

MAINE STATE LEGISLATURE

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Senate Legislative Record
One Hundred and Twentieth Legislature
State of Maine

Volume 3

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

Third Confirmation Session
October 3, 2002

First Special Session
November 13, 2002

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

In Senate Chamber
Wednesday
April 24, 2002

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

Prayer by Reverend Dr. Jesse James, Riverview Community Congregational Parish in Gardiner.

REVEREND JAMES: Let us pray. Heavenly Father, we come before You today in this moment of prayer to ask You to grant these honorable men and women, gathered here today in the service of their state, all things needful to faithfully discharge their duties. Grant to the members of this body and their staff the courage to make the proceedings of this body meaningful. Give them strength to shoulder the awesome responsibility they face in their professional and personal lives. Help us all to be diligent and upright in all we do, meeting life's challenges and doing what is right and not what is expedient. We ask that You bless this Senate, its President, and we ask all these things in Your name. Amen.

Pledge of Allegiance led by Senator Edward M. Youngblood of Penobscot County.

Reading of the Journals of Tuesday, April 9, 2002, and Wednesday, April 10, 2002.

Off Record Remarks

COMMUNICATIONS

The Following Communication: S.C. 718

**120TH LEGISLATURE
COMMITTEE ON AGRICULTURE, CONSERVATION AND
FORESTRY**

April 4, 2002

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

Dear President Bennett and Speaker Saxl:

We are pleased to report that all business which was placed before the Joint Standing Committee on Agriculture, Conservation and Forestry during the Second Regular Session of the 120th Legislature has been completed. The breakdown of bills before our committee follows:

Total Number of Bills and Papers	20
Unanimous Reports	17
Ought to Pass	1
Ought to Pass as Amended	12
Ought Not to Pass	4
Divided Reports	3

Respectfully submitted,

S/Richard Kneeland
Senate Chair

S/Linda Rogers McKee
House Chair

READ and ORDERED PLACED ON FILE.

The Following Communication: S.C. 738

**120TH LEGISLATURE
COMMITTEE ON APPROPRIATIONS AND FINANCIAL
AFFAIRS**

April 12, 2002

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

Dear President Bennett and Speaker Saxl:

We are pleased to report that all business which was placed before the Joint Standing Committee on Appropriations and Financial Affairs during the Second Regular Session of the 120th Legislature has been completed. The breakdown of bills before our committee follows:

Total Number of Bills and Papers	45
Unanimous Reports	27
Ought to Pass	0
Ought to Pass as Amended	8
Ought Not to Pass	17
Referred to Another Committee	2
Divided Reports	16
Committee Bills & Papers	2
Pursuant to Joint Order	1
Joint Study Orders	1

Respectfully submitted,

S/Jill M. Goldthwait
Senate Chair

S/Randall L. Berry
House Chair

READ and ORDERED PLACED ON FILE.

The Following Communication: S.C. 719

**120TH LEGISLATURE
COMMITTEE ON BANKING AND INSURANCE**

April 4, 2002

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

Dear President Bennett and Speaker Saxl:

We are pleased to report that all business which was placed before the Joint Standing Committee on Banking and Insurance during the Second Regular Session of the 120th Legislature has been completed. The breakdown of bills before our committee follows:

Total Number of Bills and Papers	14
Unanimous Reports	11
Ought to Pass	2
Ought to Pass as Amended	8
Ought Not to Pass	1
Divided Reports	3

Second named committee on one jointly referred bill.

Respectfully submitted,

S/Lloyd P. LaFountain III S/Christopher P. O'Neil
Senate Chair House Chair

READ and ORDERED PLACED ON FILE.

The Following Communication: S.C. 720

**120TH LEGISLATURE
COMMITTEE ON BUSINESS AND ECONOMIC
DEVELOPMENT**

April 4, 2002

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

Dear President Bennett and Speaker Saxl:

We are pleased to report that all business which was placed before the Joint Standing Committee on Business and Economic Development during the Second Regular Session of the 120th Legislature has been completed. The breakdown of bills before our committee follows:

Total Number of Bills and Papers	35
Unanimous Reports	23
Ought to Pass	4
Ought to Pass as Amended	9

Ought Not to Pass	9
Referred to Another Committee	1
Divided Reports	9
Committee Bills & Papers	3
Pursuant to Joint Order	2
Joint Study Orders	1

Second named committee on one jointly referred bill.

Respectfully submitted,

S/Kevin L. Shorey S/John G. Richardson
Senate Chair House Chair

READ and ORDERED PLACED ON FILE.

The Following Communication: S.C. 739

**120TH LEGISLATURE
COMMITTEE ON CRIMINAL JUSTICE**

April 4, 2002

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

Dear President Bennett and Speaker Saxl:

We are pleased to report that all business which was placed before the Joint Standing Committee on Criminal Justice during the Second Regular Session of the 120th Legislature has been completed. The breakdown of bills before our committee follows:

Total Number of Bills and Papers	40
Unanimous Reports	33
Ought to Pass	8
Ought to Pass as Amended	13
Ought Not to Pass	10
Referred to Another Committee	2
Divided Reports	4
Committee Bills & Papers	3
Pursuant to Statute	1
Pursuant to Resolve	1
Pursuant to Joint Order	1

Second named committee on one jointly referred bill.

Respectfully submitted,

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

READ and ORDERED PLACED ON FILE.

The Following Communication: S.C. 721

**120TH LEGISLATURE
COMMITTEE ON EDUCATION AND CULTURAL AFFAIRS**

April 4, 2002

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

Dear President Bennett and Speaker Saxl:

We are pleased to report that all business which was placed before the Joint Standing Committee on Education and Cultural Affairs during the Second Regular Session of the 120th Legislature has been completed. The breakdown of bills before our committee follows:

Total Number of Bills and Papers	32
Unanimous Reports	24
Ought to Pass	3
Ought to Pass as Amended	10
Ought Not to Pass	9
Referred to Another Committee	2
Divided Reports	7
Committee Bills & Papers	1
Pursuant to Joint Order	1

Respectfully submitted,

S/Betty Lou Mitchell S/Shirley K. Richard
Senate Chair House Chair

READ and ORDERED PLACED ON FILE.

The Following Communication: S.C. 722

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

April 4, 2002

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

Dear President Bennett and Speaker Saxl:

We are pleased to report that all business which was placed before the Joint Standing Committee on Health and Human Services during the Second Regular Session of the 120th Legislature has been completed. The breakdown of bills before our committee follows:

Total Number of Bills and Papers	50
Unanimous Reports	39
Ought to Pass	5
Ought to Pass as Amended	21
Ought Not to Pass	12
Referred to Another Committee	1

Divided Reports	8
Committee Bills & Papers	3
Pursuant to Joint Order	1
Pursuant to P & S Law	1
Joint Study Orders	1

Respectfully submitted,

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

READ and ORDERED PLACED ON FILE.

The Following Communication: S.C. 723

**120TH LEGISLATURE
COMMITTEE ON INLAND FISHERIES AND WILDLIFE**

April 4, 2002

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

Dear President Bennett and Speaker Saxl:

We are pleased to report that all business which was placed before the Joint Standing Committee on Inland Fisheries and Wildlife during the Second Regular Session of the 120th Legislature has been completed. The breakdown of bills before our committee follows:

Total Number of Bills and Papers	19
Unanimous Reports	11
Ought to Pass	1
Ought to Pass as Amended	3
Ought Not to Pass	7
Divided Reports	7
Committee Bills & Papers	1
Pursuant to Joint Order (divided)	1

Respectfully submitted,

S/David L. Carpenter S/Matthew Dunlap
Senate Chair House Chair

READ and ORDERED PLACED ON FILE.

The Following Communication: S.C. 724

**120TH LEGISLATURE
COMMITTEE ON JUDICIARY**

April 4, 2002

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

S/Betheda G. Edmonds
 Senate Chair

S/George H. Bunker Jr.
 House Chair

READ and ORDERED PLACED ON FILE.

Dear President Bennett and Speaker Saxl:

We are pleased to report that all business which was placed before the Joint Standing Committee on Judiciary during the Second Regular Session of the 120th Legislature has been completed. The breakdown of bills before our committee follows:

Total Number of Bills and Papers	27
Unanimous Reports	18
Ought to Pass	2
Ought to Pass as Amended	10
Ought Not to Pass	6
Divided Reports	9

Second named committee on two jointly referred bills.

Respectfully submitted,

S/Anne M. Rand
 Senate Chair

S/Charles C. LaVerdiere
 House Chair

READ and ORDERED PLACED ON FILE.

The Following Communication: S.C. 725

**120TH LEGISLATURE
 COMMITTEE ON LABOR**

April 4, 2002

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

Dear President Bennett and Speaker Saxl:

We are pleased to report that all business which was placed before the Joint Standing Committee on Labor during the Second Regular Session of the 120th Legislature has been completed. The breakdown of bills before our committee follows:

Total Number of Bills and Papers	42
Unanimous Reports	29
Ought to Pass	3
Ought to Pass as Amended	14
Ought Not to Pass	10
Referred to Another Committee	2
Divided Reports	10
Committee Bills & Papers	3
Pursuant to Joint Order	2
Joint Study Orders (divided)	1

Respectfully submitted,

The Following Communication: S.C. 726

**120TH LEGISLATURE
 COMMITTEE ON LEGAL AND VETERANS' AFFAIRS**

April 4, 2002

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

Dear President Bennett and Speaker Saxl:

We are pleased to report that all business which was placed before the Joint Standing Committee on Legal and Veterans Affairs during the Second Regular Session of the 120th Legislature has been completed. The breakdown of bills before our committee follows:

Total Number of Bills and Papers	23
Unanimous Reports	16
Ought to Pass	4
Ought to Pass as Amended	8
Ought Not to Pass	3
Referred to Another Committee	1
Divided Reports	5
Committee Bills & Papers	2
Pursuant to Joint Order	2

Second named committee on one jointly referred bill.

Respectfully submitted,

S/Neria R. Douglass
 Senate Chair

S/John L. Tuttle Jr.
 House Chair

READ and ORDERED PLACED ON FILE.

The Following Communication: S.C. 727

**120TH LEGISLATURE
 COMMITTEE ON MARINE RESOURCES**

April 4, 2002

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

Dear President Bennett and Speaker Saxl:

LEGISLATIVE RECORD - SENATE, WEDNESDAY, APRIL 24, 2002

We are pleased to report that all business which was placed before the Joint Standing Committee on Marine Resources during the Second Regular Session of the 120th Legislature has been completed. The breakdown of bills before our committee follows:

Total Number of Bills and Papers	11
Unanimous Reports	7
Ought to Pass	0
Ought to Pass as Amended	3
Ought Not to Pass	3
Referred to Another Committee	1
Divided Reports	1
Committee Bills & Papers	3
Pursuant to Joint Order	3

Respectfully submitted,

S/Kenneth F. Lemont S/David G. Lemoine
Senate Chair House Chair

READ and ORDERED PLACED ON FILE.

The Following Communication: S.C. 728

**120TH LEGISLATURE
COMMITTEE ON NATURAL RESOURCES**

April 4, 2002

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

Dear President Bennett and Speaker Saxl:

We are pleased to report that all business which was placed before the Joint Standing Committee on Natural Resources during the Second Regular Session of the 120th Legislature has been completed. The breakdown of bills before our committee follows:

Total Number of Bills and Papers	40
Unanimous Reports	26
Ought to Pass	2
Ought to Pass as Amended	17
Ought Not to Pass	7
Divided Reports	12
Committee Bills & Papers	2
Pursuant to Joint Order (1 divided)	2

Respectfully submitted,

S/John L. Martin S/Scott W. Cowger
Senate Chair House Chair

READ and ORDERED PLACED ON FILE.

The Following Communication: S.C. 729

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

April 4, 2002

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

Dear President Bennett and Speaker Saxl:

We are pleased to report that all business which was placed before the Joint Standing Committee on State and Local Government during the Second Regular Session of the 120th Legislature has been completed. The breakdown of bills before our committee follows:

Total Number of Bills and Papers	37
Unanimous Reports	25
Ought to Pass	3
Ought to Pass as Amended	18
Ought Not to Pass	2
Referred to Another Committee	2
Divided Reports	10
Committee Bills & Papers	2
Pursuant to Joint Order	2

Respectfully submitted,

S/Peggy A. Pendleton S/Martha A. Bagley
Senate Chair House Chair

READ and ORDERED PLACED ON FILE.

The Following Communication: S.C. 740

**120TH LEGISLATURE
COMMITTEE ON TAXATION**

April 12, 2002

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

Dear President Bennett and Speaker Saxl:

We are pleased to report that all business which was placed before the Joint Standing Committee on Taxation during the Second Regular Session of the 120th Legislature has been completed. The breakdown of bills before our committee follows:

Total Number of Bills and Papers	25
Unanimous Reports	22
Ought to Pass	2
Ought to Pass as Amended	16

Ought Not to Pass 4
 Divided Reports 3

Second named committee on one jointly referred bill.

Respectfully submitted,

S/Kenneth T. Gagnon S/Bonnie Green
 Senate Chair House Chair

READ and ORDERED PLACED ON FILE.

The Following Communication: S.C. 730

**120TH LEGISLATURE
 COMMITTEE ON TRANSPORTATION**

April 4, 2002

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

Dear President Bennett and Speaker Saxl:

We are pleased to report that all business which was placed before the Joint Standing Committee on Transportation during the Second Regular Session of the 120th Legislature has been completed. The breakdown of bills before our committee follows:

Total Number of Bills and Papers	28
Unanimous Reports	21
Ought to Pass	1
Ought to Pass as Amended	14
Ought Not to Pass	6
Divided Reports	5
Committee Bills & Papers	2
Pursuant to Public Law (divided)	1
Joint Study Orders	1

Respectfully submitted,

S/Christine R. Savage S/Charles D. Fisher
 Senate Chair House Chair

READ and ORDERED PLACED ON FILE.

The Following Communication: S.C. 731

**120TH LEGISLATURE
 COMMITTEE ON UTILITIES AND ENERGY**

April 4, 2002

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

Dear President Bennett and Speaker Saxl:

We are pleased to report that all business which was placed before the Joint Standing Committee on Utilities and Energy during the Second Regular Session of the 120th Legislature has been completed. The breakdown of bills before our committee follows:

Total Number of Bills and Papers	27
Unanimous Reports	23
Ought to Pass	1
Ought to Pass as Amended	15
Ought Not to Pass	7
Divided Reports	3
Committee Bills & Papers	1
Pursuant to Joint Order	1

Respectfully submitted,

S/Norman K. Ferguson Jr. S/William R. Savage
 Senate Chair House Chair

READ and ORDERED PLACED ON FILE.

The Following Communication: S.C. 741

**STATE OF MAINE
 OFFICE OF THE GOVERNOR
 1 STATE HOUSE STATION
 AUGUSTA, MAINE 04333-0001**

April 17, 2002

To the Honorable Members of the 120th Legislature:

Enclosed please find S. P. 133, L.D. 457, "An Act to Clarify that the Sales Tax Exemption for Purchase of Manufacturing Equipment Applies Equitably," which I am returning without my signature or approval.

The original intent of L.D. 457 was to provide an exemption for equipment necessary for television stations to convert their systems to digital signals as mandated by the Federal Communications Commission (FCC). Although the bill I am returning to you does provide this exemption, it goes much further, ultimately providing an expanded exemption for equipment used in generating all radio and television signals. This exemption will also apply to certain cable television broadcast equipment.

L.D. 457 proposes to modify the current sales tax exemption for production machinery. The intent behind that existing exemption is to avoid pyramiding, whereby equipment used to produce a product for sale is exempt from sales and use tax since the product will ultimately be subject to tax at some point. Radio and television stations are not involved in producing a product for sale. The product they produce is a signal and would not be subject to an eventual sales and use tax. Their sales are in the form of advertising to pay for the expense of production and broadcasting. The sale of such advertising is likewise not subject

to tax in Maine. To equate the production of radio and television signals to that of manufacturing tangible personal property fails to meet the intent dictated by the present statute, and it is not good tax policy.

The bill's inclusion of cable television was unfortunately not contained in the fiscal note before the Legislature, information that would have been important to know, since it alone adds \$850,000 to next biennium's structural gap. The revenue loss caused by the broad exemption in this bill was only partially funded (\$74,955), with the real impact scheduled to occur next biennium (\$2 million) when we already expect that revenues will be insufficient to meet the demands of current state services.

For these reasons, I am in firm opposition to the broad reach of L.D. 457, and I respectfully urge you to sustain my veto.

Sincerely,

S/Angus S. King, Jr.
Governor

READ and ORDERED PLACED ON FILE.

The Accompanying Bill:

An Act to Clarify that the Sales Tax Exemption for Purchase of Manufacturing Equipment Applies Equitably
S.P. 133 L.D. 457
(S "A" S-598 to C "B" S-412)

The President laid before the Senate the following: "Shall this Bill become Law notwithstanding the objections of the Governor?"

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

The Following Communication: S.C. 659

**STATE OF MAINE
DEPARTMENT OF PROFESSIONAL AND FINANCIAL
REGULATION
35 STATE HOUSE STATION
AUGUSTA, ME 04333-0035**

April 18, 2002

The Honorable Richard Bennett
President of the Senate
3 State House Station
Augusta, Maine 04333

Dear President Bennett:

Pursuant to the Charitable Solicitations Act, 9 MRSA § 5010, enclosed is the 2001 Annual Report on the fundraising activity of charitable organizations in the State of Maine.

Please do not hesitate to contact me if you have any questions about this report.

Sincerely,

S/S. Catherine Longley
Commissioner

READ and with accompanying papers ORDERED PLACED ON FILE.

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

COMMUNICATIONS

The Following Communication: S.C. 742

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

April 24, 2002

Secretary of the Senate
Pamela L. Cahill
3 State House Station
Augusta, Maine 04333

Dear Secretary Cahill:

I am pleased to announce that today I am awarding the April "President's Cornerstone Award for Business" to Steele & Marshall, Inc. in Thomaston. Bob King, the vice president of the company, will accept the award at the company's shop in the presence of its 12 employees.

Steele & Marshall, Inc. was established in 1980. It is a job shop that does precision machining and fabrication. They work with all metals to do custom work for top end powerboats and sail boats.

Lee and Vera Marshall currently own Steele & Marshall. Mr. King is buying the company and plans to eventually turn it over to his employees through an employee stock ownership plan. Steele & Marshall is a member of the Rockland/Thomaston Area Chamber of Commerce as well as the Maine Metal Products Association. They are also involved with the Rockland School of Technology and the Central Maine Technical College. The company collaborates with the Bolduc Correctional Facility, a minimum-security institution in Thomaston, by training inmates in hopes of making them contributing members of society upon their release. Inmates can improve their skills, employability and self-knowledge through this important vocational training.

Senator Christine Savage and Representative James Skoglund plan to be on hand when the award is presented. Gary Crocker, of the Maine Technical College System, nominated the company for the award. Steele & Marshall represents what is best about Maine people, their work ethic and their entrepreneurial spirit. I am pleased to honor this business for their investment in Maine's economy, its people and our future.

Sincerely yours,

S/Senator Richard A. Bennett
President of the Senate

READ and ORDERED PLACED ON FILE.

Senate at Ease.
Senate called to order by the President.

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

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

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

Off Record Remarks

On motion by President Pro Tem **MICHAUD** of Penobscot, **RECESSED** until 11:45 in the morning.

After Recess
Senate called to order by the President.

ORDERS OF THE DAY

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

An Act to Clarify that the Sales Tax Exemption for Purchase of Manufacturing Equipment Applies Equitably
S.P. 133 L.D. 457
(S "A" S-598 to C "B" S-412)

Tabled - April 24, 2002, by Senator **DAVIS** of Piscataquis

Pending - **CONSIDERATION**

(In Senate, April 9, 2002, **PASSED TO BE ENACTED**, in concurrence.)

(In Senate, April 24, 2002, Veto Communication (S.C. 741) **READ and ORDERED PLACED ON FILE.**)

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

Senator **GAGNON:** Thank you, Mr. President, men and women of the Senate. I would encourage the Senate to overturn the Governor on this veto. I just want to clarify one thing. In his veto message, he did specifically say that the exemption would apply to the cable television industry. It does not to the cable industry. That is not a broadcast. That, as you know, is a cable. Cable television is a separate animal. Again, looking at both the taxation side of the issue, and the economic development side of the issue, first of all, we're in a system that allows for the exemption of equipment used in manufacturing. We know that the industry and the economy is changing to these types of industries. More service-oriented industries. We're going to be moving more in the direction of making sure that there is parody amongst those who provide this type of service, rather than a strictly manufacturing approach. That's the approach that I think we're going to have to take more into the future, until we do make some broad based changes, possibly in our tax code. But the situation right now is that we do not have parody within the industry. Let's look at it from an economic development standpoint. We're talking about an industry that cannot leave the state. They have a specific area that they have a license to broadcast in, which makes them one of the better industries, in fact, that we have in the State of Maine. I was discouraged a few years ago when the Chief Executive also proposed elimination of the cable television and the cellular phone industry from the BETR program. Both are competitive industries that were lumped into the category of utilities when they were exempted from the BETR program. In fact, cable television companies have a specific area. They can't pick up that area and move it to South Carolina or some other state. They are employing people. Yet, they are not eligible for an economic development program. It appears that the Chief Executive is primarily interested in economic development programs that are for businesses that can leave the state. We've got these industries, and I'm wondering where we're going with economic development in this regard. So, we have an opportunity here to create a tax incentive for an industry that provides quality jobs, with benefits, that can't leave us. They can't leave. They can pick up and move their station to wherever they want to move to South Carolina, but the broadcast area is here. A second issue has to do with what is referred to as pyramiding in the industry. It's true that the industry does not create products that then can be taxed, but the very nature of what they are producing by broadcasting signals, and again this is broadcast signals, not cable television, that you have to have products to receive that broadcast. Even though it is flying through the air, we don't suddenly pick up Oprah with nothing. We have to have a television set, we have to have rabbit ears, we have to have whatever it is we're going to have. Antennas on roofs. All taxable items. So, this is an industry that is producing a signal and providing quality jobs. They are in a competitive market with other industries, such as the newspaper industry that receives the same exemption, yet we are not going to provide it to this quality industry that is providing quality jobs, that can't leave the state. So I would encourage you to override the Governor in this veto. Thank you.

Off Record Remarks

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

Senator **GOLDTHWAIT:** Thank you, Mr. President, ladies and gentlemen of the Senate. It is a pleasure to be back, and I do want to speak to urge you to sustain the Governor's veto on this. For the record, I'd like to clarify the fact that, although my name is on Senate Amendment "A", that is the result of the bill having been to the Appropriations Table and all amendments that come off that table are under my name and don't necessarily indicate my support for those. In this case, that is certainly the case. This bill has had a long history, which I won't regale you with, and took a number of different forms in the course of that history. My interest in the bill extended only as far as assisting this industry to comply with a federal mandate to convert their type of, I think, broadcasting signals. I'm not terribly clear on the technology here. At any rate, it was meant to help for that conversion period, and that was the only version of this bill that I felt I could support. It has now turned into an open-ended, permanent exemption for this industry, which I think the state can ill afford. I understand it, although it is unclear since the different sources have different opinions on this. The amendment, itself, does exclude cable rather specifically in its definition of digital television broadcast signal, but only in the period from March 1, 2003, to June 30, 2003. After June 30, the exemption applies to equipment used to generate radio and broadcasting signals and the phrase 'digital television broadcast signal' never appears again in the bill. So it is the reading, certainly of the Bureau of Revenue Services, that this applies to cable television, which will add to the already existing fiscal note another \$414,000 in cost in fiscal year 2004, and \$439,000 in cost in fiscal 2005. Because of that significant out year cost, it does not seem to me to be a reasonable time in this economic climate to be extending yet another relatively random tax exemption to this industry that goes well beyond their federally mandated conversion cost and extends indefinitely into the future with that cost extending indefinitely into the future as well. So I hope you will join me in sustaining the Gubernatorial veto of this item. Thank you.

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

Senator **MILLS:** Mr. President, men and women of the Senate, this is a service industry. We do not, as a rule, in this state, tax services. We don't tax architectural services, engineering services, accounting services, legal services, medical services, we don't tax broadcasting services and we don't tax advertising, which is, in reality, the product that they are selling. We don't tax the ski industry either. We don't tax the ski lift tickets. However, in each of these cases, we do tax the equipment that they purchase. I pay a tax on computers, photocopiers, desks, and chairs that I buy for my law practice. If you are an architect, you buy anything from supplies and materials to drafting equipment, and all of that is taxed. Engineers are taxed on what they must buy. Accountants are taxed. Barbers and hairdressers are taxed when they have to buy clippers, chairs, and equipment for the services that they provide. It's a fairly universal phenomenon. If we allow one industry after another to come in and chip away further at our sales tax code, it will exacerbate a problem that, I think, everyone in this chamber has recognized for some time.

Our sales tax, since it was created in 1952, has been constantly eroded with special interests and special purpose exemptions, one after the other, to the point where it is quite appropriate to describe it as a cancerous situation. It's a masticating phenomenon. I don't believe, frankly, that it was the intention of the Maine Broadcasters to include cable equipment in this bill. When you look at the very few words that describe this exemption, the one that takes place after this fiscal year is over, after this biennium is over, the major part of this bill says that for sales occurring after June 30, 2003, equipment is exempt if it is used 'in the generation of radio and television broadcast signals.' Now, certainly, cable television companies are in the business of generating signals. The question is, are they in the business of generating broadcast signals? I think many of us would assume that meant over-the-air, but it's not clear. I speak to this issue because I remember several years when I got involved in drafting a tax credit for high-tech businesses. We spent a great deal of time trying to target this credit to a fairly narrow group of industrial business beneficiaries. To my shock, after we got it done, after it was enacted, there were some challenges made administratively to the scope of the benefit. The tax people were compelled to recognize a much broader eligibility for that credit than those of us who had worked on it had thought was possible. It was possible because they are charged by law to grant exemptions to taxpayers if the language can be construed to permit that result. It's an experience that opened my eyes to how very, very careful we have to be when we are drafting exemptions to our tax code for the benefit of a presumably small number of tax payer beneficiaries. It isn't crystal clear in this language that cable television is not to be included in this sales tax exemption. I think the Governor has hit upon a point. He has said that if we pass this bill, it is very likely that the cost of it would rise from \$1.2 million in the next biennium to \$2 million in the next biennium if cable is included. I only raise the point because it creates another difficulty, another jeopardy, in allowing this bill to be passed and put into law. I'm really trying to appeal to you on the basis of good, sound tax policy and suggest, as I have earlier, that there is no foundation in tax policy for allowing our sales tax code to be chipped away like this in favor of one industry after another. If we're going to exempt businesses that provide a service from having to pay a sales tax on their equipment, we might as well go down the list and argue by analogy that architects and accounts and barbers and all other people that provide a service might be entitled to make the same claim before the next legislature. We can't allow this to continue to happen. We have argued again and again in the Taxation Committee, and on this chamber floor, for the need to expand the base of the sales tax, if anything, so that we might, perhaps, preserve a lower rate. We can't do that if we continue to grant paragraph after paragraph after paragraph of exemptions. I think the numbers are now up to 83. This is an alteration to an existing amendment. I think I'm correct in saying there are 83 numbered paragraphs consisting of exemptions to the sales tax code. I suggest to you that most of them are without merit and all of them contribute to raising the rate of tax that all the rest of us must pay. For that reason, I urge that you vote to sustain the Governor's veto of this bill.

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

Senator **GAGNON**: Thank you, Mr. President, men and women of the Senate. I just wanted to respond to a couple of points concerning tax policy and the intent of this bill. Clearly, the intent of this bill is for broadcasters. In fact, we have a bill that the Chief Executive has presented to the other body that is a clarification of another tax bill that we will be getting later in the day. I think it would possibly appease some people that this would not apply to the cable industry. We can prepare an amendment for that bill, which is a correction to a numbering issue on a tax bill. So, for those who are not satisfied, I will work on an amendment if we are to override this bill to make it crystal clear, if it isn't already, that it does not apply to cable companies, as cable companies are not broadcasters. We can make that crystal clear with the other bill that is coming over. The second thing had to do with the tax policy. One of the fundamental issues of the tax policy is that it be fair. While we are chipping away at the sales tax revenues, we have to make sure that we are fair. Those who would oppose this bill, I suspect, would favor a repeal of the equipment used in the print industry, because clearly with newspapers you don't need to have any product, you don't need to have anything at all to purchase a newspaper. Yet the newspaper is exempt, and the equipment that produces the newspaper is also sales tax exempt. This is unlike the broadcast industry, where they do have to pay sales tax on their equipment. Yet in order to receive their product, you have to purchase items that are fully taxable and getting to be more and more expensive. So, I guess there are different perspectives on what the highest priorities are when it comes to the tax code. I do agree with the good Senator from Somerset, Senator Mills, that we do need to take a hard look at this, and maybe we will eventually eliminate all of these exemptions. But the issue right now, before us today, is equity. It's fairness on this issue. We hear this many times in the Taxation Committee. While we have continued to provide increasing amounts of economic development money through tax credits and other issues, again there are many times with industries that either have or could at any time take those investments that the taxpayers have helped provide and simply leave the State of Maine. This is an industry that cannot pick up and leave unless all the viewers go with them. So, it is a good industry. It is one that I think we do owe this fairness issue to. Again, I would encourage you to override the veto. If you do that, I will work on an amendment to make it crystal clear that it does not apply to cable television companies. Thank you, Mr. President.

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, too, hope that you will vote to override the Governor's veto on this bill. Clearly, as the good Senator from Kennebec, Senator Gagnon, has stated, this is a matter of fairness and equity. I think in the Governor's veto speech he talked about, 'the bill's inclusion of cable television was unfortunately not contained in the fiscal note...' There was a very good reason why. It is because cable is not included in this bill. It is the Bureau of Taxation who has to implement the state laws. If the Bureau of Revenue Services has any doubt as to whether cable is included or excluded, all they have to do is look at this legislative debate we're having today. It is not included. It never was intended to be included. That is why the fiscal note, appropriately, reflects that. So I would urge you, my colleagues, to vote to override the Governor's veto on this bill. Thank you.

The President laid before the Senate the following: "Shall this Bill become Law notwithstanding the objections of the Governor?"

In accordance with Article 4, Part 3, Section 2, of the Constitution, the vote was taken by the Yeas and Nays.

A vote of yes will be in favor of the Bill.

A vote of no will be in favor of sustaining the veto of the Governor.

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#344)

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

NAYS: Senators: FERGUSON, GOLDTHWAIT, LAFOUNTAIN, MILLS, MITCHELL, ROTUNDO, TURNER, WOODCOCK

27 Senators having voted in the affirmative and 8 Senators having voted in the negative, and 27 being more than two-thirds of the members present and voting, it was the vote of the Senate that the veto of the Governor be **OVERRIDDEN** and the Bill become law notwithstanding the objections of the Governor.

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

The Chair laid before the Senate the following Tabled and Later (4/10/02) Assigned matter:

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

Tabled - April 10, 2002, by Senator **KILKELLY** of Lincoln

Pending - motion by same Senator to **ADOPT** Senate Amendment "B" (S-622) to House Amendment "A" (H-1101), in **NON-CONCURRENCE**

(In House, April 9, 2002, that Body **ADHERED** to **PASSAGE TO BE ENGROSSED AS AMENDED BY HOUSE AMENDMENT "A" (H-1101).**)

(In Senate, April 10, 2002, on motion by Senator **KILKELLY** of Lincoln, **RECEDED** from **PASSAGE TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "B" (S-575) AND HOUSE AMENDMENT "A" (H-1101) AS AMENDED BY SENATE AMENDMENT "A" (S-609)** thereto. **RECEDED** from **ADOPTION** of House Amendment "A" (H-1101) as amended by Senate Amendment "A" (S-609) thereto. **RECEDED** from **ADOPTION** of Senate Amendment "A" (S-609) to House Amendment "A" (H-1101) and **INDEFINITELY POSTPONED** the same. Senate Amendment "B" (S-622) to House Amendment "A" (H-1101) **READ**.)

On motion by Senator **MARTIN** of Aroostook, Senate Amendment "B" (S-622) to House Amendment "A" (H-1101) **INDEFINITELY POSTPONED**.

Senate at Ease.

Senate called to order by the President.

Senator **SHOREY** of Washington moved House Amendment "A" (H-1101) be **INDEFINITELY POSTPONED**, in **NON-CONCURRENCE**.

Senate at Ease.

Senate called to order by the President.

On motion by Senator **MARTIN** of Aroostook, Senate Amendment "C" (S-624) to House Amendment "A" (H-1101) **READ**.

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

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

Senator **MARTIN:** Thank you, Mr. President, members of the Senate. Much has been said about Kotch and everyone seems to be in agreement that Kotch needs to be removed. Over the weekend, trying to figure out how to proceed, it became clear that if Kotch is the problem and the Supreme Court decision is the problem, let's simply make it clear in the law that Kotch is not to be followed. So, all you need to do in order to do that is to very simply refer to it. You don't need all of the other verbiage that we have been trying to add and subtract for days, and perhaps change the entire meaning of the Workers' Comp law. So all this does is add four lines. All it says is that the decision is to be disregarded, impairment may not be included that was subsequently decided by the Maine Supreme Judicial Court in Kotch versus American Protective Services. There may be other interpretations, but this, to me, is simple, clear, and

understandable. If there are people who say, on the other side of that coin, that we really need to go further than Kotch, then they need to stand up and say so. What this does is deal with Kotch. To me, it is very simple. From my point of view, I would simply say that if you vote for this, you want to do away with Kotch. If you don't vote for it, then basically what you will be saying is that we also want to do away with Churchill. So I would ask you to vote for adoption of Senate Amendment "C".

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

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

THE PRESIDENT: The Senator may pose her question.

Senator **KILKELLY:** Thank you. The amendment that is before us, which disallows the non work-related injury to be combined with a work related injury, how does it address retroactively to work-related injuries that are not exaggerating one another, but are two very separate work related injuries?

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 Aroostook, Senator Martin.

Senator **MARTIN:** Thank you, Mr. President, members of the Senate. It will leave it just the way it was prior to the Supreme Court decision.

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

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

THE PRESIDENT: The Senator may pose her question.

Senator **KILKELLY:** Thank you, Mr. President. How was it just before that decision? My understanding is that the lack of clarity, in fact, caused some hearing officers to allow some injuries to be combined and had others not allowing it. I'm wondering if that is the way it will be left or if it would be the policy that those injuries could be combined?

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 Aroostook, Senator Martin.

Senator **MARTIN:** Thank you, Mr. President. Let me repeat again. I am not attempting to change anything prior to Kotch. Whatever way it was done would continue to be done. I'm simply repealing Kotch. Nothing more, nothing less.

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

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

THE PRESIDENT: The Senator may pose her question.

Senator **GOLDTHWAIT:** Thank you, Mr. President. To anyone who can answer. Looking at page 2 of the amendment, the underlined paragraph at the top of that page, which says that in calculating an impairment the decision of Kotch must be disregarded. It strikes me as unusual that we can, by statutes, disregard a court decision. One question would be, are we sure that this is on sound legal footing? The second question would be, because of that court decision, why would someone not immediately bring another identical case, on which presumably the court would immediately rule in the same way, and therefore, although we might not have Kotch driving these decisions, we would have whatever the next case is driving those? Thank you.

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

Senator **MARTIN:** Thank you, Mr. President. I'm not a practicing attorney with a license, but I have been practicing law for some time. I can only tell you what I have been told. When you refer to the decision in statute like this, it would apply to other cases coming forth in the same manner.

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

Senator **MILLS:** Mr. President, I think the Senator from Hancock, Senator Goldthwait, does raise a good question, but I think it's answered by what appears after the word 'and' in that same sentence. It says, 'and impairment from prior causally unrelated, non-work injuries may not be included.' So the operative words, I think, are those 8 or 10 words that describe the basic holding of the Kotch decision, and it says that this is the principle that must be rescinded. Thank you.

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

Senator **BROMLEY:** Thank you, Mr. President, men and women of the Senate. I think we would be remiss in our duties as representatives of our constituents if we leave here without codifying the agreement that exists in this chamber and in the other chamber. When we began this debate, we were talking about whether or not we ought to overturn Kotch. Some of us have come to that position somewhat reluctantly, but are in agreement that we need to overturn Kotch. So, it is my firm hope that we do exactly that by supporting this amendment and not reach out for more, not hold out for more, and not put our businesses at risk of what happens if we don't come to this agreement. So by voting for this amendment, we are saying, 'yes, let's overturn Kotch, and that's all.' That is really all that we've been asked to do, and that is what we need to do. If we don't, there are circumstances that put our businesses at risk,

and I don't believe we want to do that. So it is my firm hope that you will join us in supporting this amendment. Thank you.

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

Senator **DAGGETT:** Thank you, Mr. President, members of the Senate. I do think the amendment in front of you is particularly appropriate in its simplicity. I'd like to just make reference to a comment in the fiscal note that says this amendment eliminates the cost associated with those elements of Kotch that allowed for the combining of work injuries, etcetera. I think a part of the problem that we are facing, and we all know that we are facing, is that there will be continued increases in insurance costs in many businesses, as many employers have seen increases in those. I'm just reading to you from a newsletter from the National Conference of Insurance Legislators regarding comp insurance. I believe that we will be seeing increases, and I think it's important because this amendment separates this issue from the other increases and identifies that fact that there may be increases that have nothing to do with the decision that was recently made. There are fact findings on workers' comp and terrorism. There are several carriers who are quoted here, one from the National Association of Independent Insurers, 'before September 11th, most people thought of employees in factories or on construction sites as the most likely workforce to sustain injuries, and therefore, losses. Now the major concern is about white collar office workers in urban areas.' Quoting from Standard and Poor's director of financial services ratings, 'we're aware of a risk that we hadn't focused on before. The World Trade Center incident turned traditional underwriting on its head, where large groups were not necessarily better because of the possibility that a single event can harm a lot of people.' There are going to be additional insurance issues. Let's separate those from the decision and support this amendment. 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, too, hope that you will support this amendment. This amendment, I think, is fair and that is why we are here, to overturn Kotch. We had several different amendments earlier on that issue we thought would have done that. We've heard from attorneys on both sides that said they went too far or not far enough. I think this amendment clearly does the job. I think it's fair. Granted, there will be increases in Workers' Comp, but not because of the Kotch case. There are also problems with the whole Workers' Comp system with the 4 to 4 board. There are problems within the Bureau of Insurance, and its inability to deal with insurance issues. That is going to drive some added cost to Workers' Comp. But we are here to take care of the Kotch decision. That's what we ought to do. The lateness of when the bill was introduced to the legislature, whether it was by design or not I'm not sure, but if we are to deal with the Kotch decision, I say deal with the Kotch decision alone. I hope that you will vote for the Senator from Aroostook, Senator Martin's, amendment. Thank you, Mr. President.

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

Senator **GOLDTHWAIT**: Thank you, Mr. President, ladies and gentlemen of the Senate. This is obviously a very difficult situation. Not only do many members of the legislature not fully understand the issues being raised in these amendments, and certainly members of the public don't have the opportunity to either understand them or to comment on them through out normal public hearing process. Frankly, I resent being put in the position where I am attempting to act on an issue of this much importance under those circumstances. But with your indulgence, Mr. President, if I may pose another question.

THE PRESIDENT: The Senator may pose her question.

Senator **GOLDTHWAIT**: Thank you, Mr. President. To anyone who can answer, reading the fiscal note, it does reference the fact that this amendment would eliminate the cost associated with those elements of Kotch that allowed for certain injuries being combined. In the second paragraph, it says that this bill will partially reduce the amount of an unbudgeted increase in cost. If someone could speak to me about what portion of those costs are reduced, and what remaining portion of those costs are still in existence in regard to this amendment, I would appreciate it.

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

Senator **MARTIN**: Thank you, Mr. President. As I recall the Chief Executive's comments to me, the cost of Churchill represents NCCI's evaluation of the increase of about 2 percent. The rest of it was associated with the stuff that Kotch did. So regardless of what it is we do, if we don't repeal Churchill there is still a 2 percent cost increase that will occur as a result of that.

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

Senator **SAWYER**: Thank you, Mr. President. I rise to oppose the motion before us. The concerns I have with its intent are that it will not remove the legal environment, the legislative environment, the statutory environment that led to Kotch. While I appreciate the comments from the Senator from Somersset, Senator Mills, that in his professional estimation the courts would not be presented with an identical Kotch, I believe our task is to clarify and remove any confusion that was in the statute that led to the Kotch decision. Merely banishing the Kotch decision, in my mind, is entirely insufficient. I believe we will have other opportunities to more clearly, narrowly, effectively, and fairly clarify the statute that will remove the situation that led to the Kotch decision. I will be voting against this 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. I will be voting against this amendment as well. Part of my reasoning for voting against the amendment is that, I think one of the issues that has not been addressed is what about these retroactive work injuries, not Churchill injuries, which is an exaggeration or acceleration of an injury, by the two unrelated work injuries, retroactively for 10 years. That doesn't

get addressed in this, and what we know is that it is unclear. It's unclear because you have some hearing officers that are saying it is okay to combine. You've got other hearing officers that are saying it's not okay to combine. A third category of hearing officers say they are really not sure what it is. So what Kotch has done is forced us to deal with that issue as well. We can either look at that prospectively or retroactively. This amendment that is being offered would allow all of those cases to come in retroactively and would certainly increase costs. There isn't any way that it could not increase costs. My concern is that we need to do something that does not increase costs. So I will be voting against this amendment. I expect we'll have lots of time to debate all the other fine points later on today. Thank you.

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

Senator **EDMONDS**: Thank you, Mr. President, men and women of the Senate. I just have to raise the question that I think the good Senator from Aroostook, Senator Martin, is trying to take us back to my favorite day, February 5th, the day before Kotch was decided. I think that is what all of us have said we wanted to do. If something else should have happened on February 5th, why wasn't there a bill put in to make whatever adjustments and whatever clarifications people felt necessary? There was no bill put in. The case happened, and then all kinds of stuff came to our attention. Mostly what everyone has said from the get go was repeal Kotch. Here we have a chance to do just that, go back to my favorite day, and proceed as we've been proceeding according to the precedent, the procession of the equinox, as Kipling used to say.

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

Senator **MARTIN**: Thank you, Mr. President. I'm sorry I've been up so many times. This is only the second time where I want to make comments. The point I want to make is that it appears, from what the Senator who spoke earlier said, in terms of wanting to go further, that they really want to go back to the Supreme Court decision of Churchill that was almost 3 years ago. Those cases have been decided on the basis by all of the hearing officers because that became the law of the land in 1999. What we were told was that we wanted to go back to February 4th, as has just been pointed out. That was where we were supposed to go, and wanted to go, not to make wholesale changes in the Workers' Comp system. I don't think now is the time, the place, or the atmosphere that major changes need to be made. There are major changes to be made to the Workers' Comp system. There is absolutely no question about it. It has been dysfunctional for almost 8 years, because of the way eight people have functioned on that board, and the lack of supervision by the administration and its operation. That's the history, and that's the reality. Unfortunately, we're not in a position today to do that. It has to come, it will come, and hopefully a new administration will deal with the problem that exists there. What we were told, and we were asked to do, was to repeal Kotch. What I am trying to do with my amendment is just that, no more, no less. I'm not trying to give benefit to the employers. I'm not trying to give benefits to the workers. I'm not trying to give benefits to the Workers' Comp Board. That would be the last place I would go. The issue here is whether or not we do what we were asked to do. If you vote against my amendment, you are voting to open

up Churchill. You're opening up the other issues and you are going to impede and someone, some workers, will be disenfranchised. We don't know who they are, but they will be those that are in the system now. That's my concern. I don't know who they are, and I don't want to hurt anyone that I don't even know I'm hurting. I don't have any problem hurting those that I know, as some of you already know. So, it seems to me that what we ought to do. Whether it's this amendment just the way it's drafted, or something close to it, is to be as in sync, as clear, as brief, and in plain English, so that everyone in this world knows what it is we wrote and not leave it to another Supreme Court decision to interpret what it is we wrote. That's where I'm coming from. I did not consult with labor. I didn't consult with management. I didn't consult with the Executive. It was that clear to me. If we can write it in such a way that we know what we want to do, let's do it and leave the major changes for the future and let's go home.

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

Senator MILLS: Mr. President, men and women of the Senate, to be candid about this, the issue that's going unspoken here this morning is the issue of the hybrid case. The case where there are two injuries to separate parts of the body that are unrelated to each other, and neither is affected by the other, except that they are combined in the same person, and the two of them, in combination, put that person over the threshold, whatever that threshold might be. There are people who will make the claim that those people were not covered before the Kotch decision. Yet we know that many of them were. We know that there were hearing officer decisions that did cover these people with multiple injuries, that were work-related injuries. I have just had somebody approach me in the hall whose spouse had a significant injury from years ago, a work-related injury, and had a more recent one and the two of them together has rendered that person eligible for long-range benefits. If we go beyond the repeal of the Kotch decision and repeal the unspoken case, the hybrid case, that case that lays between Churchill and Kotch, if we take measures today to repeal that in-between case that hasn't been brought to the law court level, then there are people who will be knocked off benefits or whose benefits will be curtailed who are presently in the system. There are people from the insurance industry who claim that they never assumed that this group of cases would be covered. Yet there were hearing officer decisions that did cover them. Naturally, they are going to be claiming, in this forum, that they never dreamed that those cases would be covered. Yet I wonder, truly, whether the premiums haven't been charged to cover that eventuality. I suspect in some cases that it was. I don't know the truth. I don't know that any of us here today will know the truth. We have people whose interest it is to make us believe that no one ever assumed that this was the case, and then try to make the claim here that we need to retreat, not only from the Kotch decision, but all the way back through the multiply injured employee. Through to some holding which says that only the aggravated multiple injury case is covered. I think that if we do that, and we may well wind up doing that, we're going to wind up dropping people out of the system who believe, and have been led to believe, that they have an entitlement. We will be affecting cases already in progress, and we may be cutting costs for which a premium has already been collected. This is an awkward situation. It is very confusing. I don't blame anybody for being impatient with it. At

bottom, I really wonder if there are that many employees in this in-between case. I've been doing this at least part time for about 30 years. I can only bring to mind one or two such cases. There may well be others buried in the basement of my law office somewhere, but I can't bring them to mind. One would think that I could because a double injury is something that would stand out, but I can only think of one. I've heard of a second one today from the gentleman who came up and spoke to me in the hall. I don't really believe that there are that many people in this rather narrow set of circumstances. I truly question whether the costs at issue are worth all of the time, the energy, and the horrible friction that we devoting to this cause and to this issue. In any case, I agree with the good Senator from Aroostook, Senator Martin. The language that he has chosen to use here would, in plain English, repeal the holding of the Kotch case which says, at the very least, it is the determination of this legislature that underlying conditions, things that didn't happen to you at work, will not be added to a work-related impairment in order to allow you to cross this threshold. So, whether you have a military injury, or you have an age-related arthritic condition or whatever it is that you brought to the workplace from life, those life experiences, those life impairments will not be covered. That was the holding of the Kotch case. We will leave to another day the issue of whether the multiple injured work-related injury, the employee who is injured more than once in the workplace is entitled to stack his impairments to achieve a benefit. I suggest to you that is a fairly narrow case. I don't think there are many of them. I doubt seriously they are expensive. I could be wrong, but I don't think so. I think we're trying to bite off an awful lot if we try to repeal benefits that may already be practically vested in some people who are currently in the system with the double injured situation. Thank you.

Off Record Remarks

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

Senator TURNER: Thank you, Mr. President, ladies and gentlemen of the Senate. I'm going to try to keep this as simple as I possibly can so that I can understand it. We've been asked to reverse Kotch. I don't believe the amendment suggested to us by the good Senator from Aroostook, Senator Martin, does that in a way that we need to have it done. I would ask you to consider reversing Kotch and doing it in a way that we know is cost neutral. That cost neutrality is independently verified for us by somebody other than those sitting around this horseshoe. Consistently, what we've asked both chambers to do is to reverse Kotch. To do it effectively in a cost neutral manner, and have that cost neutrality assessed and verified for us by NCCI. Whatever we do, they look at, and on their decision, the bills go forward for Workers' Comp and those bills go to all employers, regardless whether they are for profit or not for profit, as I think you know. So, absent independent verification that this, in fact, would be a cost neutral alternative, I cannot support it. I would urge you to do the same. Thank you.

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

Senator **TREAT**: Thank you, Mr. President, men and women of the Senate. The good Senator from Somerset, Senator Mills, asked a kind of a theoretical question of how many employees are truly in this situation of being potentially subject to the combining of injuries that are in this period of time. That seems to be under debate with respect to the various amendments that have been offered. That would be employees who have been injured twice between the time of 1993 and 2001. I think that we should, before we accept various estimates that have been flying around from the insurance industry about the unbelievable amounts of money that will be charged to cover those employees, know what the universe of people is that we're talking about. My understanding, and this is based on a direct inquiry to the Workers' Comp Board for some data on that, is that right now there are only 16 reported cases that have come to the board as of last week that would be in this category. That is not necessarily the total amount, because we are talking about a group of people who have been receiving temporary benefits, and as those benefits run out, and under current law, the law we adopted back in 1992, they have the opportunity, when those benefits run out, to seek durational benefits if they are over the threshold that has been set by the board. That number is 838 people who are in that universe. The letter that we have says that experience has shown that 838 is not the number that will be seeking durational benefits. In fact, many will have no impairment rating at all. It is a very small number, likely to be closer to the 16 than to the 800. One of the difficulties we have had all along here is that we do not have very good data. We are being asked to make decisions here, beyond the end of the legislative session, and we are doing it under tremendous pressure. This amendment before us does exactly what we have been asked to do, which is to repeal the Kotch decision. If there are other elements of the 1990 to 1993 Workers' Compensation law which people would seek to repeal, that should be done in the next legislative session. We should not be adding to the decision right now on Kotch. We should not be adding to other things that someone might want to add in so that costs could be reduced in the future or held even in the future for Workers' Compensation premiums. The fact of the matter is that after 9/11, all insurance costs went up. House insurance. I just got a bill from my auto insurance. Everything went up. It has nothing to do with the premiums paid out. Premiums paid out have dropped dramatically, over \$100 million since the 1993 changes. So, what is happening out there is not related to what we're doing here in this room. What we are doing here in this room will very dramatically affect some people, and they are people who have been injured, on the job, through no fault of their own. They have been covered by a law that we enacted, and that went into effect in 1993 that said to them that they were eligible to receive durational benefits. It's not a large number of people. The cost cannot be great, based on the information I have. Now is not the time, based on no information about those people, to be repealing benefits that they currently have. I urge you to support the pending motion.

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

Senator **DOUGLASS**: Mr. President, women and men of the Senate, we've all heard a lot from constituents and people around the state on this issue. I had two contacts from people in my district, my own constituents, that I really have to take to

heart. One of them was from a fire fighter in Lewiston who was injured while fighting a fire at Harleys Are Us. He says that he was out of work for a long time. He had a major facial trauma involving one of his eyes. He's glad to say that he's back at work. He works in a hazardous situation, and I'm going to quote him, 'I could be injured again in the future.' He urged me to vote against the Governor's bill. I also had a small business owner, actually an individual who owns three businesses, call me from Durham. He owns a trucking business, some fishing businesses, and I can't recall what the other is. These businesses do involve a fair amount of hazardous activity. I commend our Workers' Comp insurers for the work they've done to help our employers understand how to be safe. This individual urged me to vote against the Governor's bill for this reason. He said that when he hired an employee, he wants to know that they are going to be willing to do the work that is required. He does not want to have someone who is worried about getting injured because there will be no compensation. So, I ask you to think about this matter as you ponder all of these various amendments that we're going to go through. I suggest to you that the one that is before us right now is the one that is the most fair, the most honest, the most true, because it overrules the court decision that brought about the Governor's action. That is really all we should be doing here. One of the reasons this issue has become so convoluted, so complicated, and so difficult is that it really didn't have the chance to go through the committee process. It really didn't have a chance to be vetted by the people who actually work in the Workers' Comp area. It simply has come forward too quickly. We owe it to ourselves, we owe it to our state to take some time, in so far as you want to overturn other areas of the law that go beyond Kotch. I'd urge you to vote in favor of this amendment because it accomplishes what the Chief Executive said was the main goal here, to change from allowing a non-work injury be combined with a work injury. It preserves the good record that we've had in the Workers' Comp area and the very real interest that our workers have in continuing to do a good job, knowing that they are covered if they are injured. 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 rise today to urge you to oppose the pending amendment. I want to briefly explain why. The Churchill decision, as we all know, said that two injuries could be stacked together if they affect the same body part. I support that. That's been the case for many years now. The Kotch decision, and the Wheeler decision, said that a non-work and a work injury can be stacked, and even said that two work injuries to different body parts can be stacked together. If you take this amendment, Senate Amendment "C", on page 2, line 9, it says, here again the retroactivity part of this in this proposed amendment says that we need to disregard the Kotch decision from any impairment from prior causally unrelated non-work injuries may not be included. To me, that retroactively takes care of about half the cases. The new ground that was contained in Kotch and Wheeler, where you can stack two injuries to different body parts together, is not retroactively repealed in this amendment. To me, that is why we're looking at probably at close to the first extremely high estimate of cost. I have run into two more small business owners in my Senate district that just don't dare to sign that loan to expand their business right now. They are working on a very small margin. They are unsure of what's going to happen to the

Workers' Comp rates. Frankly, if Workers' Comp rates do go up a lot, they're going to end up with no margin. They're just not sure. To me, this amendment is not drafted right. It only repeals the non-work injuries back to 1992. It doesn't repeal the work on work injuries to different body parts back to 1992. This has nothing to do with Churchill. Churchill still stands. I support Churchill. Two injuries to the same body part should be stacked together. They have been and will continue to be. Upon closer reading of this, I've a lot of concerns with the way this amendment is drafted. I urge you to vote against it. 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. One of the issues that seems to be floating on today's debate has to do with access profits, perhaps by insurance companies, or inappropriate filing of data by NCCI. I need to take a moment and read pieces that I believe are appropriate from Superintendent Iuppa, from the Bureau of Insurance, copies of which were mailed, I believe, to all of us. Let me highlight that the Superintendent of Insurance is charged with regulating those insurance companies, as well as a host of other less familiar insurance entities that operate within the state. In so doing, the Superintendent balances the need for consumer protection with the need for the fiscal integrity of the regulated entities so that sufficient financial resources will be available to pay future claims. One way this has been accomplished is by reviewing and analyzing the rates filed with the bureau to the extent permitted by law. This is not a case of where company X, Y, Z comes in and says what a great chance to nail the employers, and by extension the employees, of the State of Maine. I refer to the Blue Ribbon Commission of 1992 and statute 24-A MSRSA § 2382 and 2384A. The Blue Ribbon panel reported that it would be up to the self-insured groups and the new mutual insurance organization to provide a competitive market to ensure that the rates charged by private carriers are not excessive, since self insurance and the residual market mechanism now provide coverage for an overwhelming majority of employers. The code requires that the advisory organization for Workers' Compensation insurance, the National Council on Compensation Insurance, NCCI, file premium rates and supporting information to establish that the rates are not excessive, inadequate, or unfairly discriminatory. I encourage you to review the letter from the commissioner and I believe you will reach the same conclusion that I have. With the myriad of issues that we have to debate here today, I would like to think that one of them is not excessive rate charging, or collusion by NCCI or excessive rate filing by profiteering insurance companies. Certainly, the self-insureds have a very good handle on what it is costing them. I believe Maine Employers Mutual, being a state-sponsored, state-owned, employer-owned, non-profit institution is quite capable of accurately, and more importantly, fairly, telling us what is going on in their business. Thank you.

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

Senator **LONGLEY:** Thank you, Mr. President, colleagues in the Senate. I'll be supporting this amendment for the following reason; when this was first presented to us in the last minutes of the session, what we were told was that they are trying to cover

non-workplace injuries. We never, ever dreamed that our Workers' Comp system would cover non-workplace injuries too. 99.999 percent of my e-mails and calls are about non-workplace injuries. The message that the public has seized upon is non-workplace injuries. What this very simple amendment does, at this point, nanoseconds of this session, is say, let's respond to exactly what the request was. No more, no less. In the last seconds, let's do at least that. All of these other areas that some of us are willing to venture into are very difficult policy areas. I don't think the last nanoseconds of a session is the time to dive into those areas unless we absolutely, positively have to. This amendment says that maybe we don't. I'll be supporting it for that reason. It is simply, and as the Senator from Somerset, Senator Mills, said of a certain earlier amendment, elegantly, addresses the problem at hand and says to the people who have been talking to us that we agree, non-workplace injuries should not be covered under our Workers' Compensation system. Thank you.

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

Senator **MARTIN:** Thank you, Mr. President. Thank you, members of the Senate. The Senator from Penobscot, Senator Sawyer, has raised an issue which I think every member ought to think about and ought to read the letter from the superintendent. I was part of the Blue Ribbon Commission back in 1992 and one of those individuals that helped write that law, under which we now operate. I just want to leave you with this thought, since 1993 Workers' Comp rates in this state have dropped by 36%. I repeat, they have dropped by 36%. What else in business has dropped at all in the last 9 years?

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

Senator **BROMLEY:** Thank you, Mr. President, men and women of the Senate. I don't think I've ever gotten up twice on an issue. The reason I'm up for the second time for this one is because I'm feeling very much like I feel often in a family therapy situation that goes bad. For those of you who don't know, in my other life that is what I do. It's when we have agreement in the room that we can't act on. I'm going to give you a silly little example. A teenage girl who doesn't observe her curfew, and we're talking about her agreeing on a earlier curfew. She reluctantly says all right, she'll be in by 10 o'clock. Then dad says, 'you know even if you are coming in by 10 o'clock, I really don't like that boy that you're going out with.' So we miss the opportunity, because you can't get her to also agree to stop seeing her boyfriend. We missed the opportunity that she's agreed to come in at 10 o'clock, which is what the original problem was. So, if we don't support this amendment, we may miss the opportunity to codify our agreement that Kotch ought to be overturned. I will be profoundly disappointed in this body if that is what happens. Thank you, Mr. President.

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

Senator **SHOREY**: Thank you, Mr. President, men and women of the Senate. I'd like to clarify something that the good Senator from Aroostook, Senator Martin, said before he leaves the chamber. He had mentioned something that is painfully obvious to every business person in the state, that although the cost for Workers' Comp has gone down 30%, we are still number 7, a dismal 7, in the country. Thank you very much.

THE PRESIDENT: The pending question before the Senate is the motion by the Senator from Aroostook, Senator Martin to Adopt Senate Amendment "C" (S-624) to House Amendment "A" (H-1101). 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 (#345)

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

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

15 Senators having voted in the affirmative and 20 Senators having voted in the negative, the motion by Senator **MARTIN** of Aroostook to **ADOPT** Senate Amendment "C" (S-624) to House Amendment "A" (H-1101), **FAILED**.

On motion by Senator **SHOREY** of Washington, House Amendment "A" (H-1101) **INDEFINITELY POSTPONED**, in **NON-CONCURRENCE**.

On motion by Senator **KILKELLY** of Lincoln, the Senate **RECEDED** from whereby it **ADOPTED COMMITTEE AMENDMENT "B" (S-575)**.

On further motion by same Senator, Committee Amendment "B" (S-575) **INDEFINITELY POSTPONED**, in **NON-CONCURRENCE**.

On further motion by same Senator, Senate Amendment "C" (S-623) **READ**.

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

Senator **KILKELLY**: Thank you, Mr. President, men and women of the Senate. This amendment is similar to Senate Amendment "B" that was presented, but not voted on the last time we had long debate on this issue. Obviously, today we've already had long debate on this issue. The change in it has to do with who would, in fact, be included in on the job injuries. I'd like to just go over it. It will just take a moment to explain. What this

amendment does is prospectively, effective January 1, 2002, allow two work-related injuries to be combined to develop the threshold for a person to possibly get permanent or durational benefits. It also requires that the Comp Board, each side, the management side and the labor side, hire actuaries to determine what the threshold ought to be. When those reports come back, if the board can't agree on a threshold number, it requires that it go to binding arbitration for that one instance only. That will, hopefully, move that process along. It is an acknowledgment that the two work-related injuries ought to be addressed, but they ought to be addressed prospectively so that we are, in most of the other policies that we do, taking a look at where we are, and if we want to make changes in that policy, we make those changes prospectively. That's what this amendment does. It allows us the combination of doing it prospectively, clarifying the language, and having the actuarial report and the threshold adjusted, if necessary. It allows us to keep this particular bill cost neutral. The cost of this amendment is between zero and 1.1 percent. So it's not entirely zero, but it was as close to zero as we could get. So I would urge you to support this amendment and let us get it down to the other body so that we can act on and complete our work on this critically important issue as soon as possible. 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. While I appreciate the good Senator from Lincoln, Senator Kilkelly's, efforts over the past week, and we have worked long and hard, she and I, I still cannot support this amendment. I'll tell you why. This amendment talks about combining work-related injuries prospectively, moving forward from January 2002. It's a simple question - what about those people prior to 2002 who have been injured, are fully expectant that if they run out of their partial impairment benefits and then are still in need of Workers' Compensation benefits, that they are hopeful that they might be part of that small 25 percent of people who will be eligible for durational benefits? That's a whole set of people that are now just gone. Their livelihood, what they are depending on, is gone. It leaves out all those workers who happen to decide that they are going to journey to another state to work, like in the big dig in Boston. They get injured and come back to Maine where they get injured again, prior to 2002. Seven years go by and they won't be eligible for durational benefits. The other part that is very difficult for me to comprehend is that if you go prospectively only, if you go from today forward, that means that it is going to be 7 years, 7 more years, 2009, before somebody is eligible for durational benefits. I hope I'm here in 2009, because I will remind you that this is the challenge before you. You basically are saying to somebody, 'we're starting over, we just redrew the line. Now it's 2002. It used to be 1992, but opps, sorry, forget it, now it's 2002.' I know people are wagging their heads over there. These are the places where we don't agree, but that is my concern. My concern is that if you only go prospectively, you have redrawn a line that people have understood was there since 1992. Frankly, I'm not willing to do that. When I go home to my constituents, and when someone comes to me, I'm going to be happy to say to them that I was not willing to throw away the benefit that you thought you were going to be eligible to receive, not that you were going to get it, you were just going to get eligible to maybe receive it. This is not like these folks are lining up, trying to get injured so they can get

benefits. These are people who are, hopefully, banking on the fact that they might be eligible for this 25 percent place. I just can't imagine why anybody would say that you were going to now decide that those folks just plain aren't going to get it. I do appreciate the fact that we've moved farther than we had. I think everybody's moved farther than they had. I think the crowning difficulty at the moment is one that has to do with all those injured workers presently who have been injured twice before 2002, work related injuries that are now not going to be eligible for durational benefits.

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

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

Senator **MARTIN:** Thank you, Mr. President, members of the Senate. Now we're starting down the road of shifting one group to another group. Some that were eligible will no longer be eligible and some that are not eligible will be. Both prospective and retrospective. That's the danger of what we're trying to do at the moment. If that is the road we're going to take, I hope all of you are around and will continue to be around all summer as decisions are made by hearing officers so that you can take phone calls and respond to them and tell them what we did. I do have one question, Mr. President, that I would like to pose through the chair to the Senator from Lincoln, Senator Kilkelly.

THE PRESIDENT: The Senator may pose his question.

Senator **MARTIN:** According to the distribution about this amendment, there is the assumption that Churchill is being preserved. Yet, we know that Churchill has a cost. This amendment will simply increase by 1.1 percent the cost to the system. I would like to know now what is being removed and repealed from the Churchill decision?

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. In response to the good Senator from Aroostook, Senator Martin's, question, Churchill is already built into the rate. So there isn't anything in here that is taking away from Churchill. That's why there isn't an additional cost for that. It is already, in fact, built in. If I may continue.

THE PRESIDENT: The Senator may proceed.

Senator **KILKELLY:** We are talking about drawing lines. There is no question about that. As I've been thinking about this bill, and the various proposals that have been before us for the last however many days we've been working on it, it occurs to me that the choice that we have before us, in terms of developing policy, is in some ways a fairly distinct choice between two options. The amendment that I have before you is an amendment that talks about two work related injuries that are not linked to each other, that are not the same body part, and those two injuries would be able to be combined after January 1, 2002.

So, as long as one of them happened after January 1, 2002, then there would be an opportunity to combine or stack the two. There is no doubt that there will be people who have had the second injury prior to January 1, 2002, and that will not be allowed to be stacked. I'm not denying that. I don't like it. I don't think we're making a choice between a good proposal and a bad proposal. I think we're making a choice between what can we live with and what can we not live with. So, by setting it prospectively, again we're following our normal patterns of doing business, which is to say effective this date this is what is going to happen. If we look at a chance for all of the cases from the last 10 years to be evaluated, to determine what the threshold number will be that allows people to access those permanent or durational benefits, then there is another group of people that get left out, if you will. So, let's assume that someone who is right now at 12 percent and they have been informed and they know that they are receiving the potential for durational benefits. Let's say that we've decided that we are going to go back 10 years and look at how many injuries we had that actually were two injuries, not just one. Because the pool has gotten larger in terms of the number of people who would, at 11.8 percent, be eligible for durational benefits, it is decided by the various actuaries that this rate is going to go to 14 percent. So if it goes to 14 percent, I want to know who is going to make the phone call to the person who is currently at 12 percent to say, 'gee, you remember the decision that we made that would allow you to have durational benefits? Well, I'm sorry, but we've moved that line. We've moved that line to 14 percent, and in doing so, you will no longer be eligible for durational benefits, but you will be eligible for short term benefits.' I think it's much more difficult to explain that logic versus a person who is making the decision based on a calendar time where we say this was the policy before, and this is the policy now. To look retroactively and say to that person, 'I'm sorry, but you no longer have an injury percentage that equals or exceeds the threshold. Therefore, we are not going to allow you to continue in this benefit,' is a real problem. Now, obviously, one way to respond to that is to say, 'okay, we're just going to grandfather all of those people who were between 11.8 percent and whatever the new threshold is.' When you do that, obviously you've missed the 25/75 cut, and obviously, you will increase costs. So I say, yes, we're drawing lines. Public policy is always about drawing lines. Lastly, the analogy that I've used repeatedly is that there are people in my district who are \$10 a month over income for the low-cost drug program. I do everything I can to try to help them because they have no more money to spend on drugs than the person who is \$10 below that particular threshold, but the law says this is what it is going to be. We could raise the amount that somebody could earn by \$20, but there would still be somebody \$10 over that threshold. So, no matter where we draw the line, there are people who are going to be included, and people who are going to be excluded. What we need to do is find what makes the most sense. What can we do to move this situation forward to clarify the language, and I believe that prospectively is the best way to do it and keeps it at the lowest cost. 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. There certainly can be no doubt in this room, in this building, and in this state that without well-trained, safe, motivated workers there would be no business. Likewise,

there would be no towns. There would be no schools. There would be no non-profits. At the same time, there should not be any doubt that we cannot do anything that will materially increase the cost of Workers' Comp to those same businesses, those same towns, those same municipalities, and those same non-profit organizations. I met Monday morning with the good Senator from Penobscot, Senator Youngblood, and a group of non-profits in Bangor and was surprised, given the hue and cry that we've heard from the business community, how this legislation, and certainly the Kotch decision, was impacting non-profits in my home town. The YWCA has 150 employees and they asked me, 'where do we cut? Do we cut back on the swim program? Do we cut back on after school programs? Do we cut back for breast cancer awareness?' We met with the Girl Scout Council and they asked us the same questions. They said, 'we have to start hiring now for summer camp, where do we cut? What position do we leave out? We have mandates that you all passed as to ratios between campers and counselors, where do we cut?' I believe, as honestly as I can understand what is before us, that the amendment before us maintains the finest level of benefits for workers in better than all but 6 states in the nation. That's important, and that's appropriate. At the same time, this amendment keeps as level as possible the cost of Workers' Comp for those preceding groups. I'll certainly ask for your support. Thank you.

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

Senator **TREAT:** Thank you, Mr. President, men and women of the Senate. I feel I must respond to a statement just made by the Senator from Penobscot, Senator Sawyer, who stated that the benefits provided in the State of Maine are the 6th best in the United States. There may be many measures of what are the best benefits, but by many of those measures, Maine certainly is not the 6th best in the country. We rank 22nd from the bottom in terms of the maximum amount of money that you could get each week as replacement wages, \$458.83, compared to \$923 in the State of New Hampshire, \$790 in the State of Vermont, for example, the lowest in New England. We also rank 14th from the bottom at the maximum period of temporary benefits that we can get, 364 weeks. It is true that we have this provision that says 25 percent of the worst injured persons may be eligible for durational benefits, benefits over the period of time that they have been injured. There are a bunch of states that also provide for durational benefits, 8, 9, 10, 15, 20, I don't know the exact number. There are many measures about what is best, and what is worst. It is quite clear that this is not one of the best states in the nation to be injured in. I just think it's very important that we at least debate this based on the facts as they truly are. Thank you.

Off Record Remarks

On motion by Senator **DAGGETT** of Kennebec, **TABLED** until Later in Today's Session, pending the motion by Senator **KILKELLY** of Lincoln to **ADOPT** Senate Amendment "C" (S-623). (Roll Call ordered)

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

PAPERS FROM THE HOUSE

Joint Order

An Expression of Legislative Sentiment recognizing:

Zoe Zanidakis, of Monhegan Island, who is the first Mainer to appear on the reality television series "Survivor." She felt she would be a good contestant for the show because of the real life challenges of living and working on Monhegan. Ms. Zanidakis is a commercial fisherman and a charter boat captain. She owns and operates her own 40-foot vessel, the "Equinox." She was an extraordinary contestant and represented Maine well. We extend our congratulations and best wishes to her;
HLS 1007

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

READ.

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

Senator **KILKELLY:** Thank you, Mr. President, men and women of the Senate. It is my pleasure and delight to welcome Zoe to the Maine State Senate. Those of us who have known Zoe for a long time and have ridden on her boat know just what a great captain she is and what a wonderful example of strong, Maine woman she is. I am really proud of her and proud of what she's been doing. She's been a great ambassador for the State of Maine and for what we all represent. So I am delighted that she is here today to join us.

PASSED, in concurrence.

THE PRESIDENT: The Chair is pleased to recognize in the rear of the chamber Zoe Zanidakis of Monhegan Island, first Mainer to appear on the reality television series 'Survivor'. Will she please wave and receive the greetings of the Senate.

Off Record Remarks

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

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

Tabled - April 24, 2002, by Senator **DAGGETT** of Kennebec

Pending - motion by Senator **KILKELLY** of Lincoln to **ADOPT** Senate Amendment "C" (S-623) (Roll Call ordered)

(In House, April 9, 2002, that Body **ADHERED** to **PASSAGE TO BE ENGROSSED AS AMENDED BY HOUSE AMENDMENT "A" (H-1101).**)

(In Senate, April 24, 2002, on motion by Senator **MARTIN** of Aroostook, Senate Amendment "B" (S-622) to House Amendment "A" (H-1101) **INDEFINITELY POSTPONED**. Motion by Senator **MARTIN** of Aroostook to **ADOPT** Senate Amendment "C" (S-624) to House Amendment "A" (H-1101) **FAILED**. On motion by Senator **SHOREY** of Washington, House Amendment "A" (H-1101) **INDEFINITELY POSTPONED**, in **NON-CONCURRENCE**. On motion by Senator **KILKELLY** of Lincoln, **RECEDED** from **ADOPTION** of **COMMITTEE AMENDMENT "B" (S-575)** and **INDEFINITELY POSTPONED** the same, in concurrence. On further motion by same Senator, Senate Amendment "C" (S-623) **READ**.)

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

Senator **GOLDTHWAIT:** Thank you, Mr. President, ladies and gentlemen of the Senate. Once again, as I struggle with the issues involved in these various amendments, it has been disturbing to me some of the calls I received while we were at home on our all too short reprieve. Particularly, in that it is my sense that actually both sides significantly misrepresented the intent of a number of these amendments, the ones before us today and the ones before us previously. That has certainly not helped to enlighten the debate. I had constituents calling me, quite a few frankly, who were very concerned about losing benefits in ways that I don't think any of these amendments, on either side, ever contemplated. I had businesses concerned about costs that I don't think are really going to happen. There are costs that are going to happen as a result of some of our possible actions here, and I want to reference one of those. That is a letter that I suspect many, if not all of you have received from a company in Maine that has 1,200 employees. They had a Workers' Comp policy. The rate last year was \$219,000 and change. That insurer is leaving the state, according to the insurer, because of the Kotch decision. I have no way of evaluating the truth of that. In any rate, they are leaving the state which leaves two providers for this business. A private provider and MEMIC. The private provider declined to quote on the policy. MEMIC's quote compared to their previous years of \$219,000 was \$459,000, a greater than 100% increase. That is what I am talking about when I talk about the cost of business. So, the amendment that is before us now does, in fact, involve a small cost. It's given in a percentage. I understand the translation of that percentage is something in the neighborhood of \$3 million, which is a very small cost. But it is a cost. That concerns me. With data like I'm receiving, I don't think that we can really afford any additional cost. I also understand full well that we cannot afford to let the Kotch decision stand. Everyone agrees to that. It may be the only thing we do agree to in this debate. In the interest of reversing that decision, and with an amendment now before us that does a number of things that I think are positive, including extending benefits. This, to my understanding, makes us the only state in the country that will allow the combination of two or more unrelated work injuries. I believe Maine will be the

only state allowing that with this amendment. So, not only does this relieve us of the largest degree of the financial burden to business of the Kotch decision, it also is an actual extension of benefits in at least one regard to workers in Maine. I know that many of you, like me, are concerned about both workers and employers. This is not a matter, although it is cast that way, of choosing whether you're going to support employers or support workers. 99% of us want to support both of those. I think this amendment is the first thing that has come close to successfully accomplishing that. We cannot leave this building with this job not done today. I don't want to defer it to the next legislature. I don't want to go through another set of amendments, and heaven knows what the other body will do when this amendment is before them, and whether we'll be back here at some point this afternoon or in the night debating yet another series of amendments. I don't want to do that. This amendment satisfies the major points of both sides in this debate, and it has been very, very difficult to get here. I commend the men and women who have been involved in the creation of this amendment, including those from the public who gave up time and energy to come here and work on this. I apologize on behalf of this legislature to the public for trying to follow this bewildering trail of activity that has surrounded this issue. When we cast our final votes today, they will not be certain of what we've done or what impact it will have on them. That's unfortunate. But it is my opinion, having followed this as closely as I can, that this amendment is as close as we're going to get to an actual compromise. It entails a little more cost. It provides a little more benefit. If we don't accept this, we're going to be hard pressed to find something that gets this close to a true compromise and lets us walk out of the building without the one thing, the one thing, that we all agree we can't have, and that is the Kotch decision. So I hope you will join me in supporting the amendment. Thank you.

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

The President retired from the Chamber.

The Senate called to order by President Pro Tem **MARY E. SMALL** of Sagadahoc County.

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

Senator **NUTTING:** Thank you, Madame President, ladies and gentlemen of the Senate. I also rise to ask you to support the proposed amendment that is before us this afternoon. I still think that in Maine we should be very proud of the benefits that we do provide injured workers. I think to comment on the earlier comments of the good Senator from Kennebec, Senator Treat, I think just comparing Maine to other states as far as what the maximum weekly rate is, is not really putting forth the whole picture. I know in 1992, when I was a member of the other body, we had a debate on what the rates would be. The choice was given, do you want a very high rate of compensation per week for the most serious injuries, and do that over a short period of time,

or do you want a system where the 25% of the most serious injuries qualify for lifetime, durational, benefits then a lower rate of reimbursement for the other 75% of injuries that are not as severe? I remember resoundly that injured workers and their advocates that worked very hard for them said we want the 25/75 type of system. In New Hampshire, they pay \$923 a week to the person that receives the most severe workplace injuries. Yet that extends for 350 weeks and then you're on your own. We don't do that in Maine. I think we should be very, very proud of that. It's that 25% of the most serious claims in Maine that qualify for lifetime benefits. That's why we have still the 7th or the 10th most expensive system in the United States. It isn't just simply contained in what the maximum weekly rate is for the non-durational benefits. I'm also proud, as the good Senator from Hancock, Senator Goldthwait, has already alluded to, that if this amendment passes, we are going to be the only state in the country that from now on will allow an ankle injury that happened in 2002 to be combined with a shoulder injury that happened in 2005. We're the only state that is going to allow that to happen. This amendment is crafted so that the cost to businesses are not exorbitant, so we continue to have economic development and new jobs; we continue to have higher rates of pay offered to people; we continue to have health care offered to people, because people are not facing a huge increase in Workers' Comp, which is contained in some other versions of this bill. To me, that would be devastating, not only to our businesses but to our schools and our municipalities. I urge you to support this amendment that is before us today. Thank you.

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

Senator **EDMONDS:** Thank you, Madame President, men and women of the Senate. I just have a couple of additional things I want to say to you. Actually the good Senator from Hancock, Senator Goldthwait, and I, I guess I just feel I don't have any need to apologize to the people of Maine because we've been engaged in the last week in a very good faith effort to understand all the implications of every one of these amendments, what they would do, who they would harm, and how much they would harm businesses and workers. So, I am glad we've been engaged in this thing, even though it's been tedious sometimes and I understand everyone's frustration. I also need to refer to an earlier testimony that talked about non-profit organizations. Lord knows, I contribute to and belong to many a non-profit organization. I guess my only statement about all that is that I think we have to really look carefully at what is driving the cost that businesses are concerned about. I do not think it is the Workers' Comp rates. I think it is the insurance question. I think there are lots of increases that have happened as a result of 9/11. I think there are lots of businesses, all of us with mutual funds, who have suffered in the past year through the stock market. I think it is health cost in general, health insurance costs. Someone said to me in this building a little while ago, 'I wish we could have the hue and cry about the rise in health insurance costs that we're having about Workers' Comp costs, because, frankly, that's a larger issue by a long shot.' We should be having this kind of debate about that. This is about a small section of the Workers' Comp law, section 213. Yes, perhaps it is the most challenging, but it is not this larger universe that the whole health care industry is in. I guess finally, I just want to say that I am going to be very interested, and I'm going to seek out this information, to find out, if we pass this amendment, just what

happens to businesses visavis their Workers' Comp rates. I certainly hope that those rates, as adjusted or as stipulated by NCCI, don't travel very far at all, because I am not convinced that this will be the case. Thank you.

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

Senator **MILLS:** Madame President, men and women of the Senate, it's been asserted twice on the floor that we would be, if we adopt this amendment or even if we don't, I think, the only state in the union that counts two unrelated work injuries for purposes of defining a person's entitlement to claim long-term benefits. That's a little misleading, and not very accurate. I think we are the only state in the union that even has this system for defining who goes beyond short-term benefits into long-term entitlements. This was written by a fellow named John Lewis, who came from Florida in the summer of 1992. He was paid, I think, \$100,000 to write it. He was a consultant to the Blue Ribbon Panel. This was his own, unique, idea. It struck many people as a little odd, a little bizarre because the impairment isn't necessarily related to disability. They are two different concepts. Why would you use an impairment rating, a physical damage rating, to decide who is more dependent on the system than others? He promoted it because he thought it would save litigation, and provide an objective standard for defining these two classes of the injured population. I think it is unique in the United States. I don't think he was able to sell this concept to any of the other states for whom he worked. So, it is maybe entirely true that we are the only state that counts two injuries for purposes of defining the threshold, but I think we're the only state that has a threshold. However, I think it is universally true that when you look at an injured person, and define that person's level of disability, that person's incapacity to work, you look not only at the injury that brings him before the board, but also all the circumstances of that person's life, not just his underlying earlier injuries or impairments, but also his education, his background, his training, his capacity to work. All of these things enter into defining what we mean by incapacity or disability. I think it's safe to say that probably no one in this chamber, no one on the floor of this chamber, none of the members here, would ever be eligible for Workers' Compensation in our system. I had a young college kid come to me who got injured badly while working construction for the summer. He was a junior. He was about to go back to school for the year in September. He comes to me and was still crippled up, but he was going back to classes. He said he was clearly looking for some substantial award of money. I said, 'no, you're going to get a Bachelor's Degree in engineering in June. The system will pay you nothing. It hasn't interfered with your capacity to work. It has really damaged your body, but that doesn't mean that you're entitled to benefits.' So, I think that using this system for defining the eligibility for long-term support is probably unique in the United States. It's close to being unique, if it isn't. So, that is why we're in this bizarre situation of not being able to look to other states or other jurisdictions to find out how they do it. We're not going to get an easy answer, because we're dealing with ground that has not been trod upon by anybody else as far as I know. It is also true that no matter what the system is that you design to protect injured workers in the State of Maine, our claims costs are going to be somewhat above national averages. If you want to know the reason why, you only need to look at the Maine State seal in the center of this room. We are a state that extracts resources from the ground,

from the ocean, and from our forests. People in Maine, there are fewer of them with college degrees than in other states. Our population tends not to be as well educated or sophisticated in some cases as the populations of other states. By definition, our Workers' Compensation experience is likely to be, and will continue to be, adverse when compared with other states, and in deed, other nations. I suggest to you, however, that this produces in us a very special obligation. Because we, in the legislature, are trustees for these people who become injured in the workplace. When I look at this amendment, which has a lot of detail in it, I understand the theory behind it. That is, if we work prospectively only, none of this should cost us anything. We should be able to create a two-injury threshold for people who want to go beyond the short-term benefit. We should be able to do that without having it cost anything if we just adjust the percentages. But if that is the case, why are we so arbitrary about how we count prior injuries? It says here that the injury won't count unless there has been a report filed, yet there are sometimes very serious injuries for which no report is required to be filed under Maine law. It also says that if you are injured after January 1, 1993, your injury counts. That second one counts. If you are injured in 1992 or before, it doesn't count. I don't know why. If we're writing on a clean slate, in a matrix that will not cost anything because it is designed not to cost anything, why would we write with such an arbitrary pencil? I'm somewhat confused by why is drafted in such an odd way. I'm reluctant to vote for it for that reason among others. Thank you.

THE PRESIDENT PRO TEM: The pending question before the Senate is the motion by the Senator from Lincoln, Senator Kilkelly to Adopt Senate Amendment "C" (S-623). 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 (#346)

YEAS: Senators: BENNETT, CARPENTER, DAVIS, FERGUSON, GOLDTHWAIT, KILKELLY, KNEELAND, LAFOUNTAIN, LEMONT, MCALEVEY, MITCHELL, NUTTING, O'GARA, PENDLETON, ROTUNDO, SAVAGE, SAWYER, SHOREY, TURNER, WOODCOCK, YOUNGBLOOD, THE PRESIDENT PRO TEM - MARY E. SMALL

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

22 Senators having voted in the affirmative and 13 Senators having voted in the negative, the motion by Senator KILKELLY of Lincoln to **ADOPT** Senate Amendment "C" (S-623) **PREVAILED.**

PASSED TO BE ENGROSSED AS AMENDED BY SENATE AMENDMENT "C" (S-623), in NON-CONCURRENCE.

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

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

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

Senate called to order by the President.

Off Record Remarks

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

SENATE PAPERS

Resolve, to Fund the Operations of the Workers' Compensation Board for Fiscal Year 2002-03

S.P. 835 L.D. 2217

Sponsored by Senator NUTTING of Androscoggin.
(GOVERNOR'S BILL)
Cosponsored by Representative BUNKER of Kossuth Township.

REFERRED to the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS** and ordered printed.

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

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

COMMUNICATIONS

The Following Communication: H.C. 480

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

April 24, 2002

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

Dear Madam Secretary:

House Paper 1672 Legislative Document 2174 "Resolve, Authorizing Michelle Booker to Sue the State," This Bill having been returned by the Governor together with objections to the same, pursuant to the provisions of the Constitution of the State of Maine, after reconsideration, the House proceeded to vote on the question: "Shall this Bill become a law notwithstanding the objections of the Governor?"

81 voted in favor and 55 against, and accordingly it was the vote of the House that the Bill not become a law and the veto was sustained.

Sincerely,

S/Millicent M. MacFarland
Clerk of the House

READ and ORDERED PLACED ON FILE.

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

COMMUNICATIONS

The Following Communication: H.C. 481

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

April 24, 2002

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

Dear Madam Secretary:

House Paper 1205 Legislative Document 1627 "An Act to Ensure Equality in Mental Health Coverage," together with objections to the same, pursuant to the provisions of the Constitution of the State of Maine, after reconsideration, the House proceeded to vote on the question: "Shall this Bill become a law notwithstanding the objections of the Governor?"

86 voted in favor and 54 against, and accordingly it was the vote of the House that the Bill not become a law and the veto was sustained.

Sincerely,

S/Millicent M. MacFarland
Clerk of the House

READ and ORDERED PLACED ON FILE.

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

COMMUNICATIONS

The Following Communication: H.C. 482

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

April 24, 2002

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

Dear Madam Secretary:

House Paper 944 Legislative Document 1258 "An Act to Make the Unemployment Insurance Program More Responsive to the Needs of Today's Workforce," together with objections to the same, pursuant to the provisions of the Constitution of the State of Maine, after reconsideration, the House proceeded to vote on the question: "Shall this Bill become a law notwithstanding the objections of the Governor?"

77 voted in favor and 65 against, and accordingly it was the vote of the House that the Bill not become a law and the veto was sustained.

Sincerely,

S/Millicent M. MacFarland
Clerk of the House

READ and ORDERED PLACED ON FILE.

Off Record Remarks

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.

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

PAPERS FROM THE HOUSE

House Paper

Bill "An Act to Correct Recently Enacted Legislation"
(EMERGENCY)

H.P. 1741 L.D. 2216

Committee on JUDICIARY suggested and ordered printed.

Comes from the House, under suspension of the Rules, **READ TWICE** and **PASSED TO BE ENGROSSED AS AMENDED BY HOUSE AMENDMENT "A" (H-1118)**, without reference to a Committee.

READ ONCE.

House Amendment "A" (H-1118) **READ** and **ADOPTED**, in concurrence.

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

On motion by Senator **GOLDTHWAIT** of Hancock, **TABLED** until Later in Today's Session, pending **PASSAGE TO BE ENGROSSED AS AMENDED BY HOUSE AMENDMENT "A" (H-1118)**, without reference to a Committee, in concurrence.

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

PAPERS FROM THE HOUSE

Joint Resolution

The following Joint Resolution: H.P. 1738

JOINT RESOLUTION RECOGNIZING THE UNIVERSITY OF MAINE BLACK BEARS HOCKEY TEAM

WHEREAS, the University of Maine Black Bears men's hockey team carries on a great tradition of collegiate hockey at the University of Maine that spans decades and includes past championships in 1993 and 1999; and

WHEREAS, the Black Bears won the NCAA championship in 1993 and 1999 under the coaching skill of its 17-year coach, the late Shawn Walsh, who remained a strong and vital influence over the current year's team as his memory was an inspiration to all members of the 2002 team; and

WHEREAS, under the coaching talents of Interim Coach and now Head Coach Tim Whitehead, the Black Bears played hockey this season with passion, skill and dedication and advanced to play in the NCAA finals in St. Paul, Minnesota; and

WHEREAS, the team played their final game of 2002 with green shamrock-shaped patches bearing Shawn Walsh's initials on the left shoulders of their jerseys, hung a blue jersey behind the bench with Shawn's name on it and, as they played with great skill and integrity, made it into overtime playing for the national championship; and

WHEREAS, the team made their State proud and continued the legacy begun by Shawn Walsh; now, therefore, be it

RESOLVED: That We, the Members of the One Hundred and Twentieth Legislature now assembled in the Second Regular Session, on behalf of the people we represent, take this opportunity to express our sincere appreciation to the University of Maine Black Bears men's hockey team; and be it further

RESOLVED: That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to University of Maine Black Bears Hockey Team Coach Tim Whitehead, to University of Maine President Peter Hoff and to the staff and players of the 2001-2002 University of Maine Black Bears men's hockey team with our best wishes and appreciation.

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

READ and **ADOPTED**, in concurrence.

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

PAPERS FROM THE HOUSE

Joint Resolution

The following Joint Resolution: H.P. 1739

JOINT RESOLUTION RECOGNIZING RICHARD RUSSO FOR BEING AWARDED THE 2002 PULITZER PRIZE FOR FICTION

WHEREAS, Richard Russo is a former English professor at Colby College and a resident of Waterville, Maine who has been awarded the prestigious 2002 Pulitzer Prize for fiction for his novel Empire Falls, a novel that takes place in Maine; and

WHEREAS, Mr. Russo is an internationally known and admired author of many books, including Nobody's Fool, Mohawk, The Risk Pool and Straight Man, and he has been honored with critical acclaim for his sympathetic and masterful evocation of a vanishing America; and

WHEREAS, Mr. Russo gained national attention when his novel Nobody's Fool was made into a movie with Oscar-winning actor Paul Newman, which made its world premier at the Maine International Film Festival in Waterville in 1997; and

WHEREAS, Empire Falls has received much praise since its publication and was featured on the front page of the New York Times Book Review and was named by Time as the Best Work of Fiction for 2001; now, therefore, be it

RESOLVED: That We, the Members of the One Hundred and Twentieth Legislature, now assembled in the Second Regular Session, on behalf of the people we represent take this opportunity to express our congratulations to Mr. Richard Russo on his receiving the high honor of the 2002 Pulitzer Prize for fiction; and be it further

RESOLVED: That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to Mr. Richard Russo with our best wishes and appreciation.

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

READ and **ADOPTED**, in concurrence.

ESTES of Kittery
TUTTLE of Sanford
O'BRIEN of Lewiston
HEIDRICH of Oxford
PATRICK of Rumford
DUNCAN of Presque Isle

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

Signed:

Representative:
MAYO of Bath

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

Reports **READ** and the Bill and accompanying papers **INDEFINITELY POSTPONED**, in concurrence.

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

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

PAPERS FROM THE HOUSE

Joint Resolutions

The following Joint Resolution: H.P. 1743

JOINT RESOLUTION RECOGNIZING WORKERS MEMORIAL DAY ON APRIL 28, 2002

WHEREAS, every year, over 10,000 American workers are killed by workplace injuries and occupational diseases; and

WHEREAS, in the State, 22 workers died on the job in 2001; and

WHEREAS, nationally, tens of thousands are permanently disabled by such injuries or diseases; and

WHEREAS, millions of workers are injured or become ill annually on the job; and

WHEREAS, this year has special significance as Maine citizens mourn those killed in the September 11th terrorist attacks, which claimed the lives of more than 3,000 people, most of whom were workers doing their jobs when the attacks occurred or rescue workers who worked to save lives; and

WHEREAS, the federal Occupational Safety and Health Act of 1970 has goals to guarantee every American worker the right to a safe and healthy workplace; and

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

PAPERS FROM THE HOUSE

Joint Order

The following Joint Order: H.P. 1740

ORDERED, the Senate concurring, that Bill, "An Act to Control Internet 'Spam'," H.P. 1538, L.D. 2041, and all its accompanying papers, be recalled from the legislative files to the House.

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

READ.

On motion by President Pro Tem **MICHAUD** of Penobscot, **TABLED** until Later in Today's Session, pending **PASSAGE**, in concurrence.

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

REPORTS OF COMMITTEES

House

Divided Report

The Majority of the Committee on **LEGAL AND VETERANS AFFAIRS** on Bill "An Act to Hold an Advisory Referendum on Term Limits"

H.P. 1003 L.D. 1340

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-817)**.

Signed:

Senators:

DOUGLASS of Androscoggin
WOODCOCK of Franklin
BROMLEY of Cumberland

Representatives:

LABRECQUE of Gorham
CHIZMAR of Lisbon
COTE of Lewiston

WHEREAS, concerned Maine citizens are determined to prevent such tragedies by observing Workers Memorial Day on April 28th by remembering the victims of workplace injuries and disease, by renewing their efforts to seek stronger safety and health protections, better standards and enforcement and fair and just compensation and by rededicating themselves to improving the safety and health of workers in every Maine workplace; now, therefore, be it

RESOLVED: That We, the Members of the One Hundred and Twentieth Legislature now assembled in the Second Regular Session, on behalf of the people we represent, take this opportunity to proclaim April 28, 2002 as Workers Memorial Day in the State of Maine and encourage all residents to remember those workers injured or permanently disabled and those workers killed on the job and to observe the day in an appropriate manner.

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

READ and **ADOPTED**, in concurrence.

The following Joint Resolution: H.P. 1744

**JOINT RESOLUTION MEMORIALIZING CONGRESS
TO MAINTAIN THE PROVISIONS OF THE
FEDERAL CLEAN AIR ACT**

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

WHEREAS, Section 111 of the federal Clean Air Act requires the adoption of federal standards, known as new source review, reflecting the best available control technology for facilities that cause or contribute significantly to air pollution that may endanger public health and welfare; and

WHEREAS, the United States Environmental Protection Agency adopted such standards of performance for the construction or modification of power plants; and

WHEREAS, litigation against power plant owners for violations of new source review is being actively pursued; and

WHEREAS, the current federal administration is reportedly considering modifications of the new source review program; and

WHEREAS, acid rain, which is damaging sensitive ecosystems, has been attributed to emissions from coal-burning plants in the Midwest and the Mid-Atlantic states and, to a lesser extent, in New England; and

WHEREAS, scientific research has established a well-defined link between power plant air emissions and human health effects, including exacerbation of symptoms for those with asthma, increased risk of heart attacks for those with heart

disease and increased risk of lung cancer and premature death; now, therefore, be it

RESOLVED: That We, your Memorialists, urge President George W. Bush and the United States Environmental Protection Agency Administrator Christie Whitman to maintain the existing regulations on new source review; and be it further

RESOLVED: That We, your Memorialists, urge Congress to take appropriate action against any decision made by the United States Environmental Protection Agency to modify the regulations implementing Section 111 of the federal Clean Air Act if the result would be to jeopardize Maine's ability to safeguard public health and protect environmental quality; and be it further

RESOLVED: That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, Administrator Christie Whitman and each member of the Maine Congressional Delegation.

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

READ and **ADOPTED**, in concurrence.

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

Off Record Remarks

Senate at Ease.

Senate called to order by the President.

ORDERS OF THE DAY

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

JOINT ORDER - relative to recalling H.P. 1538, L.D. 2041, "An Act to Control Internet 'Spam'", and all its accompanying papers from the legislative files to the House.

H.P. 1740

Tabled - April 24, 2002, by President Pro Tem **MICHAUD** of Penobscot

Pending - **PASSAGE**, in concurrence

(In House, April 24, 2002, **READ** and **PASSED**.)

(In Senate, April 24, 2002, **READ**.)

INDEFINITELY POSTPONED, in **NON-CONCURRENCE**.

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

Off Record Remarks

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.

ORDERS OF THE DAY

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

Bill "An Act to Correct Recently Enacted Legislation" (EMERGENCY)

H.P. 1741 L.D. 2216

Tabled - April 24, 2002, by Senator **GOLDTHWAIT** of Hancock

Pending - **PASSAGE TO BE ENGROSSED AS AMENDED BY HOUSE AMENDMENT "A" (H-1118)**, without reference to a Committee, in concurrence

(Committee on **JUDICIARY** suggested and ordered printed.)

(In House, April 24, 2002, under suspension of the Rules, **PASSED TO BE ENGROSSED AS AMENDED BY HOUSE AMENDMENT "A" (H-1118)**, without reference to a Committee.)

(In Senate, April 24, 2002, **READ ONCE**. House Amendment "A" (H-1118) **READ** and **ADOPTED**, in concurrence. Under suspension of the Rules, **READ A SECOND TIME**.)

On motion by Senator **GOLDTHWAIT** of Hancock, Senate Amendment "A" (S-625) **READ** and **ADOPTED**.

PASSED TO BE ENGROSSED AS AMENDED BY HOUSE AMENDMENT "A" (H-1118) AND SENATE AMENDMENT "A" (S-625), 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, Regarding Legislative Review of Chapter 296: Patient Brochure and Poster on Dental Amalgam and Alternatives, a Major Substantive Rule of the Department of Human Services
H.P. 1637 L.D. 2140
(S "B" S-608 to C "A" H-1046)

Tabled - April 9, 2002, by Senator **GOLDTHWAIT** of Hancock

Pending - **FINAL PASSAGE**, in concurrence

(In Senate, April 8, 2002, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1046) AS AMENDED BY SENATE AMENDMENT "B" (S-608)** thereto, in **NON-CONCURRENCE**.)

(In House, April 9, 2002, **FINALLY PASSED**.)

On motion by Senator **GOLDTHWAIT** of Hancock, 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-1046) AS AMENDED BY SENATE AMENDMENT "B" (S-608)** thereto, 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-1046) as Amended by Senate Amendment "B" (S-608) thereto, 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** Senate Amendment "B" (S-608) to Committee Amendment "A" (H-1046).

On further motion by same Senator, Senate Amendment "B" (S-608) to Committee Amendment "A" (H-1046) **INDEFINITELY POSTPONED**.

On further motion by same Senator, Senate Amendment "D" (S-627) to Committee Amendment "A" (H-1046) **READ** and **ADOPTED**.

Committee Amendment "A" (H-1046) as Amended by Senate Amendment "D" (S-627) thereto, **ADOPTED**, in **NON-CONCURRENCE**.

PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1046) AS AMENDED BY SENATE AMENDMENT "D" (S-627) thereto, in **NON-CONCURRENCE**.

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

Senate at Ease.

Senate called to order by the President.

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

Senate at Ease.

Senate called to order by the President.

Off Record Remarks

THE PRESIDENT: As we complete the work of the 2nd Regular Session of the 120th Maine Senate, I wish to make a few comments. This Senate, beginning with the results of election day 2000, has been marked by a series of remarkable, amazing, even historic occurrences. Allow me to recap some of these events. We were given, by the people of Maine, a partisan tie in the Legislature's upper chamber. We crafted, as Republicans, Democrats, and an Independent, an unprecedented power sharing agreement. Not only codifying it in our rules, but also breathing it with life through the human spirit of our day-to-day work. We succeeded in finding bi-partisan common ground on a state budget, and by an overwhelming margin, passed the current services budget last year without raising taxes. In doing so, we withstood a withering barrage from the Governor's office and the other body. This experience helped unite us and strengthen the Senate. It helped us work with a common purpose in dealing with difficult choices of this year's supplemental budget. Following the terrible events of September 11th, we had a peaceful passing of the gavel from one party to the other, including the transfer of real power from Secretary O'Brien to Secretary Cahill. We mourned together the tragic loss of our friend and respected colleague, Senator Joel Abromson, after his long, difficult, and wrenching battle with cancer. We withstood the interruption of a hard fought special election during the height of our session, followed by the exceedingly rare event of having a very close election thrown to the Senate for our final decision. Even on tonight's remaining bill, the Senate has assumed the leading role in fashioning public policy on a wrenching issue, Workers' Compensation. Here we are, emerging from all of this, with the same spirit of collimate, mutual respect, and human friendship that began the 120th Senate. For that I credit each and every one of you. I want to thank my fellow members of the Republican caucus for nominating me for this important leading role. For putting your faith in me, not only two Decembers ago, but continually through these two sessions. I am deeply honored. I want to thank the members of the Democratic caucus for giving me the benefit of your doubt, and recognizing that, while I have a point of view, my first commitment, as your presiding officer, is to the Senate as an institution. I am grateful also to our Independent Senator from Hancock, Senator Goldthwait, for her friendship, for her confidence in me, and for

her tireless work in many important roles over this two years. It has been an honor and a remarkable experience for me to be part of this Senate's six member leadership team. At critical moments on difficult issues, we trusted each other and it worked. We surmounted our partisan differences through plain talk and common sense. We created lasting friendships. Please join me in thanking our caucus leaders, Senator Small, Senator Daggett, Senator Davis, and Senator Treat, for their consistent hard work and outstanding service. Most of all, I must recognize my friend, President Pro Tem Michael Michaud, and thank him for his two years of exemplary leadership, preceded by 20 years of hard work and faithful commitment to his constituents and the people of Maine. This historic 120th Maine Senate has benefited immensely from his tremendous capacity for long hours and steady labor. His even-tempered disposition. His bias for solving problems through collaboration, rather than confrontation. His mature understanding of the issues. His respectful handling of people, and of course, his ready smile. I am pleased to offer him a remembrance of his service as Presiding Officer. I ask him, at this point, to come forward and I ask all of you to join me in expressing our gratitude, our friendship, and our best wishes. (President Pro Tem Michaud of Penobscot was presented with a gavel.) In December of 2000, I said I had three basic goals for my service as President Pro Tem and as President during the 120th Maine Senate. First, to empower every member of this Senate to make the most of their service. Second, to enhance public participation in the work of the legislature. Third, to leave this institution, the Maine Senate, better and stronger. I think, working with all of you, we have accomplished these goals. In particular, I want to note the important progress we have made in making our democracy more accessible to our constituents. We've expanded access to our proceedings in the legislative process beyond the four walls of this chamber, into our citizen's homes and workplaces, through audio casing the deliberations of the Senate and some important committee work. We've taken the first step towards live video broadcasting as well through a partnership with MPBN. We've completed a three year renovation, and it seems like a lot longer than three years, of the Capital Complex, providing handicap accessibility, a much improved aesthetic, and a richer historical regard. Serving as Presiding Officer has been the high point of my public service. I feel privileged and deeply honored to have this rare opportunity. I am grateful to my wife, Karen, and my children for making the sacrifices to allow my service. If I have accomplished anything meaningful in this role, I credit and thank my outstanding staff. Brian Whitney, Chris Jackson, Tarren Bragdon, Diane Johanson, and the phenomenal Diane Jackson. I am indebted to you. The past months have been trying times for the souls of Americans and peoples around the world. In our own small, but significant way, this Senate has shown, here in this chamber, in this beautiful building, the tremendous promise of democracy. We've proven the experiment of our founders. We've shown that civic minded people with divergent views can come together and work through our differences for public betterment. This is the legacy of the 120th Maine Senate. 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. Now that we're in a role reversal, a lot of times when I was President, I got to go first and had to say a lot of things that Rick was going to say, but I had a chance to say

them first. So I'm in that role reversal this evening when there is a lot of stuff that the President had mentioned that I would have mentioned as well. I think the last two years have been a unique experience here in Maine. Never before have we had a tied Senate. I am extraordinarily proud of what each and every member of this body has stepped up to the plate to meet that challenge. We did not do it in partisan politics. We looked at each others issues and individual concerns and really stepped up to the plate. I think that is what the people of the State of Maine really wanted. I want to thank each and every member of this body for participating and making that happen. As the President mentioned, during these last two years we've had a lot of things going on. I think this body really did step up to the plate. We started off with a 17 - 17 - 1 split, which is very unique for the Senate body. Also, when we into a Committee of the Whole last year, it was really unique and extraordinary and something that I'll probably never see happen again. But we did it. Also there was the special election that we had earlier this year. These are things, I think, that would not have happened if it wasn't for the good President of the Senate, Rick Bennett, and each and every one of you. We handled each one of these situations. We did it, I think, in a professional way. Also, I think President Bennett had mentioned some of the issues that we have dealt with over these past two years, the accomplishments. I think this legislature and this Senate has a lot to be proud of with our accomplishments over the last two years. Despite the budget constraints that we had, we were able to do a lot for education. We were able to maintain the Fund for a Healthy Maine. We were able to pass landmark legislation dealing with health insurance to small businesses. Those are just a few. I especially would like to thank three members of the Appropriations Committee. Having served on the Appropriations Committee for four years as Senate co-chair and served through the other body, I know it is difficult to serve on the Appropriations Committee. I think that the good Senator from Somerset, Senator Mills, the good Senator from Penobscot, Senator Cathcart, and the good Senator from Hancock, Senator Goldthwait, have done an extraordinary job in difficult times. I know it's not easy, particularly for the good Senator from Hancock, Senator Goldthwait, where she does not have a party behind her and being one individual, it made the process even that more difficult. I want to thank her for moving the process along and really doing an exceptional job in your role as Senate Chair of the Appropriations Committee. I know it was not easy. But none of this work could have been done without the many dedicated employees of the legislature. I do want to thank the Senate Chamber staff for all the work that they've done over the last couple of years as well as the Secretary of the Senate's office, especially the Secretary of the Senate, Pam Cahill, and the Assistant Secretary of the Senate, Joy O'Brien. I think you two have done an exceptional job over the last two years making sure that you work together and that your office works together and things ran efficiently and smoothly here in the Senate. A lot of credit goes to you as far as how it reflected on us as Senators in this body. I want to thank both of you for that hard work as well as the non-legislative staff. I know the Senator from Sagadahoc, Senator Small, is in the same situation that I am, she has served two years more than I in the legislature, 22 years. It's hard to believe that this could conceivably be my last evening here in the State House. So I do want to thank the staff for that, as well as my own staff. Rick McCarthy, Marsha Levesque, Rosemary Winslow, and former Chief of Staff Peter Chandler. I think they have done an exceptionally good job over the last two years. But I think what has really worked out

extremely well is my staff and the President of the Senate's staff has worked extremely well together over the last two years. I know my staff has complimented several times the staff in the President's Office for their willingness to work out the issues between themselves. I think it's really important to think they have a lot of respect for one another and rightfully so. Also I do want to take the time to thank the lobby. I know, having served here 22 years, a lot of times the lobbyists get snubbed or hit on the head by certain legislators on certain issues, but I think I respect the lobby. I might not always agree with the lobby, but they are there representing their clients. I do want to thank the lobby for their efforts, doing the best that they can representing the people who hire them to be here. It's important. I also want to thank members of the Aroostook County delegation. Being the Senior member of the Aroostook County delegation, I do want to thank my two Junior members for their help over the last two years in the Senate chamber. I really respect their thoughts and comments to me over the last two years. I will no longer be the Senior member of the delegation by the end of the year, and I will be leaving these two freshmen with this chamber, for those of you who are coming back. Hopefully, they have learned a lot during these last two years. I expect that they will be able to move forward when they come back next time around. I'm sure that if they have any questions that they probably will be able to answer them as they move along. I'm also grateful for the Senate Democratic caucus. You have really given me a opportunity to work with each and every one of you over the last two years. I could not have done it without your help and your support as becoming the nominee for the Democratic President of the Senate. I want to especially thank the Senator from Kennebec, Senator Daggett, and the Senator from Kennebec, Senator Treat, for their help as well. I really appreciate the guidance that you have given me when I asked for it, as well as when I did not ask for it. I really appreciate that. Also the good Senator from Piscataquis, Senator Davis, and the good Senator from Sagadahoc, Senator Small. I've really learned to respect each and every one of you for the job that you have to do, bringing your caucus along with issues to try to solve or problems that we are faced with. It definitely has been a real team effort over the last two years. Finally, I'd like to thank President Bennett for the opportunity to serve with him and under him over the last two years. I've really learned a lot from him. When I first became President of the Senate, Senator Bennett came up to my area, the Millinocket area, to look at what was going on up there with the mill, and the higher education center. He got to see some of the people, and some of the issues that I had to deal with in order to get to know me better. He reciprocated that when I had a chance to go down to Oxford County, and had a chance to get to know Rick better, as well as his constituents, and seeing him on his home turf. I think we both gained a lot from that experience. I really appreciated it. I have a lot of deep and moral respect for you, Mr. President. We've had, I think, a tremendous working relationship over the last couple of years. I think one of the things, when you look at the issues that we've dealt with, whether it was the budget or the bond package or some of the other issues, we really have had the chance to focus on those issues. We did it in a non-partisan way. I think that is really important. I hope that the members of this body who will be coming back next year, regardless of who is in the majority or the minority, that they will work close together because I think it's really important. That is one of the things I've found out over the past few years. The public appreciates that. They really respect the legislature. They respect individual legislators. What they

respect most, particularly during these past two years, is that we were able to deal with issues in a non-partisan way. I think that is extremely important. I'm really proud to be a member of this body. I'm really proud to serve with each and every one of you over the last two years. I really am very appreciative of the President and his ability to lead the Senate this time around. I think he really had stepped up to the plate. I had no doubt in my mind that he would not step up to the plate. I think he's done a tremendous job. He is a true leader, a true friend, and a very family-oriented type individual. I really want to thank you for allowing me to serve with you. At this time, Mr. President, if I might, I do also have a present for you. I have a present which is similar to the one that you have given to me. Unfortunately, this one is split in half. It was the first gavel that was broken during the 120th legislature. I know that our House counterpart has been talking about all the gavels that they have broken at the other end. The difference being that the gavels at the other end are only 12 ounce gavels. So it's truly a pleasure for me, Mr. President, to present to you the first broken gavel of the 120th legislature.

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

Senator **SMALL:** Thank you, Mr. President. I feel really at a loss. I didn't know we were giving gifts and had I known that, I would have had like a large mouth bass to present to the good Senator from Kennebec, Senator Daggett, but nobody informed me that we were going to do this. I can take a few moments to thank some of the people who have made this session so special for me and for everyone else in the Senate. First, I'd like to thank our staff in the Republican office, particularly Sara, Diane, Seth, Bob, and now Matt, and of course, our shared Chief of Staff, Brian, who always seems to keep things running so smoothly for us. Even though Chris, Terran and Diane are the President's staff, they do double duty helping us out and there has been more times than I can count that I've gone to each one of them for some help or assistance and they've always given their time very generously. They have been an extraordinary group of people to work with. I think they've made all of the Republicans' jobs just that much easier because of their dedication and their hard work. The same would go for the Senate staff. This has been just a really fine group of people to work with. My good friends, Pam and Joy, and Tom and Bob, and all the other people that make our jobs seem so easy and smooth flowing. I never really realized how much went on until one of the few nights that I'd staid here very late, I think I was closing up shop, and I went by the Secretary's office and they were still working on the calendar so it would be ready for us the next morning. I suddenly realized that not only did they come in an hour or two before us in the morning, but they always left at least a couple of hours after us. I really want to thank them for making everything just so effortless and seamless for us when we're transacting our business. I'd also like to thank very much the Republican caucus for their confidence and their faith in me by allowing me to be their leader for this last two years. After 22 years in the legislature, I guess I'm a slow learner. I finally kind of got the grasp of how things run, and I was very pleased to be able to serve as your leader, and have an opportunity to be your spokesperson on some of the issues and to work with the President, and also to work with the other party. I might have been perceived in the other body as being a bit of a partisan, but I think over here we learned that if we really want to get things

done, we need to work together. As the comments before us have said, I think we did a really extraordinary job of that this year in putting aside our differences, and most importantly, just being civil in our treatment of each other. That has been, in large part, because of the counterparts on the other side. As President Pro Tem Michaud said earlier, it's been a very, very good relationship. So, I would like to also thank President Pro Tem Michaud, Senator Daggett, and Senator Treat. I'd like to thank them for their cooperation and for the real trust that we were able to put in them. If they gave us an agreement, I never worried that it wasn't going to be held up. I think that is just so important when we're dealing with issues that effect so many peoples lives. Not only has it been a very cooperative and working relationship, but it's also been a very humorous relationship, which is probably the thing that I value the most. Often times it's that humor, I think, that keeps us going and prevents us from maybe breaking down and being less civil than we are. For those of you that may have noticed, this was perhaps the first year that I didn't do a Mary Small Production. You were all thinking it was because we never had time, but really the reason was that nobody really ticked me off enough to inspire those juices. I'm sure something will happen in the next few months to allow me to do that. But I think that is really a credit because this is the first year that nothing has really come to mind that I couldn't lay my finger on and say, 'boy, that really made me angry.' So it's a small blessing, the fact that we worked so well together probably prevented many of you from being in a skit that you never knew about. I also want to thank Jill, our Independent member, for all of her help and cooperation and for providing me with hours of, I won't say entertainment. I pride myself as kind of a political junkie by sitting down and trying to figure out how someone is going to vote and what their motives are in predicting that. I have to say that I was never able to put her in any sort of category, or make any accurate prediction. For that, I thank you because you kept me entertained and occupied. I think it also kind of gave me the understanding that there are more than just two perspectives to every issue. There is always at least a third, and you often brought that up, and gave us a whole other look at an issue. I do thank you for that. I think your advise and your common sense has been invaluable to this body. I am very glad that I've had an opportunity to serve for my four years with you. Finally, I guess I'd have to thank the President for all his hard work that he has put in on behalf of this body and for his hard work that he's put in on behalf of the caucus. I always felt very confident that his wisdom and his leadership was going to be the right way. There was never any difficulty in following his lead. As my husband will tell you, that is not often the case. I generally like to go my own way. But he inspired confidence, and he inspired us to do better. So I really want to thank you for your friendship, for your leadership, and for throwing me into the saxophone player at Pam Cahill daughter's wedding. But mostly, I want to thank you for your service to the people of Maine and your constituents. It's been really an outstanding year, as I've said. As I go, there is some sadness, but I have to say that it is so wonderful to end on such a great and uplifting note. I think last session certainly could not have been topped. So I am very glad for having the opportunity to have served with all of you for my final session. I appreciate that and 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, too, would like to offer just a few remarks, fairly brief. I am not given to particularly long speeches. But I would like to say a few things and express some thanks to all of those people who contributed to the success of this session for us. I particularly would like to mention our staff in the Democratic office. Sally, Robin, Diane, Bill, Mike, and Angela who make it possible for us to do our work here. I'd like to thank all of the Senate staff, the chamber staff, who are here before we arrive and are here long after we leave, taking care of the things that are needed to make the session flow smoothly. I'd like to thank all the members of the Senate. All of you. Particularly the members of leadership that I've worked more closely with. Together, as the reflection of Maine that we're supposed to be, I think we all worked well together, and we represented the many different view points that are here in Maine that we are supposed to be representing. Our presiding officers have taken us through some of the high points, and perhaps some of the low points, of the last two years. So, I won't speak to those. There were two words that have been used, and I think those really characterize the feelings that we had. Those words are respect and trust. I think sometimes in a political environment those are two things that may be missing or others may question. I think that those were the two things that carried us through the incredible number of trials that we had over these last two years. I think in that old Yankee tradition of making do with what we had, I think we did make do with what we had and we got the job done. We sometimes disagreed, but we always got along. I think we felt good about ourselves, and what we had done afterwards, to the best of our abilities. I would also just mention that I think it's great that we're now on the internet and that others can hear what is going on here. It has certainly been the first opportunity that my husband has had for many years to find out what in world is going on when I'm gone for such long periods of time. Periodically he would call me and say, 'I can hear what is going on.' So I think that is a very good thing. I think will enable many people across the State of Maine to hear what is being said. I know that there are some members who have even had constituents communicating with them by e-mail on their laptops while debate was going on. I think that is a wonderful thing. Because what we do here is very precious, and the more people across the state know about that, the more they will understand and respect the work that is done here. I only have one little regret. That is that, as a group, we never got a chance to go down to the House balcony and sing that old Harry Belafonte favorite, 'Daylight Come and I Want to Go Home' using the Senator from Sagadahoc, Senator Small's, words. But perhaps that still may happen.

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

Senator **DAVIS**: Thank you very much, Mr. President. I just want to tell everyone here, as a person who greatly enjoys reading history, that it has been just a marvelous thrill to be part of such an undertaking as has happened as a result of the elections two years ago. I feel very blessed to have been part of this organization during the last two years, to say the very least. I, too, want to thank everyone. I, perhaps, have been the junior member of the team, but all in all I've done my best to be effective and certainly couldn't have done anything, period, without the cooperation of both sides. I certainly found that to be. It was a difficult time in some ways. My good friend, Joel. I

shared a lot with him the first session that we were here. He shared a lot with me. He told me a lot of what he was going through, and I learned a lot about such a horrible disease and the ramifications of it. I also learned how courageous he was and what a great, stand-up guy he was. I want to thank you, President Pro Tem Michaud, the good Senator from Penobscot, for the fine leadership you gave us as the President. I also want to thank you for what you have done for northern and central Maine during your tenure. There are technical colleges and roads and a lot of things that would not have happened had it not been for your leadership. I thank you for that on behalf of the people in my district and in other districts. My good friends from Kennebec, Senator Treat and Senator Daggett. You have been good to work with. Senator Treat, you certainly have always expressed your opinion, and whether you believe it or not, I've always appreciated it. Perhaps I haven't always agreed with it, but I've appreciated it. Senator Daggett, I remember with great fondness the day that we spent in Washington D.C. We traveled all over the city, went to Arlington and all the different places, and had a chance to get to know each other. Probably that trip alone, for me, did much to make it a lot easier for me to work with everyone here. My good friend and leader here in the Senate on our side, Senator Small. I want to thank you for allowing me to keep my telephone. Had I known that there were gifts being given, I perhaps would have gotten you another one perhaps the size of a canoe or something, so that you could keep it. Mr. President, I want to thank you. Thank you for being a friend. You know the President, in his office right now, has a news clipping that says, 'Senator Ignores Pain' and I was told today that perhaps I was that pain that he was ignoring. But I think not, I read it. I do want to thank you, Mr. President, for putting up with me and my never ending questions and comments. I will tell you, there were times, Mr. President, when I did ignore your youth and inexperience and was pleased to serve with you. I want to thank my good friends over, appropriately, on the right. You elected me your assistant. I've done the best I could and I thank you very much for the honor of serving you. I'm going to close, but I just want to close with this thought. When we go here, those of us that come back and those of us that don't, there will be times when we see each other. There will be times when our paths will cross. I think that what will be remembered won't be the Kotch decision, the raising of the gas tax, the meals and lodging tax, or an unbalanced budget. What will be remembered will be how we treated each other, and the respect that we showed for each other and the affection we showed each other. I think in that department, we've been second to none. 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. Since so many people have eluded to my having opinions, I feel that I must stand up, at least briefly, and express a few of them right now. Actually they would be somewhat repetitive of what you have already heard, because I don't think that it is just lip service when all of us have been just standing up and saying we've been working as a team. It really has been a team effort, both within our own Democratic caucus and across the aisles, between the Democrats and the Republicans. It's been an extraordinary session. I bought myself this little leather bound journal at the beginning of the two year session, when we were sitting around trying to decide how we were going to

organize ourselves. I said to my self, 'this is going to be historic. I'm going to keep my historic journal of these events. Years later, I will sit back and read it.' Of course, after the initial entry, which would have been sometime in December two years ago, I never had the time ever again to open up that journal, which is now covered with dust next to my bed. I have not even moved it from there because it has been such a action packed, fast moving, interesting session. I, for one, have been really, really honored to have been first elected by own caucus to serve here, but also to have had the opportunity to serve with all of the members of leadership and with all of the members of both caucuses. I think the Senate has really weathered a lot of storms and really come out of it on top and feeling good about ourselves, as the Senator from Kennebec, Senator Daggett, said. We've worked through some very difficult issues. We've advanced tremendously important public policies in ways that truly benefit the citizens of the State of Maine. I am very appreciative of having had that opportunity to serve here with you. I'm looking forward to future sessions. Thank you.

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

REPORTS OF COMMITTEES

House

Divided Report

The Majority of the Committee on **CRIMINAL JUSTICE** on Bill "An Act Amending the Membership of the Emergency Medical Services' Board"

H.P. 1745 L.D. 2219

Reported that the same **Ought to Pass** pursuant to Joint Order 2001 (H.P. 1703).

Signed:

Senators:

McALEVEY of York
O'GARA of Cumberland
DAVIS of Piscataquis

Representatives:

BLANCHETTE of Bangor
TOBIN of Dexter
QUINT of Portland
PEAVEY of Woolwich
SNOWE-MELLO of Poland
GERZOFISKY of Brunswick
WHEELER of Bridgewater

The Minority of the same Committee on the same subject reported that the same **Ought To Pass as Amended by Committee Amendment "A" (H-1121)** pursuant to Joint Order 2001 (H.P. 1703).

Signed:

Representatives:

POVICH of Ellsworth
O'BRIEN of Lewiston
MITCHELL of Vassalboro

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

Reports **READ**.

The Majority **OUGHT TO PASS** Report **ACCEPTED**, in concurrence.

READ ONCE.

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

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

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

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

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

After Recess

Senate called to order by the President.

The following proceedings were conducted after 12:01 a.m., Thursday, April 25, 2002.

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

PAPERS FROM THE HOUSE

Non-Concurrent Matter

JOINT ORDER - relative to recalling L.D. 2041, "An Act to Control Internet 'Spam'", from the legislative files.
H.P. 1740

In House, April 24, 2002, **READ** and **PASSED**.

In Senate, April 24, 2002, **READ** and **INDEFINITELY POSTPONED**, in **NON-CONCURRENCE**.

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

The Senate **ADHERED**.

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 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
(S "C" S-623)

In House, April 9, 2002, **ADHERED** to **PASSAGE TO BE ENGROSSED AS AMENDED BY HOUSE AMENDMENT "A" (H-1101)**.

In Senate, April 24, 2002, **PASSED TO BE ENGROSSED AS AMENDED BY SENATE AMENDMENT "C" (S-623)**, in **NON-CONCURRENCE**.

Comes from the House, **PASSED TO BE ENGROSSED AS AMENDED BY HOUSE AMENDMENT "A" (H-1101) AS AMENDED BY HOUSE AMENDMENT "B" (H-1124)** thereto, in **NON-CONCURRENCE**.

Senator **TREAT** of Kennebec moved the Senate **INSIST** and **ASK FOR A COMMITTEE OF CONFERENCE**.

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

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#347)

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

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

ABSENT: Senator: LEMONT

13 Senators having voted in the affirmative and 21 Senators having voted in the negative, with 1 Senator being absent, the motion by Senator **TREAT** of Kennebec to **INSIST** and **ASK FOR A COMMITTEE OF CONFERENCE**, **FAILED**.

The Senate **ADHERED**.

Senator **EDMONDS** of Cumberland moved the Senate **RECONSIDER** whereby it **ADHERED**.

The same Senator moved the Senate **RECEDE** and **CONCUR**.

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

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#348)

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

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

12 Senators having voted in the affirmative and 23 Senators having voted in the negative, the motion by Senator **EDMONDS** of Cumberland to **RECEDE** and **CONCUR**, **FAILED**.

Senator **SHOREY** of Washington moved the Senate **ADHERE**.

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 Waldo, Senator Longley.

Senator **LONGLEY:** Thank you, Mr. President, colleagues in the Senate. As we vote for this measure, I would like to go on the record as saying that it is the intent of this legislature to, as we do this modeling and get this information, that we get some data related to the numbers and the costs related to those workers who fall between 1992 and 2002. I understand, as we do this modeling, that the modeling information will come from these cases. This legislator is standing up here to say it's really important that we somehow keep an eye on these people in this group so we get an understanding of if the costs are exorbitant or are they nominal or what are they. Let's get the data. Thank you.

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

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

THE PRESIDENT: The Senator may pose his question.

Senator **MCALLEVEY:** It was explained to me earlier today that the state had a very difficult time getting the budget from the board. If that is, in fact, the case, what makes us believe that they are going to be able to put a model together and get that information back to us?

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

Senator **NUTTING:** Thank you, Mr. President, ladies and gentlemen of the Senate. That is a good question, a fair question. If you read Senate Amendment "C" that is before us now, the modeling that is going to be done to determine what the threshold is so we can start the stacking of an ankle and a shoulder injury in 2002. That modeling is going to be based on looking the cases from 1992 to 2002. It's already going to happen. But there has been some discussion about whether that data is going to be presented to the Labor Committee next year. That is what the good Senator from Waldo, Senator Longley, is talking about. This information is going to be generated by an actuary. That is why I am confident that it is actually going to happen.

THE PRESIDENT: The pending question before the Senate is the motion by the Senator from Washington, Senator Shorey to Adhere. 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 (#349)

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

NAYS: Senators: DAGGETT, EDMONDS, MARTIN, MICHAUD, RAND, TREAT

29 Senators having voted in the affirmative and 6 Senators having voted in the negative, the motion by Senator **SHOREY** of Washington to **ADHERE, PREVAILED.**

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

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

PAPERS FROM THE HOUSE

Non-Concurrent Matter

Resolve, to Fund the Operations of the Workers' Compensation Board for Fiscal Year 2002-03

S.P. 835 L.D. 2217
(S "A" S-626)

In Senate, April 24, 2002, **REFERRED** to the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS** and ordered printed.

Comes from the House, under suspension of the Rules, **READ TWICE** and **PASSED TO BE ENGROSSED**, without reference to a Committee, in **NON-CONCURRENCE.**

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

On motion by Senator **GOLDTHWAIT** of Hancock, the Senate **RECEDED.**

READ TWICE.

On further motion by same Senator, Senate Amendment "A" (S-626) **READ.**

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

Senator **GOLDTHWAIT:** Thank you, Mr. President, ladies and gentlemen of the Senate. This amendment to the bill would actually incorporate two of the provisions of the original bill. Those would be the provisions that would provide, from the Workers' Comp reserve, \$200,000 to the worker advocate program plus language that would prevent decrease in positions in the worker advocate program, and would also provide the \$4,000 plus for collective bargaining from the reserve fund. It does not provide the operating money from the reserve fund or the money for the computer technology program, which has not even been designed yet, and will not be until January 2003. Therefore, in my opinion, next year would be plenty of time to be thinking about providing that money. The reason that I have brought this amendment forward is out of my sense that, unfortunately, the Workers' Comp Board has been deadlocked for so long on so many important issues, including righting their own budget. They were not able to agree on producing a budget that would fund their own operation. Yet we are being asked to provide them with money from the reserve, in addition to the existing cap, that would keep them funded for another year. This is the same thing we did last year, when we said okay we'll do this one time, and spend this money from the reserve to keep this going for another year. Now we're in the same position. Now

we're saying we're going to do this for another year, and fund this for another year. Yet, again, we have a board that is deadlocked to the point where they can't produce a budget. They can't fulfill their statutory obligations to return money to the industry if they have exceeded in their reserve a certain percentage of their budget, 25 percent. They have rejected the idea of reforming their board. These issues, as we know painfully well, are terribly complicated. I do not mean this to sound as critical of the board as it may sound, but the fact is that they are entirely deadlocked. Until they come, in some way, to grips with the fact that they have simply got to undertake whatever if necessary to either restructure, or to begin to produce actual decisions, we are going to continue to find ourselves in the kind of situation that we are in over the other issues facing this legislature right now. So, my first impression was that I would simply oppose the bill to fund that budget in addition to their existing cap. Rather than do that and jeopardize what I think is a very important program for the workers, which is the worker advocate program, I have chosen instead to offer this amendment which protects that part of the Workers' Comp program. I am not willing to increase their operating budget at this point, which would remove any incentive for the board to revise their procedures and actually begin to turn out decisions. That is the basis for this amendment. I hope you will support 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 put this bill in, the Governor's bill, because I know all of the negotiations have fallen apart about the board's budget, the make-up of the board, and I'm very frustrated by that, like the good Senator from Hancock, Senator Goldthwait. I do know that, in the last year, the number of Workers' Comp injuries has increased. I think that is due to many many reasons. Low unemployment probably being one of them. It is because the number of Workers' Compensation cases have increased that cost to the board has increased. Exactly how much? We don't know because we don't have a budget from them. I'm frustrated by that as well. I know the advocates. I sponsored a bill for them last year, and we got them more staffing, and another couple of advocates. I just want to read from a memo I received from the Director of the Advocate Program. In the year 2000, the advocates handled 594 cases at formal hearings. Last year they handled 784 cases at formal hearings. In the year 2000, they handled 1,856 cases at mediation. In the year 2000, they had 2,247 cases. The advocate workload is way up. They are working very hard, doing an excellent job representing injured workers, and helping them at no cost to the injured workers. So, I appreciate the amendment offered by the good Senator from Hancock, Senator Goldthwait, because to me one of the most important things we have to preserve the funding for and make sure there aren't any lay-offs before January is the advocate program. My disagreement is that, in talking to some staff from the Workers' Comp Board, the other thing that would happen with the original bill, but not with the Senator from Hancock, Senator Goldthwait's, amendment is increase funding for what is called the May Program. The May Program is the program that is, I believe, now beginning to do a good job in penalizing insurance companies that challenge cases that shouldn't be challenged. It's amazing to me that some insurance companies are challenging 14 percent of the cases that come before them. Some insurance companies are challenging 96 percent of the

cases that come before them. That's a huge difference. So, I also feel that program needs to be funded. This is a very tough decision for me. I appreciate the spirit of the amendment. I think it protects, in my opinion, the most important thing that needs to be protected. I am concerned that it doesn't protect some of the other most important things as well. So, I'm going to be opposing the amendment. But I do want to say, again on record, that I am very frustrated that we don't have a budget from the board. This is why this is a very temporary fix to next year. It's going to make sure that the next legislature will have something to do in this subject. Thank you.

The Chair ordered a Division. 18 Senators having voted in the affirmative and 16 Senators having voted in the negative, the motion by Senator **GOLDTHWAIT** of Hancock to **ADOPT** Senate Amendment "A" (S-626), **PREVAILED**.

PASSED TO BE ENGROSSED AS AMENDED BY SENATE AMENDMENT "A" (S-626), without reference to a Committee, in **NON-CONCURRENCE**.

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

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

PAPERS FROM THE HOUSE

House Paper

Bill "An Act to Improve the Responsiveness of the Unemployment Insurance Program"

H.P. 1742 L.D. 2218

Committee on **LABOR** suggested and ordered printed.

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

Senator **KILKELLY** of Lincoln requested and received leave of the Senate for members and staff to remove their jackets for the remainder of this Session.

Senator **MARTIN** of Aroostook moved the **RULES BE SUSPENDED** for the purpose of **GIVING THIS BILL ITS TWO SEPARATE READINGS AT THIS TIME**.

The Chair ordered a Division. 19 Senators having voted in the affirmative and 15 Senators having voted in the negative, the motion by Senator **MARTIN** of Aroostook to **SUSPEND THE RULES** for the purpose of **GIVING THIS BILL ITS TWO SEPARATE READINGS AT THIS TIME**, **FAILED**.

Senator **MARTIN** of Aroostook moved the Bill and accompanying papers be **INDEFINITELY POSTPONED**, in **NON-CONCURRENCE**. Subsequently, same Senator requested and received leave of the Senate to withdraw his motion to **INDEFINITELY POSTPONE** the Bill and accompanying papers, in **NON-CONCURRENCE**.

On motion by Senator **MARTIN** of Aroostook, **READ ONCE**, without reference to a Committee.

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

Senator **EDMONDS:** Thank you, Mr. President, men and women of the Senate. This is the bill for part-time unemployment coverage. The change in the bill from the previous bill we looked at has to do with sunsetting the benefits to part-time workers to 2006, which is well before the REDAC money runs out. We're hoping that this will encourage people because it will take away any questions people have about whether or not the bill can be funded without causing any additional costs. So I hope you will join me in giving this much needed relief to part-time workers. Thank you.

ASSIGNED FOR SECOND READING LATER IN TODAY'S SESSION.

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 Recently Enacted Legislation
H.P. 1741 L.D. 2216
(H "A" H-1118; S "A" S-625)

This being an Emergency Measure and having received the affirmative vote of 35 Members of the Senate, with no Senators having voted in the negative, and 35 being more than two-thirds of the entire elected Membership of the Senate, was **PASSED TO BE ENACTED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

Emergency Resolve

Resolve, Regarding Legislative Review of Chapter 296: Patient Brochure and Poster on Dental Amalgam and Alternatives, a Major Substantive Rule of the Department of Human Services
H.P. 1637 L.D. 2140
(S "D" S-627 to C "A" H-1046)

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

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

Act

An Act Amending the Membership of the Emergency Medical Services' Board
H.P. 1745 L.D. 2219

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

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

REPORTS OF COMMITTEES

House

Committee of Conference

The Committee of Conference on the disagreeing action of the two branches of the Legislature, on Bill "An Act to Implement the Recommendations of the Commission to Develop a Plan to Implement the Closure of State Liquor Stores"
H.P. 1623 L.D. 2123

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

That the House **RECEDE** from Passage to be Enacted; **RECEDE** from Passage to be Engrossed as Amended by Committee Amendment "A" (H-1049); **RECEDE** from Adoption of Committee Amendment "A" (H-1049) and **INDEFINITELY POSTPONE** same; **READ** and **ADOPT** Committee of Conference Amendment "A" (H-1122); and **PASS THE BILL TO BE ENGROSSED AS AMENDED BY COMMITTEE OF CONFERENCE AMENDMENT "A" (H-1122)**.

That the Senate **RECEDE** from Indefinite Postponement and **CONCUR** with the House.

On the Part of the Senate:

Senator **GOLDTHWAIT** of Hancock
Senator **DAGGETT** of Kennebec
Senator **MILLS** of Somerset

On the Part of the House:

Representative **TUTTLE** of Sanford
Representative **PATRICK** of Rumford
Representative **MAYO** of Bath

Comes from the House with the Committee of Conference Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE OF CONFERENCE AMENDMENT "A" (H-1122)**.

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

The Senate **RECEDED** from whereby the Bill and accompanying papers were **INDEFINITELY POSTPONED**.

The Senate **CONCURRED** to **PASSAGE TO BE ENGROSSED AS AMENDED BY COMMITTEE OF CONFERENCE AMENDMENT "A" (H-1122)**.

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

Senate at Ease.

Senate called to order by the President.

ORDERS OF THE DAY

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

Emergency Resolve

Resolve, Regarding Legislative Review of Chapter 296: Patient Brochure and Poster on Dental Amalgam and Alternatives, a Major Substantive Rule of the Department of Human Services
H.P. 1637 L.D. 2140
(S "D" S-627 to C "A" H-1046)

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

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

(In Senate, April 25, 2002, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1046) AS AMENDED BY SENATE AMENDMENT "D" (S-627)** thereto, in **NON-CONCURRENCE**.)

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

On motion by Senator **MARTIN** of Aroostook, the Senate **RECONSIDERED** whereby the Bill was **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1046) AS AMENDED BY SENATE AMENDMENT "D" (S-627)** thereto.

On further motion by same Senator, the Senate **RECONSIDERED** whereby it **ADOPTED** Committee Amendment "A" (H-1046) as Amended by Senate Amendment "D" (S-627) thereto.

On further motion by same Senator, Senate Amendment "D" (S-627) to Committee Amendment "A" (H-1046) **INDEFINITELY POSTPONED**.

On further motion by same Senator, Senate Amendment "E" (S-628) to Committee Amendment "A" (H-1046) **READ** and **ADOPTED**.

Committee Amendment "A" (H-1046) as Amended by Senate Amendment "E" (S-628) thereto, **ADOPTED**, in **NON-CONCURRENCE**.

PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1046) AS AMENDED BY SENATE AMENDMENT "E" (S-628) thereto, in **NON-CONCURRENCE**.

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

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.

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

H.P. 1623 L.D. 2123
(CC "A" H-1122)

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

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

SECOND READERS

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

House

Bill "An Act to Improve the Responsiveness of the Unemployment Insurance Program"

H.P. 1742 L.D. 2218

READ A SECOND TIME.

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

Senator **GOLDTHWAIT:** Thank you, Mr. President, ladies and gentlemen of the Senate. I have the following concerns about this bill. We are, once again, in the middle of the night working on a bill that I don't understand very well. I, once again, am hearing conflicting reports about whether it has a cost or doesn't have a cost. Whether it has been exposed to some reasonable public scrutiny, or no it hasn't. So I'm back in my position of voting against it simply because it doesn't seem to me to be an appropriate bill to have been brought back before the body having just been vetoed before the last sunrise. In addition, the Reed Act money has several possible uses. It can be used to pay for regular unemployment benefits. It can be used to pay for maintaining the state's unemployment compensation public employment system. It can be used for technology or equipment or products to improve unemployment and unemployment services. It can be used to pay for personnel to deliver unemployment employment services. It can be used to facilitate infrastructure costs to maintain a state system of unemployment and public employment service delivery. I'm not aware that there has ever been a public debate about how that Reed Act money should be used. I'm reluctant to commit it to this particular use for a limited period of time. I'm not quite sure why would create a benefit program and sunset it. For all of those reasons, I will be voting against the pending motion and hope you will join me. Thank you.

The Chair ordered a Division.

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

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#350)

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

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

19 Senators having voted in the affirmative and 16 Senators having voted in the negative, was **PASSED TO BE ENGROSSED**, in concurrence.

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

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

PAPERS FROM THE HOUSE

Non-Concurrent Matter

Resolve, to Fund the Operations of the Workers' Compensation Board for Fiscal Year 2002-03

S.P. 835 L.D. 2217
(S "A" S-626)

In House, April 24, 2002, **PASSED TO BE ENGROSSED.**

In Senate, April 25, 2002, **PASSED TO BE ENGROSSED AS AMENDED BY SENATE AMENDMENT "A" (S-626), in NON-CONCURRENCE.**

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

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

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

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#351)

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 **NUTTING** of Androscoggin to **RECEDE** and **CONCUR, PREVAILED.**

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

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

ENACTORS

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

Act

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
(S "C" S-623)

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

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

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:

Resolve

Resolve, Regarding Legislative Review of Chapter 296: Patient Brochure and Poster on Dental Amalgam and Alternatives, a Major Substantive Rule of the Department of Human Services
H.P. 1637 L.D. 2140
(S "E" S-628 to C "A" H-1046)

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

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

Senator **BRENNAN** of Cumberland was granted unanimous consent to address the Senate on the Record.

Senator **BRENNAN**: Thank you, Mr. President, men and women of the Senate. I move that when we adjourn sine die that we do so in the memory of Senator Joel Abromson. From 1994 until January of this year, Senator Joel Abromson served in this body with distinction, intelligence, and good humor. In fact, many people feel that his humor and his wit exceeded that of the Senator from Sagadahoc, Senator Small. At least that was my opinion. During that time, I had the opportunity for six years to serve with Senator Abromson and I know that he had a strong

commitment to quality education, health care, civil right, and to ending discrimination. But most importantly, I remember the last year and a half, and I think we all remember the last year and a half, that Senator Abromson struggled with cancer. During that very difficult time, he demonstrated uncommon courage. He never failed in his duty as a Senator. He never failed in his duty to serve the citizens of Senate District 27 or of this state. He continued to show tremendous dignity and integrity during that very difficult time. So tonight when we adjourn in his honor, I know that he won't be here physically, but his spirit and presence will be felt. Thank you.

Senate at Ease.

Senate called to order by the President.

At this point, a message was received from the House of Representatives, borne by Representative COLWELL of Gardiner, informing the Senate that the House had transacted all business before it and was ready to Adjourn Without Day.

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 Improve the Responsiveness of the Unemployment Insurance Program

H.P. 1742 L.D. 2218

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 Cumberland, Senator Turner.

Senator **TURNER**: Thank you, Mr. President. Good morning, ladies and gentlemen of the Senate. Before you enact this last piece of legislation that is before us, I do want to make sure you understand that it, in fact, does have a \$13 million unemployment tax increase associated with it. That is because, with the implementation of part-time benefits, those benefits will result a decrease, which has been correctly pointed out, from Schedule B down to A. In the third year out, we will go back up to Schedule B. That is going to result in a multi-million dollar deficiency, which will be made up by a tax increase of \$13 million on employers in the year 2006. So, vote for this if you must, but vote for it recognizing that you are voting for a tax increase on Maine's employers. Thank you.

THE PRESIDENT: The pending question before the Senate is Enactment. A Roll Call has been ordered. Is the Senate ready for the question?

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#352)

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

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

ABSENT: Senator: CARPENTER

20 Senators having voted in the affirmative and 14 Senators having voted in the negative, with 1 Senator being absent, was **PASSED TO BE ENACTED** and having been signed by the President was presented by the Secretary to the Governor for his approval.

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

ENACTORS

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

Resolve

Resolve, to Fund the Operations of the Workers' Compensation Board for Fiscal Year 2002-03

S.P. 835 L.D. 2217

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

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

Senator **TURNER:** Thank you, Mr. President. I can't resist. The sun is not up yet. This board, as others have pointed out, is truly a dysfunctional operation. How it got there, we can discuss forever. The fact is that it is dysfunctional. I think to provide the amount of money that this resolve suggests is an irresponsible act. I think the amendment that we've now defeated, that was offered by the good Senator from Hancock, Senator Goldthwait, was a responsible action on our part. It kept the most critical piece of this program going. Now we're going to flood an

operation that could not even decide what its budget would be with money to keep it going. I would ask that you vote against this motion. Thank you.

THE PRESIDENT: The pending question before the Senate is Final Passage. 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 (#353)

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

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

ABSENT: Senator: CARPENTER

18 Senators having voted in the affirmative and 16 Senators having voted in the negative, with 1 Senator being absent, was **FINALLY PASSED** and having been signed by the President was presented by the Secretary to the Governor for his approval.

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

ORDERS

Senate Order

On motion by Senator **SMALL** of Sagadahoc, the following Senate Order:

S.O. 33

ORDERED, that a message be sent to the House of Representatives informing that Body that the Senate has transacted all business before it and is ready to Adjourn Without Day.

READ and PASSED.

The President appointed the Senator from Sagadahoc, Senator **SMALL**, to deliver the message to the House of Representatives. The Sergeant-At-Arms escorted the Senator to the House of Representatives.

Subsequently, the Senator from Sagadahoc, Senator **SMALL**, reported that she had delivered the message with which she was charged.

LEGISLATIVE RECORD - SENATE, THURSDAY, APRIL 25, 2002

On motion by President Pro Tem **MICHAUD** of Penobscot, the following Senate Order:

S.O. 34

ORDERED, that a message be sent to Governor Angus S. King, Jr. informing him that the Senate has transacted all business before it and is ready to Adjourn Without Day.

READ and PASSED.

The President appointed President Pro Tem **MICHAUD** of Penobscot, to deliver the message to the House of Representatives. The Sergeant-At-Arms escorted President Pro Tem **MICHAUD** of Penobscot to the House of Representatives.

Subsequently, President Pro Tem **MICHAUD** of Penobscot reported that he had delivered the message with which he was charged.

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

Senate at Ease.

Senate called to order by the President.

On motion by Senator **SAVAGE** of Knox, the Honorable **RICHARD A. BENNETT**, President of the Senate, declared the Second Regular Session of the 120th Legislature, **ADJOURNED SINE DIE** at 4:47 in the morning in memory of and lasting tribute to Senator I. Joel Abromson of Cumberland County.