

# 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

Interim Communications Appendix

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

In Senate Chamber  
Friday  
April 5, 2002

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

Prayer by Senator Marge L. Kilkelly of Lincoln County.

**SENATOR KILKELLY:** Good morning. Let us be in the spirit of prayer.

May God bless you with discomfort and easy answers, half truths and superficial relationships so that you may live deep within your heart. May God bless you with anger and injustice, oppression and exploitation of people so that you may work for justice, freedom, and peace. May God bless you with tears to shed for those who suffer from pain, rejections, starvation, and war so that you may reach out your hand to comfort them and to turn their pain into joy. May God bless you with enough foolishness to believe that you could make a difference in this world so that you can do what others claim cannot be done. And may the blessing of God, God who creates, God who redeems, and God who sanctifies be upon all of us, all of those that we love, those that are with us and those that have gone before us, and pray for all of us this day and for ever more. Amen.

Reading of the Journal of Thursday, April 4, 2002.

PAPERS FROM THE HOUSE

Non-Concurrent Matter

JOINT ORDER - Directing the Joint Standing Committee on Education and Cultural Affairs to Report Out Legislation  
H.P. 1707

In House, March 25, 2002, **READ** and **PASSED**.

In Senate, April 4, 2002, **READ** and on motion of Senator **MITCHELL** of Penobscot, **INDEFINITELY POSTPONED**, in **NON-CONCURRENCE**.

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

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

Sent down for concurrence.

(See action later today.)

COMMUNICATIONS

The Following Communication: H.C. 453

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

April 4, 2002

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

Dear Madam Secretary:

The Speaker appointed the following conferees to the Committee of Conference on the disagreeing action of the two branches of the Legislature on Bill "An Act to Protect Children from Sexual Predators"

(H.P. 1482) (L.D. 1983)

Representative **MITCHELL** of Vassalboro  
Representative **SAVAGE** of Buxton  
Representative **MENDROS** of Lewiston

Sincerely,

S/Millicent M. MacFarland  
Clerk of the House

**READ** and **ORDERED PLACED ON FILE**.

REPORTS OF COMMITTEES

House

Ought to Pass

The Committee on **TRANSPORTATION** on Joint Order - Relative to Establishing the Task Force on Rail Transportation  
H.P. 1727

Reported that the same **Ought to Pass**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Joint Order **PASSED AS AMENDED BY HOUSE AMENDMENT "A"** (H-1084).

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

**READ ONCE**.

House Amendment "A" (H-1084) **READ** and **ADOPTED**, in concurrence.

**PASSED AS AMENDED BY HOUSE AMENDMENT "A" (H-1084)**, in concurrence.

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Senator **MITCHELL** of Penobscot moved the Senate **RECONSIDER** whereby it **INSISTED** and **ASKED FOR A COMMITTEE OF CONFERENCE** on the following:

JOINT ORDER - Directing the Joint Standing Committee on Education and Cultural Affairs to Report Out Legislation  
H.P. 1707

(In House, March 25, 2002, **READ** and **PASSED**.)

(In Senate, April 4, 2002, **READ** and on motion of Senator **MITCHELL** of Penobscot, **INDEFINITELY POSTPONED**, in **NON-CONCURRENCE**.)

(In House, April 4, 2002, that Body **INSISTED**.)

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

Senator **MITCHELL:** Thank you, Mr. President. The reason I had originally Indefinitely Postponed this L.D. is because our committee, the Education and Cultural Affairs Committee, had talked at length about our concern on the evaluation portion of the education formula and the number of pupils and how that formula has been put together. We made a decision, as a committee, to delegate the authority to our steering committee on education policy to work this summer on looking at further development of what would be the difference if we put 3 years on the evaluation versus 4 years evaluation and how do we figure the number of pupils into that so that it would be more equitable. We feel very strongly, as a committee, that this is not an action that we can just arbitrarily put under the hammer and implement. This is something that needs to be looked at. The committee needs to be able to look at the results of what is brought out of this steering committee on education policy. We scheduled one of our 3 meetings we're entitled to this summer for October 3<sup>rd</sup>, at which time we will then go over what the policy steering committee has put together and presented to us and then make a decision on what should go forward after reconsidering the entire state, and what is going to be more fair for an evaluation percentage of pupils as part of the formula. I know the people are not familiar with what has transpired in the committee, and what our plans are to address this very high evaluation portion of the education formula. I felt by explaining this to you, we would save time with the schedule we are on and having a committee conference because it really isn't necessary. We've referred this to the proper bodies. It will be acted upon, but it will be acted upon in a manner as it should be, and not just a quick decision to arbitrarily say we're going to change it to 3 years and make a decision at this time. I think we need to give the steering committee on policy the opportunity to work on this with other interested parties that can provide the input; the education department, the people from the state board. Bring the input to us, and we'll make a decision and bring it to the body in January.

So I would ask that you would please join me in my motion to Adhere and defeat the motion that we currently have before us to Insist for a Committee of Conference.

At the request of Senator **DAGGETT** of Kennebec a Division was had. 20 Senators having voted in the affirmative and 11 Senators having voted in the negative, the motion by Senator **MITCHELL** of Penobscot to **RECONSIDER** whereby the Senate **INSISTED** and **ASKED FOR A COMMITTEE OF CONFERENCE, PREVAILED**.

The Chair ordered a Division.

On motion by Senator **BROMLEY** 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 (#314)

**YEAS:** Senators: BRENNAN, BROMLEY, CATHCART, DAGGETT, DOUGLASS, EDMONDS, GAGNON, LAFOUNTAIN, 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

**ABSENT:** Senators: KILKELLY, LONGLEY

16 Senators having voted in the affirmative and 17 Senators having voted in the negative, with 2 Senators being absent, the motion by Senator **DAGGETT** of Kennebec to **INSIST** and **ASK FOR A COMMITTEE OF CONFERENCE, FAILED**.

On motion by Senator **MITCHELL** of Penobscot, the Senate **ADHERED**.

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#### Divided Report

The Majority of the Committee on **TAXATION** on Bill "An Act to Implement the Recommendations of the Education Funding Reform Committee"

H.P. 1581 L.D. 2086

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-1068)**.

Signed:

Senators:

GAGNON of Kennebec  
LEMONT of York  
KNEELAND of Aroostook

Representatives:

GREEN of Monmouth  
STANLEY of Medway  
GAGNE of Buckfield  
PERRY of Bangor  
McGOWAN of Pittsfield  
MURPHY of Berwick  
BUCK of Yarmouth  
BOWLES of Sanford

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

Signed:

Representative:

McLAUGHLIN of Cape Elizabeth

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-1068) AS AMENDED BY HOUSE AMENDMENT "A" (H-1087)** thereto.

Reports **READ**.

Senator **GAGNON** of Kennebec 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.

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**ENACTORS**

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

**Emergency Measure**

An Act to Amend the Pulling Events Laws

H.P. 1454 L.D. 1951  
(S "A" S-571 to C "A" H-898)

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

**Emergency Measure**

An Act to Protect Workers from Unilateral Imposition of Random or Arbitrary Drug Testing

H.P. 1595 L.D. 2098  
(C "A" H-887)

Comes from the House, **FAILED ENACTMENT**.

On motion by Senator **EDMONDS** of Cumberland, **TABLED** until Later in Today's Session, pending **ENACTMENT**, in **NON-CONCURRENCE**.

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**Emergency Resolve**

Resolve, Establishing the Blue Ribbon Commission to Address the Financing of Long-term Care

H.P. 1436 L.D. 1933  
(S "A" S-556 to C "A" H-910)

This being an Emergency Measure and having received the affirmative vote of 31 Members of the Senate, with no Senators having voted in the negative, and 31 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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**Acts**

An Act to Promote Organ Donation

H.P. 1448 L.D. 1945  
(S "A" S-554 to C "A" H-840)

An Act to Promote Safety of Families through the Workplace

H.P. 1463 L.D. 1960  
(S "A" S-555 to C "A" H-841)

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

H.P. 1522 L.D. 2026  
(S "A" S-553 to C "A" H-911)

An Act to Establish the Maine Library of Geographic Information

H.P. 1617 L.D. 2116  
(C "A" H-952; S "A" S-552)

An Act to Implement the Recommendations of the Joint Standing Committee on Criminal Justice Regarding the Review of the Department of Public Safety under the State Government Evaluation Act

H.P. 1670 L.D. 2173  
(S "A" S-551)

**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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Off Record Remarks

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Senator **DAVIS** of Piscataquis was granted unanimous consent to address the Senate off the Record.

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On motion by President Pro Tem **MICHAUD** of Penobscot,  
**RECESSED** until the sound of the bell.

After Recess

Senate called to order by the President.

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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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**ORDERS OF THE DAY**

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

HOUSE REPORTS - from the Committee on **TAXATION** on Bill "An Act to Implement the Recommendations of the Education Funding Reform Committee"

H.P. 1581 L.D. 2086

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-1068)** (11 members)

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

Tabled - April 5, 2002, by Senator **GAGNON** of Kennebec

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

(In House, April 4, 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-1068) AS AMENDED BY HOUSE AMENDMENT "A" (H-1087)** thereto.)

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

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

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

Senator **GAGNON:** Thank you, Mr. President, men and women of the Senate. This is the opportunity that I was hoping that we would have yesterday, but we now have the bill before us that is the work of the Taxation Committee and the nearly unanimous committee report, 12 to 1 report, that would allow the voters of the State of Maine to decide whether or not they want to change the way we look at taxes in the state and whether or not we want to provide some significant property tax relief by an expansion of a sales tax base that is one of the narrowest in the country. The narrowness of the tax base is what creates the huge surpluses that we have in this state and are what create the huge deficits in this state, what we refer to as volatility. Most of the income that we receive from the sales tax is based on automobile sales. In fact, probably what saved us from the big deficit that we were facing coming into this session, was the fact that the auto manufacturers had these zero percent loans and people did, in fact, go out and buy automobiles and paid the sales tax. It provided us with a little bit of help at a time when we were looking at rather significant shortfalls. What this bill would do is broaden allow the voters to decide whether or not they want to broaden the sales tax to items that are referred to as excluded items, not the exemptions, but the exclusions. Primarily the services to which our economy has turned to rather than in the old days when they were goods that were primarily purchased. Our economy has really turned more to services. The purchase of services that are currently not taxed in this state. They are not considered to be taxed, thus they are excluded from the sales tax. So, that is where the funds would be coming from. It would be used primarily to support education efforts and to provide a cap on education for the mill rate that is dedicated for education. It's been worked on now for a number of months. There was a commission, a sub-committee of our committee, and this is the product that we've come up with. Unfortunately, the piece that would make it all possible was indefinitely postponed by this body. I am hoping we will have another opportunity to look at that, but this is the opportunity. This is the opportunity that has gained quite a bit of momentum, has received numerous endorsements from municipalities around the state, the editorial boards, and it allows us to send the question out to the voters and let them decide. I would appreciate a positive vote. Thank you.

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

Senator **LEMONT:** Thank you, Mr. President, ladies and gentlemen of the Senate. I'd like to begin by thanking the 14 members that served on the taskforce that looked at this issue. The seven legislators that serve on the Taxation's sub-committee, and the 13 members of the Taxation Committee that did vote, 12 to 1, in a positive recommendation for this bill. I certainly would like to thank the sponsor of this bill. I found all the legislators to be focused, committed, and very dedicated to this tax reform that is desperately needed in the State of Maine. It had two objectives, increasing funding at the local level the state's contribution for education and also to bring some property tax relief. The substance of the bill changed at the last moment. That's why I feel I have no loyalty to this bill at this time. It was a very draconian change. It did not receive a full debate of the Taxation Committee to see what the impact would be. I do admire all those who participated in this process. We've come a long way in my 10 years of serving in the legislature. This is the first time I've seen tax reform come this far. We're a little bit

ahead of ourselves. The whole premise of the bill was based on funding essential services and programs. We do not have a definition of essential services and programs, nor have we been able to identify how much money that would require. Do I think the legislature will work on this in the future? Absolutely. I expect future legislators to continue the work on this meaningful taxation reform. Recognizing the Senate's action the other evening on a companion bill, L.D. 2087, I don't see any point in furthering this debate. 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. This legislation we have before us today is well intended. I think all of us would agree that what it set out to do is admirable, and something that we would like to support. That is to lower local property taxes, increase funding for education, and provide a fairer method of distributing the monies. But I fear that this might end up doing neither. The cap that we would put on the local mill rates, the 6 and 12, is in statute, not in the constitution. It also has no guarantee that this might not be changed, either by the legislature or by the local school districts and municipalities. There is no guarantee that the city-side or the service-side of local government would not increase their portion of the property tax while we were holding the education tax to 6 mills. There is no guarantee that the locals, once they find they are not getting enough adequate money from the state, wouldn't vote to increase that themselves. So we would have almost a double taxation. All these new revenues raised through the sales tax and the meals and lodging tax and not much of a decrease in the local property tax. That is one of the things I find disturbing. Another thing that bothers me about this is, as we look at what the sales tax would be placed on, the first one of the items that I saw under consumer purchases, and it kind of hit home because it's now April 5<sup>th</sup> and I'm having my taxes prepared for me, there would be a tax on tax return preparation services. Now, I find it egregious enough that I have to, at the end of the year, pay into the State of Maine on my income. I have to pay somebody to do my taxes because of all the complications with the tax form, and now I would have to pay the State of Maine a further tax just to have my taxes prepared so that I could pay the State of Maine a tax. I just find that \$18.50 probably would come very hard for me, just because of the method in which it is taken. Probably what bothers me the most about this is my concern for what the impact would be on our local education budgets. We are looking to take or cap the local share to 6 mill and that would deprive the schools of about \$250 million. That's best estimates of monies they currently have to operate their budgets. If you take out the homestead exemptions and savings on BETR and some of those other things, the net impact is still about \$195 million that we are supposed to make up for the local districts, just to keep them where they are now. The expanded sales tax base by 5 percent and the meals and lodging tax to 8 percent was supposed to generate about \$385 million. That would leave, if one did the math, about \$186 million to do other tax reform. Well, that would be great except this is just to keep parody with what we have now. But when we looked earlier at essential programs and services, and I confess I haven't been on that committee these last two years, I believe that the price of implementing essential programs and services has been estimated around \$100 million now, without the decrease in the local mill rate. So if we add \$100 million onto the \$195 million, you're talking about \$295

million needed to implement this essential programs and services, if we enact this bill. Part of the problem with this is how are we going to distribute this money so district receives less than what they are getting now in their school taxes? I would encourage anyone, if they have an idea of how this would be done, to inform the rest of us, because I have tried to think of a method that we could use that would divide the pie up so that nobody's receiving less money than they get now. We saw what happened to this legislature when we had minor changes in the funding formula, based on valuation and pupil count, that caused some districts to lose money, some a great amount, some a smaller amount. We went all through different proposals trying to rectify this. If we enact this today, there is absolutely no way that we could guarantee school districts that they were going to have at least what they got last year, or the previous year, once they capped their local ability to raise those funds. I can't imagine how we could do that, unless we looked at prior spending and said, 'well, we'll just give everyone what they spent before.' But that is certainly not any way to do a formula, and I don't think that this is what essential programs and services is all about. That, in itself, is such an important concept. It's one which we have continued to support, but it is still an unknown because we don't know whether they are going to take into account the different costs of living and the different costs of providing services in school districts. I know a few years back, when BIW was hiring and having a big hiring push, we couldn't find bus drivers in our district. Even offering them unemployment insurance probably wouldn't have helped get people. So we had to offer a much higher wage for bus drivers, and probably most of the other towns across the state did too, because we were in competition with BIW. I'm not sure essential programs and services is going to take that into account. If and when that program ever goes through on its own, there is probably going to have to be adjustments made in local tax shares in order to make sure we don't lose any of the services that we already have. Because this is such an unknown, I just couldn't support something that was going to leave many of the school districts across the state with, in some cases, probably money that is left out of their budgets and force them to then raise their local mill, which they do have the right to do. But remember, they are already paying increased taxes on the other hand through the service tax and the meals and lodging tax. I just see that this has an infinite capacity to fail, and to leave our school systems with winners and losers that are going to be much more greater than what we saw in this most recent debate on the funding formula. There are a number of other concerns that I have about this. Perhaps other people will want to address them today. But my most sincere concern was what it was going to leave our school budgets looking like after we capped their local ability to raise taxes, and then attempted to distribute this money in a fair and equitable way and keep each and every school district whole. I simply don't think it can be done. For that reason, I hope we will vote against the Majority Report so that we can go ahead and accept the Minority Report. Thank you.

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

**Senator DAGGETT:** Thank you, Mr. President, members of the Senate. I appreciate the remarks of my colleague, the Senator from Sagadahoc, Senator Small, particularly regarding the issue of education funding. But I would just like to speak briefly to the other aspects of this bill and its attempt to change some

mechanism by which we raise money for education. Certainly, if effort was a reason for a bill to be passed, this bill should be passed. I would commend the committee for the diligence in which they have worked on this issue, knowing that a number of committees, over a number of years, and a number of legislatures have dealt with this issue of taxation and fair taxation and how it is distributed. It's a gargantuan task and we only have to look to some other states that have had broad coalitions working on actual tax reform to see it die after the fact because of other coalitions that are formed afterwards. A part of my concern with this particular bill is that it is not tax reform. It's based on our current method of taxation and it concerns me that if we pass something of this type, we will jeopardize the opportunity for true reform. There have been conversations, and I believe there has been mention of it by this particular committee, on other mechanisms of taxation, such as the gross receipts tax or a value added tax. Our current taxation system is based on the old economy. It is not based on a knowledge-based economy, which we are, hopefully, moving to, albeit with difficulty. To continue with a system of taxation which doesn't match the economy that we want to move to places us in continued jeopardy. I think that we are beginning to move to a time in which there are a number of interests who are anxious to see some change. Until there are many coalitions willing to work together as opposed to only a few, I think it will be difficult for us to reach a model of taxation that will serve us well in the future. For that reason, I will not be supporting the Majority Ought to Pass Report. Again, I would like to commend the Taxation Committee for their diligence.

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

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

**ROLL CALL (#315)**

**YEAS:** Senators: MILLS, NUTTING, O'GARA, PENDLETON

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

4 Senators having voted in the affirmative and 31 Senators having voted in the negative, the motion by Senator GAGNON of Kennebec to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence, **FAILED**.

The Minority **OUGHT NOT TO PASS** Report **ACCEPTED**, in **NON-CONCURRENCE**.

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

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

**SENATE REPORTS** - from the Committee on **LABOR** on Bill "An Act to Ensure that 25% of Workers' Compensation Cases with Permanent Impairment Remain Eligible for Duration-of-disability Benefits in Accordance With the Workers' Compensation Act" S.P. 822 L.D. 2202

**Majority - Ought to Pass as Amended by Committee Amendment "A" (S-574)** (7 members)

**Minority - Ought to Pass as Amended by Committee Amendment "B" (S-575)** (6 members)

Tabled - April 4, 2002, by Senator **TREAT** of Kennebec

Pending - motion by Senator **EDMONDS** of Cumberland to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-574)** Report

(In Senate, April 4, 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. At long last. I'm going to start by telling you that Arthur Kotch, the person about whom this decision comes, is my constituent. You should know that Arthur Kotch, while a Marine and while serving our country, got injured. He recovered and re-enlisted. Upon leaving the military, he worked as a police officer and worked on the docks. About 10 years ago or more, I may not be quite correct about that, he got another job in which his back was injured. Because of the combination of those two injuries, he has become, for purposes of the Workers' Compensation System, disabled. In other words, not able to make a living working. He's had several back surgeries. In the last 8 years, he has been before the Workers' Compensation Board and through the court system, having brought his claim forward and has won every single time, the last time being before the Maine Supreme Court in February, where he won again, unanimously. The courts all say that he deserved Workers' Compensation that included both the injury prior to work and the injury at work. Now I say all that just because I want you to know Mr. Kotch and his situation because this whole debate has gotten very far afield from this one man. I just want to bring you back to him. In both the minority and majority reports that have come out of the Labor Committee, the Kotch decision, as it's known, has been repealed. Now you will probably hear debate about people agreeing or disagreeing about whether that is true or not, but from my point of view, that's true. Both minority and majority reports realized that, while in my opinion Mr. Kotch's situation was justified, there might be other situations where a non-work injury and a work injury, added together, might not end up being fair. I want to digress just slightly by saying that I want to thank the members of the Labor Committee. We were presented with this bill not very long



ago. I can't remember the date, but it was about a week ago this past Monday. It was a big bill and it included a lot of things to think about. Basically, it's a significant change to the Workers' Compensation System which the committee, and probably all of you, have thought long and hard about for many years. I must say, in the short time I've been in this legislature, I've had many people say to me, 'don't change the Workers' Compensation System. Please don't change the Workers' Compensation System.' A hard fought battle ended in a compromise that everyone feels they can live with while they may not like it. So there is the backdrop. I think the Labor Committee did a fine job of trying to get up to speed and make recommendations when those of us who felt changes from the Governor's original bill needed to be put forward. We did that. In the majority report, we've repealed Kotch. At the same time, we've protected work related injuries. The critical objection to the Maine Supreme Court's Kotch decision was that unrelated non-work impairments could be considered in selecting those people who are most disabled and thus might qualify for benefits. That's the issue that has been out in the public. That's the issue that the Governor raised as his largest objection. We have all addressed that issue in the majority and minority reports. The Labor Committee's majority report addresses these issues and rules consideration of those unrelated, non-work impairments. It rules them out. Under the majority report, individuals like my constituent, Mr. Kotch, would not qualify for extended benefits. This would be retroactive. I am pleased to tell you that in both reports Mr. Kotch, because his case has already been adjudicated, is exempt from whatever law we pass. However, the Governor's bill, which is the minority report, actually reaches back too far. It rules out consideration of impairments from prior work injuries, which still contributes to the worker's disability. This goes beyond Kotch and it hurts deserving workers who have multiple work related injuries. I'm happy to give you chapter and verse of various law court cases from 1996 to 1999 that elucidate and remind you of the fact that injuries are work related and therefore can be considered together. Now there has been lots of talk about the increase in cost anticipated in this case. The difficult thing for me about this is that, as many times as we asked the question, nobody could say, 'here is the data and this is what it is going to cost because of this data.' Point of fact, there isn't sufficient data. On that point, I think everybody agrees. In fact, the actuary who came before us from NCCI said he couldn't say, in a point of fact, whether rates would go up or not. Because he couldn't say that, he did what apparently is something that gets done. He took a survey. He took a survey of insurance carriers in Maine who provide Workers' Compensation benefits. You could be cynical about that, as I sometimes have been, and say, 'how come we're asking them about raising the insurance rates?' But if you didn't take that cynical viewpoint, you still remain with the fact that nobody knows. People are afraid. I'll give you that. But nobody knows. I guess my biggest problem with this whole brouhaha is that a lot of it sounds to me like it's based on straight out fear, with not much to back it up. When we have Workers' Compensation benefits, they are given out at a duration. Presently, in the original time frame in 1992, the time frame was 5 years. Because of various mechanisms within the Workers' Comp System, that has been raised to 7 years. Everybody you talk to agrees that it should have been raised to 8 years last year. There was not agreement on the board to do that, and therefore it didn't happen. Lots of people agree that it actually needs to be raised to 10 years. In fact, I can find in here, if you'd like, documents from NCCI that say, very clearly, to the insured

community, that they need to reserve as if there was 10 years of benefits going to people. Okay, fair enough. That's about 55 percent of the market, 45 percent of the market are folks who are self-insured and they don't have somebody standing over them saying, 'you'd better put this in reserve.' So some of them may have reserved that and some of them may have not. That's a fact. In the majority report, we ask that you go out to 10 years. We also ask that you accept a PI rating that doesn't fluctuate, that stays fixed. Frankly, I have heard lots of talk in the halls these days. I'm happy to negotiate and talk about those issues. That's okay with me. People can come to some better solution about those two things, I don't have any big worries about that. In our report, we also put forward the notion that the executive director of the Workers' Compensation Board be granted more authority in the governance of the Workers' Compensation System. We ask that he be allowed, directed, or whatever the word is that you want to use, to come before the Labor Committee and freely answer questions that we have to ask him and to give reports about the status of the Workers' Compensation System on a yearly basis. We all felt very frustrated by the fact that he often can't answer us. I apologize for going on longer than I like to go on, but this is a very complicated, very important, bill and I want you to think well about it. I guess what I clearly want to say to you is that everybody understands the necessity of repealing Kotch. What I don't want you to forget is the fact that if you go with the majority report, you allow the fact that if you are injured in your arm and two years later you injure your hand, those two personal injuries can be added together. It only seems logical to me. Those are work related. They happened on the job. It's our business to protect people who have been injured on the job. It's our moral responsibility. It's where we need to stand as citizens in this society when we're thinking about the good of all people. So I would ask you to join me on the majority report and I hope if there are any questions, I'm able to answer them. Thank you.

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

Senator **SAWYER:** Thank you, Mr. President, ladies and gentlemen of the Senate. I rise to speak as strongly as I am able against the amendment before you. Frankly, I don't know where to start. I've tried to break this off into a couple of points. The first is that the creation of this amendment, in my opinion, was the saddest event I've witnessed in two years. There was no notice of the discussions over the amendment before you. There was no participation, to speak of, by at least two of the Senators on the committee that created the majority report. There was no participation by the employer community in the creation of this report. In my opinion, it was all done through shadow negotiations. There was a quote in the Bangor Daily News recently that said that this is revenue neutral. Well, frankly, that was spoken by someone who, in their life, has never successfully had to make a payroll on a Friday night. Let me tell you what is revenue neutral about this bill. I have before me a report, as part of the committee amendment. I'd be more than happy to distribute copies if anybody disagrees with the data. Let me read to you the section from appropriations. 'Increasing the maximum length of time that the insured worker may receive compensation to 520 weeks will increase compensation premium costs to state agencies. The perspective costs of the benefit increase is estimated to be \$255,853 per year.' Now talk about some excitement in front of the Appropriations Committee if this had to

pass the muster of an appropriations bill. The state report goes on, 'the additional cost to the state associated with this provision being applied retroactively cannot be determined at this time. The fiscal impact associated with fixing the injury threshold at 11.8,' and as you heard historically the threshold was designed in the law to float. The amendment before you fixes that threshold at 11.8. 'From the state agency point of view, cannot be determined at this time, but may be significant, depending upon the number of injured workers whose work injury is in excess of the 11.8 of the whole body.' The state doesn't know what that amount might actually come up to. We've heard, during discussion in the committee, that employers were stampeded into the committee room. Let me tell you, I can name for you at least three employers who were not stampeded into the committee room. Namely Vishay Sprague and Nautica. How many more companies do we want to bail out of this state and exacerbate Maine's 39<sup>th</sup> in the nation rate that our employees receive salaries? I'll tell you who will get hurt with this amendment, if it passes, it's not the employer community. Who will get hurt is the first employee who walks through that door looking for a job with a limp. They are not going to get hired. The first person who walks through that door looking for a job who had played football. They are not going to get hired. Anyone who is not covered under ADA is at grave risk of finding employment. As strongly and as passionately as I can, I ask you to oppose this horrid piece of legislation and go with the minority report. Thank you.

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

Senator **DOUGLASS:** Mr. President, men and women of the Senate, I rise to bring us back to thinking about how the Workers' Compensation laws came about. They came about to protect employers from the lawsuits that might have been brought by their employees due to major injuries that were suffered on the job. So basically, let's remember that the Workers' Compensation law is about protecting employers. That is its purpose. But it also must reconcile the fact that a worker is injured and that there is a need to recognize that the person, who suffered the injury on the job, is entitled to compensation for their lost ability to work. That is really what this is about today. It's about changing the rules. It's about how we balance that principle that we protect employers against the fact that the worker is injured. I bring something into this debate that has not been mentioned to this point. That is the profits of the Workers' Compensation insurers. In 1998, those profits in Maine are listed in the publication, the industry publication, on Workers' Compensation, it is a September 2000 publication, as being 21.1 percent. So I've had a lot of messages from employers in my area saying, 'oh, because of this Kotch decision, our rates are going up.' I've had similar messages from individuals who have been injured or who are working and simply know that the Workers' Compensation System is their only chance of recovery if they should be injured on the job. What has been missing from this discussion, and I suggest that you think about it, is the industry and what profit they make. What's been missing is some explanation about who it is that is telling us these dire consequences will result if we don't reverse Kotch but do nothing else. I believe that this is something you need to consider. I also want to give you the 2000 Profitability Report from the National Association of Insurance Commissioners. This was published in November of 2001. From Maine, and this is all insurers in Maine, the premiums earned by the company were \$161 billion. The

losses incurred were \$85 billion. That is a return on net worth of 9.3 percent. That's a lot better than I'm getting on my savings accounts. I want you to remember that these cries about the need to raise insurance rates come from the individuals who have this kind of return on their investment. I think we need to address this situation. But I'd ask you to do that fairly. If you are going to do that, you will be voting for this report.

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

Senator **SHOREY:** Thank you, Mr. President, men and women of the Senate. Wow, I didn't realize profit was a bad thing. Businesses are here to make profit. That is why they come to Maine. It just blows my mind that we would think that profits are a bad thing, that we should criticize people for making money. I don't understand that. I'd like to address something the good Senator from Cumberland, Senator Edmonds, said. Fear. Businesses are afraid of this. You're right. They are afraid of it. They should fear it. They are also afraid that they are not going to be able to make payroll every week. They are also afraid that they are not going to be able to keep their employees on because of the cost of doing business in the State of Maine. I can tell you first hand that Maine is not a great place to do business. Maine is not even a good place to do business. As Senate Chair of the Business and Economic Development Committee, I'm ashamed to say that. I really am. We should be doing a lot more in this state to help businesses rather than penalize them. That is what we are doing here. I have not heard from a more diverse group of people on this issue. Pizza parlors, furniture salespeople, retail stores. They are scared and they should be. They don't know if they can make their payrolls. They don't know if they are going to be able to pay for past injuries that people may have had. They ask me the question, 'Senator Shorey, if someone hurts themselves when they are working for someone else then they come to me and hurt themselves too, I'm going to pay for the other one?' I say, 'that is the way I read it, that seems to be the way it is.' That doesn't make any sense. How can you do that? It's the legislature. We're here to correct that. Hopefully we will correct that today. I just hope that we can reject this pending motion and get on to something that will actually work for the people in the State of Maine, for the businesses in the State of Maine, that make this a better place and not the hostile place to do business that is quoted in a major magazine in the United States. Please follow my light and reject this.

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

Senator **LONGLEY:** Thank you, Mr. President, colleagues in the Senate. It feels like a major speech. I think it's a sad day in Maine. I think we should be able to compromise. I don't see a compromise. I don't see a solution. I see misinformation. I see good businesses out there trying to help Maine workers. I see good Maine workers out there who deserve to have their workplace injuries included. I see no request for information in either of these studies to try to get a handle on where it is that the insurance companies are. I saw some report that they are the second most profitable in the nation. That's great. I'm for profit too. But profiting on who? On Maine businesses and Maine workers? I don't see a compromise that even tries to get to the bottom of this. When I first heard of this issue coming up at the

end of the session, it worried me and I've been trying to listen to both sides. I've been cheering for a compromise and I don't see a good one in either report. I'll be voting against both. My best friend from high school is a nurse. Pre-Workers' Comp reform she ran to help somebody who was having a heart attack, who weighed much more than she did, and she tore a big part of her back. She recovered. Went back to work. Post-Workers' Comp reform, had another chance to help somebody and said, 'I don't care about my back, this person needs my help.' She re-tore. Her case went to the Supreme Court. She, and everyone else who has called me from the worker side of this issue, has said that the injuries related to the Workers' Comp process are more injurious to them than the injury itself. Talking to Workers' Comp lawyers, they flag people away. There are aspects of this process that need to be reformed. I have a personal opinion. I think pre-1992 was weighted on the side of the worker. That was not right, as is now, which is weighted on the side of the employer. Good, socially responsible employers in my district, when I talk to them on Workers' Comp issues and explain what I'm hearing from my constituents, care. They want to see us work something out. What we have here is, I think, not anything that I am proud of. So I wrestled with this decision. I've read the case law. I've talked to both sides. I've listened to my constituents, be they socially responsible employers or employees. I don't see that we have a solution. I think we've failed our constituents, be they businesses or workers, employers or employees. Personally, for me, this is a sad day. I think that we really have to come to terms with ways to find a balance in this process. I think it is what Maine businesses want. I know it is what Maine workers want. We should be able to do this. As one employer told me, 'we're paranoid. It's not logical, but we are.' This employer is a great employer. He does great work in various schools. He's pleading with me to not go with the majority report. I hear those pleas and I've been honest with him, as I'm honest with you. We need reform. We need balance. We don't have it, we don't have a compromise. I'm very sorry about where we are at right now. I hope, if nothing is going to happen this year, that in future years I wish you the best of luck. Maine people, be they employers or employees, really need some balance and we should be able to strike a healthy compromise. Thank you.

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

Senator **NUTTING:** Thank you, Mr. President, ladies and gentlemen of the Senate. I also rise today and urge you to reject the pending motion so that we can on and accept the minority report. The majority report, in my opinion as someone who has sponsored bills concerned with Workers' Comp for years now, totally unravels much of the 1992 reforms. The majority report does eliminate the part of the Kotch decision that says Maine employers would have to be responsible for non-work injuries and have them combined or stacked with work injuries. But the majority report leaves vague as far as what injuries are to be stacked together. The majority report leaves that to be litigated and litigated. The Churchill Supreme Court decision of a few years ago has not been debated. It is not before us today. That Churchill decision said two injuries can be put together or stacked but it requires that the preexisting work injury has to contribute significantly to the new work injury. I think that is fair. That's not being debated here today. The majority report, to me, is so vague on this it leaves it open for future court cases,

future court cases that have the potential to drastically increase the cost of Workers' Comp. Is Section 213 of the law a vague quagmire that needs more work? Yes, it is. But I don't think Section 213 is going to be fixed with a 37-second work session or with work sessions where the sponsors and co-sponsors aren't even notified. It's hard for me to fathom that it took several days to debate whether or not we should require Maine businesses and only Maine businesses to be responsible for non-work injuries. To have only Maine businesses be responsible for an old football injury to be combined with a work injury and then you would go above the threshold and receive permanent partial impairment benefits. The majority report also, here again without a work session, proposes to extend the payment limit of 260 weeks to 520 weeks. Half of the market in Maine, the self-insured market, has no reserve for that. That has huge implications. Several of us were charged with trying to come up with a compromise and were given to 10 o'clock this morning to come up with one. We worked most of the night and came up with a compromise. But that was unequivocally rejected this morning in favor of increased litigation. Presently, the partial impairment threshold floats. That was created in the 1992 reforms. It floats so that the 25 percent of cases that are the most serious get the longer benefits and the 75 percent that are below don't. The majority report freezes that so that we have ever increasing costs to the system. It also opens up the whole area of retroactivity so cases can be opened up and again litigated. I want to close with the same statement I made at the public hearing when I testified in favor of this bill. Increasing the cost of Workers' Comp in the State of Maine is going to mean that fewer people are hired. It's going to mean less wages paid. It's going to mean that smaller healthcare benefits are offered. Small businesses, in Maine especially, and I'm a small business owner myself, do not have an unlimited pocket that they can just keep paying out and having their expenses go off the charts. All businesses in Maine are faced with a global economy that they have to compete in. They can't compete in a global economy if their Workers' Comp rates go back to the highest in the nation. I urge you, strongly, to reject the motion before us so that we can go on and accept the minority report. Thank you.

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

Senator **EDMONDS:** Thank you, Mr. President. I just had to clarify a few things that I think got confused in the discussions. I want to make perfectly clear that the majority report would not include a football injury and a work injury. I say that again so it's absolutely, positively clear. The majority report would not include a football injury and a work injury. Period. The end. The other point I want to make clear is that the cost to Maine businesses, I don't doubt, are high. What's become very clear, in the discussions that I have heard, is that the Workers' Compensation premium costs are not what are skyrocketing, but the healthcare costs. As much as I want those costs to come down, that's not the debate we're having today. We're having a debate about Workers' Compensation costs. I think, finally, what I want to say is that whether people agree with me or not, I'm fairly clear that including work related injuries has been the law of the land. If it's been the law of the land, why hasn't there been litigation, litigation, litigation. Why has one case, my constituent, Mr. Kotch, after 8 years, emerged victorious. Most people give up. Most people don't have the physical, spiritual, or stamina to get themselves through the Workers' Compensation System to the

ultimate end of winning a case. There may be people out there right now who have two work related injuries that could go to court. They don't get there. They give up. It's too hard. So you can still talk about the potential for all kinds of disaster, but the reality is it 'ain't' happening. 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 have four separate, but interconnected, things that I do want to say. First of all, as I close down on the second year of service here, I've only had one time that I have been terribly disappointed and that was the treatment I received as a member of the Labor Committee when we were trying to deal with this matter. So I would like to echo the sentiments of the sponsors of this bill and what was not done, and should have been done, from the committee stand point. That's point one. Now point two. There have been some assertions made with respect to profitability and return of capital. Any of you who are worth your salt in terms of assessing returns on equity, returns on risk capital, know that 9.3 percent is a dismally low return and you would probably be discarding those investments from your investment portfolio if, in fact, your company or group of companies was getting that for a return. Profitability in this area is dismal, quite frankly, and I suspect that many companies who are in the insurance business provide Workers' Comp as part of a series of packages and have to do it in order to secure the broader insurance business provided to their customers. When you look at Maine's insurance market, less than 25 percent of it is tied to insurance companies. We have MEMIC, which has a significant portion of the insured market and a little more than half of the market is self-insured. One of those self-insured is the School Management Association. This is what they say about the majority report, 'It will provide steep increases in Workers' Compensation rates, over 40 percent, due to added years of eligibility for benefits. More people in the system and more people qualifying for life-time benefits. It'll take us back to the number of weeks of eligibility in 1992 when the system was in crisis. Retroactivity for this amendment on or after January 3, 1993, has more devastating possibilities than Kotch because it would potentially re-open many more cases.' So that is one of the not-for-profits, your school systems, and that is what they say about the majority report. Now let me try to be brief with respect to the majority report. I'll tell you five things. It doesn't reverse Kotch. That's point one. It does not return us to the status quo pre-Kotch. That's point two. It significantly increases costs. That's point three. It obliterates a key component of the 1992 reforms. That's point four. Lastly, it freezes the threshold for life-time benefits at 11.8. That's point five. So let's deal with the facts. Let's get on with the vote. 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. As the sponsor of this bill, I find it necessary to talk about why I felt it was important to bring this bill forward on behalf of the Executive. The Kotch decision, in fact, redefined Workers' Comp from being a Workers' Comp program to a general disability program and said however a disability occurred, it must be covered by employers. That is illogical. It's illogical

because employers, whether it is the state as an employer or a business as an employer, certainly cannot afford to cover a general disability program. Reversing the Kotch decision, which is what L.D. 2202 does, is to bring it back so that we have continued the logical separation of disability issues. If a person is unfortunate enough to be disabled through some act outside of the workplace, the workplace should not be required to compensate for that. If a person is disabled at the workplace, we do have an obligation to assure that there is compensation available. The effort that we went through in 1991 and 1992, for the handful of us that were here at that time, was a very difficult effort of creating a very delicate balance that looked at how to maintain a system that will cover workplace related injuries and be affordable for the businesses of this state. The Kotch decision definitely threw that delicate balance out the window. Repealing it is a logical thing to do. The majority report that is before you has some significant costs that are significant enough to warrant its not passing. They are costs to not only the business community, which we've heard about and we've heard from, but also to municipalities, to schools, to hospitals, and to nursing homes. This session has been absolutely filled with concerns about the cost of healthcare, concerns about adequate funding for education, and concerns about property tax relief. The majority report adds increased cost in all those categories. When I received a copy of the majority report, the first thing I did was to seek out some of the groups that I knew were self-insured to ask, first of all, if they did reserve for that 10-year period as the actuaries may have indicated was a logical thing to do. They had not. When I talked to Maine Municipal they said that as they looked at it, the cost of maintaining that reserve was a cost that municipalities really could not bear because it meant increasing what your fees were and holding onto that money. When I talked to the schools, the report that we got back, you've heard already read, talked about a potential 40 percent increase. Those bills are going to go out July 1<sup>st</sup>. It is critical that we address this issue and address this issue now because your school budgets are going to be fully developed by July 1<sup>st</sup> and the bill that they will get, in some cases, this \$15,000 to \$40,000 means either an ed tech or a teacher or some other program that is important to the students and some other program or staff that we have fought long and hard to get funding for through this legislative process. The bills that your municipalities are going to get for fiscal year 2003, and this is an estimate from a person who was at home that night when I asked, is about \$5 million. That's, again, a bill that is going to go out after the budgets are done, after the taxes are determined, and that is a cost that they are going to have to absorb. You've already heard what the cost is to state government. I know that there are hospitals and nursing homes that are also self-insured that have not reserved for this expense. I don't have exact figures on that, but I know it is a concern. We need to take this action in order to continue to provide an environment in which people can do some planning around those costs, whether they are municipalities, whether they are in schools, whether they are in small businesses or large businesses. One of the other issues that I think is critical to bring up is that it is often easy for us to look at some of the larger businesses or larger employers and talk about the fact that there are large profit margins there, there are opportunities to cover some of these things. My district is filled with small businesses. As I spoke before the committee presenting this bill, I said my district has small businesses, very small businesses, extremely small businesses, and micro businesses. We also have a whole bunch of people who are sole proprietors because they don't

dare hire anybody because the environment for hiring one or two people to them feels too delicate and so fragile and they can't depend on it being stable in terms of what their costs are going to be. They maintain themselves as a sole proprietorship rather than take the risk of employing people. Those small, tiny, micro businesses cannot afford increases that we're talking about. Whether it's a 1 percent or a 2 percent, it's often the entire margin that allows them to stay in business. So I would urge you to defeat the pending motion, to go on and pass the minority report so that we can move on this issue. I do also believe that this is a system that is in crisis, a system that must be addressed in the broader scheme. I regret, dearly, that this was not a possibility during this process. But I hope that it will happen. Thank you.

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

Senator **SAWYER:** Thank you, Mr. President, ladies and gentlemen of the Senate. I'd like to respond to three points that I believe I heard properly during today's discussion. The first, the Senator from Waldo, Senator Longley, inquired as to whether efforts were made to compromise. I know I was here until midnight last night, and I know many others were as well, in a valiant and bona fide effort to reach a compromise, and as was reported earlier, that compromise effort was apparently refused at around noontime. The second has to do with profits. All I can tell you is that as I travel with people who try to create jobs in the State of Maine, and as I sit here and stand here and listen to this body, I get this sense that people in Augusta seem to think that behind the front door, behind the front desk, of every small business is a vault. In that vault are bars of gold. When we, in the legislature, passed the most expansive family medical leave in the nation, when we passed the most restrictive over-time laws in the nation, when we perhaps will pass the most outrageous Workers' Comp law in the nation, there are people in this town that seem to think that the average, small business person goes out to that vault, grabs one of those bars of gold, brings it out on the desk, scrapes off a few shavings, and puts that bar back in the vault with all the other bars. All I can tell you is that if that exists, that does not exist with anybody I know in Maine. Finally, I feel the need to respond, in part because we didn't have the opportunity during committee discussions. We've all received, I'm sure, many messages and I have a favorite one that I'd like to share with you. Sister Mary Norberta is the Chief Executive of St. Joseph's Hospital, the second largest hospital in my community. I won't give you all the details and background of Sister Norberta. If you had met her, you'd know. If you haven't met her, you can assume. Sister Norberta leaves me a message, 'please support the minority report.' Now I have to tell you that there are people in this town who seem to think Sister Norberta is either stupid or greedy. I would invite anyone who feels that way to go meet with the good Sister and find out that she is, in fact, neither. Thank you.

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

Senator **DOUGLASS:** Mr. President, men and women of the Senate, I've heard some remarks about the process being unfair here. I'd like to take you back to the 119<sup>th</sup> Legislature when I chaired the Labor Committee and remind you that there were many bills there put forward by labor with the thought in mind that

after the changes in 1992, which actually set us back considerably in terms of an injured workers' ability to pursue a valid claim for an injury. Basically, they were forced to do that without the aid of an attorney, although the insurers always had an attorney. We basically kept that at bay. So as far as the process goes, we heard on many occasions, 'don't make any sudden changes in the Workers' Compensation System.' Well, that is what is being proposed here. Further, it's a change that was brought in at the end of our session. So I hope you will discount all the other arguments about people being consulted or not being consulted. Ladies and gentlemen, Mr. President, we are at the end of session. Sometimes the discussions are not easy to have. If the matter had been brought forward earlier, they might have been easier. If it had been held in abeyance, until next session, we might have some studies, some information, some dialogue, rather than the rhetoric that I've heard here today. I also want to address the sarcasm I heard about gold bricks being in the vaults, the assumption that small businesses have gold bricks in the back. Listen, this is about worker's body parts. It's interesting that the discussion was about gold bricks because I suspect that is the perspective you come from, that you are trying to gather up all those dollars and cents you can at the expense of a worker's body parts. I hope we don't do that today. I hope we can treat this matter as one in which we judiciously think about whether we must act right now to make a change without any countering consideration for the people who are on the other side, that is the workers who stand to lose because they have, for instance, been shot through the hand in Vietnam, as one of the individuals in these cases was. I hope we will drop the sarcasm and think, not about gold bricks, but about what it means to be a worker here in Maine. I also want to address the fact that I think some materials have been passed out about lay-offs. Whatever we do on this matter will not change the fact that Chinese workers are willing to work for less than Americans, that they are not protected against having their hands and feet cut off, their children are not protected. This matter that is before us will not change that fact. One way or another, Americans are going to have to decide to buy only what's made in America where workers are protected or not. I hope you will keep that in mind as you are voting on this matter because lay-offs are not going to occur because of this vote.

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

Senator **DAVIS:** Thank you very much, Mr. President, ladies and gentlemen of the Senate. A lot has been said and I won't say a lot more. But I do want to talk a little bit about this. During my childhood, growing up in the Town of Dexter, there were two companies in their infancy. Dexter Shoe and Pride Manufacturing. Dexter Shoe moved in down on lower Water Street and I watched them grow throughout my life. Now I'm watching their demise. Five hundred and some odd workers were laid-off this last winter. Many of them I grew up with. I've gone to the meetings. I've gone to the employment training meetings. I've gone to their homes. Many of them have come to my home. Many of them have sat at my kitchen table and had tears rolling down their faces because they had lost their jobs. It's a society that has been destroyed. It's gone. Now to say that Workers' Comp is the reason for it, that's foolish to think that. But it is part of it. The executives at Dexter Shoe made it very clear to me, over and over, whether I was with the Governor or Senator Collins or whomever, that the high cost of doing

business in this state is what forced them to leave. Gone. The other company, Pride Manufacturing in Guilford, the world's largest manufacturer of gold tees. President Bennett and I went up there in February. He had an award for another fine company, Moosehead Manufacturing. While he was there, I took him to Pride. I know the Pride family. They are great people. They do great things for their employees. Health programs. They buy memberships to the YMCA, to the local golf club, they do all sorts of things for them. My family has worked for them. My wife worked for them. My son worked for them. My daughter-in-law worked for them. Great people. They told us that it cost 25 percent more in Maine to make a golf tee than it does, not in China, but at their sister plant in Wisconsin. Please follow my light. Thank you very much, Mr. President.

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

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

Senator **CATHCART:** Thank you, Mr. President, men and women of the Senate. I had not planned to rise on this issue. Although I did chair the Labor Committee in the 118<sup>th</sup>, I don't feel that I'm an expert on Workers' Compensation laws. They are very complex. They are very difficult. They are something that we have struggled with for years. I was a member of the other body when we passed the reforms in 1992. I remember agonizing over that and talking to so many people and I finally voted for the reforms. Ever since then we've wondered if we swung too far away from the injured workers. So I'm struggling with this one. I wish there was another report that was more of a compromise between the two sides and I was very hopeful. I want to express my appreciation to all the people who have worked so hard to try to find a middle ground here because I think that would be what we would all feel comfortable with. I do have to express some resentment at some of the remarks, Mr. President. People seem to assume that those of us who serve in this body have no experience with business and don't understand profits. I have owned a small business. I grew up in a family that owned brick businesses. I can remember talking about a business where the workplace is not often totally safe. We had some injuries and I can remember my mother and father staying up all night worrying about a worker who had been injured. I know that businesses care about their employees. They don't want them to be injured. They work for workplace safety. But they do want their employees, if they are injured, to have the best care, to be able to recover from their injuries, and go back to work. I have talked to several of the business owners who have called me from my district this week and the Senator from Cumberland, Senator Edmonds, said it very well, there is a lot of fear. Fear of the cost of Workers' Comp going up drastically. That is why it makes it so difficult to make the decision on this. None of us want to increase the cost to businesses in this state and we shouldn't even assume that anyone does. We know that we want to have more businesses and better jobs so that our young people don't have to leave the state. But every business owner or business person I have talked to this week, when asked if he or she thought that an injured worker should be allowed the stacking of one work related injury with another work related injury, has said, 'yes, that is reasonable, that is fair.' I don't know anybody who is really saying that you should be able to stack a

sports injury or another kind of injury that happened years ago but not in the workplace with a work injury. I don't really think that would be fair. I wouldn't want to do that. But as I understand the majority report, it would take care of the work related injuries and allow the stacking of those and not the others that are not work related. I think that is probably the right way to go. I came here still hoping that someone would announce that there was a new compromise reached, but having listened to the debate and thought through these issues, I think I'm going to have to support the majority report on this one. Like the good Senator from Penobscot, Senator Sawyer, I have the greatest respect for Sister Norberta at St. Joseph's Hospital. I have a call from her. I haven't called her back. But I believe that if I asked Sister Norberta if she cares about injured workers and if she thinks you should be able to stack two workplace related injuries, she would probably, like the other business owners I've talked to this week, say yes, we should. I do intend to call her back and tell her how I voted on this. Thank you, Mr. President.

**THE PRESIDENT:** The pending question before the Senate is the motion by the Senator from Cumberland, Senator Edmonds to Accept the Majority Ought to Pass as Amended by Committee Amendment "A" (S-574) 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 (#316)**

**YEAS:** Senators: BRENNAN, CATHCART, DAGGETT, DOUGLASS, EDMONDS, GAGNON, MARTIN, MICHAUD, RAND, TREAT

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

10 Senators having voted in the affirmative and 25 Senators having voted in the negative, the motion by Senator **EDMONDS** of Cumberland to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-574) Report, FAILED.**

Senator **SMALL** of Sagadahoc moved the Senate **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "B" (S-575) Report.**

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

Senator **EDMONDS:** Thank you, Mr. President. I feel I must rise to talk again about the fact that, despite all that has been said about this report, it rolls back beyond Kotch. It rolls the law back beyond where it's been. I wasn't going to give you chapter and verse, but I feel I must. Prior law covered combining impairments



from multiple work injuries. Dumont, 1996, 'we hold that the board must consider the permanent impairment attributable to previous injuries when determining whether the impairment falls within the more serious, higher percentage of whole body impairment.' 1996, Maine law. Bourgoin, 1999, 'all of Dumont's injuries were work related and therefore there is no question of the impact of a non-work injury.' Churchill, which has been referred to before, 1999, 'Section 213 embraces the whole body approach and reflects on legislative intent to preserve longer term benefits for those employees with the most severe disabilities. Section 213 permits the consideration of multiple work related impairments in the determination of the 11.8 threshold.' It could not be more plain. It's been reiterated three times in Maine law. Now lots of people will say to you that there is a jump between Churchill and Kotch. That is what has been in law. I don't understand why that is not clear as a bell. Everybody has been operating under those understandings. Everybody has read the law. Everybody has interpreted it thusly. My constituent, Kotch, went through the courts, 8 years worth of going through the courts. He won every case. That was not even work related. So the fact that you're going to now take away the combining of work related injuries is a major roll back. It's not a repeal of just Kotch. It's a repeal of Kotch and all connections of work related injuries. Don't fool yourselves. Everybody is wandering around here say, 'oh, we're just going to repeal Kotch.' Not true. You are repealing Kotch and you're taking away an injured worker's ability to say, 'I got this injury and then I got this injury, and the two of them together caused me ....' I'll use a better example. Let's say I have a knee injury. Okay. I get some physical therapy. I go back to work. I'm functioning. I'm not running a four minute mile, but I'm functioning. Then I get a shoulder injury. Okay. My job requires that I stand and run a machine like this (she makes a back and forth motion with her arms). My husband was a hand-sewer for 17 years. You know what you do when you hand sew shoes? This (she makes a motion with her hands) all day long. You get rotator cuff injuries. Okay. If you're standing or sitting all day with a bad back and you have a rotator cuff injury, hello, you can't work. This is not rocket science. This is people's lives. This is people's bodies. This is not simply repealing Kotch. This is going beyond. Backwards. I, frankly, am totally proud of Maine and its ability to think about family medical leave, about severance pay. I'm totally proud that we, as a state, have repeatedly taken the position that our people, our people that we represent, are worth taking care of, looking after, being thoughtful to. I'm completely proud of that. I know lots of people have thought that this whole decision is going to be used somehow against them in some election. I have no worries at all. I will stand before any person in my district or anywhere in this state and proudly say I am delighted, pleased, proud of myself that I didn't want this state to go backwards. I don't know how to make it any clearer to you. This has been the law of the land. Thank you.

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

Senator **LONGLEY:** Thank you, Mr. President, colleagues in the Senate. What I had to say, I can't follow and I will leave the previous Senator the good Senator from Cumberland, Senator Edmonds, and let her words be the ones that you hear.

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

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

Senator **KILKELLY:** Thank you, Mr. President, men and women of the Senate. From the time this bill was sponsored, there has been a number of discussions around how far back does this bill reach. How much does it unfold of law beyond Kotch? So we sort of struggled with how to measure that. How do you figure it out? I'm not a lawyer and I actually haven't done a lot with labor until the last few hours. So we started trying to figure out how to look at it. It occurred to me that the best way to look at it was the fiscal note. If this bill actually went back and undid rulings prior to Kotch, there would be a significant savings in Workers' Comp because we would, in fact, be taking something away that is already there. What the fiscal note says is that this bill will avoid unbudgeted increases in cost to state agencies. In the second paragraph, 'based on an analysis by the National Counsel of Compensation Insurers, Workers' Compensation insurance rates in Maine will increase by 15 percent or more if the bill is not enacted.' No where in here does it say if the bill is enacted there will be a savings of X. That, to me, is a definitive example of the fact that this bill does not take away anything that was in existence prior to Kotch. This fiscal note process is our way of doing that analysis. The NCCI process is the actuarial way of doing an analysis for the industry. The industry determined that there won't be a savings because it is not taking anything back. The Fiscal Office determined that there won't be additional savings to state government because we're not going back beyond Kotch. I did have the fiscal note distributed earlier. I would urge you to take a look at it. I do not believe, based on this information and others that I have talked to, that this does go beyond Kotch. If it did, there would be a savings. Thank you.

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

Senator **SAWYER:** Thank you, Mr. President, ladies and gentlemen of the Senate. I rise to speak in favor of the motion before us. I want to underscore, unless anyone else puts words in the mouth of the legislation before you, I'd like to quote briefly from the summary of the bill that we are voting on. It says, 'the purpose of this bill is to maintain the requirement contained in the Maine Workers' Compensation Act of 1992, Section 213, that 25 percent of Workers' Compensation case involving permanent injury be eligible for duration of disability benefits rather than the durational benefit cap. This bill clarifies that the board collect permanent impairment data to determine the point at which 25 percent of the cases will be eligible for duration of disability benefits. The data may not include permanent impairment that is unrelated to the work injury at issue.' Further more, the summary reads, 'this bill overturns the decision of the Maine Supreme Judicial Court in Kotch versus American Protective Services, which interpreted the law to permit preexisting conditions that are not related to the work injury to be considered in determining eligibility for duration of disability wage loss benefits.' This bill intends and attempts to clarify what has been practiced in the State of Maine since 1992. 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. I was struck by the comments made by my good friend from Piscataquis, Senator Davis, and my friend it goes both ways. I come from a city where businesses have come into town, have taken advantage of TIF. One company in particular came into our area and had a 100 percent TIF for 20 years. They negotiated a 100 percent TIF for 20 years and then proceeded to fire some of their employees for trying to organize. They got themselves in trouble with the national board and ended up running themselves almost out of business, leaving the town holding the bag. The town, just prior to this company and putting themselves in the position of providing 100 percent TIF for 20 years, had lost a paper company. Granted this paper company is an aging mill. But the largest paper producer in the world bought the mill, much to everyone's satisfaction. They had a full page ad. They were going to renovate the mill, modernize it. But they needed some concessions from the workers. They got them. Some health concessions. They got them from the workers. Needed a little money. Taxpayers gave it to them. Then they closed. They moved out of the state. Under darkness of night, they took all their equipment and moved out of state so they wouldn't have to pay the town the property taxes on it. Even though there were companies, other paper companies, interested in that mill, they don't want to talk to them. They don't want the competition. They just wanted this mill shut down. They ignored numerous phone calls from our Chief Executive to try to reason with them, to try to talk to them. We'll do anything from our U.S. Congressmen to U.S. Senators. They weren't budging. Yet you can still go to stores today and buy Scott towels and Scotties. They are made someplace else. It's just a label that was started in Winslow, Maine. It's now gone. We're faced with it again after going through herculean efforts to save the last U.S. shirt producer in this country. Million dollar grant from the federal government. City owning the building, providing it rent free. BETR reimbursements. A special law that this Legislature passed to allow the owners to receive ETIF, when they weren't eligible for it, but because of a Special Session of this Legislature, back then they got it. All of those benefits transferred to the new owner upon being sold. But one didn't. The liability of severance. Now they are closing, 300 people out of work, and the company was good enough to grant one week of severance for every four years of service rather than a one-for-one match. I got criticized in my local paper today for trying to fix it. A report that we got from the Economic Development Incentive Commission last year that was done by a group at the University of Maine was interesting. It was about the dollars spent on economic development in this state and the jobs. Well, you are doing pretty well in Cumberland. You're doing pretty well in York. But guess what, we're losing jobs in central Maine. With all of the investment. So either, it's a bad investment and we're very poor business people or we're not spending enough. I know we're spending enough in Cumberland and York because the unemployment rate is just about in the negative numbers when the report was done. So maybe some of that money ought to come a little further north and help out folks in the areas that I represent. I can't in good conscience this time, in my city, do anything that will hurt workers any more than they have already been hurt. They take it in the kissers, they take it in the gut, they are taking it in the pocketbook. If they happen to be injured, I

don't know, they'll just fade away I guess while we continue to protect out-of-state owners.

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

Senator **LONGLEY:** Thank you, Mr. President, colleagues in the Senate. To put it very simply in terms I was hearing from those who have been talking to me about this issue, the businesses were saying, in reference to Kotch, and I agree, that if it was not a work related injury then they have problems there. I can see why they do. This provision in front of us says even if they are work related injuries, we're going to separate them out in some cases. Talk about litigation. Going back to the 1920's, I guess, when Workers' Comp legislation was appearing on the books. Basically the thinking behind it was that when people enter the workplace, they are going to get injured. How do we control costs? What can be the deal between the employer and the employee? Very simply again, what I was hearing from employers who were talking to me on this issue is that they said they want to cover workplace injuries. That's fair. I'm just reiterating what they thought was their fairness argument and echoing what the good Senator from Cumberland, Senator Edmonds, was saying, which is I, too, believe that Maine employers and employees want to find a way to work it out together. I will restate again, I think we're failing both today. I encourage you to vote against the pending motion. It's not a solution. It adds to the problem. Thank you.

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

Senator **NUTTING:** Thank you, Mr. President, ladies and gentlemen of the Senate. I'll be very brief. We've had several court cases quoted here. I just want to remind the members that the Churchill decision stated that two injuries to the same body part could be combined or stacked together. That is as far as any court decision has ever gone in Maine, until Kotch. For it to be said that somehow this Majority Report goes further than Kotch, to erode Churchill, I just strongly don't agree. It didn't show up in the fiscal note that we were going further than Churchill. On page 1 of L.D. 2202 it clearly states that one injury can be combined with another using this same exact language, that it substantially contributes one to the other. I think it's very clear that we haven't gone beyond Churchill. We've gone to where Churchill was. Thank you.

**THE PRESIDENT:** The Chair recognizes President Pro Tem Michaud of Penobscot.

President Pro Tem **MICHAUD:** Thank you, Mr. President, men and women of the Senate. I hope that you will vote against the pending motion. I think it's very clear that this bill has strong feelings on both sides of this issue. I also think that, after several negotiation meetings with the Chief Executive, this bill goes further than the Kotch case. Simply put, this is an attempt to roll back, because of the hysteria and the emotions built on both sides of the aisles, what is currently in existing law. We tried to work out an amendment to deal with just the Kotch case. We could not get agreement on it for the simple reason that when we tried to do that there were members, and the Chief Executive included, who wanted to do more. I do not believe that this bill should go through. It deals with more than just the Kotch case. I



will not support this. To address the good Senator from Lincoln, Senator Kilkelly, as far as the fiscal note, as we all know, fiscal notes are what PR deal with, the information that is provided. This information was provided by the administration. The administration received their information from the NCCI. That's why you've got the fiscal note on this bill as is. If I could have assurance that it does not go beyond Kotch, I'd feel more comfortable. I do not have that assurance. It became obvious in several negotiations with the Chief Executive that he intends to go further. That's totally unacceptable. I will not support this minority Report because I think it does go too far. So I hope that you will vote against the pending motion so we can go on and try to deal just with the case of the Kotch bill. Thank you, Mr. President.

**THE PRESIDENT:** The pending question before the Senate is the motion by the Senator from Sagadahoc, Senator Small to Accept the Minority Ought to Pass as Amended by Committee Amendment "B" (S-575) 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 (#317)

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

**NAYS:** Senators: BRENNAN, CATHCART, DAGGETT, DOUGLASS, EDMONDS, GAGNON, LONGLEY, MARTIN, MICHAUD, RAND, TREAT

24 Senators having voted in the affirmative and 11 Senators having voted in the negative, the motion by Senator **SMALL** of Sagadahoc to **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "B" (S-575) Report, PREVAILED.**

**READ ONCE.**

Committee Amendment "B" (S-575) **READ** and **ADOPTED.**

**ASSIGNED FOR SECOND READING AT 6:00 THIS EVENING.**

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

#### PAPERS FROM THE HOUSE

##### Joint Resolution

The following Joint Resolution: H.P. 1733

#### JOINT RESOLUTION RECOGNIZING THE ACQUISITION OF A NEW PUBLIC PARK IN THE GREATER PORTLAND AREA CALLED THE PRESUMPSCOT RIVER PRESERVE

WHEREAS, in the midst of Maine's most populous city there is a large parcel of beautiful land along the Presumpscot River that has been compared to a vista in the White Mountains of Maine, which land is being acquired by the City of Portland and the Portland Land Bank Commission for a regional land preserve with assistance from the Land for Maine's Future Fund and an urban land trust named Portland Trails; and

WHEREAS, once this land is purchased, it will become known as the "Presumpscot River Preserve" and will provide vital public access and passive recreational opportunities along a pristine stretch of the historic Presumpscot River to the people of Greater Portland and the State of Maine; and

WHEREAS, this once-in-a-lifetime opportunity to acquire scenic open space in an urban area was made possible by the recent revitalization of the lower portion of the Presumpscot River, which opportunity will shortly be enhanced by the anticipated removal of the Smelt Hill Dam downstream; and

WHEREAS, with the prudent foresight and diligence of the residents of the North Deering neighborhood in Portland, who recognized the tremendous public value of this land; the leadership and financial support of the City of Portland; the Portland Land Bank Commission; and Portland Trails and the financial backing of the State of Maine through the Land for Maine's Future Fund, the opportunity for public access to this land will be forever preserved; and

WHEREAS, Portland Trails is embarking upon a capital campaign to raise a portion of the private matching funds needed to secure a grant from the Land for Maine's Future Fund and hopes to work collaboratively in this effort with numerous private groups and municipal, state and federal entities dedicated to the preservation of rivers and open space for environmental and recreational purposes; now, therefore, be it

**RESOLVED:** That the following groups be recognized for their valuable contributions to the acquisition of the Presumpscot River Preserve; and be it further

**RESOLVED:** That the people and the City of Portland and the Portland Land Bank Commission are hereby recognized for their willingness to provide substantial financial and public support to make possible this acquisition of pristine open space along the Presumpscot River; and be it further

**RESOLVED:** That the members of Portland Trails are recognized for providing valuable leadership and for securing crucial financial assistance for the acquisition and eventual stewardship of the Presumpscot River Preserve. The members of Portland Trails have played a key role in the establishment of pedestrian walkways and shoreland access throughout Greater Portland for over 10 years, and its activities have served as a model for local land trusts throughout the State; and be it further

**RESOLVED:** That the Land for Maine's Future Fund is hereby recognized for the vital role it has played in the acquisition and preservation of important parcels of land in rural and remote portions of the State. In addition, for its decision to invest in the Presumpscot River Preserve, the fund is hereby recognized for the vital role it is able to play in securing key parcels of open space in population centers that are accessible to people without adequate means of transportation. Such acquisitions of urban land are critical to securing the State's quality of life, yet they could not otherwise be accomplished without the resources of the fund due to the high cost of land in urban areas; and be it further

**RESOLVED:** That the Town of Falmouth is hereby recognized for its generosity and willingness to permit the City of Portland to annex land in Falmouth, which was an important element in the acquisition of this land, and for their willingness to provide leadership and assistance in the acquisition of adjacent parcels along the Presumpscot River; and be it further

**RESOLVED:** That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to the City of Portland, the Town of Falmouth, Portland Trails, the North Deering Neighborhood Association, the Falmouth Conservation Trust, the Coastal Conservation Association, the Friends of the Presumpscot River and the Land for Maine's Future Board.

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

**READ** and **ADOPTED**, in concurrence.

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Off Record Remarks

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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 Control Internet 'Spam'"

H.P. 1538 L.D. 2041  
(S "A" S-584)

In House, April 2, 2002, **ADHERED** to **PASSAGE TO BE ENACTED**.

In Senate, April 4, 2002, **PASSED TO BE ENGROSSED AS AMENDED BY SENATE AMENDMENT "A" (S-584)**, in **NON-CONCURRENCE**.

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

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

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

**PAPERS FROM THE HOUSE**

**Non-Concurrent Matter**

Bill "An Act to Create the Maine Rural Development Authority"  
H.P. 1724 L.D. 2212  
(S "A" S-559)

In Senate, April 3, 2002, **PASSED TO BE ENGROSSED AS AMENDED BY SENATE AMENDMENT "A" (S-559)**.

In House, April 4, 2002, **PASSED TO BE ENGROSSED AS AMENDED BY SENATE AMENDMENT "A" (S-559) AND HOUSE AMENDMENT "B" (H-1086)**, in **NON-CONCURRENCE**.

In Senate, April 4, 2002, that Body **ADHERED**.

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

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

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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 **TRANSPORTATION** on Bill "An Act to Promote the Fiscal Sustainability of the Highway Fund"  
H.P. 1516 L.D. 2020

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-1042)**.

Signed:

Senators:

SAVAGE of Knox  
O'GARA of Cumberland  
GAGNON of Kennebec

Representatives:

MARLEY of Portland  
McNEIL of Rockland  
WHEELER of Eliot  
FISHER of Brewer  
BOUFFARD of Lewiston  
BUNKER of Kossuth Township  
PARADIS of Frenchville

The Minority of the same Committee on the same subject reported that the same **Ought To Pass as Amended by Committee Amendment "B" (H-1043)**.

Signed:

Representatives:  
WHEELER of Bridgewater  
COLLINS of Wells  
McKENNEY of Cumberland

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

Reports **READ**.

Senator **SAVAGE** of Knox moved the Senate **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1042)** Report, in **NON-CONCURRENCE**.

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 PRESIDENT:** The Chair recognizes President Pro Tem Michaud of Penobscot.

President Pro Tem **MICHAUD:** Thank you, Mr. President, men and women of the Senate. May I pose a question through the chair?

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

President Pro Tem **MICHAUD:** Could someone explain how much of a tax increase is going to be needed to fund these projects and exactly how far out are the projects going to be built?

**THE PRESIDENT:** President Pro Tem Michaud of Penobscot poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Knox, Senator Savage.

Senator **SAVAGE:** Thank you, Mr. President, members of the Senate. I'm not sure I can answer specifically to the question just asked, but I will say that the 04 - 05 budget must be prepared by the end of this year. The budget does have to be presented in a balanced form. We've been told by the revenue forecast that we are anticipating a shortfall of \$88 million. Now, I'll tell you that the Transportation Committee spent hours, even days, trying to resolve this issue in a satisfactory manner to assure our constituents the projects they have been anticipating will continue. We looked at options that might be available to us. There were some. All would use General Fund dollars. Many of you have made suggestions, but not one of you could assure me that they would vote to use General Fund dollars. So what choices did we have? Use General Fund dollars, accept this legislation, or reduce projects to make up for the anticipated shortfall. For those of you who know me, increasing a tax is one hard thing for me to do. It goes against my better judgment, but I feel I have to be responsible and I have to be realistic. We have heard from many of you that you object to the automatic trigger, I

did myself. So part of this legislation, to give those of you who object to the automatic trigger some comfort, includes that a bill will be presented at the same time the budget is presented that will repeal indexing. I tried to explain this to my local reporter and I confused him right from the beginning. I'm sure most of you will understand what I am telling you. A bill will come in that will repeal. That will give all of us, the Transportation Committee and the full legislature, an opportunity to vote yes or no, do we go ahead with the indexing or have we found another method of funding or do we cut projects? I wish I could tell the good President Pro Tem Michaud of Penobscot the exact projects. I cannot tell you, but if you pull out your transportation plan you could probably see what is anticipated over the next biennium. I wish I could spell those out for you and I'm sure that someone from the department could. Thank you for the opportunity to explain this legislation and I would hope that you will also do the responsible thing and vote for the Majority Report.

Senator **DAVIS** of Piscataquis moved the Bill and accompanying papers be **INDEFINITELY POSTPONED**, in concurrence.

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

Senator **O'GARA** of Cumberland moved to **TABLE** until Later in Today's Session, pending the motion by Senator **DAVIS** of Piscataquis to **INDEFINITELY POSTPONE** the Bill and accompanying papers, in concurrence.

At the request of Senator **DAVIS** of Piscataquis a Division was had. 20 Senators having voted in the affirmative and 12 Senators having voted in the negative, the motion by Senator **O'GARA** of Cumberland to **TABLE** until Later in Today's Session, pending the motion by Senator **DAVIS** of Piscataquis to **INDEFINITELY POSTPONE** the Bill and accompanying papers, in concurrence, **PREVAILED**. (Roll Call ordered)

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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 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

In Senate, April 4, 2002, Reports **READ** and on motion of Senator **GOLDTHWAIT** of Hancock, Bill and accompanying papers **COMMITTED** to the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS**.

In House, April 5, 2002, Report "**A**", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-561)** **READ** and **ACCEPTED** and the **Bill PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-561) AS AMENDED BY HOUSE AMENDMENT "A" (H-1096)** thereto, in **NON-CONCURRENCE**.

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

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:

**PAPERS FROM THE HOUSE**

**Non-Concurrent Matter**

Bill "An Act to Correct Errors and Inconsistencies in the Laws of Maine" (EMERGENCY)

H.P. 1577 L.D. 2083  
(S "A" S-567; S "C" S-585;  
S "D" S-588 to C "A" H-1071)

In House, April 3, 2002, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1071)**.

In Senate, April 4, 2002, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1071) AS AMENDED BY SENATE AMENDMENTS "A" (S-567); "C" (S-585) and "D" (S-588) thereto, in NON-CONCURRENCE**.

Comes from the House, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1071) AS AMENDED BY SENATE AMENDMENTS "A" (S-567); "C" (S-585) and HOUSE AMENDMENT "A" (H-1097) thereto, in NON-CONCURRENCE**.

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

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

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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**

RESOLUTION, Proposing an Amendment to the Constitution of Maine to Allow the Legislature to Establish Classes of Property for Purposes of Taxation and to Exempt Personal Property from Taxation if there is an Excise Tax on Certain Personal Property  
H.P. 1582 L.D. 2087

In House, April 1, 2002, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1053)**.

In Senate, April 4, 2002, Resolution and accompanying papers **INDEFINITELY POSTPONED**, in **NON-CONCURRENCE**.

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

On motion by Senator **SMALL** of Sagadahoc, the Senate **ADHERED**.

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

**COMMUNICATIONS**

The Following Communication: S.C. 710

**120<sup>TH</sup> LEGISLATURE  
SENATE OF MAINE  
OFFICE OF THE PRESIDENT**

April 5, 2002

Honorable Pamela L. Cahill  
Secretary of the Senate  
120<sup>th</sup> Legislature  
Augusta, ME 04333

Dear Madam Secretary:

Please be advised that I have appointed the following conferees to the Committee of Conference on the disagreeing action of the two branches of the Legislature on the 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 Water 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)

Senator Small of Sagadahoc  
Senator Daggett of Kennebec  
Senator Davis of Piscataquis

Sincerely,

S/Richard A. Bennett  
President of the Senate

**READ and ORDERED PLACED ON FILE.**

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Off Record Remarks

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**ORDERS OF THE DAY**

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

**Emergency Measure**

An Act to Protect Workers from Unilateral Imposition of Random or Arbitrary Drug Testing

H.P. 1595 L.D. 2098  
(C "A" H-887)

Tabled - April 5, 2002, by Senator **EDMONDS** of Cumberland

Pending - **ENACTMENT**, in **NON-CONCURRENCE**

(In Senate, April 3, 2002, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-887)**, in concurrence.)

(In House, April 4, 2002, **FAILED ENACTMENT**.)

Senator **EDMONDS** of Cumberland moved to **SUSPEND THE RULES** for the purpose of **RECONSIDERATION**.

Senator **SMALL** of Sagadahoc requested 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 (#318)**

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

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

ABSENT: Senator: O'GARA

18 Senators having voted in the affirmative and 16 Senators having voted in the negative, with 1 Senator being absent, the motion by Senator **EDMONDS** of Cumberland to **SUSPEND THE RULES** for the purpose of **RECONSIDERATION**, **FAILED**.

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

Senator **MARTIN:** Thank you, Mr. President. I'm a little bit lost about what's going on and I wish to pose a question to any Senator as to what is the purpose of the bill and what is the emergency and why were the rules not suspended?

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Senate at Ease.

Senate called to order by the President.

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

Senator **EDMONDS:** Thank you, Mr. President. I want to attempt to answer the question from the good Senator from Aroostook, Senator Martin. I was hoping to reconsider so that I could remove the emergency preamble from this legislation. This legislation has to do with collective bargaining agreements and random drug testing for workers who are in a collective bargaining situation. I was hoping to get the agreement of all that we could remove the emergency preamble and go forth and take charge in that way so that the collective bargaining agreements are not forced onto people. Presently, as a part of the good faith negotiations, random drug testing is often part of that discussion. It's become a difficulty when two groups are bargaining in good faith. They can't come to an agreement about any number of things, perhaps, or one thing, and they get to a place where they are offered their last best offer. In the last best offer, the workers have been forced to accept the notion of random drug testing. This is not drug testing for cause, this is just random drug testing. I felt quite strongly that it ought to be excluded from the collective bargaining situation. Thank you.

Senator **MARTIN** of Aroostook moved to **SUSPEND THE RULES** for the purpose of **RECONSIDERATION**.

Senator **SMALL** of Sagadahoc requested 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.

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

**ROLL CALL (#319)**

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 MARTIN of Aroostook to **SUSPEND THE RULES** for the purpose of **RECONSIDERATION, FAILED.**

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

Senator **KILKELLY:** Thank you, Mr. President, men and women of the Senate. May I pose a question through the chair?

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

Senator **KILKELLY:** Thank you, Mr. President. The purpose of suspending the rules is to allow an opportunity for further action to take place, at which time anyone would certainly have the ability to vote against that action. I would just pose a question to anyone as to why they don't believe that the rules ought to be suspended in order for this action to take place? Thank you.

**THE PRESIDENT:** The pending question before the body is not suspension of the rules, but is enactment. Nevertheless, the Senator from Lincoln, Senator Kilkelly poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Sagadahoc, Senator Small.

Senator **SMALL:** Thank you, Mr. President. I would say this was nothing more than a parliamentary maneuver. Thank you.

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Senate at Ease.

Senate called to order by the President.

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Off Record Remarks

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On motion by Senator **GAGNON** of Kennebec, the Senate **SUSPENDED THE RULES.**

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Off Record Remarks

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On motion by Senator **EDMONDS** of Cumberland, the Senate **RECONSIDERED** whereby the Bill was **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-887)**, in concurrence.

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

On further motion by same Senator, the Senate **RECONSIDERED** whereby it **ADOPTED** Committee Amendment "A" (H-887), in concurrence.

On further motion by same Senator, Senate Amendment "A" (S-537) to Committee Amendment "A" (H-887) **READ** and **ADOPTED.**

Committee Amendment "A" (H-887) as Amended by Senate Amendment "A" (S-537) thereto, **ADOPTED**, in **NON-CONCURRENCE.**

**PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-887) AS AMENDED BY SENATE AMENDMENT "A" (S-537)** 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 Provide Government with the Necessary Authority to Respond to a Public Health Emergency Caused by an Act of Bioterrorism

H.P. 1656 L.D. 2164  
(C "A" H-1062)

**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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**ORDERS OF THE DAY**

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

HOUSE REPORTS - from the Committee on **TRANSPORTATION** on Bill "An Act to Promote the Fiscal Sustainability of the Highway Fund"

H.P. 1516 L.D. 2020

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-1042)** (10 members)

Minority - **Ought To Pass as Amended by Committee Amendment "B" (H-1043)** (3 members)

Tabled - April 5, 2002, by Senator **O'GARA** of Cumberland

Pending - motion by Senator **DAVIS** of Piscataquis to **INDEFINITELY POSTPONE** the Bill and accompanying papers, in concurrence (Roll Call ordered)

(In House, April 5, 2002, Reports **READ** and the Bill and accompanying papers **INDEFINITELY POSTPONED**.)

(In Senate, April 5, 2002, Reports **READ**. Senator **SAVAGE** of Knox moved the Senate **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1042)** Report, in **NON-CONCURRENCE**.)

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

Senator **O'GARA:** Thank you, Mr. President, ladies and gentlemen of the Senate. I would like to try to attempt to answer the questions that were posed by President Pro Tem Michaud of Penobscot. I'm not talking against the Indefinite Postponement. I'm talking about the bill. I would urge the Senate to vote against the motion to Indefinitely Postpone so that I may respond to the questions from President Pro Tem Michaud of Penobscot and go further in the debate.

**THE PRESIDENT:** The Chair would affirm for the Senator that it is appropriate to debate the merits of the measure before us while we debate Indefinite Postponement.

Senator **O'GARA:** I wasn't totally unaware of that, but I just was trying to gather another minute to myself. But let me answer the question, first of all. The first question, as I understand it, was how much would you have to raise the gas tax to fill the gap? The gap, as has already been pointed out to you by the good Senator from Knox, Senator Savage, is \$88 million. You would need to raise the gas tax by 5.5 cents to eliminate the \$88 million gap that is projected for the next biennial. L.D. 2020, that you have, raises \$47 million. If you just wanted to raise enough to correct that, then obviously 3 cents would do the job, and that would be \$48 million. The rest of the projects would have to be bonded. The reconstruction projects, I believe, was the other question that was raised. You have had for a long period of time, along with many other documents somewhere in your desk or in your office, the 6 year transportation plan. They are all listed there. These are ongoing needs. These are not things that are out there 10, 15, or 20 years from now, they are ongoing needs. The reason I'm having some difficulty is because of the things that have been going on in this chamber, in this building, and in Augusta over the last couple of weeks. They bother me immensely. This is not an issue to play games with. This is an issue to hold as hostage for some other item. These are serious matters we're dealing with. We worked hard to come with this proposal. I lived through an attempt to raise the gas tax a few years ago and I know what a struggle it was to get us even the 3 cents, because 5 cents was unacceptable. I know that none of us, or at least I don't think there would be many of us, who would support a bill to increase the gas tax by 3 cents, let alone 5.5 cents. Not now, certainly not a few months before November. Nor will whoever sits in the office on the second floor be willing, and I can't imagine any of you,

whoever you are supporting, would expect he would come forward with a gas tax increase proposal in 2003. Not ever. You couldn't expect him to. The Senator from Knox, Senator Savage, would not expect him to, nor would I, nor as a matter of fact, would anybody else on the Transportation Committee. The time to face up to the problem is now. Indexing is a reasonable way to do it. We have had some outstanding Commissioners of Transportation over the years, one of whom may be in the room besides the present one. I don't know if he is or not, I can't see behind me and I'm not going to turn around. But the present commissioner is a person who thinks very carefully before he comes up with a proposal. He did not come up with this proposal overnight, or on the way home or on the way to his office because he knew something else wasn't working. He spent a lot of time talking about it and working with us on it. It makes sense. Now the one part of it, of course, that raised some concern among a lot of people was that it appeared to have, I guess they referred to it as a jump start. You'd think after 28 years in politics I would be naive enough to think that people would see such a stupid roadblock, roadblock is probably not the right word to use in this case. But we eliminated that thanks to the Senator from Kennebec, Senator Gagnon, with a relatively simple suggestion that caught all of us in the right mood, at the right time, in the Governor's office. We eliminated that and the proposal would then be that before each budget, the commissioner would have to submit a bill to the legislature repealing the indexing. He would then go ahead and develop the budget. As the Senator from Knox, Senator Savage, pointed out to you, the budget needs to be developed now. Not next year. They have to put it together. Then he could go ahead and develop his budget based on what he assumes is going to be there. If it is not there, then obviously the projects cannot go forward. If the legislature repeals the indexing, the money would not be there or perhaps, if the economy continues going the way it's going and more and more people are using their cars, buying more gasoline or whatever, it may not be necessary to raise it. There are lots of ways that this will be taken care of, but it is the best possible way, it just eliminates. Anybody who was in this chamber, on the Transportation Committee, or in the other body during that unpleasant time, I don't know how many years ago, a couple of years ago, doesn't want to go through that again. We don't want to put anybody in that position again. The only source of income, the only source of revenue, for the Department of Transportation to do the roads that each of you use. I would be willing to bet the farm that there is not one legislator in this building, in this room, or in the other chamber, that hasn't on more than one occasion, as they've talked to the commission, as they started to walk away they say, 'oh, by the way...', just after they'd voted against a gas tax increase, just after they'd voted against anything, 'I have this road project, just a small one, and I wondered if you might take care of it for me?' That is what this book is filled with, that is what the 10 year book is filled with. You may have that right under that one in your desk drawer. That's how we do it. That's how it is done. We can't keep raising fees. We did that in conjunction with the gas tax a few years ago. We can't keep doing that. You don't like that. I don't like that. The public, at large, doesn't like that. It gets blown way out of proportion. This is a reasonable way to do it. It takes that not out of our hands by the suggestion represented by the Senator. It's not out of our hands. It's in our hands, but we don't have to be sending out and getting all

this media that we get about raising the gas tax. If I, over the last hour and a half, may have said some things that I, on my ride home tonight, will regret, I apologize. I can stand defeat when it's right in front of me, but I cannot tolerate someone voting for something while they are holding something hostage. Ladies and gentlemen of this body, I can see a couple of you are looking around thinking, 'who me, who me.' I'm not saying you, I'm not saying anybody, I'm just talking to lots of people here. I think there are some things going on that should not be related to this issue. This is a reasonable approach to solving our issues of roads, bridges, ferries, and all of that. It ought not to be tabled indefinitely. It ought not to be defeated. It ought to be passed overwhelmingly in this body and go back to the other body and make sure that they understand that we consider it to be very, very serious. Then we can work on the bonds and on Workers' Comp and a whole bunch of other things. I'm sure some of you do this as well, as I ride home, and the reason I go home every night, I shift gears between something I may have said or done up here and it's easy for me. I know I have displayed some very serious anger on the part of a lot of people and I just want you to put that aside, as I will, and understand that this an issue that we need to pass. It will be good for everybody. It will solve our problem. It will take the pressure off legislatures in the future and future governors. It is the right thing to do. I hate that expression and I'm sorry I said it. It is a practical, businesslike approach to dealing with the highway budget. For my silliness and my behavior, I apologize. Thank you, Mr. President.

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

Senator **GAGNON:** Thank you, Mr. President, men and women of the Senate. I have had the pleasure of serving as the junior Senator on the Transportation Committee this session. I didn't get a chance to visit there very often. Didn't have to. After watching a long-time chair of that committee and a new chair as a member of that committee, I was really amazed at how well they worked together. How well they complimented each other, even though it was a somewhat tense and difficult situation at the beginning. I watched as the committee struggled with something that was really within their grasp. I would go over to that committee after leaving the Taxation Committee and they had all these problems in transportation, but they also had the unique situation where they had the solution at their hands and that they had control over revenues. They struggled with that responsibility. Whereas with the rest of the committees, when they want something done they could identify the problem and hope that they could get it funded and then it would go onto another committee. The Transportation Committee has a unique responsibility. They take it very seriously. It was unfortunate that there were a number of proposals being thrown around, and one of the proposals was to use some of the General Fund monies. Of course, doing that really moves the Highway Fund into the General Fund. The Transportation Committee could do that. But there really was a deep seated belief, I think particularly in the majority of the committee, that the Highway Fund should be funded with the user fees. Those that use it should pay. That is what the gas tax is. If I can flip hats and put my Taxation Committee hat on for a minute, I'll tell you a little bit about the gas tax. Unlike other taxes in the state, it is relatively stable because it is a price-per-gallon. It is a fixed price that this body and the

other body sets per gallon. It is on a gallon of fuel, or a commodity, used by automobiles that having increasingly gained greater gas mileage. In fact, I had a bill a couple of years ago that would have provided a greater incentive for people to use electric automobiles and L.P. powered vehicles. So, what is happening is that you've got continuing and growing use of the roads, yet the roads are being used by these vehicles that are getting increasingly, amazingly increasingly, better gas mileage, particularly the vehicle that our good Representative from Farmingdale, Representative Watson, drives. It gets something like 2 trillion miles to the gallon or something like that. We'll all have those probably at some point. So unlike other taxes, like the sales tax, we have sort of natural growth in sales. With the sales tax, even though the rate doesn't increase, it is a percentage of the sale. So there is a natural growth to income, to revenue. It's already indexed. It's indexed with inflation. As the price of a product goes up, the state gets more because it is a percentage of the price. Inflation goes up, revenues go up. It is sort of natural. The things that we have to spend money goes up. So, it is sort of a natural movement. The gas tax isn't like that. Gas prices can go up, as they have been, 20 or 30 cents a gallon, but we still get the same amount. They can go down and we get the same amount. That's good. I think that is what makes it stable. People buy less gas, we get the same amount. We don't charge them more for efficiency. In fact, we shouldn't do that at all. So what this bill proposes to do is to make the gas tax more similar to the sales tax and allow it to grow naturally with inflation so that the Highway Fund can sustain itself. If we don't, it's a race to the bottom. We talked a lot today about some of the economic development issues and some of the labor issues facing the state. I think that I've come to the conclusion that probably some of the best economic development that we can do is to provide decent roads, bridges, and highways so that our people can get products to market. It just sounds like good business. I'm amazed at the groups that have been lobbying against this, so short sighted. They want us to solve the problem some other way, I guess. I'm not sure how. So, I hope that you will join three members of the committee, the people that you have asked to represent you on the committee, to look at this issue, and work something out. It no longer has an automatic pilot. A bill will be put in if there is an increase and you will be able to say if it's really not needed that year that you won't do the indexing and you won't need to do the increase. If there are projects that are out there that really can be deferred, fine. You can eliminate the indexing. You don't need to do that. Maybe we should do that with the sales tax. If some people think we need to do it, then we will know exactly what we're covering. A bridge in Bangor maybe. Route 9 or a section of Route 9. Something in the county. We'll know what we're cutting, and you can deal with it. We cannot have the increase go in. But, instead, we won't be given that opportunity because the budgets cannot be built that way. The department can only build a budget based on what the revenues are going to be. So, those items won't even get there. They won't even get to the top of the list. I'd prefer the opportunity to be able to say, 'this is the indexing, these are the projects. The economy is not that great, I don't think we should do indexing this year. We can defer these projects.' We do that all the time when talking about jails and a bunch of other things. But right now we won't even have that opportunity if this bill is Indefinitely Postponed. So I would encourage the Senate to oppose the pending motion and vote your representatives on the Transportation Committee. Thank you.



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

Senator **SAVAGE:** Thank you, Mr. President, my friends in the Senate. First, I'd like to say thank you to the good Senator from Kennebec, Senator Gagnon, for his kind words about the past chair and the current chair. I'll say that we have a very good working relationship. As a matter of fact, the whole committee has a good working relationship. I will tell you that when we organized at the beginning of the year, we all said to leave your D's and R's by the door and come in and do the work for the people of the State of Maine. I haven't heard the question asked, but you may wonder how this is going to effect you. This bill makes it retroactive to the time we passed the last gasoline tax, to go into effect next July, if we continue with the indexing. This will increase the gasoline tax by around 2.5 cents a gallon. At that time, it was my first term on the Transportation Committee, it was a major project for us to work on the gasoline tax increase. The request was for 5 cents. It was all over the board. People wanted and didn't want. We worked very, very hard and came up with a compromise. We went with the 3 cents. At that time, I did some calculating and I'm going to ask you to do some calculating now. Simple math. Figure out how many gallons of gas you use, how far you can travel, and what your traveling patterns are. As the good Senator from Kennebec, Senator Gagnon, was speaking, I was just figuring out that this will cost me less than \$20 a year. So I ask you to do that math very quickly and see how it will effect you for the run of the year and the amount of miles you put on your automobile and what this 2.5 cents will do. I ask you to vote against the Ought Not to Pass so we can either up or down on the issue before us. Thank you.

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

Senator **GOLDTHWAIT:** Thank you, Mr. President, ladies and gentlemen of the Senate. There is a South American literary technique called magic realism. I was beginning to think about writing a novel employing that technique involving a Commissioner of Transportation. In these literary works, it is usually a series of characters who do all the things we all do. They eat, they sleep, they go to work, they have a life. But some of the characters have some capability to perform magic. So it seemed to me a suitable topic for a novel involving a Commissioner of Transportation, who we ask to keep our transportation infrastructure in good shape without spending any money. The same people that call up and object to our spending money also call up and ask to have their roads rebuilt. I have constituents that call me and say, 'why in the world are you supporting a gas tax increase, or I hope you're not supporting this indexing bill.' The question that I ask them are, 'are you working for the same salary you made 10 years ago?' They always say, 'no, how could you possibly do that?' I say, 'yes, I know.' Another question is, 'are you running a business? How long would you be able to run that business without any increased income to cover inflation?' These are not difficult questions, really, but for some reason the public often expects us to be able to perform magic tricks or miracles and do all this without any money or without any increase in cost. This is the classic legislators' dilemma. Nobody likes an increase in a fee or a tax or a cost or anything, despite the fact that we all acknowledge them in our daily lives. We come into this building to object on the other side of this coin. If we attempt to flat fund the budget

because of the economic circumstances, this building fills up with people who say, 'you can't do that, costs are going up, we've got to have increased money to run everything that we do.' But somehow, when it comes to roads, nobody wants to pay more money despite the fact that everybody wants better roads. The roads that I am worried about are not just the roads that are in the TIP that won't get built, reconstructed, rehabilitated, resurfaced, or the bridges that won't get attended to, it's the roads that I know of in my district that are not in the TIP, not in the transportation improvement program. Those roads are going to be pushed back even further. I really respect the Department of Transportation's greater emphasis on prioritizing roads and laying out a plan so that even if your road isn't getting done this year, you know when it might get done. If none of the roads in the TIP are going to happen in the upcoming biennium, all of the roads that are waiting in line behind those roads are not going to be done two years from now. They are going to be done four years from now. I don't know about you, but I have constituents to whom I am struggling to explain why they are not happening today. I don't want to leave this chamber tonight having to explain to them that we now know for sure that they don't happen for four or five years. So it's not the roads in the pipeline, it's the roads behind the roads in the pipeline that I am worried about, that I hope you are worried about, and I hope will cause you to join me in voting against the pending motion. Thank you.

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

Senator **KILKELLY:** Thank you, Mr. President, men and women of the Senate. In the 16 years I have served in the other body and this body, I don't believe I've ever voted for a gas tax increase. I'm going to change that tonight. Not only am I going to vote for it, but speak on behalf of it, for which I expect some great hand to come down and hit me on the head or something. But I'm doing it for a couple of reasons. One is that we do have very good people on the Transportation Committee and as much as I am very respectful of the work they do, one of the challenges in the past when voting for a gas tax increase has been not being able to really understand exactly where it's going. I think the long part on this process that makes an enormous amount of sense is the accountability aspect of this that all of us can relate to very readily. We know that, particularly at this time of year, none of us have the time, or even the capacity, to sit down and look at long documents and figure out what it means, how it will work in our districts, and why we need to do this or that. We depend on committees to do that. But when we're asking to increase a tax, there is almost a higher threshold that needs to be met. When we're asking to increase a tax, we really need to understand this better. We need to know what is going to happen if this tax goes up. The indexing piece will look every couple of years at what projects are going to be done, and what ought to be happening. It is a wonderfully concrete piece of information to take back to your districts and be able to stick it by the phone so that when somebody calls and says why, you've got it right there. If there is a time when that list is not compelling, when the situation is not compelling, when something else is happening, maybe, heaven imagine, that we will get our fair share of federal gas tax money, but that's a different story, that option is also available. We do a lot of reacting in this body and in the other body. We don't do a lot of planning. We don't do a lot of long-term looking at a problem and trying to solve it. I think this is, brilliant is the word, and I don't use that word lightly, but a brilliant way of looking at

the system in which we fund the transportation programs. It moves that process forward and provides future legislatures with the information that they need and the answers that they need to make those decisions in the future. So, I will be voting in opposition of this motion and hope that you will follow me in that.

**THE PRESIDENT:** The Chair recognizes President Pro Tem Michaud of Penobscot.

President Pro Tem **MICHAUD:** Thank you, Mr. President, men and women of the Senate. I'd like to thank the good Senator from Cumberland, Senator O'Gara, for answering my question and the good Senator from Knox, Senator Savage, for also answering my question. However, I'm still going to be supporting the motion for Indefinite Postponement. I have been lobbied by the department earlier, a couple of days ago, as to whether I would support this bill and the tax increase that is currently in the bill. I told the department at that time that the answer was no, I am not going to support the bill. The next question was whether this was a caucus position. The answer is no. I'm lobbying the caucus to support this tax increase. They have every right to vote for the 5 cents if they so chose. I chose not to support the tax increase. This tax increase is to deal with the next budget for the Department of Transportation. There are a couple of other options that the good Senator from Knox, Senator Savage, did not mention. One of those options is that when the administration deals with the budget next time around, that is when you deal with the shortfall. The commissioner can have a tax increase next time around if he so chooses to put in the budget. Or they could reevaluate programs to find out whether or not those programs, because of what the federal government might do, are still on their priority list. Similar to when this administration brings the General Fund budget next time around and it is up to Governor King to present a balance budget at that time. He could have put a tax increase in this year's budget to have a balanced budget next time. He chose not to do so. There is another option other than to having them deal with it next time around, when they present the budget this fall. That is why I found it kind of unusual when the Governor came out with this bond package this year. Normally, every year we always have a transportation bond, whether it's from the Highway Fund, which I would not recommend that it be, or the General Fund. I sponsored a bond package last year, \$61 million for a General Fund bond package for the Highway Fund. That's why I found it unusual about this year's bond packages, there are no transportation projects in this year's bond package. I have always been a strong supporter of the Department of Transportation. I will continue to be a strong supporter of the Department of Transportation and the work that they do because I think the projects they do offer are extremely important. During my tenure as chair of the Appropriations Committee, we have transferred a lot of the transportation budget back onto the General Fund as it should be. We also have put out different bond packages, paid for by General Fund dollars. I clearly think that transportation projects are probably a little more important than the internet GIS that the Governor currently has in this year's bond package. I would have no problem using some of this year's bond package for the Department of Transportation's projects, which are in the upcoming biennium. So, therefore, I will be supporting this motion to Indefinitely Postpone this bill. Those are my own feelings, because I do not think we should deal with next year's biennium budget this time around, as I do not feel we should be passing a tax increase to fund a huge

structural gap that is going to be in the General Fund budget the next time around. So, those are the reasons why I feel I have to rise to explain my positioning on this particular bill. I do support transportation. I think if these projects are really important, and the Governor felt they were really important, then maybe he should have dealt with them in the bond package versus some of the items that he currently has in his bond package at this time around. So, I will be supporting the motion to Indefinitely Postpone this bill.

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

Senator **O'GARA:** Thank you, Mr. President, ladies and gentlemen of the Senate. As a past chair and as a member now, I readily acknowledge the terrific support that President Pro Tem Michaud of Penobscot has given and the support he has given to bond packages. But he knows as well as I know that we just cannot continue to run the Department of Transportation through bonds, whether they are highway bonds or General Fund bonds. We just cannot continue to do that. It's a heck of a way to run a railroad. It's just not the right way to do it. He knows it and I know it. I, again, sincerely urge you to vote against Indefinite Postponement so that we can go on and accept the Majority Report.

**THE PRESIDENT:** The pending question before the Senate is the motion by the Senator from Piscataquis, Senator Davis to Indefinitely Postpone the Bill and accompanying papers. 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 (#320)**

**YEAS:** Senators: DAVIS, LEMONT, MCALEVEY, MICHAUD, ROTUNDO, SMALL, TREAT, TURNER, WOODCOCK, YOUNGBLOOD, THE PRESIDENT - RICHARD A. BENNETT

**NAYS:** Senators: BRENNAN, BROMLEY, CARPENTER, CATHCART, DAGGETT, DOUGLASS, EDMONDS, FERGUSON, GAGNON, GOLDTHWAIT, KILKELLY, KNEELAND, LAFOUNTAIN, LONGLEY, MARTIN, MILLS, MITCHELL, O'GARA, PENDLETON, RAND, SAVAGE, SAWYER, SHOREY

**ABSENT:** Senator: NUTTING

11 Senators having voted in the affirmative and 23 Senators having voted in the negative, with 1 Senator being absent, the motion by Senator **DAVIS** of Piscataquis to **INDEFINITELY POSTPONE** the Bill and accompanying papers, in concurrence, **FAILED.**

The pending question before the Senate was the motion by Senator **SAVAGE** of Knox to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1042)** Report, in **NON-CONCURRENCE.** (Roll Call ordered)

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

**ROLL CALL (#321)**

YEAS: Senators: BRENNAN, CARPENTER, CATHCART, DAGGETT, EDMONDS, FERGUSON, GAGNON, GOLDTHWAIT, KILKELLY, KNEELAND, LONGLEY, MARTIN, MILLS, MITCHELL, O'GARA, PENDLETON, SAVAGE, SAWYER, SHOREY

NAYS: Senators: BROMLEY, DAVIS, DOUGLASS, LAFOUNTAIN, LEMONT, MCALEVEY, MICHAUD, RAND, ROTUNDO, SMALL, TREAT, TURNER, WOODCOCK, YOUNGBLOOD, THE PRESIDENT - RICHARD A. BENNETT

ABSENT: Senator: NUTTING

19 Senators having voted in the affirmative and 15 Senators having voted in the negative, with 1 Senator being absent, the motion by Senator **SAVAGE** of Knox to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1042)** Report, in **NON-CONCURRENCE**, **PREVAILED**.

**READ ONCE.**

Committee Amendment "A" (H-1042) **READ** and **ADOPTED**.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1042)**, in **NON-CONCURRENCE**.

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

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

Bill "An Act to Create the Office of Program Evaluation and Government Accountability"

H.P. 1695 L.D. 2193  
(S "A" S-750 to C "A" H-1039)

Tabled - April 4, 2002, by Senator **TREAT** of Kennebec

Pending - motion by same Senator to **RECONSIDER PASSAGE TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1039) AS AMENDED BY SENATE AMENDMENT "A" (S-570)** thereto, in **NON-CONCURRENCE**

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

(In Senate, April 3, 2002, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1039) AS AMENDED BY SENATE AMENDMENT "A" (S-570)** thereto, in **NON-CONCURRENCE**.)

On motion by Senator **TREAT** of Kennebec, the Senate **RECONSIDERED** whereby the Bill was **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1039) AS AMENDED BY SENATE AMENDMENT "A" (S-570)** thereto, in **NON-CONCURRENCE**

On motion by Senator **PENDLETON** of Cumberland, the Senate **SUSPENDED THE RULES**.

On further motion by same Senator, the Senate **RECONSIDERED** whereby it **ADOPTED** Committee Amendment "A" (H-1039) as Amended by Senate Amendment "A" (S-570) thereto.

On further motion by same Senator, the Senate **RECONSIDERED** whereby it **ADOPTED** Senate Amendment "A" (S-570) to Committee Amendment "A" (H-1039).

On further motion by same Senator, Senate Amendment "A" (S-570) to Committee Amendment "A" (H-1039) **INDEFINITELY POSTPONED**.

On further motion by same Senator, Senate Amendment "C" (S-595) 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. I just want to briefly tell you what this amendment does. This is a bill that we presented the other night as a committee bill from the State and Local Government Committee, as you probably recall. It was a very different way of approaching legislative oversight by creating an office of oversight in statute rather than in rules. Upon people examining our piece of legislation, which we thought was really good, we found that there was a great deal of concern. So we went back to the drawing board and did some negotiations back and forth with different people who had concerns. We tried to include as many as we could. As usual, at the last moment like this, time is not permitting for you to do all that you want to do. What this amendment does is incorporate the changes that we made in Senate Amendment "A" to Committee Amendment "A" and then adds other provisions. It provides that the legislative council will appoint, by a vote of 8 members, the director of this office. This goes along with the usual appointment of other officers. It provides that the legislative committee that oversees the work of the office will evaluate the director and make recommendations in writing to the legislative council. So, again, it brings in the legislative council. It also provides that money appropriated or allocated to the office must be expended at the discretion of the director and the legislative committee that oversees the work of this office. It also provides that prior to the release of a program evaluation report, or the point at which a program evaluation is no longer being actively pursued, all papers, physical and electronic, and correspondence and other supporting materials comprising the working papers in the possession of the director and any

other entity will be reported as confidential and may not be released or disclosed. We did all those changes to try to set aside some of the concerns that were given to us. We went to a point and the committee met again today and we again unanimously stand behind this. There are some reservations because it is not exactly as unique as we had hoped we would make it. The purpose of having it in the unique manner that we are presenting to you, yet again, in this amendment is that we wanted an oversight committee but we also wanted an office with a purpose, to serve as an information gathering office for the entire legislature. We thought that in order for this office to function efficiently, it needs to be as far away from the perception of any kind of partisan politics to the public and also to those bureaus, programs, or entities that were being examined. We didn't want it to look like we were just doing another study and have them give us the information they thought we wanted them to give us. This is why we did what we did. I just hope that you will vote along with our committee and pass this bill along with the amendment. Thank you.

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Off Record Remarks

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

Senator **YOUNGBLOOD:** Thank you, Mr. President, men and women of the Senate. I've had a lot of thoughts over the last two or three days as this particular piece of legislation has been reaching the point that it is today. I'm going, in a few short words, ask you to support this amendment to this very important piece of legislation. As I sat here today and listened to some of these arguments going back and forth, I've concluded that I'm probably not smart enough to stand in front of this seat that I stand here in front of tonight. I'm sure I'm not enough of a partisan to ever be a good politician. I'm absolutely convinced that I'm too naïve to probably ever be effective in this environment. Having said all of that, I'll go on to try to explain some of these fears of being too naïve to be successful here. If I've heard it once, I've heard it a hundred times in the last two years, with efforts coming out of Labor, with efforts coming out of Natural Resources, with efforts coming out of Agriculture, the word *Dirigo*, we lead. People say why are we doing this? They aren't doing it anywhere else in the country. Why are we doing this? We're already number one in doing this. Believe me, in this effort, we are not leading the country. When we pass this very important landmark, maybe the most important piece of legislation in the entire session, maybe the most important piece of legislation in the last 10 years, we will be number 45<sup>th</sup> in the nation to put in place some permanent process to do program evaluations. Don't forget Health and Human Services, I have a note, that wants to be first in doing things. We will not be leading the nation. We will not be the first. I was very fortunate a year ago, maybe some would say unfortunate, to be in the right place and complaining about the process. We have to evaluate the programs that we have all put lots of effort into, any period of time when money was very tight and there was very limited resources. The then President of the Senate, the good Senator from Penobscot, Senator Michaud, and the then President Pro Tem, the Senator from Oxford, Senator Bennett, authorized the funds for me to accompany other people

from the other body to go to Florida. They have the model program of program evaluation. I felt what the mandate was that if we are going to do this, if we are going to have a program that provides any reasonable credibility with our constituents, let's make sure we do it right. I spent three days in Florida along with two Representatives. We have been through the Florida program. We have looked at the Idaho program. We have looked at the Kansas program. We have had multiple discussions with the National Council for Legislative Government. We have been before their oversight board for program evaluation throughout this country. We have received immense amounts of data from them, down to ultimate details that would be worked out in rules and so forth later. I couldn't be more happy with the job that the Senator from Cumberland, Senator Pendleton, has done in showing leadership for this committee. This is no one individual's bill. This is the legislature's bill. There are no names as sponsors on this bill. This legislature will be remembered as the legislature, the 120<sup>th</sup> Legislature of the State of Maine, that put in place a believable accountability program that, as much as is absolutely possible, takes the politics, the partisanship, out of that. We are a part-time legislature. We cannot be expected to spend the time, to have the time, to look into programs that are going on. We all have pet programs. We all want them to be better, one way or another. This program often gets confused with audit. I hear people in the hallways saying, 'you're going to come look at my budget.' That is not the main purpose of a program review government accountability program. Many of you people have been here for years, I hesitate to list how many years but over the last week or so I've heard some reference that some people have been here since I was diapers or probably been here since I was riding on horseback delivering newspapers. You can go from one extreme to the other. The 44 programs that are around this country run the entire gamut. Florida being the model that is very well protected. Seven states in this nation have put this into their constitution to ensure that it can absolutely not be changed. That is something that maybe we should consider somewhere down the road. One of the statements made by Mr. John Turcotte, who is the director of the program in Florida, the recognized expert in this country, 'governance by a legislative service, office, or council is least desirable because without the clout and visibility of the joint committee and statutory independence of the staff, the function will definitely not be perceived by agencies as any different than any other legislative staff, research, or study function.' We all have been involved and read study reports. People get involved in looking at study reports and get on study committees because they have some interest in assuring that it goes in the direction that they would like to have it go. We pass laws, we put them in place, we hope that next year there will be more money and we can completely forget about them. How many times have you sat in your committee and said, 'I wish I had a consultant working for me, the legislature, that I could give an assignment to and go and do some research and expect to get a non-political, honest evaluation done by professional researchers.' I've been there. I expect that each and every one of you have been there as well. How many programs have we put in place with a very good legislative intent that rulemaking by the Executive Branch has completely altered and we don't know? How many times have we said to whatever the department is that your committee is responsible for, 'you're sub-contracting, you're outsourcing more things out of your department to be taken care of on a regular basis.' We, as a joint standing committee, have the authority, obviously, to do research on any agency of state

government that we would like to do that on. Try to get the information. Try to find the time in your schedule to do that. Try to find an analysis that can do that while you're gone this summer. They don't have the time to do it. We have wonderful intentions. It isn't fun. You've got to be a little bit of a nut to be interested in review, evaluation, audit, and oversight. That's not the fun part of being here. The fun part of being here is getting your legislation passed on a new program. The only way that we will ever, as a legislature, have the ability to gather data that lets us really know what's going on in the state. I hope that all of you have taken the time to really read this legislation because it has long and far reaching aspects to it. The legislation allows not just the ability to look at state agencies, but the ability to look at any function that uses public funds, contracted, local communities, county government, quasi municipal governments, not for profits, public funds. There have been some people in the hallways that have been saying to lobbyists, 'you'd better watch this legislation, you'd better lobby against it, because they are going to be auditing your books.' Again, this is not to audit something. This is to have the ability to go out and say, 'we want to see what's happening with this program. Is it working? Are we doing the right thing? If not, we ought to be taking a different step.' The only way we have to do this is through this kind of a full-time staff working for us, the legislators. The Executive Branch has a raft of people who spend lots of our dollars looking at what they are doing, justifying what they are doing, and getting back to us. We have absolutely no way, whether it's looking to give money to BIW or looking to give money to some social service agency. This provides that mechanism. Will it look at every program, every agency, in a short period of time? Obviously not. Will there be an enormous list of requests of people who want programs looked at? Of course. This oversight committee has the responsibility of working up that annual work study plan and the way this is laid out at the beginning of every year. All of the studies that are going to be undertaken during this next year would have to be on that plan. We would all know, and the agencies would know, which programs were going to be reviewed by this group in that year. I'd be more than happy at any time to talk to anyone in detail about this. There have been two amendments, as you realize, put on this. We tried to go just as far as we could absolutely go with the ability to make this non-partisan. We have backed-up some through negotiations with people to bring them on board. I do not feel that we have crippled this at all. I'm still satisfied that it will do what we want it to do. I would certainly urge you to vote for this amendment and to be opposed to any other amendments that might try to weaken this for all the reasons that people are against government accountability. How can you be against government accountability? How can you be against wanting to know if a program is working or if a program is not working. If it isn't, we obviously need to do something about it? This deserves our full attention. It deserves our vote. Our constituents, the people of the State of Maine, have every right to believe that they have a process that they can hold programs accountable. We don't need a program, as there has been before, that we can go out to our people and say, 'hey, we've got program accountability,' but we know in our hearts that it really isn't there. This provides it. I would urge you to vote for it. Thank you very much, Mr. President.

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

Senator **TREAT:** Thank you, Mr. President, men and women of the Senate. This is, I think, a very far-reaching bill. I hope that, as the Senator just asked you, that you take a look at it. It has provisions in it that, perhaps when you read them, you will have some concerns about. I will say that I do have some concerns about this bill. At the same time, I very much support the goals of it, and the particular goal of giving this legislature better tools than we have right now to really review what state government programs and agencies are doing. I've become increasingly concerned, I think it is perhaps in part a product of term limits, with the decreasing ability of legislators to really oversee what state agencies are doing. I often feel that we don't have the right questions to ask. We ask questions. The answers that are given are responsive to that question, but the real question was the next question that we just didn't know enough to ask because we haven't been around very long. We're switching from committee to committee, whereas in the past legislators would stay on a committee for a couple of years, gain some expertise. We used to have a program which cost nearly \$1 million, which is the original fiscal note on this bill, which was the program and audit review process. We had a standing committee which did spend a great deal of time, and had very expert professional staff to advise it. That committee was abolished, I believe, in part, because of changes in Washington where we had changes to the committee structure in Congress and this legislature. At a time of reduced revenues, we decided to go along and "streamline the committee process" and save money. We replaced it with a government evaluation act, something that I think many of us feel is not a particularly effective process. I know that in some committees that I have worked on that it has worked to some extent. The departments came forward, they responded to the questions. We didn't really feel that the answers were terribly responsive. We sent them out to do their homework, and they came back. There was a real dialogue, and I think it worked the way it should. I know that in other situations, basically, it is the whole concept that has been viewed as boring by committee members. Half the time legislators didn't even show up for the meetings where these reports were being presented. I think that's a problem. It's a problem, in part, because of the structure of the process that we now have, which puts on top of all of our committee work this very important oversight and evaluation function without providing any additional resources to the committees in the form of staff time, and certainly without providing much additional time. We are already working overtime and not really being paid for it. So, this is just one more thing we have to do. I think that there is a lot of good in this legislation in that it establishes a committee that does look at these issues and has an ongoing responsibility. I would assume this would attract legislators that find this activity appealing as opposed to legislators who don't want to show up in committee meetings when the review is being done. It has a lot of good in it in that it does hire some staff people who will have expertise in the matter of review and oversight and will be professionals. That is additional expertise that we absolutely need. I particularly appreciate the work that the committee has done, in researching this and getting expert advice from the National Conference of State Legislatures. They are very well informed about this. Not only have they been willing to work hard in the committee, but when myself and others have raised concerns about the bill that came out of committee, they have worked hard to try to meet those concerns. I just want to say that because I feel, having worked myself on committees that came out with 13 to 0 reports that ended up being substantially rewritten on the floor of the

Senate or other body, I know how it feels to have others criticize what you do. It doesn't usually feel all that great. But I still, despite those efforts, and I believe they are very well intentioned, there has been a significant effort here to change this bill in a way that will meet concerns that I and others have, I still feel that it falls a bit short. In a way it falls short because it goes so far. I would just draw your attention to the first paragraph of the bill, and it is the first paragraph of the amendment as well. It says that this office is established for the purpose of providing program evaluation of agencies and programs of state government. It defines these as anybody, basically, that is getting any public funds, whether it is local or county government, quasi municipal government, special districts, utility districts, regional development agencies, municipal or non-profit corporations, and any employee who makes a decision to spend any money, including private money. This is extremely broad language. It is much more broad than the language that governed the audit and program review committee that we had previously, which did very significant work. I question what guidance is here for this committee in terms of making judgments about what to do. It appears that simply by getting general revenue sharing money, this committee of legislature would have subpoena power to go after a utility district in any community in the State of Maine that might receive some money or any municipal government. It seems that there might be some potential for abuse here. The way this is set up, and again the amendment that has just been offered and that we are debating at this point, attempts to improve on this situation. But taken together, with the underlying bill, it still sets up a situation where the staff of this particular committee, unlike any other committee in the legislature, will be very directly under their supervision as opposed to being under the supervision of the management of the legislature. The argument for doing this is, as I hear it, is to prevent that staff from being partisan. It seems to me that we already have a non-partisan office in the Office of Policy and Legal Analysis, and I would challenge anyone to find partisanship there. I think that this concept has come from legislatures that do not have non-partisan staff like we have. I'm often surprised when I go to other legislatures and they say this is our staff counsel, the Democratic staff counsel, and this is the Republican staff counsel. It's like Congress, everybody has lots of staff, which is of course quite different from here. Not only do you have personal staff, but your committee has staff and it is divided along partisan lines. That is not the case in this legislature. We do have a very small partisan staff. But the majority of the staff, whether it is the Revisor's Office, Office of Policy and Legal Analysis, Fiscal and Program Office, those are all non-partisan positions. It seems inappropriate to me to set up a special office that has very different rules of pay scale, hiring and firing, and who they report to. I don't understand it. It seems inconsistent with how we have run the legislature. I'm not sure that it is an improvement in the process that we have right now. I think that with some additional work, this could be a bill that I could support. I actually have an amendment that I would like to offer at some other time, if the pending amendment does not succeed, which I think will address those concerns directly without limiting unnecessarily the role of this office. I do agree with the committee members, is a very positive function that I think we should support as a legislature. Again, I think this is an excellent concept. The amendment before you helps some. I appreciate the effort that went into it, but I just don't think that it helps enough. I would encourage you to vote against the pending motion so that we can go on to consider an alternative amendment.

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

Senator **GOLDTHWAIT:** Thank you, Mr. President, men and women of the Senate. I have it on good authority that a tribe of outlaws has taken over my committee room and is down there eating pie, so I will be brief. I have four questions, if I may.

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

Senator **GOLDTHWAIT:** Thank you, Mr. President. Number one, what does this cost? Number two, how is it funded? Number three, where is it housed? Number four, because the reach of this committee seems rather broad, if somebody could kind of give me an example of what the activities of the committee might be that would be helpful. I think is an interesting effort and I'd like to be able to support it if somebody could help me with the information I've asked for.

**THE PRESIDENT:** The Senator from Hancock, Senator Goldthwait poses a series of questions 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, ladies and gentlemen of the Senate. I'll try to. There is a fiscal note for the funding, and it is around \$87,000 for the first hiring of the person that would be running the office and to get the office started. We had hoped to take some of that money for the next year out of the amounts of money that the different caucuses had. We have had an opportunity to talk to some of the different caucuses, and they have tentatively pledged money towards that if the bill passes. Not all, but a couple of them. The other question was where would it be? Where the office will be housed? That we honestly don't know. The other question was the purview of the office. I think in that first paragraph, perhaps that is where the concern is. I think the previous speaker had some concerns about that first paragraph. The point that we are trying to follow public dollars. So, if you look at that first paragraph, if you have the amendment in front of you, you will see in the forth line that it says, 'public funds provided.' Then, skip to the next two lines of all the different places, 'are expended for the purpose for which they were allocated, appropriated, or contracted.' That is the exact purpose and context of what we were trying to do. We actually did run this by a representative of the Maine Municipal and the county government. I didn't personally, but someone else did. They tentatively had no discomfort with it because the idea would be if public funds are going into any of these entities, why in the world would you not want to know where the money is being spent because it is the taxpayer's dollars. An example of what this committee could do is that we have had four different committees in the last three years investigate a program under the Department of Education. We have never come to any conclusions or come to any legislation because we have never been able to get the bottom of the statistics and the operation of that particular program. That would be the purpose. A program that a committee of oversight is seeing and saying, 'gee, I don't know if this is working well.' This office with this director would be able to go out, again, not audit by numbers because it is not a fiscal audit, but to find out where the employees are, what the employees are doing, what the funding mechanism may be, and if that particular program is working at its most efficient capacity.



So I hope I answered those questions as best I could. Thank you.

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

Senator **MARTIN:** Thank you, Mr. President, members of the Senate. As I sit here and listen to the debate today on this particular item, I'm reminded about the fact that we once had this form of audit and it worked fairly well until the 1990's when the legislature ran out of money. So, in order to save, we cut it out and saved about \$1 million. We cut other things in the legislative budget as well. In order to have an effective program, we're going to need more than a director. We need to talk about what the cost will be, the real cost down the road. Not that I'm opposed to it, because I'm a believer that if you need to have a program and you need to do whatever it is you do, you do it. We have a mechanism now. Some of you I would urge at some point might want to take the course that I teach on State and Local Government where I basically say that the role of government legislatures is to enact legislation and to provide oversight. We don't do the second one well at all. That is, frankly, our own fault. The leadership last year began a process that could actually start, in the long run, to make it work. That is to provide for the committees to meet in the off session, when they don't have legislation and they can do the in-depth studies that I think they need. I can't think of a better place to begin than the Education Committee and CDS. I can't think of a better place, having been involved a little bit with that as well as the Senator from Penobscot, Senator Mitchell, and others as well around the room. But that's going to take money. As I sit here, and I now stand, thinking about all of this, I'm really starting to think that maybe I like the idea because apparently this committee will be able to investigate anything with public funds going into it. That means we can go into every city and town, because we provide revenue sharing and school subsidy money. Can you imagine what havoc we could cause? Why don't you put me on the committee? I can think of all the fun I could have investigating such places as Portland, Dover-Foxcroft. How many of you would like to have me there, or others of you in my towns? I think we ought to think about that. With that, I'll ask a question. If I may pose a question through the chair.

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

Senator **MARTIN:** Is it really intended that this committee will be able to go to every city and town, every non-profit organization, potentially, in the State of Maine?

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

Senator **YOUNGBLOOD:** Thank you, Mr. President, ladies and gentlemen of the Senate. I'd be happy to answer that question. Leading into answering that question, one of the statements that the good Senator from Aroostook, Senator Martin, said was that we don't do it well at all. The truth is that we don't do it. Good, bad, or indifferent. Because it's not fun. You've got to be a nut to want to spend time doing program review, oversight, audit, evaluation. Who wants to do that when you can be having the fun that we're having? So we don't do it at all. The answer to

your question is absolutely, the way the bill is written. But can you do it? Of course you can't do it. But the bill, the way it is written, says that if you have a problem with the way a program is working, you have the ability to go to the oversight committee or the joint standing committee that you sit on can go to the oversight committee, with a request that this be looked at as to how this program is working. We spent a great deal of time one afternoon in Florida talking about what they were doing with their school systems. The legislature was convinced that the school systems, individually, were not adequately spending the dollars that were given to them, and not utilizing them to their greatest extent. They did authorize this kind of an operation in Florida to go into the school districts, but they did it with a proviso. In that particular case, it said that any savings that were shown to that school district must be reinvested in that school district. So, they were welcomed with opened arms because of their professional research ability to go in and look at what they were doing. How they were spending their money. If they were utilizing it to the greatest degree, and they saved lots of dollars to be available to be reinvested in that same school district. That sort of thing is absolutely open. What is the cost of running this program? Obviously, it is directly related to personnel. Obviously, we didn't put in the legislation how many people this will entail. This will be the oversight group's responsibility. My suggestion, based on talking to lots of other programs and directors, is probably 6 to 8 people in Maine. These 6 to 8 people ought to have the ability to produce 12 to 15 reports a year. Some of the research projects that they would do are 3 month projects. Some may be 6 month projects. We don't know that, obviously, until you decide you are going to accept that project. I think that it is fair to say that the fiscal note, fully staffed at 6 to 8 people, is in the vicinity of \$600,000 or \$700,000, or in that ballpark more than likely to start. The original fiscal note that was put on this was over \$1 million, as someone earlier today said. But because in the description of the mission of this function, it mentioned that they might do audits, they might do post-audits, the Office of Fiscal Review, in addition to the researchers, added three CPAs to it. It doesn't need those kinds of people, obviously. If they were doing some sort of an audit they might very well do it in conjunction with our internal audit function. I hope that has answered the questions. As the good Senator from Hancock, Senator Goldthwait, has left, I hope that answers her area of reach. I believe that it is important that the legislation authorize these people to go anywhere, and to look at anything that is spending our money. I wasn't around when the audit program review committee was available. They looked at state agencies. Less and less are we doing things through state agencies. More and more we are doing it with out-sourcing. Because we have learned, and the agencies have learned, that the state gets a better return on its dollar by out-sourcing and hiring someone else to do some of these things rather than putting staff on and doing it ourselves. I hope that answers your questions. I'd be happy to respond to any others.

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Off Record Remarks

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

Senator **MCALLEVEY**: Thank you, Mr. President, men and women of the Senate. A rhetorical answer to one question and then a very brief comment. The good Senator from Aroostook, Senator Martin, talked about looking at towns and local entities that receive state dollars with a sharp pencil. Well, I have a sharp pencil and I trust the good Senator, should he ever be given that sharp pencil, to do an excellent job should he serve on that committee. The rhetorical question is, is there any truth in the rumor that the good Senator from Aroostook, Senator Martin, served on the Truman Commission during World War II? It basically did the same thing and saved a lot of tax dollars. The reality is this, I think this is good government. We need to have the courage to start in motion those wheels to take a solid, hard look at how we spend our money. We might recoup some savings and those savings might be better used for new and expanded programs or for tax cuts, whatever. As a committee of jurisdiction, I feel very comfortable looking at our departments on behalf of the full body, in policy and legal terms, but not totally when it comes to their finances. I'd rather have somebody that knows what they are doing with a sharp pencil do that. But the broader question is, do we have the political courage to set in motion that oversight tonight? I do.

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

Senator **MARTIN**: Thank you, Mr. President, members of the Senate. I can't let the occasion go by without giving, I think, credit to the Committee on Natural Resources this year. This committee was faced with a request from the Department of Environmental Protection for increased fees in the air bureau. We decided to appoint two committees out of the committee. One to review whether or not any of the existing programs could be terminated, that had outlived their use. The second one was whether or not staff could be eliminated. We spent about a month doing that with the committees meeting time in and time out at various times, including weekends. The final analysis is that we were able to reduce the staff. We eliminated a program. We ended up, when it was all over, with the industry supporting what we had done, agreeing with us, using a little money from the General Fund to transfer over to the dedicated account. We were able, in my opinion, because the committee chose to do the work, to accomplish the goal of what I think every committee ought to do.

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

Senator **SHOREY**: Thank you, Mr. President, men and women of the Senate. I'll make it very brief. But the good Senator from Hancock, Senator Goldthwait, had requested an example of where this could come into play. During my first experience with the legislature, serving in the other body, I was on the Business Committee. I was part of what I felt was a very partisan witch hunt which went after MES. There were things that were played out in the press. We heard experts from each side come forward. I don't feel we ever got a true resolution because it was such a partisan issue. There were such partisan feelings involved. I really, truly wish that at that time there was an opportunity for an authority such as the one the good Senator from Cumberland, Senator Pendleton, has brought forward. I wish there was a commission at that point in time to look into this

rather than the people that were looking into it, because there obviously were issues and agendas at play. Thank you.

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

Senator **DAGGETT**: Thank you, Mr. President, members of the Senate. As one of those, I forget how it was referred to earlier, people who are interested in oversight, but as one of those people I had an opportunity to serve on the Audit and Program Review until its demise. I actually was chair of the State and Local Government Committee when we put together the Government Accountability Act. I don't know of anyone that would not agree that oversight is an extremely important, and one of the most important, roles for legislators. Unfortunately, we are more closely tied with lawmaking as opposed to oversight. But oversight is certainly something that I hope, regardless of the outcome of this bill, is not being set in motion tonight. I hope that with each of us, in our roles on committees or whatever we are doing, a part of what we are doing is providing oversight today. Regarding the bill that is in front of us, I am full well pleased to vote for oversight and more oversight. In fact, when the Senator from Aroostook, Senator Martin, made reference to cutting the budget and there being financial reasons for getting rid of the Audit Committee, prior to the committee's actual demise the staff was cut. There were several staff members that helped to perform the audit. Frankly, at the very end, we only had one staff person and a partial clerical staff from the Fiscal Office. In that position, we were unable to do the same kind of work that we had done before that. Frankly, I did not see a limit to the kind of work and the kind of inquiry that committee was able to do. I'm talking now about over 10 years ago, maybe 12 years ago. There had been concerns regarding Child Protective Services. We've seen that surfacing again. There was quite an involved inquiry. In fact, this might have been 15 years ago. Quite an involved inquiry in Child Protective Services and recommendations that were not unlike recommendations that have been talked about today. I would like to say that this committee, if it is formed in this office, would not be a magic committee that would automatically find savings or cut functions of state government. In fact, the Audit and Program Review Committee was a part of governmental reform that came out of the mid 1970's. There were states across the nation that established these committees that were called sunset review committees. Agencies were automatically sunsetted unless the review had taken place and legislation went in to continue them. That was a part of it. There was this thinking that somehow a lot of state government was not doing a good job and could be eliminated. In fact, quite the opposite was found. Virtually all of state government was working without the resources and without the personnel necessary to do the job with which it had been tasked. My concerns regarding this oversight agency are more in line with the organization of it. I think we have an excellent organization, as far as our non-partisan staff, and have not heard complaints regarding that and feel that this office should fit within the confines of the current structure that we have and the way we have the legislature organized. I feel that it would fit within that well. The employees of that office should be paid according to the same pay scales. It should have the same mechanisms we have for hiring and for managing those people. There should not be some exterior group, some group that is set outside of that, that has its own budget, that does not necessarily have the committee overseeing that staff. That is a part of how this is set



up. The staff can function outside of what the committee and what legislators feel should be done. I feel there needs to be some resolution of that. At this point, the legislators are in charge of the legislature, not unelected officials. That is my concern. But, certainly, oversight is an important thing to happen. I hope it's going on now. With this agency, I think it certainly could be done better. Thank you.

On motion by Senator **PENDLETON** 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 Penobscot, Senator Cathcart.

Senator **CATHCART:** Thank you, Mr. President, men and women of the Senate. I hadn't planned to speak on this bill either, but the debate has brought up some interesting questions for me. I had some questions earlier, but the Senator from Hancock, Senator Goldthwait, asked those and I've heard some answers. Obviously, there is not one senator here who would disagree with the concept that we need oversight and that we don't do as good a job as we should in the Maine legislature of providing that kind of oversight. It's already been discussed by the Senator from Kennebec, Senator Daggett, that we did have the old Audit and Program Review Committee. While I never served on that committee when I was member of the other body, I did work with that committee quite extensively on some of the changes to our child protective system. I thought that worked very well, and I believe that they reviewed each department at least once every 10 years. So, it was a shame we had to give that up, but I do think it probably was partially because there just wasn't any money in the early 1990's and some things had to go. This bill has some troubling aspects to it for me, though, even though I think we really need to pass something and provide this kind of accountability and oversight. It just seems so very broad and that raises anxiety in me. The fact that it would have the power and the authority to investigate not only agencies of state government, but local government, county government, non-profits, anybody who receives any money from the State of Maine. I have known a few situations in my lifetime and the time that I've lived in Penobscot County, as I'm sure most of you have, where a certain individual or maybe a small group of individuals would develop a vendetta against someone who would become very dissatisfied with the services of a water district or the services of a mental health agency. It really would turn into a vendetta if this person or group felt they hadn't been treated fairly and they would really try to go after that agency that they were angry at. I just see so much potential for abuse of this kind of oversight office, because I don't understand how it would be decided exactly who in this committee and this office would start to investigate and oversee. However, I think if it just took a call from one individual, let's say, in Bangor who was upset with whoever, I don't want to name any names and certainly not be specific about cases that I've heard of in the past, this could turn into a witch hunt and be totally unjustified. If that were the case, it would be a huge waste of taxpayer dollars if this committee and their staff began to go after some agency that didn't really deserve this. They could spend months and months focusing on an investigation that really would lead to nothing. So, I would like to see a little more accountability, I think, in the legislation that is before us to make sure that it is more narrowly focused so that it would focus on the bureaucracy that we have. Surely it could

take a full-time staff of several people just to oversee the different departments. We have a huge Department of Human Services. We have the Department of Education. We have all of these departments of state government that we have a duty to oversee. So, I would prefer this bill, and would really like to vote for it, if it could be restricted to that kind of oversight. I just think to allow this committee and the staff to investigate anything in any town in the State of Maine is a bit too much. I also agree with what the Senator from Aroostook, Senator Martin, said earlier. I would be kind of uncomfortable if this committee and its staff arrived in the town of Orono and sort of set up a kangaroo court to investigate our water commission or whatever, our fire department or something. I think that most of us would be really uncomfortable and perturbed if that sort of behavior were to occur. So, I would be happy to vote for this kind of oversight and accountability, but I would really hope that the committee or someone would figure out a way that the focus could be narrowed down so that it would really focus on our state bureaucracy here that we have the responsibility for. Thank you very much, Mr. President.

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

Senator **PENDLETON:** Thank you, Mr. President. This is about the gabbiest I've been in the last 6 years. I'm getting a little nervous now because I'm beginning to feel like Fraulein Pendleton from the Gestapo, wearing a black uniform and rushing into all these places and investigating. That's really not the case. We discussed very, very clearly in committee, when we had our work sessions and when we got the information we got from NCSL, how we would focus the different investigation by the oversight committee. We had that originally in the bill, but because it was unpalatable for some people, we had to take it out and put it into rules. The purpose of the oversight committee, which legislators will set up at the beginning of the year, will be a program of what investigations will be done. They will have a time certain when they will be done. The requests will come from particular legislative committees. This is a tool for the legislator. We're not talking, when we put in the quasi and different governments, special districts, utilities and all that, that was to allow us to have this committee have the flexibility, while they are focusing, to follow the state dollars. My maiden name is German, but I am not a Fraulein and I am not with the Gestapo. Believe me, it's the last thing I want to do. We did discuss this. Thank you very much for your attention.

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

Senator **YOUNGBLOOD:** Thank you, Mr. President, ladies and gentlemen of the Senate. I really want to just kind of reiterate a couple of things that the good Senator from Cumberland, Senator Pendleton, just covered. There seems to be a little bit of confusion about one Senator feeling that he'd like to be on a committee to go out and investigate someone. No committee person, no legislator, would be involved based on this present legislation. They would never be involved in doing that research. No legislator would be involved in doing that research. Elected officials oversee this function. You have a joint rule on our table

that was part of this legislation. That, hopefully, will be the same when it gets to the joint rules and laid out as to what it is going to be. That makes a committee of 12 absolutely equal with 6 people from the other body, 6 people from the Senate; 6 people from one major party; and 6 people from the other major party, to decide which programs will be investigated. There are 186 legislators. We could all have something that we wanted researched. There is no ability for somebody from Bangor to call this committee and say, 'I'd like to have you look into what the City of Bangor is doing. I'd like to have you look into what any agency anywhere is doing.' It has to come through the legislative process. There are all those safeguards in it. But if it is not put off by itself, the amendment we made today, to cover some of the fears of some of the people. It says the executive director of this operation, the man or woman who heads this effort, will be appointed by the Legislative Council. So they have control over who is going head this. The Legislative Council, on an annual basis, has control over setting the budget that they are going to have to spend to do these various research projects. The council and the leadership is actively involved in this process. No legislator has the ability to go out and get involved in any research. No legislator has the ability to review the data that is being researched and influence the report prior to the report being given back to the committee. The committee then has the ability and the statutory authorization to accept the report, to deny the report, or to accept it in part. The agency, the program, the non-profit, whoever it was that was looked, has the ability to see the report and respond to what their attitude is to this evaluation 15 days before that report is made available. Whether they agree, whether they disagree, want to add additional facts, and have that included in the report that is coming to the legislature. The day that this report is made available to that committee it is made available to each and every one of us and the general public. That's the only way that you have the total perception by the consuming public, by the people who sent us here, that this is a non-biased, believable, report. Not a study report that is put together by a joint standing committee that has 8 of one party and 5 of another party on it. It could be absolutely wonderful. I don't disagree that we have had some very good reports. But the perception is always there that it is really believable, was it really non-biased. You need to take that out of everybody's doubt if you want this program to be successful. Thank you very much.

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

Senator **DAGGETT:** Thank you, Mr. President, members of the Senate. I just, in reading through the bill and responding to the Senator from Penobscot, Senator Youngblood's, comments about members not being able to go out and conduct these examinations. It doesn't have to do with going out, but from the bill itself, it indicates that the duties of the committee are to conduct hearings for the purpose of interrogating public officials, examining witnesses, for the purpose of production of papers, records, books, accounts, documents, computer disks, memory or other electronic media, to issue subpoenas in the event of a refusal to appear or produce papers or records, including books, accounts, documents, etcetera. It certainly seems to me that committee members, even if they don't go out, have the opportunity to require anyone to come in front of them and to examine them under oath. There is another part about administering oaths, to administer oaths to witnesses appearing before the committee to determine if there is a probable cause if

a witness has committed perjury by testifying falsely before the committee and to direct the Attorney General to institute legal proceedings as provided by law. It seems to me that it is pretty broad authority for the committee to investigate anything that the committee wishes to investigate. I would assume that any company that contracts with the state for building roads or for building buildings could be examined regarding the public funds. It also indicates that any expenditure by any public official or public employee and any expenditure of private money for agency purposes. So this is broad authority for this committee, whether they leave the State House or not. Thank you.

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

Senator **PENDLETON:** Thank you, Mr. President and thank you, colleagues, for your tolerance. To answer the concerns of the good Senator from Kennebec, Senator Daggett, you are reading from the bill, I believe, and I think some of those things were taken out in the amendment. I'm not sure all of them have been, but I think some of them have been because of that very concern that you raised. I don't have the bill in front of me because I gave it to somebody to look at, but I do think that it has been taken out already. Thank you.

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

Senator **BROMLEY:** Thank you, Mr. President. I just wanted to point out a couple of things that are of concern to me, particularly sitting on the Business and Economic Development Committee. Earlier this year we had a debate when the Maine Technology Institute came before us concerned that entrepreneurs that are applying for grants are less apt to apply for grants if their trade secrets aren't protected. We worked hard to try to craft some legislation to do that, so they would be continued to be encouraged to use this fine grant program. The Senator from Penobscot, Senator Youngblood, was on that committee and may recall that debate. I register concern that this additional oversight might jeopardize the MTI confidentiality issue. I also want to point out that research is far from an exact science. In fact, my favorite graduate school professor said that statistics and research was a little bit like bikinis, they show a lot but sometimes cover the essentials. So, I wouldn't want us to fall into the trough of thinking that research coming from this committee would be unbiased. That research is not an exact science, and we certainly wouldn't want to be parlor generals and just rely on research from this committee. So, I raise those concerns and wanted to share them with you. Thank you, Mr. President.

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

Senator **YOUNGBLOOD:** Thank you, Mr. President, ladies and gentlemen of the Senate. I will be very brief and answer that direct question having to do with confidentiality. That is a big concern. It raises all kinds of eyebrows every time that comes into any discussion. The wording pertaining to confidentiality of

records or work papers has the exact language in here as is in Maine Statute Title 5, I believe it is. The only thing that is changed between the language that is in here and the language that protects the work of the state's internal auditor is the reference to the committee, itself, as opposed to the state auditor. Everything else is word for word in Maine Statutes today.

**THE PRESIDENT:** The pending question before the Senate is the motion by the Senator from Cumberland, Senator Pendleton to Adopt Senate Amendment "C" (S-595) to Committee Amendment "A" (H-1039). 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 (#322)**

**YEAS:** Senators: BRENNAN, BROMLEY, CARPENTER, DAVIS, DOUGLASS, EDMONDS, FERGUSON, GAGNON, GOLDTHWAIT, KILKELLY, KNEELAND, LAFOUNTAIN, LEMONT, LONGLEY, MARTIN, MCALEVEY, MICHAUD, MILLS, MITCHELL, NUTTING, O'GARA, PENDLETON, ROTUNDO, SAVAGE, SAWYER, SHOREY, SMALL, TURNER, WOODCOCK, YOUNGBLOOD, THE PRESIDENT - RICHARD A. BENNETT

**NAYS:** Senators: CATHCART, DAGGETT, RAND, TREAT

31 Senators having voted in the affirmative and 4 Senators having voted in the negative, the motion by Senator **PENDLETON** of Cumberland to **ADOPT** Senate Amendment "C" (S-595) to Committee Amendment "A" (H-1039), **PREVAILED**.

Committee Amendment "A" (H-1039) as Amended by Senate Amendment "C" (S-595) thereto, **ADOPTED**, in **NON-CONCURRENCE**.

**PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1039) AS AMENDED BY SENATE AMENDMENT "C" (S-595) thereto, in NON-CONCURRENCE.**

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

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Off Record Remarks

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

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On motion by Senator **SMALL** of Sagadahoc, **RECESSED** until 8:40 in the evening.

After Recess

Senate called to order by the President.

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

**COMMUNICATIONS**

The Following Communication: S.C. 713

**120<sup>TH</sup> LEGISLATURE  
STATE OF MAINE  
OFFICE OF THE PRESIDENT**

April 5, 2002

Honorable Pamela L. Cahill  
Secretary of the Senate  
120<sup>th</sup> Legislature  
Augusta, ME 04333

Dear Madam Secretary:

Please be advised that I have appointed the following conferees to the Committee of Conference on the disagreeing action of the two branches of the Legislature on Bill, "An Act to Control Internet 'Spam'" (H.P. 1538) (L.D. 2041)

Senator Shorey of Washington  
Senator Treat of Kennebec  
Senator Small of Sagadahoc

Sincerely,

S/Richard A. Bennett  
President of the Senate

**READ and ORDERED PLACED ON FILE.**

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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**

HOUSE REPORTS - from the Committee on **TAXATION** on Bill "An Act to Implement the Recommendations of the Education Funding Reform Committee"

H.P. 1581 L.D. 2086

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-1068)** (11 members)

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

In House, April 4, 2002, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1068) AS AMENDED BY HOUSE AMENDMENT "A" (H-1087)** thereto.

In Senate, April 5, 2002, the Minority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED**, in **NON-CONCURRENCE**.

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

The Senate **ADHERED**.

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

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

**SECOND READERS**

The Committee on **Bills in the Second Reading** reported the following:

**Senate As Amended**

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

S.P. 822 L.D. 2202  
(C "B" S-575)

**READ A SECOND TIME.**

On motion by President Pro Tem **MICHAUD** of Penobscot, Senate Amendment "B" (S-597) **READ**.

**THE PRESIDENT:** The Chair recognizes President Pro Tem Michaud of Penobscot.

President Pro Tem **MICHAUD:** Thank you, Mr. President, men and women of the Senate. I rise and offer this amendment and hope that you will support the amendment. When the Supreme Court issued the Kotch decision earlier this year, Labor was pleased, clearly, by that decision and rightfully so because it interpreted the 1992 reform. Employers, on the other hand, were really concerned about that decision. Clearly it would have added, for some employers, a significant increase in their Workers' Compensation costs. We all know rates have risen in Workers' Comp. There are some normal rates because of the cost of health care. Since the Governor submitted L.D. 2202, we have had a very spirited debate about injuries which should be covered under Workers' Comp. Kotch held that prior, non-work related injuries should be used in determining permanent impairment. As a result of this debate, we have all agreed that such injuries should not be included in determining permanent impairment. Both Labor Committee reports would prevent consideration of prior, non-work related injuries. Unfortunately,

the Minority Report goes far beyond the scope of the Kotch decision. It would repeal the Churchill decision. It effects the Churchill decision by preventing consideration of prior work related injuries in determining permanent impairment. Think about it. Suppose a carpenter hurts his left arm carrying lumber one year and sustains a 10% permanent impairment in that arm. He returns to work a few months later and then he hurts his right arm, with another 10% permanent impairment. Under current law, before Kotch, he would qualify for extended partial disability benefits. His combined impairment of 20% would exceed the 11.8% threshold. Unfortunately, the Governor's bill goes beyond Kotch and it would refuse that carpenter the extended benefits. Can anyone explain why we shouldn't consider both of his work related injuries? It is only a fair way to treat the worker. The amendment before you corrects this problem in the bill. It does what the employers have asked us to do. It would repeal Kotch. Nothing more. This amendment is a fair amendment. It repeals Kotch and prevents any increase in Workers' Compensation in Maine because of the Kotch decision. I know it was noted earlier about the fiscal note on the Majority Report. If you look at this report, the fiscal note is very clear. This amendment eliminates the cost associated with the elements of Kotch. I hope you will support this amendment because it deals with the Kotch decision and the Kotch decision alone. That's why the Governor put the bill in. That's why there has been a lot of heated debates. The business community wanted to go a little bit further and the labor community wanted to go a little bit further. I think we have to deal with the Kotch decision and the Kotch decision alone. Nothing more, nothing less. That is what this amendment attempts to do. Mr. President, when the vote is taken, I request a roll call.

On motion by President Pro Tem **MICHAUD** 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 Lincoln, Senator Kilkelly.

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

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

Senator **KILKELLY:** Section 2, paragraph B, of this amendment talks about any work injury, other than the work injury at issue in the determination. One of the questions I have is how is that work injury defined and under what circumstances? Can it occur in another state? Can it occur in a way that has not been documented? Can it occur as a person who is self-employed and has not in any way reported that as a work related injury?

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

Senator **LONGLEY:** Thank you, Mr. President. To answer the question, I honestly believe that it's a work injury. It's a workplace injury. It's part of the compact between employers and employees that workplace injuries, as a way to control costs since the 1920's, labor and management have been meeting to say as we move into the workplace and have workplace injuries, we'll come up with a special compensation system to control the

cost that might be related to workplace injuries. So, yes, it could happen out-of-state. That's okay. It's a workplace injury. A worker at work, when they walk across the threshold of the employer's office, they are giving their time and they're giving up their rights to certain other suits. That's a very important piece. When you walk into the workplace, you're giving up your right to any other form of suit related to your workplace injury. So, yes, and that's exactly what wasn't addressed in the worker's reform. I happen to have the theory that it was an oversight on everyone's part. Maybe I'm wrong, but my thought is that when they wrote in the law in 1992, based on the Kotch decision, where they quote the statute 'combined injury' that no one thought to put 'combined workplace injuries' and then Kotch happened. This is simply fixing Kotch by putting in 'workplace injuries'. Simple as that. It's the pact that was made between employer and employee and has lasted since the 1920's, according to my historical research. 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'm very pleased that this amendment has come forward. I appreciate all the work that everybody in the building has been doing for the last week or more. I think it's clear that the place where we all agree is that Kotch needs to be repealed and this does that and that alone. I am delighted and pleased and I hope you will join me in supporting this amendment.

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

Senator **SHOREY:** Thank you, Mr. President, men and women of the Senate. I was very curious about the question the good Senator from Lincoln, Senator Kilkelly, had because I had written pretty much the same questions down. Does it have to be in the same state? Does it have to be the same employer? Is there a time frame involved? Judging from the answer, it may be okay for you that this doesn't have to apply, but me, as an employer, I think I would look awfully hard at anybody that I would even think about hiring to see if there were any potential injuries there. That's something that you need to think about. Perspective employers looking at a perspective employee. That's not what I would be looking for as an employer. I think this would also be very dangerous to all parties involved. So I would not be able to support this amendment. I would encourage you not to also. Thank you.

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

Senator **SAWYER:** Thank you, Mr. President, ladies and gentlemen of the Senate. First of all, I think I understand that the way this town works is different from any place I've ever worked before and when in Rome, do like the Romans. I must say, for the record, I'm disappointed over the way we've gone about this. The original bill that was presented by the Senator from Lincoln County. We had days, if not weeks, to review it, analyze it, get information on it. Then we received, what was, earlier today, Committee Amendment "A". We had minutes to review that before the committee took a vote. Then many people, including persons in this room, spent late into the night last night trying to negotiate a compromise. That was held over, postponed if you

will, until at least noon today so that everyone could have an opportunity to research the implications, to do their own math, and draw their own conclusions. I must say, I'm disappointed, I think maybe I've had ten minutes to review this amendment before us. Having said that, I'll call your attention to the fiscal note. Frankly, I believe any statement that says this amendment is not expensive fails that straight face test. I call your attention to the second paragraph because apparently nobody else has had time to actually figure out what the cost of this is. Let me read it to you, if you don't have copies. 'As amended, this bill will partially reduce the amount of an unbudgeted increase in cost to state agencies', I would add, parenthetically, to the whole rest of the employers in the state, 'through increased Workers' Compensation payments and premiums.' Based on the information that is available, based on the information that is available to the people to whom I've talked, this amendment has nearly a \$50 million a year going forward expense to the employers in the state. Apparently, up to \$240 million retrospective cost, perhaps. The earlier number had, I think, on the magnitude of, an \$8 million expense to the State of Maine and the testimony and documentation we have in front of us says this bill will partially reduce that cost. I would ask that you oppose this amendment. I would ask that you stay with the Minority Report. Thank you.

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

Senator **NUTTING:** Thank you, Mr. President, ladies and gentlemen of the Senate. I also rise tonight to ask you to oppose this pending amendment. I had to read this amendment three or four times before I realized the huge price tag for every business in the state contained in this amendment. This amendment is much different than the amendment printed earlier, about an hour ago. This amendment has a Section 4 in it which attempts to add a retroactivity section. That's what I want to talk about briefly this evening. The Churchill decision said that two workplace injuries to the same body part that are related significantly can be stacked or put together. The Kotch decision said that, frankly, almost anything can be stacked. This amendment here does clarify, in Section 2, I believe, that non-workplace injuries cannot be stacked. That's a good step, but the huge hole in this amendment is in Section 4. In Section 4, it says on line 46, 'this act'. In other words Section 2, 'applies retroactively to injuries occurring on or after January 1, 1993. This Section 4 does retroactively remove the stacking of non-workplace injuries with workplace injuries. That is what Section 2 is about. But this amendment does not retroactively stop two workplace injuries, PI cases, that have been closed over the last 10 years, it does not prohibit those from being opened up again. The Section 4 only applies to what is written in this bill. Section 4 does not apply to two workplace injuries that have not been stacked, that happened since 1993, that's 10 years worth, every single one of those can now be opened up. You're talking a huge, huge amount of, yes, litigation. That's a huge amount of future costs to every business. Once again, this amendment will result in fewer people hired. It will result in less wages being paid and less healthcare offered. I urge you to reject this amendment. Thank you.

**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 go back to my previous question that has to do with any work injury. It's all well and good to talk about the fact that any work injury ought to be covered. I think there's a place where probably most of us could agree with that, particularly if you're talking about a carpenter who gets injured on the job and then ten years later gets injured on the job again and that's a problem. But what are we going to be talking about in terms of any work injury when it is not an injury that has been documented? When it may be an injury that happened as a self-employed person? At the time of another injury that has aggravated the initial injury, who is then to determine that it wasn't because of your motorcycle accident? It wasn't because you stole a car at 16 and ran it into a tree. It wasn't because of a previous work experience. Or was it? Those are all going to be questions that are, in fact, going to be litigated. Those are questions that are going to be hanging out there. One of the things that I've heard complained about the most, in terms of the Workers' Comp system, is the time it takes to get through the process. I can't imagine that this language is going to do anything but add time to that as somebody says 'no, my ankle isn't from playing basketball, it's from falling off a ladder when I was house painting when I was a kid' or 'it's from doing something else, no I didn't report it, I wasn't covered under comp at the time.' That is an enormous opening. An enormous opening. So when we say any work injury, every person in here probably has a different definition of what that means. If I have learned nothing else in the last 48 hours it's that every letter in every word of this bill counts. Thank you.

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

Senator **LONGLEY**: Thank you, Mr. President, colleagues in the Senate. Again, I'll address that question. You've got a really weak case if you haven't got it documented. Good luck to you. You have to have your things documented. You don't have a leg to stand on in court if you don't have it documented. Concerning the point about retroactivity. Correct me if I'm wrong. But looking at L.D. 2202 and then looking at this amendment, basically it's not a \$2 million loophole. It's saying the two cases out there that were successful continue to be successful, just as the Governor's bill did up front. If I'm wrong, let me know and if I think I'm right, I'll argue back. I honestly think I'm right. I voted against both provisions today. I didn't think either one was fair. I thought both of them weren't what I needed to see. The problem that emerged was Kotch from the Supreme Court. I honestly think that there was no legislative intent to prove either side right or wrong. This simply says that this is our legislative intent. It's workplace injuries that we're trying to cover. I think it's fair. I think we can split legal hairs. But I don't think that is what the people want us to do. I think the people out there, be they the businesses that contacted us or the workers that contacted us, want an honorable system. Everyone was surprised by Kotch. This is a simple, easy to understand, correction of Kotch, to add in the legislative intent that wasn't added in before. Very simply put, we will cover workplace injuries. That's almost a century old compact between employer and employee to keep down the costs at the workplace. So the employee can get the job, they will forgo some of their rights and work within the Workers' Comp system. I honestly think this is a clean, fair attempt to correct what was an oversight in 1992. I honestly believe this is what the businesses are asking for. When they called me they said we think it's fair to cover

workplace injuries. We don't think it's fair to cover non-workplace injuries. That struck me as logical and defensible. We are here simply saying okay, we agree. No more, no less. This is fair. This is the compromise I was looking for. I am very grateful for the opportunity to vote for this and no, I don't think and I would argue and go to the mat on the argument, that this is creating a big, huge loophole. This is simply honoring an almost century old compact between worker and employer in a healthy Maine way. Thank you for supporting it.

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

Senator **DOUGLASS**: Mr. President, women and men of the Senate. This is the language that we should have had in the first place. This amendment is narrowly drafted. It's well crafted. It overturns Kotch for the future. I've heard some statements here that I know to be incorrect. First of all, Section 4 is the only protection that an injured worker who is now receiving permanent impairment payment has from having an insurer go back and retroactively say, 'oh, now the law has changed, now we're going to stop paying you for the back injury you have, even though you were shot through the knee in Vietnam and originally that was considered part of that assessment.' That is the situation of one of the injured parties in Kotch or Wheeler, I think the name was. So that is a protection against going back, whether it's the insurance company or the employer, and changing the rules now that we've reached the year 2002. Let's be honest, the reason Kotch came up is because it's the only case of this kind that has occurred. So there probably aren't any people who need this protection in Section 4. But it's not right to change the law without protecting those people who are currently existing with permanent impairment, who deserve to be treated with fairness. The rules of the game were laid out at the time their permanent impairment was adjudicated. They deserve fairness now. So this amendment does overturn Kotch. I heard some other questions about whether or not a previous work injury could have happened outside the state. I don't know how many of you are mathematicians or what you know about statistics, but I know this, the actuaries do not ask what state you worked in when they decide what the statistics are for the construction industry or for the office industry or for nurses in hospitals. They do not ask what state you were working in over the course of the last 20 years. They are going by statistics for our population at large. So some of the scary statements we've heard made by fellow Senators simply will not occur because actuaries do not look at things in that way. I'd also like to urge you to consider that this process has been hasty. It's been hasty because the Kotch decision was in February. I think that we can be proud if we vote for this amendment. Proud of having done something to protect against future increases in cost resulting from that particular decision and that's all we ought to do for now. We can be proud that we've done it quickly. There may have been a lot of discussion and disagreement along the way, but this is the amendment that will reverse Kotch in it's narrow, well crafted language. I urge you to vote in support of it.

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

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

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

Senator **SHOREY:** My question is, which employer's rates would be effected by the full disability of an employee in a stack situation? The employer at the place of the first injury, would his rates be effected? Or would the employer where the second injury occurred, or the third? Or would it be left up to the last one who happened to be employing this person to pick up the slack for everybody else and have their rates effected? Thank you.

**THE PRESIDENT:** The Senator from Washington, Senator Shorey poses a question through the Chair to anyone who may wish to answer. The Chair recognizes President Pro Tem Michaud of Penobscot.

President Pro Tem **MICHAUD:** Thank you, Mr. President, men and women of the Senate. I'm not a Comp attorney and I can understand why some members of this body want to reopen the whole Workers' Comp law. That's not what I want to do. The arguments about cost, the arguments on what work injury is or is not, is currently defined in Title 39A. That is not what this amendment is all about. This amendment is very simple. It will overturn the Kotch case and the Kotch case alone. Nothing else. I know some of my colleagues within my party have agreed to not support any amendments and they are talking about the cost of Workers' Comp. I was here during the early 90's when we had that Workers' Comp debate. We had the state shutdown. It was a very grueling time. The decision was made at that time, by the majority of the Legislature, and the Governor signed it, to pass the reforms. Whether we like it or not, part of the reform that was upheld by Kotch is now being reversed. I don't want to do anything more or anything less than reverse the Kotch decision. That is what this amendment does. We can argue about what's right for the Workers' Comp law or what's wrong with the Workers' Comp law. That was not why the Governor put this bill in. He put the bill in to take care of Kotch. Unfortunately, the bill went further than what he said it did. That's why I'm proposing this amendment. In case there is any doubt from some members of my party or the other party, when I had this amendment drafted, I instructed my staff to go down to the Revisor's Office and have them draft me an amendment that reverses the Kotch decision and does not effect the two that were involved. This amendment did not come from the labor community. It did not come from the business community. Quite frankly, over the last couple of days, I've heard a lot of people talking from both sides of this issue and we haven't been able to come up with any agreement. On one side, some want to go further than what was intended. That's the business community and the Governor. On the other side, in exchange for overturning what was a compromise back in the early 90's, they want to go and have something in exchange for repealing Kotch. What I wanted was just to repeal Kotch and Kotch alone. We don't have to reopen the Workers' Comp debate on what's right or wrong with it. We should deal with the issue that the Governor intended, the reason why this bill is here. The good Senator from Washington, Senator Shorey, clearly has a lot of concerns about this issue and the cost that it has on workers. True, this bill doesn't, but the other bill would have had costs on businesses. But there are members of this body who voted for a bill the other night that would have added a lot more cost to the business community, dealing with mental health parity. So I would ask members of this body to deal with the issue that was originally presented to us. Deal with the Kotch decision and the Kotch decision alone. Don't

try to expand it one way or another because that was not why this bill is before us. Unfortunately, both sides of this issue saw an opportunity where they might be able to get one more, one way or the other, a little more from this issue, but deal with the issue that we currently have before us and that was the Kotch decision. Let's just over turn that decision and that decision alone. Thank you, Mr. President.

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

Senator **DOUGLASS:** Mr. President, men and women of the Senate. The question was posed with regard to permanent impairment that results from a workers' injury from two incidents, for whom would the rates go up? The first business or the second business. Well, with this amendment, neither one will go up. The reason is this. By repealing Kotch, the rates do not go up. Not based on the Kotch decision, they don't. I want to explain a little bit about how actuaries determine injuries. In our society there are a certain number of us who have blue eyes or a certain number of us who have red hair. Actuaries enjoy figuring this stuff out. Some of the debate here sort of dismembers people so far as their injuries go. But with regard to the whole population, there are going to be a certain number, particularly within a given type of occupation, that have a previous injury from that occupation. Of course, by far, the large majority will not. These are matters that are a lot like the issue of who has blue eyes and who has brown. They are matters that can be determined objectively. But if we pass this amendment, we will have stopped any further speculation about how actuaries will determine that second injury because we will only have those that are already in process. Now, you've heard something about the actuaries being unable to determine what the effect of Kotch is. Well now, if we pass this amendment, they will not have to do that. We will be at the same place we were prior to February of this year. I hope you'll think about your common experience with regard to statistics when I argue that this is the amendment that gives us certainty, that protects people who should not be subject to having us go back and change the award they might have had, and that's really only going to be the two at issue in Kotch and Wheeler. So I hope you'll vote for this current amendment.

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

Senator **SAWYER:** Thank you, Mr. President, ladies and gentlemen of the Senate. The current threshold for PI in the State of Maine is 11.8%. It was not based on the stacking of two unrelated work injuries. The amendment before you does not require that the earlier work injury to have been in Maine, to be a compensable injury, or even established as work related. The amendment will allow additional claims that were not factored in when that 11.8% threshold was established. It would permit more than 25% of the cases with permanent impairment to be entitled to full duration of benefits. This will clearly increase employer premiums. Most states limit permanent, partial injuries to a set duration. Maine is one of only a few states that allow for unlimited duration. This expansion of those cases eligible for duration of disability benefits will increase Maine's disparity with other states. I didn't craft the Minority Report. I don't believe the Minority Report goes beyond Kotch. Frankly, I'm willing to trust the crafter of the Minority Report to represent to me that it does not go beyond Kotch. I suppose, what's the old statement, that



men and women of good will might disagree. I was very pleased in 1972, when I decided I couldn't make it as pre-dental major, that instead of law, I choose garbage. I cannot interpret the nuances of each of these. I must rely on the input of the intent of the crafter and the interpretation by people who have formal education in that regard. I must take issue with the good Senator just to the north to me in Penobscot County. I do not believe the Minority Report was intended to go beyond Kotch, nor does it go beyond Kotch. I would ask that you stay with the Minority Report and vote against the motion before you. Thank you.

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

**Senator MILLS:** Mr. President, men and women of the Senate. I think what we most need is something to drain the emotion out of these interminable lectures that we've been giving each other this afternoon and evening. I noted with some interest that we did, not so long ago, vote, after a long discussion, on extending mental parity benefits to people who need them on their health insurance. I submit to you that the cost to the employer community was in the multi millions of dollars. We had a relatively dignified and lady-like and gentleman-like discussion about whether to spend all that money for some reasonably deserving people. I voted against it. I lost. I went home, I went to bed, and slept normally. We had another bill that said let's extend unemployment benefits to part-time workers, workers who hold themselves out as available only for part-time work. We have a very rich and well endowed unemployment compensation fund at the moment, but any amount that you drain from that fund directly results, at some point, in draining money from Maine's employers who are the sole source of revenue for that fund. I think the cost of that bill was in the order of \$5 or \$10 million a year. We had a relatively dignified discussion about that. The halls were not filled with these gentlemen in gray suits. We didn't have lines of people forming up to raise the specter of bankruptcy for Maine employers. We just had a discussion about it. We voted it up or down. For some reason, there is something about comp that draws out the worst in many of us. It's the most volatile political issue since prohibition in Maine. If you go back and read the report of the records from this chamber from 1903, 1905, 1907, you will see that they had debates that went on for hours, even days, on the evils or the benefits of alcohol. I think 20 years ago we had these discussions interminably on abortion. Those have quieted down somewhat. In the last decade or two, it's been Workers' Comp. It lights everybody's fire. Gets everybody's cheesed up for November. It stirs the adrenaline. It gets people to vote one way or the other. It destroyed the capacity of either party to elect a Governor. We have both been out of power for 8 years because of this issue, because we allowed this issue to get out of hand. We did damage to all of us in political circles. We need, more than anything else, to drain the emotion from this discussion and it can't be done, frankly, unless neither side wins. I have to give credit to the President Pro Tem for having come up with the simple, elegant little amendment that does it. There is a lot of intentional confusion generated about the Kotch case and the Churchill case that preceded it because there is an inherent ambiguity lurking between those two decisions that you have to understand, and when you understand it, you understand how other people are misrepresenting what they stand for. It's very easy. There are only two cases, but there are three classes of injuries to be concerned about. Churchill said that when a work related injury

aggravates an old work related injury then you can combine the two impairments and pass over the threshold, if you are qualified. The case that might arguably occur to you is what if I have an injured arm and an injured leg from work and I, thus, pass the threshold, what is the answer, Judge? But that case never went to the law court. They skipped over it. The next case was Kotch, which said that if you have a work related injury in combination with an underlying condition from any source, then you pass over the threshold. That, naturally, subsumes the second case that we've never had and never litigated. That case is over by virtue of Kotch. So when we start retreating from Kotch, as most of us in this chamber agree that we should, the question is do you retreat to stage two or do you retreat to stage one? Frankly, to get this conversation over with, it may ultimately not make a huge difference. At least the people who wrote the 1992 law intended that it make no difference because they put a leveling mechanism in Section 213. If you are allowed to stack these two impairments from work related injuries and if that results in raising the percentage of PI threshold, fine. The end result is that only 25% of permanently impaired workers pass over the threshold into the area of an entitlement, possibly, to benefits that may go to roughly age 65. I need to remind you that this is not 25% of all injuries. So many people with these impairments are not disabled. I often like to tell people, very quickly, the Assistant Minority Leader in the House has, I think, roughly the same earning capacity that I have. Neither of us is disabled. One of us is profoundly impaired. We need to distinguish those two. So not everybody that passes over the threshold gets to getting lifetime benefits, only that subset of people who continue to have a disability beyond that 7 years, or whatever the term is that you choose. Only those that continue to be disabled continuously would receive benefits. So what we have before us tonight really is just a simple policy decision. Should we create a law, and we have that power here tonight. Should we create a law that says that only the injury at that place of employment qualifies you for passing over the threshold or should we look at more than one work related injury to determine whether you go over the threshold? We can argue that both ways and do it dispassionately. If the law is allowed to work, it won't make any difference in the long run on cost because the statute was ingeniously designed to be self-leveling on cost over time. I think there is probably a good policy reason for saying we ought to count the work related injuries. I find it difficult to say you lost the use of your left arm on one day and a year later you lost the use of your right leg and the two in combination have made you a 20% impaired person, but we're not going to let you get long term benefits because we didn't like you, we like some of these other people that get injured all in one day. I don't know. I find it difficult to do that. My own sense of things is that I come down on saying let's combine the two or three work related injuries. The good Senator from Washington, Senator Shorey, has raised a profound point. A very difficult point. It's one that this statute has been wrestling with since 1915 and I have read the statute back to 1915 and forward. The problem is what happens when you have a second injury. We always have those problems. We've had them since 1915. Yes, there is some bias or prejudice to the second employer because he says, 'well, I took on a partially impaired person and then they got worse impaired and now I'm sort of responsible for all of his disability and maybe I'm responsible for carrying him for a long term disability and I wouldn't be if he'd only been injured once on my job.' Is that fair? It's not. The statute settles that out by saying you're the employer on the watch. You're the one he's working for. You've



got to pick up the responsibility initially and you do have rights, however, to go over against the earlier employer and gain a contribution from that employer. We have a special arbitration provision to do it. It's cumbersome. Doesn't always work well. It's rough justice. But there is at least that safety valve in the statute that people often employ. That the second carrier will employ. I think the point I want to leave you with is this, we know that the board has had its problems and at the moment the problem that they are currently facing is that the statistics show that injured employees are entitled at this juncture to an 8<sup>th</sup> year of benefits. The ones that haven't passed the threshold. The short-term, partially impaired people. They were entitled to 5 at the beginning and it was said in the statute that if the Maine statistics on injuries dropped below the national average, that it would entitle labor to have an increment in the duration of the lower echelon of permanently impaired workers or partial disability workers. It went from 5 to 7 a few years ago by agreement of the board. The percentage filter came down in response to another system that they have for collecting statistics. It came down from 15% to 11.8%. So you have these two statistics. You have these two thresholds, if you will, or two variables that get adjusted by the board. Well at the moment, as we've all heard, the board has kind of locked up the issue of whether to give that 8<sup>th</sup> year to injured workers who seem entitled to it. In fact, there is a law suit that has been filed that is seeking to force the board to give that 8<sup>th</sup> year out in response to the data that was presented to them. Now, what will happen if we pass the amendment offered by the good Senator? There will be some upwards pressure, there may be if you start to permit the stacking of work related injuries, on that percentage. Maybe it should rise above 11.8. Management will have something that they want from labor. But isn't that interesting because, at this moment, labor has been asking for that extra year and hasn't received it because of the deadlock on the board. But wouldn't it be interesting if we passed a law that put them into parity? That put the situation into balance? What if we emerged from this controversy and defused it by passing a law that very simply and very elegantly covered these multiple injured people, as I think they should be covered, but only for work related injuries and then a law that had the other collateral benefits of putting those two parties nose-to-nose with something each has to give. That's the beauty of the amendment that lies before you and that is the reason that I intend to vote for it. Thank you.

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

Senator **NUTTING:** Thank you, Mr. President, ladies and gentlemen of the Senate. I appreciate the background given from the good Senator from Somerset, Senator Mills. Some of it I agree with and I guess some of it I don't. I've got a few notes after my first speech about the huge loophole in this particular amendment. The fact that the retroactivity clause doesn't put everything retroactive. I think you just need to take a second and look at L.D. 2202. Look at Section 3 of that. That particular retroactive section does make everything retroactive. This retroactive section in this amendment is much different. That's the danger with this amendment. I urge you to oppose it.

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

Senator **MARTIN:** Thank you, Mr. President, members of the Senate. As you have obviously been aware, to this moment I refrained from commenting on the Workers' Comp law and the issue before us. Frankly, I have done so because of all my political service to this state, the period that is, in my opinion, the worst time in my political career was the period during the shut down and Workers' Compensation issue. A period when hundreds and hundreds of people stood staring at one another, yelling and screaming in the halls of the State House over the issue of Workers' Compensation and the state shutdown. The state employees yelling, screaming, crying. Employers in this state saying that the end of the world was arriving. Some threatening and some yelling and some, frankly, being totally irresponsible. Not a very pleasant period. When I look at what disappoints me more than anything else on this issue right now are the comments made about how little time the committee had to work or didn't work. May I remind everyone in this body, and in this state, and in particular the Governor and the Commissioner, involved with this issue that the Supreme Court decision was rendered in early February and if you look at when this bill was introduced into the legislative body, you will find March 25<sup>th</sup>. Approximately 6 or 7 weeks after the Supreme Court decision. None of us, to my knowledge, were ever informed. With whom did the Commissioner communicate? The business community? She certainly didn't communicate with this body. With this Senator. Or anyone else that I know. So if you wonder why there was so little time and why people are upset, maybe you ought to ask the administration why. Because I don't think it's fair at this point to try to deal with this issue in the shortness of time that we have and to say buy it or else. That's what disturbs me. It is the time period. I, frankly, am a very suspicious person. I, frankly, have been told some things by both sides that I have refused to accept and I don't know the answer to. But I do know this, after listening to the comments of the Senator from Somerset, Senator Mills, and remembering the 1992 issue and the debate, what he laid out to you tonight is exactly what we intended. I don't know whether this amendment, this bill accomplishes what it is we want tonight. But I also believe that none of us here really know, in the final analysis, and we're all groping to try to find the answer. We all know what it is we want, but I think it's unfortunate that we're doing this at 10 o'clock on Friday night with having had it before us for about 3 days. That's what I find unfortunate. Quite frankly, before I got up to speak, my initial reaction was simply to move to adjourn until Tuesday so that people could sit down and draft a piece of legislation with what it is they need. I've looked at the Governor's bill for the first time and I can see in it exactly what it does, having now read it. It goes a lot further. For those of you who believe what you're being told by the lawyers representing the employers and self-insured and the industry in this state, I ask you to do something tonight. Go to them right now, ask them for a signed contract to that agreement to which they are willing to say publicly and that their corporation will pay the difference to the employers of this state if they are wrong. Let them put their money where their mouth is. Let them sign a contract with this state. I say to the Commissioner of Labor you ought to resign because you are not serving the people of Maine.

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

Senator **TURNER:** Mr. President, ladies and gentlemen of the Senate. Earlier somebody made reference to looking back on

the record of this chamber and reflecting on the debates regarding the benefits or the evils of alcohol. Frankly, at 10 o'clock on a Friday night, I would be reflecting on the benefits of alcohol and probably would be on my third tankard of Black Fly Stout at Gritty's in Portland. Regrettably, I'm here and Gritty's is in Portland. I want to say this with the utmost respect and I preface that, but I've listened to attorneys who appear to be expert statisticians. I've listened to professors of government who appear to be experts in economics. I've listened to business people who appear to be experts on medicine. I've listened to an attorney who practices Workers' Comp law who does appear to be an expert on Workers' Comp law. I'm an engineer by academic training, a businessman by experience, and now an attorney who could play the role on television perhaps. When I look at this section, the new Section 239A, MSRA 213, the determination of permanent impairment, it talks about including only permanent impairment resulting from; A, the work injury at issue in the determination; B, any work injury other than the work injury at issue and in the determination, it combines that with injury that contributes to the employee's incapacity; or C, any pre-existing condition or injury that is aggravated or accelerated by the work injury at issue. Makes a lot of sense to me. I only had to read it a half a dozen times. But I'm not going to read to you the fiscal note that has been read to you already that says there are still significant additional costs associated with this amendment. Now there are many here this evening who say they want to reverse only Kotch. I happen to believe the Minority Report does that. I know there are others here that sincerely believe differently on that. My position is that it does. When I reflect on the new wording that I read to you in Section 239A, I think what that tells me is that with the balancing mechanism that the good Senator from Somerset, Senator Mills, described to you, we now have a situation where, in my opinion, my honest opinion, the worker from away who is self-employed, may be picking up bottles on the side of the road in Alabama or Arkansas, decides now to come to Maine and be injured. He claims, or she claims, that it is a work related injury. It goes along with the work related injury to that person that they incur in our jurisdiction. That person now competes in this balancing mechanism for the worker from Maine who has incurred those injuries in our workplaces. For example, the shoe worker who has been doing hand sewing for a long time and now incurs injuries of an impairment equal to the fellow or woman who joined us from Arkansas or Alabama. One comes in, the other doesn't. I think we've set up a situation now where our own workers are disadvantaged because these workplace injuries can come from any place, substantiated or otherwise, and I think that sets up a real problem for the people we care most about, our workers here in Maine. So I'm going to ask that you reject the amendment that has been offered to you and that we move on to the Minority Report unamended. Again, in closing, I do not mean any disrespect to anybody seated in the chamber this evening, around this horseshoe or otherwise, but I do believe, because each paragraph, each sentence, each word, each punctuation mark, gets debated and adjudicated and litigated. If you, in my opinion, pass this amendment with these words in it, you are going to have the opportunity, in my opinion, to rename this the Workers' Comp attorney full employment act. I'd ask that you reject the amendment. Thank you very much.

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

Senator **EDMONDS:** Thank you, Mr. President, men and women of the Senate. I'm trying to figure out a way to speak to the Senator from Washington, Senator Shorey, and the good Senator from Cumberland, Senator Turner, about the notion of my worker gets injured and I have to bear the responsibility for the injury that happened at your workplace. I guess it goes back to when I was in Sunday School. When I got taught by Ms. Frederica Mitchell, my minister, that my responsibility in the world was to look out for everybody. Let's say I've got a business and you've got a business and today somebody gets injured in my business. They recover. For various and sundry reasons, they leave my business and they go to your business. They get injured again. You are responsible. But conversely, statistically, equally probable, they were injured at your business. Things are taken care of. They come to my business and they get injured. It's the law of averages. You know, we've got to look out for people. We can't just hold everything together in our little place and say okay this is my little thing. We're all in this boat together. I don't think there are people somewhere else in the United States who are going to read this decision in their local library and high-tail it to Maine to get injured. I just don't think it's going to happen. I guess I very much appreciated the Senator from Somerset, Senator Mills, asking that we remove the emotion. I apologize that I can't always do that. But I feel like what we were asked to do 2 ½ weeks ago, or 2 weeks ago, or whenever in Sam's Hill it was, was to reverse Kotch. I appreciate the President Pro Tem's clarity at simply coming in and reversing Kotch. I guess tonight we'll probably end where we started. It depends on who you believe about whether Kotch has been reversed or not. I feel confident that this amendment reverses Kotch. I guess I just want to leave you with the image that we are in this together. It's all of us and we have to take a broad view, a big view, not a narrow one. Thank you.

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

Senator **LONGLEY:** Thank you, Mr. President, colleagues in the Senate. In addition to Sunday School, it's simple law that when I go into my workplace, if I'm an employee, I forgo my legal rights to sue my boss if I'm injured. I'll settle for 80% for 7 years of my salary. That's certainty in the workplace. That's what I've given up. Separate and aside from employers who don't want to cover what might have been contributed from another workplace. It's the compact between the employer and the employee. I'll forgo my rights as an employee and as an employer I'll have some sense of certainty in terms of my costs. When you come into my workplace, you can't sue the daylights out of me if you get hurt. Second point of my three is if both decisions reverse Kotch, why the big opposition to the current motion? They both do the same thing. I think they don't do the same thing. If you look at the summary of facts, if you don't want to read the harder language, what it comes down to is basically, as the Senator from Somerset, Senator Mills, said, it's trying to take two steps back as opposed to the one step that we are all agreeing to, which is the workplace injuries. Kotch said non-workplace and workplace get combined. Many of us thought that was wrong. We thought workplace injuries is what should be covered. Well, the Minority Report is basically saying not all workplace injuries are covered. We're going to cut out some of them. That's two steps back. Third and lastly, I simply have to call it a red herring. This retroactivity provision that is being thrown out as completely different. One says all pending cases. That's the Minority

Report. Arguably broader than what the current pending motion, the floor amendment, which basically says cases that were complete by April 1<sup>st</sup>. It's the same. In that respect they are both the same. But on my second point, one case takes two steps back, as the Senator from Somerset, Senator Mills, explained. But then again, if you think they are both reversing Kotch, no more, no less, I encourage you to vote for the pending motion. It's no different according to the argument you state. 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 because I feel I need to respond. It would be wonderful if, in business, we could all get along and have a great big group hug. But you know what, it doesn't work that way. We have to look at the real numbers and the real facts and figures and at the employers, these small employers, who are trying to make payroll. They would experience no solace in knowing that they feel awfully good about helping out another business because the percentages say that it could have happened to them. What they are looking at is the real numbers. They are looking at the fact that, because of this decision, they are now faced to pay a higher cost and they are now faced to look at if they are going to be able to pay the higher cost and still stay in business with the amount of employees they have? Or will they have to reduce the amount of employees they have because they have to pay higher costs? Those are the real numbers. Those are the real facts. It would be wonderful if it was a perfect world and it would be great. But that's not the case. 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. I've been sitting here listening to the debate and trying to form the logic of what the opposition is to this. The logic is, from what I can gather, that since two employers maybe can't agree as to who should pay, worker, you lose. The worker loses. If that's what you want to do.

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

Senator **MILLS:** Mr. President, I rise just to make a footnote. There has been a lot of discussion about the retroactivity clause in this bill. The retroactivity clause is completely essential to reducing the cost that people here intend to reduce. In other words, this redefines the threshold for all cases, going back to the original date of the statute, to 1/1/93, the first day when the statute came into effect. So anybody that is injured under this new law will be effected by this definition rather than the definition that is in the Kotch case, which people are disturbed about because it has retroactive effect. The law court says that's been the rule since day one. You just didn't know it. So this retroactivity clause, is important in executing what I think is our intent, that we say no, that hasn't been the law since 1/1/93. This is the law. This is the law that we wanted, this is the law that we want for the future, and for the last 10 years of accumulated claims to the extent that they are still in the system. The only claims exempted are Mr. Kotch, himself, because his claim was decided by a hearing officer. He's got some sort of vested right

in that decision under the law that he established, frankly. If there are one or two other people out there who got a decision in the last few weeks, I don't know if there are, there may be none, but if there are one or two others who have had the benefit of a decree under the law of Kotch, clearly they should be entitled. So we're talking about only a few, at most, who would be entitled to the benefit of the Kotch decision. This retroactivity clause irritates those rights for every other claim since the beginning of the statute and ongoing. Thank you.

**THE PRESIDENT:** The pending question before the Senate is the motion by President Pro Tem Michaud of Penobscot to Adopt Senate Amendment "B" (S-597). 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 (#323)

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

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

17 Senators having voted in the affirmative and 18 Senators having voted in the negative, the motion by President Pro Tem Michaud of Penobscot to **ADOPT** Senate Amendment "B" (S-597), **FAILED**.

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

Senator **MARTIN:** Thank you, Mr. President. I would ask if someone would take a look at the Governor's bill, L.D. 2202, on page 1.

**THE PRESIDENT:** The chair would ask if the Senator is addressing the Senate or posing a question?

Senator **MARTIN:** I'm trying to figure out where it is, Mr. President. And will attempt to pose a question to anyone who has the answer.

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

Senator **MARTIN:** Line 26 through line 31, beginning with the word 'the' and the end of that sentence. It appears that the impairment rating that is being discussed here would deal only with the one accident. I'm wondering why the drafting was done to do that. Because it does appear, if you read this carefully, that sentence changes what was intended by the previous sentence. The same thing is done, I think, by line 40 through line 44. It

appears to contradict the previous line. I would pose a question to anyone who may answer, since obviously I grabbed this for the first time an hour ago, as to why the drafting was done in this manner, and in fact, seems to, basically, destroy the intent of the first line in both sections and I would ask that someone respond to that if they could.

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

Senator **KILKELLY:** Thank you, Mr. President, men and women of the Senate. I am not an attorney. I am not a specialist in Workers' Comp. In terms of looking at whether or not this language does, in fact, significantly reduce the availability that had been there prior to the decision, I would again refer you to the fiscal note because the fiscal note does, in fact, indicate that there is not a significant cost savings which there would be if, in fact, we were reversing more than that one decision. That's as far as I can go. I'd be happy for anyone else to provide additional information.

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

Senator **MARTIN:** Thank you, Mr. President. For the record, members of the Senate, summaries, fiscal notes, have absolutely no meaning. Have no force of law. Are not included in the laws of this state. Have no intent and have no interpretation ever made by a court in this state. They are simply added on to give the lay-person some knowledge, but have absolutely no legal binding status. So whatever, including members of the staff who care to laugh about it, so whatever there is, it has absolutely no bearing and I'd pose my question again. Can anyone who sponsored this bill or co-sponsored this bill or heard this bill have any idea what this means?

The Chair ordered a Division. 21 Senators having voted in the affirmative and 14 Senators having voted in the negative, the Bill was **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "B" (S-575).**

Sent down for concurrence.

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Off Record Remarks

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Senator **MCALEVEY** of York was granted unanimous consent to address the Senate off the Record.

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

**ENACTORS**

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

**Emergency Measure**

An Act to Correct Errors and Inconsistencies in the Laws of Maine

H.P. 1577 L.D. 2083  
(S "A" S-567; S "C" S-585;  
H "A" H-1097 to C "A" H-1071)

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

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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**

Resolve, to Promote the Interests of the People of Maine when Public Funds are Used to Acquire Conservation Easements  
H.P. 1593 L.D. 2096  
(S "B" S-586 to C "A" H-990)

In House, March 26, 2002, **FINALLY PASSED.**

In Senate, April 4, 2002, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-990) AS AMENDED BY SENATE AMENDMENT "B" (S-586)** thereto, in **NON-CONCURRENCE.**

In House, April 5, 2002, **PASSED TO BE ENGROSSED AS AMENDED COMMITTEE AMENDMENT "A" (H-990) AS AMENDED BY SENATE AMENDMENT "B" (S-586) AND HOUSE AMENDMENT "A" (H-1100)** thereto, in **NON-CONCURRENCE.**

On motion by Senator **KILKELLY** of Lincoln, the Senate **RECEDED** and **CONCURRED.**

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

**COMMUNICATIONS**

The Following Communication: S.C. 715

**120<sup>TH</sup> LEGISLATURE  
STATE OF MAINE  
OFFICE OF THE PRESIDENT**

April 5, 2002

Honorable Pamela L. Cahill  
Secretary of the Senate  
120<sup>th</sup> Legislature  
Augusta, ME 04333

Dear Madam Secretary:

Please be advised that I have appointed the following conferees to the Committee of Conference on the disagreeing action of the two branches of the Legislature on Bill, "An Act to Create the Maine Rural Development Authority."

(H.P. 1724) (L.D. 2212)

Senator Shorey of Washington  
Senator Bromley of Cumberland  
Senator Youngblood of Penobscot

Sincerely,

S/Richard A. Bennett  
President of the Senate

**READ and ORDERED PLACED ON FILE.**

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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 Establish the Maine Consumer Choice Health Plan  
S.P. 793 L.D. 2146  
(S "A" S-548 to C "A" S-530)

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

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**ORDERS OF THE DAY**

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

An Act to Support Family Farms  
S.P. 463 L.D. 1516  
(C "A" S-424)

Tabled - March 13, 2002, by Senator **GOLDTHWAIT** of Hancock

Pending - **ENACTMENT**, in concurrence

(In Senate, February 20, 2002, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-424).**)

(In House, March 13, 2002, **PASSED TO BE ENACTED.**)

On further motion by same Senator, 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" (S-424).**

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

On further motion by same Senator, the Senate **RECONSIDERED** whereby it **ADOPTED** Committee Amendment "A" (S-424), in concurrence.

On further motion by same Senator, Senate Amendment "A" (S-581) to Committee Amendment "A" (S-424) **READ and ADOPTED.**

Committee Amendment "A" (S-424) as Amended by Senate Amendment "A" (S-581) thereto, **ADOPTED**, in **NON-CONCURRENCE.**

**PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-424) AS AMENDED BY SENATE AMENDMENT "A" (S-581) thereto, in NON-CONCURRENCE.**

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

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

**Resolve**

Resolve, to Reduce Pollution of Androscoggin Lake by Repairing and Altering the Existing State-owned Barrier on the Dead River in Leeds

H.P. 1465 L.D. 1962  
(C "A" H-902)

Tabled - March 21, 2002, by Senator **GOLDTHWAIT** of Hancock

Pending - **FINAL PASSAGE**, in concurrence

(In Senate, March 18, 2002, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-902)**, in concurrence.)

(In House, March 20, 2002, **FINALLY PASSED.**)

On further motion by same Senator, 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-902)**.

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

On further motion by same Senator, the Senate **RECONSIDERED** whereby it **ADOPTED** Committee Amendment "A" (H-902), in concurrence.

On further motion by same Senator, Senate Amendment "A" (S-580) to Committee Amendment "A" (H-902) **READ** and **ADOPTED**.

Committee Amendment "A" (H-902) as Amended by Senate Amendment "A" (S-580) thereto, **ADOPTED**, in **NON-CONCURRENCE**.

**PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-902) AS AMENDED BY SENATE AMENDMENT "A" (S-580)** thereto, in **NON-CONCURRENCE**.

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

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

An Act Relating to the Treatment of Persons with Mental Illness Who are Incarcerated

H.P. 1563 L.D. 2068  
(C "A" H-1020)

Tabled - April 1, 2002, by Senator **GOLDTHWAIT** of Hancock

Pending - **ENACTMENT**, in concurrence

(In Senate, March 27, 2002, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1020)**, in concurrence.)

(In House, April 1, 2002, **PASSED TO BE ENACTED**.)

On further motion by same Senator, 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-1020)**.

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

On further motion by same Senator, the Senate **RECONSIDERED** whereby it **ADOPTED** Committee Amendment "A" (H-1020), in concurrence.

On further motion by same Senator, Senate Amendment "A" (S-579) to Committee Amendment "A" (H-1020) **READ** and **ADOPTED**.

Committee Amendment "A" (H-1020) as Amended by Senate Amendment "A" (S-579) thereto, **ADOPTED**, in **NON-CONCURRENCE**.

**PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1020) AS AMENDED BY SENATE AMENDMENT "A" (S-579)** thereto, in **NON-CONCURRENCE**.

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

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

An Act to Implement the Recommendations of the Blue Ribbon Commission on Postsecondary Educational Attainment  
S.P. 767 L.D. 2102  
(C "A" S-460)

Tabled - March 21, 2002, by Senator **GOLDTHWAIT** of Hancock

Pending - **ENACTMENT**, in concurrence

(In Senate, March 15, 2002, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-460)**.)

(In House, March 20, 2002, **PASSED TO BE ENACTED**.)

On further motion by same Senator, 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" (S-460)**.

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

On further motion by same Senator, the Senate **RECONSIDERED** whereby it **ADOPTED** Committee Amendment "A" (S-460), in concurrence.

On further motion by same Senator, Senate Amendment "A" (S-578) to Committee Amendment "A" (S-460) **READ** and **ADOPTED**.

Committee Amendment "A" (S-460) as Amended by Senate Amendment "A" (S-578) thereto, **ADOPTED**, in **NON-CONCURRENCE**.

**PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-460) AS AMENDED BY SENATE AMENDMENT "A" (S-578) thereto, in NON-CONCURRENCE.**

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

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

**Resolve**

Resolve, Appropriating Funds for the Seeds of Peace International Camp

H.P. 1434 L.D. 1931  
(C "A" H-859)

Tabled - March 14, 2002, by Senator **GOLDTHWAIT** of Hancock

Pending - **FINAL PASSAGE**, in concurrence

(In Senate, March 11, 2002, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-859)**, in concurrence.)

(In House, March 14, 2002, **FINALLY PASSED.**)

On further motion by same Senator, 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-859).**

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

On further motion by same Senator, the Senate **RECONSIDERED** whereby it **ADOPTED** Committee Amendment "A" (H-859), in concurrence.

On further motion by same Senator, Senate Amendment "A" (S-590) to Committee Amendment "A" (H-859) **READ** and **ADOPTED.**

Committee Amendment "A" (H-859) as Amended by Senate Amendment "A" (S-590) thereto, **ADOPTED**, in **NON-CONCURRENCE.**

**PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-859) AS AMENDED BY SENATE AMENDMENT "A" (S-590) thereto, in NON-CONCURRENCE.**

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

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

**Resolve**

Resolve, to Require Agencies to Provide a List of Certain Paperwork Required of Maine Businesses

H.P. 1543 L.D. 2044  
(C "A" H-1016)

Tabled - April 1, 2002, by Senator **GOLDTHWAIT** of Hancock

Pending - **FINAL PASSAGE**, in concurrence

(In Senate, March 27, 2002, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1016)**, in concurrence.)

(In House, April 14, 2002, **FINALLY PASSED.**)

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

On further motion by same Senator, the Senate **RECONSIDERED** whereby the Resolve was **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1016).**

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

On further motion by same Senator, the Senate **RECONSIDERED** whereby it **ADOPTED** Committee Amendment "A" (H-1016), in concurrence.

On further motion by same Senator, Senate Amendment "A" (S-592) to Committee Amendment "A" (H-1016) **READ** and **ADOPTED.**

Committee Amendment "A" (H-1016) as Amended by Senate Amendment "A" (S-592) thereto, **ADOPTED**, in **NON-CONCURRENCE.**

**PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1016) AS AMENDED BY SENATE AMENDMENT "A" (S-592) thereto, in NON-CONCURRENCE.**

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

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

An Act to Amend the Motor Vehicle Laws

H.P. 1485 L.D. 2018  
(C "A" H-1032)

Tabled - April 2, 2002, by Senator **GOLDTHWAIT** of Hancock  
Pending - **ENACTMENT**, in concurrence

(In Senate, April 1, 2002, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1032)**, in concurrence.)

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

On further motion by same Senator, 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-1032).**

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

On further motion by same Senator, the Senate **RECONSIDERED** whereby it **ADOPTED** Committee Amendment "A" (H-1032), in concurrence.

On further motion by Same Senator Senate Amendment "A" (S-593) to Committee Amendment "A" (H-1032) **READ** and **ADOPTED.**

Committee Amendment "A" (H-1032) as Amended by Senate Amendment "A" (S-593) thereto, **ADOPTED**, in **NON-CONCURRENCE.**

**PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1032) AS AMENDED BY SENATE AMENDMENT "A" (S-593) thereto, in NON-CONCURRENCE.**

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

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

An Act to Reinstate Tax Deductibility of Qualified Long-term Care Insurance

H.P. 70 L.D. 79  
(C "B" H-811)

Tabled - March 12, 2002, by Senator **GOLDTHWAIT** of Hancock

Pending - **ENACTMENT**, in concurrence

(In Senate, February 26, 2002, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "B" (H-811)**, in concurrence.)

(In House, March 11, 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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On motion by Senator **GOLDTHWAIT** of Hancock, the Senate removed from the **SPECIAL APPROPRIATIONS TABLE** the following:

**Resolve**

Resolve, to Establish a Fatherhood Issues Study Commission  
H.P. 370 L.D. 472  
(C "B" H-852)

Tabled - March 11, 2002, by Senator **GOLDTHWAIT** of Hancock

Pending - **FINAL PASSAGE**, in concurrence

(In Senate, March 5, 2002, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "B" (H-852)**, in concurrence.)

(In House, March 11, 2002, **FINALLY PASSED.**)

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

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

An Act to Address the Health Coverage Crisis for Maine's Small Businesses and Self-employed Persons

H.P. 1324 L.D. 1784  
(C "A" H-970)

Tabled - March 26, 2002, by Senator **GOLDTHWAIT** of Hancock

Pending - **ENACTMENT**, in concurrence

(In Senate, March 22, 2002, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-970)**, in concurrence.)

(In House, March 25, 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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On motion by Senator **GOLDTHWAIT** of Hancock, the Senate removed from the **SPECIAL APPROPRIATIONS TABLE** the following:



An Act to Create the Office of the Maine-Canada Trade  
Ombudsman

H.P. 1505 L.D. 2008  
(H "A" H-809 to C "A" H-791)

Tabled - March 26, 2002, by Senator **GOLDTHWAIT** of Hancock

Pending - **ENACTMENT**, in concurrence

(In Senate, March 22, 2002, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-791) AS AMENDED BY HOUSE AMENDMENT "A" (H-809)** thereto, in concurrence.)

(In House, March 25, 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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On motion by Senator **GOLDTHWAIT** of Hancock, the Senate removed from the **SPECIAL APPROPRIATIONS TABLE** the following:

An Act to Expand the Maine Seed Capital Tax Credit Program  
H.P. 1509 L.D. 2012  
(C "A" H-1014)

Tabled - March 27, 2002, by Senator **GOLDTHWAIT** of Hancock

Pending - **ENACTMENT**, in concurrence

(In Senate, March 26, 2002, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1014)**, in concurrence.)

(In House, March 26, 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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On motion by Senator **GOLDTHWAIT** of Hancock, the Senate removed from the **SPECIAL APPROPRIATIONS TABLE** the following:

An Act to Amend the Lead Poisoning Control Act  
H.P. 1535 L.D. 2038  
(C "A" H-1007)

Tabled - March 27, 2002, by Senator **GOLDTHWAIT** of Hancock

Pending - **ENACTMENT**, in concurrence

(In Senate, March 26, 2002, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1007)**, in concurrence.)

(In House, March 26, 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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On motion by Senator **GOLDTHWAIT** of Hancock, the Senate removed from the **SPECIAL APPROPRIATIONS TABLE** the following:

**Emergency Measure**

An Act to Provide Retirement Equity for Capital Security Officers  
H.P. 1524 L.D. 2028  
C "A" (H-846)

Tabled - March 11, 2002, by Senator **GOLDTHWAIT** of Hancock

Pending - **ENACTMENT**, in concurrence

(In Senate, March 5, 2002, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-846)**, in concurrence.)

(In House, March 11, 2002, **PASSED TO BE ENACTED.**)

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

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**Off Record Remarks**

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

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Senator **LONGLEY** of Waldo 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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LEGISLATIVE RECORD - SENATE, FRIDAY, APRIL 5, 2002

Senator **SHOREY** of Washington was granted unanimous consent to address the Senate off the Record.

Off Record Remarks

Senator **NUTTING** of Androscoggin was granted unanimous consent to address the Senate off the Record.

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

Senator **MARTIN** of Aroostook was granted unanimous consent to address the Senate off the Record.

JOINT ORDER - directing the Joint Standing Committee on Appropriations and Financial Affairs to report out a Bill transferring \$3,500,000 from the Maine Learning Technology Endowment to the General Purpose Aid Cushion  
H.P. 1730

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

Tabled - April 2, 2002, by Senator **MARTIN** of Aroostook

Senator **GOLDTHWAIT** of Hancock was granted unanimous consent to address the Senate off the Record.

Pending - motion by Senator **MITCHELL** of Penobscot to **INDEFINITELY POSTPONE**, in **NON-CONCURRENCE**

(In House, April 2, 2002, **READ** and **REFERRED** to the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS**.)

(In Senate, April 2, 2002, **READ**.)

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

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

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

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

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

Senator **BROMLEY:** Thank you, Mr. President. I appreciate that I wasn't greeted by a groan by my colleagues in the Senate. I want to encourage us to vote against the pending motion for the following reasons. One, what this order does, or asks us to do, does not jeopardize the good work of the budget. It does not jeopardize the laptop program that is important to many people in this chamber and in the other body unless you think that this money from the endowment fund would go only to the likely suspects. I want to read a few of the communities that would benefit from this cushion money. I'm not going to read them all. I used as a cutting test anything that was equal to cutting one position or higher. Some of these are not just in the southern part of the state. In fact, they are so far away that I don't know exactly how to pronounce them. Acton, Arrowsic, Bath, Brewer, Cape Elizabeth, Dedham, Freeport, Kittery, Lisbon, Medway, Old Orchard, Orland, Penobscot, Peru, Raymond, Readfield, Stockholm, Veazie, Wayne, Winter Harbor, Yarmouth, Guilford, and I've heard mentioned as the bastion for the Learning Technology. I wonder if they know that they are getting a cut as well. Buxton, Lubec, Sherman, Howland, Eliot, Bethel, Searsport, Berwick, Pownal, Kennebunk, and East Machias. We often, in this chamber, are careful not to send mandates to municipalities. In fact, we're so concerned about passing costs down to municipalities that we make sure we have a two-thirds vote before we do that. This may not be a mandate, but it is certainly a huge burden to the communities that are going to have to absorb these very disproportionate cuts. So, though it is late in the hour, late in the day, we've had many important matters

Senator **MCALLEVEY** of York was granted unanimous consent to address the Senate off the Record.

Senator **WOODCOCK** of Franklin was granted unanimous consent to address the Senate off the Record.

Senator **MARTIN** of Aroostook was granted unanimous consent to address the Senate off the Record.

Senator **MCALLEVEY** of York was granted unanimous consent to address the Senate off the Record.

Senator **MARTIN** of Aroostook was granted unanimous consent to address the Senate off the Record.

before us at this late hour and I ask you to defeat the pending motion. Thank you, Mr. President.

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

Senator **MITCHELL:** Thank you, Mr. President, ladies and gentlemen of the Senate. I rise to ask you to please support the pending motion of Indefinite Postponement. I would like to speak to my motion.

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

Senator **MITCHELL:** Thank you. In response to a concern from the good Senator from Cumberland, Senator Bromley, of the fact that this is not going to jeopardize the Maine Learning Technology Endowment, I would like to explain to you that it does. We have a commitment whereby we can raise \$15 million from private monies if we do not move any more money out of that endowment. We have reduced the endowment, as you know, to \$25 million. We have \$1 million that was given by the Gates Foundation. That is to pay for the professional development of the teachers. These laptops are currently in the schools, and the children are currently learning on them. We made a commitment a year ago when we put this law into effect. We issued a contract and it is the responsibility of this body to live up to this commitment, to fulfill that commitment. However, part of the commitment is that if we raise \$15 million. It will give us the matching monies to meet the four year commitment of the budget for this plan. If we lower that more than the \$25 million that it is currently at, we won't get the \$15 million from private funding because the private companies will not contribute. As an example, the current one we have before us is MBNA. They will provide \$1 million providing this legislature does not take away any more money from the \$25 million. If we don't keep our commitment, we lose \$15 million. So, you would have to add that onto the price of what you are going to be doing to give a cushion to these towns. You are also saying to all of the communities that are not going to gain any more money. That we are not going to give them the same opportunity to have a laptop and learn to use this new tool for education that has excited many children in this state. They won't be able to have it because we're going to put not only the \$12 million additional that we poured into education. But we're going to give another cushion to help those cities out. We know they need help. However, I think you have to look at the whole picture and what it is costing us. This endowment was established as an investment when we had a surplus. We reduced it by 50%, and we asked for matching private monies to show the sincerity of utilizing the ability to not only address higher education with some of the scholarships that we have been working hard for and the improvements in our university system, but to also enhance K - 12 by giving a technology start to these students in the 7<sup>th</sup> and 8<sup>th</sup> grades. Every student in this state. Not selected cities and towns that pour money into these particular programs that others can't afford. If you look at the program, and some of the cities that have these problems with financial difficulties, they have far more programs than some of the communities. Some of the school units in the outlying areas that are not effected as deeply because they don't have the programs they are trying to financially support. If you look overall at what we're trying to do with education and the commitment to provide more equitably the distribution of funding, we will be helping those cities. With the

additional \$2.2 million that we put into programs is also helping more. We have reached more communities and more units with that additional monies that we put into the formula than we will by putting additional monies into a cushion. We already have done a tremendous job in trying to provide money for education this year. We feel very fortunate and certainly thank the people on the Appropriations Committee and all of the support we got from all of the legislators that worked with the department, that worked hard to show the need for education. But we made a commitment a year ago. We need to fulfill that commitment. We can't jump out in the middle of it. It does jeopardize it if you take money out of this fund. You are giving up \$15 million of private money. Where are you going to get the money to keep this program alive for four years? You're going to go back into the General Fund and we're not going to have that money another year to make that happen. So how do you fulfill a four year contract without the private money? You're not going to get the private money if you lower that \$25 million any lower and you take any money out of it because private business is not going to commit to support a program when the state continually takes money out of the supposedly matching funds. We've already been told that. We need to hold tight. We've taken 50% out. Let's show them we can stick to a commitment that this legislature has made. There are other ways we can work to help our towns and communities who are struggling. But this cushion is not the answer. This is not a matter between a cushion or laptops. It's a matter of a cushion. We've got to make sure we keep this program in place, and not take the money out of it and jeopardize the opportunity we have for 7<sup>th</sup> graders throughout this state. Some of them already have this opportunity currently and are working with it. We can't pull the rug out from under it at this point. I would ask you to please support the Indefinite Postponement of this bill and let us look at looking at other ways and means of working together as a team to help these other cities out.

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

Senator **BRENNAN:** Thank you, Mr. President, men and women of the Senate. We've got a lot of difficult decisions to make today. There are still the difficult decisions to be made. If the current budget stands, if there is no further relief in General Purpose Aide to Education, there are going to be over 100 school districts across this state that are going to have to make very difficult decisions. Decisions about keeping teachers, keeping school personnel, and maintaining programs. The proposal that is before us tonight is an easy decision. It is a decision to take money from the technology endowment and apply it to GPA. That decision does not, in any way, compromise the Learning Technology Endowment. But it allows all those communities, those 100 communities that will be faced with significant budget decisions, to be able to move forward and not to have to suffer. I think one point that we have to make here is that the Learning Technology Endowment is no longer an endowment. It is a spend-down program. That was the decision that was made last year by the legislature. So, I think we need to be clear when we start talking about endowments and when we have spend-down programs. Secondly, the good Senator from Penobscot, Senator Mitchell, mentioned the fact that there has been \$2.2 million in the budget set aside for programs and that will assist communities that are being hurt by the current GPA formula. That, in fact, is not true in the sense that it does not

disproportionately advantage those communities any more than other communities. The way that money is dispersed through program costs helps all communities around the state. It does not disproportionately help any particular community. There is also an assertion made that somehow communities that were losing money had more programs than other communities around the state that may benefit from the laptops. I don't know how that assertion can be supported, and I don't know of any particular reports that would be able to document that. Lastly, there was a discussion about commitment. I'm committed to the Learning Technology Endowment. I want to see that go forward. I think it's a good program. At the same time, we also have a commitment to assist our communities to maintain a quality education, be able to maintain their school personnel, and to maintain their programs. This proposal allows us to do both and I encourage you to vote against the pending motion. Thank you.

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

Senator **GOLDTHWAIT:** Thank you, Mr. President, ladies and gentlemen of the Senate. I hope you will join me in voting in favor the pending motion for Indefinite Postponement. I consider this issue being raised again to be a violation of the agreement that we made about the budget even though the budget is passed now some couple of weeks. There were amendments offered of this nature at the time. They were debated at some length. They were defeated in a fair fight. I am disappointed to see this issue back in front of us yet another time, especially at this hour of the night. We are once again removed from the view of a public who is mostly in bed. They don't have the opportunity. I'm beginning to get e-mails again of 'don't cut the laptop program.' For the most part, people don't know we're here at this hour debating. I think that's unfortunate. I admire the efforts of the Senator from Cumberland, Senator Bromley, to pursue what she perceives to be the best interest of her district. I would be the first one to be on hand to witness to her district that she has more than fulfilled her role as an excellent advocate for that district. It is cushions that got those schools units where they are now. Cushions interfere with the natural rise and fall of money in the formula. To continue that cushioning effect on those schools only makes it harder every year to get out of it. The formula works automatically. Cushions work politically. It ends up being a food fight every year. One end of the state versus the other. The coast versus inland. The north versus the south. Little schools, big schools. It ends up being parceled out on a non-logical basis to whoever happens to successfully put the right coalition together that year. We need to get away from the cushions. The Education Committee has done a fine job of creating the beginnings of our ability to do that. The formula is based on the fact that if you lose students, you lose subsidy. I'm in a district where half of my towns get less than 10%. Several get zero. I understand the difficulties of funding our schools. I understand the needs of the urban areas. Different languages, transient populations, and so on. I do not believe this be in the best interest of the State of Maine. As far as the Learning Technology program, I fully support it. I was able to see the first kids who got the laptops in the pilot programs in each county. The excitement was palpable. The comments from the kids were extraordinary. There was a group here from Kittery one morning. One of them managed to somehow, however they do that, get onto the internet and look up the date of birth for a person for whom I was writing a legislative sentiment for. They got

information I had been running around trying to get all morning. In two seconds they said 'here it is.' They are truly excited. They are truly engaged. My favorite quote on the Learning Technology programs was from a 7<sup>th</sup> grader who said, 'I want to be in the first school to be successful with laptops. Not the first school to get them.' I thought that was a terrifically mature comment to make. 'I want to be in the first school to be successful with laptops.' That kid knew that that was about more than simply having a shiny new laptop in his hands. He understood where that laptop could take him and his school. I would urge you to support the pending motion so that the Technology program can go on and school funding in the State of Maine can get onto the formula and not have to be based on these endless political struggles about trying to direct more dollars in this direction or that direction. Thank you.

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

Senator **BROMLEY:** Thank you, Mr. President. I also want to start out by saying the timing wasn't mine. I also want to point out that the Chief Executive expressed appreciation to me. In my first floor debate I did not 'slam the laptops' when trying to advocate for my community. However, I am finding my teeth clenching tighter and tighter as I listen to the program being extolled and I feel I can't be hands off any longer. What this orders asks is for a compromise. To take a piece of money out of the 4<sup>th</sup> year of the program to cushion a formula that has been labeled as outdated and irrelevant to the communities that it doesn't serve already and we're on the way to another formula. The Commissioner of Education is on the record saying that cushions ought to be a way of life until we get to our new funding. I support that. I also have to stand up for my community who, to date, has not used cushion money in operating costs. It has looked at that money as one-time money, not on-going money, as we were cautioned to do so up here, and has to date not put cushion money into operating costs. So this year, in one of my communities, they will be losing up to 30 teachers, I think, and we're going to have laptops. I will tell you that I have a very ambivalent feeling about laptops. I could be a good supporter of laptops. However, now it is going to be very difficult for me to do that. It's going to be very difficult for the educators in my community to know what these laptops cost us. So this feels like compromise to me. I can understand that it might not to some of you. So, I'm asking us to cushion the blow to these communities, and not just mine, while we're on the way to a new formula, to ease up a little bit. If this program does what it is touted to do, we'll all find the money. I'll be standing here doing that as well. We'll be trotting up success story after success story. But it's going to be hard in my district, for my educators, to have the zeal around this program as others do when they know that it cost them their colleagues. Thank you, Mr. President.

**THE PRESIDENT:** The pending question before the Senate is the motion by the Senator from Penobscot, Senator Mitchell to Indefinitely Postpone, in Non-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 (#324)**

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

**NAYS:** Senators: BRENNAN, BROMLEY, CATHCART, DAGGETT, EDMONDS, GAGNON, KILKELLY, LAFOUNTAIN, LONGLEY, MARTIN, O'GARA, PENDLETON, RAND, TREAT

**ABSENT:** Senators: LEMONT, MCALEVEY, MICHAUD

18 Senators having voted in the affirmative and 14 Senators having voted in the negative, with 3 Senators being absent, the motion by Senator MITCHELL of Penobscot to **INDEFINITELY POSTPONE**, in **NON-CONCURRENCE**, **PREVAILED**.

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 (4/4/02) Assigned matter:

JOINT ORDER - Relative to Amending the Joint Rules to Establish the Government Oversight Committee  
S.P. 833

Tabled - April 4, 2002, by Senator LAFOUNTAIN of York

Pending - motion by Senator PENDLETON of Cumberland to **PASS**

(In Senate, April 4, 2002, on motion by Senator PENDLETON of Cumberland **READ**.)

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

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:

**PAPERS FROM THE HOUSE**

**Non-Concurrent Matter**

Bill "An Act to Support a Continuum of Quality Long-term Care Services" (EMERGENCY)

S.P. 722 L.D. 1924  
(C "A" S-523)

In Senate, April 1, 2002, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-523)**.

Comes from the House, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-523) AS AMENDED BY HOUSE AMENDMENT "B" (H-1102)** thereto, in **NON-CONCURRENCE**.

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

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

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Senate at Ease.

Senate called to order by the President.

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Senator WOODCOCK of Franklin was granted unanimous consent to address the Senate off the Record.

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Off Record Remarks

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On motion by Senator SMALL of Sagadahoc, **ADJOURNED** to Monday, April 8, 2002, at 10:00 in the morning.