

# MAINE STATE LEGISLATURE

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Senate Legislative Record  
One Hundred and Twentieth Legislature  
State of Maine

Volume 3

Second Regular Session (Continued)  
April 2, 2002 to April 24, 2002

Third Confirmation Session  
October 3, 2002

First Special Session  
November 13, 2002

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

In Senate Chamber  
Wednesday  
April 3, 2002

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

Prayer by Father Frank Murray, St. Mary's Catholic Church in Bangor.

**FATHER MURRAY:** Let us pray. Loving God, we give You thanks and praise for Your goodness and Your generosity to us. We thank You for the opportunity to cooperate with You and Your creative powers to build a better society, better communities, good families, and citizens living to their potential. Today we ask Your blessings on the Maine Senate, this deliberative body seeking to do Your will. May their actions not only bring You honor and glory, but also be for the betterment of all Maine's citizens. Together we make this prayer, as always in Your name. Amen.

National Anthem performed by the Phippsburg Elementary School Band.

Reading of the Journal of Tuesday, April 2, 2002.

Off Record Remarks

**ORDERS OF THE DAY**

Out of order and under suspension of the Rules, the Chair laid before the Senate the following Tabled and Later (3/26/02)  
Assigned matter:

JOINT RESOLUTION - in Memoriam, Laura L. (Guite) Murray of Bangor

SLS 690

Tabled - March 26 2002, by Senator **SAWYER** of Penobscot

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

(In Senate, March 26, 2002, on motion by Senator **SAWYER** of Penobscot **READ.**)

Joint Resolution **READ.**

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

Senator **SAWYER:** Thank you, Mr. President. Ladies and gentlemen of the Senate. I did not know Laura Murray all that well, personally, having been raised as a Methodist Republican in Bangor. But I knew her late husband, Robert, a bit better and I must say that I think we know both Laura and Robert Murray through their progeny. I was always raised with the statement that we often hear, 'the apple doesn't fall far from the tree,' and I think in this case we know a lot about the Murray's by virtue of their children. It's my privilege to introduce today the children of Robert and Laura Murray. They are, by age, and I won't tell you which is the youngest and which is the eldest;

Cynthia Murray-Beliveau who lives in Hallowell with her infamous husband, Severin. Cynthia has served on several boards including, currently, on the University of Maine Board of Visitors.

Father Frank Murray, from whom we've heard this morning. Father Frank is a pastor at Saint Mary's Church and served as a member of the other body in the 105<sup>th</sup> and 106<sup>th</sup> Legislatures, which I've been told, occurred in this century.

Kathi Murray. Kathi currently resides in Old Orchard and is a nursing home administrator. She was a former administrator of the Elizabeth Levinson Center in Bangor.

Winnie Murray-Higgins is unable to attend. She lives in Edgington.

Also, my good friend and former member of this body, Robert 'Buddy' Murray, Jr. Buddy served in the other body previously and served in this body during the 118<sup>th</sup>, that was the year that he trounced me royally for this job, and in the 119<sup>th</sup> Legislature.

I'm very proud and pleased and humbled to have grown up in a community that had a family like the Murrays in its existence. Thank you, Mr. President.

On the motion by Senator **SAWYER** of Penobscot, **ADOPTED.**

**THE PRESIDENT:** The Chair is pleased to recognize with us today Cynthia Murray-Beliveau and her husband, Severin; Father Frank Murray; Kathi Murray; and a former member of this body, Senator Robert 'Buddy' Murray, Jr. Will they please all rise and receive the greetings of the Senate.

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

Off Record Remarks

**PAPERS FROM THE HOUSE**

**Non-Concurrent Matter**

SENATE REPORTS - from 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

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

Minority - **Ought to Pass as Amended by Committee Amendment "A" (S-486)** (5 members)

In Senate, April 1, 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" (S-486)**.

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

Senator **EDMONDS** of Cumberland moved the Senate **RECEDE** and **CONCUR**.

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

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

Senator **GOLDTHWAIT:** Thank you, Mr. President, ladies and gentlemen of the Senate. I'm struggling to gather amendments here that are new as of yesterday, but I am not quite sure. If I could pose a question through the chair?

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

Senator **GOLDTHWAIT:** Thank you, Mr. President. There was a Workers' Comp bill amended yesterday, I'm not entirely sure whether this one was added too or this one was moved out of the bill. If somebody could clarify which bill this is, I would appreciate it.

**THE PRESIDENT:** The Senator from Hancock, Senator Goldthwait poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Cumberland, Senator Edmonds.

Senator **EDMONDS:** Thank you, Mr. President. This bill is the bill that came before our body yesterday, I believe, and it is the bill put forward by the Governor having to do with changing the governance body of the Workers' Compensation Board. It's very long, but basically that is what it deals with. It deals with changing the governance of the Workers' Compensation Board and many other pieces around it.

On motion by Senator **SMALL** of Sagadahoc, **TABLED** until Later in Today's Session, pending the motion by Senator **EDMONDS** of Cumberland to **RECEDE** and **CONCUR**. (Roll Call ordered)

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**Non-Concurrent Matter**

Bill "An Act to Amend Maine's Wild Turkey Hunting Season" (EMERGENCY)

S.P. 721 L.D. 1923  
(C "A" S-430)

In Senate, March 27, 2002, **PASSED TO BE ENACTED**, in concurrence.

**RECALLED** from Governor's Desk, pursuant to Joint Order, H.P. 1729, in concurrence.

Comes from the House, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-430) AS AMENDED BY HOUSE AMENDMENT "A" (H-1076)** thereto, in **NON-CONCURRENCE**.

On motion by Senator **CARPENTER** of York, the Senate **RECEDED** and **CONCURRED**.

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**Non-Concurrent Matter**

Bill "An Act to Stabilize the Funding of the Department of Inland Fisheries and Wildlife"

H.P. 1432 L.D. 1929  
(C "A" H-1021)

In Senate, April 1, 2002, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1021)**, in concurrence.

Comes from the House, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1021) AS AMENDED BY HOUSE AMENDMENT "A" (H-1061)** thereto, in **NON-CONCURRENCE**.

On motion by Senator **CARPENTER** of York, the Senate **RECEDED** and **CONCURRED**.

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**COMMUNICATIONS**

The Following Communication: H.C. 445

**STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
CLERK'S OFFICE  
2 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0002**

April 2, 2002

Honorable Pamela L. Cahill  
Secretary of the Senate  
120th Legislature  
Augusta, Maine 04333

Dear Madam Secretary:

The House voted today to adhere to its previous action whereby it Indefinitely Postponed Bill "An Act to Eliminate Department of Professional and Financial Regulation, Bureau of Insurance Travel Restrictions for Obtaining Health Care" (H.P. 1462) (L.D. 1959)

Sincerely,

S/Millicent M. MacFarland  
Clerk of the House

**READ and ORDERED PLACED ON FILE.**

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

**REPORTS OF COMMITTEES**

**House**

**Ought to Pass As Amended**

The Committee on **NATURAL RESOURCES** on Bill "An Act to Provide for Livable, Affordable Neighborhoods"  
H.P. 1596 L.D. 2099

Reported that the same **Ought to Pass as Amended by Committee Amendment "B" (H-1075).**

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "B" (H-1075).**

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

**READ ONCE.**

Committee Amendment "B" (H-1075) **READ** and **ADOPTED**, in concurrence.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "B" (H-1075)**, in concurrence

**Divided Report**

The Majority of the Committee on **LABOR** on Bill "An Act to Increase the Workers' Compensation Insurance Assessment to Fund a Hearing Officer Position"  
H.P. 1548 L.D. 2051

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-1036).**

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

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

Signed:

Senators:  
TURNER of Cumberland  
SAWYER of Penobscot

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

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-1036).**

Reports **READ.**

Senator **EDMONDS** of Cumberland 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.

Off Record Remarks

Senate at Ease.

Senate called to order by the President.

Off Record Remarks

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

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

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

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

Off Record Remarks

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

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

Off Record Remarks

On motion by Senator **DAGGETT** of Kennebec, **RECESSED** until the sound of the bell.

After Recess

Senate called to order by the President.

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

**PAPERS FROM THE HOUSE**

**Joint Order**

The following Joint Order: H.P. 1731

ORDERED, the Senate concurring, that:

1. The Joint Standing Committee on Criminal Justice shall conduct a study of county jail population, costs and reimbursement. The committee shall conduct the study during authorized interim committee meetings, except that the committee may hold one additional meeting to conclude its work.

2. The committee shall study:

A. Initiatives for regional cooperation and solutions in building county jails;

B. Population of county jails, overcrowding and growth;

C. State probation violations, where those violations should be served and who should pay for the resulting incarceration;

D. Probation options, graduated sanctions and probation officer case load;

E. Criminal court case loads, whether cases are being handled in a timely fashion and whether there are sufficient judicial resources allocated to handle the current case load;

F. Issues concerning female offenders in county jails;

G. State subsidies that support the operation of county jails and community corrections programs;

H. Alternative sentencing options and sentencing policies; and

I. The population that is being served and populations that are not served by the current county jail system.

3. The committee shall submit its report, together with any necessary implementing legislation, to the Legislature no later than November 6, 2002. The joint standing committee of the Legislature having jurisdiction over criminal justice matters is authorized to introduce a bill related to the report to the First Regular Session of the 121st Legislature.

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

**READ.**

On motion by President Pro Tem **MICHAUD** of Penobscot, **TABLED** until Later in Today's Session, pending **PASSAGE**, 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 Make the Use of Tokens or Tickets for Games of Chance at Agricultural Fairs Optional

H.P. 1552 L.D. 2055  
(S "A" S-512 to C "A" H-853)

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.

**Emergency Measure**

An Act to Address the Unfunded Liability of the Maine State Retirement System and the Equity of Retirement Benefits for State Employees a2nd Teachers

S.P. 819 L.D. 2199  
(C "A" S-521)

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

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**Emergency Resolve**

Resolve, Regarding Legislative Review of Chapter 296: Patient Brochure and Poster on Dental Amalgam and Alternatives, a Major Substantive Rule of the Department of Human Services  
H.P. 1637 L.D. 2140  
(C "A" H-1046)

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**.

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

**ORDERS**

**Joint Order**

On motion by Senator **BROMLEY** of Cumberland, the following Joint Order:

S.P. 831

**ORDERED**, the House concurring, that Bill, "An Act to Supplement Maine's Academic Attainment and to Retain Talent," H.P. 1655, L.D. 2162, and all accompanying papers, be recalled from the Engrossing Division to the Senate.

**READ.**

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

Senator **BROMLEY:** Thank you, Mr. President, men and women of the Senate. This is just a technical change, it is to align some wording so the bill can be engrossed.

On motion by Senator **BROMLEY** of Cumberland, **PASSED**.

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

**ORDERS OF THE DAY**

**Unfinished Business**

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

The Chair laid before the Senate the following Tabled and Later (4/1/02) Assigned matter:

Resolve, to Allow Julie Harrington to Sue the State  
H.P. 1659 L.D. 2165  
(C "A" H-1045)

Tabled - April 1, 2002, by Senator **MILLS** of Somerset

Pending - **PASSAGE TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1045)**, in concurrence

(In House, April 1, 2002, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1045)**.)

(In Senate, April 1, 2002, Report **READ** and **ACCEPTED**, in concurrence. Committee Amendment "A" (H-1045) **READ** and **ADOPTED**, in concurrence. Under suspension of the Rules, **READ A SECOND TIME**.)

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

Senator **DOUGLASS:** Mr. President, I'd like to explain a little bit about this situation for the benefit of those who will be voting. In addition to informing the members that this was a unanimous committee report, here is the situation. Julie Harrington is a teacher in one of the northern facilities, I believe it's Charleston. During her work, she was required to keep track of the 750 student, juvenile detainees, who were in the facility over the course of a month. She realized that they were doing a great deal of record keeping to keep track of where the individual was, what court did the person have to be in, where were the parents, what transportation arrangements were necessary for various items, and a slew of information; who was their probation and parole officer, who is the Health and Human Services contact. That sort of information; whether there was an abuse order out or people who could be contacted or be informed about the student's status. All of those were the sorts of matters that she had to keep track of in her job as a teacher, but were not matters for which she actually responsible as an employee of the state. She worked with the Microsoft Access program and developed a program that would work to keep track of all the various engagements that this individual might have, all the status, their educational status, and a variety of other information. The net result of this was that her supervisor wrote a letter indicating that her work had saved the State of Maine approximately, or at the minimum, \$30,000 in one year by just saving the cost of entering paperwork and shuffling it around. What happened was, then the Department of Corrections went on to use the system. In fact, she had put it on the Department of Corrections computer to use. She had also registered it as a copyright. Then, however, someone took it without her authority and put it on the computer

of another institution in South Portland that tracks juveniles. Later the Department of Corrections used her work as a model, or there might have been another term of art, but basically they used it as an example of work that they wanted an outside vendor to create for them as sort of a data base program. The State of Maine awarded a bid on that for approximately \$3 million. Julie Harrington felt wronged in this situation because she tried to speak to the department. Although the department indicated a willingness to speak, it seemed pretty clear that this, in fact, did not happen. This resolve allows her to prove her case. Let me just tell you a little bit about copyright law. This resolve is a little different in that it's not about suing the state, it's about the 11<sup>th</sup> Amendment right of the state not to be sued under the U.S. Constitution. It simply waives that right to the extent of \$400,000, which is our cap on other suits against the state. As a copyright matter, this is actually currently filed in federal court and then I guess they bumped up against this issue of the state not being liable. Let me explain that in this situation it seemed that the state was acting as a business entity and had basically taken advantage of a smaller entrepreneur who actually hadn't asked for any money in return for the use of her program, but did feel that it belonged to her and that the State of Maine was wrong to use it without her permission, both at the South Portland facility and in using it as an example in their request for proposals. The situation is this, in court she is going to have to prove first that she actually copyrighted the material. That is that she put the little 'c' on it somewhere and that she always intended it to be hers. We heard some statements from the commissioner and from her that indicated that she might well prevail on that. She also would have to prove that the capacity in which she developed this software program was not one in which she was working for the State of Maine, that it was outside of her work, that she did it at night, and that it wasn't really within the scope of her employment. So that is another hurdle she'll have to meet. She further would have to go through proving that use of this program isn't allowed as a matter of course. There is a term of art here, but I don't practice copyright law, but I know a bit about it. It is something like fair use, I believe that is the term. There are a couple of clear defenses that the State of Maine may be able to show. Further, the State of Maine may have, as an affirmative defense, that she waived her rights by allowing use of the program for however long it was used. But the situation that the committee saw presented was one in which the Department of Corrections argued that she had waived any rights she had and they basically had no good explanation for why they had used this program and gone on to sell it. They hadn't really addressed the issue of whether or not it belonged to her or not. They simply said she waived her rights. I think that is a matter of dispute, that is a matter of proof. The situation is one in which I think it is important, as a state, that we recognize that first of all we ought to have a copyright policy if our employees are developing materials that are useful. We ought to copyright them. We did do this in the 119<sup>th</sup> Legislature with a video tape that was produced about being in the legislature. So we ought to have a clear policy. Second, we ought not take advantage of people who are employees if they did produce some work outside the scope of their employment. So I would say that is pretty much why the committee unanimously voted this. I would like to recall for you that in the First Regular Session of the 120<sup>th</sup> Legislature, most of our recommendations, or at least on the part of the Senate, we against allowing suit. So I do want you to know that we weighed the facts and we weighed the situation in coming to this recommendation. I would urge your support.

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Off Record Remarks

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

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

Senator **MILLS:** As I understand it, this employee used a conventional, off-the-shelf, data base program called Access, which is produced by Microsoft. It is just a standard data base, like File Maker and some of the others that are on the market. These data bases are designed to do exactly what she applied it to, to take care of complex management and diary issues. I have such a program in my office. It is based on File Maker. It runs my office. We've had it for 8 or 10 years. I paid somebody, I think, a couple of thousand dollars to convert File Maker to use the File Maker data base as a way of creating a sort of tailor made master diary system that keeps track of where everybody is, what the court dates are, what the deadlines are, what the office appointments are, and all of that. We put it to use. What was done here is a little more complex version of what I think is done everyday in businesses all over the United States. That is why Microsoft produces a product called Access and why other data bases are out there for use and application. The fact that a state employee does a good job, and is commended for that job, and the fact that she turns over a certain work product for use by the state without having been hired in a direct way to do that. As I understand it, nobody from the state ever agreed to pay her for doing this work. She did it because it made her life easier at work. In deed, it was a benefit to the state. I don't think anybody can question that. But to suggest that the state should then subject itself to be sued because some employee, at a given time, at a given occasion, does a good job, there is something dreadfully wrong here. If she has a copyright on some sort of conversion of the Access program into this particular use and some private company is making use of it in violation of her copyright rights, then that is a discussion or a quarrel which she may well have with some other private agency that might attempt to sell or resell the program or convert the program by making use of her work. I don't want to get into that. I don't see why she can't go out and pursue that remedy if she has one. But to sue her employer because she has done her job, done a good job or an extra good job, just seems insane to me. I don't see why the state should subject itself to this kind of treatment just because an employee can go get a lawyer to come down to a committee and say, 'this is an employee who did a great job, and even though she didn't expect to get paid for it, she now wants to be able to sue the state for what she did.' It does not ring true to me, I think there are reasons why we don't ordinarily permit suits in this case. I shudder to think what other state employees, there are some 14,000 or 15,000 of them, how many of them will be down next time saying, 'gee, I did a good job last year and I didn't get the right to sue the state for doing a good job. Can you consider my case?' I just think we're opening the floodgates and we're setting a precedent that ought not to be established. I do urge that you join with me in voting against the bill. Thank you.



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

Senator **DOUGLASS:** Mr. President, men and women of the Senate, I wanted to respond to the comments of the Senator from Somerset, Senator Mills. It's true that Microsoft Access is a standard software data base program. However, just as the words of our English language are available to all of us, some of us are creative enough to write poems or to write essays or to write novels that are our own intellectual property. That is what copyright does, it protects intellectual property. Similarly, we have eight notes in our musical scale. Yet, we recognize that the person who has put together those notes in a certain fashion to form a song that is unique and distinct, has authorship and that this authorship creates an intellectual property right. That is what this is about. I want to assure you that the 13 members of our committee are not in sync on fairness. This is really an issue of how the state treats its employees with regard to the state's business. That is the state's business practices. I think we could be doing the state a great service here by forcing them to recognize that this situation needs to be remedied and that it will not thereby open any floodgate because this was really quite a unique situation where this employee was much more than simply a good employee. She created a computer program that kept track of all the 750 or more individuals who came in and out of the facility. I think that is a matter that we ought to allow her to put to proof as a matter of policy. Thank you.

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

Senator **YOUNGBLOOD:** Thank you, Mr. President, ladies and gentlemen of the Senate. Julie Harrington is a wonderful teacher. She is very concerned about this effort that she has stepped forward to do because she loves her job. She loves what she is doing with the youth at the Charleston Correctional Center. This is really all about communication with the state. She found out about these things going on because apparently someone within the department said, 'gee, you weren't very bright to do all of that programming for the state and give it to them. Do you realize that you did that for nothing and now the state has taken your program and contracted it out to be enhanced and now they are willing to pay \$3 million to have this enhanced?' She did it because she likes to do that kind of thing, did it willingly, and would, in fact, do it again. Her reaction was, 'gee, if there are things that have to be done, I could have willingly done for them just the same as I wrote those first programs.' I'm absolutely convinced that this committee looked at this subject very, very hard, very, very long, and made a wise decision. All she asked for was a chance to talk to the department about what was going on. The department refused, on multiple occasions, to have any communication, any discussion, about what they were doing with this program. This was her way of getting them to set down and say, 'please, take a few minutes and talk to me about this issue and what it is you are doing.' The department, all during that period of time, said, 'absolutely not, we're not going to talk to you about it.' I would urge you to vote for this to give Julie her chance, her opportunity, to be heard and to have a discussion with the department. Unfortunately, or maybe fortunately, the people who are discussing this mostly are the lawyers. Once this got into the lawyer's hands, you know what happens. The department says, 'our lawyers say we can't talk to

you. We'd like to, but we're not allowed to.' I would urge you strongly to vote to Julie the opportunity to do this.

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

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

Senator **TURNER:** Thank you, Mr. President, ladies and gentlemen of the Senate. I'm trying to remember what Shakespeare did say about this matter. I'm also reminded, when one thinks about the tremendous productivity gains that our economy has enjoyed, many people look to the laptop or the desktop and the tools thereon to enhance the productivity of our workers. I think what we see here is an example of a worker in a state bureaucracy using their innovation and the tools available to help them do their job in a more superior way. That said, I don't think that this should rise to the occasion of allowing that employee to sue the state. It does sound like there is a good deal of miscommunication between the employee and their management. That certainly is disdainful. However, it does further seem to me that when an employee is employed and uses a tool provided by their employer to enhance the productivity of their job, that is really what we would hope they would do. To somehow then say to the employee, 'gee, you should have been compensated for that.' They were using the tool to do a job. They did the job and they did the job well. For us to then say, 'you can now sue your employer because you somehow should have been specially compensated for your work' doesn't make sense to me. I'm struggling to get where the committee did on this matter. If I may pose a question through the chair.

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

Senator **TURNER:** Do we know if there are policies, practices, and procedures in place between the state and its employees that speak specifically to those things that you develop on the job, that those do remain the property of the state? Can somebody enlighten me on that matter please? Thank you, Mr. President.

**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 Waldo, Senator Longley.

Senator **LONGLEY:** Thank you, Mr. President. Quickly, it looks like we have a policy that needs to be improved. This is a letter from the Department of Administrative and Financial Services, Office of the Chief Information Officer, dated April 2<sup>nd</sup>. The writer, Henry Lanphear, Chief Information Officer says, 'First, the Information Services Policy Board has a policy that specifically speaks to this issue. The policy states that only software acquired by the State for official use may be loaded onto, or used on Maine State Government owned personal computers.' It goes on to say, 'Second, the civil service rules specifically state that 'no employee shall receive any pay from the state in addition to the salary authorized under the schedules provided in the pay plan for services rendered.' Those are the two answers. It sounds like good ideas put into the system aren't welcome and when they are, whether they are good ideas or not,

compensation is what you earn while you are working and not more than that. That is my understanding. Thank you.

**THE PRESIDENT:** The Chair recognizes the Senator from Franklin, Senator Woodcock.

Senator **WOODCOCK:** Thank you, Mr. President, men and women of the Senate. I would address the issue of insanity. As a member of the committee, here I am amidst two lawyers and two members of the business world, so you judge for yourself how insane I am. The issue isn't whether or not Julie Harrington did a good job. Julie Harrington did a wonderful job and was commended by the Department of Corrections for that work. The issue remains that the State of Maine used the work of Julie Harrington in the bidding process. In so doing, realized significant gains monetarily. Whether or not she copyrighted it needs to be arbitrated in the courts. We stand here today debating the fairness of the ability of an individual to sue the State of Maine. A waiver of immunity is not something I take lightly. This is the first time I have voted for such a waiver. It remains to be seen whether or not Julie Harrington's case will be upheld. Today we discussed solely if the State of Maine, in putting this process out to bid, act fairly in this process of Julie Harrington's ability to alter the original program? In my judgment, we should be supportive of the motion. Thank you.

**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. When I went to work in 1957, probably not many of you were born at that time, but in any event, the first thing I did when I went to work when I was signing some papers was to sign a waiver that anything that I invented or any process that I developed was the property of the company. It seems to me that there are a couple of basic things here that we have to take into consideration. Did she do this in the performance of her duty? Was she doing it on state time? If she was, it seems to me that any programs that she developed would be the property of the state. Now, she is probably a good person and an outstanding employee. I don't argue that. But I do argue that to be allowed to go ahead and sue the state for \$400,000 is far reaching. It was mentioned that communication was the problem, and I would agree with you. If you have an employee that does great work like this, they should be rewarded in some manner. But to go ahead with legislation such as this, I think it's a little far reaching and I will be voting against the bill. I would urge you to also. Thank you.

**THE PRESIDENT:** The pending question before the Senate is Passage to be Engrossed as Amended by Committee Amendment "A" (H-1045), in concurrence. A Roll Call has been ordered. Is the Senate ready for the question?

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

**ROLL CALL (#289)**

**YEAS:** Senators: BRENNAN, BROMLEY, CATHCART, DAGGETT, DAVIS, DOUGLASS, EDMONDS, KILKELLY, KNEELAND, LAFOUNTAIN, LEMONT, MARTIN, MCALEVEY, MICHAUD, NUTTING, O'GARA, PENDLETON, RAND, ROTUNDO, SAVAGE, SAWYER, SHOREY, SMALL, TREAT, WOODCOCK, YOUNGBLOOD, THE PRESIDENT - RICHARD A. BENNETT

**NAYS:** Senators: CARPENTER, FERGUSON, GAGNON, GOLDTHWAIT, LONGLEY, MILLS, MITCHELL, TURNER

27 Senators having voted in the affirmative and 8 Senators having voted in the negative, the Resolve was **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1045)**, in concurrence

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

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On motion by Senator **DAVIS** of Piscataquis, **RECESSED** until the sound of the bell.

After Recess

Senate called to order by the President.

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**ORDERS OF THE DAY**

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

**JOINT ORDER** - relative to the Joint Standing Committee on Criminal Justice conducting a study of county jail population, costs and reimbursement.

H.P. 1731

Tabled - April 3, 2002, by President Pro Tem **MICHAUD** of Penobscot

Pending - **PASSAGE**, in concurrence

(In House, April 3, 2002, **READ** and **PASSED**.)

(In Senate, April 3, 2002, **READ**.)

**PASSED**, in concurrence.

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

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Off Record Remarks

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

**COMMUNICATIONS**

The Following Communication: S.C. 697

**120<sup>TH</sup> LEGISLATURE  
COMMITTEE ON APPROPRIATIONS AND FINANCIAL  
AFFAIRS**

April 3, 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 Appropriations and Financial Affairs has voted unanimously to report the following bills out "Ought Not to Pass":

- L.D. 29 An Act to Implement the Recommendations of the Task Force to Reduce the Burden of Home Heating Costs on Low-income Households
- L.D. 1561 An Act to Require Sprinkler Protection in all Secondary and Postsecondary Dormitories
- L.D. 2093 An Act to Promote Cultural Tourism and Economic Growth
- L.D. 2121 An Act to Authorize a General Fund Bond Issue in the Amount of \$9,500,000 to Construct New or Retrofit Existing Pollution Control Structures on Maine Farms to Protect the Environment, to Construct Environmentally Sound Water Sources that Help Avoid Drought Damage to Crops, to Recapitalize the Potato Market Improvement Fund and to Make Renovations and Enhance Wastewater Treatment at the Department of Inland Fisheries and Wildlife's Fish-rearing Facilities
- L.D. 2129 An Act to Authorize a General Fund Bond Issue in the Amount of \$43,000,000 to Improve Homeland Security in Maine, to Renovate a State Office Facility, to Build a New Correctional Facility in Machias and to Make Improvements to the Maine Correctional Center in South Windham

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. 698

**120<sup>TH</sup> LEGISLATURE  
COMMITTEE ON HEALTH AND HUMAN SERVICES**

April 3, 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. 2045 An Act to Enhance Consumer-directed Personal Assistance Services for Maine Citizens with Disabilities

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. 699

**120<sup>TH</sup> LEGISLATURE  
COMMITTEE ON INLAND FISHERIES AND WILDLIFE**

April 3, 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 Inland Fisheries and Wildlife has voted unanimously to report the following bill out "Ought Not to Pass":

L.D. 2180 An Act to Provide Funding for Conservation Education

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

Sincerely,

S/Sen. David L. Carpenter  
Senate Chair

S/Rep. Matthew Dunlap  
House Chair

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

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The Following Communication: S.C. 700

**120<sup>TH</sup> LEGISLATURE  
COMMITTEE ON TAXATION**

April 3, 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 Taxation has voted unanimously to report the following bill out "Ought Not to Pass":

L.D. 2161 An Act to Conform the Maine Tax Laws for 2001  
With the United States Internal Revenue Code

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

Sincerely,

S/Sen. Kenneth T. Gagnon  
Senate Chair

S/Rep. Bonnie Green  
House Chair

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

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

**REPORTS OF COMMITTEES**

**House**

**Divided Report**

The Majority of the Committee on **BANKING AND INSURANCE**  
on Bill "An Act to Ensure Equality in Mental Health Coverage"  
H.P. 1205 L.D. 1627

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-1051).**

Signed:

Senators:  
LaFOUNTAIN of York  
SMALL of Sagadahoc

Representatives:  
MICHAEL of Auburn  
YOUNG of Limestone  
MAYO of Bath  
SULLIVAN of Biddeford  
GLYNN of South Portland

The Minority of the same Committee on the same subject reported that the same **Ought To Pass as Amended by Committee Amendment "B" (H-1052).**

Signed:

Senator:  
DOUGLASS of Androscoggin

Representatives:  
DUDLEY of Portland  
SMITH of Van Buren  
O'NEIL of Saco  
CANAVAN of Waterville  
MARRACHÉ of Waterville

Comes from the House with the Minority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "B" (H-1052)** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "B" (H-1052) AS AMENDED BY HOUSE AMENDMENT "A" (H-1077)** thereto.

Reports **READ.**

Senator **LAFOUNTAIN** of York moved the Senate **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1051)** Report, in **NON-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 BY COMMITTEE AMENDMENT "A" (H-1051)** Report, in **NON-CONCURRENCE.**

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

**PAPERS FROM THE HOUSE**

**Non-Concurrent Matter**

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  
(H "A" H-1041 to C "A" H-973)

In Senate, April 1, 2002, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-973) AS AMENDED BY HOUSE AMENDMENT "A" (H-1041)** thereto, in concurrence.

Comes from the House, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-973) AS AMENDED BY HOUSE AMENDMENTS "A" (H-1041) AND "B" (H-1070)** thereto, in **NON-CONCURRENCE**.

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

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**ORDERS OF THE DAY**

The Chair laid before the Senate the following Tabled and Later (4/2/02) Assigned matter:

Resolve, Authorizing Michelle Booker to Sue the State  
H.P. 1672 L.D. 2174  
(C "A" H-1044)

Tabled - April 1, 2002, by Senator **MILLS** of Somerset

Pending - **PASSAGE TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1044)**, in concurrence

(In House, April 1, 2002, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1044)**.)

(In Senate, April 1, 2002, Report **READ** and **ACCEPTED**, in concurrence. **READ ONCE**. Committee Amendment "A" (H-1044) **READ** and **ADOPTED**, in concurrence. Under suspension of the Rules, **READ A SECOND TIME**.)

On motion by Senator **MILLS** of Somerset, **TABLED** until Later in Today's Session, pending **PASSAGE TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1044)**, in concurrence.

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The Chair laid before the Senate the following Tabled and Later (4/2/02) Assigned matter:

Resolve, Regarding Legislative Review of Chapter 3: Maine Clean Elections Act and Related Provision Amendments, Major Substantive Rules of the Commission on Governmental Ethics and Election Practices

H.P. 1684 L.D. 2183

Tabled - April 2, 2002, by Senator **SMALL** of Sagadahoc

Pending - **FINAL PASSAGE**, in concurrence

(In House, April 2, 2002, **FINALLY PASSED**.)

(In Senate, April 1, 2002, **PASSED TO BE ENGROSSED**, in concurrence.)

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.

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The Chair laid before the Senate the following Tabled and Later (4/1/02) Assigned matter:

HOUSE REPORTS - from the Committee on **LABOR** on Bill "An Act to Make the Unemployment Insurance Program More Responsive to the Needs of Today's Workforce"  
H.P. 944 L.D. 1258

Majority - **Ought to Pass as Amended by Committee Amendment "C" (H-839)** (7 members)

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

Tabled - April 2, 2002, by Senator **EDMONDS** of Cumberland

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

(In House, April 1, 2002, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "C" (H-839) AS AMENDED BY HOUSE AMENDMENT "B" (H-1027)** thereto.)

(In Senate, April 2, 2002, motion by Senator **EDMONDS** of Cumberland to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report **FAILED**.)

On motion by Senator **DAGGETT** of Kennebec, **TABLED** until Later in Today's Session, pending the motion by Senator **EDMONDS** of Cumberland to **RECONSIDER** whereby the Senate **FAILED** to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence.

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The Chair laid before the Senate the following Tabled and Later (4/2/02) Assigned matter:

Bill "An Act to Create the Maine Rural Development Authority"  
H.P. 1724 L.D. 2212

Tabled - April 2, 2002, by Senator **SHOREY** of Washington

Pending - **PASSAGE TO BE ENGROSSED**, in concurrence

(In House, April 2, 2002, **PASSED TO BE ENGROSSED**.)

(In Senate, April 2, 2002, Report **READ** and **ACCEPTED**, in concurrence. **READ ONCE**. Under suspension of the Rules, **READ A SECOND TIME**.)

On motion by Senator **SHOREY** of Washington, Senate Amendment "A" (S-559) **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 clarifies that the Department of Economic and Community Development is responsible for the expenses necessary to establish the Maine Rural Development Authority and that the ongoing expenses of the authority are subject to other funding. It also corrects technical errors in the bill. Thank you.

On further motion by same Senator, Senate Amendment "A" (S-559) **ADOPTED**.

**PASSED TO BE ENGROSSED AS AMENDED BY SENATE AMENDMENT "A" (S-559)**, in **NON-CONCURRENCE**.

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

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Senate at Ease.

Senate called to order by the President.

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The Chair laid before the Senate the following Tabled and Later (4/2/02) Assigned matter:

Resolve, to Study the Impact of a Maine-based Casino on the Economy, Transportation Infrastructure, State Revenues and the Job Market

H.P. 1700 L.D. 2200

Tabled - April 2, 2002, by Senator **SMALL** of Sagadahoc

Pending - **ADOPTION OF COMMITTEE AMENDMENT "A" (H-1035)**, in concurrence

(In House, April 2, 2002, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1035)**.)

(In Senate, April 2, 2002, the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED**. **READ ONCE**. Committee Amendment "A" (H-1035) **READ**.)

On motion by Senator **SMALL** of Sagadahoc, Senate Amendment "B" (S-560) to Committee Amendment "A" (H-1035) **READ**.

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

Senator **SMALL:** Thank you, Mr. President. I'm presenting this amendment today as an attempt to, at least, make what I consider a not so good bill a little less bad. I really can't give it my full approval because I have a problem often times with studies that we put out that are supposedly going to look at all the sides of an issue and actually end up being the engine that drives the legislation in the next session. I do have some concerns about that. I have concerns about casinos and I have concerns about many forms of gambling. This, in no way, gives my support for this. But if, indeed, this is a real attempt to look at all the repercussions, good and bad, about having a casino located somewhere in the state, I think we need to be objective about it and put that into the study. What my amendment would do is first, even out the appointments between the Speaker and the President so that there would be three from each body. It would specify that one of the casino opponents appointed must examine the religious, spiritual, and moral impacts of casino gambling, because there are a large number of people who oppose casinos for no other reason than that. It would clarify that the taskforce will examine the net cost of the casino to the state, so we don't look just at the revenues but also look at whatever the additional costs would be and services that would have to be provided. It would also clarify that the taskforce would examine the net effect on jobs in Maine, so not only look at the new jobs created but also look at what jobs might be lost. It would specify that the taskforce would have to examine the effect the casino would have on a 50-mile radius of its location and not the 25 miles as originally proposed, particularly if it's located in a fairly populated area, 25 miles, I don't think, would be enough of a radius to really look at the impact that people are going to feel from traffic and all the other things that would be created. Finally, it would require a survey to the social service agencies that would have to deal with the problems of gambling addictions and find out what services are available and what their cost would be to provide them to Maine people. That is my amendment and I hope that this body will be able to adopt it. Thank you.

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

Senator **SHOREY:** Thank you, Mr. President, men and women of the Senate. I rise to tell you that I will be supporting this amendment in that it equals the number of Senators that will be participating with House members. The other piece which changes slightly really doesn't change it as much as to make it objectionable because one of the things, two members of the public opposed. What it does is create a criteria for that and any criteria can be followed. So that works out fine. It also talks about verifying the amount of estimated revenues produced by the casino. This is something the study should look at anyway, as well as the number of new jobs created or lost. That is something the study should be looking at. Also the 50-mile radius compared to the 25-mile radius. A survey of various groups and agencies and organizations to determine which agencies, groups, and organizations would provide educations, assistance, and counseling, is something the study should look at. So I will be supporting this. Thank you.

On motion by Senator **SMALL** of Sagadahoc, Senate Amendment "B" (S-560) to Committee Amendment "A" (H-1035) **ADOPTED**.

Committee Amendment "A" (H-1035) as Amended by Senate Amendment "B" (S-560) thereto, **ADOPTED**, in **NON-CONCURRENCE**.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1035) AS AMENDED BY SENATE AMENDMENT "B" (S-560)** thereto, in **NON-CONCURRENCE**.

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

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

**ENACTORS**

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

**Acts**

An Act to Dissolve the Ministerial Accounts in the Town of Readfield's Trust Fund

H.P. 1416 L.D. 1860

An Act Relating to Tax Expenditure Review and Other Tax Reporting Requirements

S.P. 828 L.D. 2210

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

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An Act to Expand Family Life Education Services in Maine Schools

H.P. 1180 L.D. 1603  
(C "A" H-1024)

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

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An Act to Update the Department of Defense, Veterans and Emergency Management Laws

H.P. 1288 L.D. 1752  
(C "A" H-837; H "C" H-946; S "A" S-526)

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

An Act to Include all State-supported Institutions of Higher Education in the Clean Government Initiative

H.P. 1642 L.D. 2145  
(C "A" H-1047)

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

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

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

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On motion by Senator **SMALL** of Sagadahoc, **RECESSED** until the sound of the bell.

After Recess

Senate called to order by the President.

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**ORDERS OF THE DAY**

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

SENATE REPORTS - from the Committee on **LABOR** on Bill "An Act to Implement the Recommendations of the Workers' Compensation Board Governance Study"

S.P. 789 L.D. 2133

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

Minority - **Ought to Pass as Amended by Committee Amendment "A" (S-486)** (5 members)

Tabled - April 3, 2002, by Senator **SMALL** of Sagadahoc

Pending - motion by Senator **EDMONDS** of Cumberland to **RECEDE** and **CONCUR** (Roll Call ordered)

(In Senate, April 1, 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" (S-486)**.)

(In House, April 2, 2002, the Majority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED**, in **NON-CONCURRENCE**.)

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

Senator **SAWYER**: Thank you, Mr. President, ladies and gentlemen of the Senate. Earlier today, I don't think it was this afternoon, one of our members asked a question regarding this bill. I want to offer a response if that question still requires an answer.

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

**ROLL CALL (#290)**

YEAS: Senators: BRENNAN, BROMLEY, CATHCART, DAGGETT, DOUGLASS, EDMONDS, GAGNON, LONGLEY, MARTIN, MICHAUD, MILLS, RAND, ROTUNDO, TREAT

NAYS: Senators: CARPENTER, DAVIS, FERGUSON, GOLDTHWAIT, KILKELLY, KNEELAND, LAFOUNTAIN, LEMONT, MCALEVEY, MITCHELL, NUTTING, O'GARA, PENDLETON, SAVAGE, SAWYER, SHOREY, SMALL, TURNER, WOODCOCK, YOUNGBLOOD, THE PRESIDENT - RICHARD A. BENNETT

14 Senators having voted in the affirmative and 21 Senators having voted in the negative, the motion by Senator **EDMONDS** of Cumberland to **RECEDE** and **CONCUR**, **FAILED**.

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

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

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

HOUSE REPORTS - from the Committee on **LABOR** on Bill "An Act to Increase the Workers' Compensation Insurance Assessment to Fund a Hearing Officer Position"  
H.P. 1548 L.D. 2051

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-1036)** (7 members)

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

Tabled - April 3, 2002, by Senator **EDMONDS** of Cumberland

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

(In House, April 2, 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-1036)**.)

(In Senate, April 3, 2002, Reports **READ**.)

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

Senator **EDMONDS**: Thank you, Mr. President, men and women of the Senate. This bill, "An Act to Increase the Workers' Compensation Insurance Assessment to Fund a Hearing Officer Position" actually is slightly more than that. Last year this Legislature passed a bill authorizing a hearing officer for Aroostook County. To my mind, that was a good thing. What has happened in the intervening period is that the Workers' Compensation Board has come back to us saying that they need more funds released from the reserve account to fund that hearing officer. In the process of trying to think clearly about all these bills having to deal with Workers' Compensation, it was the opinion of the majority of the committee that we would, in fact, put the funding of the Workers' Compensation Board into this bill so that it was clear that all the funds necessary for the running of the Workers' Compensation Board were present. If you recall the previous bill, in that bill there was an \$8.6 million assessment. This bill has \$8.3 million. It's our hope that, in the chance that the executive director gets more ability to administer in the Workers' Compensation Board, things will run more efficiently and \$8.3 million will be sufficient. It's a concern of all of us, I know, that the Worker Advocate Program and the May Program get sufficiently funded. We think with the increased abilities of the executive director that will happen. I hope you will join me in voting Ought to Pass as Amended on this bill. Thank you.

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

Senator **TURNER**: Thank you, Mr. President, ladies and gentlemen of the Senate. I think further clarification is in order and I will ask that you vote against the pending motion. First of all, to address the Caribou hearing officer. We did act, at the request of the good Senator from Aroostook, Senator Martin, to ensure that a hearing officer was to be assigned permanently in Caribou. We had assurances from the executive director and the board that this could be done within their existing budget and they would relocate an officer from Bangor back to Caribou. I think we wanted that done and that was consistent with the wishes of the good Senator from Aroostook, Senator Martin. Further, and I do agree with the point that the good Senator from Cumberland, Senator Edmonds, makes, they have since some forward saying, 'gee, we made a mistake, we now need additional money.' Then the bill goes on to further take the assessment mechanism that you have already voted on in the Workers' Compensation Governance bill that we just voted on previously. It includes the budget. So this bill is an attempt to take the hearing officer mechanism and take the entire Workers' Comp Board assessment vehicle, strip it out of the Governor's bill and put it onto this bill. It's a way to try to cherry-pick a mechanism that needs help, significant help, and that is the disfunctionality of the whole Workers' Comp Board and the scheme that has kept them in gridlock now for several years. So I would ask, again, that you vote against the pending motion. Thank you.

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



Senator **MARTIN**: Thank you, Mr. President, members of the Senate. Now I'm caught between the two sides. The Senator from Cumberland, Senator Turner, is absolutely correct. That was what we were told. The other Senator from Cumberland, Senator Edmonds, basically now tells me it isn't going to happen. My only concern is that it sounds a little bit like the four - four problem of the Workers' Comp Board. But my only concern is how do I maintain the position in Aroostook? I guess, based on that, I have to go with the majority report because that is my concern. I guess I fully appreciate the comments of the Senator from Cumberland, Senator Turner, but I guess I have nowhere else to turn but to vote for the majority report.

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

Senator **TURNER**: Thank you, Mr. President. I could be mistaken, it would not be the first time today or probably any day, but I do believe that the hearing officer, in fact, is now assigned to Caribou and is functioning from that office. This now is funding to allow for the additional hearing officer. That is my understanding, but I can tell from the shaking of your head that you think otherwise.

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

Senator **MARTIN**: Thank you very much, Mr. President, members of the Senate. Let me respond that, in fact, the board did hire someone who is on board right now in Aroostook. The board did not reassign. What they did was to hire in order to fulfill the requirement, since they apparently found out they couldn't relocate because it would create a severe problem with the work load and they didn't have a slot. That position, right now, is filled under a contract. That is how they got around that. I recently found that out. In fact, we have no slot. We have a person working, and has been now since we said they had to be working, and they, in their magnanimous approach of four - four, worked out this arrangement, unbeknownst to me. So now we have that person who, in fact, has been working and the slot is needed and the money is needed. So I guess I need to urge everyone to, for the sake of Aroostook County, I beg one more time, vote for the majority 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 was looking at this amendment, H-1036, and I realize that it is \$300,000 less than the other bill on this same subject that we just voted to adhere on. My question, that I would like to pose if I may, Mr. President.

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

Senator **NUTTING**: To the good Senator from Cumberland, Senator Edmonds. The good Senator talked about that we could get by with less money in this budget because the executive director was going to have new powers and new duties to run things more efficiently. But as I read this amendment, H-1036, I don't see where there is anything proposed here to give the executive director any more authority or power. To me, all I see is just an increase in their budget. I'm kind of concerned about

the inefficiencies that have been going on there, continuing to go on there. My question would be, I must be missing something, where is the extra authority for the executive director in regards to the L.D. that is before us? Thank you.

**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 Cumberland, Senator Edmonds.

Senator **EDMONDS**: Thank you, Mr. President. The good Senator from Androscoggin, Senator Nutting, is correct. There is nothing in this amendment that would give the executive director more authority. I am hopeful that this will happen in the future.

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

Senator **MILLS**: Mr. President, just a few words on this. I don't intend to support it. Some years ago, when the Workers' Compensation system was, I think, every bit as busy as it now, they had four commissioners, part-time, who traveled the circuit around the state with a single court reporter and they held hearings all over the state. They went to Caribou, Fort Kent, Jackman, they went everywhere. All of the remote regions of the state were well served. The commissioners traveled to hold their hearings. They took a court reporter in tow with them. The attorneys needed to travel. They traveled as well. The system was oriented towards rendering service on contested cases that came before the board. As the system presently stands, we have ten or eleven hearing officers to resolve ultimate disputes in lieu of four. We have mediators that have been hired to try to resolve disputes before they reach the stage where a hearing officer has to pay attention to it. They have trouble shooters who do intake of claims at the beginning and help people get their medical records together, makes contacts with the carriers, and try to expedite and facilitate the processing of claims that perhaps ought not to be in contest at all. Then you have the employee advocates now, courtesy of this Legislature four or five years ago. We have ten or twelve such people who are hired to represent the interests of injured employees when they must go to a hearing or a mediation. So we now have four groups of professional people whose hands must touch these files, whose eyes much peruse the information, who must digest what may be contained in them. All of this gets done at the expense of the Workers' Compensation Board as the file is processed through some sort of complex dispute resolution procedure. My understanding is that because of the changes in the law in 1992, the actual number of filings has gone down. Because we have trouble-shooters and mediators and employee advocates in the system, arguably the burden on hearing officers, who are the formal judges who sit on these cases, must obviously have been greatly reduced. Not just because the numbers of claims coming through the system has been reduced, but we have a satellite of professionals in the system who help them to do so. The idea of adding another position at a time when it seems, I would say, fairly evident that the number of hearing officers ought to be diminished to eight or seven, to add another so it goes from ten to eleven just seem absurd to me. I will stand ready to be corrected if there is someone who has better information on this system than I do. But from a little bit of a detached perspective of someone who is a little bit detached from observing it closely, that's what I see going on. We have to remember that every

penny of this assessment comes out of Maine employers and Maine insurers who pass it on to Maine employers. I think that something needs to be done to cut down the size, the very size, of the Workers' Compensation Board, its members, and hearing officers. Someone needs to do a workload assessment and bring it down to earth. That is what I have to say. 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. I'm not sure what is right. I can tell you what I do know. In fact, there was an attempt by the board and director to move a position from Portland to Aroostook County to solve the problem. The person from Portland did not want to move to Aroostook County and the board caved. That's all I can tell you. So I guess what I would like, perhaps, is that someone would table the bill and I'll prepare an amendment to eliminate the position in Portland that the board didn't have the guts to do. I'd have absolutely no problem doing that. If this is not the answer, then I know where the position ought to come from because that was the decision that had been made. I can certainly solve the problem for Aroostook County. I don't know about the rest of the state.

**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 hardly my field, but I must confess that I was captured by the title that talked about a position in Caribou in which I found the budget for the Workers' Comp Board. I see from the amendment that the title is also changed, reflecting the fact that this does provide for the funding for the Workers' Comp Board. The issue where this bill started, about the position in Caribou, is somewhat caught in the crossfire of what, to me, is the larger and much more significant feature of the committee amendment before us tonight. That is this, as I figure it, an 18.5 percent increase in the spending cap. No revisions to a board which, by all accounts, has become somewhat deadlocked on almost every issue. I respect the fact that these are enormously difficult and complicated, often emotional and sometimes even heated, issues and so I'm not suggesting that I could do better than anyone who is currently serving. Nonetheless, there has been a growing sense that it's very difficult to get a decision out of the board in its current form. The amendment provides that board, at its discretion, I'm quoting from the amendment, 'may authorize use of funds in the reserve', which kind of eliminates any oversight on how much and when or for what purpose that reserve was dipped in to by the board. It sounds a bit like kind of a blank check for this board to overspend its budget, which it has done previously. The reserves have been used, as I understand, twice before in the history of the board, once for a one-time infusion of money when the board was over spending its budget, and once as we were, I believe, transitioning to a new structure. But this would simply provide that any time it chose, the board at its discretion, could enter and use that reserve. I guess I'll add another voice to the suggestion that this amendment should either be defeated or at least these issues need to be separated so that the Senator from Aroostook, Senator Martin's, Caribou hearing officer position can be

addressed without being caught in this crossfire because, in its current form, I certainly can't support this amendment. I don't think it is fiscally responsible and I think it leaves a state entity in full control of a budget that it has exceeded in the last year or two, I believe, and with no oversight regarding use of the very precious reserves that it creates. So I will be opposing the pending motion in its current form. Thank you.

The Chair ordered a Division.

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

Same Senator moved the Bill and accompanying papers be **TABLED** until Later in Today's Session, pending the motion by Senator **EDMONDS** of Cumberland to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence. (Roll Call ordered)

The Chair ordered a Division. 22 Senators having voted in the affirmative and 13 Senators having voted in the negative, the motion by Senator **MARTIN** of Aroostook to **TABLE** until Later in Today's Session, pending the motion by Senator **EDMONDS** of Cumberland to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence, **PREVAILED**. (Roll Call ordered)

The Chair laid before the Senate the following Tabled and Later (4/1/02) Assigned matter:

HOUSE REPORTS - from the Committee on **LABOR** on Bill "An Act to Protect the Rights of Maine Citizens Under Collective Bargaining Agreements" (EMERGENCY)

H.P. 1595 L.D. 2098

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-887)** (7 members)

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

Tabled - April 1, 2002, by Senator **EDMONDS** of Cumberland

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

(In House, April 1, 2002, the Majority **OUGHT TO PASS** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-887)**.)

(In Senate, April 1, 2002, Reports **READ**.)

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

Senator **EDMONDS:** Thank you, Mr. President, men and women of the Senate. I just wanted to give you a sense of this bill. This allows for random or arbitrary drug testing to be imposed in the collective bargaining process. However, it clarifies that such a

program cannot be imposed by unilateral imposition of the employer's last best offer. For example, when bargaining reached an impasse. It became clear, in the public hearing, that while nearly everyone agrees that the opportunity to have random drug testing for cause is important, it was not clear, in fact was very true, that people were not interested in having drug testing imposed on people who did not collectively bargain that. The problem has arisen that folks who are bargaining in good faith, having random drug testing on the table in their bargaining process, when they reach an impasse, the company offers its' last best offer. They say random drug testing is part of their last best offer and people are forced into this position. It was felt by the majority that this is a unfair way of reaching this decision. I would urge you to join me in the Majority Ought to Pass as Amended Report.

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

Senator **TURNER:** Thank you, Mr. President, good evening ladies and gentlemen of the Senate. I would ask that you oppose the pending motion and ask you to reflect on the purpose of random drug testing. That is simply to deter workers from reporting to work impaired. Taking away this ability is dangerous to employees. It is important that we protect their safety. It is important that we protect the safety of their co-workers. Further, it is my opinion that this bill interferes in the collective bargaining process. It's a very bad precedent when the legislature tries to intervene in the free bargaining process. I think we all understand that it is not equitable, further in my opinion, to allow random testing for some employees in the work place and not others. For those of you who have issues of substance abuse in your communities or your districts, I don't think I need to tell you that our society, nationally and in Maine particularly, unfortunately is ripe with substance abuse. We, as a people, spend millions of dollars a year trying to deal with this matter. This bill, in my judgment, seeks to remove one of the tools in our fight against such abuse. I would urge that you vote against the pending motion. Thank you.

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

Senator **EDMONDS:** Thank you, Mr. President, men and women of the Senate. I just wanted to make clear that there was no one in the hearing or on the committee who doesn't agree that drug testing is often a necessary procedure. But it needs to be done for cause. If you're going to have random drug testing, and you want that as part of your bargaining, you need to be able to bargain in good faith. It can't just be held out and forced on people in their last best offer. Thank you.

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

Senator **TURNER:** Thank you, Mr. President, ladies and gentlemen of the Senate. I would offer one additional piece of information. There was a question during the hearing on this bill as to whether or not there was the matter of preemption with federal labor law. We did have, albeit a tepid response, from the Attorney General suggesting that perhaps, indeed, federal labor law would preempt in this particular matter. I am in receipt of a letter that adjudicated a particular case relevant to what we are

discussing. It involves Georgia Pacific Corporation and the Paper, Allied Industrial, Chemical and Energy International Union, PACE for short. In a letter dated March 28<sup>th</sup> of this year, the regional director, Rosemary Pye, of the U.S. Government National Labor Relations Board in Boston ruled against labor's position in this. While I won't read all of the letter to you, it speaks specifically to the preemption matter. So I think we have now a case that can be appealed. But preemption is at hand on this issue. Thank you.

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

Senator **EDMONDS:** Thank you, Mr. President, men and women of the Senate. I am aware of this letter and I think the feeling of the majority was that it needs to be able to go to adjudication if that is necessary.

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 Doorkeepers secured the Chamber.

The Secretary opened the vote.

#### ROLL CALL (#291)

**YEAS:** Senators: BRENNAN, BROMLEY, CATHCART, DAGGETT, DOUGLASS, EDMONDS, GAGNON, KILKELLY, LAFOUNTAIN, LONGLEY, MARTIN, MICHAUD, NUTTING, O'GARA, PENDLETON, RAND, ROTUNDO, TREAT

**NAYS:** Senators: CARPENTER, DAVIS, FERGUSON, GOLDTHWAIT, KNEELAND, LEMONT, MCALEVEY, MILLS, MITCHELL, SAVAGE, SAWYER, SHOREY, SMALL, TURNER, WOODCOCK, YOUNGBLOOD, THE PRESIDENT - RICHARD A. BENNETT

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

#### READ ONCE.

Committee Amendment "A" (H-887) **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-887)**, in concurrence.

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

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

HOUSE REPORTS - from the Committee on **LABOR** on Bill "An Act to Make the Unemployment Insurance Program More Responsive to the Needs of Today's Workforce"

H.P. 944 L.D. 1258

Majority - **Ought to Pass as Amended by Committee Amendment "C" (H-839)** (7 members)

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

Tabled - April 3, 2002, by Senator **DAGGETT** of Kennebec

Pending - motion by Senator **EDMONDS** of Cumberland to **RECONSIDER** whereby the Senate **FAILED** to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence

(In House, April 1, 2002, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "C" (H-839) AS AMENDED BY HOUSE AMENDMENT "B" (H-1027)** thereto.)

(In Senate, April 2, 2002, motion by Senator **EDMONDS** of Cumberland to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report **FAILED**.)

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

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

**ROLL CALL (#292)**

YEAS: Senators: BRENNAN, BROMLEY, CATHCART, DAGGETT, DOUGLASS, EDMONDS, GAGNON, KILKELLY, LAFOUNTAIN, LONGLEY, MARTIN, MCALEVEY, MICHAUD, NUTTING, O'GARA, PENDLETON, RAND, ROTUNDO, TREAT

NAYS: Senators: CARPENTER, DAVIS, FERGUSON, GOLDTHWAIT, KNEELAND, LEMONT, MILLS, MITCHELL, SAVAGE, SAWYER, SHOREY, SMALL, TURNER, WOODCOCK, YOUNGBLOOD, THE PRESIDENT - RICHARD A. BENNETT

19 Senators having voted in the affirmative and 16 Senators having voted in the negative, the motion by Senator **EDMONDS** of Cumberland to **RECONSIDER** whereby the Senate **FAILED** to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence, **PREVAILED**.

The Chair ordered a Division.

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

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

**ROLL CALL (#293)**

YEAS: Senators: BRENNAN, BROMLEY, CATHCART, DAGGETT, DOUGLASS, EDMONDS, GAGNON, KILKELLY, LAFOUNTAIN, LONGLEY, MARTIN, MCALEVEY, MICHAUD, NUTTING, O'GARA, PENDLETON, RAND, ROTUNDO, TREAT

NAYS: Senators: CARPENTER, DAVIS, FERGUSON, GOLDTHWAIT, KNEELAND, LEMONT, MILLS, MITCHELL, SAVAGE, SAWYER, SHOREY, SMALL, TURNER, WOODCOCK, YOUNGBLOOD, THE PRESIDENT - RICHARD A. BENNETT

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

**READ ONCE.**

Committee Amendment "C" (H-839) **READ**.

House Amendment "B" (H-1027) to Committee Amendment "C" (H-839) **READ** and **ADOPTED**, in concurrence.

Committee Amendment "C" (H-839) as Amended by House Amendment "B" (H-1027) thereto, **ADOPTED**, in concurrence.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "C" (H-839) AS AMENDED BY HOUSE AMENDMENT "B" (H-1027)** thereto, in concurrence.

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

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

**ENACTORS**

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

**Emergency Measure**

An Act to Amend Maine's Wild Turkey Hunting Season  
S.P. 721 L.D. 1923  
(H "A" H-1076 to C "A" S-430)

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.

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**Acts**

An Act to Revise the Definition of Affordable Housing  
H.P. 1596 L.D. 2099  
(C "B" H-1075)

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

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An Act to Implement the Recommendations of the Commission to Develop a Plan to Implement the Closure of State Liquor Stores

H.P. 1623 L.D. 2123  
(C "A" H-1049)

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

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

**RECALLED FROM ENROSSING**

Bill "An Act to Supplement Maine's Academic Attainment and to Retain Talent"

H.P. 1655 L.D. 2162  
(C "A" H-1055)

(In House, April 2, 2002, **PASSED TO BE ENROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1055).**)

(In Senate, April 2, 2002, **PASSED TO BE ENROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1055)**, in concurrence.)

(**RECALLED** from Enrossing pursuant to Joint Order (S.P. 831).)

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Senate at Ease.

Senate called to order by the President.

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On motion by Senator **BROMLEY** of Cumberland, the Senate **RECONSIDERED** whereby the Bill was **PASSED TO BE ENROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1055)**, in concurrence.

On further motion by same Senator, the Senate **RECONSIDERED** whereby it **ADOPTED** Committee Amendment "A" (H-1055), in concurrence.

On further motion by same Senator, Senate Amendment "A" (S-558) to Committee Amendment "A" (H-1055) **READ**.

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

Senator **BROMLEY:** Thank you, Mr. President, men and women of the Senate. This is the technicality I referred to before, just to align some wording. Thank you very much.

On further motion by same Senator, Senate Amendment "A" (S-558) to Committee Amendment "A" (H-1055) **ADOPTED**.

Committee Amendment "A" (H-1055) as Amended by Senate Amendment "A" (S-558) thereto, **ADOPTED**, in **NON-CONCURRENCE**.

**PASSED TO BE ENROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1055) AS AMENDED BY SENATE AMENDMENT "A" (S-558)** thereto, in **NON-CONCURRENCE**.

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

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

**ENACTORS**

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

**Act**

An Act to Adopt the Model Business Corporation Act in Maine  
H.P. 283 L.D. 361  
(C "A" H-1037)

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

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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 Include a Woman Veteran on the Board of Trustees of the Maine Veterans' Homes

H.P. 1723 L.D. 2211

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

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An Act to Reduce Medical Errors and Improve Patient Health  
S.P. 419 L.D. 1363  
(S "A" S-532 to C "A" S-527)

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

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An Act to Safeguard Volunteer Firefighters' Regular Employment  
H.P. 1449 L.D. 1946  
(S "A" S-536 to C "B" H-947)

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

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

**ENACTORS**

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

**Mandate**

An Act Concerning Student Threats  
H.P. 1474 L.D. 1975  
(S "A" S-546 to C "B" H-922)

This being a Mandate, in accordance with the provisions of Section 21 of Article IX of the Constitution, 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 **PASSED TO BE ENACTED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

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**Acts**

An Act to Establish the Community Preservation Advisory Committee  
H.P. 1565 L.D. 2070  
(S "A" S-542 to C "A" H-950)

An Act Regarding Essential Programs and Services  
H.P. 1602 L.D. 2103  
(S "A" S-540 to C "A" H-1002)

An Act to Implement the Recommendations of the Returnable Container Handling and Collection Study  
H.P. 1685 L.D. 2184  
(S "A" S-539)

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

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**ORDERS OF THE DAY**

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

An Act to Safeguard Volunteer Firefighters' Regular Employment  
H.P. 1449 L.D. 1946  
(S "A" S-536 to C "B" H-947)

Tabled - April 3, 2002, by Senator **SMALL** of Sagadahoc

Pending - **ENACTMENT**, in concurrence

(In Senate, April 2, 2002, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "B" (H-947) AS AMENDED BY SENATE AMENDMENT "A" (S-536)** thereto, in **NON-CONCURRENCE**.)

(In House, April 3, 2002, **PASSED TO BE ENACTED**.)

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

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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 Develop a Living Memorial in Capitol Park in Honor of the Victims and Heroes of the September 11, 2001 Tragedy  
H.P. 1488 L.D. 1991  
(S "A" S-544 to C "A" H-801)

Resolve, to Recognize Veterans of World War II and the Korean War in the State House Hall of Flags  
S.P. 735 L.D. 2046  
(S "A" S-543 to C "A" S-449)

Resolve, to Continue the Study of the Benefits and Costs for Increasing Access to Family and Medical Leave for Maine Families

H.P. 1556 L.D. 2058  
(S "A" S-545 to C "A" H-847)

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

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

**REPORTS OF COMMITTEES**

**House**

**Divided Report**

The Majority of the Committee on **JUDICIARY** on Bill "An Act to Implement the Recommendations of the Committee to Review the Child Protective System"

H.P. 1644 L.D. 2149

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

Signed:

Senators:

RAND of Cumberland  
McALEVEY of York  
FERGUSON of Oxford

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  
SHERMAN of Hodgdon

The Minority of the same Committee on the same subject reported that the same **Ought To Pass as Amended by Committee Amendment "B" (H-1079)**.

Signed:

Representative:

MENDROS of Lewiston

Comes from the House with the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1078)**.

Reports **READ**.

Senator **RAND** of Cumberland moved the Senate **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1078)** 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 BY COMMITTEE AMENDMENT "A" (H-1078)** Report, 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 Expand Family Life Education Services in Maine Schools

H.P. 1180 L.D. 1603  
(C "A" H-1024)

Tabled - April 3, 2002, by Senator **DAVIS** of Piscataquis

Pending - **ENACTMENT**, in concurrence

(In Senate, March 27, 2002, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1018)**, in concurrence.)

(In House, April 2, 2002, **PASSED TO BE ENACTED**.)

On motion by Senator **DAVIS** of Piscataquis, 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 (#294)**

YEAS: Senators: BRENNAN, BROMLEY, CARPENTER, CATHCART, DAGGETT, DOUGLASS, EDMONDS, FERGUSON, GAGNON, GOLDTHWAIT, KILKELLY, LAFOUNTAIN, LONGLEY, McALEVEY, MICHAUD, MILLS, MITCHELL, NUTTING, O'GARA, PENDLETON, RAND, ROTUNDO, SMALL, TREAT, TURNER, THE PRESIDENT - RICHARD A. BENNETT

NAYS: Senators: DAVIS, KNEELAND, LEMONT, MARTIN, SAVAGE, SAWYER, SHOREY, WOODCOCK, YOUNGBLOOD

26 Senators having voted in the affirmative and 9 Senators having voted in the negative, was **PASSED TO BE ENACTED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

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

An Act to Update the Department of Defense, Veterans and Emergency Management Laws

H.P. 1288 L.D. 1752  
(C "A" H-837; H "C" H-946; S "A" S-526)

Tabled - April 3, 2002, by Senator **DOUGLASS** of Androscoggin

Pending - **ENACTMENT**, in concurrence

(In Senate, April 1, 2002, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-837); HOUSE AMENDMENT "C" (H-946) AND SENATE AMENDMENT "A" (S-526)**, in **NON-CONCURRENCE**.)

(In House, April 3, 2002, **PASSED TO BE ENACTED**.)

On motion by Senator **DOUGLASS** of Androscoggin, the Senate **SUSPENDED THE RULES**.

On further motion by same Senator, the Senate **RECONSIDERED** whereby the Bill was **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-837); HOUSE AMENDMENT "C" (H-946) AND SENATE AMENDMENT "A" (S-526)**.

On further motion by same Senator, the Senate **SUSPENDED THE RULES**.

On further motion by same Senator, the Senate **RECONSIDERED** whereby it **ADOPTED** Senate Amendment "A" (S-526).

On further motion by same Senator, Senate Amendment "A" (S-526) **INDEFINITELY POSTPONED**.

On further motion by same Senator, Senate Amendment "B" (S-558) **READ**.

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

Senator **DOUGLASS:** Mr. President, men and women of the Senate, this bill is a correction. You heard me explain that the War Orphans Benefit for students who go to our universities might be more than the cost of their education. The language that was used in the first bill used the word tuition. Now, by using the word education, the cost of their education, the monies will be used to reimburse the cost of their education. That covers other items, such as fees, that we had intended to cover but had inadvertently put the word tuition in the bill.

On further motion by same Senator, Senate Amendment "B" (S-558) **ADOPTED**.

**PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-837); HOUSE AMENDMENT "C" (H-946) AND SENATE AMENDMENT "B" (S-558)**, in **NON-CONCURRENCE**.

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

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

HOUSE REPORTS - from the Committee on **BANKING AND INSURANCE** on Bill "An Act to Ensure Equality in Mental Health Coverage"

H.P. 1205 L.D. 1627

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-1051)** (7 members)

Minority - **Ought To Pass as Amended by Committee Amendment "B" (H-1052)** (6 members)

Tabled - April 3, 2002, by Senator **LAFOUNTAIN** of York

Pending - motion by same Senator to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1051)** Report, in **NON-CONCURRENCE**

(In House, April 3, 2002, the Minority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "B" (H-1052)** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "B" (H-1052) AS AMENDED BY HOUSE AMENDMENT "A" (H-1077)** thereto.)

(In Senate, April 3, 2002, Reports **READ**.)

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

Senator **LAFOUNTAIN:** Thank you, Mr. President, men and women of the Senate. I rise this evening and encourage you to support the Majority Ought to Pass as Amended Report. This bill has been one of the most difficult issues for me in my tenure here in Augusta. I've actually seen it a couple of times. The public hearings always involve people I know from home coming to testify in support of the bill or people who work in this very building coming to tell us why we should be supporting mental health parity. Their stories are truly compelling, relative to their mental health illnesses in their family, including bi-polar, schizophrenia, ADD, ADHD, PTSD, and so forth. In better economic times, I would be supporting the bill or one of the other amendments. But because these are not better economic times, I cannot support anything other than the Majority Ought to Pass as Amended Report. I had the fortune to attend a conference back in March in Charleston, South Carolina. It was a conference put on by the National Conference of Insurance



Legislators. We had a presenter come to us to talk to us about the current state of health insurance. This presenter equated the current state of health insurance with the book or movie The Perfect Storm. For anyone who knows the story of The Perfect Storm, it's a story about a fishing boat that leaves Gloucester Harbor and heads to the Bay of Fundy to fish and gets caught in a weather system, which is actually, if I'm not mistaken, 3 different systems converging in one spot at one time. We all know the results from that book and movie, it spelled disaster for the fishing boat captain and his crew. Well this presenter told us that what we have with health insurance today is the perfect storm. On one front we have the high, increased cost of health care in this state and throughout the country. That front comes together with what is standing there in the middle, which is a slowed or stalled economy. Another front converges, which is the skyrocketing insurance premiums that we have all seen in not only our personal insurance premium bills, but those of our constituents. The forth front that converges in this situation is costly mandates imposed by legislators. This perfect storm, like death for the people in The Perfect Storm book and movie, creates a system where people can't afford health insurance coverage. We all know too well what is happening in our current economy with the state of health care and health insurance. I know very well by looking at my own seatmate, the good Senator from Penobscot, Senator Cathcart, who I watched for several weeks last month try to find a way to help the university system meet its obligation to fund health insurance premiums as a result of a drastic and dramatic increase that the university sought. The Senator from Penobscot, Senator Cathcart, was a great advocate for the university system, but unfortunately we can't do the same for private businesses in our communities. If the insurance premiums go up for business A, B, and C in my community, I don't have the luxury of putting a bill in before this Legislature seeking to bail them out so they don't have to pay the bill, so that the legislature or the State of Maine pays it. That's not a luxury we can afford. I have seen, in my own community, various businesses that offered 100 percent coverage slowly reduce their coverage in payment of premiums to somewhere around 50 percent or lower. The City of Biddeford at one time paid 100 of its teachers health insurance premiums. Today that is somewhere around 85 percent. One of the presenters before our committee in opposition to the bill presented evidence about one of the members of his association. I would like to briefly read to you that testimony. 'One of my members operates an in-state chain of discount stores and employs approximately 800 people. Five years ago this firm offered employees health-care on a 50-50 employer/employee cost sharing basis, 67 percent of the employees availed themselves of the benefit. Presently the company has increased its share of the benefit to 75 percent and only 29 percent of the employees has joined the plan. The manager of the firm says that even 25 percent of the premium has become too much for employees to assume. The insurance premium for the company is presently \$992 per month per employee, regardless of whether the coverage is for an individual or a family. Given this employer's recent annual increase, there is no reason to believe there will not be like general hikes in the immediate future. Assuming some 250 employees avail themselves of the current plan, simple logic dictates that another \$30,000 to \$50,000 increase to cover a new mandate could decide whether this employer will continue the struggle.' There was a study released by the Maine Hospital Association which indicated the top ten reasons why people are uninsured in the State of Maine. The number one reason, which 79 percent of the

people indicated was their reason, is because health insurance premiums in this state are much too high. What the majority report does is maintain consistency with current law dealing with the seven biologically based mental illnesses. For anyone who served in the 117<sup>th</sup> Legislature, I believe that was the session in which this issue was debated. I remember that debate very well, not only because of the important issue, but because of the various personalities debating the issue in the other chamber. As a compromise, there were seven biologically based mental illnesses that would be included in insurance coverage for large groups. A large group is normally a group of 51 or more. However under mental health coverage, a large group is considered 21 or more. Actually the 21 to 50 range would be, in any other area of insurance law, considered a small group. We are not asking to expand that list because we believe that people cannot afford the premiums. Businesses cannot afford the premiums and individuals cannot afford the premiums. What we are doing is recognizing that LCPCs, Licensed Clinical Professional Counselors, who can currently treat people for various mental illnesses, be reimbursed by insurance. Currently, they are one of the only types of therapists that cannot be reimbursed. We're also asking, in the majority report, that residential services be covered for the purposes of insurance reimbursement for a 30-day period. The essential issue in this situation is, if we move to a mental health parody, what is the ultimate outcome? We are convinced, based upon statistics that we have received this session and in previous sessions, that the more mandates and costly mandates that are imposed on the system, you will only see more people dropped from the private insurance roles. For those reasons, I encourage you to support the Majority Ought to Pass Report.

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

**Senator DOUGLASS:** Mr. President, women and men of the Senate, I rise to urge you to vote against the pending motion so that we can go on to the minority report, which includes some additional categories of mental health in the standard insurance contract in Maine. I'd like to give you one of the best reasons to vote for this, and that is that it is cost effective. The committee received information from Anthem, Blue Cross/Blue Shield indicating that they expected this mandated benefit would cause their premiums to go up .4 percent. I was concerned about what that actually meant, and when I had that translated to the standard policy for a family, it was something \$3 or less per month. So this is not an expensive matter and it has some profound positive effects. It actually saves the State of Maine at least \$1 million. How does it do that? Currently people who are getting mental health coverage might be Medicaid eligible even though they may have other private insurance. We had two entities or departments of the State of Maine government that talked to us or gave us information about the cost savings. The first was the report that we got from the Bureau of Insurance on this L.D. When we go to enact a mandate or consider it, we have to have a full study by the Bureau of Insurance. That was done here. This was with regard to enacting what would be called full parody, which means all mental illnesses would be covered. That is what this study spoke of. That was a reported savings of \$20 million. This comes from a report that comes in the binders that you will find on the shelves in our committee room or it may even be in my file that I have here on my desk. I have some of the excerpts. That was for full mental illness coverage. The

Minority Report, which I hope we will go on to consider, covers 11 categories of mental illness. It does not cover the entire diagnostic list that is fairly long. It covers psychotic disorders; disassociative disorders; mood disorders; anxiety disorders; personality disorders; paraphilias, I never did find out what that is; attention deficit and disruptive disorders; pervasive developmental disorders; tick disorders; eating disorders, including anorexia and bulimia; and substance abuse related disorders. I'm just going to give you an example about anorexia and bulimia and how you can figure out for yourselves if this actually will be cost saving. I think the same would be true of depressive disorders in terms of someone who has a failed suicide attempt and then is living as a cripple and requires assistance from the State of Maine. When dealing with anorexia and bulimia, frequently there is hospitalization that is required at the end of this disease. Some people do recover from it and some don't. What this coverage does is mandate preventive care. Basically, it would provide our citizens who do purchase insurance for a very modest cost an ability to have those disorders treated and it will save not only the State of Maine, but I argue, the insurers from the ultimate outcome of some of those, which is in the case of anorexia is a slow, wasting death, and usually hospitalization. That is the reason for my support of the Minority Report and my hope that you will consider these facts and perhaps others that will be given and vote against the pending motion. Thank you.

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

Senator **GAGNON:** Thank you, Mr. President, men and women of the Senate. We've heard a lot of statistics and a lot of numbers and dollars. The good Senator from York, Senator LaFountain, asks what is the ultimate outcome. Let me tell you what the outcome was one night in Waterville without parody and with a mental health system that failed. A young man, who had been going through considerable trouble and had been seeking some assistance from a chapel in the City of Waterville, broke into the church one evening after the chapel had closed and the nuns were still there. In his condition, he believed that the nuns that were still there were representatives, or whatever you want to call it, of Satan. He picked up a statue and brutally beat three of the nuns, killing two of them. This happened about 6 years ago now. You will recall the incident, I'm sure, as it was quite significant. Amazingly, that order of nuns, of which there are only two left in the United States and who have now merged together because of the loss of the nuns in Waterville, forgave the man because he was ill. They forgave all of us, because we failed to take care of him. At the funeral, officials from the church talked only about forgiveness and concern for the man. The family of this man, who obviously is no longer around with us, understandably was absolutely devastated. This was their son who had experienced a life of mental illness, bipolar disorder, which they had minimal assistance from their insurance and from other sources. They had done everything they could. In this family, his mother and father, one has become very much an activist in these issues and the other one is having a difficult time, still today, being seen in public. They are amazing people who had to deal with an incredibly difficult disease. When these issues come before us, I had promised them that I would do everything I could. I will be voting against the pending motion and supporting the minority report because we can't afford not to.

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

Senator **KILKELLY:** Thank you, Mr. President, men and women of the Senate. I want to just briefly talk about two things tonight. One is the whole issue of mandates. It is interesting to me that whenever there is any discussion about the mandate or anything that is being required, there is an automatic link to an increase in cost. One of the mandates that I was involved with a few years ago had to do with mammography and whether or not insurance companies should be required to cover mammograms. There were some rather specious arguments about the fact that the service would be overused, but I won't go into that. At the time, a very dear friend of mine was dying of breast cancer. My response to one of the members in the lobby who said to me that this was terribly expensive and we couldn't possibly afford it was that for the amount of money that was spent on my friend's care you could cover mammograms in my county forever, and by the way, she might not be dying. She passed away a couple of months later, leaving two young kids. It is just amazing to me that we have not evolved to the point of looking at these things and being able to evaluate them in a fair and reasonable manner. Within about six weeks of each other this winter, I received two phone calls from constituents of mine. Both were families that I have known very well for a long time. Both were dealing with young daughters who were suffering from anorexia. In both cases the families were wonderful and loving families. The parents were well employed and insured. They had assumed that the insurance coverage that they purchased would, in fact, cover the needs of their families. In one case, the family was on the verge of losing their house and making a decision between working hard to keep their house or working hard to keep their child alive, in the program that she was in and was beginning to make a recovery. In the second case it hadn't gotten quite that far but it was on the verge of getting there. They were having again, to make decisions about what care was best for their child but could they do it. In both cases, I was able to refer them to the Department of Human Services where they were able to get assistance for the programs that their daughters needed. There is a cost savings to the state when people who are paying for insurance coverage can get the coverage that they need and the taxpayers of the state don't need to subsidize that insurance coverage. So I would urge you to vote against the motion that is before us and I would hope that as time goes on that we will, in fact, evolve to the point of being able to look at these issues as broadly as possible and understand that mandates are not always a cost increase. Thank you.

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

Senator **RAND:** Thank you, Mr. President, men and women of the Senate. I, too, would urge you to reject the Majority Ought to Pass Report so that we can go on to accept the minority report. I'd like to point out just two things that I think, if they have been said already or if you have read them, certainly demand to be repeated. Mental illnesses are medical illnesses. Very often they are a chemical deficiency or over abundance in the brain. Treatments for mental illnesses have very high success rates. Success rates are consistently 20 percent higher than for diseases such as heart disease. The other important fact, I think, is that federal workers have had parody since January 2001. Despite the prediction that the costs were going to soar beyond

the stratosphere, premiums went up only 1.3 percent. We all acknowledged there would be some increase because more services would be covered. Overall, with managed care policies, which we know most people have now, it was .3 percent. Actually, we could be doing the insurance companies a big favor by rejecting this report and accepting the minority report because, in the long run, just as with mammograms and some of the mandates we have put on for prostate cancer and other things that we have deemed as important, they are life savers and they are money savers. I would urge you to reject this report.

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

Senator **BRENNAN:** Thank you, Mr. President, men and women of the Senate. I would ask each and every one of you, for one second, to remember when you made the decision to run for public office and what it was like the first time that you were interviewed for TV or for radio. The fear that kind of crept in, the little bit of adrenaline, and maybe hoping that the situation you were in would get over fairly soon. There are people in the State of Maine that, every day, from the time they wake up until the time they go to sleep, have that fear. It doesn't go away because of their mental illness. The unfortunate part is that the fear that they have is treatable and it could be easily turned into a sense of confidence. What this bill will do, if we reject the current motion and go to the minority report, is allow those people across the state that live with that fear and live with that anxiety to put that aside and to live a productive life in our communities. Some people have raised the issue of cost. Let me give you one cost. In 1998, the Senator from Kennebec, Senator Daggett, and myself were co-chairs of the Joint Select Committee on Substance Abuse. The title of our report was The Largest Hidden Tax in Maine. Each year the State of Maine loses \$1 billion to lost productivity, treatment, and to a number of other issues related to substance abuse. That is a real cost, \$1 billion each year to the State of Maine due to substance abuse. What we found in that report was that even people that wanted treatment could not get access to treatment because they didn't have coverage in their insurance plan. That's not right. We shouldn't have that in the state, when people want service, want to seek treatment, and can't get it. This bill will allow those people in the State of Maine that are currently suffering from substance abuse, that are not productive, that are a tremendous cost to our health care system, to get the services they need early on to reduce the cost. Lastly, and I think most importantly, is the distinction between mental health and physical health is an archaic distinction. We have evidence, research, reports, studies, and books that show that there is an artificial distinction when we are talking about physical care versus mental health care. It is simply not right in 2002 that if you have a physical illness you get unlimited care but if you have a mental illness, you get limited care. What I hope tonight is that this body will take a step in 2002 to end that archaic distinction and to vote against the pending motion and go on and support the minority report. Thank you.

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

Senator **SMALL:** Thank you, Mr. President, men and women of the Senate. I rise as one of the members of the majority report

and I have to say, in all honesty, that I didn't attend the hearing on this as I came to the committee rather late in the session. I sincerely wish that it was the Senator from Cumberland, Senator Abromson, here today giving this speech instead of me because he understood the issues so much better and I think he would have been a much better ally for the good Senator from York, Senator LaFountain, in the discussions on this issue because he certainly knew these issues inside and out. I'm relatively new to them. I do have to say, though, that my brief attendance in that committee, on several other bills that are before us that dealt with the cost of health insurance for small businesses, I was able to attend the hearing and some of the work sessions on them. As I was sitting there, looking through some of the testimony that came in from small businesses on both of the bills, over and over again they discussed the fact that they could not keep up with the rising insurance premiums and they were going to have to drop their insurance, they were going to have to have their employees pay more. There was a sense of franticness about some of the testimony there. Again, it wasn't on this bill, it was on other bills that were proposed to try to bring some relief to these small business owners who are attempting to do their best for their employees. I'm not sure that the legislation that we worked on is going to be the answer for them, but certainly the concerns were heard. I don't think anyone here today doesn't believe that there should be help for people who are suffering from these disorders, but as I look at the list of all the potential disorders, I don't see how it could not have an enormous price tag. I see some disorders here that, frankly, I remember the legislature could come under some of these. I'm not being facetious about this. If you look at some of these, there is everything from nicotine dependency to bereavement; phase of life problems, perhaps I'll be going through that as soon as I finish up my term here; academic problems, there is a list of problems that children experience in the school setting; and it seems to me that there could be some extraordinarily high costs to these problems. Again, it's not that we shouldn't deal with them, but is it really fair to put the cost of that on the employers who have two options. They have the option to incur the additional cost or to get rid of the insurance for their employees, thus leaving them without any option at all. So we just have to make a decision of whether or not this is something that we think is affordable and will it be afforded. Will the small businesses, the over 21 businesses, continue to provide insurance? Many said that at the next increase they were dropping it. Are we going to take away any opportunity for health insurance from many Maine families by enacting one more mandate? I supported a number of the other mandates, the mammogram and the prostate cancer screening, because I felt that there was an actual cost savings and I think we've heard testimony to prove that this was the case. But in this one, I just see a significant tail to this, that I don't think we've really gotten a grasp on, that will be the cost. For that reason, I just had to go along with the majority report on this and just say that, at this point in time, our small businesses simply can't afford this. I hope you will support the Majority Ought to Pass Report. Thank you.

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

Senator **MCALLEVEY:** Thank you, Mr. President, men and women of the Senate. I appreciate the comments I've heard from everyone on both sides of this issue. It's not easy. I'll be very brief. I just want to address two items. I think the overriding cost

to small businesses or large businesses is much larger if we don't look at treating all of our mental illnesses. Lost productivity. It is certainly a lot more expensive to pay for an emergency room visit and treatment for whatever is going wrong than it is to provide some prophylactic, up front treatment. Statistically, of the 35 of us in this room, 7 of us suffer from some sort of mental illness. But try to put yourself into this position. Look at it from the other side. Look at how ridiculous this is. I think we are moving in the right direction by looking at mental illness as an illness in totality. How would you like to be diagnosed with a terrible disease, and I hope none of us are ever in that position, and have your doctor say, 'let's see, you've been diagnosed with cancer, but let's look it up in the book and see which form of cancer the insurance company will pay for. If you've got this or this or this, we'll take care of it. But I'm sorry, you've got this type of disease or this type of cancer and the insurance company has a big deductible or just flat out won't pay.' That is what we are saying to people with mental illness that are in this other category. An illness is an illness. I'm glad to see that we are coming forward with some enlightened legislation to provide for people who suffer from a treatable disease, who, in the long run, seek treatment, seek affordable treatment through their insurance companies, do not miss work, do not end up in jail, do not end up in emergency rooms getting sutured or having their stomach pumped out or having some serious counseling offered to them. That is a heck of a lot more expensive than this plan. I don't want to put any more burden on any of our businesses in Maine, whether it is a mandate or not. I know insurance is a major problem. It's about time we came out of the dark ages, and as policy makers, stepped up to the plate and put all of these illnesses on the same level. I'm not going to get into the argument of what it is going to cost or not cost the insurance companies. Quite frankly, I don't care. I would like to see some parody. I do usually follow and respect the light of the good Senator from York, Senator LaFountain, as I trust his judgment. I just think that tonight we should do what is right and reject the recommendation of the committee, which is no reflection upon my respect for the committee process, and adopt the minority report. If we do that, this state will be a lot safer and many citizens in our state will be able to receive full treatment, which I believe they are entitled to. Thank you.

**THE PRESIDENT:** The pending question before the Senate is Acceptance of the Majority Ought to Pass Report.

The Chair ordered a Division

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

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

**ROLL CALL (#295)**

**YEAS:** Senators: CARPENTER, DAVIS, FERGUSON, KNEELAND, LAFOUNTAIN, MILLS, MITCHELL, SAVAGE, SAWYER, SHOREY, SMALL, TURNER, WOODCOCK, YOUNGBLOOD, THE PRESIDENT - RICHARD A. BENNETT

**NAYS:** Senators: BRENNAN, BROMLEY, CATHCART, DAGGETT, DOUGLASS, EDMONDS, GAGNON, GOLDTHWAIT, KILKELLY, LEMONT, LONGLEY, MARTIN, MCALEVEY, MICHAUD, NUTTING, O'GARA, PENDLETON, RAND, ROTUNDO, TREAT

15 Senators having voted in the affirmative and 20 Senators having voted in the negative, the motion by Senator **LAFOUNTAIN** of York to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1051)** Report, in **NON-CONCURRENCE, FAILED.**

On motion by Senator **DOUGLASS** of Androscoggin, the Minority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "B" (H-1052)** Report **ACCEPTED**, in concurrence.

**READ ONCE.**

Committee Amendment "B" (H-1052) **READ.**

House Amendment "A" (H-1077) to Committee Amendment "B" (H-1052) **READ** and **ADOPTED**, in concurrence.

Committee Amendment "B" (H-1052) as Amended by House Amendment "A" (H-1077) thereto, **ADOPTED**, in concurrence.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "B" (H-1052) AS AMENDED BY HOUSE AMENDMENT "A" (H-1077)** thereto, in concurrence.

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

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Off Record Remarks

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

Resolve, Authorizing Michelle Booker to Sue the State  
H.P. 1672 L.D. 2174  
(C "A" H-1044)

Tabled - April 3, 2002, by Senator **MILLS** of Somerset

Pending - **PASSAGE TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1044)**, in concurrence

(In House, April 1, 2002, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1044).**)

(In Senate, April 1, 2002, Report **READ** and **ACCEPTED**, in concurrence. **READ ONCE.** Committee Amendment "A" (H-1044) **READ** and **ADOPTED**, in concurrence. Under suspension of the Rules, **READ A SECOND TIME.**)

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

Senator **SAWYER:** Thank you. I would like to speak in favor of this. Is this the appropriate time?

**THE PRESIDENT:** The Senator may proceed.

Senator **SAWYER:** Thank you. I'd like to give you a little bit of background on this. As the lawyers are often fond of saying, I should preface it by saying, 'based on the action taken earlier this afternoon.' Basically, let me say that Michelle Booker is the only daughter of a lady named Donna Leen. Donna Leen was minding her own business in the fall of 2001, driving a taxicab. One of those high paying and healthy, fringe benefited jobs that Maine provides its people. She picked up, as a fare, a young man who had been recently released from the county facility. After driving around Bangor for a little while, this young man decided that he would beat Donna Leen to death with a hammer. Michelle Booker, as I said, is seeking redress from those actions. I want to point out that the State Department of Corrections knew that there were charges against this young man. He had a lengthy criminal history. He had been held on felony charges out of Cumberland County for most of the year 2001. In fact, the day before releasing him, the Department of Corrections received a telephone call from the Oxford County Sheriff's Department. A telephone call that was recorded, in fact, that warned the Department of Corrections that the young man had felony charges pending against him in Cumberland County and therefore, and I quote, 'the Department of Corrections should hang on to him.' I want to repeat, the Oxford County Sheriff's Department calls the Department of Corrections and says hang onto this guy. Despite that knowledge, the Department of Corrections authorized Mr. Heath's premature release after he wrapped up some minor charges in Penobscot County. The question was raised to me, who is responsible for the obviously premature release of Mr. Heath? Was it Cumberland County? I would argue no. Cumberland County tried to warn the Department of Corrections. Was it Penobscot County, where Mr. Heath was held? I think not. Penobscot County acted on the advice that they got from the Department of Corrections. It was, in fact, the State of Maine who was clearly responsible for the absolute premature release of Mr. Heath who proceeded to murder a very innocent person. I would ask, certainly based on the arguments that we heard earlier this afternoon, that Michelle Booker be allowed to proceed with her case. Obviously, she has to prove her case. Obviously, she will have to prevail in a court of law. But I believe when I do something really stupid, besides having the Bangor Daily News printing it, I am usually held accountable for it. When most of us do something really stupid, hopefully we are held accountable for it. I believe, and I believe the committee felt, that the State of Maine did something really stupid. The Department of Corrections released a man that they should clearly have known should have been hung on to. Thank you.

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

Senator **DOUGLASS:** Mr. President, women and men of the Senate, I rise to urge you to vote in favor of the pending motion. It's unusual to have two unanimous votes of our committee, the Legal and Veterans Affairs Committee, in favor of allowing suit

against the state. But this was one of them. We heard the other this morning. I think the statistical anomaly that this casts is of no real consequence because what is important here is that the State of Maine had, in custody in the Oxford County Jail, a person by the name of Carl Heath who was so difficult to manage that the jail asked to have him put in the Thomaston prison. In the Thomaston prison, he was serving out his sentence. They brought him back and forth to various counties where he had other charges pending. They brought him back and forth to Cumberland County where he was charged with, I believe, burglary. They brought him back and forth to Penobscot County. Ultimately, when it was time to get ready to release him, finally, because he had served the sentence that he was adjudicated for by the Oxford Court for which he had been in the Oxford jail, but he couldn't be held there because he was so dangerous, he was taken to the Penobscot jail. Excuse me, I want to go back. The folks at the Bureau of Corrections did call Oxford County to find out what else was pending on this fellow. The Oxford County Sheriff said specifically, in this recorded conversation that was written down later, that, 'you probably want to check with Cumberland County as well.' The question came, 'have their charges been cleared up.' 'Well, according to whomever I spoke with, he's supposed to be in Cumberland County today.' So this was October 11<sup>th</sup>. I believe it was October 13<sup>th</sup>, and if anyone else with knowledge of the details speaks on this, I certainly may be corrected, but I believe it was the 13<sup>th</sup> that he was brought to Penobscot County, where he had charges pending. He was found guilty but was sentenced to time served. Then he was brought back to the Department of Corrections, basically, I guess, for further paperwork or whatever. They released him. That's the issue here. We have, in this committee, heard many tales of brutal killings and of things gone array, but none with such clear knowledge on the part of the agents of the state, our employees, that this was a person to be guarded. A person who had charges pending, not only in Cumberland and Penobscot, when he was still in jail in Oxford, but there was one other county, it might have been Kennebec, I can't quite sort it out because he had so many pending. I was astounded that our department had this information, and I understand they may not be fully automated, fully computerized yet, but they didn't go to some special red book to look at what was still pending. We did hear testimony about how this was a writ to bring the prisoner back to Cumberland as opposed to a warrant. Warrants are somewhat on the NCIC, National Crime Information Channel. But even so, people at Thomaston had these conversations about this individual and they did not hold him. That was wrong. The case does have to be proved, but I think it's one of those situations, and a rare one, that I voted for in which I think we have to recognize the State of Maine has some responsibility. Not even so much to this individual, but to all of us, because we want to be secure in the knowledge that our Department of Corrections takes care of this. I urge you to vote in support of this.

On motion by Senator **MILLS** of Somerset, the Senate **SUSPENDED THE RULES.**

On further motion by same Senator, the Senate **RECONSIDERED** whereby it **ADOPTED** Committee Amendment "A" (H-1044), in concurrence.

On further motion by same Senator, Senate Amendment "A" (S-568) to Committee Amendment "A" (H-1044) **READ.**

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

Senator **MILLS:** Mr. President, the purpose of the amendment that I am offering at this point is to make sure that the claim, if it is assertive, is limited by the same rules that apply whenever a claim is filed against the state. In reading the committee amendment, it appears that the language of the amendment references the Wrongful Death Act and says that the claimant, who is the daughter of the decedent, would be entitled to all the damages that are available under the Wrongful Death Act. Those damages, essentially, might have no ceiling, depending on the nature of the claims that are asserted for this wrongful death. It is customary when someone does sue the state that they do so within the cap that is in the Tort Claims Act, which limits the damage claims to \$400,000. The amendment has a sentence that would simply say that her claims, such as they are, are limited to the limits that are in the state's Tort Claims Act, which is a current limit of \$400,000. Thus, in the process of waiving the state's immunity, leave the claimant in the same posture as anyone else who would be suing the state for personal injuries arising from negligence on the part of the state. That is the purpose of the amendment. Without the amendment, I don't know the details of her claim, but there are damages available under the Wrongful Death Statute that could greatly exceed \$400,000 and it is the purpose of the amendment to make sure that this claimant would be bound by the same rules that apply to anybody who sues the state or a subdivision of the state. Thank you, Mr. President.

On further motion by same Senator, Senate Amendment "A" (S-568) to Committee Amendment "A" (H-1044) **ADOPTED**, in **NON-CONCURRENCE**.

Committee Amendment "A" (H-1044) as Amended by Senate Amendment "A" (S-568) thereto, **ADOPTED**.

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

Senator **MILLS:** I rise to ask one question for anyone who may answer.

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

Senator **MILLS:** Is it crystal clear from the evidence that was presented to the committee that the State of Maine or the County of Penobscot had the legal authority to hold this man, who I understand was at the expiration of his sentence for the crimes that he'd been convicted of? That is my question.

**THE PRESIDENT:** The Senator from Somerset, Senator Mills 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, men and women of the Senate, the evidence presented to the committee was crystal clear that there was a pending writ, an active writ from the Cumberland County Sheriff's Office that applied to this perpetrator. To the extent that this becomes a matter of proof for the plaintiff in this case, further proof I'm sure will be forthcoming.

But there was the assertion by the Department of Corrections that they had no legal authority and yet we heard from the Sheriff of Cumberland County that they had booked and charged this individual with crimes that he had been released on a writ back to the Thomaston prison because he was already serving another sentence. So Cumberland, therefore, had a right to keep him and that was through the Department of Corrections.

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

Senator **MCALVEY:** Thank you, Mr. President, men and women of the Senate. The Criminal Justice Committee inquired into this when we were aware of the allegations and accusations that were flying in the media long before any bill was presented. I stand here today to just briefly tell you what we were told by the department. At the time of this individual's release, they had no legal authority to keep him. They followed their standard procedures, which was to call the appropriate county jails to double check, to make sure. The information that was communicated to them was that there was nothing being held by any county official, any department or repository of warrants. They checked outstanding warrants. The department assured us they checked and double checked and found nothing that would have allowed them, at that time, to legally hold this person and that by our statutes, they were legally bound to release him. Now, what may be found in the future, is in the future. But I am personally satisfied, as a legislator, that the Department of Corrections acted according to the law and took the steps to assure that they could release this person and any other person that they release on a daily basis prior to them being held somewhere else. If there is a breakdown in communications, perhaps that was the case. But it wasn't for lack of want of the department following their mandate by this Legislature in statute to do what they are supposed to do before they open the door and let them out.

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

Senator **DOUGLASS:** Mr. President, men and women of the Senate, the Committee on Legal and Veterans Affairs heard from the Sheriff for Cumberland County, Sheriff Mark Dion, that the Cumberland County learned of Heath's whereabouts in October subsequent to a phone call and that they gave information to the prison and had him brought down to their courts to be arraigned on the charges that they had pending against him. The statement by the Department of Corrections that they had no legal authority to hold this individual, who was charged in Cumberland County and brought there by Thomaston prison officials, and that they knew had not made bail in Cumberland County, is a fact that was very clear in the record.

**THE PRESIDENT:** The Chair recognizes the Senator from Franklin, Senator Woodcock.

Senator **WOODCOCK:** Thank you, Mr. President, ladies and gentlemen of the Senate. I wish I could bill you by the hour as our lawyers have been doing tonight. I can't do that because I'm not in that profession. But it's obvious, or should be obvious, I feel, that there is some contention as to the actions of the Department of Corrections. Now this is to be adjudicated. If it is found that the Department of Corrections was in error and

therefore this gentleman, Mr. Heath, did, in fact, go free by direct ill actions by the department, and after that time proceeded to bludgeon to death the lady, then it becomes readily apparent to me that the person who was bringing this suit or wants to bring this suit should be able to do so. We are not here tonight to debate whether or not the Department of Corrections was in error. We are here tonight to debate whether or not the lady who was bludgeoned to death was bludgeoned to death because of the actions of the Department of Corrections. Now, if that is the case and it is adjudicated so, she should be able to recover something from that. Our issue tonight is solely should this suit go forward. It hasn't been adjudicated. It remains to be adjudicated. This bill, as you read it, says that within one year's time, including appeals, Ms. Booker should be able to be allowed to bring actions to achieve some reparation from the department. I don't think it is our place to do that tonight, to look at the Department of Corrections as ably as some are doing. The question remains about Ms. Booker, not the Department of Corrections. I would urge support of this. Thank you.

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

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

Senator **MILLS:** It's an unfortunate fact that our counties and the Department of Corrections, release, probably every day, some very, very bad people. People who are a significant threat to our society. Unless we have an opinion from the Attorney General's Office or some other unimpeachable evidence that the Department of Corrections violated a duty to hold this man, I think, we have a duty as a legislature not to simply pass these matters on to the courts and burden the courts with claims that may or may not have any merit or may or may not be provable. It is a critical and crucial point to understand whether the Department of Corrections had a right to hold this man. Apparently inquiries were made. There was some care exercised. Some inquiries were made, competent inquiries were made into the status of this person. He had served his sentence. He was released after somebody gave it some fairly conscience thought. I accept what I hear from the department on that issue. Unless there is some very strong evidence to show that they are in error, I would not be inclined to relegate this matter to the court system and impose that burden, frankly, on both the department and the court system. For that reason, I'll be voting against the pending motion.

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

**THE PRESIDENT:** The pending question before the Senate is Passage to be Engrossed as Amended by Committee Amendment "A" (H-1044) as Amended By Senate Amendment "A" (S-568) thereto. 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 (#296)**

**YEAS:** Senators: **BROMLEY, CATHCART, DAVIS, DOUGLASS, EDMONDS, LAFOUNTAIN, LONGLEY, MARTIN, MICHAUD, O'GARA, PENDLETON, RAND, ROTUNDO, SAWYER, WOODCOCK, YOUNGBLOOD, THE PRESIDENT - RICHARD A. BENNETT**

**NAYS:** Senators: **BRENNAN, CARPENTER, DAGGETT, FERGUSON, GAGNON, GOLDTHWAIT, KILKELLY, KNEELAND, LEMONT, MCALEVEY, MILLS, MITCHELL, NUTTING, SAVAGE, SHOREY, SMALL, TREAT, TURNER**

17 Senators having voted in the affirmative and 18 Senators having voted in the negative, **PASSAGE TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1044) AS AMENDED BY SENATE AMENDMENT "A" (S-568)** thereto, in **NON-CONCURRENCE, FAILED.**

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

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Under suspension of the Rules, all matters thus acted upon, with exception of those matters being held, were ordered sent down forthwith for concurrence.

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

**HOUSE REPORTS** - from the Committee on **JUDICIARY** on Bill "An Act to Implement the Recommendations of the Committee to Review the Child Protective System"

H.P. 1644 L.D. 2149

**Majority - Ought to Pass as Amended by Committee Amendment "A" (H-1078)** (12 members)

**Minority - Ought To Pass as Amended by Committee Amendment "B" (H-1079)** (1 member)

Tabled - April 3, 2002, by Senator **RAND** of Cumberland

Pending - motion by same Senator to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1078)** Report, in concurrence

(In House, April 3, 2002, the Majority **OUGHT TO PASS AS AMENDED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1078)** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1078).**)

(In Senate, April 3, 2002, Reports **READ.**)

On motion by Senator **RAND** of Cumberland, the Majority **ought to pass as amended by committee amendment "A" (H-1078)** Report **ACCEPTED**, in concurrence.

**READ ONCE.**

Committee Amendment "A" (H-1078) **READ.**

On motion by Senator **MCALLEVEY** of York, Senate Amendment "A" (S-569) to Committee Amendment "A" (H-1078) **READ.**

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

Senator **MCALLEVEY:** Thank you, Mr. President, men and women of the Senate. I'll be brief. The amendment puts forward a number of items that were brought forward by people who feel that they are aggrieved by the department in terms of child protective cases. It offers a number of their suggestions and solutions. You have a handout that was distributed. I felt that the committee worked this bill hard, but their concerns deserved being brought to the full floor of this chamber for your consideration. You have before you the arguments in the handout and the requested suggestions of the amendment. Thank you very much.

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

Senator **LONGLEY:** Thank you, Mr. President, colleagues in the Senate. I urge you to vote against this pending motion. For starters, having worked on this issue since Logan Marr was murdered, which is over a year ago now, I can tell you that we know it is a serious issue. I have great concern when something is passed out that misstates the record. We're not doing great, but we aren't number one in the nation for taking children from their parents, we're not 49<sup>th</sup> in the nation at returning children. I would simply say that the facts here are suspect and I would further like to say that this bill, basically, opens up a Pandora's box for legal liability for the taxpayers of Maine. The Health and Human Services Committee and the Judiciary Committee have worked very hard to try to fix what arguably is a broken system. We have taken our job seriously and the department has worked with us. We've come up with numerous recommendations on how to fix the system. We know it's only a start. We'll continue to do our job in keeping the department's feet to the fire and making sure that when we have to remove kids because they are in dangerous situations, because kids are like flowers or plants and you remove as few roots as need be to get them into safe soil or safe ground. We're learning how to better keep families together. We're learning to not just give winks and nods to our reasonable effort requirement in the courts. We've done yeoman's work this year on both of our committees. I would ask that you trust that we have our sights set on improving the system as best possible. I think that this measure before us, if it were a good idea, it would have come out of one of the committees. I thank you for listening. I urge you to vote against the pending motion. Thank you.

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

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

Senator **TURNER:** Thank you, Mr. President. I'll try to be brief, the pizza calleth. I would also ask that you vote against the pending motion. Discovery is one of the matters that the Joint Committee on Judiciary looked at very carefully. We have also included in the budget improved legal aid, specifically intended to work on the matter of discovery. L.D. 2149, as before you, also puts some very specific perimeters around discovery, which I think strengthens it, and in fact, allows the playing field to become much more level for the families who are involved. I think it gets to the heart of some of the concerns that the good Senator from York, Senator McAlevey, has expressed. Thank you.

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

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

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

Senator **MCALLEVEY:** If the figures that are on the sheet that was passed out under my name are inaccurate, I'll apologize for that. But does anybody have another figure on where we rank in terms of other states in taking children from homes and what is the figure for that? Also what is the figure in returning children, in terms of how many represented do we return in so far as family reunification and where do we stand nationally with that? Thank you.

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

Senator **LONGLEY:** Thank you, Mr. President, colleagues in the Senate. As I said, we are not number 1, we're not that bad. We are in the top 10, so we do have room to improve. What the Health Committee has been focused on is improving the chances of kinship care. As I was saying earlier, making it so that when we uproot a child and try to take the child out of harms way, we are less about pulling up all the roots and putting the child in another community and in a non-family, call it a foster family, environment. We're making moves. We have performance measures to make sure that we move from that top 10 ranking. As for the question about the number of children returned, I don't know that off the top of my head.

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

Senator **MILLS:** Thank you, Mr. President. I'm reliably informed that the pizza isn't here yet, so we can continue debating. But I will be brief. I was reading the amendment from the good Senator from York, Senator McAlevey. His proposals, I think, are among those that have been considered by the committees that have worked very, very hard on these issues. They are tough issues. One of the things that he proposes is that we open these



hearings up to the public, that we treat child protective cases in a public fashion just the way we treat practically every other form of litigation. There is a lot to be said for that. We certainly don't have a hue and cry arising from the procedures that are used in criminal courts because every criminal goes on trial in a public setting. We even put them on television sometimes. Everybody, I think, understands that there are really good reasons, often times to protect the children in settings where their parents are being accused of being bad parents. There are situations where the parents themselves may need to have it private. I believe firmly that the court system would be better off if it were public because there would be fewer questions. I think probably the Department of Human Services would be open to less vilification if everything they did was on the top of the table and everybody could see that, yes, there really is substantial evidence of abuse in many of these cases and that their actions are appropriate. Perhaps they would be more careful if they were operating in a setting where their actions were public. But on the balance, it's so hard to do that and still protect the interest of kids and parents who are subject to these allegations that sometimes are not proven. I don't see how we can responsibly adopt the suggestions that were made by the good Senator from York, Senator McAlevey, to open up these court proceedings. I know the committee has wrestled with it. The new Chief Justice of the Maine Supreme Court has suggested that perhaps we should put an ombudsman or some sort of independent citizen observer into these private trials so that there would be a public observer who could comment, for the benefit of all of us, on whether the proceedings appeared to be conducted in an appropriate way. For that reason and several others, I intend to vote against the pending amendment. The other one is that the amendment proposes to hold members of the Department of Human Services personally liable if they intentionally or knowingly violate a department policy. There are a lot of risks to that work. We have a great deal of difficulty in recruiting responsible people to do this work. It's a job that is difficult to do. It is very trying. It's hard to go home at night after a day of working with abused children and difficult parents. I think adding this legal risk to the daily stresses of that job would not be beneficial to the system that we are responsible for administering. For those reasons, I intend to vote against the amendment even though I recognize that these suggestions have been discussed and considered by the committees.

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

Senator **TURNER:** Thank you, Mr. President, ladies and gentlemen of the Senate. I think the information presented to you earlier in the handout by the Senator from York, Senator McAlevey, is certainly nothing that we should be proud of. While we can quibble about whether we are first or tenth or fifth in various categories, we do not have a system that we should be proud of. I think we've worked very diligently through two different committees, Judiciary and Health and Human Services, seeking to redress these problems. You have approved a budget which puts over 50 staff additions into the Department of Human Services, earmarked to try to address some of the very things that the Senator from York, Senator McAlevey, is concerned about in his handout. I might also reflect on opening the proceedings of the courts. We did consider that. We considered it carefully. In the end we decided to open the courts somewhat and we classified three levels of people. Observers, people who

could come into the court system by showing the judge that they had some connection to the child or children in question. Participants, who could speak to the court. Lastly, interveners who would have the right to present evidence and question people. So I think the system has been opened more than adequately and I would again urge you to vote against the pending motion. Thank you.

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

Senator **MCALLEVEY:** Thank you, Mr. President, men and women of the Senate. I appreciate the comments, especially concerning the issue of hearings being open to the public. I appreciate the work of the two committees. It's a good start and I'm sure this will be work in progress as the years progress. But I would like to close this debate with one comment. I wish I could take credit for this thought, but it lays with someone else, I'm not sure who the owner is, but the quote is, 'sunshine is a wonderful antiseptic for government proceedings.'

**THE PRESIDENT:** The pending question before the Senate is the motion by the Senator from York, Senator McAlevey to Adopt Senate Amendment "A" (S-569) to Committee Amendment "A" (H-1078). 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 (#297)**

**YEAS:** Senators: DAVIS, MCALLEVEY, SHOREY

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

**ABSENT:** Senator: NUTTING

3 Senators having voted in the affirmative and 31 Senators having voted in the negative, with 1 Senator being absent, the motion by Senator **MCALLEVEY** of York to **ADOPT** Senate Amendment "A" (S-569) to Committee Amendment "A" (H-1078), **FAILED**.

Committee Amendment "A" (H-1078) **ADOPTED**, in concurrence.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1078)**, in concurrence.

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

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

**REPORTS OF COMMITTEES**  
**House**

**Divided Report**

The Majority of the Committee on **CRIMINAL JUSTICE** on Bill "An Act to Protect Children from Sexual Predators"  
H.P. 1482 L.D. 1983

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

Signed:

Senator:

O'GARA of Cumberland

Representatives:

POVICH of Ellsworth  
O'BRIEN of Lewiston  
BLANCHETTE of Bangor  
QUINT of Portland  
PEAVEY of Woolwich  
GERZOFKY of Brunswick  
MITCHELL of Vassalboro  
WHEELER of Bridgewater

The Minority of the same Committee on the same subject reported that the same **Ought To Pass as Amended by Committee Amendment "A" (H-881)**.

Signed:

Senators:

McALEVEY of York  
DAVIS of Piscataquis

Representatives:

TOBIN of Dexter  
SNOWE-MELLO of Poland

Comes from the House with the Reports **READ** and the Bill and accompanying papers **COMMITTED** to the Committee on **CRIMINAL JUSTICE**.

Reports **READ**.

On motion by Senator **McALEVEY** of York, the Majority **OUGHT NOT TO PASS** Report **ACCEPTED**, in **NON-CONCURRENCE**.

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

On motion by Senator **TREAT** of Kennebec, **RECESSED** until 8:15 in the evening.

After Recess

Senate called to order by the President.

**ORDERS OF THE DAY**

The Chair laid before the Senate the following Tabled and Later (4/1/02) Assigned matter:

HOUSE REPORT - from the Committee on **STATE AND LOCAL GOVERNMENT** on Bill "An Act to Create the Office of Program Evaluation and Government Accountability"  
H.P. 1695 L.D. 2193

Report - **Ought to Pass as Amended by Committee Amendment "A" (H-1039)**

Tabled - April 1, 2002, by Senator **TREAT** of Kennebec

Pending - **ACCEPTANCE OF REPORT**

(In House, April 1, 2002, Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1039)**.)

(In Senate, April 1, 2002, Report **READ**.)

Report **ACCEPTED**, in concurrence.

**READ ONCE**.

Committee Amendment "A" (H-1039) **READ**.

On motion by Senator **PENDLETON** of Cumberland, Senate Amendment "A" (S-570) to Committee Amendment "A" (H-1039) **READ**.

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

Senator **PENDLETON:** Thank you, Mr. President, men and women of the Senate. This particular piece of legislation is a piece of legislation that came out of the State and Local Government Committee. That committee, as a group, sponsored it. It came out of the committee as a unanimous report, 13 to 0. We spent many, many months on it. There was a lot of research done on it. I'm very proud to present it to you and explain to you what it does. This piece of legislation will establish an office of program evaluation and government accountability. This is something that, having returned to the legislature after having been out for a few years, I feel is very necessary. The reason that I feel it is necessary is because the legislature, I believe, needs a tool to get information through a non-partisan and a working professional committee. The government accountability office would be overseen by a legislative committee, which would be appointed by the presiding officers. It would contain six members, both parties and both bodies would be represented,

the two major or the two majority parties, whichever they may be at the time. It provides for the professional staff to carry on a schedule that would be presented from other committees to this oversight committee that would make the schedule for the year for this particular office to go out and check into programs and evaluate programs. They would have subpoena power. They would have questioning power. The legislature would have some kind of idea of what is going on in the different bureaus and commissions. The legislature would have a tool so they would be able to get the same type of information that perhaps the Executive Branch is privy to and perhaps the Legislature is not. We worked on this bill in an unusual way, but we decided, as a committee, what our goal would be. We did the research and came up with language. Then we took the language that our analyst gave us and went down each piece. We amended it, worked with it, and amended it again. When it came out to the two bodies there were some questions and there are concerns, because this piece of legislation is very different than anything we've done in our state before. I commend the committee for having the courage to step forward in trying to do something very different, because doing something different in a different way is always kind of frightening and it makes you feel kind of timid. I admit, there were times when I felt timid about this piece of legislation. But I do think that it is probably one of the most important pieces of legislation that we, as a legislature, will look at this session and certainly it is one of the most important pieces of legislation that came out of the State and Local Government Committee since I've been there. I thank you very much and I hope that you will join me in supporting this bill and the attached amendments. Thank you.

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

Senator **DAGGETT:** Thank you, Mr. President. May I pose a question?

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

Senator **DAGGETT:** Thank you, Mr. President, members of the Senate. In looking at this amendment, it looks as if this office has the capacity to audit local and county governments, any agency, public official, state contractor, in regard to any of the public money or private money which they have that might be related to, it says, 'agency purposes.' Would it be possible for someone to explain to me exactly how that would work?

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

Senator **PENDLETON:** Thank you, Mr. President, men and women of the Senate. Thank you for that question. When we looked at this and came up with this language, what we were looking at were places where state dollars are spent, other than in the state coffers, such as if there was a contract that we had sent out for counseling or our legislative dollars were being spent in other areas other than just right here in the bureaus. That was our attempt. That language is our attempt to address that concern.

On motion by Senator **PENDLETON** of Cumberland, Senate Amendment "A" (S-570) to Committee Amendment "A" (H-1039) **ADOPTED.**

Senator **TREAT** of Kennebec moved to **TABLE** until Later in Today's Session, pending **ADOPTION** of Committee Amendment "A" (H-1039) as Amended by Senate Amendment "A" (S-570) thereto, in **NON-CONCURRENCE.**

The Chair ordered a Division.

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

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

**ROLL CALL (#298)**

**YEAS:** Senators: **BRENNAN, BROMLEY, CATHCART, DAGGETT, DOUGLASS, EDMONDS, GAGNON, GOLDTHWAIT, LAFOUNTAIN, MARTIN, MICHAUD, O'GARA, RAND, ROTUNDO, TREAT**

**NAYS:** Senators: **CARPENTER, DAVIS, FERGUSON, KNEELAND, LEMONT, MCALEVEY, MILLS, MITCHELL, PENDLETON, SAVAGE, SAWYER, SHOREY, SMALL, TURNER, WOODCOCK, YOUNGBLOOD, THE PRESIDENT - RICHARD A. BENNETT**

**ABSENT:** Senators: **KILKELLY, LONGLEY, NUTTING**

15 Senators having voted in the affirmative and 17 Senators having voted in the negative, with 3 Senators being absent, the motion by Senator **TREAT** of Kennebec to **TABLE** until Later in Today's Session, pending **ADOPTION** of Committee Amendment "A" (H-1039) as Amended by Senate Amendment "A" (S-570) thereto, in **NON-CONCURRENCE, FAILED.** Committee Amendment "A" (H-1039) as Amended by Senate Amendment "A" (S-570) thereto, **ADOPTED**, in **NON-CONCURRENCE.**

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1039) AS AMENDED BY SENATE AMENDMENT "A" (S-570)** thereto, in **NON-CONCURRENCE.**

Senator **TREAT** of Kennebec **OBJECTED** to **SENDING THIS MATTER DOWN FORTHWITH FOR CONCURRENCE.**

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

**REPORTS OF COMMITTEES**

**Senate**

**Divided Report**

Seven members of the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS** on Bill "An Act to Authorize a General Fund Bond Issue in the Amount of \$19,300,000 to Construct and Upgrade Water Pollution Control Facilities, to Remove Discharges, to Clean up Tire Stockpiles, to Clean up Uncontrolled Hazardous Substance Sites, to Remediate Solid Waste Landfills, to Make Drinking Water System Improvements, to Address Household Hazardous Wastes and to Promote Standardization and Use of Public Geographic Data"  
S.P. 783 L.D. 2120

Reported in Report "A" that the same **Ought to Pass as Amended by Committee Amendment "A" (S-564)**.

Signed:

Senator:  
GOLDTHWAIT of Hancock

Representatives:  
BERRY of Livermore  
MAILHOT of Lewiston  
TESSIER of Fairfield  
BRANNIGAN of Portland  
ETNIER of Harpswell  
JONES of Greenville

Four members of the same Committee on the same subject reported in Report "B" that the same **Ought to Pass as Amended by Committee Amendment "B" (S-565)**.

Signed:

Representatives:  
NASS of Acton  
WINSOR of Norway  
BELANGER of Caribou  
ROSEN of Bucksport

Two members of the same Committee on the same subject reported in Report "C" that the same **Ought to Pass as Amended by Committee Amendment "C" (S-566)**.

Signed:

Senators:  
CATHCART of Penobscot  
MILLS of Somerset

Reports **READ**.

Senator **GOLDTHWAIT** of Hancock moved the Senate **ACCEPT** Report "A", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-564)**.

On motion by Senator **CATHCART** of Penobscot, **TABLED** until Later in Today's Session, pending the motion by Senator **GOLDTHWAIT** of Hancock to **ACCEPT** Report "A", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-564)**.

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

**REPORTS OF COMMITTEES**

**Senate**

**Divided Report**

Seven members of the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS** on Bill "An Act to Authorize a General Fund Bond Issue in the Amount of \$31,150,000 to Stimulate Job Growth in Rural Maine"  
S.P. 785 L.D. 2130

Reported in Report "A" that the same **Ought to Pass as Amended by Committee Amendment "A" (S-561)**.

Signed:

Senator:  
GOLDTHWAIT of Hancock

Representatives:  
BERRY of Livermore  
MAILHOT of Lewiston  
TESSIER of Fairfield  
BRANNIGAN of Portland  
ETNIER of Harpswell  
JONES of Greenville

Four members of the same Committee on the same subject reported in Report "B" that the same **Ought to Pass as Amended by Committee Amendment "B" (S-562)**.

Signed:

Representatives:  
NASS of Acton  
WINSOR of Norway  
BELANGER of Caribou  
ROSEN of Bucksport

Two members of the same Committee on the same subject reported in Report "C" that the same **Ought to Pass as Amended by Committee Amendment "C" (S-563)**.

Signed:

Senators:  
CATHCART of Penobscot  
MILLS of Somerset

Reports **READ**.

Senator **GOLDTHWAIT** of Hancock moved the Senate **ACCEPT** Report "A", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-561)**.

On motion by Senator **CATHCART** of Penobscot, **TABLED** until Later in Today's Session, pending the motion by Senator **GOLDTHWAIT** of Hancock to **ACCEPT** Report "A", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-561)**.

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Senate at Ease.

Senate called to order by the President.

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#### ORDERS OF THE DAY

The Chair laid before the Senate the following Tabled and Later (4/1/02) Assigned matter:

SENATE REPORTS - from the Committee on **HEALTH AND HUMAN SERVICES** on Bill "An Act to Increase the Supply of Medical Services to Consumers"

S.P. 481 L.D. 1545

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

Minority - **Ought to Pass as Amended by Committee Amendment "A" (S-528)** (6 members)

Tabled - April 1, 2002, by Senator **LONGLEY** of Waldo

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

(In Senate, April 1, 2001, Reports **READ**.)

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

Senator **TURNER:** Thank you, Mr. President, good evening ladies and gentlemen of the Senate. I would ask that the pending motion be defeated so that we can move on and accept the minority report to which I will attach a Senate Amendment giving the fiscal note that actually saves us some money. A certificate of need is one of Maine's current regulatory schemes that promises one thing, to keep down medical costs, while actually delivering exactly the opposite. It does this by seeking to restrict the supply of medical services. In the face of demand, restricting supply really only does one thing, it drives up prices. The primary beneficiaries of this are Maine's hospitals. The primary losers are Maine citizens who pay needlessly higher costs for medical services. A little bit about the history of the certificate of need program that we currently have in place in Maine. It goes back to the 1970's when medical services, health care costs, were based on your cost basis as opposed to something that was negotiated. In fact, in the 1970's the federal government passed a certificate of need law requiring that all 50 states also pass such legislation. By 1978, Maine and all the other states had passed such legislation. We moved into the 1980's, HMOs became a force. The need for certificate of need, as envisioned in the 1970's by the federal government, no longer was required. In fact, the federal government repealed the

requirement in 1986. Since that time, 14 states have outright repealed their certificate of need law. Most others have dramatically altered and weakened their certificate of need law. Maine continues to be anything but in the vanguard with respect to this. It is interesting, those who favor retention of certificate of need would tell you that dire consequences would befall our hospitals if, in fact, this law is repealed. That is clearly not the experience in the 14 other states who have repealed the law. From my perspective, it appears to be an employment program for bureaucrats within the Department of Human Services and those consultants who make a living dealing with hospitals and others who seek to run the gauntlet of Maine's certificate of need regulatory scheme. In fact, I will contend to you that it creates a cartel or a franchise for those who have come through the program and is used by the holder to guarantee that the right to be the only provider of the service with no incentive to improve quality or to hold down costs. I'd like you to ask yourselves some questions. Why are hospital costs in Maine 20 percent or more higher than they are in New Hampshire? Why would the same doctors dealing with York Hospital and Portsmouth Hospital, barely 10 miles apart, have hospital costs that are so much different? I think the answer to that is the certificate of need. Why in Anthem's eight or so states that they write business, does Maine have the highest hospital costs? In the extreme, one of these states has hospital costs only 50 percent of ours. I think the reason for that is certificate of need. Now, in Cumberland County, there is at least one business that I know, a private LLC, that makes a very good living directing and connecting Maine consumers to Boston, saving those consumers up to 40 percent of their medical costs. Why is that the case? I think you can lay it at the floor of the certificate of need program. I have watched us, this evening, deal with mental parody and wonder again and again why we continue to vote for regulatory schemes with the idea that we are going to help people and save on medical costs when, in fact, those things that we enact do exactly the opposite. It is also interesting to me that if you talk to hospitals and their associations, they public support a certificate of need program. Privately, one on one, they will tell you the program is terrible, they wish they didn't have to deal with it, and they would prefer something else. But I suppose that, as someone once said, better the devil you know. Therefore, they stick with the certificate of need. Those of you who represent the Lewiston area know the troubles that Central Maine Medical Center had with their cardiac unit a year or so ago. Ironically, they hated certificate of need. Now we find them in support, because they have been able to come through the gate and they are in the club and would like to cut out others who would want to come behind them. Every hospital that gets faced with dealing with certificate of need finds it repugnant. Yet, they somehow feel they must hide behind this regulatory scheme to protect themselves. I would suggest to you that the market which rewards excellence, rewards quality, is the best place for these people to operate. If they do this, the costs to you and your constituents will, in fact, go down. So I would ask that you give these regulations something they so richly deserve, repeal. I would ask that you vote against the majority report. Thank you very much.

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

Senator **MARTIN:** Thank you very much, Mr. President, members of the Senate. As member of the Committee on Social Services dealing with this bill, it was difficult, quite frankly, to try

to get your hands around the subject matter since, obviously, there are a number of people who feel very strongly about doing away with the certificate of need and there are obviously those who clearly support the certificate of need. I want to just go back to an experience that I had when I was a freshman legislator and was appointed to a group to take a look on consolidating two hospitals in Aroostook County, Cary and Arthur R. Gould in Presque Isle. That, frankly, did not succeed and that was prior to the CON and there was no way to stop it. Today we have such competition between the two facilities that it provides, obviously, for higher costs. Two facilities within ten miles or so of one another. When the CON process was put in place, frankly, the CON process was a lot stronger than it is today. But it works. Not as well, perhaps, as some of us would like, but it does provide for public input, it does provide for a review process. Some would have you believe that hospital costs in Maine are so much higher than the rest of the country. If you look at the rest of New England, it is quite true that New Hampshire is lower, but Massachusetts is substantially higher than us. What Massachusetts has an ability to do, and this outfit in Portland has by transporting individuals to Boston, it is what I refer to as cherry-picking because they can then use that as a way to make money. Keep in mind that all the hospitals in Maine are non-profit, private corporations. All of them. They are not for-profit entities. All of them provide a service that is very expensive, and that is emergency room service. That's one of the reasons why in Maine, since we have so many hospitals because of the regions and the way we're spread out, there is going to be a cost higher than is going to be found, for example, in Rhode Island. That's bound to occur. Now, keep in mind that if you do away with the CON, and by the way, there is a fiscal note on this bill which is in the millions if you chose to pass it, if you look at the fiscal note you will find that it potentially could allow a group of doctors to set up shop with MRIs and x-rays outside of a hospital, next door to the hospital in Calais, Ft. Kent, near small hospitals, and drain away the base. At that point, the hospital is going to make a choice, close or the price is going to go up. It has no choice. Now, if a physician's group or another kind of group comes in, they have to go through a CON to demonstrate that they are not going to have an impact on that facility. That's the difference. I hope that before we're done with this session we will also strengthen part of the CON process that will streamline it, make it more efficient, and more effective. I can assure you that one of the things that we understood in the committee was that we have to preserve the CON if at all possible. But we knew that there were problems and we knew they had to be corrected. But simply doing away with it was not the answer, because I can assure you that the benefactors of that will not be the small hospitals. They will be the most impacted by this process and they potentially could be destroyed. If you've gotten the material from the Maine Hospital Association, it clearly lays it out. I hope you've had an opportunity to read it. I hope you've had an opportunity to talk to your own hospitals and the executive directors in your own area. There is no question that the certificate of need has provided us an opportunity, in this state, to save costs. Now you may argue, and I can too, that in some instances it has not worked. The reason it has not worked is because the CON process wasn't strong enough. I hope you will correct that before we leave. But the bottom line here, from serving on the committee that I serve on, is that we have to preserve it. I certainly hope that you will vote to accept the Majority Ought Not to Pass Report.

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

Senator **LONGLEY:** Thank you, Mr. President, colleagues in the Senate. I rise to support the Majority Ought Not to Pass Report. In so doing, I'd like to send my compliments over to the Senator from Cumberland, Senator Turner. He senses that there is a problem in this area. Many of us know the problem and we're struggling for a solution. Basically just doing away with CON isn't a solution. For me anyway, it's a valiant, slightly logical, but mostly frustrated attempt because it is such a problem area. As I leave this Senate and those of you who have more years here, I would simply say the CON process is something that the public doesn't understand. But it is going to be an issue. It is absolutely contributing to the perfect storm that we, as leaders, are having to navigate the boat to figure out how we not topple over and all watch our economy really take a beating because we haven't addressed the rising cost of health care. I'll simply say that it is an issue that we are just beginning to discuss. As the Governor said in the state-of-the-state address, discourse can, and should, happen. It will be healthy, hopefully. We've got to address the issue. The CON process is just, in my opinion, emerging as a major issue. It will just gather momentum with time. It's an issue that we have to learn to grapple with. People out there might not understand, but it is incumbent on all of us to try to fix the system. The current fix before us isn't a good one. For that reason, I say vote ought not to pass with the majority, but also remember that this is an issue ripe for a lot of discussion for the next few years. It's a tough issue. Thank you.

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

Senator **RAND:** Thank you, Mr. President, men and women of the Senate. To my knowledge, the certificate of need question is certainly not a new one. Some years back, to tell you the truth, I can't remember how many years ago, but it was more than eight years ago, when I was on the Banking and Insurance Committee, we had many issues come before us dealing with different aspects of this issue, the certificate of need. While I can freely admit to you that I am not an expert on all the ins and outs of this, it became very clear, very clear to me, that without the certificate of need program or system in place, rural hospitals would eventually have to close. I remember speaking to one of my fellow committee members, a Senator from the northern part of the state, and in fact the father of one of our U.S. Senators, and I asked him to explain his vote, which was to either severely weaken or do away with the certificate of need, I can't really remember exactly what it was. I said, 'why would you do that?' I live in the district that contains probably the last hospital in the state that would ever close. My 14-year old son went from my kitchen table to the operating table in less than 45 minutes with appendicitis. If you take away or allow different entities to take away lucrative parts of running a hospital, like x-ray, radiology, lab tests, or any number of services that are offered in a hospital, you very well are going to have a situation where the hospitals are going to have to close. We all know one of the most expensive types of healthcare is through the emergency room. It's a very expensive entity or part of a hospital to run. If you take all of the other lucrative or profit making systems away from that and allow them to exist outside, you are going to lose your rural hospitals. It boggles my mind why anyone who has a district that has a rural flavor to it would even consider doing away with the

certificate of need. Believe me, like I said, I live in a district where, if hospitals were going to close, I would bet the last one in the state would be the one in my district. I would urge you to accept the Majority Ought Not to Pass Report.

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

Senator **TURNER:** Thank you, Mr. President. I would remind you again that if we do not accept the majority motion, I have a fiscal note which will cure the figure that the good Senator from Aroostook, Senator Martin, mentioned in his earlier comments to you. I would further tell you that I think fears that are being suggested to you are terribly overblown. In the 14 states that do not have certificate of need, emergency room services continue to be operative and provided to those who have no other choices. Hospitals and doctors continue to work closely together, as they have for a long, long time. The so called experts tell us that medical services are not subject to market forces. I don't know how we could refute their claim because we don't now allow medical services to be subjected to any market forces. We continue to try to manage it centrally and we continue to manage it poorly and we continue to escalate the cost. The certificate of need is not the only culprit in this situation, but it's one of several. I find it curious that with certificate of need we require our citizens to come begging to the state to provide them with services. Whether it's in Washington County, Bangor, or Lewiston, our citizens come forward, demanding the services and begging the state to allow something that they need to be provided. I find that abhorring, personally. I'll just simply close by reiterating a personal experience I had in securing MRI services for a torn rotator cuff. I could have had a MRI done in Portland for \$1,200. At the time I was working in Boston. My health plan suggested that my physician was going to need to see the results of the MRI and I should have it done in Boston. It was \$360. A significant difference. So, again, who loses? The consumer loses by paying needlessly higher costs. Thank you very much.

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

Senator **KILKELLY:** Thank you, Mr. President, men and women of the Senate. I am moved to speak on this issue for a couple of reasons. First, the largest employer in my district is the hospital and I've served on the Miles Health Care Board of Directors for several years. I have learned much about the challenges of providing services in a rural area and how to maintain that. One of the things, as we talk about 14 other states or 20 other states or 30 other states,

**THE PRESIDENT:** The Senator will defer.

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

Senator **TREAT** of Kennebec moved the Senate extend until 9:15 p.m., pursuant to Senate Rule 514.

At the request of Senator **FERGUSON** of Oxford a Division was had. 27 Senators having voted in the affirmative and 7 Senators having voted in the negative, the motion by Senator **TREAT** of Kennebec to extend until 9:15 p.m., pursuant to Senate Rule 514, **PREVAILED**.

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

Senator **KILKELLY:** Thank you, Mr. President. I'll start again. Men and women of the Senate, I won't start back where I was, however. When we talk about a number of different states and how they have been impacted in terms of losing their certificate of need process, there are a couple of things I think we need to remember. One is that Maine is the fourth most rural state in the country. We are the fourth most rural. Part of what that means is that our population is spread out more over the surface of our state than all but three other states. It means it is more difficult to get services to them, and more importantly, it's more difficult for them to get to services. So the infrastructure does, in fact, cost us more and it makes it more of a challenge for them to get there. The other piece that is critically important to note is that we are the oldest state in the northeast with an average age of 38.9. So we've got an older population, we have a population that is spread out over the fourth most rural state in the country, and we have a federal program that has a very distinct bias against folks who are involved in Medicare and also rural programs. Rural programs get less reimbursement on Medicare than urban programs do. Heaven only knows why. But that is the way it goes. Older people on Medicare are more likely to access services. So you automatically have an issue of a deficit from there. The CON provides us with a planning tool. A planning tool that allows us to establish a system that can support those folks. In rural programs, what we are paying for in every case, whether it is education, healthcare, or any other kind of infrastructure, we're paying for availability. When I go to the emergency room at 2 o'clock in the morning, I'm the first person to be there, the cost for me, if you want to do it in that formula, is going to be more than if I'd gone to the emergency room in Boston or Portland where they have already seen dozens or maybe hundreds of people that night. Their staff is constantly working and their revenue stream is coming through the door on a regular basis. We are paying for availability. If we don't allow this system of planning to continue, we will lose availability, for rural people in particular. When we lose that, it's not the same as losing any other kind of service. We're talking about healthcare. Somebody's child is not going to get served, somebody's parent is going to get served because that hospital, that rural provider, has not been able to stay in business. So the example of the good Senator from Cumberland, Senator Turner, about the MRI. The advantage there is having a choice between Portland and Boston. That's an amazing choice. I think there are many things we go to Boston and get and it would be less expensive. The choice that some of my constituents have is Rockland or Damariscotta, or really making a stretch and coming up to Augusta or maybe going to Lewiston. Those are the kinds of choices they have got. So as we create more spikes in the cost of those services because, in fact, there has been an opportunity to cream away the revenue stream, it's going to be even more difficult for them. So I would urge you to defeat the pending motion. Thank you.

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

Senator **TURNER:** Well, it's getting late, I fear the tide is going out from underneath the keel of my vessel. But I would leave you with a few closing comments. If the state has a health care plan, I've never seen it. I don't think the certificate of need is providing one. Secondly, one of the 14 states that currently does not have certificate of need is South Dakota. Not exactly an urban center of the United States. A rather large, rather rural, and somewhat poor state. Perhaps not as poor as ours, but I think it has many of the same characteristics as Maine. I'm reminded of a colleague who once told me about FUD. FUD stands for fear, uncertainty, and doubt. We have certainly thrown a lot of fear, uncertainty, and doubt into the chamber this evening regarding the certificate of need. I do believe the experience of 14 states would refute all the concerns that you have expressed regarding certificate of need's repeal. With that, I will close. Thank you very much.

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

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

Senator **MARTIN:** Thank you very much, Mr. President, members of the Senate. I'll be very brief, but I just want to relay to you that in the last four years I've been serving on the National Advisory Board of Rural Health at the national level. I think it's clear that I'll not be reappointed this coming July for obvious reasons. But in my tenure, as it comes to an end, one thing that we've discovered is how many hospitals in this country have closed. It's interesting to note where they are. All rural, all caused by what's happened in some states that don't have the CON. All of the larger hospitals have survived, some of those in some of those states have gone from non-profit to profit facilities. It is a very dangerous course that we embark on if we chose to repeal the CON process.

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

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

#### ROLL CALL (#299)

**YEAS:** Senators: BRENNAN, BROMLEY, CARPENTER, CATHCART, DAGGETT, DOUGLASS, EDMONDS, GAGNON, GOLDTHWAIT, KILKELLY, KNEELAND, LAFOUNTAIN, LEMONT, LONGLEY, MARTIN, MCALEVEY, MICHAUD, MILLS, MITCHELL, NUTTING, O'GARA, PENDLETON, RAND, ROTUNDO, SAVAGE, SAWYER, SMALL, TREAT,

WOODCOCK, YOUNGBLOOD, THE PRESIDENT - RICHARD A. BENNETT

**NAYS:** Senators: DAVIS, SHOREY, TURNER

**ABSENT:** Senator: FERGUSON

31 Senators having voted in the affirmative and 3 Senators having voted in the negative, with 1 Senator being absent, the motion by Senator **LONGLEY** of Waldo to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report, **PREVAILED**.

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

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**THE PRESIDENT:** The Chair would make the following announcement on the record. If you desire to file an amendment on any matter before the Senate or the other body that is currently before the Senate or the other body, I would you ask you to please have your amendment filed in the Revisor's Office no later than 10 p.m. tonight. This is on any bill that has been reported up and is currently before the House and the Senate. We are waiting on a lot of amendments, several of which I believe have yet to be filed with the Revisor's Office. If we're going to have any hope of adjourning tomorrow, we will need to have amendments posted as soon as possible.

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

Senator **TREAT:** A question about your ruling, or whatever it might be. Are we talking about matters that are in the House? You said any matter pending before the House or the Senate. It would seem that matters that are pending in House, but not in the Senate, we don't know what is going to happen to them and we can't properly amend them if they are not really before us.

**THE PRESIDENT:** The Chair will restate. Any bill which has been reported to the House or the Senate and is currently before either body, if any member has the desire to put an amendment on them, I'm asking all members to please file your amendments by 10 p.m. with the Revisor's Office.

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On motion by Senator **TREAT** of Kennebec, **ADJOURNED**, to Thursday, April 4, 2002, at 10:00 in the morning, in memory of and lasting tribute to Laura L. Murray of Bangor.