

MAINE STATE LEGISLATURE

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

In Senate Chamber
Monday
March 25, 2002

Senate called to order by President Richard A. Bennett of Oxford County.

Prayer by Reverend Roland Arno, Retired.

REVEREND ARNO: Thank you, Mr. President. It's a great joy for me to be here to open you with prayer and I bring you greetings, Mr. President and members of the Senate and ladies and gentlemen, from Stockholm, Maine. Especially from our school department. Our principal, Mrs. Maynard, this morning and our students and some teachers are with us today. We've come to share the day with you. It's a great joy for me to open with prayer this morning.

Dear Lord, this morning as we come here to conduct business, it is business of Yours. Each decision we make is for You. Each decision we make is for Your people. Lord, this morning we come to make decisions to better our people, to better our country, and to better our homes. Not for our own selfish reasons, but for each other and for our country. Lord, we ask You to be with our families as we come here and leave our families at home. Lord, be there and watch over them and care for them during this time and give them the great comfort that is needed. Lord, as we also come with burdens upon our hearts and concerns upon our hearts of our own matters, help us to just set them aside, that we have clear minds and clear thoughts to make the decisions that need to be made for Your people, countries, and homes. Lord, as You give us help and guidance and direction in each step and each moment. Lord, we ask for this in the name of Jesus. Amen.

Pledge of Allegiance led by Senator Michael J. McAlevey of York County.

Reading of the Journal of Friday, March 22, 2002.

Off Record Remarks

PAPERS FROM THE HOUSE

Joint Order

The following Joint Study Order: H.P. 1702

ORDERED, the Senate concurring, that the Task Force to Study Regulatory Barriers to Affordable Housing is established as follows.

1. Task force established. The Task Force to Study Regulatory Barriers to Affordable Housing, referred to in this order as the "task force," is established.

2. Task force membership. The task force consists of the following members.

A. Three members of the Senate are appointed by the President of the Senate.

B. Three members of the House of Representatives are appointed by the Speaker of the House.

C. The Commissioner of Economic and Community Development; Executive Director of the Maine State Housing Authority; the Executive Director of the State Planning Office within the Executive Department; the President of the Maine State Chamber of Commerce; the Executive Director of the State Association of Municipalities; the President of the Maine Association of Planners; and representatives from neighborhood associations, city councils, municipal officers, town planning boards, nonprofit and for-profit housing developers, land trusts, manufactured housing manufacturers, financial institutions and the business community are invited to participate as members of the task force.

3. Task force chair. The first named Senator is the Senate chair of the task force and the first named member of the House is the House chair of the task force.

4. Appointments; convening of task force. All appointments must be made no later than 30 days after adjournment. The appointing authorities shall notify the Executive Director of the Legislative Council once all appointments have been made. When the appointment of all members has been completed, the chairs of the task force shall call and convene the first meeting of the task force no later than 30 days after adjournment of the Second Regular Session of the 120th Legislature.

5. Duties. The task force shall hold its meetings at various locations in the State, to be determined by the chairs. The task force shall gather information and request necessary data from public and private entities in order to develop recommendations to reduce regulatory barriers to and provide incentives for the creation and availability of affordable housing consistent with legitimate concerns of local communities for healthy neighborhoods, sound environmental practices, sustainable affordability and inclusive communities.

6. Staff assistance. Upon approval of the Legislative Council, the Office of Policy and Legal Analysis shall provide necessary staffing services to the task force.

7. Compensation. Members of the task force are entitled to receive the legislative per diem and reimbursement for travel and other necessary expenses related to their attendance at authorized meetings of the task force.

8. Report. The task force shall submit a report that includes its findings and recommendations, including suggested legislation, to the Legislative Council by November 6, 2002. The task force is authorized to introduce legislation related to its report to the First Regular Session of the 121st Legislature at the time of submission of its report.

9. Extension. If the task force requires a limited extension of time to complete its study and make its report, it may apply to the Legislative Council, which may grant an extension. Upon submission of its required report, the task force terminates.

10. Budget. The chairs of the task force, with assistance from the task force staff, shall administer the task force's budget. Within 10 days after its first meeting, the task force shall present a work plan and proposed budget to the Legislative Council for approval. The task force may not incur expenses that would result in the task force's exceeding its approved budget. Upon request from the task force, the Executive Director of the Legislative Council shall promptly provide the task force chairs and staff with a status report on the task force's budget, expenditures incurred and paid and available funds.

Comes from the House, **READ** and **REFERRED** to the Committee on **BUSINESS AND ECONOMIC DEVELOPMENT**.

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

COMMUNICATIONS

The Following Communication: S.C. 674

**120TH LEGISLATURE
COMMITTEE ON STATE AND LOCAL GOVERNMENT**

March 22, 2002

The Honorable Richard A. Bennett
President of the Senate of Maine
120th Maine Legislature
State House
Augusta, Maine 04333-0003

Dear Mr. President:

In accordance with 3 M.R.S.A., Section 157, and with Joint Rule 505 of the 120th Maine Legislature, the Joint Standing Committee on State and Local Government has had under consideration the nomination of Nelson E. Durgin of Bangor, for appointment to the Civil Service Appeals Board.

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

YEAS Senators 2 Pendleton of Cumberland,
Youngblood of Penobscot

Representatives 7 Chase of Levant, Cressey of
Baldwin, Hatch of
Skowhegan, Lessard of
Topsham, McDonough of
Portland, McLaughlin of
Cape Elizabeth, Murphy of
Berwick

NAYS 0

ABSENT 4 Rep. Bagley of Machias,
Rep. Haskell of Milford, Rep.
Kasprzak of Newport, Sen.
Rotundo of Androscoggin

Nine members of the Committee having voted in the affirmative and none in the negative, it was the vote of the Committee that the nomination of Nelson E. Durgin of Bangor, for appointment to the Civil Service Appeals Board be confirmed.

Signed,

S/Peggy A. Pendleton
Senate Chair

S/Martha A. Bagley
House Chair

READ and **ORDERED PLACED ON FILE**.

The President laid before the Senate the following: "Shall the recommendation of the Committee on **STATE AND LOCAL GOVERNMENT** be overridden?"

In accordance with 3 M.R.S.A., Chapter 6, Section 151, and with Joint Rule 506 of the 120th Legislature, the vote was taken by the Yeas and Nays.

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#262)

YEAS: Senators: None

NAYS: Senators: BRENNAN, BROMLEY,
CARPENTER, CATHCART, DAGGETT, DAVIS,
EDMONDS, FERGUSON, GOLDTHWAIT,
KNEELAND, LAFOUNTAIN, LEMONT, MARTIN,
MCALEVEY, MICHAUD, MITCHELL, O'GARA,
PENDLETON, ROTUNDO, SAVAGE, SAWYER,
SHOREY, SMALL, TREAT, TURNER,
WOODCOCK, YOUNGBLOOD, THE PRESIDENT -
RICHARD A. BENNETT

ABSENT: Senators: DOUGLASS, GAGNON, KILKELLY,
LONGLEY, MILLS, NUTTING, RAND

No Senator having voted in the affirmative and 28 Senators having voted in the negative, with 7 Senators being absent, and none being less than two-thirds of the Membership present and voting, it was the vote of the Senate that the Committee's recommendation be **ACCEPTED** and the nomination of **Nelson E. Durgin** of Bangor, for appointment to the Civil Service Appeals Board was **CONFIRMED**.

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

Off Record Remarks

The Following Communication: S.C. 675

120TH LEGISLATURE
COMMITTEE ON STATE AND LOCAL GOVERNMENT

March 22, 2002

The Honorable Richard A. Bennett
President of the Senate of Maine
120th Maine Legislature
State House
Augusta, Maine 04333-0003

Dear Mr. President:

In accordance with 3 M.R.S.A., Section 157, and with Joint Rule 505 of the 120th Maine Legislature, the Joint Standing Committee on State and Local Government has had under consideration the nomination of Bent Schlosser of Vassalboro, for appointment to the Civil Service Appeals Board.

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

YEAS	Senators	3	Pendleton of Cumberland, Rotundo of Androscoggin, Youngblood of Penobscot
	Representatives	8	Cressey of Baldwin, Haskell of Milford, Hatch of Skowhegan, Kasprzak of Newport, Lessard of Topsham, McDonough of Portland, McLaughlin of Cape Elizabeth, Murphy of Berwick
NAYS		0	
ABSENT		2	Rep. Bagley of Machias, Rep. Chase of Levant

Eleven members of the Committee having voted in the affirmative and none in the negative, it was the vote of the Committee that the nomination of Bent Schlosser of Vassalboro, for appointment to the Civil Service Appeals Board be confirmed.

Signed,

S/Peggy A. Pendleton
Senate Chair

S/Martha A. Bagley
House Chair

READ and ORDERED PLACED ON FILE.

The President laid before the Senate the following: "Shall the recommendation of the Committee on **STATE AND LOCAL GOVERNMENT** be overridden?"

In accordance with 3 M.R.S.A., Chapter 6, Section 151, and with Joint Rule 506 of the 120th Legislature, the vote was taken by the Yeas and Nays.

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#263)

YEAS: Senators: None

NAYS: Senators: BRENNAN, BROMLEY,
CARPENTER, CATHCART, DAGGETT, DAVIS,
EDMONDS, FERGUSON, GOLDTHWAIT,
KNEELAND, LAFOUNTAIN, LEMONT, MARTIN,
MCALEVEY, MICHAUD, MILLS, MITCHELL,
O'GARA, PENDLETON, RAND, ROTUNDO,
SAVAGE, SAWYER, SHOREY, SMALL, TREAT,
TURNER, WOODCOCK, YOUNGBLOOD, THE
PRESIDENT - RICHARD A. BENNETT

ABSENT: Senators: DOUGLASS, GAGNON, KILKELLY,
LONGLEY, NUTTING

No Senator having voted in the affirmative and 30 Senators having voted in the negative, with 5 Senators being absent, and none being less than two-thirds of the Membership present and voting, it was the vote of the Senate that the Committee's recommendation be **ACCEPTED** and the nomination of **Bent Schlosser** of Vassalboro, for appointment to the Civil Service Appeals Board was **CONFIRMED**.

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

The Following Communication: S.C. 668

120TH LEGISLATURE
COMMITTEE ON
APPROPRIATIONS AND FINANCIAL AFFAIRS

March 21, 2002

Honorable Richard A. Bennett, President of the Senate
Honorable Michael V. Saxl, Speaker of the House
120th Maine Legislature
State House
Augusta, Maine 04333

Dear President Bennett and Speaker Saxl:

LEGISLATIVE RECORD - SENATE, MONDAY, MARCH 25, 2002

Pursuant to Joint Rule 310, we are writing to notify you that the Joint Standing Committee on Appropriations and Financial Affairs has voted unanimously to report the following bills out "Ought Not to Pass":

- L.D. 1135 An Act to Authorize a General Fund Bond Issue in the Amount of \$5,000,000 for the Testing of Marine Dredge Spoils and the Proper Disposal of Spoils that are Special or Hazardous Waste
- L.D. 1440 An Act to Authorize a General Fund Bond Issue in the Amount of \$7,000,000 to Provide Adequate Facilities for Business Expansion or Relocation in the State
- L.D. 1885 An Act to Transfer Funds From the Service Retirement Benefit Reserve to the Maine State Retirement System in Order to Fund the Change in Retirement Eligibility Requirements for Game Wardens and Marine Patrol Officers
- L.D. 1902 An Act to Fund the Maine Biomedical Research Program
- L.D. 1910 An Act to Establish the Retired Teacher Health Insurance Contribution Fund

We have also notified the sponsors and cosponsors of each bill listed of the Committee's action.

Sincerely,

S/Sen. Jill M. Goldthwait Senate Chair S/Rep. Randall L. Berry House Chair

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

The Following Communication: S.C. 669

**120TH LEGISLATURE
COMMITTEE ON CRIMINAL JUSTICE**

March 21, 2002

Honorable Richard A. Bennett, President of the Senate
Honorable Michael V. Saxl, Speaker of the House
120th Maine Legislature
State House
Augusta, Maine 04333

Dear President Bennett and Speaker Saxl:

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

- L.D. 2167 An Act to Improve Public Safety by Regulating the Installation and Inspection of Fire Alarm Systems

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

Sincerely,

S/Sen. Michael J. McAlevey Senate Chair S/Rep. Edward J. Povich House Chair

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

The Following Communication: S.C. 670

**120TH LEGISLATURE
COMMITTEE ON HEALTH AND HUMAN SERVICES**

March 21, 2002

Honorable Richard A. Bennett, President of the Senate
Honorable Michael V. Saxl, Speaker of the House
120th Maine Legislature
State House
Augusta, Maine 04333

Dear President Bennett and Speaker Saxl:

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

- L.D. 1882 Resolve, Directing the Department of Behavioral and Developmental Services to Recommend a Name for the New Psychiatric Treatment Center Located in Augusta

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

Sincerely,

S/Sen. Susan W. Longley Senate Chair S/Rep. Thomas J. Kane House Chair

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

The Following Communication: S.C. 671

**120TH LEGISLATURE
COMMITTEES ON HEALTH AND HUMAN SERVICES
AND BANKING AND INSURANCE**

March 21, 2002

Honorable Richard A. Bennett, President of the Senate
Honorable Michael V. Saxl, Speaker of the House
120th Maine Legislature
State House
Augusta, Maine 04333

Dear President Bennett and Speaker Saxl:

Pursuant to Joint Rule 310, we are writing to notify you that the Joint Standing Committees on Health and Human Services and Banking and Insurance have voted unanimously to report the following bill out "Ought Not to Pass":

L.D. 1768 An Act to Create a Comprehensive Prescription Insurance Plan for Maine Seniors through the Implementation of the Recommendations of the Heinz Family Philanthropies Report

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

Sincerely,

S/Sen. Susan W. Longley
Senate Chair

S/Rep. Thomas J. Kane
House Chair

S/Sen. Lloyd P. LaFountain III
Senate Chair

S/Rep. Christopher P. O'Neil
House Chair

READ and with accompanying papers ORDERED PLACED ON FILE.

The Following Communication: S.C. 672

**120TH LEGISLATURE
COMMITTEE ON JUDICIARY**

March 21, 2002

Honorable Richard A. Bennett, President of the Senate
Honorable Michael V. Saxl, Speaker of the House
120th Maine Legislature
State House
Augusta, Maine 04333

Dear President Bennett and Speaker Saxl:

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

L.D. 2105 An Act to Enact the Maine Professional Service Corporation Act

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

Sincerely,

S/Sen. Anne M. Rand
Senate Chair

S/Rep. Charles C. LaVerdiere
House Chair

READ and with accompanying papers ORDERED PLACED ON FILE.

The Following Communication: S.C. 673

**120TH LEGISLATURE
COMMITTEE ON NATURAL RESOURCES**

March 21, 2002

Honorable Richard A. Bennett, President of the Senate
Honorable Michael V. Saxl, Speaker of the House
120th Maine Legislature
State House
Augusta, Maine 04333

Dear President Bennett and Speaker Saxl:

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

L.D. 2155 An Act Pertaining to Environmental Fines

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

Sincerely,

S/Sen. John L. Martin
Senate Chair

S/Rep. Scott W. Cowger
House Chair

READ and with accompanying papers ORDERED PLACED ON FILE.

The Following Communication: S.C. 676

**BUREAU OF CORPORATIONS, ELECTIONS AND
COMMISSION
DEPARTMENT OF THE SECRETARY OF STATE**

March 21, 2002

Hon. Anne M. Rand, Chair
and Members of the Standing Committee on the Senatorial Vote
3 State House Station
Augusta, ME 04333-0003

Dear Senator Rand and Members of the Standing Committee on the Senatorial Vote:

In response to your request earlier today, I have tabulated the results of the Committees' votes on disputed ballots in the Appeal of the Senate District 27 Recount, and have verified the tabulation with the official record produced by the Committee Clerks. I report the final count of votes for each candidate to be as follows:

Michael Brennan 3275

Sally G. Vamvakias 3265

Please let me know if I can provide further information to the Committee.

Sincerely,

S/Julie L. Flynn
Deputy Secretary of State

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

REPORTS OF COMMITTEES

House

Divided Report

The Majority of the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS** on Bill "An Act to Make Supplemental Appropriations and Allocations for the Expenditures of State Government and to Change Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2002 and June 30, 2003" (EMERGENCY)

H.P. 1574 L.D. 2080

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-968)**.

Signed:

Senators:

GOLDTHWAIT of Hancock
CATHCART of Penobscot
MILLS of Somerset

Representatives:

BERRY of Livermore
MAILHOT of Lewiston
TESSIER of Fairfield
BRANNIGAN of Portland
ETNIER of Harpswell
JONES of Greenville
NASS of Acton
BELANGER of Caribou
ROSEN of Bucksport

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

Signed:

Representative:

WINSOR of Norway

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-968) AS AMENDED BY HOUSE AMENDMENT "K" (H-986)** thereto.

Reports **READ**.

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

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

Divided Report

The Majority of the Committee on **JUDICIARY** on Bill "An Act Regarding the Repatriation of Native American Remains"
H.P. 1443 L.D. 1940

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-975)**.

Signed:

Senators:

RAND of Cumberland
FERGUSON of Oxford
McALEVEY of York

Representatives:

LaVERDIERE of Wilton
BULL of Freeport
JACOBS of Turner
MITCHELL of Vassalboro
MUSE of South Portland
SIMPSON of Auburn
MADORE of Augusta
WATERHOUSE of Bridgton
MENDROS of Lewiston

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

Signed:

Representative:

SHERMAN of Hodgdon

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-975)**.

Reports **READ**.

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

READ ONCE.

Committee Amendment "A" (H-975) **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-975)**, in concurrence.

Senate

Ought to Pass As Amended

Senator **KNEELAND** for the Committee on **AGRICULTURE, CONSERVATION AND FORESTRY** on Bill "An Act to Address Liquidation Harvesting"

S.P. 718 L.D. 1920

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-488)**.

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

READ ONCE.

Committee Amendment "A" (S-488) **READ** and **ADOPTED**.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-488)**.

Sent down for concurrence.

Divided Report

The Majority of the Committee on **LABOR** on Bill "An Act to Implement the Recommendations of the Workers' Compensation Board Governance Study"

S.P. 789 L.D. 2133

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

Signed:

Senator:
EDMONDS of Cumberland

Representatives:
BUNKER of Kossuth Township
MATTHEWS of Winslow
HUTTON of Bowdoinham
NORTON of Bangor
SMITH of Van Buren
TARAZEWICH of Waterboro

DAVIS of Falmouth

The Minority of the same Committee on the same subject reported that the same **Ought To Pass as Amended by Committee Amendment "A" (S-486)**.

Signed:

Senators:
TURNER of Cumberland
SAWYER of Penobscot

Representatives:
TREADWELL of Carmel
MacDOUGALL of North Berwick
CRESSEY of Baldwin

Reports **READ**.

Senator **EDMONDS** of Cumberland moved the Senate **ACCEPT** the Majority **OUGHT NOT TO PASS** Report.

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

Senate at Ease.

Senate called to order by the President.

Off Record Remarks

Senate at Ease.

Senate called to order by the President.

ORDERS OF THE DAY

Unfinished Business

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

The Chair laid before the Senate the following Tabled and Later (2/13/02) Assigned matter:

Joint Order - Directing the Joint Standing Committee on Labor to Report Out Legislation to Make Changes to the Laws Governing Law Enforcement Retirement

S.P. 771

Tabled - February 13, 2002 by Senator **DAVIS** of Piscataquis

Pending - motion by Senator **SAWYER** of Penobscot to **PASS**

(In Senate, February 13, 2002, on motion by Senator **SAWYER** of Penobscot **READ**.)

On motion by Senator **DAVIS** of Piscataquis, the Joint Order **INDEFINITELY POSTPONED**.

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

ENACTORS

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

Emergency Measure

An Act to Amend the Tax Laws

S.P. 669 L.D. 1873
(C "A" S-444)

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

Emergency Measure

An Act to Establish the Administrative Operating Budget for the Maine State Retirement System for the Fiscal Year Ending June 30, 2003

H.P. 1526 L.D. 2030

This being an Emergency Measure and having received the affirmative vote of 32 Members of the Senate, with no Senators having voted in the negative, and 32 being more than two-thirds of the entire elected Membership of the Senate, was **PASSED TO BE ENACTED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

Emergency Measure

An Act to Amend the Charter of the Corinna Water District to Allow for the Appointment of Trustees

S.P. 800 L.D. 2159
(C "A" S-474)

This being an Emergency Measure and having received the affirmative vote of 32 Members of the Senate, with no Senators having voted in the negative, and 32 being more than two-thirds of the entire elected Membership of the Senate, was **PASSED TO BE ENACTED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

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

ENACTORS

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

Acts

An Act to Authorize the Transfer of Development Rights

H.P. 1546 L.D. 2049
(C "A" H-912)

An Act to Require Logging Contractors to Notify Landowners and Employees of the Cancellation of Workers' Compensation Insurance Coverage

H.P. 1572 L.D. 2077
(C "A" H-907)

An Act Concerning the Disposal and Storage of Cremains

H.P. 1580 L.D. 2089
(C "A" H-908)

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

An Act to Transfer Responsibility for Determining Eligibility for the Elderly Low-cost Drug Program from the Department of Administrative and Financial Services to the Department of Human Services

H.P. 1522 L.D. 2026
(C "A" H-911)

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

An Act to Control Internet "Spam"

H.P. 1538 L.D. 2041
(C "A" H-906)

On motion by Senator **SHOREY** of Washington, **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:

ENACTORS

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

Resolves

Resolve, to Establish a Demonstration Project to Review Requirements Imposed on Agencies Contracting with the Department of Behavioral and Developmental Services
H.P. 1450 L.D. 1947
(C "A" H-909)

Resolve, to Study the Design and Funding of a Household Hazardous Waste and Universal Waste Collection Program
H.P. 1473 L.D. 1974
(C "A" H-913)

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

Off Record Remarks

Senator **SHOREY** of Washington 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 **SMALL** of Sagadahoc 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.

On motion by President Pro Tem **MICHAUD** of Penobscot, **RECESSED** until 11:30 in the morning.

After Recess

Senate called to order by the President.

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

REPORTS OF COMMITTEES

House

Ought to Pass As Amended

The Committee on **HEALTH AND HUMAN SERVICES** on Resolve, to Provide Access to Personal Care Assistant Home Care Services (EMERGENCY)

H.P. 1437 L.D. 1934

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-997)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Resolve **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-997)**.

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

READ ONCE.

Committee Amendment "A" (H-997) **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-997)**, in concurrence.

The Committee on **LABOR** on Bill "An Act to Coordinate the Maine Overtime Pay Provisions with the Federal Fair Labor Standards Act Regarding Exceptions for Businesses Involved in the Transportation of Persons or Goods"

H.P. 1611 L.D. 2108

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-999)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-999)**.

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

READ ONCE.

Committee Amendment "A" (H-999) **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-999)**, in 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:

Mandate

An Act Regarding Workers' Compensation Benefits for Firefighters, Rescue Workers and Safety Workers Who Contract Certain Communicable Diseases

H.P. 1283 L.D. 1746
(C "A" H-931)

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

Emergency Measure

An Act to Establish Municipal Cost Components for Unorganized Territory Services to be Rendered in Fiscal Year 2002-2003

H.P. 1613 L.D. 2110
(C "A" H-914)

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

Emergency Measure

An Act to Change the Governing Board of the George Stevens Academy in Blue Hill

H.P. 1639 L.D. 2142
(C "A" H-921)

This being an Emergency Measure and having received the affirmative vote of 33 Members of the Senate, with no Senators having voted in the negative, and 33 being more than two-thirds of the entire elected Membership of the Senate, was **PASSED TO BE ENACTED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

Emergency Measure

An Act to Allow Qualified Shellfish Harvesters to Continue to Sample Water Quality

H.P. 1646 L.D. 2152
(C "A" H-933)

This being an Emergency Measure and having received the affirmative vote of 34 Members of the Senate, with no Senators having voted in the negative, and 34 being more than two-thirds of the entire elected Membership of the Senate, was **PASSED TO BE ENACTED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

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

PAPERS FROM THE HOUSE

House Paper

**Pursuant to Statutes
Maine Fire Protection Services Commission**

The **Maine Fire Protection Services Commission** pursuant to the Maine Revised Statutes, Title 5, section 3371 asked leave to report that the accompanying Bill "An Act to Provide Funding for the Office of the State Fire Marshal and the Maine Fire Training and Education Program" (EMERGENCY)

H.P. 1704 L.D. 2201

Be **REFERRED** to the Committee on **CRIMINAL JUSTICE** and ordered printed pursuant to Joint Rule 218.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **REFERRED** to the Committee on **CRIMINAL JUSTICE** and ordered printed pursuant to Joint Rule 218.

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

REFERRED to the Committee on **CRIMINAL JUSTICE** and ordered printed pursuant to Joint Rule 218, in concurrence.

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

Off Record Remarks

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

REPORTS OF COMMITTEES

House

Divided Report

The Majority of the Committee on **AGRICULTURE, CONSERVATION AND FORESTRY** on Resolve, to Promote the Interests of the People of Maine when Public Funds are Used to Acquire Conservation Easements

H.P. 1593 L.D. 2096

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-990).**

Signed:

Senators:

KNEELAND of Aroostook
KILKELLY of Lincoln

Representatives:

McKEE of Wayne
VOLENIK of Brooklin
HAWES of Standish
CARR of Lincoln
JODREY of Bethel
FOSTER of Gray
GOOLEY of Farmington
PINEAU of Jay

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

Signed:

Senator:

NUTTING of Androscoggin

Comes from the House with the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Resolve **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-990).**

Reports **READ.**

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

READ ONCE.

Committee Amendment "A" (H-990) **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-990)**, 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 **JUDICIARY** on Bill "An Act to Implement the Minority Recommendations of the Committee to Study Issues Concerning Changes to the Traditional Uses of Maine Forests and Lands"

H.P. 1600 L.D. 2101

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

Signed:

Senators:

McALEVEY of York
FERGUSON of Oxford

Representatives:

BULL of Freeport
JACOBS of Turner
MUSE of South Portland
MADORE of Augusta
WATERHOUSE of Bridgton
SHERMAN of Hodgdon
MENDROS of Lewiston

The Minority of the same Committee on the same subject reported that the same **Ought To Pass as Amended by Committee Amendment "A" (H-973).**

Signed:

Senator:

RAND of Cumberland

Representatives:

LaVERDIERE of Wilton
MITCHELL of Vassalboro
SIMPSON of Auburn

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

Reports **READ.**

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

On motion by Senator **FERGUSON** of Oxford, **TABLED** until Later in Today's Session, pending the motion by Senator **RAND** of Cumberland to **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED** Report, in **NON-CONCURRENCE.**

Senate at Ease.

Senate called to order by the President.

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

SENATE PAPERS

Bill "An Act to Ensure that 25% of Workers' Compensation Cases with Permanent Impairment Remain Eligible for Duration-of-disability Benefits in Accordance With the Workers' Compensation Act"

S.P. 822 L.D. 2202

Sponsored by Senator KILKELLY of Lincoln. (GOVERNOR'S BILL)
Cosponsored by Representative TREADWELL of Carmel and Senators: NUTTING of Androscoggin, TURNER of Cumberland, Representatives: ETNIER of Harpswell, MacDOUGALL of North Berwick.

REFERRED to the Committee on **LABOR** and ordered printed.

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:

ENACTORS

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

Emergency Resolve

Resolve, Regarding Legislative Review of Portions of Chapter 10, Section 17(A)(2), (3) and (6), Standards for the Clearing of Vegetation for Development, Major Substantive Rules of the Maine Land Use Regulation Commission within the Department of Conservation

H.P. 1590 L.D. 2095
(C "A" H-919)

Comes from the House, **FAILED FINAL PASSAGE**.

On motion by Senator **MARTIN** of Aroostook, **TABLED** until Later in Today's Session, pending **FINAL PASSAGE**, in **NON-CONCURRENCE**.

Emergency Resolve

Resolve, Regarding Legislative Review of Chapter 691, Section 3-A, Siting Restrictions for New Facilities, a Major Substantive Rule of the Bureau of Remediation and Waste Management within the Department of Environmental Protection

H.P. 1618 L.D. 2117
(C "A" H-917)

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

Emergency Resolve

Resolve, Regarding Legislative Review of Chapter 9: Rules Governing Administrative Civil Money Penalties for Labor Law Violations, a Major Substantive Rule of the Department of Labor, Bureau of Labor Standards

H.P. 1634 L.D. 2137

This being an Emergency Measure and having received the affirmative vote of 30 Members of the Senate, with no Senators having voted in the negative, and 30 being more than two-thirds of the entire elected Membership of the Senate, was **FINALLY PASSED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

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:

Acts

An Act to Allow Federal Law Enforcement Officers to Enforce Maine Statutes

H.P. 1458 L.D. 1955
(C "A" H-927)

An Act to Establish Educational Requirements for Granting Noncommercial Lobster Licenses

H.P. 1493 L.D. 1996
(C "A" H-935)

An Act to Amend the Laws Concerning Specialty License Plates

H.P. 1506 L.D. 2009
(C "A" H-928)

An Act to Facilitate Compliance with Spill Prevention Requirements and Authorize Reimbursement for Certain Oil Spill Remediation Expenses

H.P. 1513 L.D. 2016
(C "A" H-945)

An Act to Provide Incentives for Multimunicipal Development

H.P. 1559 L.D. 2061
(C "A" H-944)

An Act to Clarify the Use of Municipal Rate of Growth Ordinances

H.P. 1560 L.D. 2062
(C "A" H-918)

An Act to Amend the Law Relating to Growth-related Capital Investments

H.P. 1566 L.D. 2071

An Act Regarding Workers' Compensation and Liability Immunity Coverage for Emergency Management Forces

H.P. 1578 L.D. 2084

An Act to Implement the Recommendations of the Committee to Study the Loss of Commercial Fishing Waterfront Access and Other Economic Development Issues Affecting Commercial Fishing

H.P. 1619 L.D. 2118
(C "A" H-934)

An Act Regarding the Local Governance of School Administrative Units

S.P. 791 L.D. 2143
(C "A" S-479)

An Act to Amend the Rule-making Authority of the Department of Conservation Regarding Timber Harvesting in Shoreland Areas

H.P. 1678 L.D. 2181

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

An Act to Require Major Water Users to Provide Public Information About Their Annual Water Withdrawals from Public Water Resources

H.P. 1119 L.D. 1488
(C "A" H-936)

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

Senator **MARTIN:** Thank you, Mr. President, members of the Senate. This bill is the result of a major study that was done by a number of agencies in the state. It came to the Natural Resources Committee and came out of the committee with a unanimous Ought to Pass Report. It is a compromise on the part of an awful lot of people and all the departments involved. There is a provision in this bill that we added and I do want to clarify legislative intent so that there won't be any questions if ever someone should question it and if the courts should ever have to deal with this issue. The amendment, basically, requires users to report water use above a prescribed threshold to the DEP, the Department of Agriculture, the Department of Conservation, and to DHS. The agency to which they would report would depend on the kind of use that they have. In the amendment, which is now part of 470-D, it outlines what the reports must contain. It further requires that the individual departments provide data to the DEP for assisting watersheds and establishing priorities. The intent, and reason I'm putting it in here, so it is clear, is that each department collects the withdrawal reports and aggregate these individual reports on a watershed basis and they will provide only the aggregated information to the DEP. The data, as aggregated, will allow the DEP to work with the regional associations in developing water use policy. It will also provide

the DEP with the information necessary to meet its obligations in this legislation.

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

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

THE PRESIDENT: The Senator may pose his question.

Senator **TURNER:** My assumption is that this bill was necessitated because of the drought experience in the state. If that is the case, is there a sunset provision in it so when there is no longer a drought than we could set these things aside?

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

Senator **MARTIN:** Thank you, Mr. President. This bill is not the result of the drought situation and is unrelated. It deals with the amount of water being taken from the present water sources for agricultural, industrial, water producing, or whatever. It is not directly related to the issue of drought.

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

An Act Concerning Student Threats

H.P. 1474 L.D. 1975
(C "B" H-922)

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

An Act to Implement the Recommendations of the Returnable Container Handling and Collection Study

H.P. 1685 L.D. 2184

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

An Act to Amend Maine State Retirement System Statutes

H.P. 1686 L.D. 2185

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

Resolves

Resolve, Regarding Legislative Review of Amendments to Chapter 305, Permit by Rule Standard and Chapter 310, Wetland Protection Regarding Cutting and Removal of Vegetation, Major Substantive Rules of the Department of Environmental Protection
H.P. 1571 L.D. 2076
(C "A" H-920)

Resolve, to Require the Maine Fire Protection Services Commission to Report Regarding Methods to Improve the Recruitment and Retention of Firefighters and the Provision of Healthcare
H.P. 1643 L.D. 2148

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

ORDERS OF THE DAY

The Chair laid before the Senate the following Tabled and Later (3/22/02) Assigned matter:

HOUSE REPORT - from the Committee on **UTILITIES AND ENERGY** on Bill "An Act Regarding Utility Easements"
H.P. 1472 L.D. 1973

Report - **Ought to Pass as Amended by Committee Amendment "A" (H-872)**

Tabled - March 22, 2002, by Senator **PENDLETON** of Cumberland

Pending - motion by Senator **FERGUSON** of Oxford to **ACCEPT** the **OUGHT TO PASS AS AMENDED** Report, in concurrence

(In House, March 21, 2002, Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-872).**)

(In Senate, March 22, 2002, Report **READ.**)

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

Senator **MARTIN:** Thank you, Mr. President. I have some concern that this bill is going to have some impact on what is happening with the Bangor and Aroostook Railroad and I would like some assurance that this bill will have no impact, whatsoever, on what is now pending before the bankruptcy court.

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. What is pending before a court, I think, I'm not qualified to speak in that regard, but I can speak on what we're trying to do here with the bill. I'd like to do that at this time. This would give the utilities the right to pass over or under or parallel to a railroad right-of-way. If the parties were in dispute and couldn't agree, then the resolution would go to the PUC for a determination. This is a unanimous committee report. We did give due consideration to the bill in committee and it would be my hope that you could support the committee in this endeavor. Thank you, Mr. President.

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

Senator **O'GARA:** Thank you, Mr. President, ladies and gentlemen of the Senate. I do urge you to consider the fact that we have many issues regarding transportation issues. Our Department of Transportation, even though you may be being told they did not testify against the bill, has expressed very strong concerns about this bill and what it will do in regard to their dealings with rail and other issues that we have. I assume you received on your desk today a copy of a letter from the Public Utilities Commission stating that they don't see that L.D. 1973 adds or detracts from the ability to get an easement in this particular situation. I would urge you to defeat the motion that is before us. I'm not sure whether we want to send it back to a committee or not, but I will tell you, from the Transportation Committee, the chair of the committee, the Senator from Knox, Senator Savage, asked to meet with representatives of the utilities. We met, thought we had a compromise worked out, but it is our opinion that when it was brought to the Utilities Committee, it was ignored. We think that the most we should do is allow the two committees to have this bill and work on it and come up with a compromise that will work. We do not feel this is in the best interest of the Department of Transportation and certainly not of the railroads. Thank you.

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

Senator **FERGUSON:** Thank you very much, Mr. President. I would remind the body that there was a representative of the Department of Transportation in our committee room when we heard this bill and also when we worked the bill. They didn't indicate that they had any particular problem with it at that time. I did speak with Commissioner Melrose this morning and he said that was something he didn't want to get involved in. He said that it was between the utilities and the railroads. It seems to me that this is a common sense piece of legislation. It allows the Public Utilities Commission to be the arbitrator and the final resolver if there is a dispute. I would urge the members of this body to support the unanimous committee report. Thank you very much.

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

Senator **O'GARA:** Thank you, Mr. President. In fact, Mr. President, the Department of Transportation has spoken quite strongly about this issue, as I said earlier. I would appreciate

your recognizing the fact that they do express a concern. What I see this as, and I think others are now beginning to see this, is that we are being asked to put ourselves between an issue that is ongoing between the utilities and the railroads. I don't think that we should be putting ourselves in that particular position. I hope that you will consider that very carefully when you vote, because that is exactly where you will be putting us. That is the issue now. I think you ought to consider where that might put us in the future. We should not allow ourselves, or let ourselves, get in this particular position. Thank you.

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

Senator **MARTIN:** Thank you, Mr. President, members of the Senate. I don't want to get into a battle between utilities and transportation. However, I have been informed that this will create a problem, is creating a problem, between, and potentially involving, the sale and the transfer of assets with the B&A which is now pending before the courts. I, based on that, cannot support this legislation until that is resolved. It potentially could effect the future of what happens to us in northern and eastern Maine. I have grave concerns that, if that is not resolved, the only thing I can see is that I, personally, will have to vote against this piece of legislation at this time for the future of, if nothing else, Aroostook County.

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

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

THE PRESIDENT: The Senator may pose his question.

Senator **GAGNON:** Mr. President, to anyone who can answer. It's my understanding that there was some issue related to the railroads that are actually owned by the State of Maine, the railroad lines, the publicly owned or state owned railroads. My question is, are they also required to abide by this change and if not, why not, and if so, why?

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

Senator **FERGUSON:** The State of Maine is exempt and the reason we exempted them is because DOT requested it.

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

Senator **CARPENTER:** Thank you, Mr. President. I was on the Utilities Committee back in 1988 with the same type of bill in those days. It's just the right of way along railroad beds, basically for power lines and now gas lines. The committee worked hard and long on this. There were some disagreements. They worked them out. They worked them out again, they'll work them out better each time. This time it pretty much gives more authority to the Public Utilities Commission to decide any disagreement between the railroads and the power companies or

the gas companies or whoever is also using the right away from the railroads. It is absolutely true, there was a representative in all the discussions from the Department of Transportation in the Utilities Committee. He did speak and speak well. We listened to him and we did negotiate. I still urge you to vote with the Ought to Pass as Amended report. It's well spelled out. It's well thought out. We should pass it. Thank you.

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

Senator **NUTTING:** Thank you, Mr. President, ladies and gentlemen of the Senate. I'd like to pose a question if I may?

THE PRESIDENT: The Senator may pose his question.

Senator **NUTTING:** My question would be to anybody that could answer. Was the issue of this bill and its' potential effect on the sale of the B&A discussed in the public hearing or work session or was that brought up before today or is this the first time that this issue has come before us?

THE PRESIDENT: The Senator from Androscoggin, Senator Nutting poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Oxford, Senator Ferguson.

Senator **FERGUSON:** Thank you very much, Mr. President. There was no discussion about the B&A. I have the bill here and if there is anything in this bill that would inhibit rail transportation, one way or the other, I'll buy you a nice meal at the Senator Inn. There is nothing in here. It wasn't brought up. This is something that just came to my attention maybe within the last week. Last week I heard there was some concern that it might inhibit the B&A sale, but there is nothing in this bill that would inhibit that. It wasn't brought up by DOT representatives or anyone else, to my knowledge. Thank you.

THE PRESIDENT: The Senator from Aroostook, Senator Martin, requests unanimous consent of the Senate to address the Senate a third time on this matter. Hearing no objection, the Senator may proceed.

Senator **MARTIN:** Thank you, Mr. President, members of the Senate. Let me try to preface my remarks. Some of us in eastern, western, and northern Maine have been meeting for what feels like a year on the question of what happens to the Bangor and Aroostook Railroad. The Bangor and Aroostook Railroad is presently before the federal bankruptcy court in Portland. The State of Maine has had very little ability to impact that process because the State of Maine literally has no control, to speak of, over railroads. There is a federal law that preempts the states from dealing with railroad issues. That 100 feet where the rail line is located is entirely under the control of the federal government. We have nothing that we can really impact except to ask questions and make comments. The state's Attorney has been making comments to the court on behalf of those of us that are represented within the B&A. That's our only ability. So whatever takes place, takes place outside of state government. The preemption issue is entirely a federal issue, over which, as I said, you and I have no control. It is clear that all of this is being brought into play as to what is and what will be the value of what is going to be transferred if someone gives the rights to cross its

land wherever it wants to. So it has a tremendous potential impact on the potential value in that transfer. That's my concern. I guess, short of that, I would hope that someone might just consider taking the bill back to committee to deal with that issue. If the Utilities Committee doesn't want it, might I suggest that Committee on Transportation take it and do something with it or someone else, whether it be the Judiciary Committee or whatever. But I don't want to be here, as a Senator from Aroostook, telling you that unrepairable harm might occur when I'm not positive of that and that's why I asked the question initially. But I am sure enough to know that I don't want to leave here having doted on something that potentially could effect what happens to us in northern Maine. So I would hope that someone would do something with this bill.

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

Senator **TREAT:** Thank you, Mr. President, men and women of the Senate. I don't plan to do anything with this bill, but I do plan to give you a little bit of information about what was presented to the Utilities and Energy Committee, of which I am a member. As you may recall, that committee voted unanimously to support this legislation after much debate and considerable amendment of the original bill. I would like to address specifically two points, both in the form of questions and one part of that being an answer to that question that I think do not accurately represent what was presented to our committee. First of all, on the question of whether this bill, if enacted, would do something untoward to the bankruptcy proceedings, I would just say that that was information that was not presented to our committee. It was not in any of the testimony before our committee, including testimony submitted by any of the parties to the legal proceeding. So this is scuttlebutt that is going on outside of the committee and if there were such an impact, I would have thought it would have been brought to our committee. Secondly, on the issue of preemption. Of course, we can only go by the best information that we have, as a committee, and for that we turn to the lawyer assigned to our committee, John Clark, who works for the neutral Office of Policy and Legal Analysis. Those claims about preemption were, indeed, made before our committee and they were found not to have much legal basis by our committee staff. What he said is that the one case that was cited for that proposition, in that case the court held that the state law was not preempted under the federal law, and I quote from his analysis to the committee, 'the court did not hold, nor was it presented with, a question whether federal law prohibits any state eminent domain laws from being enforced against a rail line that is not formally abandoned. I have not been able to find any cases supporting Mr. Nadzo's claim, 'that is the attorney who made that claim before the committee. Again, we can only go with the best information presented to us as a committee. But I have to say of both of those claims, that one was not brought to our committee and the other was and was, in effect, found not to be valid legal argument by our own counsel. Thank you.

On motion by Senator **MARTIN** of Aroostook, **TABLED** until Later in Today's Session, pending the motion by Senator **FERGUSON** of Oxford to **ACCEPT** the **OUGHT TO PASS AS AMENDED** Report, in concurrence.

The Chair laid before the Senate the following Tabled and Later (3/22/02) Assigned matter:

HOUSE REPORTS - from the Committee on **BUSINESS AND ECONOMIC DEVELOPMENT** on Bill "An Act to Authorize a General Fund Bond Issue in the Amount of \$15,000,000 for the Construction of a Civic Center and Auditorium in Eastern Central Maine"

H.P. 1690 L.D. 2189

Majority - **Ought to Pass**, pursuant to Joint Order 2001 (H.P. 1610) (10 members)

Minority - **Ought Not to Pass**, pursuant to Joint Order 2001 (H.P. 1610) (3 members)

Tabled - March 22, 2002, by Senator **SHOREY** of Washington

Pending - **ACCEPTANCE OF EITHER REPORT**

(In House, March 20, 2002, the Minority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED**.)

(In Senate, March 22, 2002, Reports **READ**.)

Senator **SHOREY** of Washington moved the Senate **ACCEPT** the Majority **OUGHT TO PASS** Report, in **NON-CONCURRENCE**.

At the request of Senator **TREAT** of Kennebec a Division was had. 21 Senators having voted in the affirmative and 14 Senators having voted in the negative, the motion by Senator **SHOREY** of Washington to **ACCEPT** the Majority **OUGHT TO PASS** Report, in **NON-CONCURRENCE**, **PREVAILED**.

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

On motion by Senator **SHOREY** of Washington, Senate Amendment "A" (S-489) **READ**.

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

Senator **SHOREY:** Thank you, Mr. President, men and women of the Senate. This amendment is purely the fiscal note, which was not assigned when the bill came through. Thank you.

On further motion by same Senator, Senate Amendment "A" (S-489) **ADOPTED**.

PASSED TO BE ENGROSSED AS AMENDED BY SENATE AMENDMENT "A" (S-489), in NON-CONCURRENCE.

Sent down for concurrence.

The Chair laid before the Senate the following Tabled and Later (3/22/02) Assigned matter:

HOUSE REPORTS - from the Committee on **BUSINESS AND ECONOMIC DEVELOPMENT** on Bill "An Act to Authorize a General Fund Bond Issue in the Amount of \$25,400,000 for Economic Development"

H.P. 1691 L.D. 2190

Majority - **Ought to Pass (H.P. 1691 L.D. 2190)** (12 members)

The same Committee on Bill "An Act to Authorize a General Fund Bond Issue in the Amount of \$29,400,000 for Economic Development"

H.P. 1692 L.D. 2191

Minority - **Ought to Pass (H.P. 1692 L.D. 2191)** (1 member)

Tabled - March 22, 2002, by Senator **SHOREY** of Washington

Pending - **ACCEPTANCE OF EITHER REPORT**

(In House, March 20, 2002, the Majority **OUGHT TO PASS** (H.P. 1691 L.D. 2190) Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED**.)

(In Senate, March 22, 2002, Reports **READ**.)

On motion by Senator **SHOREY** of Washington, the Majority **OUGHT TO PASS** (H.P. 1691 L.D. 2190) Report **ACCEPTED**, in concurrence.

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

On motion by Senator **SHOREY** of Washington, Senate Amendment "A" (S-490) **READ**.

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

Senator **SHOREY:** Thank you, Mr. President, men and women of the Senate. Again, this is a amendment which has the fiscal note attached which was not attached when originally sent up. Thank you.

On further motion by same Senator, Senate Amendment "A" (S-490) **ADOPTED**.

PASSED TO BE ENGROSSED AS AMENDED BY SENATE AMENDMENT "A" (S-490), in NON-CONCURRENCE.

Sent down for concurrence.

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

The Chair laid before the Senate the following Tabled and Later (3/21/02) Assigned matter:

HOUSE REPORTS - from the Committee on **CRIMINAL JUSTICE** on Bill "An Act to Implement the Recommendations of the Commission to Study Domestic Violence"

H.P. 1658 L.D. 2163

Majority - **Ought to Pass** (7 members)

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

Tabled - March 21, 2002, by Senator **DAGGETT** of Kennebec

Pending - motion by Senator **MCALLEVEY** of York to **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED** Report, in concurrence

(In House, March 12, 2002, the Minority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-883)**.)

(In Senate, March 13, 2002, Reports **READ**.)

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

Senator **O'GARA:** Thank you, Mr. President, ladies and gentlemen of the Senate. I do hope that you will go on and defeat the motion that is before you so that we can, eventually, support the Majority Report. Fear is a terrible, terrible thing. The dictionary defines it as, 'a disturbing emotion caused by or aroused by an impending danger, whether that threat is real or imagined. It is an unpleasant and strong emotion caused by expectation or awareness of danger.' However it is defined, whatever definition you accept, it is a painful emotion. Let me first stress what you have heard me say many times before, this is not a gun control bill. I have never, and will never, support a bill that in any way attempts to take a gun away from a law-abiding citizen, and I stress law-abiding. This bill does not deprive a law-abiding citizen of possessing a firearm for hunting, employment, target practice, collection, or any other legal use. It is aimed at a person who has demonstrated dangerousness with a firearm. So I ask you, my fellow citizens, as we discuss this bill today, keep your eye on the target here. A person who abuses his wife, who is a constant threat to her, who has shown a history of violent behavior, is not and cannot be defined or described as a law-abiding citizen. In my judgment, not much of a man either. As I said before, fear is a terrible thing. For the most part, everyone suffers, to some degree, from some type of fear, whether it's a fear of heights, fear of the dark, fear of crowds, or being closed in, of speaking in public. The list could go on and on. Those fears are not, for the most part, suffered by just the young or the old, rich or poor, educated or not, or by just men or just women. But there is one fear that men, again for the most part, do not suffer from, do not share with women. That is the fear of domestic abuse. Men rarely get beaten up by women for any of the wide range of reasons men beat up women. Men rarely have a gun pointed at their head for the purpose of intimidation as women do. Men rarely, if ever, have to worry that

a woman he is trying to break away from is carrying a concealed weapon that she has threatened to kill him with if he tries to leave. You may hear from someone today or have been told by others outside of this chamber, maybe one is even in the chamber, that what we really have to do is work harder on our children to catch and discourage the tendency towards violence, that we should work on discouraging bullying and intimidation in schools and on the playgrounds so that boys don't grow up to be abusers. I agree with that position wholeheartedly. But don't forget the problem we have now and that we have before us today with adult men and women. We do so many things to try to prevent bad things from happening. We mandate seatbelts, blaze orange, life preservers, and car seats, and we hope, and the emphasis is on hope, that they will save a life or reduce injury. We require labels on packs of cigarettes, containers of alcohol, and many household items, and we hope they will prevent an unnecessary death or illness. We make all kinds of public announcements about all kinds of issues regarding safety and we hope they will save lives. The mother of Amy St. Laurent is speaking to students and women about the need for caution in their relationships. She hopes a life, or many lives, may be saved. Women and men of the Senate, does an abused woman deserve less? If we are trying to offer even the slimmest glimmer of hope to parents, families, and friends that the above examples I gave might save the life of a loved one, prevent a serious injury, can we then turn around and say that an abused, intimidated, scared to death, woman doesn't deserve that same glimmer of hope? There are two claims opponents make that I must speak to today. The first I've already mentioned, but I must say it again. This is, or at least one specific section of this bill, not a gun control bill. While I'm here, let me digress a minute. The bill, overall, is an excellent bill. It is just unfortunate that people, who see anything that relates to guns and automatically make it a gun control bill, and could, cause the whole bill to be defeated. The last time I debated similar legislation, I began by asking if any Senators in this chamber considered it to be a gun control bill? I waited and no one in the Senate chamber rose to say that, in fact, they thought it was a gun control bill. I won't do it again, but I surely urge any of you to get up on this Senate floor and state that belief, if in fact you do have it. Secondly, the claim is made that it is just a piece of paper and it will have no impact at all. If just one otherwise abusive man, and how I hate to use the word man to refer to such a cowardly human being, it demeans an otherwise perfectly good word, if just one abusive man is discouraged from carrying out his threat of violence or prevents him from reminding his long suffering spouse that he still has his gun, than it will certainly be worth the paper it is written on. A couple of closing thoughts. In a recent piece the spokesman for Maine sportsmen and sports women concludes his article by saying, and I quote, 'the one thing that kills you at the State House is dishonesty.' I believe it is dishonest to claim that gun control is the purpose of this one section, and bluntly, it is dishonest for anyone in this chamber to embrace that totally false claim. I have asked repeatedly for anyone who has evidence that I have ever supported legislation that would take a gun away from a law-abiding citizen to present such evidence. No evidence has ever been presented. Oh, I may not get my picture in the publication, and I think the heading is 'Friends of the Sportsman', as some of you may. If that means a lot to you, than so be it. But that doesn't mean I'm a gun control person, just because I'm not listed in their magazine as a friend of the sportsman. Many of my friends and family are hunters and sportsmen. None of them will ever tell you that I have voted to take their guns away. I

strongly, strongly believe that this tiny little piece of legislation, one part of an incredibly important bill that many, many people worked on. I was privileged to be chair of that commission for a while. Subsequently had to give it up and was replaced by the Senator from Androscoggin, Senator Douglass. You have received, as results of questions that were asked in our caucus and perhaps in yours, a list of all the people who spoke and who have supported this legislation. Surely in that long list that you have on your desk somewhere there is at least one group in there that you have some level of respect for, that you can take their word that this legislation is necessary, that it will provide that one piece, that one little glimmer of hope. I urge you, ladies and gentlemen of the Senate, to defeat the motion that is before us now so that we can accept the Majority Report. I might point out that on that Majority Report is a member of the other body who is a former law enforcement person, who is a hunter, who has opposed legislation in the past, but sees it as worded now as being just what it is intended to be. Thank you.

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

Senator DOUGLASS: Men and women of the Senate, I rise to urge you to vote against the pending motion, the Minority Report, so that we can go on to pass the Majority Report on this bill that came from the Commission on Domestic Violence. It's important to note that what this commission did is look at each area where we currently have gaps in safety for the victims of domestic violence. Of course, 90% or more of these are women. The first area where we saw deficiencies was in the bail process where the bail commissioners are often not informed about who the victim is and that this is a matter that involves domestic violence. The report indicates and includes an effort to close that gap. If you would just read through the bill, you will see that the second part is concerned with the issuance of protection from abuse orders and the power of our courts. There is a gap there because currently, under the temporary protection from abuse statute, our courts have no power to prohibit the defendant in one of those actions from possessing a firearm or a dangerous weapon. Let me repeat that. Our courts have no power to protect the victim of domestic violence. Hence, our police do not have power under that statute. The Majority Report is an effort to develop that power in certain limited circumstances. That is when the victim speaks in person with the judge presiding over the matter and there is a discussion about the defendants' history. The court makes a determination that there is a history of violence and the court determines that withdrawing that right to possess a firearm or dangerous weapon, which is an important right in our society is appropriate under the circumstances. I'd like you to think about when you were young and you were unable to control your temper. This bill is a lot about counting to ten. The effort here is to give the court the power to help the victim of violence and also the perpetrator of that violence. How would it help that person? Well, we know, and most of you know, from personal experience, reading in the paper, or maybe you know an individual, who has been murdered after a separation from one of these situations when the perpetrator kills the victim, sometimes kills a law enforcement officer who is at the premises as occurred with Trooper Giles Landry in Leeds, and then kills himself. This is a glaring gap in our current system. So what does this power of the court do, this limited power? I argue to you that it allows time for the defendant to count to ten, to get over that anger, and realize that separation is not the end of the

world, that there is a reason to go living, and our courts can help in bringing about that determination. It is true that it may not always work, but it is certainly well worth our effort here, as the people who create the policies for the State of Maine. There are other matters in the bill that also go to the heart of closing those gaps, such as notifying the victim. In the commission report to the Committee on Criminal Justice, we've provided that notice should go to the victim. These are all measures aimed at closing the gap that exists in terms of the safety of people, primarily women, who are the victims of violence. We can close that gap. We can provide more safety for our citizens if we defeat the pending motion so that we can go on to pass the Majority Report. I urge you to do that.

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

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

THE PRESIDENT: The Senator may pose his question.

Senator **GAGNON:** Thank you, Mr. President. To anyone who may answer, if this law were to take effect, concerning the ability for a judge to remove guns, how specifically would that occur? Would the sheriff or law enforcement officer go back to the man's house and take the guns and stash them? I haven't been told just how that actually would occur.

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

Senator **DOUGLASS:** Mr. President, members of the Senate, one of the ways in which this order could be effectuated is to have the defendant agree, in the presence of the law enforcement officer, to have those guns transferred to the possession of another individual, presumably some friend, but out of his abode, his house, out of his direct possession. That is what the law enforcement people on the commission preferred because there are some issues with regard to the ability of the police or law enforcement to keep stock of these weapons, although I do believe that could be accommodated. That is what their suggestion was. I think some of the technicalities are matters that can be worked out. The issue for the police was really one of insurance. If they have these items in a locked box, sometimes there might be some claim that they got scratched when they were returned. There are a number of ways this could happen. The police could, in fact, take possession of the weapons, given the proper sort of insurance or safe for that. In addition the order would be complied with these weapons were simply given to another individual.

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

Senator **MCALVEY:** Thank you, Mr. President, men and women of the Senate. Let me start by attempting to answer the good Senator's question that was posed earlier. There are no provisions in the bill to handle that other than the person gives them up. That is to be worked out later. There were no recommendations on the specifics. In fact, specific suggestions

were offered by members of the committee during a hearing about how to facilitate this and the people representing the study committee couldn't come to a consensus on what they should do. I have a certain ownership with this study and I want to thank the people who served on it. It was a stellar panel of individuals across our state with varying backgrounds. I have some ownership because I was the individual who, 2 years ago, requested the legislative counsel to create a study committee. They, in their graciousness, along with the legislature, agreed. It was a 2-year study. The reason this came about is 4 years ago we heard a series of bills in the Criminal Justice Committee that revolved around handguns. A lot of the testimony was that it would help victims of domestic violence. For various reasons, those 4 bills died. I wanted to come out of that session with something that was positive, so we did the study. I thank the good Senator from Androscoggin, Senator Douglass, who talked about other specific items recommended in the legislation, because this is good legislation for domestic violence. It's excellent. The only difference between Report A and Report B is the one issue dealing with temporary orders. That issue came up last session as L.D. 1911, dealing with due process. This body and the other body killed it. That issue came up in the 119th; same issue. Both chambers killed it. That issue came up in the 118th; same issue. Both chambers killed it. Regardless of where you are on this issue, both sides are very passionate. Both sides are very intelligent and persistent. If I thought, for one moment, taking away a person's right, under a temporary order, would afford a victim of domestic violence any real, legitimate comfort and safety, I'd be on this in a heartbeat. I've consistently supported domestic violence legislation, despite what's been said elsewhere. I don't need to remind you that I broke my leg and crushed my knee protecting a victim from domestic violence. Lost my law enforcement career. By the way, I lay on the floor, waiting for help to come, while that perpetrator was looking for their firearm to shot me. I rolled over on my side, covering my weapon, figuring I was going to pass out, which I eventually did, and they would take my weapon and shoot me. So if anybody in here has a reason to be very upset about handguns and domestic violence, it's me. I don't want victims to suffer any more than anyone else in this chamber. We're all passionate about this. I think we're all in the same place. We need to do things to protect victims. This legislation, if enacted, will go a long way in a variety of things. I'm pleased with the commission and how they did their work. I'm going to wrap-up quickly. I asked 'how many victims of domestic violence were injured or threatened or killed by a person who was subject to a protection from abuse order, temporarily?' I was told that they didn't know, didn't ask and didn't inquire. How many people were killed, injured, or threatened by a person who was out on bail for domestic violence? They said 'we don't know, we didn't ask and we didn't inquire.' I said 'that goes to the heart of this issue. Why didn't you?' I was told that, basically, their concern was with broader issues, not counting beans. Well this bean counter is concerned. Just because that data isn't available doesn't mean we shouldn't consider this. We considered it in the 118th, 119th, 120th, and now in the 2nd session. Senator Buddy Murray of Penobscot County, 4 years ago, when these pieces of legislation died, said something very wise. He cautioned both sides of this issue not to come back until they were both on the same page. Unfortunately, we're not all on the same page yet over this one little issue. But I have confidence in this chamber that we are all on the same page with 99.9% of this piece legislation. I'd ask you to support the Minority Ought to Pass Report and deal with

this issue in the 121st, because it will come back. I have no doubt about it. I don't have a problem with that. It's a thorny issue. But don't hold this piece of legislation up over this one issue. I respect the good Senators from Androscoggin County and Cumberland County. They have worked very hard on this issue. They believe very fervently in protecting victims, as I do. But let's move on; get this piece of legislation on the Appropriations Table so we can spend all of our energy lobbying that committee to fund portions of this or all of it. That's where our energy needs to go. I have confidence that this chamber will do what is right for potential victims of domestic violence. This is a former victim of domestic violence speaking to you now. Thank you.

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

Senator **DOUGLASS:** Mr. President, I am uncertain whether it is appropriate to correct the record since the good Senator from York, Senator McAlevey, indicated that a piece of legislation has been killed in the Senate during the last session but, in fact, it was passed here. I'm uncertain whether I am allowed to argue on that.

THE PRESIDENT: I believe the Senator has already done so.

Senator **DOUGLASS:** I rise to argue that you were given some information by the good Senator from York, Senator McAlevey, which is not correct. That is that this bill, or part of this bill, is exactly, precisely the same as other legislation that has been before this body. That is not so. Further, this piece of legislation that is currently before us is even better in that it has some protections for a defendant that needs to have his weapon for employment. In that respect, it is even more protective of defendants in this situation than earlier legislation, or legislation in the past legislatures, that was passed by the Senate. So it is important to remember that we should be voting only on what is before us today. That is an effort to give our courts some modest power to cover the glaring hole that currently exists when a protection from abuse order is issued and there is no one to protect that victim from the defendant's possession of dangerous weapons until there is a full protection hearing, 21 days later. We need that power in our courts. It's a modest power. It's tempered. It's wise. I urge you to vote against the pending motion for that reason.

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

Senator **DAVIS:** Thank you very much, Mr. President. To me this issue is not about gun control. When I say that, Mr. President, I say it very seriously and I think of my good friend, the Senator from Cumberland, Senator O'Gara. I struggle with it because I know what this means to him and the emotional issue that's involved and has been involved in his life. I hesitated to get up because of that. I don't believe there is any finer person here than the good Senator from Cumberland, Senator O'Gara. But to me, Mr. President, it's a much larger issue. A much larger issue indeed. This proposal, in the Majority Report, would allow a judge to order a person's property to be taken from them without the benefit of due process. Due process, as I understand it, in the 5th and 14th amendments of the Constitution of the United States, guarantees that you have the right to confront witnesses. But you can't do it if you're not there. It gives you the right to

have an attorney represent you. But you won't need one if you're not there. You might need one, but you won't have one there. It gives you the right to a fair trial. But there won't be any trial. Not at that time. All these things are guaranteed before your property is taken away from you. With this piece in the Majority Report, all these rights are taken away from you. Maybe for just a short time, but they are still taken away from you without due process. I don't like domestic violence. I would not necessarily correct anyone, but I think if folks looked at the statistics from last year, a number of men were killed by their girlfriends and wives. That happens. I dealt with domestic violence over and over and over again during my career as a State Police Office. I have supported, in every way I could, the battle against domestic violence. I co-sponsored legislation last year that did a number of things, put a lot of money into it. I sponsored a bill my first term to put more prosecutors to work on domestic violence. But I also love the constitution and I love our freedom. I see this as something that is going against that. I believe we should do a lot for the victims. We should provide a safe haven. We should provide places where they can go for the time it takes to follow the constitution. But I think we need to protect the constitution. Mr. President, I believe we have made much progress in this battle. However, much more must be done. I think we should continue this battle and not be distracted by this issue. Our basic rights guarantee equal treatment under the law. Equal treatment. Thank you very much, Mr. President.

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

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

Senator **LAFOUNTAIN:** Thank you, Mr. President, men and women of the Senate. I disagree with the comments raise by the previous speaker, the good Senator from Piscataquis, Senator Davis. This is not a unique situation where the judge would be able to take away a person's right to bear arms because of the issuance of a temporary order. Currently, in law, we give the very same authority to a bail commissioner to take away a persons ability to carry, possess in his home, possess on his person, any sort of weapon. As you all know, in a criminal justice system, upon arrest, initially your bail is set by a bail commissioner who comes in, without the benefit of having any witnesses brought before him to testify, and not giving the defendant any ability to cross examine those witnesses. He makes a determination at that very point in time what is needed to protect society. Not only does he indicate what financial considerations should be imposed on this individual to be released from jail, he also can make considerations as to whether or not this person can return to their home, return or have any sort of contact with any individual, or in addition, use, possess, or conceal any sort of weapon. This is not a unique situation.

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

Senator **CATHCART:** Thank you, Mr. President, men and women of the Senate. I urge you to reject this Minority Report so that we can go on to accept the Majority Ought to Pass Report. Back in 1979, the legislature was considering the Protection from Abuse Act. Remember, back then it wasn't that all states had

these temporary orders that would take away the rights of the defendants in these cases. This was sort of a new thing. Perhaps one or two other states had passed this. It was really hotly debated. Some of the same arguments have come up on this bill that came up 23 years ago. Ex parte orders, you were taking away due process, you were taking away the right of this person to get right up in court and defend himself. Well, the legislature, at that time, decided that it was worth taking some fairly extreme measures to protect victims of domestic abuse, the women and the children, who are intimidated, threatened, harassed, assaulted, and afraid to stay in their own homes. Therefore, they passed this temporary protection from abuse act and that allows, not only that the abuser has to stay out of the home and stay away from the family, but also can temporarily order the parental rights and responsibilities changed. It also provides for an expedited hearing date. Many of the hearings go 10 days. It can go for up to 21 days. But if an expedited hearing date is requested, than the court orders that. So probably at most, if we grant this other measure to take away the weapons that would potentially be used to kill the victims, the person might have to do without those weapons for a couple of days. Is that so much to ask if it might give protection to one victim of abuse? Let me also remind you, in my 10 years of experience working with victims of domestic abuse, that they don't go running to the court the first time the abuser utters a threat. With most of these women, that I've worked with, it happens over and over and over again, in a pattern of abuse. So the people that we are considering taking these weapons away from are not law-abiding citizens and I certainly support the 2nd Amendment rights for law-abiding adults. These are people who have threatened, intimidated, assaulted, etceteras over and over again their closest family members, the people that they are supposed to love the most. That is why the judges issue these orders, because the judge is convinced that the family members are in danger and deserve to be protected. That's why they order an abuser out of the home and that's why they should be allowed to order that that abuser hand over these weapons, to another person, for a short amount of time, until they have a chance to have a hearing and determine the case. As far as the question of whether victims of abuse who have gone for a temporary protection order have ever been shot or killed, I can only refer you to the one that I knew, Pat Crowley from Hampden. In 1989 she went to court. The paper was served on her husband. He went home and got a gun; went down to the Bangor Travel Agency and shot her dead. So don't tell me that there is no evidence that these crimes occur. As I see it, you can't guarantee that someone is going to be protected by removing those weapons, but at least you're sending the right message to all the victims of domestic abuse out there who are living in fear, that the state does not condone giving weapons to people who break the law and who abuse their family members. Thank you, Mr. President.

Senate at Ease.

Senate called to order by the President.

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

Senator LONGLEY: Thank you, Mr. President, colleagues in the Senate. My jury is still out. I spent Saturday dealing with members of the Bangor Shelter and those who work with battered women. There is division. The question for me is, do I or don't I agree with the suspension of civil liberties for terrorists? If I do agree with the suspension of civil liberties for terrorists, how long am I willing to suspend them for? On the federal level, with what is going on with terrorists and their indefinite suspension of civil liberties, I know I'm not for that. I honestly don't know where I'm drawing the line on suspension of civil liberties for domestic violence terrorists. I think this is a terrorist situation. September 11th has me thinking a whole lot harder about where to draw the line. Our Health Committee has addressed this issue, a bio-terrorism issue, and the line that has been drawn by some is 72 hours. Current law says that after a temporary order is issued, only the abuser can request an expedited FPO, final protection order. It's limited to the abuser to get an expedited order. That doesn't seem fair. To add to why my jury is still out is a 3rd point. That is, as has been said, both reports contain some very good information, and given what we're hearing all around the State House, is it better to secure one bird in hand as opposed to two? I'm completely divided and not ashamed to admit it. This is an extremely difficult issue and we'll see which button I chose to press. But I wanted to go on the record with my process. Thank you.

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

Senator MILLS: Mr. President and men and women of the Senate, before we vote on this, it does need to be recognized that there are other remedies in law, particularly in criminal law. If a person, a victim, comes into a court and files an affidavit, files a petition, saying they need relief. If it turns out that there has actually been a weapon brandished in the confrontation that lead to the abuse, or if there has been a verbal threat, a credible verbal threat, that this weapon might come into play, or any weapon might come into play, or even there is a credible threat of violence without the use of a weapon, there is a criminal statute called criminal threatening and another one called terrorizing. There does come a time, in these situations, where the best advice you can give someone who is victimized by threatening or by terrorizing is to go to the local police department, the sheriff's department, or the Maine State Police, and file a complaint. That is a remedy. It's the remedy we've had for years. It's the one, frankly, that should be invoked if a weapon has come into play in the dispute, even if it's only presented in a threatening way. In these cases, we really should be invoking the criminal law at some point to step in and a police officer should enter the home and there should be an investigation to get at some of the facts, and if necessary, a prosecution, even if it's only for the threatened use of a weapon or the threatened use of violence. We need to bear in mind that this is part of the backdrop of our law and that these protection from abuse petitions are really a civil remedy, of sorts, that are designed to reconcile controversies between two individuals. But when the controversy gets out of hand, when there is violence or the threat of violence, we do have the criminal law step in, the police departments step in, and well they should. I think any judge hearing that kind of report would recommend to the victim that they go to the police department rather than to the courts. Thank you.

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

Senator **LONGLEY:** Very quickly, the timing issue related to what the good Senator from Somerset, Senator Mills, just said. What's the lag time between requesting, going to the police and asking for criminal sanctions and getting some results? It seem like time is of the essence.

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

Senator **MILLS:** Most of the police forces in our state are available 24 hours a day, 7 days a week. As the good Senator from York, Senator McAlevey, can tell you, they often respond in the middle of the night. Indeed, in this state, they have to respond quite frequently to these problems.

THE PRESIDENT: The pending motion before the Senate is the motion by the Senator from York, Senator McAlevey, to accept the Minority Ought to Pass as Amended Report. A roll call has been ordered. Is the Senate ready for the question?

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#264)

YEAS: Senators: CARPENTER, DAVIS, FERGUSON, KILKELLY, KNEELAND, MARTIN, MCALEVEY, MICHAUD, MILLS, MITCHELL, PENDLETON, SAVAGE, SAWYER, SHOREY, SMALL, TURNER, WOODCOCK, YOUNGBLOOD, THE PRESIDENT - RICHARD A. BENNETT

NAYS: Senators: BRENNAN, BROMLEY, CATHCART, DAGGETT, DOUGLASS, EDMONDS, GAGNON, GOLDTHWAIT, LAFOUNTAIN, LEMONT, LONGLEY, NUTTING, O'GARA, RAND, ROTUNDO, TREAT

19 Senators having voted in the affirmative and 16 Senators having voted in the negative, the motion by Senator **MCALEVEY** of York to **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED** Report, in concurrence, **PREVAILED**.

READ ONCE.

Committee Amendment "A" (H-883) **READ.**

On motion by Senator **LONGLEY** of Waldo, **TABLED** until Later in Today's Session, pending **ADOPTION** of Committee Amendment "A" (H-883), in concurrence.

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

Emergency Measure

An Act to Establish Municipal Cost Components for Unorganized Territory Services to be Rendered in Fiscal Year 2002-2003
H.P. 1613 L.D. 2110
(C "A" H-914)

Tabled - March 25, 2002, by Senator **GOLDTHWAIT** of Hancock

Pending - **ENACTMENT**, in concurrence

(In Senate, March 20, 2002, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-914)**, in concurrence.)

(In House, March 25, 2002, **PASSED TO BE ENACTED.**)

This being an Emergency Measure and having received the affirmative vote of 32 Members of the Senate, with no Senators having voted in the negative, and 32 being more than two-thirds of the entire elected Membership of the Senate, was **PASSED TO BE ENACTED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

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

On motion by President Pro Tem **MICHAUD** of Penobscot, **RECESSED** until 4:00 in the afternoon.

After Recess

Senate called to order by the President.

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

PAPERS FROM THE HOUSE

Non-Concurrent Matter

Bill "An Act to Authorize County Extension Building Associations to Borrow Money"

H.P. 1614 L.D. 2111
(C "A" H-943)

In Senate, March 20, 2002, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-943)**, in concurrence.

Comes from the House, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-943) AS AMENDED BY HOUSE AMENDMENT "A" (H-969)** thereto, in **NON-CONCURRENCE**.

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

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

REPORTS OF COMMITTEES

Senate

Ought to Pass As Amended

Senator O'GARA for the Committee on **CRIMINAL JUSTICE** on Bill "An Act to Amend the Maine Criminal Code to Address Terrorism"

S.P. 801 L.D. 2160

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-499)**.

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

READ ONCE.

Committee Amendment "A" (S-499) **READ** and **ADOPTED**.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-499)**.

Sent down for concurrence.

Senator CARPENTER for the Committee on **UTILITIES AND ENERGY** on Bill "An Act Providing for the Supply of Water to the City of Brewer"

S.P. 794 L.D. 2147

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-498)**.

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

READ ONCE.

Committee Amendment "A" (S-498) **READ** and **ADOPTED**.

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

On motion by Senator **FERGUSON** of Oxford, **TABLED** until Later in Today's Session, pending **PASSAGE TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-498)**.

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

REPORTS OF COMMITTEES

Senate

Ought to Pass As Amended

Senator **LONGLEY** for the Committee on **HEALTH AND HUMAN SERVICES** on Bill "An Act to Ensure Fairness in the Regulation and Reimbursement of Nursing Facilities"

S.P. 461 L.D. 1514

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-501)**.

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

READ ONCE.

Committee Amendment "A" (S-501) **READ** and **ADOPTED**.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-501)**.

Sent down for concurrence.

Senator **LONGLEY** for the Committee on **HEALTH AND HUMAN SERVICES** on Bill "An Act to Require Majority Resident Representation on the Board of Any Assisted Living Facility Receiving Bonds from the Maine Health and Higher Education Facilities Authority"

S.P. 689 L.D. 1891

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-502)**.

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

READ ONCE.

Committee Amendment "A" (S-502) **READ** and **ADOPTED**.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-502)**.

Sent down for concurrence.

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

REPORTS OF COMMITTEES

Senate

Divided Report

The Majority of the Committee on **HEALTH AND HUMAN SERVICES** on Bill "An Act to Appropriate Funds for a Study to Determine the Feasibility of a Medical School in Maine" (EMERGENCY)

S.P. 501 L.D. 1588

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

Signed:

Senators:

LONGLEY of Waldo
MARTIN of Aroostook

Representatives:

KANE of Saco
FULLER of Manchester
NUTTING of Oakland
BROOKS of Winterport
LAVERRIERE-BOUCHER of Biddeford
DUDLEY of Portland
O'BRIEN of Augusta
LOVETT of Scarborough

The Minority of the same Committee on the same subject reported that the same **Ought To Pass as Amended by Committee Amendment "B" (S-500).**

Signed:

Representative:

SHIELDS of Auburn

Reports **READ.**

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

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 (3/18/02) Assigned matter:

SENATE REPORTS - from the Committee on **NATURAL RESOURCES** on Bill "An Act Relating to Subdivision Review and Title Search Procedures"

S.P. 779 L.D. 2119

Majority - **Ought to Pass as Amended by Committee Amendment "A" (S-472)** (9 members)

Minority - **Ought to Pass as Amended by Committee Amendment "B" (S-473)** (3 members)

Tabled - March 18, 2002, by Senator **SHOREY** of Washington

Pending - motion by Senator **MARTIN** of Aroostook to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-472)** Report

(In Senate, March 18, 2002, Reports **READ.**)

On motion by Senator **MARTIN** of Aroostook, the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-472)** Report **ACCEPTED.**

READ ONCE.

Committee Amendment "A" (S-472) **READ.**

On motion by Senator **MARTIN** of Aroostook, Senate Amendment "A" (S-487) to Committee Amendment "A" (S-472) **READ.**

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

Senator **MARTIN:** Thank you, Mr. President. Some of you may remember that last year we tried to do something with subdivision review and title search procedures. We put into place last year a provision that lasted one year. Therefore, we need to do something this year. This bill does that. In the course of trying to reach that conclusion without making it overburdened for the registrars in the all of the Register of Deeds, it became clear that there was a possibility that what we were doing would require that every time a municipality filed a change to a plan it would potentially have to file those plans with the Register of Deeds. If you do that long enough, over a period of time, there was a concern that they would run out of space. What they came back with was a suggestion, perhaps, that what the counties would do would be simply to have an index of the town plans as they were brought in. That would satisfy the title attorneys so there would be a repository. Each time a plan was changed in the community, it would not be filed, it simply would be indexed in the Register of Deeds. This would, therefore, solve the problem for the bond attorneys, who are in the process of making sure that when you get a mortgage there is a proper title in the process and that it is, in fact, followed through. This amendment solves the problem for both the title attorneys and the Register of Deeds.

On further motion by same Senator, Senate Amendment "A" (S-487) to Committee Amendment "A" (S-472) **ADOPTED.**

Committee Amendment "A" (S-472) as Amended by Senate Amendment "A" (S-487) thereto, **ADOPTED.**

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-472) AS AMENDED BY SENATE AMENDMENT "A" (S-487)** thereto.

Sent down for concurrence.

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

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

HOUSE REPORTS - from the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS** on Bill "An Act to Make Supplemental Appropriations and Allocations for the Expenditures of State Government and to Change Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2002 and June 30, 2003" (EMERGENCY)

H.P. 1574 L.D. 2080

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-968)** (12 members)

Minority - **Ought Not To Pass** (1 member)

Tabled - March 25, 2002, by Senator **GOLDTHWAIT** of Hancock

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

(In House, March 22, 2002, 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-968) AS AMENDED BY HOUSE AMENDMENT "K" (H-986)** thereto.)

(In Senate, March 25, 2002, Reports **READ**.)

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

READ ONCE.

Committee Amendment "A" (H-968) **READ**.

House Amendment "K" (H-986) to Committee Amendment "A" (H-968) **READ** and **ADOPTED**, in concurrence.

Senate at Ease.

Senate called to order by the President.

On motion by Senator **DOUGLASS** of Androscoggin, Senate Amendment "C" (S-494) to Committee Amendment "A" (H-968) **READ**.

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

Senator **DOUGLASS:** Mr. President, I urge this body to adopt this amendment. What it does is add some language to our budget document to assure that the Maine Clean Elections fund will be solvent in the year 2006. This amendment has an effective date of 2005 and it is written to allow or require the Committee on Ethics and Elections, in the event that committee sees that it will not have enough funds to supply those who are running under the Clean Election Act within 120 days, require or allow them to certify that fact and then that goes to the controller and funds would be withdrawn up to the amount that the committee certifies as needed up to the amount of \$4 million, the amount that this budget transfers, and no more. Only until the end of that election cycle, at which time the money would automatically go back to the Rainy Day Fund, where it is now, in order to balance the budget. What this is, basically, is a verification that the Maine Clean Election Act will still be solvent in the year 2006. We believe that to be so, but this is a guarantee. I hope you will adopt it.

Senator **GOLDTHWAIT** of Hancock moved Senate Amendment "C" (S-494) to Committee Amendment "A" (H-968) be **INDEFINITELY POSTPONED**.

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

Senator **GOLDTHWAIT:** Thank you, Mr. President, ladies and gentlemen of the Senate. It is a pleasure to finally have this budget before you and I do want to speak to the amendment that the good Senator from Androscoggin, Senator Douglass, has presented and specifically to the issue of the Clean Election Fund. There is a very elaborate mechanism set up now so that the Rainy Day Fund can cover the cost of tax conformity. That is, in essence, making that money unavailable for other purposes. My concern with this amendment is that a number of years out, without any knowledge of what the economic situation in the state is going to be, where we are going to stand with revenue forecasting, etcetera, this is committing money in that fund, which is generally not a healthy trend. Those of you who have served on the Appropriations Committee, and there are a number of you here who have, understand that limiting flexibility in terms of out years is a very difficult situation to reconcile when you are then in those out years looking at requests for money but various options are not available due to actions taken earlier. The budget, before you in Committee Amendment "A", on page 191, part OO, does include language recognizing the fact that it was certainly not the intention of the Appropriations Committee not to have sufficient money in the Clean Elections Fund. That provides, similar to this amendment, that by September 1st preceding each election year the commission shall publish an estimate of revenue in the fund available for distribution to certified candidates and an estimate of the likely demand for Clean Elections funding. The commission may submit legislation to request additional funding. I would submit that it is more appropriate for the commission to submit that legislation at the time than to tie up, 5 years from now, the Rainy Day Fund, not knowing what the economic climate will be. It may well be needed for other purposes. So I would urge you to support the Indefinite Postponement motion.

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

Senator **DOUGLASS**: Mr. President, men and women of the Senate, I urge you to vote against the pending motion. This is the reason: the budget document permits legislation to be placed by the Committee on Ethics and Elections, however this shortfall will not occur in the time period when we are in session. It's most likely to occur in September and October, as we are in the midst and thick of elections. The possible results of this will be that there is no way to fund that effort, that law that was passed as a referendum by the people of Maine. So it's my hope that you will defeat the pending motion so we can go on to add Amendment "C" to the budget.

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

Senator **GOLDTHWAIT**: Mr. President, ladies and gentlemen of the Senate, I would just point out that the language states, 'by September 1st preceding each election year.' So that would happen if 2006 was an election year, this would be in September of 2005. There would be ample time for that legislation to be submitted to the upcoming session and passed prior to the election in the following year.

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

Senator **MILLS**: Thank you, Mr. President, men and women of the Senate. I need to weigh in as well because I was the one in committee who raised the issue most vigorously that we should leave the Clean Election Fund alone. I was not in favor of removing \$4 million from it in order to balance the present budget. I lost that discussion, but we did put in the language that the good Senator from Hancock, Senator Goldthwait, has alluded to which authorizes the Ethics Commission to introduce legislation in a timely fashion to generate more funds for the Clean Election Fund in case they need it or they anticipate that they will need it. The projections that we received from the administrator of that fund are that it will be very, very difficult for the gubernatorial candidates that are presently seeking to use that option, to qualify. We've already had a couple of them drop out. There are only about two weeks left before folks can qualify for the current round of gubernatorial uses of the fund and I will be greatly surprised if even one or two of the candidates are able to qualify. In any case, there is ample money in the fund to fund the current election cycle, even if several gubernatorial candidates qualified and became eligible for distribution in something of a \$1 million apiece. There is ample money in the fund to fund the elections two years from now, in 2004. The first time that there is any projection for a challenge to the adequacy of this fund is in the anticipated gubernatorial contest in the year 2006, which is a good 4 years from now. Frankly, the only issue is whether we store money in a reserve account that is allocated specifically to the Clean Election progress, or whether we store that same money in the Rainy Day Fund, or in other reserve accounts that are important to the management of state government. Even though I was a vigorous advocate for leaving this money in the Clean Election Fund, on the theory that it belongs there as much as anywhere else, frankly, we're talking about form over substance. We have, as a legislature, an obligation to fund the Clean Election Fund, regardless of whether it comes from the fund itself or comes from the Rainy Day Fund in the year 2005. I think that the interest of the people who advocate for the Clean Election Fund are reasonably well

protected in spite of what we do as a committee. I would urge you to vote for the pending motion so that we may indefinitely Postpone this amendment and go on to enact the budget. Thank you for your attention.

The Chair ordered a Division. 19 Senators having voted in the affirmative and 15 Senators having voted in the negative, the motion by Senator **GOLDTHWAIT** of Hancock to **INDEFINITELY POSTPONE** Senate Amendment "C" (S-494) to Committee Amendment "A" (H-968) **PREVAILED**.

On motion by President Pro Tem **MICHAUD** of Penobscot, **TABLED** until Later in Today's Session, pending **ADOPTION** of Committee Amendment "A" (H-968) as Amended by House Amendment "K" (H-986) thereto, in concurrence.

The Chair laid before the Senate the following Tabled and Later (3/5/02) Assigned matter:

SENATE REPORTS - from the Committee on **STATE AND LOCAL GOVERNMENT** on Bill "An Act to Require Appropriate Public Notice of a State Building Project"

S.P. 742 L.D. 2067

Majority - **Ought to Pass as Amended by Committee Amendment "A" (S-448)** (8 members)

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

Tabled - March 5, 2002, by Senator **PENDLETON** of Cumberland

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

(In Senate, March 5, 2002, Reports **READ**.)

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

READ ONCE.

Committee Amendment "A" (S-448) **READ**.

On motion by Senator **DAGGETT** of Kennebec, Senate Amendment "A" (S-497) to Committee Amendment "A" (S-448) **READ**.

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

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

THE PRESIDENT: The Senator may pose his question.

Senator **MARTIN**: What is the purpose of the amendment?

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. The purpose of the amendment is to narrow the focus of the bill to only new construction. The bill, itself, asks for the Department of Administration and Financial Services to do the notifying. There are some agencies that do not go through the Department of Administration and Financial Services or the Bureau of General Services, so it would apply to those agencies, not just the Department of Administration and Financial Services.

On motion by Senator **DAGGETT** of Kennebec, Senate Amendment "A" (S-497) to Committee Amendment "A" (S-448) **ADOPTED.**

Committee Amendment "A" (S-448) as Amended by Senate Amendment "A" (S-497) thereto, **ADOPTED.**

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-448) AS AMENDED BY SENATE AMENDMENT "A" (S-497)** thereto.

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

Senate at Ease.

Senate called to order by the President.

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

HOUSE REPORT - from the Committee on **UTILITIES AND ENERGY** on Bill "An Act Regarding Utility Easements" H.P. 1472 L.D. 1973

Report - **Ought to Pass as Amended by Committee Amendment "A" (H-872)**

Tabled - March 25, 2002, by Senator **MARTIN** of Aroostook

Pending - motion by Senator **FERGUSON** of Oxford to **ACCEPT** the **OUGHT TO PASS AS AMENDED** Report, in concurrence

(In House, March 21, 2002, Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-872).**)

(In Senate, March 22, 2002, Report **READ.**)

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

Senator **MILLS:** Mr. President, in the interim today during our break, in consideration of this bill, I made some inquiries and I, too, am concerned about the Bangor and Aroostook Railroad and its value and bankruptcy and the potential impact. My understanding is that the total amount presently being paid, under current law, for the licenses that are issued to the two major utilities that make crossings for Bangor and Aroostook right of ways. A license is like an easement only it's temporary. You get it back. The amounts being paid on an annual basis do not exceed \$7,500 per year for all of them in the aggregate. So it seems to me that a stream of revenue of \$7,500 or less, even if this bill does impact that stream of revenue, I'm not sure that it does at all, would be so minor in the overall scheme of things that, in my view, I don't see how it could have any real impact on the value of Bangor and Aroostook as a going concern. The other thing that I want to say is that, with the encouragement of my seatmate who is on the unanimous Majority Report, I read the pertinent sections of the bill and it does seem to me like a good idea. Utilities can condemn, if they need to get across property, if they want to get across my property or your property they can do so. They have to pay you just compensation for that privilege, but we, as individuals, don't have the power to stop them and make them go all the way around and increase costs for all the ratepayers by forcing some ridiculous route. It seems to me that I don't understand why the railroads should have any special privilege in the matter, as long as the utilities are obliged by law to pay a compensation, a just fee, for taking those rights from a railroad. It seems to me they ought to have the right to do that just as much as they have the right to take a right-of-way across your property or mine. I was greatly encouraged to hear that this does not appear to be a matter of federal preemption and that we do have the right to pass this law if we so chose. I think it may save some money in the long term on rates for natural gas, electricity, and telephone transmission. I think, generally speaking, it looks like a good bill and one that the committee should be proud of. Thank you.

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

Senator **O'GARA:** Thank you, Mr. President, ladies and gentlemen of the Senate. While there very well may be, and I think I suggested it earlier today, some tweaking and some things that we should do to resolve this and I don't know if we really want to get involved in the discussion or the debate on the argument and the controversy between utilities and the railroad, but maybe there is something the legislature could do to encourage them to resolve this issue. But I would just leave you with this, you heard many times over your lifetime when talking about certain things and when people get disgusted and they say, 'what a terrible way to run a railroad.' I would just submit to you, as the Senator from Aroostook, Senator Martin, has mentioned earlier, the issue of the B&A Railroad, if you were in the market and you were thinking about purchasing a railroad, wouldn't you be concerned if you knew that there were permanent easements, not to be negotiated, once and for all, that's it, opposite the process now. Now they have to work together, they have to discuss them, they have to renew them. This would make a permanent easement across this line and I think it would be very, very difficult. I think it is an issue that's going on right now, it's very tenuous, and would be made more difficult by having this permanent easement across. I urge you to keep that in mind as you vote. Thank you.

The Chair ordered a Division. 21 Senators having voted in the affirmative and 11 Senators having voted in the negative, the motion by Senator **FERGUSON** of Oxford to **ACCEPT** the **OUGHT TO PASS AS AMENDED** Report, in concurrence, **PREVAILED**.

READ ONCE.

Committee Amendment "A" (H-872) **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-872)**, in concurrence.

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

Off Record Remarks

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

Emergency Resolve

Resolve, Regarding Legislative Review of Portions of Chapter 10, Section 17(A)(2), (3) and (6), Standards for the Clearing of Vegetation for Development, Major Substantive Rules of the Maine Land Use Regulation Commission within the Department of Conservation

H.P. 1590 L.D. 2095
(C "A" H-919)

Tabled - March 25, 2002, by Senator **MARTIN** of Arostook

Pending - **FINAL PASSAGE**, in **NON-CONCURRENCE**

(In Senate, March 20, 2002, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-919)**, in concurrence.)

(In House, March 25, 2002, **FAILED FINAL PASSAGE**.)

This being an Emergency Measure and having received the affirmative vote of 35 Members of the Senate, with no Senators having voted in the negative, and 35 being more than two-thirds of the entire elected Membership of the Senate, was **FINALLY PASSED**, in **NON-CONCURRENCE**.

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

Off Record Remarks

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

Bill "An Act to Make Supplemental Appropriations and Allocations for the Expenditures of State Government and to Change Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2002 and June 30, 2003" (EMERGENCY)

H.P. 1574 L.D. 2080

Tabled - March 25, 2002, by President Pro Tem **MICHAUD** of Penobscot

Pending - **ADOPTION OF COMMITTEE AMENDMENT "A" (H-968) AS AMENDED BY HOUSE AMENDMENT "K" (H-986)** thereto, in concurrence

(In House, March 22, 2002, 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-968) AS AMENDED BY HOUSE AMENDMENT "K" (H-986)** thereto.)

(In Senate, March 25, 2002, on motion by Senator **GOLDTHWAIT** of Hancock, the Majority **OUGHT TO PASS AS AMENDED** Report **ACCEPTED**, in concurrence. **READ ONCE**. Committee Amendment "A" (H-968) **READ**. House Amendment "K" (H-986) to Committee Amendment "A" (H-968) **READ** and **ADOPTED**. On motion by Senator **DOUGLASS** of Androscoggin, Senate Amendment "C" (S-494) to Committee Amendment "A" (H-968) **READ**. On motion by Senator **GOLDTHWAIT** of Hancock Senate Amendment "C" (S-494) to Committee Amendment "A" (H-968) **INDEFINITELY POSTPONED**.)

On motion by Senator **BROMLEY** of Cumberland, Senate Amendment "F" (S-504) to Committee Amendment "A" (H-968) **READ**.

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

Senator **BROMLEY:** Thank you, Mr. President, men and women of the Senate. Overall, I think you've heard many of us saying this is a very good budget and I would be the first to say that. We were able to restore many things that are important to us with the additional revenues and many of you are anxious to get home and get on with your lives, as am I. School funding is a topic that we've all talked about in the halls today and yesterday and the day before, and I suspect we'll be talking about it when we leave here. I want to speak about a few school districts, including the school district that I represent. I want to speak about a few school districts that are disproportionately effected by the way we fund education here in Maine. I want to talk about the children in those district. As I'm speaking to you today, I have two particular children in mind. One 8 year old and one 13 year old who live with me in my home who are my children and who attend school in the district that I'm going to be speaking to you about today. The amendment that I am presenting, I want to make it very clear

to people that the revenue from this amendment will put additional money in the infamous cushion and additional money through the regular formula. What I want to be very clear about is that my argument is not that my community deserves more than another community, but I want to make the argument about why my community deserves to be cushioned and why some other communities, that are disproportionately effected by the school funding formula, need to be considered. I want to go on the record and say that some of these funds would come from the lap top fund. This would not represent a vote against laptops, certainly not for me. The amendment would, I want to say borrow, but I'm not sure that's the right word, but it would take money from the last year of the lap top program to put into this formula. It would keep the program intact and give us a little bit of time to assess the value of it. As many of us know, when we see a good idea, as a legislature, we want to support that. So I want to clearly say that this is not about being against laptops, it's about being in favor of schools. I want to also point out that the policy of the cushion is not a new one. It's been done for the past 10 years. With the exception of one year, the cushion that has been proposed this year is the smallest that's ever been proposed. I would like to read into the record some comments that the Commissioner of Education made February 2002 about the cushion. As many of us know, particularly those on the Education Committee, we're moving to a new way of funding education. We're funding essential programs and services. We're on the way to do that. I'm quoting from the commissioner at this point when I say; 'in the long term, the use of cushion is contrary to the overall intent of the school funding formula. I agree with that principle which recognizes (a) that units with a greater and costlier education needs are in general those units with larger numbers of pupils and (b) units with a higher ability to pay, are better able to provide local property tax revenues to fund their educational needs, than are units with a lesser ability to pay. However,' and this is the point that I hope you can pay particular attention to, 'during a period of transition to a new funding approach, school units maybe unable to quickly adjust to the new approach. Under such circumstances, a cushion is appropriate to make the transition easier for local units, both fiscally and politically. The Department proposes that a cushion be provided during a period of transitioning, transitioning to essential programs and services, to be phased at the year of complete implementation of essential programs and services. To be eligible for a cushion, a school unit should meet certain criteria, including a minimum education mill rate and a maximum per pupil evaluation amount.' I further want to point out that in my district my city manager and school board have worked together closely to try not to rely on the cushion. In fact, we've never put cushion money into ongoing operating program costs in years past because we looked at it as something that was going away and that we needed to plan for and budget our ongoing program needs on the regular formula money and not on the cushion. However, with a cut of over 30%, it's not possible to do that this year. The amount of money that would be going to the cushion, that this amendment suggests, would certainly not make my community whole. It will leave us with over a \$600,000 or \$700,000 cut. So it's far from holding us harmless and I would not suggest to you that was even appropriate. We also talk about local effort. Though it doesn't get measured in any of the printouts you're seeing, my community just passed a \$28 million bond referendum, of which the first debt service will be due next year to the tune of \$12 million, to build new schools. In the school that my daughter attends, if we were to receive one-on-

one technology, there would not be a place to plug this one-on-one technology in at her school. Our needs in the district are clear. This is not about taking money from the north to feed the south. It's about acknowledging a real need. We've had many debates about the needs of service centers, regional centers, hub communities; how ever we've been referring to them this year. If you note in your printout, some of the cities and towns that are losing education money, you will notice the correlation between the cities and towns that have been before us asking for local option sales tax, asking for other means of relief because of the fiscal reality. I want to point us in the direction of what it means when our city schools are so encumbered by these financial problems that people flee the cities and move to the suburbs and then our school funding formula, our education construction formula, requires that we now build new schools in the suburbs. We build new school for fewer students with our scarce education dollars. I submit to you that it is of vital importance that we fund out city schools in a robust way to discourage this flight and the necessity to use precious education dollars to build new schools. So this amendment, crafted creatively, with Yankee ingenuity, with a team of colleagues, would take \$2.5 million from the 4th year of the lap top program. It would also take \$2.5 million from the cascade, making certain that we place it in line beneath tax conformity and above the Rainy Day Fund, to take advantage of what may be additional resources and that we put \$3 million of this into the cushion and \$2 million of this into GPA for the regular formula to get relief to some of our urban schools and to acknowledge that we still need more in some of our rural districts. I ask you to vote for the pending amendment.

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

Senator **GOLDTHWAIT** of Hancock moved Senate Amendment "F" (S-504) to Committee Amendment "A" (H-968) be **INDEFINITELY POSTPONED**.

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

Senator **GOLDTHWAIT:** Thank you, Mr. President, ladies and gentlemen of the Senate. This is an extremely difficult issue because, I think, there is a lot of right on both sides. Certainly the good Senator from Cumberland, Senator Bromley, has well represented the difficulties in which her school district finds itself. This budget is, as all budgets are, a compromise. It is a compromise between partisan ideologies. It is a compromise between regional interests, between individual priorities. Most of all, it's a compromise with the reality of a demised economy. The strength of this budget is that representatives from all quarters were at the table when the fundamentals of this compromise were agreed on. All of leadership from both bodies were present, from both caucuses within those bodies, and even from those of us who don't have a caucus. There was an agreement at that point that this was a compromise that warranted general support. One of the more difficult pieces of this was, clearly, the school funding piece. Compared to the original proposal from the chief executive, we had the benefit of working with a significant reprojecion, which came after the chief executive put his budget proposal together, and because of that, we were able restore \$11 million to GPA. The money was substantial, irrespective of other

considerations, but in this particular year, starting with a \$250 million hole and receiving a reprojected of only about \$90 million, it is extraordinary that we were able to return that much and it is only the commitment of this entire legislature that caused us to be able to put that money together and add that much more to GPA. The money that was provided is a rising tide. It adds money virtually everywhere in the state. In some cases that is money that increases the state subsidy. In some cases that is money that mitigates losses. With the mitigation of losses, it's probably cold comfort to know that you're losing only a little rather than a lot or you're losing less than you were going to. But the fact is that, despite the fact that there are still losses and that is very difficult for some school districts, it points out to me the whole problem with the premise of a cushion. Had we not employed cushions over the years, these districts that are losing money now because they have fewer students, for instance, would have been ratcheted down rather slowly over time. But because we have provided cushion after cushion, we are now in a position where some districts are losing quite a lot of money quite suddenly. So we can't go back and address the issue of whether we should have done those cushions or not. The fact is that the more cushioning we do, the less the formula is allowed to operate and the more we get into these situations where only millions more will buy us out. As for using money from the Maine Learning Technology Endowment for this, I am opposed to that specific provision. I am also concerned because this already eats into potential surpluses or unanticipated revenues in the future year when we already know that the out years have a structural gap in the neighborhood of \$500 million. So to be already providing for the use of dollars in that economic context, again, leaves relatively less flexibility for the legislature to deal economically with that situation. The problem with the cushioning is if you do it internally, you are creating losers somewhere in the system, and if you do it externally, you have to find more money. In this case, I believe that it passes one test. It doesn't create more losers because it's not an internal cushion. But it fails the second test, which is that it's looking for money from two sources to provide this, neither one of which, I think, are sound policy or sound fiscally. So I would urge you to support the pending Indefinite Postponement motion.

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

Senator **BRENNAN:** Thank you, Mr. President, men and women of the Senate. I rise and urge you to support this amendment. I want to state three reasons why I think you should support this amendment. First, there has been general discussion about cushions, and about why we have cushions, from a policy perspective. I want to lend my perspective to why we have cushions. We have cushions for one simple reason, we're not funding the school funding formula at 55%. In 1991, the state was funding 50% the share of education. All through the 1990's that percentage dwindled and we got down to 43%. We're back up to about 45%. If we were funding 55% the share of education through the school funding formula we would not be using cushions. We started cushions in 1991 because we were not able to adequately fund the school funding formula, and consequently, there were a series of cushions that were implemented all through the 1990's. So I think at this particular point, to make the argument that cushions are no longer necessary, ignores the fact that on one hand our policy of funding 55% is 10% off from that and we need to continue to have

cushions in order to make the formula work to some degree. Second, those communities in this particular printout that are most effected tend to be service center communities that we already know, based on legislative research and from other reports, tend to have the highest mill rates in the state and they also tend to be the areas with the most economic development. If this budget passes without this amendment, we'll simultaneously increase the property tax in those areas and increase the mill rate in such a way that it will diminish economic activity and will hurt the business climate. Last, and most important, there is an issue of fairness here. By any count, depending on how conservative you want to be or how liberal you want to be, there have been at least 5 changes to the school funding formula since 1998. Those changes have benefited some communities and they have not been very advantageous to other communities. Given those changes to the school funding formula, at this point, to say that we cannot have cushions is not fair. When those changes were made to the school funding formula, they were with the understanding and good faith that cushions would continue to assist those communities that may be disadvantaged because of the changes in the school funding formula. So if for no other reason, I would ask you to support this amendment out of a sense of fairness, that when changes have been made to the school funding formula and have benefited some of your communities, at this point there are people that need a cushion in order to extend that fairness. Thank you very much.

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

Senator **MARTIN:** Thank you very much, Mr. President and members of the Senate. It may seem a little strange to some of you that I'm going to be supporting the amendment. I want to give you background why that's the case. I know the Appropriations Committee did their job and did it well. I'm not at all disappointed with what they did. We all know the problem that exists with the school formula. It's all been pointed out. It's a fact that we've not funded it appropriately. The legislature got into trouble and this state got into trouble in the late 1980's and early 1990's. Basically, the 55% goal was not met. We all understand and all know that cushions are not the answer. But the reason I will support this today is based entirely on history and probably it's because I've been here as long as I have been. When northern Maine and eastern Maine got the increases in valuation, caused by the changes in valuation by the state that are imposed each year, it was not southern Maine that asked for the cushions, it was northern Maine. It was Lewiston. It was Fort Kent. It was Presque Isle. As I recall, the first time we put in about \$5 million. If you take that in today's money, it would probably closer to \$10 million. We put the cushion in to help northern Maine communities, those that I represent and those that some of you represent. Today, because of the changes and what has happened with state valuation changes, the shoe is on the other foot. I find it difficult to say that I can't help because, until such time as we go to 55%, it's going to be this way. This time it's southern Maine. Five years from now, if we don't go to 55%, when property values change again in northern Maine and southern Maine changes the other way, as they did a number of years ago, we will be the ones hurting. I want to be the last one to say 'I don't want subsidy help, I don't want a cushion.' So I'm going to vote for it, not because I think it's right, only because it's fair. For those of you who intended not to vote for this, I urge you

to reconsider because the shoe may be on the other foot in a few years and it won't be any more right then as it is today.

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

Senator **MITCHELL:** Thank you, Mr. President, ladies and gentlemen of the Senate. I would ask you to please vote in favor of the good Senator from Hancock, Senator Goldthwait's, motion to indefinitely postpone this amendment. I would like to address some of the concerns that some of you have that would mention the fact that you would not support this motion. The Education Committee has worked diligently, along with the Appropriations Committee, in coming up with this budget. We looked at the quintiles, not just individual towns. We looked at how we could equitably help all of the school units in our state, realizing that there is a hardship that goes across our state. It isn't just the southern towns, it's some of our northern and some of our towns in the coastal communities that are also experiencing this problem. When we talk about the smallest cushion, what we're saying is we reduced the cushion from \$6 million last year to \$4 million in this current proposal. However, \$2.2 million was put into the program. The program cost, by adding that \$2 million into this, has also reduced the percent reduction, which helps those communities that are having the difficulties. It's actually providing more help to more units across the state with this existing proposal that has been supported by the Appropriations Committee. We went up to \$730 million. What we have done is to defeat that image that has been there for many years, that we are not working diligently towards reaching 55% of support by the state. By putting the additional money into the operating cost, we have made that even, so that there is no loss in operating cost for this biennium, and we've added this money to the program cost to help those communities that experienced a larger cushion last year. They are getting it in the formula instead of in a cushion, which is the long-term goal. Yes, we approved essential programs and services and we need to phase out that cushion over a period of years. But we also need to put the money into the formula to make more of the school units equitable and to provide the formula on a more equitable basis. You can't say you can't help, but you are helping by supporting this existing budget that we have because you are putting the money that would have been additional money into the cushion, into the formula, which is internally helping those units by reducing the percent reduction. We are reaching out to the largest number of gainers with this formula. We are also reducing the amount of loss by this formula that we have put into the budget. So I would ask you to work with all of us to try to reduce that cushion by putting that money into program costs, which is going to still help those units. If you look at how it was proportionately divided, you would see that the money going into the formula that we've put in there is helping more people, substantially, and we would certainly be glad to review those facts with you individually. But looking overall at the quintiles and looking at the overall number of units, you would see that this is a definite step in reaching our goal on implementing essential programs and services down the road. It's like the 4-year target that we had, that we're working diligently on. We need a target also in implementing essential programs and services. You can't make it happen all in one year. You can't jump to 55% in one year. You have to work towards that goal. This is definitely putting us into that position. So I would ask you to please support the efforts of all of the Education Committee and the Appropriations Committee and many other

people who want to make sure that we care for the largest number of students in the most units in this state by providing more equitable funding. Please vote to indefinitely postpone this amendment.

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

Senator **EDMONDS:** Thank you, Mr. President, men and women of the Senate. I appreciate all the good words my brother and sister Senators have put forward. I just want to remind you of one thing. I'm sitting here thinking about the young people who come into my library, which is the public library in Freeport. I want you to think about the young people in every town in Maine when you think about this. We get kind of lost in percentiles and percentages and all those things, but we're talking about the lives of young people. We're talking about how many teachers they have. In my school, they will have 6 less teachers. That will be a big deal. It won't be about percentages and it won't be about quintiles. It will be about the fact that they will have less access to good people. That's important. I think, for me, that tips the balance. Thank you.

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

Senator **MILLS:** Mr. President, men and women of the Senate, the discussion about cushions really has nothing to do with 55% promises that were made in 1985. It has nothing to do with service center communities. The issue is how to deal with fluctuations in property value. That is what has driven these disparities that people are talking about this evening. If we had been at 55% funding last year or two years ago and we were still at 55% funding this year and we had had the same variations in property values, we would be here talking about cushions. The problem of service center communities in Maine has much more to do with what I call the municipal side of their budgets than it does with the school side of their budgets. The school funding formula, if you let it work, does a pretty good job of adjusting for differentials in tax burdens, in so far as it effects school budgets. Easily 50% of the budget of the service center community is consumed by police departments, public libraries, and trash pick up. All of these things that are not controllable by the school funding formula. Yet we have this tremendous political pressure exerted on us at this time every year to distort the school funding formula to favor service center communities and others who might, in some instances, lose. Why? Because the school funding formula is where the money is. I think we need a system whereby revenue sharing and other sources of state support are delivered in a more rational way to these service center communities that have mill rates of 27, 28, and 29. Not all service center communities will be benefited by a cushion. May I suggest to you that the City of Lewiston, which is a property poor service center, is just as much in need of letting the formula work as a poor town like Milo, or Hartland, or Palmyra. So this really is not a discussion about 55% promises, it should not be a discussion about service center communities and how much we care for them or not. It is pure and simple a situation where property values have climbed dramatically in one sector of the state and they haven't climbed in another sector of the state. I would add that there has been some adjustments to pupil counts. We have addressed this policy issue in a sensible way in the past. We made a conscience decision that we would count, or

average, 2 years of property values. Bare in mind the way in which the state addresses property values, as it looks at really old property values, because the data flows in such a delayed way. Adjusting for property values is like playing the organ. You put your finger on the note and wait for a moment before you get the answer. Here we wait for a year or two. So we're looking at property values from 1999 and 2000, things that happened several years ago. Thus, when the community sees this happening, when they see their property values skyrocketing, they have a chance to get ready. Yes, there have been times when rural communities have needed cushions because property values were plummeting in the south end of the state at times when we had a significant downturn in the economy. Sure the shoe will be on the other foot on another day. It's all true. But this \$4 million cushion and the money that was allocated to program costs and the money that was allocated to operating costs to let all boats rise together was done after lengthy discussions, all day Friday a week or so ago, and well into the night. It had the backing, I believe, of key members of the Education Committee. It had the backing of almost all the members of the Appropriations Committee. It had the backing of the administration, and most significantly, it had the backing of the leadership of this chamber and the other chamber. These are compromises. I think we do need cushions to adjust for some of these changes that we see being made from year to year. But we determined that a compromise level of \$4 million, plus injecting more money than we can afford this year into the engine of the formula, was what we should do. A lot of money is being spent on program costs this year because it helps some of the very service center communities who are articulating concerns about this budget. There were accommodations made. This compromise was framed in the principle of discussion. This chamber, I think, has a duty to back the people who were at the point of the sword negotiating this agreement. I would urge you to vote for the pending motion, reject the amendment so that we can go on and pass the budget. I think that there are fundamental policy issues lurking within the formula that we should have under constant discussion from year to year. It's been suggested that perhaps we should go to a 3 year averaging of property changes and perhaps we should. But that's for another day, not for this budget. I urge that you vote for the pending motion. Thank you.

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

Senator BROMLEY: Thank you, Mr. President. I neglected, in my earlier remarks, to point out what the good Senator from Somerset, Senator Mills, reminded of all of. It is property valuation that's made these vast, disproportionate affects on the formula. I want to point out that often in this chamber we talk about tax policy and making it predictable in order to write budgets and plans, whether you are a business or whatever. A skyrocketing property valuation, in our school funding equation, is beyond the control of any Superintendent of Schools. It's beyond the control of any City Manager. To have that variable cut your funding by 30%, when there is absolutely nothing you can do about it, seems to be something that we, in this chamber, ought to be concerned about. Also the remarks that the good Senator and chair of the Education Committee, the good Senator from Penobscot, Senator Mitchell, made was to work with the formula towards our goal of equity and I will tell you that is exactly what I hope we do. That is exactly the point of cushions, to help us

work towards equity in a gradual way so that a community doesn't have to suffer in a year when they can work in a more gradual way. I want to point out that it's 34 positions in my community. It is 6 positions confirmed in the good Senator from Cumberland's community. It is nearing 50 positions in our other good Senator from Cumberland's community. These are people and positions that I don't think can be replaced by debate about equity. I urge you to defeat the pending motion. Thank you.

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

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

Senator MARTIN: Thank you, Mr. President and members of the Senate. The Senator from Somerset, Senator Mills, has raised the question of what happened and why. Subsidies began when the problem started with the budget when, unfortunately, most of you were not here and I was. Let me give you the history of the cushions. In 1992, when the problem started in northern Maine, we froze the funding subsidy and said 'it's going to be like that, just the way it is. No changes.' That helped northern Maine. In 1993, we added \$4.8 million for northern Maine. We were getting the valuation increases. In 1994, we put in \$6.6 million for northern Maine. In 1995, we put in \$2 million for northern Maine. In 1996, losses were limited to 5% and the cushion came from those who were gaining more than 6.59% in subsidy. Then it started to change. We added \$3 million in 1997, \$3 million in 1998, \$5 million in 1999 with a hold harmless, in 2000 we put \$4.3 million with a hold harmless, and last year we put \$6.2 million. I can't go home and tell the people why northern Maine isn't getting any money because today, those of us in power, who are gaining more, refused to give to those who are losing. Next trip around, the shoe may be on the other foot.

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

Senator GOLDTHWAIT: Thank you, Mr. President, ladies and gentlemen of the Senate. I have just a few words to add. I've tried not to bring my own district into this discussion because whatever is happening there doesn't make what's happening in any other district any better or any worse. The facts of each district remain. To argue 'my district is really worse off...no, no mine is really, really worse off' is not a productive debate in any way. But since the word fairness was brought up, my district has not really had a dog in this fight, frankly, because for the most part we don't get school subsidy. We live in an area where the valuation is enormous. Many of our jobs are tourism related. They are seasonal. You don't get health insurance benefits from many of those jobs. Despite the fact that we are portrayed to be a fabulously wealthy community, some of our summer residents may be, but our year-round residents are not. Yet the formula has dictated that we don't get much in the way of subsidy in about half of my communities, my 23 communities. I've not really pressed that point because I believe, having served on two School Funding Task Forces, probably before some of you were born, that the formula has a design to it, as difficult as it is to understand, and it does work. I'll tell you about a town in my district that is losing subsidy. It's a very, very small town, Winter Harbor. The naval base is closing there. They are losing about

2/3 of their students and that means that the formula says they are losing \$90,000 in what is already a very small subsidy. That's a very painful impact for that community. But I have not argued that we should be cushioning Winter Harbor because there are other potential solutions. That community is trying hard to work that out. One of the solutions may be to combine with a neighboring town and splitting so that one town has a K-3 and the other has 4-8. There are solutions on the drawing board. But they were not dependent on me coming in and saying 'oh, Winter Harbor is losing money. We've got to send them more money.' Although, as I say, I try hard not to do that useless battle of who's in worse shape, but I think there is probably not a school unit in the State of Maine that couldn't honestly use more money and make a better educational program with it. But the issue for me is putting the money through the formula, which tends to rise all boats, and beginning with the cushion routine, than things turn into the kind of debate we're having now where we are beginning to pit region against region and school against school. So it is my hope that we can continue to raise the state percentage for the formula, because some day that's going to get to the coast. In the meantime, I prefer not to go the cushion route and urge you to support the pending motion. Thank you.

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

Senator NUTTING: Thank you, Mr. President, ladies and gentlemen of the Senate. I wasn't going to rise tonight, but I feel that after listening to the debate I must. As the prime sponsor of the school funding formula bill that passed 4 years ago that has caused many of the current changes to occur, I just feel I have to say some things on the record. The goal of the school funding formula is an attempt to try to equalize the mill rate effort raised for education all over Maine. In 1996, we had a situation where there was a huge difference in the number of property tax mills raised for education. Not for trash pick-up and police and everything else, but for education, because that is the only goal of the school funding formula. The per pupil guarantee has been increased over four years from \$3,700 per student to \$4,800 per student this year. Yes, the original bill said that this years per pupil guarantee was supposed to increase to \$5,200 per student to finish getting the poorest schools at a mill rate effort for education that was at the state average. This budget, on page 111, if you read the top of page 111, this year's per pupil guarantee is only going to \$4,816. The poorest communities in Maine are waiting another one or two years to get to that \$5,200 level that they were supposed to get to this year. So there have been compromises all over. If you look at your computer print-out from the Department of Education, the quintile of schools that are raising the most amount of effort for education is still the 5th quintile. That's been that way for five or six years now, at least. So they've waited and waited and waited. Yet is the difference as great as it was? No, it isn't. Progress has been made. I think all of us can share some pride in that. I also have to rise today to say that I am frustrated with part of the work that happened. I feel, personally, that of the \$4 million that is in this budget for a cushion, \$1 million is going to schools that, frankly, don't deserve a cushion. We have cushion money going to schools that have a total mill rate effort for education is 9.5 mills, well below the state average. We have \$350,000 in cushion money going to one school that has a \$760,000 valuation per student. Last year, that school wouldn't have qualified for a cushion. It does this year. I tried in the Education Committee to change the criteria of the

cushion, to take \$1 million of the \$4 million and direct it towards communities that really do need a cushion. I, so to speak, fought the good fight and got absolutely nowhere. Some of the very representatives, not in this body, who stood to gain by my proposed change to who gets a cushion and who doesn't, kind of lead the charge against changing that criteria. I'm frustrated by that. I felt it was a significant amount of money that could be moved to those communities without increasing the total amount of the cushion. But I lost that battle and I have to accept that. I like this budget, but when my bill passed 4 years ago, the thought process then, as was stated in the Education Committee, was that there would be four more years of cushions, and there has been. The other statement that was made, and agreed to by the Education Committee at that time, was that the amount of money put into a cushion would slowly be decreased over time. Everybody agreed to that. That is reflected in the budget that is before us today. I think there are a lot of tough choices and there is a lot of pain to go around in the school budget and there is a lot of pain and suffering, potentially, with a lot of different schools in Maine. But some schools have waited seven or eight and through that period have raised 18 to 22 mills for education. They are going to wait another couple of years before that mill rate drops. I feel strongly that tonight somebody needs to stand up and at least mention the Greenville's and the Wales and the Lubec's of this state, who by far are raising the most amount of mills for education, far more than any community that stands to lose money in this formula. Far more. When you are raising 20 mills for education, that's really a sad state of affairs and it's only going to be corrected when we get to a per pupil guarantee of \$5,200 per student, which is still one or two years away. So in conclusion, yes, I'm frustrated. In my opinion, \$4 million that is here for the cushion is not going to where it should go. There is nothing I can do about that. I know one of the Superintendent of Schools in one of the communities in southern Maine that is effected by this has been pushing for one year now to consolidate some of the 12 elementary schools in that district in order to save money. That's going to have to be looked at. That's happened in many other parts of the state. I think there are many other options out there. I am going to be supporting the motion. I wish things could have been different as far as who got a cushion, but I have to accept that. In the end, the main goal of the formula is to equalize the number of mills raised for education and this budget takes a step towards that goal. I want to thank you all for listening.

THE PRESIDENT: The pending question before the Senate is the motion by the Hancock, Senator Goldthwait to Indefinitely Postpone Senate Amendment "F" (S-504) to Committee Amendment "A" (H-968).

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#265)

YEAS: Senators: CARPENTER, CATHCART, DAVIS, FERGUSON, GOLDTHWAIT, KNEELAND, MCALEVEY, MILLS, MITCHELL, NUTTING, ROTUNDO, SAVAGE, SAWYER, SHOREY, SMALL, TURNER, WOODCOCK, YOUNGBLOOD, THE PRESIDENT - RICHARD A. BENNETT

NAYS: Senators: BRENNAN, BROMLEY, DAGGETT,
DOUGLASS, EDMONDS, GAGNON, KILKELLY,
LAFOUNTAIN, LEMONT, LONGLEY, MARTIN,
MICHAUD, O'GARA, PENDLETON, RAND, TREAT

19 Senators having voted in the affirmative and 16 Senators having voted in the negative, the motion by Senator **GOLDTHWAIT** of Hancock to **INDEFINITELY POSTPONE** Senate Amendment "F" (S-504) to Committee Amendment "A" (H-968) **PREVAILED**.

Committee Amendment "A" (H-968) as Amended by House Amendment "K" (H-986) thereto, **ADOPTED**, in concurrence.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-968) AS AMENDED BY HOUSE AMENDMENT "K" (H-986)** thereto, in concurrence.

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

Senate at Ease.

Senate called to order by the President.

The Chair laid before the Senate the following Tabled and Later (1/18/02) Assigned matter:

SENATE REPORTS - from the Committee on **EDUCATION AND CULTURAL AFFAIRS** on Bill "An Act to Phase Out Community Income Considerations from the School Funding Formula" S.P. 9 L.D. 1

Majority - **Ought Not to Pass** (11 members)

Minority - **Ought to Pass** (2 members)

Tabled - January 18, 2002, by Senator **MITCHELL** of Penobscot

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

(In Senate, January 18, 2002, Reports **READ**.)

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

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

The Chair laid before the Senate the following Tabled and Later (3/6/02) Assigned matter:

Bill "An Act to Amend the Laws Relating to Development Districts"

S.P. 725 L.D. 1966
(C "A" S-441)

Tabled - March 6, 2002, by Senator **GAGNON** of Kennebec

Pending - **FURTHER CONSIDERATION**

(In Senate, February 27, 2002, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-441)**.)

(In House, March 5, 2002, Bill and accompanying papers **COMMITTED** to the Committee on **TAXATION**, in **NON-CONCURRENCE**.)

On motion by Senator **GAGNON** of Kennebec, the Senate **RECEDED** from whereby the Bill was **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-441)**.

On further motion by same Senator, the Senate **RECEDED** from whereby it **ADOPTED** Committee Amendment "A" (S-441).

On further motion by same Senator, Senate Amendment "A" (S-503) to Committee Amendment "A" (S-441) **READ**.

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

Senator **GAGNON:** Thank you, Mr. President, men and women of the Senate. This is just a bill that recodifies the TIF laws and this Senate Amendment is a clarification of some of the items and corrects a typo in the bill.

On further motion by same Senator, Senate Amendment "A" (S-503) to Committee Amendment "A" (S-441) **ADOPTED**.

Committee Amendment "A" (S-441) as Amended by Senate Amendment "A" (S-503) thereto, **ADOPTED**.

PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-441) AS AMENDED BY SENATE AMENDMENT "A" (S-503) thereto, in **NON-CONCURRENCE**.

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

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

Bill "An Act to Implement the Recommendations of the Commission to Study Domestic Violence"

H.P. 1658 L.D. 2163

Tabled - March 25, 2002, by Senator **LONGLEY** of Waldo

Pending - **ADOPTION OF COMMITTEE AMENDMENT "A" (H-883)**, in concurrence

(In House, March 12, 2002, the Minority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-883).**)

(In Senate, March 25, 2002, the Minority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED**, in concurrence. **READ ONCE.** Committee Amendment "A" (H-883) **READ.**)

On motion by Senator **DOUGLASS** of Androscoggin, Senate Amendment "B" (S-509) to Committee Amendment "A" (H-883) **READ.**

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

Senator **DOUGLASS:** Mr. President, this amendment would permit a court to conditionally order that a defendant not possess a firearm. This is in the protection from abuse order in the arena of domestic violence. What this amendment does is provide a bit more due process for the defendant in this way. First, when the defendant gets this order, he is notified by the law enforcement officer serving it that there is a condition that would potentially prohibit his possession of a firearm until a further hearing that happens during the duration of the temporary order. But the defendant has the opportunity to accept that condition or to contest it. If the defendant contests that condition, then there is a hearing on that issue alone within 48 hours or as soon thereafter as practicable. What this means is that the defendant continues to have the right until the full protection order, something like between 10 and 21 days. That is an important right for defendants in terms of getting together their witnesses to any of the incidents that are involved in the full protection order. With regard to the condition of possession of a firearm or a dangerous weapon, there are two options. One is that the defendant recognizes, in his heart and soul, that he may be in a position of doing violence to himself or to others and agrees not to possess those weapons. That's a good thing. What this amendment does is provide an opportunity for a cooling off period that is with the defendant's knowledge. If the defendant objects and protests that condition, then he is provided a due process hearing in full conformity with the usual court proceedings but the issue is limited to that one matter, the possession of a firearm or a dangerous weapon. I hope that you will add this amendment to the Minority Report, which we have adopted, because it provides for due process for defendants, it helps the police in this state, who were instrumental in crafting this idea, do their job. For one thing, it provides them notice of those situations when there is a real threat of violence, either with a dangerous weapon or with a firearm. It's important for the police to know that so they can be extra cautious. In the past, we haven't had the advantage of the computerized records that just went online, actually, in August 2001. With that, we do have a large number of protection from abuse orders. But there are, simply stated, certain ones that require more diligence on behalf of law enforcement and on behalf of the courts because there is a great potential for the use of a dangerous weapon. If we can pass this amendment, and I hope you will vote in favor, we can provide more security for the citizens of our state.

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

Senator **MCALLEVEY:** Thank you, Mr. President, men and women of the Senate. I'd much rather rise and spend my energies promoting this through the appropriations process than arguing amendments, but I recognize everyone's right to offer an amendment. I don't see this doing anything but what we had already discussed earlier on Report A and Report B. To quote the good Senator from Androscoggin, Senator Douglass, it does offer a bit more due process. But you either have due process or you don't. It's not a case of a bit more due process. The reality is the U.S. Attorney, Paula Silsby, came twice to talk to our committee. They are doing a good job violating people who violate domestic violence laws on the federal level. She made it very clear to us, on two separate occasions, they will violate and charge anyone of a gun violation once they have violated a protection from abuse order with a firearm, after the permanent protection order. But they will not charge or try to violate anybody under a temporary order because they believe, as does the federal government, that there is no due process at that point. The only time when there is a permanent order, the individual has the right to be present and have representation. Once those conditions are met, and there is a violation after that date, they will go after them. But they will not charge anybody who is subject to a temporary order and violates a state law with a firearm. So let's just put it in perspective. You either have due process or you don't. Thank you.

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

Senator **DOUGLASS:** Mr. President, men and women of the Senate. This amendment provides safety for the victims of domestic violence. That is really what you're voting on here. It also provides safety for the defendants who would agree that they should not be possessing firearms during the period when a protection from abuse order is temporarily provided or ordered by the court. To wait until the full protection order has two consequences. One, it's a lengthy period of time for someone who is in a great state of anger. Two, it is necessary for the defendant to have some time to prepare to defend against an order that can last for up to 2 years. That is a different issue from the issue of possessing a dangerous weapon or a firearm. This amendment provides the courts with an ability to defuse the situation and that is what law enforcement officials, including the U.S. Attorney, Paula Silsby, have asked for. If the defendant accepts service of this order, then he has recognized that he may be a danger to himself and to others. It's a good thing for us to provide that opportunity to people in such situations. Really, that's not any different than many of the situations we might find ourselves in at home when we are raising our children. This is one of those common sense approaches to life that we ought to have had in our laws a long time ago. Frankly, the police can only be called when there is an actual crime being committed in the presence of either the victim or some other person. They will very rarely arrest the individual unless there is a weapon used, so that excludes the threat. When the threat of violence is there, that's the danger that we probably need to guard against the most. That's what this particular amendment will do. It provides the opportunity for the defendant to have an expedited hearing solely on the issue of possession of a dangerous weapon. Why is that a good thing to have separate from the full order? Because the facts are different. A defendant who doesn't have to defend against all the issues is going to be better prepared to

argue on the issue that he may hold very dear, which is the right to possess a firearm or dangerous weapon. For that reason, this is the best possible alternative for an individual who takes that right seriously, but it is also the safest measure we can provide as opposed to the Minority Report that does nothing.

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

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

Senator **LONGLEY:** Thank you, Mr. President, colleagues in the Senate. First off, I'll repeat what I said earlier today, which is the most important thing to remember is a lot of good work is happening and has happened in terms of all of us finding a way to address this issue. The most important thing for all of us, I think, is to remember that we come out of this accomplishing something, finding something we can all agree on. As some of us reach further to address the issue of the safety of the victim and the due process of the alleged abuser, I think this is a really good step forward. What I like about it is that it could protect a victim and it does attempt to honor due process rights. Finally, say there is an abuser out there who is willing to admit, mostly he, there is one of 12 murders every year related to domestic violence, homicides, is a he, but it would mostly be a he possibly acknowledging he's out of control in a situation and he is taking a first step at admitting that there is a problem. As we try to help these people, presuming everybody can be helped, and in the case where it is actually an abuser, I would think that first step is as important a step as that alcoholic realizing he or she has a drinking problem and they go to their first AA meeting. I think we want to encourage those first steps and the amendment put forth helps protect the victim, it attempts to honor due process rights in giving that person a notice and opportunity to be heard, and maybe most importantly, it helps those who actually are abusers with an order against them take a first step to address their problem. I think it's a wonderful opportunity for all of us to move forward on public enemy number one. Thank you.

THE PRESIDENT: The pending question before the Senate is adoption of Senate Amendment "B" (S-509) to Committee Amendment "A" (H-833). 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 (#266)

YEAS: Senators: BRENNAN, BROMLEY, CATHCART, DAGGETT, DOUGLASS, EDMONDS, GOLDTHWAIT, LONGLEY, NUTTING, O'GARA, PENDLETON, RAND, ROTUNDO, TREAT

NAYS: Senators: CARPENTER, DAVIS, GAGNON, KILKELLY, KNEELAND, LAFOUNTAIN, LEMONT, MARTIN, MCALVEY, MICHAUD, MILLS, MITCHELL, SAVAGE, SAWYER, SHOREY, SMALL, TURNER, WOODCOCK, YOUNGBLOOD, THE PRESIDENT - RICHARD A. BENNETT

ABSENT: Senator: FERGUSON

14 Senators having voted in the affirmative and 20 Senators having voted in the negative, with 1 Senator being absent, the motion by Senator **DOUGLASS** of Androscoggin to **ADOPT** Senate Amendment "B" (S-509) to Committee Amendment "A" (H-883), **FAILED**.

Committee Amendment "A" (H-883) **ADOPTED**, in concurrence.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-883)**, 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 (3/21/02) Assigned matter:

HOUSE REPORTS - from the Committee on **NATURAL RESOURCES** on Bill "An Act to Restrict the Availability of Products with Excessive Levels of Arsenic" H.P. 1447 L.D. 1944

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-937)** (8 members)

Minority - **Ought to Pass as Amended by Committee Amendment "B" (H-938)** (5 members)

Tabled - March 21, 2002, by Senator **MARTIN** of Aroostook

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

(In House, March 20, 2002, the Minority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "B" (H-938)** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "B" (H-938)**.)

(In Senate, March 21, 2002, Reports **READ**.)

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

Senator **MARTIN:** Thank you, Mr. President. I would first urge you to vote in favor of the Majority Ought to Pass Report, which is the motion I made. Let me very quickly tell you the history. A bill came into our committee that dealt with only one item that was to restrict a type of fertilizer that contained arsenic. After a great deal of discussion, we realized that there is a awful lot of fertilizer in Maine that is bought and used in this state. In fact, there is no testing of any kind. So in working with the Department of Agriculture and the Department of Environmental Protection, we put together a proposal that is in this bill. We felt, as a matter of state policy, that all of them ought to be treated the same. When

we got through the process, someone decided, the Minority members, that it was a great idea but to do arsenic anyway and stop it now. As a matter of state policy, I believe that is the wrong way to proceed. What the Majority Report does is create a system so that all fertilizers in Maine can be dealt with the same way, including this product. So I would urge you to adopt the Majority Ought to Pass Report.

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 brief. I'm going to be opposing the pending motion. I know I've checked with the companies in Maine that are selling fertilizer to commercial agriculture. This type of waste product, very high in arsenic, has not been used in commercial fertilizer and agriculture for years and years. However, there is a tremendous amount of this type of fertilizer with very high levels of arsenic that is sold to the homeowners. They use it where ever they use it around the home, on their flowers, maybe even around their little flower beds that they have around their well heads. Who knows. Maybe they use it on their lawns that their kids are going to play on next week. I can't find a good use for this particular product. There are many companies in the United States that are selling fertilizer in small bags for homeowners' use that don't use this particular waste product in their fertilizer. After much thought and research, I can't find one good use for these small 10 and 20 pound bags of fertilizer that are kind of off the scale in their level of arsenic. There are plenty of substitutes out there. I'm going to be opposing the pending motion so we can go on and accept the Minority Ought to Pass Report. I think it's the right thing to do. I don't think Maine needs to be the recipient of waste that has absolutely no use other than to have people put it on their lawns, put it around where their kids are going to be, put it around their flower beds, etcetera. So I would urge you to vote against the pending motion. Thank you.

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

Senator **TREAT:** Thank you, Mr. President, men and women of the Senate. I urge you to vote against the pending motion so that we can go on to accept the Minority Report. The only difference between the two reports is the outright banning of this material, which is not really fertilizer, it is mine tailings that have arsenic levels that are extremely high. I can't see any good reason to continue to sell this product, which is essentially a hazardous waste, although not meeting the technical legal definition of that. I think most people who have watched "Arsenic and Old Lace" would conclude that it does meet our sort of basic common sense test.

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

Senator **MARTIN:** Thank you, Mr. President. In all difference to the good Senator from Kennebec, Senator Treat, it's amazing how we can argue on one side of the aisle that it's not good public policy to single something out, but on the other side it's okay to do so. Remember that we have all kinds of fertilizers being sold in this state. None done with testing, including this one. I do not believe it's fair to treat one any different than the others. I might just point out that you ought to look at some of

the chemicals that are in some of the fertilizers that you use every day.

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

Senator **SAWYER:** Thank you, Mr. President, ladies and gentlemen of the Senate. I find myself in concurrence with the good Senator from Aroostook, Senator Martin. The committee met and the majority of us felt that this material should be tested and either pass or fail as a result of that testing. I think it's not good public policy to outright ban, at least to an absolute minimum, and I urge your support for the motion before us.

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 (#267)

YEAS: Senators: CARPENTER, DAGGETT, DAVIS, KNEELAND, LEMONT, MARTIN, MCALEVEY, MICHAUD, MILLS, MITCHELL, O'GARA, PENDLETON, SAVAGE, SAWYER, SHOREY, SMALL, TURNER, WOODCOCK, YOUNGBLOOD

NAYS: Senators: BRENNAN, BROMLEY, CATHCART, DOUGLASS, EDMONDS, GAGNON, GOLDTHWAIT, KILKELLY, LAFOUNTAIN, LONGLEY, NUTTING, RAND, ROTUNDO, TREAT, THE PRESIDENT - RICHARD A. BENNETT

ABSENT: Senator: FERGUSON

19 Senators having voted in the affirmative and 15 Senators having voted in the negative, with 1 Senator being absent, the motion by Senator **MARTIN** of Aroostook to **ACCEPT** the Majority **UGHT TO PASS AS AMENDED** Report, in **NON-CONCURRENCE, PREVAILED.**

READ ONCE.

Committee Amendment "A" (H-937) **READ** and **ADOPTED.**

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-937), in NON-CONCURRENCE.**

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

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

PAPERS FROM THE HOUSE

Joint Resolution

The following Joint Resolution: H.P. 1701

**JOINT RESOLUTION MEMORIALIZING CONGRESS TO
ADOPT PATRIOTS' DAY AS A HOLIDAY THROUGHOUT THE
UNITED STATES OF AMERICA**

WE, your Memorialists, the Members of the One Hundred and Twentieth Legislature of the State of Maine now assembled in the Second Regular Session, most respectfully present and petition the Congress of the United States, as follows:

WHEREAS, Patriots' Day commemorates the American Revolution and the legendary battles at Lexington and Concord in 1775; and

WHEREAS, these historic events led to the colonies' independence from Great Britain and subsequently to the formation of the United States of America; and

WHEREAS, great patriotism was demonstrated by Americans after the terrorist attacks in New York City, Washington, D.C. and Pennsylvania on September 11, 2001; and

WHEREAS, Patriots' Day, a holiday in reverence of our unity as a nation, is celebrated only in Maine and Massachusetts; now, therefore, be it

RESOLVED: That We, your Memorialists, urge the Congress of the United States to encourage all of the United States of America to observe Patriots' Day on April 15, 2002 in remembrance of the founding of this nation and the patriotism shown by Americans after September 11, 2001; and be it further

RESOLVED: That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to the Honorable George W. Bush, President of the United States, and to the President of the United States Senate, the Speaker of the House of Representatives of the United States and each Member of the Maine Congressional Delegation.

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

READ.

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

Senator **KILKELLY:** Thank you, Mr. President. What is the cost of creating and sending a Joint Resolution and to whom will this be going?

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

Senator **KILKELLY:** Thank you, Mr. President, men and women of the Senate. Over the last few weeks, as I have sat here and looked at the calendar, I have seen more and more rather creative and interesting Joint Resolutions that have come before

us. I'm concerned that we are getting to the point of doing the resolution of the day when, in fact, it doesn't always reflect the importance of the business that is before us. I quite enjoy Patriot's Day and I think Patriot's Day is a wonderful holiday that, in fact, is very appropriately a holiday for Maine and Massachusetts. As much as we would like to deny it, we do come from that particular place. I just wonder if this is how we want to be spending our time. I will be asking for a division on this and voting against it. I hope that leadership and the Rules Committee would just take a look at the process and really determine if this is, in fact, how we want to be spending money. It's my understanding that it is fairly expensive to go through this process. Thank you.

At the request of Senator **KILKELLY** of Lincoln a Division was had. 20 Senators having voted in the affirmative and 13 Senators having voted in the negative, **ADOPTED**, in 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 Control Internet "Spam"

H.P. 1538 L.D. 2041
(C "A" H-906)

Tabled - March 25, 2002, by Senator **SHOREY** of Washington

Pending - **ENACTMENT**, in concurrence

(In Senate, March 19, 2002, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-906)**, in concurrence.)

(In House, March 21, 2002, **PASSED TO BE ENACTED**.)

The Chair ordered a Division.

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

Senate at Ease.

Senate called to order by the President.

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

ENACTORS

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

Emergency Measure

An Act to Make Supplemental Appropriations and Allocations for the Expenditures of State Government and to Change Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2002 and June 30, 2003

H.P. 1574 L.D. 2080
(H "K" H-986 to C "A" H-968)

The President requested the Sergeant-At-Arms escort the Senator from Hancock, Senator **GOLDTHWAIT** to the rostrum where she assumed the duties as President Pro Tem.

The President took a seat on the floor.

The Senate called to order by President Pro Tem **JILL M. GOLDTHWAIT** of Hancock County.

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

Senator **LONGLEY:** Thank you, Madame President. As we go to vote on this final version of the budget, I'd just like to, first off, congratulate the Appropriations Committee. It was great news, as the chair of the Health and Human Services Committee, to see what funds were restored for healthcare, specifically in the Fund for a Healthy Maine. It's been one of our best years in terms of the Fund for a Healthy Maine after what had been 3 earlier very rough years. I just want to point out that we managed to not have any programs cut. We did get hit in our reserve, which was unfortunate, in my opinion. Fortunately, the programs got saved. Before I vote for this budget, and I will be voting for this budget, I want to go on record saying that, so you know, 4 years ago, when we got our tobacco money and put it into the Fund for a Healthy Maine, Maine lead the nation in how we allocated those monies. We dedicated it towards preventive health. There were articles written in newspapers and magazines nationwide noticing how well Maine dedicated its money to healthcare. That was great news. The very ungreat news is that, in the 4 years since, the Fund for a Healthy Maine has been cut 33¢ on the dollar. This year it was threatened to be cut 40¢ on the dollar. Because the Appropriations Committee, and I'd think the Health Committee, were working to restore cuts and budget rejections helped us all a lot, it's down to only 33¢ on the dollar. But that is still not very good. We can do better and I look forward to you, who are returning here, to do what you can to protect the Fund for a Healthy Maine. There is no more important issue out there than healthcare. It's what we hear from all of our constituents. We have a huge opportunity with the Fund for a Healthy Maine. Its taken hits in the 3 previous years. This year it took less of a hit. We've got to stop making the Fund for a Healthy Maine the fund of first resort. It's absolutely what your constituents are saying they want. They want and need

healthcare. We need to help them with healthcare. I'll be voting for this budget. I appreciate that the hit was minor, relative to earlier years. I'm just encouraging that we all make sure that we discontinue taking so much money out of the Fund for a Healthy Maine, 33¢ on the dollar taken over the last 4 years is not a good record. Maine can and should do much better. Thank you.

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

Senator **MCALLEVEY:** Thank you, Madame Chair, men and women of the Senate. I've never spoken on a budget issue before, enactment. This is the first time in 8 years. I'll be brief. There are some that would say that this is a good budget. I would disagree. It's a good start. It doesn't go far enough for education. I personally believe our number one responsibility, as legislators, is to provide for the best possible education in this state for each child. I have 5 school districts and have children in 80 portables throughout those 5 districts. Money that we are setting aside for a technology grant for portables is laudable. But in my priority of things, I'd rather get the children out of portables and into real classrooms than give 7th and 8th graders portables. That is the feeling of most of the people in my district. But that is only one of two issues that I have. We passed and enacted legislation last year creating programs and funds that the Governor has cut or frozen; a domestic violence coordinator for the state, and a cold case homicide squad. Those positions stood the test of time with the committee work. Debated in both chambers. Enacted. Signing by the Governor. Funded by the Appropriations Committee. Those positions are now unfilled and will go unfilled. I'm concerned that we don't make whole what we worked on last session before we hire 80 new positions. Those are the two reasons why I don't support the budget in its present form. I wish we had more time. I commend the people who worked on it. It's a difficult job. My comments are in no way meant to be negative on their hard effort. But we haven't gone far enough. We need to go further. Thank you.

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

Senator **BROMLEY:** Thank you, Madame Chair. It won't come as a great surprise to the men and women of the Senate that I'll not be voting for this budget. I want to say what that vote means, briefly, for the record. I want to acknowledge that I'm pleased that I will be able to use my plane tickets and visit my mother in Missouri because of the fast and efficient work of the Appropriation Committee. I want to also acknowledge that there are many core agreements about the budget document and for that the Appropriations Committee has my admiration. It is simply the disproportionate impact in my district that causes me to not be able to vote for the budget. What my no vote will mean is a commitment to work for sustainable and fair funding in the next legislature. I look forward to doing that. Thank you, Madame Chair.

THE PRESIDENT PRO TEM: The Chair recognizes President Bennett of Oxford.

President **BENNETT:** Thank you, Madame President, fellow members of the Senate. It is an interesting position from where I stand tonight. I can say ever so briefly, that I've sat in the chair of the Senator from Hancock, Senator Goldthwait, the seat of the

chair of the Appropriations Committee. Looking at the pile of documents and papers on her desk, I wish to return to my perch as soon as possible. I do want to take this opportunity to say a word of gratitude to the Senator from Hancock, Senator Goldthwait, the Senator from Somerset, Senator Mills, and the Senator from Penobscot, Senator Cathcart, as this 120th Maine Senate grinds its way toward its inevitable end, which I assure you will be soon. I think it's appropriate just to pause for a moment and recognize the good work of 3 of the hardest working members of this body. Those 3 people who have volunteered their energies and their time to serve on the Appropriations Committee. This budget was not easy. The work of the Appropriations Committee continues past this budget. There are a number of matters that continue beyond this that need attention. The table, bond issues, other matters. But I think it's appropriate to recognize their role, lead by the Senator from Hancock, Senator Goldthwait, in pulling a lot of dispersed groups and dispersed interests together and crafting what is not perfect, but is a budget. It is a compromise. I think that we should lend them, as members of this body, our support and vote for this budget because, as much as we may not like parts of it, overall I think it is a great compromise, one that will stand the test of time. I commend the work of the Appropriations Committee and I commend this budget to you and your affirmative vote. Thank you.

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

Senator **MARTIN:** Thank you, Madame President, members of the Senate. I, too, want to congratulate the work of the Appropriations Committee and the members of this Senate who were on the Appropriations Committee. I will be voting for the budget. I just want to make one point, as a member of the Health and Human Services Committee. That is, whatever you do tonight, when you think about the number of people that may be added to this budget as state employees, it may be 80, but I would point out to you that about 50 of those are in the Department of Human Services to deal with the problems of domestic abuse and child abuse and foster children, etcetera. That's where most of the new employees are going to be in this budget. We ought not to be ashamed when we go home and tell the people of Maine why we added state employees.

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 PRO TEM: The Chair recognizes President Pro Tem Michaud of Penobscot.

President Pro Tem **MICHAUD:** Thank you, Madame President, men and women of the Senate. I, too, hope that you will support this budget. There was an amendment offered earlier, a couple of them that did not get on, although I supported one of those amendments. I think this budget document, probably with the exception of GPA distribution, is a fair document. It does take care of a lot of the needs in the state. A lot of the committees have done excellent jobs in bringing their recommendations back to the Appropriations Committee. The Fund for a Healthy Maine program was pretty much kept in tack. The Medicaid cuts; domestic violence and tax conformity, which was a big issue and threw a big loop before members of this body, with a \$30 million

cost to the state budget. I don't think we're going to get a better product than we currently have here this evening. I've been through many budgets over 22 years and there is a lot of give and take. This budget document I will support, although there are some parts I don't totally agree with. I think it's the best we're going to get at this time. So I would encourage your support for the budget. Thank you.

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

Senator **BRENNAN:** Thank you, Madame President, men and women of the Senate. After some thought, I too will support this budget. I think there are a number of programs and services and opportunities in this budget that are very positive. At the same time, I would be remiss without going on record and saying that I think it is terribly unfortunate that we couldn't do more for GPA. There are a number of communities in this state that will be hurt because of this budget and I look forward to working with members of the 121st legislature and looking at ways that we can come up with a more fair and equitable school funding formula. Thank you.

THE PRESIDENT PRO TEM: The pending question before the Senate is Enactment. 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 (#268)

YEAS: Senators: BENNETT, BRENNAN, CARPENTER, CATHCART, DAGGETT, DAVIS, DOUGLASS, EDMONDS, GAGNON, KILKELLY, KNEELAND, LAFOUNTAIN, LEMONT, LONGLEY, MARTIN, MICHAUD, MILLS, MITCHELL, NUTTING, O'GARA, PENDLETON, ROTUNDO, SAVAGE, SAWYER, SHOREY, SMALL, TREAT, TURNER, THE PRESIDENT PRO TEM - JILL M. GOLDTHWAIT

NAYS: Senators: BROMLEY, MCALEVEY, RAND, WOODCOCK, YOUNGBLOOD

ABSENT: Senator: FERGUSON

This being an Emergency Measure and having received the affirmative vote of 29 Members of the Senate, with 5 Senators having voted in the negative, and 29 being more than two-thirds of the entire elected Membership of the Senate, was **PASSED TO BE ENACTED** and having been signed by the President Pro Tem, was presented by the Secretary to the Governor for his approval.

Under suspension of the Rules, ordered sent forthwith to the Governor.

The President Pro Tem requested the Sergeant-At-Arms escort President **BENNETT** of Oxford to the rostrum where he resumed his duties as President.

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

Senate called to order by the President.

Off Record Remarks

On motion by President Pro Tem **MICHAUD** of Penobscot, **ADJOURNED** to Tuesday, March 26, 2002, at 10:00 in the morning.