, partial and total. In this fashion, if an injured worker with a partial disability was ordered into rehabilitation, the hearing officer could stipulate partial benefits commensurate with the worker's partial disability as well as if they had total benefits they could be stipulated commensurate with total disability. That's just a clarification, putting it in a more correct place in the law. Thank you.

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

Senator **TURNER**: Thank you, Mr. President, ladies and gentlemen of the Senate. I remember once my Uncle Bert who ran a business downeast and he said, 'you know if you take an ugly fella and you shave him, give him a haircut, put him in a Brooks Brothers suit, you still have an ugly fella.' So this bill, with its amendment, changes the title, moves the compensation from one section of Workers' Comp to another, but the basic bill really has not changed. In fact, I think you could make a case that rather than make the fella ugly, we've made the fella really ugly. It still provides a monetary incentive for an employee to accept rehabilitation, regardless of whether there an active commitment to do so. The amendment does further expand from total disability only to total disability and partial disability, which section 213 specifically deals with. It's possible, under this bill, for somebody who is working full time to quit and end up getting full benefits. I think, and I hope that you will agree, that each case as to level of compensation that a person receives should stand on its own merits. I don't think that we ought to be legislating an omnibus capability in this particular area. I think it adds additional cost to the system. There are a couple of very specific definitions that are absent in this bill. Doesn't define full time vocational rehabilitation. Doesn't even define full time. So I think it presents opportunities for litigation where they do not exist and I think it presents opportunities to expand the concept of rehabilitation from a vocational standpoint as all of us, I believe, have understood it and now greatly expands that. It's not a fair example, but it is an example that was discussed at length in our committee. It is possible, under this bill, for one to go to college full time and get a master's degree. As the good Senator from Somerset, Senator Mills, has pointed out to me, that is not the intent of rehabilitation. But under this bill it would be possible. I think that would be a major mistake. We had 13 people in the Labor Committee negotiate, discuss, and go around on this particular bill. I know that there were people from the loyal opposition who really held their noses in voting for this particular bill. Even with the amendment, I think the bill is a problem. I would ask you to not support the amendment. Thank you.

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

Senator **EDMONDS**: Thank you, Mr. President, women and men of the Senate. Beauty is obviously in the eye of the beholder. I must say that I need to step back and walk you through this bill because I think there are some pieces that are missing for you.

Presently, if a person is injured and involved in the Workers' Compensation system, they may be, and often are, ordered by the insurance company or they may choose to themselves or they may be ordered by the hearing officer into rehabilitation. The idea being that all of us want to get people back to work, earning a commensurate amount of money as they earned prior to the injury. So here you are, you're willing, you're involved in the system, you are ordered into rehabilitation, you dutifully go forward to rehabilitation, and then you find out, low and behold, that you're not going to get your disability benefits. Well, I don't know about you, but I would find it hard to be involved in the rehabilitation and have no money to pay my rent. So it seems as if the worker is caught between a rock and a hard place. What this legislation says is that a hearing officer can say okay you've been ordered to do rehabilitation and we will allow you to keep receiving whatever benefit you had been awarded prior to the ordering of the rehabilitation. It seems like it's quite beautiful to me. I hope you will join me.

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

Senator **SAWYER**: Thank you, Mr. President, ladies and gentlemen of the Senate. I'd like to speak in opposition to the amendment. Some have suggested that politicians are, by their nature, good at checkers but horrible at chess. I believe that Maine enjoys one of the nation's worst business climates. Now, that could mean to some of you that my buddies store a few bars of gold in the vault out back and that maybe good. But I believe that also means that we are driving from Maine an entire class of job creators. Additionally, those very same people, with the exception of Charlie Calley and the return of Heather Blais, are not coming to Maine in the first place. Why? Because of our high taxes, because of the high cost of utilities relative to the rest of the nation, and an anti-business climate. The real impact of this attitude, in my mind, is not so much on the employers, but on the employees. There's a reason why Maine, depending on who you talk to and what report you read, is 36th in the nation on what people get paid. The Bangor Daily News listed Maine as 42nd in the nation for what people get paid. But we can't continue to love employees and hate job creators. I can count in my home town of Bangor 15 entrepreneurs who have left the State of Maine, actually driving back to Maine for the summer, because they are legal residents of Florida. Those people provided darned good jobs, they lead the United Way, they lead the YMCA, they headed up the Scouts, they worked on museum campaigns, and we all affectionately refer to them as 'snow birds' now. While this bill and while this amendment is well intended to help employees, and I don't believe anybody's arguing that point, this is yet one more nail in that coffin of driving job creators out of the state of Maine and in the long run will hurt the very people that we're trying to help. I would urge you to vote against the amendment. Thank you.

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

Senator **MILLS**: Mr. President, men and women of the Senate, I can't take issue with any of the policy arguments made by the good Senator from Penobscot, Senator Sawyer. If this bill or its amended version were in any sense thought to be seriously disruptive to the current state of the Workers' Compensation system, then it would be a very different matter. This is a very

minor, fairly technical change to the law that is really needed to make clear that the rules are about somebody who is engaged in a full time program of vocational rehabilitation. The problem that the bill addresses is this; if somebody is eligible for voc rehab, they have to prove to the commission that they are unable to perform work for which they are already trained. I've heard stories about an antidote that was floating through the Labor Committee about somebody with a bachelor's degree wanting to use voc rehab under the Workers' Comp law to go get a master's degree. I have to say to you that's foreign to my experience. I have had occasion when someone with a college degree will come in to me with a badly injured arm or some such thing and want to get benefits under Workers' Compensation for not being able to earn a living on a long range basis. I've thrown them out of the office. The Workers' Compensation system is to deal with people who need all their body parts to make a living. If you've got a brain that makes a living for you, the Workers' Compensation system has almost nothing to do with you except for medical benefits, perhaps, for something that might have happened. There are good lawyers in wheelchairs who have every bit the earning capacity that I have and maybe greater. So Workers' Compensation was only invented to deal with those folks who don't have the capacity because of their lack of education or experience or intelligence to do things that don't require a full body to do it. Now occasionally you get somebody who graduated from high school, or maybe didn't and got a GED, went onto a construction site and by the time he or she was 30 lost something significant, a bad back, lost an arm, had carpal tunnel, bad neck injury, or what have you. But they've got the capacity to go back to a technical college for a year and pick up a trade, maybe as a phlebotomist in a hospital or something like that, where they can make \$25,000 a year again doing something that uses the brain that God gave them but they hadn't yet exploited. That's what this voc rehab system that was invented in 1992 is designed to do. It's not a very generous system. It says you have to be without other resources. It says that you can only do it for a year and under very special circumstances get an extension for a second year. So you can't go to college, you can't go get a teacher's certificate under this system unless you've already earned most of it. So it's a fairly limited program. But the problem is if the hearing officers order or approve a program for you to go attend maybe Kennebec Valley Technical College for 9 months to become maybe a healthcare worker and all of a sudden the employer who is irritated about having to pay that tuition says well I'll get him. I'm going to make an offer of light work back at the factory sorting out defective products, sitting at a bench, doing make work, and I'll pay him \$10 an hour or something close to his earning capacity. That entitles me, under the law, to drive him off Workers' Compensation and to take away his support, and by the way, preoccupy his time so he can't possibly engage in full time studies at the tech college. This law is narrowly crafted to do away with that tactic for the limited period of time in which the person might be engaged in a 'full time' voc rehab program. I share reservations the good Senator from Cumberland, Senator Turner, has about what full time means. I think I'm comfortable with knowing what it means. It wouldn't bother me if we put an amendment on this bill to define it more narrowly. But it means committed in such a way that you can't really be doing something else with you life other than maybe a part time job. The beauty of the amendment that lies before you is this, it fixes what I think was a defect in the bill as the committee drafted it. The way the committee drafted it, it said that if you are in voc rehab, than you are presumptively entitled to

full benefits. Now what the amendment says is no, no, no, wait a minute. You're presumptively entitled to benefits. It may be full, it may be partial, but it's whatever the occasion seems to indicate as appropriate for you. In other words, if it's appropriate for you to be working part time, maybe back for your old employer or somewhere else, that's okay. The employer has a right to make you do that if it seems appropriate and consistent with your full time voc rehab program. For that reason, I thought the amendment softened the bill from its original posture and should have been accepted, frankly, as a rather friendly amendment to those who oppose the bill in concept. For that reason I do urge adoption of the amendment and passage of the bill. Thank you for your patience.

The Chair ordered a Division.

On motion by Senator **SMALL** of Sagadahoc, 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 (#100)

YEAS: Senators: BROMLEY, CARPENTER, CATHCART, DAGGETT, DOUGLASS, EDMONDS, FERGUSON, GAGNON, GOLDTHWAIT, KNEELAND, LAFOUNTAIN, LEMONT, LONGLEY, MARTIN, MILLS, O'GARA, PENDLETON, RAND, ROTUNDO, TREAT, THE PRESIDENT - MICHAEL H. MICHAUD

NAYS: Senators: BENNETT, DAVIS, KILKELLY, MCALEVEY, NUTTING, SAVAGE, SAWYER, SHOREY, SMALL, TURNER, WOODCOCK, YOUNGBLOOD

ABSENT: Senators: ABROMSON, MITCHELL

21 Senators having voted in the affirmative and 12 Senators having voted in the negative, with 2 Senators being absent, the motion by Senator **EDMONDS** of Cumberland to **ADOPT** Senate Amendment "A" (S-302) to Committee Amendment "A" (H-365), **PREVAILED**.

At the request of Senator **GOLDTHWAIT** of Hancock a Division was had. 19 Senators having voted in the affirmative and 14 Senators having voted in the negative, Committee Amendment "A" (H-365) as Amended by Senate Amendment "A" (S-302) thereto, **ADOPTED**, in **NON-CONCURRENCE**.

On motion by President Pro Tem **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 (#101)

YEAS: Senators: BROMLEY, CARPENTER, CATHCART, DAGGETT, DOUGLASS, EDMONDS, GAGNON, KNEELAND, LAFOUNTAIN, LEMONT, LONGLEY, MARTIN, MILLS, O'GARA, PENDLETON, RAND, ROTUNDO, TREAT, THE PRESIDENT - MICHAEL H. MICHAUD

NAYS: Senators: BENNETT, DAVIS, FERGUSON, GOLDTHWAIT, KILKELLY, MCALEVEY, NUTTING, SAVAGE, SAWYER, SHOREY, SMALL, TURNER, WOODCOCK, YOUNGBLOOD

ABSENT: Senators: ABROMSON, MITCHELL

19 Senators having voted in the affirmative and 14 Senators having voted in the negative, with 2 Senators being absent, **PASSED TO BE ENGROSSED AS BY COMMITTEE AMENDMENT "A" (H-365) AS AMENDED BY SENATE AMENDMENT "A" (S-302) thereto, in NON-CONCURRENCE.**

Sent down for concurrence.

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

ORDERS

Joint Resolution

On motion by Senator **NUTTING** of Androscoggin (Cosponsored by President **MICHAUD** of Penobscot, President Pro Tem **BENNETT** of Oxford, Senators: **CARPENTER** of York, **DAGGETT** of Kennebec, **DAVIS** of Piscataquis, **FERGUSON** of Oxford, **KILKELLY** of Lincoln, **SMALL** of Sagadahoc, **TREAT** of Kennebec, Representatives: **BERRY** of Belmont, **BLISS** of South Portland, **BRUNO** of Raymond, **COLWELL** of Gardiner, **CRABTREE** of Hope, **DUNCAN** of Presque Isle, **GOODWIN** of Pembroke, **McGLOCKLIN** of Embden, **NORBERT** of Portland, **PERKINS** of Penobscot, **SAVAGE** of Buxton, **SCHNEIDER** of Durham), the following Joint Resolution:

S.P. 642

JOINT RESOLUTION EXPRESSING SUPPORT FOR THE COMPROMISE INSTALLED CAPACITY PROPOSAL BEFORE THE NEW ENGLAND POWER POOL

WHEREAS, electricity costs in the State of Maine are among the highest in the United States; and

WHEREAS, electricity is a vital component of everyday life for residential consumers throughout the State and is a key ingredient for competitive success for the State's commercial and industrial consumers; and

WHEREAS, the New England Power Pool, NEPOOL, is entrusted with the creation of wholesale electric markets for the

benefit of the consumers of New England, including those of the State of Maine; and

WHEREAS, NEPOOL and its more than 100 member organizations, including generators of electricity, have a public duty to fulfill in carrying out the affairs of NEPOOL; and

WHEREAS, a compromise "installed capacity proposal," which will be voted on by NEPOOL on June 1, 2001, will help to protect the interests of consumers while meeting certain of the needs of electric generators; and

WHEREAS, Maine's Public Utilities Commission and the Maine Office of the Public Advocate have endorsed the compromise as in the public interest; and

WHEREAS, resolution of this matter reconciles in a reasonable fashion the consumers' proposal of 17¢ per kilowatt per month with the generator's position of \$8.75 per kilowatt per month; now, therefore, be it

RESOLVED: That We, the Members of the One Hundred and Twentieth Legislature, now assembled in the First Regular Session, strongly endorse the compromise proposal supported by Maine's Public Utilities Commission and the Maine Office of the Public Advocate and it is the sense of the Legislature that it is in the best public interest for each member of NEPOOL, especially the electric generators selling power into the NEPOOL wholesale and Maine retail markets, to vote in favor of the compromise to end expensive litigation; and be it further

RESOLVED: That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to the President of the Senate and the Speaker of the House of Representatives, or their equivalents, of each of the other New England states.

READ

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

Senator NUTTING: Thank you, Mr. President, ladies and gentlemen of the Senate. I'll be very brief. Tomorrow NEPOOL is going to be taking a vote on the type of, sort of called, peak surcharge that may or may not be tacked onto everyone's and all businesses' electric rates. I think this edict that the Federal Energy Regulatory Commission has given them is ridiculous. To me with my limited knowledge of it, these types of things are supposed to be tacked on, these extra charges, if you're in an area where there is a shortage of electricity generating capacity. That's not the case in the State of Maine. With the good work of the Utilities Committee over the years, we've brought on new generating facilities. This Joint Resolution is just attempting to gently ask them to be very reasonable in their vote tomorrow. Something very similar to this is also being passed today in the New Hampshire and Vermont legislatures to also try to have them not adopt an \$8.75 per kilowatt per month charge. So I hope you will go on to support this resolution and then it can be passed on tomorrow and hopefully have a good effect. Thanks.

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

Senator **FERGUSON**: Thank you very much, Mr. President, ladies and gentlemen of the Senate. I would urge that you do support this Joint Resolution. As the good Senator from Androscoggin, Senator Nutting, mentioned NEPOOL is meeting and they are going to make a recommendation to MERC. The compromise, as I understand it, is \$3.00 per kilowatt per month, which is still a very substantial increase from 17¢. It would be my hope that when MERC takes this under review they would modify it even further. Like the good Senator said, we do have excess capacity in the state as far as generating capacity goes. All this is a fee that's collected on our electrical bills and it is returned to the generators. So I imagine the generators are pushing to increase this as high as possible. There has been a pending potential charge of \$8.75 that is on stay by the Federal Energy Regulatory Commission and this is in the interest of all consumers in the state. I would urge that you do support the resolution. Thank you very much.

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

Senator **SAWYER**: Thank you, Mr. President, ladies and gentlemen of the Senate. I rise in support of the order. I'd call your attention to the first line, 'whereas electricity costs in the State of Maine are among the highest in the United States.' I believe that's true. I also propose to you that that statement reflects one of the top 3 reasons why investment capital does not come into the State of Maine. I also propose to you that we're not going to solve it if we limit our activity to passing resolutions. Thank you.

On motion by Senator **NUTTING** of Androscoggin, **ADOPTED**.

Sent down for concurrence.

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

ORDERS OF THE DAY

The Chair laid before the Senate the following Tabled and Later (5/24/01) Assigned matter:

HOUSE REPORTS - from the Committee on **EDUCATION AND CULTURAL AFFAIRS** on Bill "An Act to Authorize Release of Certain Information Pertaining to the Certification, Authorization and Approval of Educational Personnel" (EMERGENCY)
H.P. 1295 L.D. 1765

Majority - **Ought to Pass As Amended by Committee Amendment "A" (H-532)** (11 members)

Minority - **Ought Not to Pass** (2 members)

Tabled - May 24, 2001, by Senator **MITCHELL** of Penobscot

Pending - **ACCEPTANCE OF EITHER REPORT**

(In House, May 24, 2001, the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY HOUSE AMENDMENT "A" (H-553) AS AMENDED BY HOUSE AMENDMENT "A" (H-572)** thereto.)

(In Senate, May 24, 2001, Reports **READ**.)

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

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

Senator **ROTUNDO**: Thank you, Mr. President, men and women of the Senate. What you have before you is the bill that's been reported out of the Education Committee to deal with the perceived need for more information with regards to the results of the fingerprinting bill that was passed in the last legislative session. There was some reluctance to come forward with this bill because promises had been made that no information would be released. However, we felt that we needed to come forward with a bill in order to correct erroneous information that had been circulated with regard to numbers and also to give people the opportunity to evaluate the effectiveness of the legislation from the last session. The language was worked out very carefully for this bill and it was done at the Education Committee's request by the Maine Educational Association, the Maine School Management Association, the Maine Principal's Association, the Department of Education, and the Attorney General's Office. The language is very narrow in scope. It allows for the release of 2 figures and I would like to read what this information would involve. First it would be the aggregate number that represents the number of educational personnel applicants who have been fingerprinted and secondly the aggregate number that represents the sum total of educational personnel applicants that the Commissioner has denied, refused to renew, revoked, or suspended a certificate authorization or approval or determined to be ineligible for employment based on the results of a criminal history record check. We did have a bill to repeal the fingerprinting law, which has been carried over to the next year so that, based on the figures that will be coming forward as a result of this bill before you, if it's passed, we could, in fact, act upon repeal of the fingerprinting law at that point in the coming year. I think it's very important that correct information come forward to the public and to the legislature. I hope you will join me in accepting the Majority Ought to Pass Report. Thank you.

On motion by Senator **ROTUNDO** of Androscoggin, the Majority **OUGHT TO PASS AS AMENDED** Report **ACCEPTED**, in concurrence.

READ ONCE.

Committee Amendment "A" (H-532) **READ**.

Senator **DAGGETT** of Kennebec moved Committee Amendment "A" (H-532) be **INDEFINITELY POSTPONED**, in concurrence.

On motion by Senator **SMALL** of Sagadahoc, 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 Aroostook, Senator Martin.

Senator **MARTIN:** Mr. President, may I pose a question through the chair to whoever may choose to respond to the question?

THE PRESIDENT: The Senator may pose his question.

Senator **MARTIN:** I'd be curious as to why we are going to be indefinitely postponing Committee Amendment "A" since it deals with the information that the original bill called for?

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

Senator **DAGGETT:** Thank you, Mr. President, members of the Senate. Indefinite postponement of this Committee Amendment would allow for other amendments to then be offered.

On motion by Senator **MARTIN** of Aroostook, **TABLED** until Later in Today's Session, pending motion by Senator **DAGGETT** of Kennebec to **INDEFINITELY POSTPONE** Committee Amendment "A" (H-532), in concurrence.

The Chair laid before the Senate the following Tabled and Later (5/30/01) Assigned matter:

HOUSE REPORTS - from the Committee on **HEALTH AND HUMAN SERVICES** on Bill "An Act to Require Full Disclosure of Prescription Drug Marketing Costs "

H.P. 778 L.D. 1022

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-517)** (7 members)

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

Tabled - May 30, 2001, by President Pro Tem **BENNETT** of Oxford

Pending - motion by Senator **MARTIN** of Aroostook to **ACCEPT** the Minority **OUGHT NOT TO PASS** Report, in **NON-CONCURRENCE** (Roll Call Requested)

(In House, May 21, 2001, 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-517)**.)

(In Senate, May 30, 2001, motion by Senator **LONGLEY** of Waldo to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence, **FAILED**.)

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

Senator **TREAT:** Thank you, Mr. President, men and women of the Senate. I urge you to vote against the pending motion so that we may go forward to pass this bill. I just want to remind you that this is an important measure that will assist the consumers of this state in not having to pay excessive prices on their drugs. I think it's part of an overall strategy that we have in this state which is very important. I do know that there are some concerns in the legislature and in this body that, as drafted, the committee report may pull into its ambit advertising that is regional and national in scope and that it will be a burden on the companies to comply with this. If you were to vote against the pending motion so that we can go forward with the committee report, I believe we will be in a posture where we can fix any such problems. I personally am committed to supporting any such limiting language that is being worked on right now. So I would encourage you to vote against the pending motion.

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

Senator **GOLDTHWAIT:** Thank you, Mr. President, ladies and gentlemen of the Senate. If you were not listening to NPNB in the pre-dawn hours as I was, you may not have heard a report on regarding treatment of ear infections in children. That report contained, what is getting to be widely known information, that antibiotic treatment of outer ear infections, at least, is not an effective treatment and also contributes to developing resistance among bacteria to that and other medications. But the piece of that report that interested me was a physician who used a fascinating word. He said he has endured patients or the parents of patients who have come to him insisting that their child needed to be on antibiotics based on information they had gotten from drug advertising. What he said was that even though he takes the time to sit with them, to offer them the studies that have been done on this issue, to explain to them the dangers of unnecessarily exposing a child to antibiotics in a case where the efficacy is not only in doubt but has been disproven, nevertheless, these parents, believing they are acting in the best interest of their child, are insisting that they have a prescription before they leave the office. So I hope you will join me in opposing the pending motion.

Senator **GOLDTHWAIT** of Hancock requested a Roll Call.

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

Senator **MARTIN:** Thank you, Mr. President, members of the Senate. Just to make clear, I'm for the bill. I ask you to vote against my motion.

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

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#102)

YEAS: Senators: BENNETT, CARPENTER, DAVIS, FERGUSON, KILKELLY, KNEELAND, LEMONT, MCALEVEY, SAVAGE, SAWYER, SHOREY, SMALL, TURNER, WOODCOCK, YOUNGBLOOD

NAYS: Senators: BROMLEY, CATHCART, DAGGETT, DOUGLASS, EDMONDS, GAGNON, GOLDTHWAIT, LAFOUNTAIN, LONGLEY, MARTIN, MILLS, NUTTING, O'GARA, PENDLETON, RAND, ROTUNDO, TREAT, THE PRESIDENT - MICHAEL H. MICHAUD

ABSENT: Senators: ABROMSON, MITCHELL

15 Senators having voted in the affirmative and 18 Senators having voted in the negative, with 2 Senators being absent, motion by Senator **MARTIN** of Aroostook to **ACCEPT** the Minority **OUGHT NOT TO PASS** Report, in **NON-CONCURRENCE**, **FAILED**.

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

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

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#103)

YEAS: Senators: BROMLEY, CATHCART, DAGGETT, DOUGLASS, EDMONDS, GAGNON, GOLDTHWAIT, LAFOUNTAIN, LONGLEY, MARTIN, MILLS, NUTTING, O'GARA, PENDLETON, RAND, ROTUNDO, TREAT, THE PRESIDENT - MICHAEL H. MICHAUD

NAYS: Senators: BENNETT, CARPENTER, DAVIS, FERGUSON, KILKELLY, KNEELAND, LEMONT, MCALEVEY, SAVAGE, SAWYER, SHOREY, SMALL, TURNER, WOODCOCK, YOUNGBLOOD

ABSENT: Senators: ABROMSON, MITCHELL

18 Senators having voted in the affirmative and 15 Senators having voted in the negative, with 2 Senators being absent, the motion by Senator **MARTIN** of Aroostook to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence, **PREVAILED**.

READ ONCE.

Committee Amendment "A" (H-517) **READ**.

On motion by Senator **TREAT** of Kennebec, **TABLED** until Later in Today's Session, pending **ADOPTION** of Committee Amendment "A" (H-517), in concurrence.

Senate at Ease.

Senate called to order by the President.

Off Record Remarks

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 Expand the Maine Mathematics, Science and Engineering Talent Search Venture"

S.P. 280 L.D. 991
(S "A" S-288 to C "A" S-94)

In Senate, April 30, 2001, 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-94)**.

In House, May 9, 2001, the Minority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED**, in **NON-CONCURRENCE**.

In Senate, May 30, 2001, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-94) AS AMENDED BY SENATE AMENDMENT "A" (S-288)** thereto, in **NON-CONCURRENCE**.

Comes from the House, that Body **INSISTED** and **ASKED FOR A COMMITTEE OF CONFERENCE**.

On motion by Senator **CATHCART** of Penobscot, the Senate **INSISTED** and **JOINED IN A COMMITTEE OF CONFERENCE**.

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

PAPERS FROM THE HOUSE

Non-Concurrent Matter

Emergency Measure

An Act Adopting and Implementing the National Crime Prevention and Privacy Compact

S.P. 545 L.D. 1691

In Senate, May 15, 2001, **PASSED TO BE ENGROSSED.**

In House, May 23, 2001, Bill and accompanying papers **INDEFINITELY POSTPONED**, in **NON-CONCURRENCE.**

In Senate, May 30, 2001, **PASSED TO BE ENACTED**, in **NON-CONCURRENCE.**

Comes from the House, **PASSED TO BE ENGROSSED AS AMENDED BY HOUSE AMENDMENT "A" (H-649)**, in **NON-CONCURRENCE.**

On motion by President Pro Tem **BENNETT** of Oxford, the Senate **RECEDED** and **CONCURRED.**

Off Record Remarks

Senate at Ease.

Senate called to order by the President.

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

Senator **SMALL** of Sagadahoc was granted unanimous consent to address the Senate off the Record.

Senate at Ease.

Senate called to order by the President.

Off Record Remarks

Senator **SAWYER** of Penobscot was granted unanimous consent to address the Senate off the Record.

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

RECESSED until the sound of the bell.

After Recess

Senate called to order by the President.

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

REPORTS OF COMMITTEES

Senate

Divided Report

The Majority of the Committee on **EDUCATION AND CULTURAL AFFAIRS** on Bill "An Act to Implement Maine's System of Learning Results"

S.P. 582 L.D. 1760

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-303).**

Signed:

Senators:

MITCHELL of Penobscot
ROTUNDO of Androscoggin
NUTTING of Androscoggin

Representatives:

RICHARD of Madison
DESMOND of Mapleton
WATSON of Farmingdale
ESTES of Kittery
CUMMINGS of Portland
ANDREWS of York
WESTON of Montville
LEDWIN of Holden

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

Signed:

Representatives:

SKOGLUND of St. George
STEDMAN of Hartland

Reports **READ.**

On motion by Senator **ROTUNDO** of Androscoggin, the Majority **OUGHT TO PASS AS AMENDED** Report **ACCEPTED.**

READ ONCE.

Committee Amendment "A" (S-303) **READ** and **ADOPTED.**

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-303).**

Sent down for concurrence.

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

REPORTS OF COMMITTEES

House

Pursuant to Joint Order

The Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS** on Bill "An Act to Give the Maine Technical College System Limited Revenue Bonding Authority"
H.P. 1362 L.D. 1819

Reported that the same be **REFERRED** to the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS**, pursuant to Joint Order (H.P. 1347).

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **REFERRED** to the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS**.

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

REFERRED to the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS**, in concurrence.

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

REPORTS OF COMMITTEES

House

Committee of Conference

The Committee of Conference on the disagreeing action of the two branches of the Legislature, on Bill "An Act to Enhance the Observance of Veterans' Holidays"
H.P. 937 L.D. 1251

Had the same under consideration, and asked leave to report:

That they are **Unable to Agree**.

On the Part of the Senate:

Senator SHOREY of Washington
Senator BROMLEY of Cumberland
Senator YOUNGBLOOD of Penobscot

On the part of the House:

Representative BOUFFARD of Lewiston
Representative MICHAUD of Fort Kent
Representative TOBIN of Windham

Comes from the House with the Committee of Conference Report **READ** and **ACCEPTED**, in concurrence.

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

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

PAPERS FROM THE HOUSE

Non-Concurrent Matter

Bill "An Act to Amend the Maine Health Data Organization Laws"
S.P. 395 L.D. 1310
(C "A" S-290)

In Senate, May 30, 2001, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-290)**.

Comes from the House, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-290) AS AMENDED BY HOUSE AMENDMENT "A" (H-643)** thereto, in **NON-CONCURRENCE**.

On motion by Senator **MARTIN** of Aroostook, the Senate **RECEDED** and **CONCURRED**.

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

ORDERS OF THE DAY

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

Bill "An Act to Require Full Disclosure of Prescription Drug Marketing Costs "
H.P. 778 L.D. 1022

Tabled - May 31, 2001, by Senator **TREAT** of Kennebec

Pending - **ADOPTION OF COMMITTEE AMENDMENT "A" (H-517)**, in concurrence

(In House, May 21, 2001, 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-517)**.)

(In Senate, May 31, 2001, motion by Senator **MARTIN** of Aroostook to **ACCEPT** the Minority **OUGHT NOT TO PASS** Report, in **NON-CONCURRENCE, FAILED**. On further motion by same Senator, the Majority **OUGHT TO PASS AS AMENDED** Report **ACCEPTED**, in concurrence. **READ ONCE**. Committee Amendment "A" (H-517) **READ**.)

On motion by Senator **NUTTING** of Androscoggin, Senate Amendment "A" (S-304) to Committee Amendment "A" (H-517) **READ.**

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

Senator **NUTTING:** Thank you, Mr. President, ladies and gentlemen of the Senate. I really struggled with my vote yesterday on this particular L.D. I did end up voting in favor of it. But as I looked at the Majority Report, on page 2, number 3, paragraph A, I really kind of had problems with it. That's where it says that all costs of marketing, advertising, even on a regional basis, would have to be calculated by the drug companies. My concern was an ad taken out in the New York Times or the Sports Illustrated Magazine, how do you really justify taking the time and the expense to calculate an ad in the Sports Illustrated Magazine how much of that was actually credited just to the State of Maine? Paragraph B I didn't have as much of a problem with. So what I'm trying to do with this amendment is just to say that the marketing advertising costs that are done in the State of Maine. Costs of educational programs, seminars, trips, and free product samples given away that still would be calculated. But the most onerous part of this calculation, the regional media purchases, the advertisements taken out in a national magazine that subscriptions sold in the State of Maine are going to vary from week to week, that part of the bill I'm proposing to remove with this amendment. I hope you will go along with its adoption. Thank you.

On motion by President Pro Tem **BENNETT** of Oxford, **TABLED** until Later in Today's Session, pending motion by Senator **NUTTING** of Androscoggin to **ADOPT** Senate Amendment "A" (S-304) to Committee Amendment "A" (H-517).

The Chair laid before the Senate the following Tabled and Later (5/29/01) Assigned matter:

SENATE REPORTS - from the Committee on **BANKING AND INSURANCE** on Bill "An Act to Strengthen the Authority of the Bureau of Insurance"

S.P. 172 L.D. 590

Majority - **Ought to Pass As Amended by Committee Amendment "A" (S-271)** (8 Members)

Minority - **Ought Not To Pass** (5 Members)

Tabled - May 29, 2001, by Senator **LAFOUNTAIN** of York

Pending - **ACCEPTANCE OF EITHER REPORT**

(In Senate, May 29, 2001, Reports **READ.**)

Senator **LAFOUNTAIN** of York moved the Senate **ACCEPT** the Minority **OUGHT NOT TO PASS** Report.

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

Senator **TREAT:** Thank you, Mr. President, men and women of the Senate. I ask that you vote against the pending motion so that you can go on to vote for the Majority Report which is Ought to Pass. This bill is a fairly simple bill which is designed to give additional protections to consumers facing high health insurance costs and really struggling to deal with, what I would view and I think most of you probably share my view, a health insurance system that is in turmoil in many ways. We find that competition is quite limited, that complaints about refusal to cover doctor recommended treatments are on the increase, and that costs are going through the roof. When there is a request to the Bureau of Insurance to have a rate increase, the Bureau is in the position of being both the judge, and to some extent, an advocate for the individual consumer. You can't really be both all of the time and the intent of this bill is to provide for consumers an additional protection only in those circumstances where a rate increase of over 20% in the non-group market is requested or a situation like the Blue Cross Blue Shield Anthem sale where a change in ownership or other very significant policy change of that nature is occurring. There have been a number of bills this year that have looked at this issue. One suggested putting onto the responsibilities of the public advocate a formal role for consumers before the Bureau of Insurance. I put in this legislation, I decided not to go really that far and to see if there were mechanisms within the Bureau that could be used to really provide this additional assistance in what are extremely complicated proceedings that involve actuaries. The costs of transcripts alone sometimes can be hundreds of dollars. To put together a case for an individual is just not going to happen. Within the Bureau they do have a practice of what they call advocacy panels and these panels can, if they choose, decide to create this panel which basically provides an additional role of advocacy for consumers, looking out after consumer interests and making recommendations as to whether a rate increase is an appropriate rate increase. However, they have never impaneled one of these panels for a health insurance rate increase or case. They have been used in some of the Bureau's other hearings. What this bill does, as it has been amended by the committee, which is amended pretty significantly so that really there is only this one piece, is it requires the Bureau to establish the advocacy panel, again only in those limited circumstances where the rate increase is pretty significant that's requested, 20%, or whether there is a change in ownership which could very significantly effect the nature of the health insurance policies that are being offered to individuals, businesses, and others that might take advantage of these policies or have them. I'm not clear what the opposition to this is except that there is a fiscal note which does not come out of the General Fund. It would be paid by the insurers and the amount on the Committee Amendment is actually off by about \$500,000. It's way too high and I've been working with the fiscal office on a corrected fiscal note which I would offer should we reject the pending motion so that this bill has the appropriate amount of money on it. But what I would say about that amount of money, and it is probably quite small when spread out over all of the policies, is that is how the public advocate is funded and the fact that we fund the public advocate through policies or rates that people pay has actually saved the consumers of this state many millions of dollars because they have come in to make the case that sometimes the rate increase that has been requested by a utility isn't necessary, that a smaller rate increase might be more appropriate. When we look at what has happened over the last several years with insurance, in the last year there were 20 non-group health insurance rate

increases that were requested. Those requests ranged from 20% to 69%. No one was denied the request that they made. I don't think you can assume, because whatever anyone asked for they got, that nobody was representing consumers. I don't mean to make that assumption. I do think that insuring that there is a voice for consumers that understands actuarial tables and the numbers. These are incredibly complex proceedings. I think that would be really a benefit. Our understanding is that this might be as many as 20 proceedings per year. The intent of the language would be that whatever was the least expensive way of providing this, whether through existing staff positions which at the most would be one attorney and one actuary, or through contracted services on a case by case basis, whichever turned out to be the least expensive, would be the way that it would be done. I think this is a very measured approach. It's something that I know. As I said last night, health care is the number one issue in my district and it relates to access, which is what we were talking about last night relating to who can get insurance, and it also relates to price. That's what this particular bill is about. It's about the fact that the price of health insurance has just sky rocketed and we need to be sure that those rate increases are, in fact, necessary. If they are, great. But we need to be sure. I do think that for consumers to know someone is there going to bat for them. If those rates are increased, they have a much better sense of security that it was an appropriate increase. So again, I urge you to vote against the pending motion so that we can go on to enact this legislation.

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

Senator TURNER: Thank you, Mr. President, ladies and gentlemen of the Senate. I find this argument curious in light of the most recent discussions we had with regard to L.D. 1745 which was an attempt to try to actually bring down the cost of insurance in the individual and small group market. The Senator from Kennebec, Senator Treat, is correct. It would effect approximately 20 filings per year. I think the suggestion that somehow these are not reviewed proceedings is erroneous. Rate filings within the Bureau are already extensively reviewed to determine that, one, they are not inadequate, they're not excessive, or that they are unfairly discriminatory. That mechanism is in place today and I think it is working. The fact that our costs of health insurance have gone up dramatically isn't because somebody has decided to open the gates and let premiums spiral upward out of control. The fact is the utilization is heavy, the cost of the services are heavy, and that's being borne out by the rates that we are being charged. I think what this will do, if you defeat this motion and enact the other report, is that you will end up delaying implementation of proper rates in the market. Potentially, in a market where we have very limited carriers in place today, you could see some of them, in fact, leaving the market. We have a market that's in bad enough shape now without trying to impose what appears to me to be backdoor price controls through some 'consumer advocacy' group which would do nothing but delay the proceedings. Additionally, there are costs here. The Senator from Kennebec, Senator Treat, suggests that the fiscal note is flawed. There is a \$600,000 fiscal note that's been developed by the Bureau of Insurance. It is fully documented and I would suggest to you that figure of \$600,000 is the one that is the appropriate consideration for the cost of implementation of this, notwithstanding the cost of the advocacy piece which would be borne by the applicants

themselves. So I would ask you to accept the Minority Ought Not to Pass Report. Thank you very much.

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

Senator LAFOUNTAIN: Thank you, Mr. President, men and women of the Senate. I echo the concerns raised by the good Senator from Cumberland, Senator Turner. This bill probably received the greatest amount of time in the Banking and Insurance Committee this session than any other bill. Other than the public hearing, I think we had at least 4 work sessions on the bill. There were several reasons why the good Senator from Cumberland, Senator Abromson, and I were on the Minority Report. It wasn't essentially the issue of cost, it was the issue of the current status of the individual market and the potential that L.D. 590 would have on that market. What L.D. 590 does is it creates another regulatory burden on that market. This is currently a market that has very few carriers. It is our belief that L.D. 590 would discourage other carriers from even looking into whether or not to enter into that market. It was also our belief that the Bureau of Insurance did a very good job in enforcing Maine law and in representing the consumers here in the State of Maine. Several of the concerns raised by the good Senator from Kennebec, Senator Treat, have been addressed by legislation that was previously passed by this legislature. That was the creation of the Consumer Health Care Division in the Consumer Health Care Commission which addresses numerous concerns, which meets on a regular basis to discuss some of the issues that are effecting Maine consumers in an adverse manner. It's our attempt, through that commission, to address those issues and to report legislation back to this body. I ask you to join in the minority and vote Ought Not to Pass.

The Chair ordered a Division.

On motion by Senator **TREAT** of Kennebec, 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 (#104)

- YEAS:** Senators: BENNETT, CARPENTER, DAVIS, FERGUSON, GOLDTHWAIT, KNEELAND, LAFOUNTAIN, LEMONT, MCALEVEY, MILLS, PENDLETON, SAVAGE, SAWYER, SHOREY, SMALL, TURNER, WOODCOCK, YOUNGBLOOD
- NAYS:** Senators: BROMLEY, CATHCART, DAGGETT, DOUGLASS, EDMONDS, GAGNON, KILKELLY, LONGLEY, MARTIN, NUTTING, O'GARA, RAND, ROTUNDO, TREAT, THE PRESIDENT - MICHAEL H. MICHAUD
- ABSENT:** Senators: ABROMSON, MITCHELL

18 Senators having voted in the affirmative and 15 Senators having voted in the negative, with 2 Senators being absent, the motion by Senator **LAFOUNTAIN** of York to **ACCEPT** the Minority **OUGHT NOT TO PASS** Report, **PREVAILED**.

Sent down for concurrence.

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:

Act

An Act to Ensure that the Annual Inflation Adjustment for Partial Compensation for Injuries occurring Prior to November 20, 1987 is Fully Recognized and Paid

H.P. 723 L.D. 943
(C "A" H-616)

On motion by Senator **SMALL** of Sagadahoc, **TABLED** until Later in Today's Session, 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 **EDUCATION AND CULTURAL AFFAIRS** on Bill "An Act to Change the Truancy Laws"

H.P. 560 L.D. 715

Reported that the same **Ought to Pass as Amended by Committee Amendment "B" (H-614)**.

Signed:

Senator:
NUTTING of Androscoggin

Representatives:
RICHARD of Madison
DESMOND of Mapleton
ESTES of Kittery
CUMMINGS of Portland
STEDMAN of Hartland
ANDREWS of York
WESTON of Montville
LEDWIN of Holden

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

Signed:

Senators:
MITCHELL of Penobscot
ROTUNDO of Androscoggin

Representative:
WATSON of Farmingdale

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

Reports **READ**.

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

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

Senate at Ease.

Senate called to order by the President.

ORDERS OF THE DAY

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

An Act to Ensure that the Annual Inflation Adjustment for Partial Compensation for Injuries occurring Prior to November 20, 1987 is Fully Recognized and Paid

H.P. 723 L.D. 943

Tabled - May 31, 2001, by Senator **SMALL** of Sagadahoc

Pending - **ENACTMENT**, in concurrence

(In Senate, May 31, 2001, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-616)**, in concurrence.)

(In House, May 31, 2001, **PASSED TO BE ENACTED**.)

On motion by President Pro Tem **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 (#105)

YEAS: Senators: BROMLEY, CATHCART, DAGGETT, DOUGLASS, EDMONDS, FERGUSON, GAGNON, GOLDTHWAIT, KILKELLY, KNEELAND, LAFOUNTAIN, LEMONT, LONGLEY, MARTIN, MCALEVEY, MILLS, NUTTING, O'GARA, PENDLETON, RAND, ROTUNDO, TREAT, THE PRESIDENT - MICHAEL H. MICHAUD

NAYS: Senators: BENNETT, CARPENTER, DAVIS, SAVAGE, SAWYER, SHOREY, SMALL, TURNER, WOODCOCK, YOUNGBLOOD

ABSENT: Senators: ABROMSON, MITCHELL

23 Senators having voted in the affirmative and 10 Senators having voted in the negative, with 2 Senators being absent, 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:

REPORTS OF COMMITTEES

House

Divided Report

The Majority of the Committee on **HEALTH AND HUMAN SERVICES** on Bill "An Act to Increase Access to Health Care" H.P. 979 L.D. 1303

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-639)**.

Signed:

Senators:
LONGLEY of Waldo
MARTIN of Aroostook
TURNER of Cumberland

Representatives:
FULLER of Manchester
BROOKS of Winterport
DUDLEY of Portland
LAVERRIERE-BOUCHER of Biddeford
DUGAY of Cherryfield
KANE of Saco
O'BRIEN of Augusta

The Minority of the same Committee on the same subject reported that the same **Ought to Pass as Amended by Committee Amendment "B" (H-640)**.

Signed:

Representatives:
SHIELDS of Auburn
NUTTING of Oakland

Comes from the House with the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-639)** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-639)**.

Reports **READ**.

Senator **LONGLEY** of Waldo moved the Senate **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-639)** Report, in concurrence.

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

Senator **LONGLEY:** Thank you, Mr. President, colleagues in the Senate. Every once in a very great while we get a very great bill and this is a very great bill. It addresses health care needs of our constituents out there and I would highly recommend that you consider voting in support of this bill. There will be more that will be said I'm sure. I'm just here to say we're in the presence of greatness at this moment and I encourage your yes vote. Thank you.

On motion by Senator **LONGLEY** of Waldo, the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-639)** Report **ACCEPTED**, in concurrence.

READ ONCE.

Committee Amendment "A" (H-639) **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-639)**, in concurrence.

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

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

ORDERS

Joint Order

On motion by Senator **MARTIN** of Aroostook, the following Joint Order:

S.P. 644

ORDERED, the House concurring, that the Joint Standing Committee on Education and Cultural Affairs report out to the Senate, or return to the Senate, Bill, "An Act to Repeal the Requirement that School Employees be Fingerprinted," S.P. 322, L.D. 1090, by June 5, 2001.

READ.

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

Senator **MARTIN:** Thank you very much, Mr. President, members of the Senate. There's been a lot of discussion in the last couple of days about a bill which has come from the Education Committee and subsequently has 2 House amendments attached to it. The intent of the bill, as I saw it, was to get the information as to why personnel in the educational field were being denied or could be denied certification and the rumors as to how many personnel out there potentially are in violation of some laws and still teaching and perhaps some are abusers somewhere at someplace, sometime. The two amendments that were adopted in the other body, added to the bill, repeals the bill, repeals the law under which the bill was intended, and then, at the same time, said that the files achieved under this law thus far were also to be destroyed or returned. My concern about the way it was being done and being proposed by some, was that the repeal, in fact, potentially could take place, the files destroyed, and there would be some personnel out there with a record that would, at some point, be disclosed and should not be teaching the youth in this state. So there was and there is a bill in the Education Committee which deals with the very question of repeal. The intent of the Education Committee, as I understand it, was to hold off until they got the information from the bill that we have on the table and then next year probably deal with the repeal bill. But listening to the members of this body and the other body, where a number of people say we've got the votes to repeal, let's do it, I became concerned that if we're going to be doing this we ought to separate the issues. The first issue remains with the bill and let's find out what the facts are. Then, we return this bill which, in my recollection, was actually sponsored by the Senator from Piscataquis, Senator Davis, and bring it to the floor and let's vote on the issue up or down. Let's not confuse the issue by what has taken place. So the order calls for bringing the bill out of committee on Tuesday, which I believe is the day that the Senator from Penobscot, the chair of the Education Committee, will be back, so I've been told. Then we can, at that time, deal with the question of repeal in its proper light. So I hope that you will vote for the order.

Senator **MARTIN** of Aroostook requested a Roll Call.

On motion by Senator **DAGGETT** of Kennebec, **TABLED** until Later in Today's Session, pending motion by Senator **MARTIN** of Aroostook to **PASS**. (Roll Call Requested)

On motion by President Pro Tem **BENNETT** of Oxford, **ADJOURNED**, pursuant to the Joint Order, to Monday, June 4, 2001, at 10:00 in the morning.