

# MAINE STATE LEGISLATURE

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**Legislative Record**  
**House of Representatives**  
**One Hundred and Twenty-First Legislature**  
**State of Maine**

**Volume III**

**Second Special Session**

April 8, 2004 - April 30, 2004

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ONE HUNDRED AND TWENTY-FIRST LEGISLATURE  
SECOND SPECIAL SESSION  
35th Legislative Day  
Tuesday, April 13, 2004

The House met according to adjournment and was called to order by the Speaker.

Prayer by The Reverend Jacob Fles, Christ Episcopal Church, Gardiner.

National Anthem by Fryeburg Academy Singers.

Pledge of Allegiance.

The Journal of yesterday was read and approved.

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Representative DUNLAP of Old Town assumed the Chair.  
The House was called to order by the Speaker Pro Tem.

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**ORDERS**

On motion of Representative WHEELER of Kittery, the following Joint Resolution: (H.P. 1461) (Under suspension of the rules, cosponsored by Senator LEMONT of York and Representatives: ANDREWS of York, ASH of Belfast, AUSTIN of Gray, BARSTOW of Gorham, BEAUDETTE of Biddeford, BERUBE of Lisbon, BLANCHETTE of Bangor, BOWEN of Rockport, BOWLES of Sanford, BREault of Buxton, BROWN of South Berwick, BROWNE of Vassalboro, BRUNO of Raymond, CAMPBELL of Newfield, CARR of Lincoln, CHURCHILL of Orland, CLARK of Millinocket, COLLINS of Wells, CRAVEN of Lewiston, CRESSEY of Baldwin, CROSTHWAITE of Ellsworth, CUMMINGS of Portland, CURLEY of Scarborough, DAVIS of Falmouth, DUNLAP of Old Town, DUPLISSIE of Westbrook, DUPREY of Medway, EARLE of Damariscotta, FINCH of Fairfield, GERZOFKY of Brunswick, GOODWIN of Pembroke, GROSE of Woolwich, HATCH of Skowhegan, HEIDRICH of Oxford, HONEY of Boothbay, HOTHAM of Dixfield, HUTTON of Bowdoinham, JENNINGS of Leeds, JOY of Crystal, KETTERER of Madison, KOFFMAN of Bar Harbor, LEDWIN of Holden, LEWIN of Eliot, LORING of the Penobscot Nation, LUNDEEN of Mars Hill, MAIETTA of South Portland, MAKAS of Lewiston, MARLEY of Portland, McGLOCKLIN of Embden, MCKENNEY of Cumberland, McLAUGHLIN of Cape Elizabeth, MILLETT of Waterford, MILLS of Farmington, MILLS of Cornville, MOODY of Manchester, NUTTING of Oakland, O'BRIEN of Augusta, PARADIS of Frenchville, PATRICK of Rumford, PELLON of Machias, PERCY of Phippsburg, PERRY of Calais, PINEAU of Jay, RECTOR of Thomaston, RICHARDSON of Brunswick, RICHARDSON of Skowhegan, ROGERS of Brewer, ROSEN of Bucksport, SAMPSON of Auburn, SAVIELLO of Wilton, SHIELDS of Auburn, SMITH of Monmouth, SNOWE-MELLO of Poland, STONE of Berwick, SUSLOVIC of Portland, SYKES of Harrison, THOMPSON of China, TOBIN of Windham, TREADWELL of Carmel, USHER of Westbrook, VAUGHAN of Durham, WALCOTT of Lewiston, WOODBURY of Yarmouth, WOTTON of Littleton, YOUNG of Limestone, Senators: BENNETT of Oxford, BLAIS of Kennebec, BROMLEY of Cumberland, BRYANT of Oxford, CARPENTER of York, CATHCART of Penobscot, President DAGGETT of Kennebec, DAMON of Hancock, DAVIS of Piscataquis, DOUGLASS of Androscoggin, EDMONDS of Cumberland, GAGNON of Kennebec, GILMAN of Cumberland, HALL of Lincoln, HATCH of Somerset, KNEELAND of Aroostook, LAFOUNTAIN of York, MARTIN of Aroostook, MAYO of Sagadahoc, MITCHELL of Penobscot, NASS of York, PENDLETON of Cumberland, ROTUNDO of Androscoggin, SAVAGE of Knox, SAWYER of Penobscot, SHOREY of

Washington, STANLEY of Penobscot, President Pro Tem TREAT of Kennebec, TURNER of Cumberland, WESTON of Waldo, WOODCOCK of Franklin, YOUNGBLOOD of Penobscot) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 214)

**JOINT RESOLUTION MEMORIALIZING THE CONGRESS OF THE UNITED STATES TO CONTINUE ITS SUPPORT AND ADVOCACY FOR THE MILITARY BASES IN MAINE**

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

WHEREAS, within the year, Secretary of Defense Donald Rumsfeld, through the Base Realignment and Closure (BRAC) Commission, will make recommendations about which military installations are to be considered for closure in cost-cutting measures for the military and has indicated that reductions may total 25% or an estimated 100 bases; and

WHEREAS, the State of Maine has 3 distinct and important military installations that are potentially at risk for closure: the naval shipyard in Kittery, the Naval Air Station Brunswick and the Naval Computer and Telecommunications Area Master Station, Atlantic Cutler Detachment; and

WHEREAS, the naval shipyard in Kittery is one of only 4 public shipyards in the Nation, is vital to our maritime strength and is of major importance to 2 states' local economies; and

WHEREAS, Naval Air Station Brunswick is the only fully capable air base in the northeastern United States, does not encroach on the civilian community and has plenty of space for expansion, even for housing other branches of the military. Naval Air Station Brunswick is on the coast, and aircraft can take off and land without flying over major centers of population; and

WHEREAS, the Cutler detachment's primary mission is Very Low Frequency communications with submarines in the Atlantic Ocean and Mediterranean Sea; the installation has the most powerful radio transmitter in the world and is staffed with 84 civil service workers, who ensure the signal stays in the wind to the submarine fleet; and

WHEREAS, the people of the State of Maine have long been at the forefront of our Nation's defense, are first to join and send troops in any conflict and have a strong tradition of support and appreciation for the bases within our borders; now, therefore, be it

RESOLVED: That We, your Memorialists, take this opportunity to convey our appreciation for the advocacy and support for our 3 bases that the Congress of the United States and the Maine Congressional Delegation have provided over the years, and we strongly urge the Congress of the United States to consider the importance of these installations in this time of war on terrorism and the vital need to protect our Nation; 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 Senate, to the Speaker of the United States House of Representatives and to each Member of the Maine Congressional Delegation.

**READ and ADOPTED.**

Sent for concurrence.

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By unanimous consent, all matters having been acted upon were **ORDERED SENT FORTHWITH.**

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On motion of Representative BUNKER of Kossuth Township, the following House Order: (H.O. 54)

WHEREAS, the Constitution of Maine, Article IV, Part First, Section 7 provides that the members of the House of Representatives shall choose their speaker, clerk and other officers; and

WHEREAS, in accordance with House Order 7 of the One Hundred Twenty-first Legislature, Representative Patrick Colwell was declared Speaker of the House of Representatives for a term to expire on December 1, 2004; and

WHEREAS, in accordance with House Rule 523, a rule or order of the House may be dispensed with if 2/3 of the members present consent to the dispensation; now, therefore, be it

ORDERED, that the House of Representatives of the One Hundred Twenty-first Legislature, by a vote of 2/3 of its members present and voting, hereby removes Speaker Patrick Colwell as the presiding officer of the House of Representatives; and be it further

ORDERED, that in accordance with Mason's Manual of Legislative Procedure, Section 581, the House of Representatives elect a presiding officer pro tempore until a new presiding officer is elected in accordance with this order; and be it further

ORDERED, that the House of Representatives conduct a new election to fill the vacancy in the Office of the Speaker of the House of Representatives within 3 calendar days of the passage of this order.

**READ.**

The SPEAKER PRO TEM: The Chair recognizes the Representative from Kossuth Township, Representative Bunker.

Representative **BUNKER**: Mr. Speaker, Men and Women of the House. I don't know if you folks know how difficult this is for me or not, but I will say at 5:30 this morning I still hadn't fallen asleep. For anybody behind closed doors to have anything to say that I am doing this here this morning because I am disloyal or I don't believe in this body or this chamber, you have another thing coming, ladies and gentlemen.

This Order was debated many times last session. I was always a staunch opponent that this is an improper thing to do. I saw daily things going on that I had never seen in my first eight years in and out of this body. I saw things happening that made me feel less enthusiastic about the body that I preside in. I have never ever had any intentions ever to preside or appear at the other end of this hall if that gives you any indication of where my heart lies. I think and I highly respect each and every member of this body from both comers and from whether you are an Independent, Green, Democrat or Republican. I do not believe that this order before you should have anything to do with partisanship. I will argue until the cows come home that this is an order that talks about our institution, our end of the hall, our responsibilities under the Constitution, our individual responsibilities to our constituents to ensure that this body and this part of the legislative balancing procedures is upheld and works in the open and fair and impartial way that I saw it operate for the first eight years of my time in this body or during the time that I was unelected and not here and came back to visit.

Ladies and gentlemen, there are things that I have seen and I don't want to recount them all, but I want you to know that when I first started this process, I didn't intend to speak. Isn't that a funny joke when it comes to people standing up and saying that they didn't intend to speak on your own order? I wish the order in accordance with Mason's Manual and the way we elected folks in this body would have been simply a very quiet endorsement or non-endorsement of the way this body has been operating

without having to speak and without having to speak about issues that everybody in this body knows in their heart and has seen for the last two years.

Thanks to the professional Clerk of the House that we have and her indulgence of me yesterday, she pointed out to me that Mason's and the way we elect folks in this body is not the way that this body decides, when it decides to take an action that is addressed in this Joint Order. That was news to me after much research with other folks that have equal stature as our good Clerk and knowledge. I do defer to her and agree that after our election process a year and a half ago, two years ago, we memorialized a House Order (H.O. 7), which basically placed the various people, including the one in this House Order. After that happens, ladies and gentlemen, that then invokes one of our House Rules. It says to dispense with a House Order takes two-thirds vote. The misunderstanding that many of us had over the years that the person that presides over this auspicious body does so by the will of the majority of this body by technicality of that Joint Order is not correct. I stand here to inform you of that.

I want you to know that I made great pains in writing this Joint Order not to list a laundry list of issues. I don't think that is what we are here for. What we are here for, ladies and gentlemen, is to make sure that everybody in this body, from one corner to the other corner, to the back row to the front row is allowed to get up and introduce amendments to speak, to be heard, to be listened to and whether we like it or not, if they do it for more than three times then we give them permission to speak as many times as they darn well please. Ladies and gentlemen, that has been curtailed in many ways in recent months and in the first term as well.

When I went out to speak to people in the public for my first three terms of my legislative process when I spoke to young folks, I told them that we have the most open Legislature in the United States. I bragged that anybody that got their Representative to present a bill would have its day in court and be heard by the committee of jurisdiction and will have a fair and impartial presentation before that committee and the system would take it from that point on. They may prevail or they may not. It is not somebody like a chair of a committee or a speaker or somebody in one of our corners making determinations on how a certain bill should come out of committee or how a certain bill should be voted on or how a certain bill should be maneuvered on the floor in detriment to others who have opposing views. I do respectfully submit that that has happened on several occasions. I have seen people, a female crying as she voted on something that was not the way she wanted to vote, but she promised leadership in some format that she would vote that way.

I have seen people being redressed for improper voting on the floor. This has never happened in my experience, the first eight years of experiencing and out of this body on this side of the aisle. I wouldn't go so far as to speak for what happens on the other side of the aisle, but I believe my experience is that you folks have open communication with your leadership as well. I stood on the floor here and saw tabling motions being made because a Representative stood up and made a tabling motion and instead of calling a recess and bringing all of the parties necessary to that issue down front and trying to resolve the issue, I saw that immediately we moved to an aisle fight over the tabling motion. I think that is inappropriate, ladies and gentlemen, our body has never done those type of things. We are trying to resolve them with the least amount of resistance, the least amount of fighting. I know we had a very bad experience this year on a majority vote of a certain budgetary document. I stand by my vote as voting for that majority, but I also know that when I

sat in this seat and conversed with the people around me that the vote on the other side of the aisle wanted to take a vote that they thought was necessary.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Falmouth, Representative Davis. For what purpose does the Representative rise?

Representative DAVIS: Mr. Speaker, I would like to know what the Representative is talking about. He seems to be rambling. Would he please stick to the point?

On POINT OF ORDER, Representative DAVIS of Falmouth asked the Chair if the remarks of Representative BUNKER of Kossuth Township were germane to the pending question.

The Chair RULED the comments of Representative BUNKER of Kossuth Township are germane to the pending question.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Kossuth Township, Representative Bunker.

Representative BUNKER: Mr. Speaker, Ladies and Gentlemen of the House. I was speaking right on the point about the operation and the policies and the procedures and the way we deal our business with this auspicious body. I do disagree with my good friend in that point. I would ask you to rule in accordance with that.

The SPEAKER PRO TEM: The Chair would rule that the Representative is speaking in accordance with the order before us. The Representative may proceed.

Representative BUNKER: Mr. Speaker, Ladies and Gentlemen of the House. This is very difficult, because I believe so much in what we do here. I will not go on, except to ask the courtesy and the requirement of 536, Sub 2 of Mason's, which requires that when we are dealing with appointed people who are elected by ballot to be dealt with any issues surrounding that election to also be done by ballot. I think it is only fair, as I said earlier, that I would not have gotten up and spoke if this was a majority vote. I would have sat in my chair and let this body, without any discussion, decide if this is the proper way we want this body to operate or did we want some change. I was satisfied with that without any talk. Because of the increased threshold of the two-thirds required for passage, I don't think it is fair to make this a partisan issue, fair to place our independence, our dreams, our Democrats, our Republicans on any higher standard than the one that is a precedent of how we elect the person in question in this order. In consistency with Rule 536, Sub 2, any votes surrounding that, including procedural motions should be dealt with the same courtesies of the members that I feel deserve the same respect that they did when the initial elections occurred. I think it is very important.

I would just offer one thing in closing here. If the threshold is so high as it now is and there is no issue in the folks that have been spoken to quite vigorously in the last day or so have made up their minds to support or not support this motion. I would respectfully submit to the chair, what harm would there be to follow Mason's, our prior way of voting on issues of this nature and allow this to be dispensed with as expeditiously as possible with a paper ballot. In accordance with Mason's, that is what I request. Thank you.

Representative RICHARDSON of Brunswick moved that House Rule 524 be **SUSPENDED**.

Representative BUNKER of Kossuth Township **OBJECTED** to **SUSPENDING** House Rule 524.

Subsequently, Representative BUNKER of Kossuth Township **WITHDREW** his **OBJECTION** to **SUSPENDING** House Rule 524.

Subsequently, by unanimous consent, House Rule 524 was **SUSPENDED**.

Representative BUNKER of Kossuth Township moved the when the vote is taken, it be taken by paper ballot.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Kossuth Township, Representative Bunker.

Representative BUNKER: Mr. Speaker, Ladies and Gentlemen of the House. I initially had asked you to adhere to the 536, Sub 2. Subsequent to that, I think the proper motion would be that I formally move that a paper ballot be made in any votes pertaining to this Joint Order.

THE SPEAKER PRO TEM: The Chair would rule that the request is out of order pursuant to Mason's Section 536, Subsection 1 and the preponderance of the tradition in the House.

The Chair RULED that in accordance with Section 536, Subsection 1 of Mason's Manual and the preponderance of the tradition in the House of Representatives, the motion was out of order.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Kossuth Township, Representative Bunker.

Representative BUNKER: Mr. Speaker, Ladies and Gentlemen of the House. I would challenge that ruling of the Chair.

Representative BUNKER of Kossuth Township **APPEALED** the **RULING OF THE CHAIR**.

On motion of Representative WATSON of Bath, the **APPEAL** was **TABLED** and later today assigned.

Representative RICHARDSON of Brunswick moved that the House Order be **INDEFINITELY POSTPONED**.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Kossuth Township, Representative Bunker.

Representative BUNKER: Mr. Speaker, Men and Women of the House. I know it sounded kind of crazy as things are going on here. Again, I could have objected to that, but the bottom line here is it takes 51 percent of the people voting in present to sustain this Indefinite Postponement and not have an actual vote on the question in the House Order before us. This is strictly a parliamentary move. It has nothing to do with the vote itself. I would ask you folks to join with me to support through a division the Indefinite Postponement and vote your hearts. Please think about this institution when you push your light. This is not an R, D, I or Green thing. It is an institutional getting ourself focused back on what our constitutional requirements of checks and balances are and keeping the other side of this building in check as well as maintaining our moral obligation to the people to not just rubber stamp something that may come up from the second floor. I would ask you to support a division on this Indefinite Postponement, to oppose it.

The Chair ordered a division on the motion to **INDEFINITELY POSTPONE** the House Order.

A vote of the House was taken. 80 voted in favor of the same and 55 against, and accordingly the House Order was **INDEFINITELY POSTPONE**.

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The Speaker resumed the Chair.

The House was called to order by the Speaker.

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**SPECIAL SENTIMENT CALENDAR**

In accordance with House Rule 519 and Joint Rule 213, the following items:

**Recognizing:**

the members of the Portland High School Varsity Basketball Team who have won the Class A State Championship. All team members are to be commended for their efforts and hours of dedication. We wish captain Eric Shone, and team members Jarod Brownlee, Brandon Dorsett, David Philbrook, Joe Murphy, Lyle Divinsky, Jake Johnston, Lavon McKoy, Tyler Emmons, Rocco Toppi, Quan Morgan, Riko Bol, Michele Bamani, Eric Nelson, Tut Diang, David Berry and Shane Morong; coaches Joseph Russo, Todd Day, Joe Giordano and Carmine Rumo; and trainer Audrey McKenzie continued success in their future endeavors;

(HLS 1453)

Presented by Representative NORBERT of Portland. Cosponsored by Senator BRENNAN of Cumberland, Senator STRIMLING of Cumberland, Representative DUDLEY of Portland, Representative EDER of Portland, Representative SUSLOVIC of Portland, Representative ADAMS of Portland, Representative BRANNIGAN of Portland, Representative MARLEY of Portland, Representative CUMMINGS of Portland, Representative DAVIS of Falmouth, Representative DAIGLE of Arundel.

On **OBJECTION** of Representative NORBERT of Portland, was **REMOVED** from the Special Sentiment Calendar.

**READ.**

The **SPEAKER**: The Chair recognizes the Representative from Portland, Representative Norbert.

Representative **NORBERT**: Mr. Speaker, Ladies and Gentlemen of the House. I rise with great pride today, along with my fellow Portland legislators and a couple of other legislators who are alums of the great Portland High School, to salute the Class A state boy's basketball champions, the Portland High School Bulldogs who are with us in the gallery today. We are very excited. We all know it has been an exciting morning. The truth is, this is what the real excitement has been about. This is why all the people have been filling in the back part of this room and in the gallery. It is to see the Portland High School boy's basketball champs. They had a terrific season. They were 21 and 1 and they defeated a very valiant effort by the Brunswick Dragons. In fact, it was one of the most heroic single efforts by the Brunswick Dragons, Ralph Nims, a 46-point game from Ralph Nims. My hat goes off to him and to the great Brunswick team, but even that was not enough to hold back the great Portland High School Bull dogs who won the championship. I just want to say that as an alumni of the school, I am very proud to be welcoming back for the second time in my short time here the team as state champions. My hat goes off to coach Joe Russo, all the players on the team, to the assistant coaches, the trainers and to the whole school. I know there are others who wish to speak, but we are just thrilled that you all could be here. We are very proud of you in Portland.

The **SPEAKER**: The Chair recognizes the Representative from Falmouth, Representative Davis.

Representative **DAVIS**: Mr. Speaker, Men and Women of the House. I want to congratulate the Portland High Basketball Team and especially the coaches Joe Russo and Joe Giordano. Joe Giordano was a student of mine. My heart beats blue congratulations, blue and white.

The **SPEAKER**: The Chair recognizes the Representative from Portland, Representative Cummings.

Representative **CUMMINGS**: Mr. Speaker, Ladies and Gentlemen of the House. It is wonderful to have a winning team. It is a blessing to have a team of winners and that this exactly what you have. I congratulate the boy's team for not only their excellent play, but their classiness and their victories and their single defeat. It is my honor today to offer two tee shirts. One is extra large and it won't go to Representative Richardson from Brunswick, it will go to the other one, Representative Gerzofsky who is not in the chamber. I will take great pride in having him wear this shirt and Representative Richardson from Brunswick, I hope you wear this with pride as well. Representative O'Brien, tomorrow the Deering Girl's team will be up.

Subsequently, was **PASSED** and sent for concurrence.

By unanimous consent, all matters having been acted upon were **ORDERED SENT FORTHWITH**.

**REPORTS OF COMMITTEE**

**Divided Report**

Majority Report of the Joint Select Committee on **REGIONALIZATION AND COMMUNITY COOPERATION** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-888)** on Bill "An Act To Encourage Voluntary Efficiency in Maine's School Systems and Related Costs Savings"

(H.P. 1422) (L.D. 1921)

Signed:

Senators:

DAMON of Hancock  
 ROTUNDO of Androscoggin  
 WOODCOCK of Franklin

Representatives:

McLAUGHLIN of Cape Elizabeth  
 SUSLOVIC of Portland  
 TARDY of Newport  
 MILLS of Farmington  
 BARSTOW of Gorham  
 BOWEN of Rockport  
 O'BRIEN of Lewiston  
 KOFFMAN of Bar Harbor  
 BENNETT of Caribou

Minority Report of the same Committee reporting **Ought Not to Pass** on same Bill.

Signed:

Senator:

BLAIS of Kennebec

Representatives:

PEAVEY-HASKELL of Greenbush  
 MURPHY of Kennebunk

**READ.**

Representative McLAUGHLIN of Cape Elizabeth moved that the House **ACCEPT** the Majority **Ought to Pass as Amended** Report.

On further motion of the same Representative, **TABLED** pending her motion to **ACCEPT** the Majority **Ought to Pass as Amended** Report and later today assigned.

**ENACTORS  
Acts**

An Act To Further Implement the Recommendations of the Commission To Improve the Sentencing, Supervision, Management and Incarceration of Prisoners and the Recommendations of the Commission To Improve Community Safety and Sex Offender Accountability

(H.P. 1409) (L.D. 1903)  
(C. "A" H-860)

Was reported by the Committee on **Engrossed Bills** as truly and strictly engrossed.

On motion of Representative RICHARDSON of Brunswick, was **SET ASIDE**.

On further motion of the same Representative, **TABLED** pending **PASSAGE TO BE ENACTED** and later today assigned.

The following items were taken up out of order by unanimous consent:

**UNFINISHED BUSINESS**

The following matters, in the consideration of which the House was engaged at the time of adjournment yesterday, had preference in the Orders of the Day and continued with such preference until disposed of as provided by House Rule 502.

Resolve, Regarding Legislative Review of Portions of Chapter 1: Procedures and Portions of Chapter 3: Maine Clean Election Act and Related Provisions, Major Substantive Rules of the Commission on Governmental Ethics and Election Practices (EMERGENCY)

(H.P. 1392) (L.D. 1868)  
(C. "A" H-835)

- In House, **FINALLY PASSED** on April 7, 2004.

- In Senate, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-835) AS AMENDED BY SENATE AMENDMENT "A" (S-504) thereto AND SENATE AMENDMENT "A" (S-503) in NON-CONCURRENCE.**

**TABLED** - April 12, 2004 (Till Later Today) by Representative RICHARDSON of Brunswick.

**PENDING - FURTHER CONSIDERATION.**

Representative CLARK of Millinocket moved that the House **RECEDE AND CONCUR.**

The SPEAKER: The Chair recognizes the Representative from Raymond, Representative Bruno.

Representative BRUNO: Mr. Speaker, May I pose a question through the Chair?

The SPEAKER: The Representative may pose his question.

Representative BRUNO: Mr. Speaker, Ladies and Gentlemen of the House. To the Chair of the committee, in reading over this amendment it says that these rules do not take affect until January 2005. Is that the intent of the legislation that the Ethics Commission does not interpret these rules for this coming election and wait until January to enforce these rules?

The SPEAKER: The Representative from Raymond, Representative Bruno has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Millinocket, Representative Clark.

Representative CLARK: Mr. Speaker, Ladies and Gentlemen of the House. I don't say this very often, but the good Representative from Raymond is correct.

Subsequently, the House voted to **RECEDE AND CONCUR.**

By unanimous consent, all matters having been acted upon were **ORDERED SENT FORTHWITH.**

**HOUSE DIVIDED REPORT - Majority (7) Ought Not to Pass - Minority (4) Ought to Pass as Amended by Committee Amendment "A" (H-863) - Committee on BUSINESS, RESEARCH AND ECONOMIC DEVELOPMENT on Bill "An Act To License Home Building and Improvement Contractors"**  
(H.P. 1137) (L.D. 1551)

**TABLED** - April 8, 2004 (Till Later Today) by Representative PELLON of Machias.

**PENDING - ACCEPTANCE OF EITHER REPORT.**

Representative SULLIVAN of Biddeford moved that the House **ACCEPT** the Majority **Ought Not to Pass** Report.

The SPEAKER: The Chair recognizes the Representative from Hallowell, Representative Cowger.

Representative COWGER: Mr. Speaker, Men and Women of the House. I ask you to not support this current motion. I ask you to go on and support the Minority Ought to Pass Report. I would like to take an opportunity to tell you why. This piece of legislation is a very important piece of legislation and it has a significant potential to protect the consumer of Maine and at the same time support our small businesses in the state.

There are many highly skilled and qualified residential builders and they deserve recognition and acknowledgement. There are, however, some unscrupulous builders that have taken consumer's money and either not completed their work or in some cases not in a very satisfactory manner.

This bill before you to license home building and improvement contractors has three very important goals. I would like to go through those with you. First of all, this bill would recognize qualified contractors who would be proud to call themselves licensed. That is why this bill is supported by the Maine Home Builders and Remodelers Association who represent quality home builders throughout the State of Maine. These builders know that the playing field will be leveled if contractors must build to a minimum standard, which is defined by the new uniform building code that we have adopted and has been signed into law. This code will form the basis for a contractor's license, and therefore the consumer can be assured that the work will be built to this standard. With a licensing program, qualified contractors cannot be underbid by another contractor that will build substandard work.

This bill licenses the person responsible for what is creating most people's situations, their most valuable asset, their home, and that is the general contractor. Beyond that, this bill also licenses very important trades that are responsible for the health and safety of our homes occupants, the citizens of the State of Maine, specifically this bill would license framers, roofers, folks that install siding, insulation, windows and also that build chimneys.

The second goal of this legislation is to create a very important consumer protection system that does not exist today and is desperately needed in the area of home construction. I suspect that many of you, if not all of you, have gotten calls from constituents over the years who have relayed a terrible experience with a contractor. These consumers are also frustrated that they don't have anywhere to turn and they have very few avenues for which to seek a solution. With an uncooperative contractor, again, that is the exception, not the rule, the only solution typically is to go to court. This is often financially not feasible for somebody who has already lost their money on a poor job, has to pay a contractor to do it again and then has to pay expensive legal fees to go to court.

This bill would set up a licensing board with many members of that board being general contractors or licensed contractors.

This board would hear complaints by constituents and the board has a broad authority to resolve these complaints, ranging from developing an agreeable solution, hopefully with the consumer and the contractor to actually taking disciplinary action, which can range up to pulling the license on a permanent basis. In any case, the consumer will now have an affordable and effective avenue to resolve what is an occasional case of shoddy workmanship in the state.

An important element also here is that the consumer will have a place to go before they hire a contractor and they can see if any complaints have been filed with the board. What we are really asking here is for a contractor to have what I call a license of responsibility. In this bill it is purposely quite easy to obtain a license, only requiring a few years of education or experience without any sort of test being required or if somebody wants to get a license quicker, they can take an exam with less experience. By design it is very easy to obtain a license. It is then the contractor's individual responsibility to assure that their work meets the standards and the code that we have adopted in order to not put their license at risk.

Finally, the third goal of this bill involves the insurance industry. The insurance industry in our state has been very supportive of obtaining a uniform building code. They would benefit from the application of this code to construction throughout the state. While the code we passed earlier this year for municipalities to adopt, it is going to be the standard by which licensed contractors will be judged. Licensed contractors will have to build to this code anywhere in the State of Maine. The insurance industry is very supportive of this because once the work is done to a consistent and proper standard, their limits and liabilities will be limited and due to any faulty workmanship.

This bill takes the building code that we have adopted and signed into law and applies the standards in that code into the construction world. Let's take this next step and provide an important consumer protection process that does not exist today.

I also want to point out that for over two decades there have been various attempts to license residential home builders, but prior to this bill the stakeholders involved in that process have not been actively involved. Last summer and fall the Attorney General's Office, myself and others convened a broad group of stakeholders. We met numerous times and we redrafted this entire bill to address all the issues that were of concern.

The amendment before you (H-863) is a result of the stakeholders group and completely replaces the original bill. Some of the people involved in this group I want to tell you about. They were the Maine Home Builders and Remodelers Association, Mid-Coast Builders Alliance, several independent contractors, AARP Maine, who considers this one of their top legislative priority issues. Insurance companies were well represented through the Maine Association of Insurance Companies and others. Local government was represented, Maine Municipal Association, Maine Building Officials and Inspectors Association sent around a letter of support. The Maine Community College System is very supportive of this bill. They have a great program with the Southern Maine Community College. The state Fire Marshal's Office was involved and the Department of Professional and Financial Regulation.

This bill was carefully negotiated after months of meeting, many, many meetings. One important element of the bill is the careful phase in of this process. To address the concerns of creating not an instant regulatory system, a trigger mechanism was put into place. Before anything can happen with contractor licensing, two-thirds of the municipalities in this state that currently have a building code will have to adopt the code that we passed earlier this year. This would achieve what the building

community, what the insurance community wants. It is a consistent code throughout the State of Maine without imposing any mandates on our municipalities. Once that code is adopted, we would then have a registration period for contractors lasting a year and then after that process has gone forth and we collected data and we know who is going to be licensed we would then have the opportunity to put licensing in place.

I urge you to support this bill. It has been carefully thought out through many months of negotiations. All interested parties have been involved and we have tried very hard to address the concerns of anyone interested in this legislation. I urge you to vote against the pending motion to go on and accept the Majority Ought to Pass Report. Thank you.

The SPEAKER: The Chair recognizes the Representative from Biddeford, Representative Sullivan.

Representative **SULLIVAN**: Mr. Speaker, Men and Women of the House. I was somewhat surprised this bill was coming up right now. However, I am prepared even though it didn't look like I was. Originally we were going to table this until a member got back from a funeral. I think there has been some miscommunication. I guess we are into this full well.

I would ask you to support the Majority Ought Not to Pass Report for a variety of reasons. As you know, I was gone for a week and at the time I had left I was on a report. Actually it was an Ought to Pass report that I was on. At the very beginning this is a holdover bill, a carryover. At the very beginning of the bill it was as you see it now, it covers everybody. The second floor was very unhappy with that. The Attorney General supported it. The two chairs of this committee, the Attorney General, the Chief Executive and the commissioner of the department met and we sort of had an agreement. The agreement was that we would put this and scale it down to just roofers, because it was agreed that roofers was where the complaints were coming from. I still wasn't happy, but in the spirit of compromise I agreed to that. I gave my word. I supported that in the original report.

Funny things happen when you leave. While the cat is away, the mice will play. It seems that this entire report was changed around to the original bill. It included everyone. I have some serious problems if we can even put it together in time for the law. It is much too broad. Everybody is going to be licensed. Where do we get that list of those who have never had the license before? It is not just roofers. That was the original bill. That was the agreement that I had with the powers that be.

This bill would even keep your son-in-law or your brother-in-law or the college student that is going to help family members reshingle your house. It is one more restriction. You have to have a basis to build that from. Do you really think the shoddy contractors are going to line up with the Attorney General's Office or the Department of Professional Regulation and say, here I am? I want to sign up. It doesn't make sense.

More importantly, I am disappointed that what I had agreed to in the Chief Executive's Office is not what I am standing here and having to argue against. It is not the same bill. I also have a real concern that this is not in the Department of Public Safety where our other bills are for consumer protection. In fact, our committee even discussed that. It was decided that it was here, let's go ahead with it and keep it in this department. The Public Safety Committee is the committee that deals with consumer protection. This is a round about way to get involved. It is in the wrong department and certainly when you start a program, you don't start with everybody.

I also would question the fiscal note that would be required on this, to take and put together every single contractor to have a license. There is start up money, even if eventually the fees will match, but I don't believe it will match for everybody. We are



growing state government. This bill is a good concept. I question where it should be. I also question the broadness of it. More importantly, I need to remain true to what I agreed to compromise to. I agree to roofers only and this is not the bill. I feel very comfortable in asking you to please vote Ought Not to Pass. Thank you.

The SPEAKER: The Chair recognizes the Representative from Machias, Representative Pellon.

Representative **PELLON**: Mr. Speaker, Ladies and Gentlemen of the House. I won't try to go over the ground that our Chair of the committee has just talked to you about. I will say that this bill does not protect the elderly as they try to put before you that it will do. How will the elderly know? Somebody who can show they have four years experience, no matter how shoddy they are, will walk up to an elderly person and they will show them that they have a license and they are qualified to do the work. They will feel secure and hire them anyway.

I hold two licenses. I am in the construction business. I have been in the construction business all of my life, a lot more years than I would like to tell you about. Just because I am licensed and I do a shoddy job doesn't guarantee the homeowner, whether they are elderly or who they are, that they can get reimbursed for that work or have it corrected. They will end up going to court. This is too broad of a coverage. Certainly some of the larger contractors would like it. It will drive some smaller contractors out. The licensing fee is very high to begin with compared to other licenses. When we talk about plumbing licenses it is there because of the health. We talk about carpentry licenses and when it started out we agreed to have a roofing license because that is where the Attorney General's Office said the majority of complaints were coming from.

Reluctantly, I was on the Ought to Pass at that time. One of the reasons that roofers do have a problem is insurance companies, God bless them, are making people repair roofs. Instead of patching them in December, January and February, we are using fiberglass shingles which will blow off in great areas when we have wind storms. That is why some good contractors are getting accused of being poor roofers. I personally know of a great contractor, G & H Home Improvement, who will no longer do roofs from November, December, January and February, only a patch job.

I ask you not to support this. It is being pushed as a savior for the elderly. That is not so. That is untrue. Thank you.

The SPEAKER: The Chair recognizes the Representative from Biddeford, Representative Twomey.

Representative **TWOMEY**: Mr. Speaker, Men and Women of the House. I tried to talk about this yesterday in my caucus. I was rudely interrupted. Today at least I know that I can try to get my point across. First of all, we did not vote for unified building codes. We did vote for it, but it is voluntary. Not every community has to adopt them. The second point is, I see this as the big guys against the little guys. Let me tell you as a widow and having a house that is almost 200 years old, nine rooms, I have had to learn how to do my own repairs because I can't afford to have somebody come in. All this is to hurt the small business, to increase licensing fees to the small guys. I had this roof problem and my son said that he has this young man that can come over and give you a quote. If I had to go with the big guys, this would have cost me in the thousands of dollars. This young man did an excellent job and I only had to pay \$300. That is the difference in this bill. I won't be able to do that anymore. We all come to Augusta and we want to legislate our lives away, but I am talking about the reality. The reality is it is hitting me. If you get a large contractor that charges \$25 or \$35 an hour, I

can't afford that. I am not ashamed to say that. I am in a situation where I am by myself and I am trying to keep my home.

Yesterday in the caucus I heard about our seniors. We had the Attorney General come in. I think the world of the Attorney General. I don't think that we should be doing his job. If there is fraud out there, then the Attorney General should be going after those cases that have fraud. I think this is a way of trying to do that job. I don't agree with it. I hear about my seniors. I can tell you that my seniors love me and I love them and we paint them like they are fools. We paint them like they can't make decisions for themselves. I hate that argument. My seniors are pretty smart. When they are going to get something done, they are going to ask about it. Yes, there are these people that come into town and make phone calls once in a while and somebody gets caught. My seniors are with it. I am becoming that senior and I think that I am going to ask around when I am going to get something done. I am totally opposed to this. I appreciate the fact that I was allowed to say this right now. Thank you.

The SPEAKER: The Chair recognizes the Representative from Scarborough, Representative Clough.

Representative **CLOUGH**: Mr. Speaker, Ladies and Gentlemen of the House. We have been dealing with this issue ever since I have been serving in Augusta. I came here in the 119th and we have dealt with it in every session since then. The message that we have received has been loud and clear. We must adopt a statewide building code before we even consider licensing contractors. Earlier in this session we passed legislation that would require any municipality that adopted a building code to adopt the IPC codes. However, adoption of the code is optional and it could be years before the code is finally adopted statewide.

This bill would allow us to start registering and licensing contractors after 56 out of 84 communities statewide that are named in this bill, had agreed to adopt the code. I think that we have the cart before the horse and I totally agree with this motion of Ought Not to Pass and would ask you to support it.

The SPEAKER: The Chair recognizes the Representative from Woolwich, Representative Grose.

Representative **GROSE**: Mr. Speaker, Ladies and Gentlemen of the House. I couldn't let this one go by. I am married to a carpenter/contractor, small business. It is him and one other person. He was large at one point. He lost too much hair and decided it wasn't worth the hassle. I am speaking on his behalf and am speaking on local contractors in my district. I met with them on Sunday. They all were behind this 100 percent to be licensed. There are too many people out there, men and women, who can put a belt on, have a hammer and claim to be a carpenter. They take advantage of our seniors. They take advantage of people who do not know the difference between good carpentry and bad carpentry. My husband has had numerous calls to come and repair bad carpentry from people who were claiming to be carpenters. This is not fair to them. We have licensed electricians, licensed plumbers. Why can't we have licensed carpenters? He has worked very hard for 34 years being a carpenter, 23 being self-employed. It is not easy having your own business. We have gone and struggled through times when the economy was good and people were building and adding additions and we have gone on when there have been bad times. It is a struggle. Being self-employed is not that great.

I just want to stand up here in defense of the contractors and builders. They have a right also to have a say. Maybe this bill isn't the greatest bill to start with, but at least it is something that we can start with now. Thank you.

The SPEAKER: The Chair recognizes the Representative from Bar Harbor, Representative Koffman.

Representative **KOFFMAN**: Mr. Speaker, Ladies and Gentlemen of the House. I, too, am pleased to have the opportunity to rise and discuss this subject. It is not a subject I thought I would be needing to take an interest in. My constituents taught me otherwise. I have had more calls about shoddy construction on projects in people's homes than on any other issue and in this past year or two in particular. I am very pleased that the Representative from Woodwich, Representative Grose, spoke before me. As it turns out, in my district a number of small business contractors of different types, established contractors, some of whom have been working on our community for more than a generation, two or three generations of family owned businesses, very respected contractors, have called me to talk about doing something about licensing contractors. They weren't aware that there was a bill being worked through the Business, Research and Economic Development Committee. I am grateful for the committee to be working on this.

Last October I had a call from an accountant. The accountant asked me if I could attend a meeting early in the morning with several contractors, an insurance agency and the accountant. I didn't ask what the subject was. I thought I would let it be a surprise. It turned out that these contractors from the district, they are not alone because I have had other calls along the same subject with the same basic story, talked about fly by night operators who were underbidding them by 20 or 25 percent on jobs, coming to the insurance agent to get a workers' comp policy to show the customer, getting the job, returning to the insurance agency to return the workers' comp policy for a refund. According to the insurance agency thereby leaving the consumer liable for whomever might get hurt on that job. Paying a crew that this contractor picks up off the street cash under the table, no workers' comp, no withholdings and it is really putting the pinch on legitimate business people.

This bill may or may not help this problem, but I can tell you that I don't see any other life preserver floating around in the water for my constituents. They really care about this. They have been on the phone with me about this. I hope we are going to do something about it. Perhaps a modest version of the bill would have been in order, but this is what we have got. I really strongly support it and I urge that we pass this bill and not the Majority Report.

The SPEAKER: The Chair recognizes the Representative from Brewer, Representative Rogers.

Representative **ROGERS**: Mr. Speaker, Ladies and Gentlemen of the House. I stand in support of the Majority Ought Not to Pass Report. Most of what I was going to say has already been said very eloquently by my predecessors. As has been pointed out, this has gone through several other Legislatures. It went through our committee last year and didn't fly. They tried to put just roofers only and the roofers weren't even put on notice that we were going to be hearing as a bill for roofers only. Here we stand with another opportunity to put it aside until a better bill can be put down. The Department of Professional and financial regulation stands behind the Ought Not to Pass. It puts a burden on small business. It will raise the costs to the consumers. It has confusing standards of licensures. It will increase the bureaucracy. We are down here trying to put the budget in line and put a cap on government.

I was in Gray the other day when the sign said it was 350 miles to Fort Kent. We are talking about putting two inspectors on the road. How effective will they be? This bill should be killed now. Put it back to committee and let them come forth with

something halfway decent. Putting false hope in the minds of the elderly that something is going to happen when we don't even have a date as to when this is actually going to go into effect. It is only hoodwinking them. Thank you.

The SPEAKER: The Chair recognizes the Representative from Thomaston, Representative Rector.

Representative **RECTOR**: Mr. Speaker, Men and Women of the House. I will just take a moment of your time. I want to say that the report back to the Attorney General indicated that the estimated annual cost of this bill to Maine consumers was \$40 million a year. In the year 2002 there were 100 complaints received by his office for building problems. That is \$400,000 a complaint. The value of those complaints was \$1.4 million. That fact and one other, the cost for the license is to be \$350. It is important that you know that will be the most expensive contractor license in the nation. We will have number one in the nation yet again something else to be proud of, the most expensive contractor license at \$350. New Hampshire doesn't have contractor licensing. Vermont doesn't have it. Massachusetts doesn't have it. New York doesn't have it. Rhode Island and Connecticut have it at \$60 a year or to renew it. Thank you Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Machias, Representative Pellon.

Representative **PELLON**: Mr. Speaker, Ladies and Gentlemen of the House. I think the one issue that should be out there is that the BED Committee this year increased the contract amount from \$1,400 to \$3,000 which should be signed between the contractor and the homeowner. I am not sure that all the members of this House realize that type of contract is there. I am certainly sure that the homeowners out there do not know this. If this was something that we stressed and we got the information out, then the AG's Office would have a tool when they go to court fighting for these elderly and the homeowners. As it is now, if you don't have a signed contract, you walk in the door, you are in trouble.

The SPEAKER: The Chair recognizes the Representative from Bath, Representative Watson.

Representative **WATSON**: Mr. Speaker, Ladies and Gentlemen of the House. I have represented a number of people who have had these complaints in court. As a matter a fact, the Attorney General's Office, the Consumer Complaint Division, ranks these types of complaints second only to automobile and lemon law complaints in its office. As a matter a fact, it has so many cases on an annual basis that it only chooses those contractors who have bilked 10 or more customers to make it even worth going after them. A very typical complaint that I handled a couple of years ago involved a contractor who built an addition on my client's home. Only after the addition was built was it determined that it was done without a permit, within a shore land zone and my client had to tear off that addition. Only then did my client find out that the contractor had charged over \$7,000 worth of materials at Marriner Lumber and used those materials on another job. By the time I chased him down, the contractor had changed names, gone into bankruptcy and it turns out that he was now running the sixth of this independent contractor businesses simply by changing the name on the side of this truck. His truck, incidentally, was registered to his wife, as were all of his tools. Needless to say, my client recovered nothing.

This is a minor first step. It is a step in the right direction. In response to a couple of things that I have heard today, if members would read the act and the amendment they would find some answers to their questions. For instance, there is a \$3,000 cap on this or limit on this. When you hire your son-in-law to

come over and help paint the porch, as long as you are not paying them over \$3,000, he doesn't need a license to do that. The people that need licenses are the people that need tracking. Those are the ones that prey on homeowners, elderly, individuals, middle class college educated people that hire them because they have a sign painted on the side of their truck and don't bother to check the references and proceed to get a job, shoddily done, dangerous in many cases, in violation of local codes and permits and they are left with the bag. When you try to pursue them through the Attorney General's Office or privately you find that they have simply gone out of business and opened another DBA and are bilking your neighbors down the street. I have checked with contractors in my area, like the Representative from Woolwich noted. I have checked with union individuals involved in the construction trades. I have checked with as many sources as I could on the real objections to this. I have found none. The erstwhile professionals in this industry want their industry regulated. They cannot regulate themselves. They can't turn in somebody they know is operating illegally because it is not illegal to do a shoddy job right now.

The Majority Ought Not to Pass Report should be rejected in favor of the Minority Report and I shall so vote. Thank you Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Falmouth, Representative Davis.

Representative **DAVIS**: Mr. Speaker, Men and Women of the House. I live in the area of West Falmouth and surrounding areas where there are probably 60 or 70 contractors who do part time construction work. I don't think it is a good idea to go down and license them for \$350. This would also, to me, drive up the price of having a house fixed. Some of these people can't afford their property tax now. I think it is not a good bill. I agree with the Representative from Biddeford. She made some good points. I think we should vote accordingly.

The SPEAKER: The Chair recognizes the Representative from Waterboro, Representative Jacobsen.

Representative **JACOBSEN**: Mr. Speaker, Ladies and Gentlemen of the House. This bill is a great idea. It is a wonderful idea. In reality it is terrible. Let's be real. It is going to cost everybody more money. It is not going to save the seniors any money. Somebody will come up with a license. It might be real and it might not be. We have been building houses in this state for hundreds of years with very little problems. Many of them are still standing after 200 years. It is a field that takes young people who are not interested in going to college, probably don't have academic skills, but with the apprenticeship programs that carpenters offer on their own, they employ these people. This bill, if it passes, is unenforceable. It is just going to raise the cost of housing in Maine. It is going to limit competition. I believe all of us would like to have some kind of license to protect our jobs so we can charge more. Think about all the bills and laws and licenses we have passed in this state over the years. Where does this state stand in comparison with the other New England states? What list are we on the top of and where do we rank near the bottom. It is early to pass laws thinking they are good and making ourselves feel good while we actually damage the people in this state. Thank you.

The SPEAKER: The Chair recognizes the Representative from Lewiston, Representative O'Brien.

Representative **O'BRIEN**: Mr. Speaker, Men and Women of the House. This is truly a bill that has possibilities of doing good. However, it will not. It is a bill that gives false hopes. It says to some people that finally you are going to get some help in this area. Truly this bill will not do it. It still means, buyer beware. Whoever has any work to be done around their home, they would

still have to check out with others, check with their local city or town for building codes because unless we truly believe that every job done will be done perfect, this bill will not accomplish it. It is an Ought Not to Pass bill. The bill we originally worked on was truly to look at the roofers. However, this is not what this bill is. This is like sending a magic wand out to say now we have something that will truly protect you. It will not. It cannot. I think that we have to realize that this is a bill that another time, another day, another way, but not this bill. Thank you.

The SPEAKER: The Chair recognizes the Representative from Gray, Representative Austin.

Representative **AUSTIN**: Mr. Speaker, Ladies and Gentlemen of the House. There have been some accurate references to the expense of this bill. Let's just talk cold cash for a second. If this were to take affect in September of this year, the funds are not there. We would be facing off with Peter and Paul again. Robbing one to pay the other to the tune of \$284,000. That is just to set this up for the first three months only. Peter in this case would be the other special revenue fund, meaning other licensure group's funds would be drawn upon to do the start up. Of course, this would need to be paid back to this fund by January '06. It seems imprudent to move in this direction at this time in view of our many other difficult financial considerations. Why? Because this clearly is another charge on the State of Maine's charge card. It only has to be paid later, at some other date far out in time. Let us remember, we want and seek a good foundation for our construction and our building trade. Let's hold ourselves to the same resolve and sure up our foundation before we take on more financial burden. Let's stick to that code and let's accept the Majority Ought Not to Pass Report. Thank you.

The SPEAKER: The Chair recognizes the Representative from Hallowell, Representative Cowger.

Representative **COWGER**: Mr. Speaker, Colleagues of the House. I would like to address some of the concerns that have come up and some of the concerns that were addressed in a letter that came around from the Department of Professional and Financial Regulation. First of all, I would like to point out that PFR was a member of our stakeholder group and while they raised concerns during that process, we addressed them. We worked very hard and addressed the concerns. They never once said during our stakeholder meetings that they would not support this bill. It has come to a great surprise to me over the last several weeks that they are spending an awful lot of their time arguing against it when they never said that in our stakeholder group. Their handout suggests several things. First of all, they suggest that the cost of a license would be a burden on small business. The \$350 amount is for general contractors and it is the highest amount we would ever charge. I believe the amount is going to be much lower. I think, quite frankly, we can get down to the \$100 range, which is a much more appropriate and more consistent with other states. The cap on specialty contractors, those just doing roofing or windows or the like, would be \$150 in the bill. Again, I think we can get that cost down a lot more as well. I will tell you about that in a second. The only cost to be a licensed contractor is going to be the cost of paying a license. I think that cost is very reasonable. I don't think it is going to drive up the cost of running that business. For comparison, the other night I sat down and looked at what I spend in terms of licenses and fees for my little Bed and Breakfast and for local, state and federal fees, I spend over \$1,400 every year for my little business. I am still in business and I think a very modest contractor fee for licensing is not going to put anybody out of business. In fact, many contractors support this. They think they have earned that recognition.

The department also states that there are nearly 12,000 businesses that might be regulated. This would be a huge regulatory program. I would like to point out that they already license electricians and there are over 10,000 licenses electricians in this state. There are programs of this magnitude. We are a big state. We have a lot of contractors. The department has experience with these types of programs. I believe the likely numbers that were are going to be looking at for contractor licensing are more in the 6,000 range and even at that we are going to have plenty of revenue to support the program.

The department also suggests in their memo that there will be a massive increase in costs to consumers. I want to point out that many professions they regulate have very intensive continuing education requirements, extensive regulatory requirements and also limit the amount of people that can get licenses. Yes, those drive costs up.

Again, the way this bill is drafted, if you look at the actual language, it is a very minimal cost to become a licensed contractor. The Department is basing their claims on the fact that they expect the rates the contractors charge to go up by 25 percent. I don't believe that is going to be the cost. They also base their claims on an economic model based on the original bill that required a permit and multiple inspections for every building in the State of Maine. That model was thrown out immediately by the stakeholder group and by the committee. There are no state inspections required. That economic model was no longer correct. I think it is improper to base conclusions on it. One piece of that economic model that is still true today is that there are about \$40 million a year in unacceptable or substandard buildings in the State of Maine. The goal of this bill is bring that number down dramatically.

Also, both Representatives from Biddeford have mentioned that they want to have a family member or somebody do work on their home. You have heard that there is a \$3,000 cap or a \$3,000 threshold before you have to get a license. You can also do all the work you want in your own home yourself. The stakeholders group felt very strongly that not everybody who picks up a hammer needs to be licensed. There needs to be at least one person on every job with a license that can be held responsible. If things go wrong, the consumer can go to the licensing board and file a complaint and the licensing board has broad discretion to resolve those complaints. There is no such avenue today. That is the heart of the consumer protection part of this bill.

Finally, regarding the finances, the department suggests and others have suggested that other licensed professionals will be supporting this profession. That is just not true. The department's Licensing and Inspection Fund today, which is the pool of all other licensed professions, has over \$10 million in unobligated cash sitting in that fund. What this bill aims to do is to make them take a loan of several hundred thousand dollars from that \$10 million and pay that money back as this program rolls out. With \$6,000 contractors that will be licensed at, let's say \$100, that is \$600,000 a year, which is enough to repay the loan and to support the eventual six positions in this bill. There is no cost to the general fund. There will be no burden on other professions when this money is paid back and the department has adequate resources by which to do this.

I also want to point out that if the department is serious about reducing staff and lowering license fees, they should look at that \$10 million and perhaps lower the fees that are being charged to other professions today. That is not being proposed. I think it is an appropriate use of that money to jumpstart this program.

Again, I urge you to vote against the pending motion so we can go on and consider the Ought to Pass report. Thank you.

The SPEAKER: The Chair recognizes the Representative from Van Buren, Representative Smith.

Representative **SMITH**: Mr. Speaker, Ladies and Gentlemen of the House. As the debate has been going on, I have been reading the bill and rereading it. I cannot escape the conclusion that although the proposed amendment seeks to solve problems, I cannot escape the conclusion that this bill, if it was passed, would create more problems than it would solve.

The problems that I can foresee coming up with this bill is that it is going to reduce the natural competition we have for the repair of homes or the construction of homes to where those people who are starting out in the business, the younger members of our workforce, will not have the opportunity to get out and do the work that our citizens are willing to hire them for. I am also concerned about the exemption level. It would purport and say that you are exempt from licensing requirements if you don't receive \$3,000 or more from one owner in a calendar year. What happens? In many cases a person starts doing work for a homeowner and they proceed from one job and then the idea comes up if you might do this thing for me and another further thing. That is the way human nature is and that is the way people work, at least in the State of Maine. All of a sudden you are over \$3,000. Does that make you a criminal? I guess it does. The penalties for performing home contractor work and not having a license are criminal. You can be convicted of a Class E or eventually a Class D Crime. We don't need this kind of regulation. It is not going to solve the fundamental problems, if there is fraud or if there is theft, shoddy workmanship, the remedy already exist in our court system and in our existing statute. We don't need to create a level of bureaucracy that is going to reduce opportunity for younger people to get into the contractor work and do the work that people are willing to hire them for. I am quite sure that as we think back and we live in communities where we know people that the most important resource for a contractor is not a license. The most important resource for a contractor is a reputation. A license is not the same as a reputation. I would suggest that we continue with what has been in existence. Good contractors with good reputations have all the work they can handle. They don't need the licensing. I will be voting in favor of the Ought Not to Pass motion.

The SPEAKER: The Chair recognizes the Representative from Skowhegan, Representative Richardson.

Representative **RICHARDSON**: Mr. Speaker, Ladies and Gentlemen of the House. I have a tenet that I go by when everything has been said, then let's quit saying it. I probably should sit down. There are two things that I see in this bill. This is a bill designed to keep scoundrels from preying on seniors. I happen to be a senior, a pretty senior. I don't really worry about scoundrels because I pay attention to what I am doing. I look into things when I need a contractor. I found out whether the contractor is any good or not. It looks like to me what we have done here or what we are trying to do is pass a bill that is completely unnecessary. Really the only people who are going to benefit from this are the general fund and the license fees. I really don't think we need to put that burden of a tax on any more people in the state.

Representative **SULLIVAN** of Biddeford **REQUESTED** a roll call on the motion to **ACCEPT** the Majority **Ought Not to Pass** Report.

More than one-fifth of the members present expressed a desire for a roll call which was ordered.

The SPEAKER: The Chair recognizes the Representative from Biddeford, Representative Sullivan.

Representative SULLIVAN: Mr. Speaker, Men and Women of the House. I heard several things said and I must have missed more meeting than I realized. First of all, the stakeholders group that was working during the summertime was working on basically a uniform code. It was very important that we have a uniform code. We didn't get a uniform code. We got a partial uniform code. It is voluntary. That kicked around here for a long, long time and finally it got to be voted on. It is a partial uniform code. It is exactly the way most bills should begin.

As chair I offered the compromise in front of all three parts that are represented here, the Attorney General, the Chief Executive, the commissioner of this department. The Attorney General was well aware of the Department of Professional and Financial Regulation that there was a problem. Only in trying to get along with the Attorney General did they agree to the roofers only. That was an agreement on all three parts, the chairs, the Attorney General, the Chief Executive representing the Department of Financial Regulation.

I also heard somebody speak that right now there is no law against shoddy work. It is untrue. It is great sound bite, but it is untrue. We have a consumer protection bill. It deals with everything. It is called fraud and it works well. Unfortunately, they tell me this week sometime we are going to vote on a budget. We are voting to take away health care. We are still not giving enough to localities for education, but we have the chance to spend a huge amount of money to set up new regulation. There is something wrong with the priorities when we already have consumer protection.

My word means a lot to me as I am sure it does to every other person sitting here. To leave for a week to come back to find out that this has been changed so that my name does not even show up on the report, isn't quite right. We were told we would wait for a member attending a funeral. Here we are debating it. It is not quite right. I ask you to look at the budget problems that we have, to look at the fact that for two years this committee has been working on this bill and all of a sudden the people who should care the most aren't here listening to this debate.

I also heard that this won't cost any money after we set it up. You are shortly going to hear about another bill coming from my committee, I was told this was an easy committee, I will take lobsters any day. We have a board that is so dysfunctional that it had to keep raising caps. You didn't want to have a board for professional boxing. It was too expensive, \$25,000 a year for nothing. They don't do anything, but they have to share the costs of all of the departments, the clerk, the mailing, the postage, everything is shared. There is an ongoing cost to this. Yes, it is supposed to be picked up by fees. If you multiply out the fees of even 6,000 it is not going to work, people. There is not enough money. I am not a great mathematician, but I can do a little bit. I would still ask you to support Ought Not to Pass just for my friends on the other side of the aisle. I am a teacher. Thank you Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Monmouth, Representative Smith.

Representative SMITH: Mr. Speaker, Men and Women of the House. I am asking you to vote against the current measure as a member of this committee. The big question that we are dealing with, but not saying out loud is why do we license professionals? How many members of this body are licensed in their professions? I know within our committee it was by far the majority. Some had even more than one license. The issue, part of the discussion, was whether it is just public safety or is it about

protecting the public in financial matters as well. Last week we received a blue paper that listed out all the licenses, all the professions that are licensed. They include auctioneers, barbers, foresters, sardine packers, realtors who seem to be the primary opponents to this bill and I have yet to figure out why.

Earlier you got a blue paper from the Maine Association of Realtors. This morning a yellow paper trying to respond to what some of us felt were some inaccuracies in that. If there is time and you would like, it would be great to review those. Consumer safety has come up several times. What we learned in committee is that the home construction contract act, which is the consumer protection bill that has been referred to, is not the best or shouldn't be the only way for consumers to get a fair shake on abuses. Number one, it is expensive for the consumer. You have to hire a lawyer to do this. Number two, you heard from the Representative from Bath that there is no guarantee for a settlement. The unscrupulous operators we are trying to deal with know enough to not own anything. Their wife owns the house. The son owns the tools. The daughter owns the pickup. Sue them all you want. You can win, but you are not getting anything. You are still stuck with a faulty house.

Let me hit on a few other things that have been brought up. I do not believe this bill is premature. We have a registration period that would occur prior to licensing. That is how we will know who we are licensing. There is the acceptance of the building code trigger mechanism. That was passed as part of the model building code. When two-thirds of the municipalities or two-thirds of the population is covered by municipality building codes, then this will kick in.

There are exemptions that are again worth noting. If a handyman does work valued at less than \$3,000 per client, they are exempt and don't need to be licensed. Again, that falls into your brother-in-law, your neighbor or someone else. You can pay them up to \$3,000 to do the work. The requirements for licensing, one of the concerns we had early on is what do you do with the really talented contractor who is illiterate? It happens. This bill deals with that beautifully. There are two ways to become licensed. One is two years experience and an exam and the other is four years of experience. It takes care of the talented contractors who would not do well on a written test. Let me state once more again that the \$350 is a license fee cap. That means it is the maximum that can be charged, not what will be charged. Another point to be made on licensing and the value of licensing is that the Attorney General's Office will take care of educating the public to be sure that they understand what it means to have licensing.

I would ask you again to review the yellow paper that went out this morning and to consider the testimony that came from the Representative from Bar Harbor, Representative Koffman, the Representative from Woolwich, Representative Grose and the Representative from Bath, Representative Watson.

Let me take issue with a few more things to try to add to the debate. There were two working groups this summer. One worked on codes and the other worked on licensing. There was discussion about the fact that the licensing bill that actually reduced natural competition, I disagree with that. The goal of the bill and I think what it will do is make it more difficult for the fly by night operators to function, not for reputable small and large contractors.

Let me also point out that enforcement is complaint driven. If you have a situation, I think someone earlier mentioned you thought it was going to cost \$3,000. Again, that is the cost of the labor, not the cost of the materials and it runs over that, it only becomes an issue if the consumer complains about it. If the resident does not speak out, it is not an issue.

Let me wrap up with just two last points and remind you that this bill came at the request of the Attorney General's Office who has heard from consumers who are interested in having this done. We have talked about the elderly because the AARP has cited this as their top priority. This is about the elderly and all consumers trying to get a fair shake.

Finally, one of the tenets that I learned early on that seems to be relevant almost every day here is don't let the perfect be the enemy of the good. I think we have a very good bill and I would ask you again to defeat the pending motion. Thank you.

The SPEAKER: The Chair recognizes the Representative from Bucksport, Representative Rosen.

Representative **ROSEN**: Mr. Speaker, Members of the House. Earlier in this debate the good Representative from Skowhegan, Representative Richardson, made a statement. He said he was pretty senior. Ladies and gentlemen, he is not that pretty. I think it is time for us all to collect ourselves and vote on the measure that is before us.

The SPEAKER: The Chair recognizes the Representative from Scarborough, Representative Clough.

Representative **CLOUGH**: Mr. Speaker, May I pose a question through the Chair?

The SPEAKER: The Representative may pose his question.

Representative **CLOUGH**: Mr. Speaker, Men and Women of the House. To anyone who can give me an answer, this bill exempts from licensure requirements a person who receives less than \$3,000 per year from each owner. My question is, when you calculate the \$3,000 do you include the building materials or is that labor only?

The SPEAKER: The Representative from Scarborough, Representative Clough has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Monmouth, Representative Smith.

Representative **SMITH**: Mr. Speaker, Men and Women of the House. In answer to the question, that is for labor only, not for materials.

The SPEAKER: A roll call has been ordered. The pending question before the House is acceptance of the Majority Ought Not to Pass Report. All those in favor will vote yes, those opposed will vote no.

#### ROLL CALL NO. 439

YEA - Andrews, Annis, Ash, Austin, Bennett, Berry, Berube, Bierman, Blanchette, Bowen, Bowles, Brown R, Browne W, Bruno, Bryant-Deschenes, Bunker, Campbell, Carr, Churchill E, Churchill J, Clark, Clough, Collins, Courtney, Cressey, Crosthwaite, Curley, Daigle, Davis, Dugay, Dunlap, Duprey B, Earle, Eder, Finch, Fischer, Fletcher, Gagne-Friel, Glynn, Goodwin, Hatch, Heidrich, Honey, Hotham, Hutton, Jackson, Jacobsen, Joy, Kaelin, Ketterer, Landry, Ledwin, Lessard, Lewin, Lundeen, Maietta, Marraché, McCormick, McGlocklin, McGowan, McKenney, McLaughlin, Mills J, Mills S, Moody, Moore, Muse, Nutting, O'Brien J, O'Brien L, O'Neil, Paradis, Patrick, Peavey-Haskell, Pellon, Perry A, Pineau, Pingree, Piotti, Rector, Richardson E, Richardson J, Richardson M, Rogers, Rosen, Saviello, Sherman, Shields, Smith W, Snowe-Mello, Stone, Sukeforth, Sullivan, Sykes, Tardy, Thomas, Tobin D, Tobin J, Trahan, Treadwell, Twomey, Vaughan, Wheeler, Woodbury, Wotton, Young, Mr. Speaker.

NAY - Adams, Barstow, Beaudette, Bliss, Brannigan, Breault, Bull, Canavan, Cowger, Craven, Cummings, Dudley, Duplessie, Faircloth, Gerzofsky, Greeley, Grose, Koffman, Lerman, Makas, Marley, McKee, Norbert, Norton, Percy, Rines, Sampson, Simpson, Smith N, Suslovic, Thompson, Walcott, Watson.

ABSENT - Duprey G, Jennings, Jodrey, Kane, Lemoine, Mailhot, McNeil, Millett, Murphy, Perry J, Usher.

Yes, 107; No, 33; Absent, 11; Excused, 0.

107 having voted in the affirmative and 33 voted in the negative, with 11 being absent, and accordingly the Majority **Ought Not to Pass** Report was **ACCEPTED** and sent for concurrence.

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By unanimous consent, all matters having been acted upon were **ORDERED SENT FORTHWITH**.

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The House recessed until the Sound of the Bell.

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(After Recess)

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The House was called to order by the Speaker.

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The following item was taken up out of order by unanimous consent:

#### UNFINISHED BUSINESS

The following matters, in the consideration of which the House was engaged at the time of adjournment yesterday, had preference in the Orders of the Day and continued with such preference until disposed of as provided by House Rule 502.

An Act To Make Additional Allocations from the Highway Fund and Other Funds for the Expenditures of State Government and To Change Certain Provisions of State Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2004 and June 30, 2005 (EMERGENCY)

(S.P. 769) (L.D. 1934)

(C. "A" S-487)

TABLED - April 12, 2004 (Till Later Today) by Representative RICHARDSON of Brunswick.

PENDING - **PASSAGE TO BE ENACTED**.

Reported by the Committee on **Engrossed Bills** as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 119 voted in favor of the same and 16 against, and accordingly the Bill was **PASSED TO BE ENACTED**, signed by the Speaker and sent to the Senate.

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By unanimous consent, all matters having been acted upon were **ORDERED SENT FORTHWITH**.

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SENATE DIVIDED REPORT - Majority (7) **Ought to Pass as Amended by Committee Amendment "A" (S-496)** - Minority (5) **Ought Not to Pass** - Committee on **HEALTH AND HUMAN SERVICES** on Bill "An Act To Ensure Disclosure of Prescription Drug Prices"

(S.P. 736) (L.D. 1890)

- In Senate, Majority **OUGHT TO PASS AS AMENDED** Report READ and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-496)**.

TABLED - April 8, 2004 (Till Later Today) by Representative KANE of Saco.

PENDING - Motion of same Representative to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report.

The SPEAKER: The Chair recognizes the Representative from Raymond, Representative Bruno.

Representative **BRUNO**: Mr. Speaker, Men and Women of the House. I am sitting here reading the bill and its amendment. I guess I have a question to the committee or someone who can answer. The bill details four prices that the department is supposed to get from drug manufacturers. In looking at these four issues, wholesale, acquisition, manufacture price and best price, the department already has this information. Can someone explain to me why we need this bill?

The SPEAKER: The Representative from Raymond, Representative Bruno has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Damariscotta, Representative Earle.

Representative **EARLE**: Mr. Speaker, Ladies and Gentlemen of the House. The reason for wanting to pass this bill is that it will save senior citizens a good deal of money on prescription drugs.

The SPEAKER: The Chair recognizes the Representative from Raymond, Representative Bruno.

Representative **BRUNO**: Mr. Speaker, Men and Women of the House. The question I asked was why do we need this bill if the department already has this information, not what the intent of the bill is. Frankly, I don't understand how it is going to lower prescription prices for anyone. The fact of the matter is, the department has this information. Why do we need the bill? Frankly, I don't think we need the bill because it doesn't do anything.

I know a lot about this stuff. This bill is just another stick in the eye of pharmaceutical manufacturers and serves no purpose. It has no way to lower prescription drug prices in this state, none, yet we bring forth a bill like this that serves no purpose for people to get out there and campaign and say they did something about prescription drug prices. I don't understand why we do this kinds of things. The department has the information. I can guarantee you they have this information. If you want it, you can ask them. There are over 200,000 drug products that they would have to report on, which they already do.

The SPEAKER: The Chair recognizes the Representative from Damariscotta, Representative Earle.

Representative **EARLE**: Mr. Speaker, Ladies and Gentlemen of the House. A major part of this strategy has been to negotiate the best possible prices with drug manufacturers. A critical factor in such a negotiation is having the best possible information on drug pricing. This is particularly important in view of the Medicaid deficit, a considerable amount of which is due to the soaring costs of pharmaceuticals. Maine Medicaid spent over \$235 million on prescription drugs under Maine Care in the fiscal year 2003. Prescription drug costs have increased by 13 percent. We are currently in the process of acting on a budget that has required considerable reductions in a whole range of health and human services programs for the elderly and the disabled.

It is incumbent on us to do everything we can to reduce the burden on our taxpayers and help balance the budget. The bill is limited to prescription drug manufactured for drugs marketed in Maine to a health program directly administered by the state. The bill also complies with federal confidentiality laws protecting proprietary information on behalf of the industry. In dealing with the pharmaceutical industry it is difficult to get information. That is why it is difficult to understand how and why the Canadian consumers import drugs from the US actually pay up to 50 percent less than US consumers. In fact, the Department of Justice settled several cases amounting to over \$350 million with just three drug companies over drug pricing charges.

Maine currently does not receive average manufactured price, the most important indication of the costs associated with producing a drug. The difficulty has been in attempting to document such things as average wholesale price, the wholesale acquisition price, the average manufacture price as defined by federal law. The average wholesale price is the average list price that a manufacturer suggests that wholesalers charge pharmacies. AWP is typically less than retail price, which will include the pharmacies own markup. AWP is referred to as the sticker price because it is not the actual price that large purchasers normally pay. The average manufacturers price is the average paid to the manufacturer by the wholesaler for drugs distributed to retail pharmacies. The Congressional Budget Office is estimated the AMP to be about 20 percent less than AWP for more than 200 drug products frequently purchased by Medicaid beneficiaries. The wholesale acquisition price is the actual average price that wholesalers charge pharmacies.

LD 1890 attempts to get this information from pharmaceutical companies doing business in Maine in order to improve our negotiation position for state-funded purchases. This will in no way control the price, but rather subject it to open market forces through negotiation, which can help enable states to negotiate better drug prices and rebates for Maine Care. We owe it to the taxpayers who sent us here to make sure we negotiate the best deal possible. It will require drug companies to report a method of calculation for each category and to certify as to the accuracy.

The bill has been amended to assure its compliance with federal confidentiality laws protecting proprietary information on behalf of the industry. Thank you Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Waldoboro, Representative Trahan.

Representative **TRAHAN**: Mr. Speaker, May I pose a question through the Chair?

The SPEAKER: The Representative may pose his question.

Representative **TRAHAN**: Mr. Speaker, Men and Women of the House. To anyone who might be able to answer, I have been reading the fiscal note on this bill. It seems to be the oddest fiscal note I think I have seen in my six years here. Could someone explain how this bill is funded if we pass it?

The SPEAKER: The Chair recognizes the Representative from Auburn, Representative Shields.

Representative **SHIELDS**: Mr. Speaker, Ladies and Gentlemen of the House. First of all, I would like to ask for a roll call.

This bill makes a great number of demands on pharmaceutical companies. Actually it says that the CEO of the company quarterly will certify that the prices that they report are accurate. This can be a big nuisance to an international company like Pfizer and so forth. It may well be that these types of companies will say, look, Maine, you can take a long walk on a short pier. We don't need to do business in your state. That may be the case if they find this a big enough nuisance.

The question is, what purpose does this bill serve? The information is already known. What it will do is make us hire another state employee. This is where it gets interesting. The state employee originally was budgeted out at \$70,000 to compile all these statistics. The sponsors of the bill found that this was not acceptable to have a fiscal note like this. The amendment says that this person will be funded by money that the Attorney General has acquired as a result of consumer protection litigation involving pharmaceutical pricing or practices. General fund funding will not be used for the purposes of this bill.

The Attorney General has to go out and sue somebody and then collect before this guy can get paid that collects all these statistics. There is a question of confidentiality or proprietary

information protected by federal law. I don't know that Maine's Attorney General has cleared this bill that we can do this. The amendment tries to address this, by saying that the material and information sent to the Commissioner of Human Services will not be revealed to anybody except those who are working with it. It is hardly confidential or a secret. The other part is that this bill may not be enacted even if it passes until the Attorney General sends a letter to the Commissioner of Human Services. I am reading from the amendment that informs the commissioner that there are funds available. I think it kind of puts together a bill with duct tape and bailing wire. It is a very awkward way to do it. I don't think it is good government and good legislation and I don't think it accomplishes very much that we don't already know.

Representative SHIELDS of Auburn **REQUESTED** a roll call on the motion to **ACCEPT** the Majority Ought to Pass as Amended Report.

More than one-fifth of the members present expressed a desire for a roll call which was ordered.

The SPEAKER: The Chair recognizes the Representative from Scarborough, Representative Curley.

Representative **CURLEY**: Mr. Speaker, Men and Women of the House. I think we had agreement on our committee that we wanted to do everything that we could do to lower the cost of prescription drugs for our constituents. I want to talk a little bit about why I am on the Minority or the Ought Not to Pass report. Many of you in this chamber and in the other body have worked very hard and had a leadership role in making prescription drugs more accessible to every one in our state. We have some model programs, Maine RX Plus and Drugs for the Elderly. We are really increased access. I am glad that the Representative from Damariscotta mentioned the fact that the price for prescription drugs has risen 13 percent. What is interesting about that is 11 percent of that cost is from increased utilization. People are taking more medications and they are avoiding surgery and living longer. I personally think that that is a good thing. Two percent of the increase has been from increased costs in medication. The 13 percent is a little bit deceiving although it is important to address the 2 percent.

The reasons I didn't support the bill is first the federal government and the State of Maine already have access to this information. The Department of Human Services told us that Maine has already negotiated the lowest drug prices of any state in New England. Again, we have already negotiated the lowest price of any state in New England. We are already doing this. I think that this kind of bill really puts us in a position where we will decrease access. We already have a problem with one-third of our pharmacies not participating in Maine RX Plus and drug companies are not as willing to come on board with our Drugs for the Elderly Program as they once were.

This bill really doesn't help us and, in fact, may hurt the very people that we are supposed to be helping. Please vote no on this motion. Thank you.

The SPEAKER: The Chair recognizes the Representative from Calais, Representative Perry.

Representative **PERRY**: Mr. Speaker, Ladies and Gentlemen of the House. I just want to bring out some of the issues as to why we are looking at this as an option for money savings. First of all, we do not get the average manufacturers price. It is with this that we are looking at getting a better margin between the price and the wholesale price. The federal government, Department of Justice, has actually settled some suits against pharmaceutical companies for failing to provide state Medicaid programs with the best price information that is required by federal law. Bayer paid the government \$250 million for this. Glaxo paid almost \$88 million and Parker Davis paid over \$30

million for failing to provide the programs with the best price information. The best way to ensure that we do this without having to go through legal setting and to spend more money on court cases is to get that information up front so that this occurs before we get to that point. Thank you.

The SPEAKER: The Chair recognizes the Representative from Waldoboro, Representative Trahan.

Representative **TRAHAN**: Mr. Speaker, Ladies and Gentlemen of the House. This fiscal note continues to bother me. I would like to give you a couple of reasons why that is. It appears that the Attorney General is going to have to go out and sue someone. That is going to cost the Attorney General's Office some resources. Just because you sue doesn't mean you are going to win. I wonder why this fiscal note doesn't reflect that extra cost for the Attorney General's Office. Secondly, I would like to ask someone in here to tell me how we are going to fund this position into the future? If the Attorney General's Office does sue, is that going to include enough money to continually fund this position into the future?

I have supported legislation very similar to this in the past. I was very proud to support it. I think that we are setting up a funding mechanism for this new position that is just unsustainable and it is quite outrageous, in my opinion. I just think it is bad policy. I am going to ask you to not support this legislation today. By doing that, it would send a message to the sponsor and to others to find a different, more responsible approach to funding this. I just think it is bad policy. Thank you.

The SPEAKER: The Chair recognizes the Representative from Old Orchard Beach, Representative Lemoine.

Representative **LEMOINE**: Mr. Speaker, Men and Women of the House. The battle for fair prescription drug prices in this state has gone on for many years and we haven't won it yet. We have some wins. We have put in the plate. We have acquired the best prices of many states, maybe even the best in New England, but that is far short of what is available in the public interests for this state and for the people we represent. The thing that I have learned, and I will share this with the body, having been involved in this prescription drug battle for a number of years is the pricing mechanisms that are involved in the pharmaceutical market are among the most obscure ever seen in humanity. You cannot tell what the price for anything is. That has been a major problem with trying to get prescription drug price reform.

Last year I believe we put a bill through so that somebody even when they are buying at the retail level knows what they are paying at the counter. That was not information that was known or freely given. We are pushing the ball forward here so that when we negotiate on behalf of the public with private enterprises for a fair price, we know what the facts are. There is nothing hiding on our side of the ball. We know what is available for money and they know what is available for money. This is a public deal that we put together. What does it cost you to provide that drug to us so that we can determine what is a fair negotiated price? This is a great bill. It deserves our support. I hope you will join me in supporting it.

The SPEAKER: The Chair recognizes the Representative from Damariscotta, Representative Earle.

Representative **EARLE**: Mr. Speaker, Men and Women of the House. I am sorry I was tardy in answering the good Representative Trahan's question. I was hunting for the correct answer. In answer to the question of what the funding or what the fiscal note was, it is going to be for a planner. Most of that planner's salary can be paid for by federal funds. Perhaps all of it can be, but we are not positive if all can be paid through federal funds or not. In answer to the second question about the Attorney General's Office fees, those are taken care of with the



settlement for successful action that the AG's Office bring against pharmaceutical companies. The three pharmaceutical companies that were sued, all of the expenses of the AG's Office were paid for from that. There is not cost to the state for the AG's services.

The **SPEAKER**: The Chair recognizes the Representative from Raymond, Representative Bruno.

Representative **BRUNO**: Mr. Speaker, Men and Women of the House. I hate to disagree with the Representative from Calais, Representative Perry, but the state does know what average manufacturing price is. I can guarantee you they know that. The fact of the matter is that the State of Maine has had the lowest cost increases in prescription drugs around the country. It was reported in the *Wall Street Journal*. Someone says we are going to negotiate a fair return. Does that mean putting 100 pharmacies out of business? Is that what you consider a fair return? When does it stop? When does putting pharmacies out of business stop, because you consider it a fair return?

I am in the pharmacy business. I have been for 25 years and I am barely surviving right now because of the actions of this Legislature and this bill just puts another nail in the coffin and no one cares. That is what is frustrating about being in the minority up here. The other side doesn't care. They don't care if you put a business out.

The **SPEAKER**: Would the Representative please defer? The Chair recognizes the Representative from Biddeford, Representative Sullivan. For what purpose does the Representative rise?

Representative **SULLIVAN**: Mr. Speaker, I object to questioning the motives of this side.

On **POINT OF ORDER**, Representative SULLIVAN of Biddeford objected to the comments of Representative BRUNO of Raymond because he was questioning the motives of other members of the House.

The **SPEAKER**: The Chair would remind the Representative that, although I do understand the emotional nature of this debate, it is improper to question the motives of any member of this institution. The Representative may proceed.

The Chair reminded Representative BRUNO of Raymond that it was inappropriate to question the motives of other members of the House.

Representative **BRUNO**: I apologize Mr. Speaker. I let my emotions get the best of me, but when I have 200 employees I may have to tell that they don't have a job anymore, I need to be able to point to someone. I know what it takes to run a business successfully. I have done it for many years. This bill is totally unnecessary. It is someone's ego trip that they think this does anything.

The **SPEAKER**: The Chair recognizes the Representative from Waterville, Representative Marraché.

Representative **MARRACHE**: Mr. Speaker, May I pose a question through the Chair?

The **SPEAKER**: The Representative may pose her question.

Representative **MARRACHE**: Mr. Speaker, Ladies and Gentlemen of the House. I don't understand how finding out what the cost is and how we can lower the cost to the state will put pharmacies out of business? Could somebody please answer that for me?

The **SPEAKER**: The Representative from Waterville, Representative Marraché has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Raymond, Representative Bruno.

Representative **BRUNO**: Mr. Speaker, Men and Women of the House. By finding out what the direct cost of these products are, the state negotiates some return that they think is fair as they

did in Maine RX Plus. The reason there is 100 pharmacies that are not accepting Maine RX Plus is because it is not a fair return. You have overhead. You have salaries. There are a lot of reasons that people are in business. We are not non-profits, but that is what people want to make of us. They want to say that this is what you are paying for the drug, I am going to let you have 1 percent or 2 percent on top of that price. That doesn't cover even the heating bills in a pharmacy. Thank you Mr. Speaker.

The **SPEAKER**: The Chair recognizes the Representative from Arundel, Representative Daigle.

Representative **DAIGLE**: Mr. Speaker, Ladies and Gentlemen of the House. I am reacting to the comments about what this bill does, I ask the body to recognize that one of the precedents it is setting, the policy it is establishing is that enforcement actions will be considered revenue generating actions to the further enforcement upon an industry. That is a concept that we have soundly rejected constantly here. The cliché is the rural sheriff who writes speeding tickets so he can buy himself a new squad car. The premise here is the Attorney General goes out and seeks enforcement actions against pharmaceutical companies in order to pay for the enforcement actions against pharmaceutical companies in order to pay for the enforcement of pharmaceutical companies and therefore staff up their agencies and so forth. We don't allow that in any law enforcement. We always put enforcement actions in the general fund so that we don't see it as corrupting influence on the way we select and pursue enforcement actions. That is just another factor of why this policy has consequences that I think are just wrong for the state. Thank you.

The **SPEAKER**: The Chair recognizes the Representative from Newfield, Representative Campbell.

Representative **CAMPBELL**: Mr. Speaker, Ladies and Gentlemen of the House. I have social security. I have Medicare and now we are going to have a federal program for prescription drugs. Why do we keep beating, what I have seen for two years, on prescription drugs when we are going to have prescription drugs? Thank you.

The **SPEAKER**: A roll call has been ordered. The pending question before the House is acceptance of the Majority Ought to Pass as Amended Report. All those in favor will vote yes, those opposed will vote no.

#### ROLL CALL NO. 440

YEA - Adams, Ash, Barstow, Beaudette, Bennett, Blanchette, Bliss, Brannigan, Breault, Bull, Bunker, Canavan, Clark, Cowger, Craven, Cummings, Dudley, Dunlap, Duplessie, Duprey G, Earle, Eder, Faircloth, Finch, Gagne-Friel, Gerzofsky, Grose, Hatch, Hutton, Jennings, Ketterer, Koffman, Lemoine, Lerman, Lessard, Lundeen, Mailhot, Makas, Marley, Marraché, McGlocklin, McGowan, McKee, McLaughlin, Mills J, Moody, Norbert, Norton, O'Brien L, O'Neil, Paradis, Patrick, Pellon, Percy, Perry A, Pineau, Pingree, Piotti, Richardson J, Rines, Sampson, Saviello, Simpson, Smith N, Smith W, Sullivan, Suslovic, Thomas, Usher, Walcott, Watson, Wheeler, Woodbury, Wotton, Mr. Speaker.

NAY - Andrews, Annis, Austin, Berry, Berube, Bierman, Bowen, Bowles, Brown R, Browne W, Bruno, Bryant-Deschenes, Campbell, Carr, Churchill J, Clough, Collins, Courtney, Crosthwaite, Curley, Daigle, Davis, Dugay, Duprey B, Fischer, Fletcher, Glynn, Greeley, Heidrich, Honey, Jacobsen, Joy, Kaelin, Landry, Ledwin, Lewin, Maietta, McCormick, McKenney, Millett, Mills S, Murphy, Muse, Nutting, O'Brien J, Rector, Richardson E, Richardson M, Rogers, Rosen, Sherman, Shields, Snowe-Mello, Stone, Sukeforth, Sykes, Thompson, Tobin D, Tobin J, Trahan, Treadwell, Vaughan, Young.

ABSENT - Churchill E, Cressey, Goodwin, Hotham, Jackson, Jodrey, Kane, McNeil, Moore, Peavey-Haskell, Perry J, Tardy, Twomey.

Yes, 75; No, 63; Absent, 13; Excused, 0.

75 having voted in the affirmative and 63 voted in the negative, with 13 being absent, and accordingly the Majority Ought to Pass as Amended Report was **ACCEPTED**.

The Bill was **READ ONCE**. **Committee Amendment "A" (S-496)** was **READ** by the Clerk and **ADOPTED**.

Under suspension of the rules the Bill was given its **SECOND READING WITHOUT REFERENCE** to the Committee on Bills in the **Second Reading**.

Under further suspension of the rules the Bill was **PASSED TO BE ENGROSSED as Amended by Committee Amendment "A" (S-496)** in concurrence. **ORDERED SENT FORTHWITH**.

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By unanimous consent, all matters having been acted upon were **ORDERED SENT FORTHWITH**.

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Bill "An Act To Implement the Recommendations of the Joint Standing Committee on Business, Research and Economic Development Regarding the Board of Dental Examiners Pursuant to Reviews Conducted under the State Government Evaluation Act"

(H.P. 1457) (L.D. 1958)

- In House, **PASSED TO BE ENGROSSED** on April 7, 2004.

- In Senate, **PASSED TO BE ENGROSSED AS AMENDED BY SENATE AMENDMENTS "A" (S-498) AND "B" (S-499)** in **NON-CONCURRENCE**.

TABLED - April 8, 2004 (Till Later Today) by Representative SMITH of Monmouth.

PENDING - **FURTHER CONSIDERATION**.

On motion of Representative SULLIVAN of Biddeford, the House voted to **RECEDE**.

The **SPEAKER**: The Chair recognizes the Representative from Biddeford, Representative Sullivan.

Representative **SULLIVAN**: Mr. Speaker, Men and Women of the House. You have before you the recommendations of a sunset review that every 10 years every board must go through. It was the feeling of our committee that this was definitely needed. This was a dysfunctional board. That is the best I can say about it. It was a board where the dental hygienists, the dentists and the denturist were at each other's throat. There was permission being asked by dental hygienists on their day off to go to the clinics in your community and work. They had to get permission to give up their free time to work from the dentist to do public service. There was a constant battle with finances. The caps had been raised again and again. It is interesting to note that in this board, it is a unique board because the Dental Association is not represented by the dentist. They serve separately. It is a board of regulation. If there is a complaint against a dentist, a hygienist, they actually oversee this. It is the way all the boards work, but it did not work here.

The dental hygienists also had a bill in requiring asking for a unique and separate board. The denturists wanted a unique and separate board. It was the belief of the committee that these boards do not work well together. It was the request of the president of the board of dentists, Dr. Jim Faulkner from Kennebunkport, that we add one dental hygienist to the board. The board is eight members. In order not to grow government with every single board we looked at, licensers, plumbers, everything, we did not grow. We did not add anybody new. The

makeup was five dentists, one dental hygienist, one denturist and one public member. In order not to change anything as far as the number, we went to four dentists, two dental hygienist, remember it was the request of the dentist president, we kept the denturist at one and public member at one at the request of the dentist.

We also set up committees so that the dental hygienists could control their own professional growth. It was a subcommittee. We have done major work. You need to know that if I were to stand on this review book, I would be roughly six inches taller than I am right now. I really should have done it because it would have been nice once in my life to be tall. It has been a huge problem. We worked very hard. It was a carry over bill. It came here and the Dental Association was upset. How dare we tamper, at a 10 year review, and that we would change anything that the dentists said. This was request. The lobbyists came out in full array. They finally talked the other body into adding this amendment, which says, to heck with what you have been doing, we are going to grow government and we want another dentist on here. If you don't, then you don't support dentists.

I want you to know that a dentist even sent letters to people on my committee of a different party and threatened future contributions. This was heavy handed by the Dental Association and they are not even supposed to be represented on the board. They are simply dentists. That is how they want to be. I am asking you to Indefinitely Postpone the amendment from the other body, which grows this and we go on. There are a lot of good things in here. There are subcommittees, validation of dental hygienists, the understanding of state law that you may work in public health clinics. You may go into the schools and help those who cannot afford dentistry work. It is good work. Please do not let the whole bill go down. Do not allow a fiscal note to become available because of what lobbyists have done out here in the halls. I would ask you to Indefinitely Postpone Senate Amendment "A." Thank you.

On further motion of the same Representative **Senate Amendment "A" (S-498)** was **INDEFINITELY POSTPONED**.

**Senate Amendment "B" (S-499)** was **READ**.

Representative O'BRIEN of Augusta **REQUESTED** a roll call on the motion to **ADOPT Senate Amendment "B" (S-499)**.

More than one-fifth of the members present expressed a desire for a roll call which was ordered.

The **SPEAKER**: A roll call has been ordered. The pending question before the House is Adoption of Senate Amendment "B" (S-499). All those in favor will vote yes, those opposed will vote no.

#### ROLL CALL NO. 441

YEA - Adams, Ash, Austin, Barstow, Beaudette, Bennett, Berry, Berube, Bierman, Blanchette, Bliss, Bowen, Brannigan, Breault, Browne W, Bruno, Bull, Bunker, Canavan, Carr, Clark, Clough, Cowger, Craven, Cummings, Curley, Davis, Dudley, Dugay, Dunlap, Duplessie, Duprey G, Earle, Eder, Faircloth, Finch, Fischer, Gagne-Friel, Gerzofsky, Glynn, Goodwin, Greeley, Grose, Hatch, Hutton, Jackson, Jacobsen, Jennings, Kaelin, Ketterer, Koffman, Landry, Ledwin, Lemoine, Lerman, Lessard, Lundeen, Maietta, Mailhot, Makas, Marley, Marraché, McCormick, McGlocklin, McGowan, McKee, McKenney, McNeil, Mills J, Mills S, Moody, Murphy, Muse, Norbert, Norton, O'Brien L, Paradis, Patrick, Pellon, Percy, Perry A, Pineau, Pingree, Piotti, Rector, Richardson E, Richardson J, Rogers, Rosen, Sampson, Saviello, Shields, Simpson, Smith N, Smith W, Snowe-Mello, Sukeforth, Sullivan, Suslovic, Thomas, Thompson, Trahan, Usher, Walcott, Watson, Wheeler, Woodbury, Wotton, Young, Mr. Speaker.

NAY - Andrews, Bowles, Brown R, Bryant-Deschenes, Campbell, Churchill J, Collins, Courtney, Crosthwaite, Daigle,

Duprey B, Fletcher, Heidrich, Honey, Joy, Lewin, Millett, Nutting, O'Brien J, Richardson M, Rines, Stone, Sykes, Tobin D, Treadwell, Vaughan.

ABSENT - Annis, Churchill E, Cressey, Hotham, Jodrey, Kane, McLaughlin, Moore, O'Neil, Peavey-Haskell, Perry J, Sherman, Tardy, Tobin J, Twomey.

Yes, 110; No, 26; Absent, 15; Excused, 0.

110 having voted in the affirmative and 26 voted in the negative, with 15 being absent, and accordingly **Senate Amendment "B" (S-499) was ADOPTED.**

On motion of Representative MILLETT of Waterford, the House **RECONSIDERED** its action whereby **Senate Amendment "A" (S-498) was INDEFINITELY POSTPONED.**

The same Representative **REQUESTED** a roll call on the motion to **INDEFINITELY POSTPONE Senate Amendment "A" (S-498).**

More than one-fifth of the members present expressed a desire for a roll call which was ordered.

The **SPEAKER:** The Chair recognizes the Representative from Biddeford, Representative Sullivan.

Representative **SULLIVAN:** Mr. Speaker, Ladies and Gentlemen of the House. This is the amendment that I asked to be Indefinitely Postponed. It went under the hammer and I can understand the confusion. I turned around and I was a little confused myself. I needed to make sure from the corner that we had done what we wanted. This is the amendment that asks that the we not grow government and that we simply keep the same number of people, moving one of the dentists to a dental hygienist which was the request of the president of the Dental Board, but not of the Dental Association. The amendment "B" that we voted on was simply word smithing. They were correct. I can understand the confusion, but this is the amendment we are Indefinitely Postponing, which will add a fiscal note to this and which will also change and grow the board, which we have purposely been as a policy on both sides not to do. Thank you.

The **SPEAKER:** The Chair recognizes the Representative from Scarborough, Representative Clough.

Representative **CLOUGH:** Mr. Speaker, Ladies and Gentlemen of the House. I would ask you to oppose this motion to Indefinitely Postponement Senate Amendment "A." One of the most troublesome proposals in this bill calls for a change in the composition of the State Board of Dental Examiners from the current five dentists, one hygienist, one denturist and one public member to four dentists, two hygienists, one denturist and one public member. This amendment calls for an increase in the number of state board members to a total of nine to allow for the addition of the hygienist and bring the dentists back to five. The protection of the public is prime function of this board. Reducing the number of dentists on the state board does not improve public protection. Dentists are more familiar with all the aspects of dental care and are the best prepared to evaluate and rule on the complaints, licensure and scope of practice issues affecting all oral health care providers.

Adding one member to the state board also is not adding to state government and is not adding to the cost of state government. The cost is projected to be under \$1,000 a year for per diem and travel and the dental board is self-supporting by licensing fees and doesn't receive general fund support from the state at all. The vast majority of cases dealt with by the state board deal with dentists. Current board members report a heavy workload and reducing the number of dentists on the board would make this situation worse. I ask you to vote against the pending motion and leave (S-498) intact.

The **SPEAKER:** The Chair recognizes the Representative from Medway, Representative Duprey.

Representative **DUPREY:** Mr. Speaker, Ladies and Gentlemen of the House. This, like Representative Sullivan said earlier, was a carry over bill. We spent a great deal of time listening to various components of this bill, listening to a tremendous amount of debate on it. The dentists, the way it was structured with five members did not really substantiate their makeup of five members on the board. There are other practices, if you will, in the dental profession that are equally important. The impression or whatever you may want to refer to it as was a control, if you will, that the dentists that they want to maintain. The other professions have had a hard time dealing with this over the years and that became quite evident in what we heard. I really feel that spreading the representation on the board would serve the public much better. I would ask you and encourage you to please support this motion.

The **SPEAKER:** The Chair recognizes the Representative from Monmouth, Representative Smith.

Representative **SMITH:** Mr. Speaker, Men and Women of the House, ever so briefly, I am in agreement with our House chair. We had a unanimous committee report that made significant improvements to the function of the dental board, adding back the fifth dentist is not part of that. Please vote to Indefinitely Postpone Senate Amendment "A." Thank you.

The **SPEAKER:** A roll call has been ordered. The pending question before the House is Indefinite Postponement of Senate Amendment "A" (S-498). All those in favor will vote yes, those opposed will vote no.

#### ROLL CALL NO. 442

YEA - Adams, Ash, Austin, Barstow, Beaudette, Bennett, Berube, Breault, Bull, Bunker, Canavan, Clark, Craven, Cummings, Dudley, Dunlap, Duplessie, Duprey G, Earle, Eder, Faircloth, Finch, Fischer, Gagne-Friel, Gerzofsky, Goodwin, Grose, Hatch, Hutton, Jackson, Jacobsen, Jennings, Ketterer, Koffman, Lemoine, Lessard, Lundeen, Mailhot, Makas, Marley, McGlocklin, McGowan, McKee, Mills J, Moody, Norbert, Norton, O'Brien L, Paradis, Patrick, Pellon, Percy, Perry A, Pineau, Pingree, Piotti, Richardson J, Sampson, Simpson, Smith N, Smith W, Sullivan, Suslovic, Usher, Walcott, Watson, Wheeler, Woodbury, Wotton, Mr. Speaker.

NAY - Andrews, Annis, Berry, Bierman, Bliss, Bowen, Bowles, Brannigan, Brown R, Browne W, Bruno, Bryant-Deschenes, Campbell, Carr, Churchill J, Clough, Collins, Courtney, Cowger, Crosthwaite, Curley, Davis, Dugay, Duprey B, Fletcher, Glynn, Greeley, Heidrich, Honey, Joy, Kaelin, Landry, Ledwin, Lewin, Maietta, Marraché, McCormick, McKenney, McNeil, Millett, Mills S, Murphy, Muse, Nutting, O'Brien J, Rector, Richardson E, Richardson M, Rines, Rogers, Rosen, Shields, Snowe-Mello, Stone, Sukeforth, Sykes, Thomas, Thompson, Tobin D, Trahan, Treadwell, Vaughan, Young.

ABSENT - Blanchette, Churchill E, Cressey, Daigle, Hotham, Jodrey, Kane, Lerman, McLaughlin, Moore, O'Neil, Peavey-Haskell, Perry J, Saviello, Sherman, Tardy, Tobin J, Twomey.

Yes, 70; No, 63; Absent, 18; Excused, 0.

70 having voted in the affirmative and 63 voted in the negative, with 18 being absent, and accordingly **Senate Amendment "A" (S-498) was INDEFINITELY POSTPONED.**

Representative CLOUGH of Scarborough **REQUESTED** a roll call on **PASSAGE TO BE ENGROSSED as Amended.**

More than one-fifth of the members present expressed a desire for a roll call which was ordered.

The **SPEAKER:** A roll call has been ordered. The pending question before the House is Passage to be Engrossed. All those in favor will vote yes, those opposed will vote no.

**ROLL CALL NO. 443**

YEA - Adams, Ash, Austin, Barstow, Beaudette, Bennett, Berube, Blanchette, Brannigan, Breault, Bull, Bunker, Canavan, Clark, Craven, Cummings, Dudley, Dunlap, Duplessie, Duprey G, Earle, Eder, Faircloth, Finch, Fischer, Gagne-Friel, Gerzofsky, Goodwin, Grose, Hatch, Hutton, Jackson, Jacobsen, Jennings, Ketterer, Koffman, Ledwin, Lemoine, Lessard, Lundeen, Mailhot, Makas, Marley, Marraché, McGlocklin, McGowan, McKee, McNeil, Mills J, Moody, Norbert, Norton, O'Brien L, Paradis, Patrick, Pellon, Percy, Perry A, Pineau, Pingree, Piotti, Richardson J, Sampson, Saviello, Simpson, Smith N, Smith W, Sukeforth, Sullivan, Suslovic, Thomas, Usher, Walcott, Watson, Wheeler, Woodbury, Wotton, Mr. Speaker.

NAY - Andrews, Annis, Berry, Bierman, Bliss, Bowen, Bowles, Brown R, Browne W, Bruno, Bryant-Deschenes, Campbell, Carr, Churchill J, Clough, Collins, Courtney, Cowger, Crosthwaite, Curley, Daigle, Davis, Duprey B, Fletcher, Glynn, Greeley, Heidrich, Honey, Joy, Kaelin, Landry, Lewin, Maietta, McCormick, McKenney, Millett, Mills S, Murphy, Muse, Nutting, O'Brien J, Rector, Richardson E, Richardson M, Rines, Rogers, Rosen, Shields, Snowe-Mello, Stone, Sykes, Thompson, Tobin D, Trahan, Treadwell, Vaughan, Young.

ABSENT - Churchill E, Cressey, Dugay, Hotham, Jodrey, Kane, Lerman, McLaughlin, Moore, O'Neil, Peavey-Haskell, Perry J, Sherman, Tardy, Tobin J, Twomey.

Yes, 78; No, 57; Absent, 16; Excused, 0.

78 having voted in the affirmative and 57 voted in the negative, with 16 being absent, and accordingly the Bill was **PASSED TO BE ENGROSSED as Amended by Senate Amendment "B" (S-499) in NON-CONCURRENCE** and sent for concurrence.

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By unanimous consent, all matters having been acted upon were **ORDERED SENT FORTHWITH**.

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Bill "An Act To Require Surety Bonding by Payroll Processing Companies"

(H.P. 1369) (L.D. 1843)

- In Senate, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-838)**.

TABLED - April 8, 2004 (Till Later Today) by Representative SULLIVAN of Biddeford.

PENDING - **ADOPTION OF HOUSE AMENDMENT "B" (H-878) to COMMITTEE AMENDMENT "A" (H-838)**.

Subsequently, Representative WATSON of Bath **WITHDREW House Amendment "B" (H-878) to Committee Amendment "A" (H-838)**.

Representative SULLIVAN of Biddeford **PRESENTED House Amendment "C" (H-902) to Committee Amendment "A" (H-838)**, which was **READ** by the Clerk.

The SPEAKER: The Chair recognizes the Representative from Biddeford, Representative Sullivan.

Representative SULLIVAN: Mr. Speaker, Men and Women of the House. The bill is to require bonding by the payroll processing companies. It is in regard to Saco and the Harmon Bart situation there. You have seen three different amendments that have never actually gotten to the floor. I have been promised by the department that this will be the last wording. Let me tell you what this does. There was a concern at the beginning that if payroll processing company does your forms as a business, but does not pay any money in, they do not need a surety bond. There is no reason to put people out of business

that never handled money. We had some words with handle and hold and all this. This has been written up by lawyers and it simply means that if you are a payroll processing company, that simply completes forms, but the employer, your client, sends those forms in with the money owed, they do not need to put up surety bond. It has been approved by the Chamber of Commerce. It has been approved by the Maine Merchants Association. We think that this is a good addition and I would ask you to support it. Thank you very much.

The SPEAKER: The Chair recognizes the Representative from Old Town, Representative Dunlap.

Representative DUNLAP: Mr. Speaker, Ladies and Gentlemen of the House. I want to thank the work of the Committee on Business, Research and Economic Development and their work on this very important issue. I don't think we should lose sight of the original incident, which brought rise to this legislation. This is legislation that I was privileged to introduce. Because of the circumstances of the Harmon Bart situation which was expertly outlined by the good chair of the committee. This is a friendly amendment. Hopefully this will go a long way toward preventing the outrageous malfeasants that has brought low so many of our good friends in the small business community and jeopardized the paychecks of so many hardworking Mainers. I would like to thank the committee again for their hard work and urge the adoption of this friendly amendment. Thank you Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Sanford, Representative Bowles.

Representative BOWLES: Mr. Speaker, May I pose a question through the Chair?

The SPEAKER: The Representative may pose his question.

Representative BOWLES: Mr. Speaker, Ladies and Gentlemen of the House. As I look at this new amendment, House Amendment "C" and I compare it to House Amendment "B" that was withdrawn, I don't see any difference. Could someone tell me the difference between these amendments?

The SPEAKER: The Representative from Sanford, Representative Bowles has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Biddeford, Representative Sullivan.

Representative SULLIVAN: Mr. Speaker, Men and Women of the House. I didn't see the difference either. There has been major confusion over this bill. It actually has to do with one word that has been replaced. I can't even remember that because there have been five amendments. We finally have agreed that we want to make sure that handling and in control of is the same. We finally have agreement so that we won't have the situation that we did in Saco. It is word smithing and they have word smithed it four or five times. There is a sixth one out there and we said no.

The SPEAKER: The Chair recognizes the Representative from Medway, Representative Duprey.

Representative DUPREY: Mr. Speaker, Ladies and Gentlemen of the House. If you still have copies of House Amendment 878 and 902, if you look under exceptions, item 4, I think that is where you will see the distinction between the two.

**House Amendment "C" (H-902) to Committee Amendment "A" (H-838) was ADOPTED.**

**Committee Amendment "A" (H-838) as Amended by House Amendment "C" (H-902) thereto was ADOPTED.**

The Bill was **PASSED TO BE ENGROSSED as Amended by Committee Amendment "A" (H-838) as Amended by House Amendment "C" (H-902) thereto in NON-CONCURRENCE** and sent for concurrence.

The Chair laid before the House the following item which was **TABLED** earlier in today's session:

An Act To Further Implement the Recommendations of the Commission To Improve the Sentencing, Supervision, Management and Incarceration of Prisoners and the Recommendations of the Commission To Improve Community Safety and Sex Offender Accountability

(H.P. 1409) (L.D. 1903)  
(C. "A" H-860)

Which was **TABLED** by Representative RICHARDSON of Brunswick pending **PASSAGE TO BE ENACTED**.

On motion of Representative GAGNE-FRIEL of Buckfield, the rules were **SUSPENDED** for the purpose of **RECONSIDERATION**.

On further motion of the same Representative, the House **RECONSIDERED** its action whereby the Bill was **PASSED TO BE ENGROSSED**.

On further motion of the same Representative, the rules were **SUSPENDED** for the purpose of **FURTHER RECONSIDERATION**.

On further motion of the same Representative, the House **RECONSIDERED** its action whereby **Committee Amendment "A" (H-860)** was **ADOPTED**.

On further motion of the same Representative, the rules were **SUSPENDED** for the purpose of **FURTHER RECONSIDERATION**.

On further motion of the same Representative, the House **RECONSIDERED** its action whereby **House Amendment "A" (H-875)** to **Committee Amendment "A" (H-860)** was **INDEFINITELY POSTPONED**.

The **SPEAKER**: The Chair recognizes the Representative from Buckfield, Representative Gagne-Friel.

Representative **GAGNE-FRIEL**: Mr. Speaker, Ladies and Gentlemen of the House. We did discuss somewhat earlier this particular amendment. I think we should revisit this. As legislators we are obligated to public safety. Repeat offenders need more time in prison, not more time on probation. Maine already has the lowest incarceration rate. We should not endanger the public in the long term because Maine's prisons are overcrowded. I ask you to please vote for House Amendment "A" and I ask for a roll call.

The same Representative moved that **House Amendment "A" (H-875)** to **Committee Amendment "A" (H-860)** be **ADOPTED**.

The same Representative **REQUESTED** a roll call on the motion to **ADOPT House Amendment "A" (H-875)** to **Committee Amendment "A" (H-860)**.

More than one-fifth of the members present expressed a desire for a roll call which was ordered.

Representative **BLANCHETTE** of Bangor moved that **House Amendment "A" (H-875)** to **Committee Amendment "A" (H-860)** be **INDEFINITELY POSTPONED**.

The **SPEAKER**: The Chair recognizes the Representative from Bangor, Representative Blanchette.

Representative **BLANCHETTE**: Mr. Speaker, Ladies and Gentlemen of the House. I guess I feel like I am living through déjà vu all over again. I believe it was yesterday that we debated this bill. I can tell you in all honesty and my committee not only debated this bill, but we compromised in order to come out of the Criminal Justice, Public Safety Committee with a unanimous committee vote. There was give. There was take. It was a joint effort by 13 elected officials that we took into the consideration

the sentencing commission that had met for six months, the Sex Offender Commission that had met for six months. We took these bills and we married them together very successfully, but not without a lot of soul searching and pain on everybody's part.

I need to quote some of the things that were said in a recent newspaper article that drives the point home of why this is a bill that is going to help the people of the State of Maine. Probation is the most heavily used sentencing option in many types of cases. With the caseloads topping 140 per probation officer, the system is unmanageable. Lawyers and correction officials have said that. You have corrections officers that are supervising way too many people in the prison system, both in the state and on the county level. This is because 54 percent of the people in our corrections facility at Warren are probation violators and their probation is mostly on a technical cause.

If someone is picked up for a probation violation and they have more than one year left of their sentence, they have no option but to go back to the state prison. I have people, human beings, let's not forget these are human beings that we are asking to live in inhumane conditions in our prison because there are four people in one cell that was designed and approved by the accreditation of prison for one person. This cannot continue to happen. We have worked and worked and worked with brightest and the best minds in this state that are in charge of our correctional facilities. We need to implement the bill as it came out of Criminal Justice, Public Safety in a unanimous committee report as it stands. I would urge you to vote with me to Indefinitely Postpone this amendment. Let's complete the people's business. Thank you Mr. Speaker.

Representative **SHIELDS** of Auburn **REQUESTED** a roll call on the motion to **INDEFINITELY POSTPONE House Amendment "A" (H-875)** to **Committee Amendment "A" (H-860)**.

More than one-fifth of the members present expressed a desire for a roll call which was ordered.

Under suspension of the rules, members were allowed to remove their jackets.

The **SPEAKER**: The Chair recognizes the Representative from Waldoboro, Representative Trahan.

Representative **TRAHAN**: Mr. Speaker, Ladies and Gentlemen of the House. I won't repeat my comments from yesterday when I supported this legislation. I do want to say that I thank the Representative for giving us another opportunity to look at this. I think that this piece of legislation will have an impact in several years. If we pass it in its current form, it will have a negative impact.

Ladies and gentlemen, there is no doubt that our prisons are full, but those people who are in our prisons are there for a reason. They are there because they violated our laws and because they violated drug laws that put in jeopardy many of our constituents. My fear and the fear of a lot of people out there, especially DAs, is that this legislation is going to be putting people back on the streets that shouldn't be there without supervision. I believe this amendment is a much more cautious approach to reducing our prison population. In the meantime, there are things that we can do by putting more people, more guards into our prisons and accounting for more space for our prisoners. Ladies and gentlemen, when I have to choose the safety of my constituents, my law abiding constituents or with the inconvenience of those prisoners who have gone into our prisons

for many very troubling reasons, I will always choose my constituents. Please support this amendment. Thank you.

The SPEAKER: The Chair recognizes the Representative from Winterport, Representative Kaelin.

Representative **KAELIN**: Mr. Speaker, Ladies and Gentlemen of the House. I really don't have an awful lot of familiarity with some of those legal issues involving this bill. I have tried to stay away from law enforcement throughout all of my 53 years. When I listened to the debate the other night, Thursday I think it was, I spent time out in the hall on the phone with our local Sheriff in Waldo County who I have a lot of respect for and who has been very creative in trying to overcome some significant overcrowding problems in our county jail. I talked to Scott Storey about the bill and the commission's recommendations and I have a lot of respect for what the Public Safety Committee has done in this area. Scott's view was on balance it is a pretty good thing. I think it will help us a little bit with overcrowding. As the evening wore on I went to see the Sheriff's Association that night and then I got some phone calls over the weekend, including our District Attorney and began to look at it a little more carefully. I am now convinced that there are at least two or three classes of criminals that would be released under the Majority Report on second convictions. You have the yellow paper in front of you. You don't have to read off it. Easter Sunday I heard from Jeff Rushlaw who is our prosecuting attorney in the county. He has convinced me that, in fact, Representative Faircloth's amendment is a good balance between the protection of public safety for our constituents and easing the overcrowding of our jails, which is certainly important. I would urge my colleagues to vote against the Indefinite Postponement of this amendment so that we can get to it and support it. Thank you Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Poland, Representative Snowe-Mello.

Representative **SNOWE-MELLO**: Mr. Speaker, Ladies and Gentlemen of the House. Ordinarily I would look at the amendment and say this is a good amendment and I can really support this. I have told my fellow committee members that I am very tempted to. What aggravates me is that the different district attorneys came once to our committee. That is all. If they despised this report as much as they say they do, then why didn't they come more often? I know a few of them personally came to me and said they didn't like it. They weren't too crazy about it. You need to go to the whole committee. Many of you that have come before the Criminal Justice Committee know that we have a very open committee room. It is a very open committee process. We will listen to all concerned. We will often take comments of the people that come to represent their concerns. Why, I ask, didn't they come to us and scream and yell and make it very loud and clear that they were very upset with where we were going.

I got a few e-mails early on, but then we continued to work on this bill and work on this bill, they stopped. They stopped the e-mails and they stopped the communications. I automatically assumed that they were okay with this. As my committee chair, Representative Blanchette from Bangor said, this was not easy for any of us. Believe me, none of us would have gone here and done this if we weren't in the situation that we are in. I do believe that we need to be tough on criminals. I do believe that if you abide by the law and follow the law, you won't be in prison and you won't go to jail. Yes, I believe that our prisoners should be in jail. That is the safest place for them and the safest place for the people back home. I have to correct what I just said because at this time it isn't the safest place for our prisoners. This

amendment troubles me because I shouldn't question why it was brought forward. It does concern me. Thank you.

The SPEAKER: The Chair recognizes the Representative from Calais, Representative Perry.

Representative **PERRY**: Mr. Speaker, Ladies and Gentlemen of the House. I know I have spoken before on this. This amendment does not gut the bill. It does not bring back in all the probations and stuff that were eased and taken out. There are some areas that I have some real concern with and that is what this amendment is trying to do. First of all, there is no probation for Class W possession. It really does concern me. I am dealing with an area that has some significant substance abuse problems. Class W drugs are not alcohol. They are not legal. They also carry with the possessor a very difficult problem of addiction. You may be able to say that you have to go to treatment, but treatment does not work with these people. Unfortunately because of the illness, without some real clout behind it and without the guidance that probation would give them.

It also concerns me about second offenders who then will have the same lightness of term in probation that a first timer will have. I would hope and pray that first time through there were certainly some lessons learned. That doesn't always happen.

The other issues are around the non-probation for arson or animal cruelty. Those also are areas that need to be very carefully watched because of what is known and proven that if this is not taken care of then it can lead to much more serious crime. Thank you.

The SPEAKER: The Chair recognizes the Representative from Topsham, Representative Lessard.

Representative **LESSARD**: Mr. Speaker, Ladies and Gentlemen of the House. I, too, am concerned with this bill, but you know what? Being from a law enforcement community for many years was an education listening to the experts testify on all aspects of the criminal justice system. I was enlightened by a lot of things that were presented, especially in the area of probation. Let me assure you that with this bill the judges will have the authority or the right to sentence people that deserve to be sentenced. Never mind about probation. What is probation? Probation is it feels good, we'll give you two years probation, along with 30 days suspended on and on and on. Yes, I have problems with the bill, but it is a fair bill to begin with. The commission will be in place and certainly I have reservations also, but certainly I will bring them up in January when the commission reports back. We will have some statistics to show if we are on the right track. Right now we don't have the information and all of these amendments are coming forth.

We debated these issues and we looked at them. Where are the statistics that we can work with and hang our hats on and say that this is fair? This is what we should do for the safety of the public. We are concerned for the safety of the public. It is a hard bill. People realize that we are allowing probation for all kinds of things. You look at the bill, the serious crimes, the judge has the latitude to go more serious than we are doing it now. It is a good bill. It has to be tweaked. It is not by offering amendments after amendments. I could have offered amendments all day, but to what end. Let's do what we have already and continue to process and come back in January or the first part of the year and correct those if they are to be corrected. There is substantial information that we can act on. I implore you to defeat this amendment. Thirteen members of that committee heard long and hard on these issues. It feels good to have these amendments and I admire those who support that, but not for now. Let's see what the statistics are and see where it comes from and then we will go ahead. Thank you.

The SPEAKER: The Chair recognizes the Representative from Rockland, Representative McNeil.

Representative **MCNEIL**: Mr. Speaker, Ladies and Gentlemen of the House. I hope that the statistics that the Representative from Topsham are talking about are not my constituents back home who are already victims and the families of those victims.

The SPEAKER: The Chair recognizes the Representative from Harrison, Representative Sykes.

Representative **SYKES**: Mr. Speaker, Ladies and Gentlemen of the House. Please don't forget another part of LD 1903 that would be impacted by this amendment. It creates two additional alternative sentencing options for the judge the third disposition and administrative release. The objective here is to get the judiciary to get away from probation, to relieve some of those probation overloads and for those judges to use some of these sentencing alternatives. Defer disposition, which is actually for a Class C, D and E crime and administrative release, which is for a Class D and E crime. These are activity proven alternatives in other states that can be effective and will also at the same time help us reduce some of the probation overload. Remember, we are trying to get away from the use of probation, but we are creating two additional sentencing alternatives, defer disposition and administrative release. I hope we will Indefinitely Postpone this amendment. Thank you.

The SPEAKER: The Chair recognizes the Representative from Bangor, Representative Faircloth.

Representative **FAIRCLOTH**: Mr. Speaker, Men and Women of the House. I will address some of the issues that have arisen since this issue was last before us. I agree with everything in substance that Representative Blanchette says about this piece of legislation. If the amendment were to be accepted, we would let many, many people completely off probation. That is what the amendment does. There is a huge list, I should have it distributed and I am sorry I didn't, of misdemeanors that with the amendment would be completely let off probation, theft, negotiating worthless instruments, forgery, criminal trespass, trespass by motor vehicle, criminal invasion of computer privacy, false swearing, falsifying physical evidence, tampering with public records and the list goes on. The great majority under the amendment of misdemeanor crimes would be left off probation completely. We all agree on that point.

What the amendment does is it says for things like Schedule W drugs, not marijuana, serious Schedule W addictive drugs to maintain probation. Who are some of the people that suggested this to me? Probation officers. They say, listen here is guy who is eight years as a probation officer. Let's these other things off probation. That is reasonable and that is fine. Schedule W, you need to monitor. Why? You have to do random drug testing. You have to do random home visits. You won't find anywhere in the committee report any legal authority like you have with a probation officer to go enter into a home for anyone. There is no such process created in here under the administrative release. There is no mechanism. I talked with the Assistant Attorney General and he said the same thing. There is no mechanism by which to do that monitoring. This is great for restitution. That works. That is good, but not for somebody who is addicted to Oxycontin. That doesn't make sense.

All this amendment does is carve out some narrow and reasonable exceptions. If the amendment were to prevail, all first time felony offenders would have their probation reduced. All of the first time felony offenders would have their probation reduced just like under the underlying bill. It is not an issue. We are just talking about under this amendment, the repeat offenders and the

career criminals. That is reasonable and appropriate. Under administrative release for these misdemeanors, Don Gean, a former Democratic legislator from York County was very clear where in one of those areas where they have drug court, they said they still need probation. We need it because we need to help transition these people back on the straight and narrow path. He thought it would be a violation of confidentiality, an undermining of the relationship with the treatment provided for them to be policing, if you will, in the manner of a probation officer. He didn't like it. It wasn't a good idea. It wasn't one that he thought would be helpful to the people who need to get help when they are addicted to these drugs.

Truth in sentencing law was passed in 1995. Again, I respect the Sentencing Commission, but I happen to agree with the Attorney General. I happen to agree with the Chief Justice who opposed the increase in good time from five to nine days. If this amendment were to pass, you would still increase from five to seven days. It is a moderate, reasonable middle ground that would let lots of people off of probation, lots of people onto shorter probation and because it would go from five to seven days, let lots of people out of jail earlier. This amendment is extremely moderate. It carves out some narrow appropriate exceptions. Let's work together to add this on and then we can move on to what is an excellent piece of legislation.

This isn't any threat to the bill. It is an improvement to the legislation. Thank you.

The SPEAKER: The Chair recognizes the Representative from Farmington, Representative Mills.

Representative **MILLS**: Mr. Speaker, Men and Women of the House. Just a few remarks because I did pick up this orange sheet earlier and quite frankly, I found it offensive to suggest for a moment that the 13 members of this committee that I serve on proudly were not thinking about public safety or were not thinking about victim's rights and who were not thinking about putting repeat offenders in jail. I am a bit offended by the content of that yellow sheet. I want to say that we are very in tune with victim's advocates and victim's rights and we changed the bill many times to accommodate the needs of victims in the bill. I won't repeat everything I said last Thursday because this is the exact same amendment that was proposed last Thursday that we all voted to Indefinitely Postpone. It is not an amendment. It is not a minor tinkering. It is, quite frankly, a rewrite of the bill and it completely undermines the bill that we worked so hard on for the last several months in committee and for six months in the commission.

I think the good Representative from Bangor simply misunderstands the whole concept of probation and the concepts in this bill surrounding administrative release and deferred disposition and the concept of good time and work time, which is a new thing in the law that we are proposing. It is not some automatic decrease in anybody's sentence.

Probation is an easy thing to talk about. People have understandings about probation. The good Representative from Bangor has talked about probation officers going to people's houses and checking on them and seeing if they are doing drugs and what not. That would be good if that were so, but that is not so. Probation officers do not have a chance to go to people's houses and go to their places of employment, not when they have caseloads of up to 300 probationers per probation officer, not when they have to try to focus their time on violent offenders, domestic violence offenders, sexual assault offenders and the like and not when they are automatically violating people for technical offenses resulting in overcrowding in the jails and the prisons.

The Sheriffs were part of the commission. The Sheriffs were very deeply involved in writing this bill. The Sheriff's Association

has backed this bill. To help ease the overcrowding in the jails and to help the courts and the DAs and members of the criminal justice community be a little bit more creative with what they do and how they handle people on first offense and second offense property crimes and people who don't pose the kind of threat to public safety that people convicted of domestic violence do and people who are convicted of various sex offenses do.

We are very much acting in the interest of public safety in passing this bill and in passing it unamended.

The orange sheet asks about second offenses for selling Crack or Oxycontin to children and second arson convictions and second offenses for aggravated assault. I am not interested in putting those people on probation. I am interested, as is the committee, I think, in putting those people in prison where they belong. We can't put them in prison for long sentences right now because there is no room in the inn. The room is being taken up by technical violators of probation, burglary of motor vehicle offenders and the like. People who filch six packs of beer from a store on a Saturday night and violate their probation. I want to save the precious resources we have in our prisons and in our jails for those who are indeed a threat to public safety. That is why it is important not to dilute this bill, not to undermine this bill, not to change the bill, but to vote for it unamended.

The bill asks for members of the criminal justice community to think a little bit outside the box, to be more creative in sentencing. Instead of walking into court in the morning and saying that I want three years of probation on Joe Schmo or a years probation, think about administrative release.

When it comes to people who sell Oxycontin or sell Crack to other adults or to children, those are felony offenders. All current ranges of incarceration are available for those offenders. For felony and misdemeanors, drug cases, drug court is available and drug court is a good alternative and creative sentence that does not require probation. The drug court has its own resources, its own case managers who test those individuals and who ensure that they are in counseling and who require that they report to the court every week or every month as the court requires. That is a good program and an effective program without probation even being involved. It is not necessary to put first offense misdemeanor drug possession convicts on probation to achieve the good work of the drug court.

I ask you to vote with me in Indefinitely Postponing the gentleman's amendment as we did last Thursday and then go on to vote again to pass this good bill unamended. It is in the public's safety. Thank you.

The SPEAKER: The Chair recognizes the Representative from Bangor, Representative Faircloth.

Representative FAIRCLOTH: Mr. Speaker, Men and Women of the House. I strongly support the goal of increased public safety and I strongly support the goal of letting more people out on probation, decreasing probation ranges and increasing good time and with the amendment all those things happen. One I respectfully disagree about, a factual point, probation now, I checked with Kennebec and Penobscot County probation officers, do now, today, monitor Schedule W drug possessors. When people are saying it is too crowded and they can't do it, they do it now. If this amendment were to pass and relieve all of these misdemeanors off the probation roles and all of these first-time offenders down to lowered probation, they were able to do so even more. They are already doing it now. Why? One probation officer told me that an Oxycontin, Schedule W, drug possessors is a high-risk offenders, even if it is a Class D. He wants to help that person transition. It was not me who said you need probation after drug court. It was a treatment provider. He said it is very important because those people fall of the wagon.

This guy is in on their side. He is on the side of the drug addict trying to help them get straight. He says that probation is needed after drug court. By the way, drug court isn't in every county of the state. If it were, it would be necessary. Charlie Leadbetter from the Attorney General's Office, the father of our criminal code. We look inside here, inside the Committee Amendment, there is no legal authority for anyone, anywhere, anytime to go into a home, like a probation officer can and say, hi, we are checking in on you. They do that now, but if the Committee Amendment passes without the amendment, there is no one with the legal authority to go to that home and check. There is no legal authority to do the drug testing. That is very necessary to help that person.

First time offenders, let's decrease their probation period and respectfully I happen to agree with the Chief Justice and the Attorney General that going from five to nine days good time is too much. Thank you very much.

The SPEAKER: The Chair recognizes the Representative from Brunswick, Representative Gerzofsky.

Representative GERZOFSKY: Mr. Speaker, Ladies and Gentlemen of the House. Again, I have sat here and I have listened. I have this yellow paper, it is a great color, on my desk. I read it. The same time that I read my Maine Criminal Statutes. Ladies and gentlemen of the House, if you deal drugs in the State of Maine, it is a Class C crime. That gets you time in Thomaston or Warren now that we have Warren. It puts you not in jail, not on probation, it puts you in prison. That is where we start. I looked at this and I think how misleading. I have seen things on my desk that have been misleading. I probably have put things on your desk that might have been a little bit misleading, but nothing to this extent. This is printed on the right color paper. The commission and the study did not want to do away with probation. It did not want to do away with good time. We did good time for up to 15 days a month. We didn't take it back to two days a month. We cut it back to 9, 10 and 11 days a month to only the people who are doing their time without spitting on guards, without spilling their peas on the floor at dinnertime, without causing any disturbances. They are earning some good time. Not very many of those people are going to graduate with any good time on their books, because as I said last week, the guards love to say, 30 days loss of good time. If you don't have 30 days built up, they will be glad to deduct it as you get it.

Ladies and gentlemen, I have heard about punching women in the face. I have heard about selling drugs to kids. I have heard about arson. I have read all of this. If you punch a woman in the face in this state in a bar, after the bartender gets a hold of you, you are going to go to jail. You are going to go and do some time in prison, because you can't assault people in this state. It is against the law. No matter what anybody comes here and stands up and says and puts things out on yellow paper, it is against the law and you can't change that. You are not allowed to burn buildings down. It is a Class C crime. A Class C crime gets you time in prison.

Ladies and gentlemen, good time is a tool that the guards happen to use. I worked in the prison. I know what I am talking about. Probation is something that we need for people that have been released from jail or released from the court that need to be supervised. When a probation officer has 100 people on his role, he is not going to supervise them. He can't supervise them. We are not going to spend the money to hire another 100 probation officers. That is why this bill is so important as it is written. The committee I sit on, and since I got elected to this fine body, I have been on Criminal Justice. I am not a Johnny Come Lately that just happened to come in and say that I don't like what you are doing to my bill. I want it changed. I worked on this bill. My



committee worked on this bill. There are lawyers on my committee. There are furniture makers on my committee and I will tell you right now there are a couple of cops on my committee. One of them likes to say it every time he opens his mouth because he knows what it is like to deal with these people on the street and wants them behind bars as we do. We know the real life world. We can't keep putting people on probation without probation officers to handle it. This bill of ours gives us that.

We go from 15 days a month good time down to five days a month and now we are going to go back to nine days a month so that we can use it as a tool. Believe me, we don't graduate people with much of it on their books.

Ladies and gentlemen, please, I implore you to Indefinitely Postpone this amendment and let's get on with our business. It is running late. Thank you very much.

The SPEAKER: The Chair recognizes the Representative from Woolwich, Representative Grose.

Representative GROSE: Mr. Speaker, Ladies and Gentlemen of the House. I was told when I first came up here last session that you pay attention to the committee votes. You go with your committee. You trust their judgment. We had a unanimous vote on our committee. I can honestly tell you that this was not easy. We really had some head banging there and temper tantrums and everybody didn't get what they wanted. I just want to reiterate that. You do trust your committee. I trust committees. When I hear you stand up and talk about what you deal with in your committees, I trust a lot of your judgment. Some times I will vote against it, but a good majority of the time I trust your judgment. That is all I am asking on this committee here. We made a vote. We worked hard on it. I just wish everybody would take a good hard look at this. Thank you.

The SPEAKER: A roll call has been ordered. The pending question before the House is Indefinite Postponement of House Amendment "A" (H-875) to Committee Amendment "A" (H-860). All those in favor will vote yes, those opposed will vote no.

**ROLL CALL NO. 444**

YEA - Adams, Ash, Barstow, Blanchette, Bowles, Breault, Brown R, Bull, Churchill J, Clark, Cummings, Daigle, Dunlap, Duplessie, Earle, Eder, Fischer, Gerzofsky, Glynn, Greeley, Grose, Hatch, Jackson, Jacobsen, Jennings, Ketterer, Landry, Lessard, Lundeen, Maietta, Makas, Marley, Marraché, McCormick, McGlocklin, McKee, McLaughlin, Millett, Mills J, Mills S, Norbert, Norton, Nutting, O'Brien L, O'Neil, Patrick, Pellon, Percy, Pineau, Richardson E, Richardson J, Richardson M, Sampson, Saviello, Sherman, Simpson, Smith N, Smith W, Snowe-Mello, Sullivan, Suslovic, Sykes, Tobin D, Tobin J, Usher, Vaughan, Woodbury, Mr. Speaker.

NAY - Andrews, Annis, Austin, Beaudette, Bennett, Berry, Berube, Bierman, Bliss, Bowen, Brannigan, Bruno, Bryant-Deschenes, Bunker, Campbell, Canavan, Carr, Clough, Collins, Courtney, Cowger, Craven, Crosthwaite, Curley, Davis, Dudley, Dugay, Duprey B, Duprey G, Faircloth, Finch, Fletcher, Gagne-Friel, Heidrich, Honey, Hutton, Joy, Kaelin, Koffman, Ledwin, Lemoine, Lerman, Lewin, Mailhot, McGowan, McKenney, McNeil, Moody, Murphy, Muse, O'Brien J, Paradis, Perry A, Pingree, Piotti, Rines, Rogers, Rosen, Shields, Stone, Sukeforth, Thomas, Thompson, Trahan, Treadwell, Walcott, Watson, Wheeler, Wotton, Young.

ABSENT - Browne W, Churchill E, Cressey, Goodwin, Hotham, Jodrey, Kane, Moore, Peavey-Haskell, Perry J, Rector, Tardy, Twomey.

Yes, 68; No, 70; Absent, 13; Excused, 0.

68 having voted in the affirmative and 70 voted in the negative, with 13 being absent, and accordingly the motion to

**INDEFINITELY POSTPONE House Amendment "A" (H-875) to Committee Amendment "A" (H-860) FAILED.**

On motion of Representative RICHARDSON of Brunswick, **TABLED** pending **ADOPTION** of House Amendment "A" (H-875) to Committee Amendment "A" (H-860) and later today assigned. (Roll Call Ordered)

The following items were taken up out of order by unanimous consent:

**ENACTORS  
Acts**

An Act Regarding the Continued Provision of Free and Appropriate Public Education for Eligible Children of Kindergarten Age

(S.P. 801) (L.D. 1960)

Reported by the Committee on **Engrossed Bills** as truly and strictly engrossed, **PASSED TO BE ENACTED**, signed by the Speaker and sent to the Senate. **ORDERED SENT FORTHWITH.**

An Act To Streamline the Sales Tax Credit for Worthless Accounts To Eliminate Unnecessary Burdens on Certain Maine Businesses and Consumers

(S.P. 646) (L.D. 1714)

(C. "A" S-451)

Was reported by the Committee on **Engrossed Bills** as truly and strictly engrossed.

On motion of Representative LEMOINE of Old Orchard Beach, was **SET ASIDE.**

The SPEAKER: The Chair recognizes the Representative from Pittsfield, Representative McGowan.

Representative MCGOWAN: Mr. Speaker, Men and Women of the House. I want to apologize for not being here yesterday when this bill was presented to the House. I feel obligated today to rise and speak against this bill. I really would like to explain a few details about it. The title is a little deceiving. I would like to explain to you what this bill really does. There are some car dealers in the State of Maine that have what they call in-house financing. In-house financing is they finance whatever the car is worth in house. If I went into a garage and told them I didn't have any money for a down payment and I didn't have any money for the sales tax, they would probably tell me that they would finance this whole package. What they don't tell you is what percentage of interest they are going to finance this package for. They add in the sales tax. They add in the down payment and the price of the car and then in some cases they charge as high as 18 to 19 percent interest.

The SPEAKER: The Chair recognizes the Representative from Scarborough, Representative Clough. For what purpose does the Representative rise?

Representative CLOUGH: Point of Order, Mr. Speaker. There is nothing in this bill that refers to interest rates in any part of this bill.

On **POINT OF ORDER**, Representative CLOUGH of Scarborough asked the Chair if the remarks of Representative MCGOWAN of Pittsfield were germane to the pending question.

The SPEAKER: The Chair gives great leeway in the debate. The Chair would rule that the Representative from Pittsfield may proceed.

The Chair **RULED** the Representative MCGOWAN of Pittsfield can proceed.

Representative **MCGOWAN**: Thank you Mr. Speaker. These were things that went on in the committee. Returning to what I said earlier. What happens to this person who finances a car through an in-house dealer and he fails to make the payments? He may pay them for two years and then finds that under circumstances that he can't make another payment and they repossess the car. They take the car back and they dispose of it in some way, resell or take it to an auction. What they want to do now is they want to recoup the sales tax from the State of Maine for the loss of what they had in the original contract with the owner of the car.

I know there is not a money figure on this bill. There could be at least \$500,000 that could be involved in this bill. What it does do is it opens up a big can of worms. What will happen with this bill if it passes is you will see credit card companies coming in for bad accounts wanting to get reimbursed for sales taxes. You will have other businesses who have accounts receivables that include the sales tax that will be coming to the state for reimbursement on worthless accounts. This bill will open up a can of worms for the State of Maine that could be enormous as far as the money is concerned.

I ask you to consider this bill and I would like to have a roll call vote.

Representative **McGOWAN** of Pittsfield **REQUESTED** a roll call on **PASSAGE TO BE ENACTED**.

More than one-fifth of the members present expressed a desire for a roll call which was ordered.

The **SPEAKER**: The Chair recognizes the Representative from Scarborough, Representative Clough.

Representative **CLOUGH**: Mr. Speaker, Ladies and Gentlemen of the House. My good friend from Pittsfield, Representative McGowan, would have you believe this is a practice that is not approved in any other business. As a matter of fact, if you should buy a riding tractor from a farm dealer on such an arrangement and not make the payments, the unpaid portion of it would be submitted for a reduction in sales tax owed to the state by the dealer.

LD 1714 eliminates totally unnecessary administrative burdens on a number of Maine businesses throughout the state and provides important benefits to consumers as well. Let me explain how this works. Whenever a motor vehicle is sold, a car or a truck, the sales tax must be remitted to the state up front, whether the customer has paid for the car or not. No matter how carefully the dealer screens its customers, it is inevitable that sometimes a customer will default and the dealer does not get paid. To avoid a sales tax windfall to the state in that situation, Maine law has always provided for a mechanism for the dealer to recoup the sales tax that was remitted up front to the state in the form of a bad debt credit against future sales tax remittances. This is not something new. There was no problem with this process until a short time ago. A few years ago when several out of state financial institutions file refund claims with the state arguing that they should be entitled to the sales tax credit even though they didn't sell the cars, but only financed them.

The Maine Supreme Court eventually said no and that only the original dealer was entitled to the sales tax credit. Unfortunately the courts decision created some confusion even for Maine retailers claiming the credit. The court's decision contained some gratuitous language that cast a shadow on the bad debt credit that has historically been taken by a number of automobile dealers across the state that also operate their own in-house finance companies. Because of this confusion, some automobile dealers across the state, in the face their bad debt credit, received an enormous retroactive sales tax assessments

even though the Maine Supreme Court case had nothing to do with them and involved a much different situation.

Fortunately Maine Revenue Services stepped up to the plate and ruled that there was indeed a way around this situation. Maine Revenue Services actually provided a road map for these automotive dealers to obtain the bad credits after all. The problem was that complying with the Maine Revenue Services ruling would have created many administrative headaches for these dealers subjecting them to totally unnecessary legal and accounting costs and would have created enormous confusion for unfortunate customers of these dealers.

This bill, LD 1714, fixes these unnecessary hoops and hurdles and eliminates the confusion by making Maine Revenues cumbersome ruling unnecessary. LD 1714 simply clarifies the existing law by stating that automobile retailers that operate in-house finance companies are entitled to the credit, just as they have been and as they have been taking the credit for years prior to the confusion created by the court case. As a result of this legislation the sales tax law will now be crystal clear on this point, which benefits everyone and the need for completely unnecessary hoops and hurdles will be eliminated.

This bill also benefits consumers. My understanding is that once the bad debt credits are received, these credits are credited to the account that is owed by the consumer, the remaining bad debt that is still in a collection process is credited with this tax credit. It doesn't go to the automobile dealer. It goes to the person who purchased the vehicle, paid the tax up front, even though he put in on a financing arrangement, but was charged for the tax and paid it up front and then didn't pay for the whole vehicle and the vehicle was reposed.

In addition, these consumers will be spared the confusion that Maine Revenue's ruling will have caused by forcing them to be done the second time for the same debt by a different entity. Another important point is that the bill should not cost the state any money since the state would have had to provide the credits anyway once the dealers jumped through the unnecessary hoops and hurdles.

The Taxation Committee worked very hard on this bill and amended it in committee. Delaying the effective date of the bill to July 1, 2005 to make sure that it would have no affect on any appeals that are currently working their way through the court system. The final product as amended in committee is not intended to have any bearing, positive or negative, on those appeals.

This bill received very strong support in the Tax Committee and I urge you to support it. Ladies and gentlemen, please vote for the pending motion and accept the Majority Report. Mr. Speaker, I would request that the Clerk read the committee report.

Representative **CLOUGH** of Scarborough **REQUESTED** that the Clerk **READ** the Committee Report.

The Clerk **READ** the Committee Report in its entirety.

The **SPEAKER**: The Chair recognizes the Representative from Portland, Representative Suslovic.

Representative **SUSLOVIC**: Mr. Speaker, Men and Women of the House. I apologize for breaking my self-imposed vow of silence this evening. The longer I go on, the longer I am going to have to buy ice cream for my kids shortly. I just want to very briefly go over this. This bill is a pro-consumer bill and a pro-Maine small business bill. It is not often that we get to vote on the same bill and get to be pro-consumer and pro-Maine owned and operated small businesses.

This bill helps Maine businesses by avoiding having to put both the business and the consumer through unnecessary double dunning, if you will, so that the car dealer can, in fact, get the tax

credit under current Maine Revenue Service rulings. What this does is it enables the business to get the credit and then apply that credit to the consumer's account, thereby reducing the amount that the consumer owes in terms of bad debt. Again, I would urge you to support the 10 to 3 bipartisan Majority Report on this bill. Thank you.

The SPEAKER: The Chair recognizes the Representative from Old Orchard Beach, Representative Lemoine.

Representative **LEMOINE**: Mr. Speaker, Men and Women of the House. It is difficult when we get into talking about the details of tax policy. It is much easier to do the larger macro picture. Let me try to clarify a couple of things and do it as simply as I can. Number one, there is indeed a fiscal note to this. In FY 05-06 it amounts to a little over \$400,000 that are lost to the state revenues. Of course, under our rules we are obligated to live by fiscal notes. The fact that there is money on the table at issue, I think we need to be aware of it. Let me tell you for a minute about the substance of this bill. This is the case. If you go to buy a car and you bring the money with you and you buy that car, it is a done deal. The dealer has given you the car and you have taken the money and it is done. At that point, the dealer remits to the state what is owed for sales tax.

If on the other hand you don't have the money and you borrow it from a bank or from Uncle Paul and you go to find the dealer and he says, I'll give you the car and you give me the money, it is still a done deal. The dealer has all of his money. What happens then is your Uncle Paul gets your debt. If you don't pay it, then it is Uncle Paul's risk. We got into this slippery slope because of internal financing deals. If you are the car dealer and the buyer comes in and says that they want that car, but they don't have the money. You say that I will give you the car. You sign a note and when it is paid off, when its paid off, it will be a done deal. Until it is paid off it is not. Until it is paid off, the state is at risk for getting its sales tax on a done deal. What we did when we said you as a dealer can get some money back from a sale that you financed on your own if the buyer doesn't pay you what you owed, then that is a logical place to rest tax policy. The deal is not done from the dealer's point of view.

Once we start saying that your wife's financing company, your Uncle Paul's financing company, your credit union, your bank, your credit card company, the list just goes on and on for financiers who have taken the risk when they give the money to that buyer. They have secured it by the car. There is a lot of background. We have heard some discussion from Representative McGowan about how this process works, but at the end of the day the tax policy, which I would urge you to support by not voting for this bill, is to say a tax is due when the deal is done. Let's keep it that simple and that makes everybody's lives a lot easier and I guarantee if you don't do this, there is going to be a dozen new bills in here next year saying why is it good for the associated finance company, but it is not good for the bank and it is not good for the credit union around the corner and it is not good for Uncle Paul? It is going to be here and expand and expand. There is no good tax policy basis to support it. Thank you.

The SPEAKER: The Chair recognizes the Representative from Scarborough, Representative Clough.

Representative **CLOUGH**: Mr. Speaker, Ladies and Gentlemen of the House. The facts of the matter are that this is current state policy to allow anyone selling a product and financing it if they have to repossess it to recover the tax on the unpaid portion that had been paid up front. That is state policy. Also, if you were to sell a car for \$8,000 and only \$4,000 gets paid on it and you have to repossess it, that wasn't an \$8,000

sale. It was a \$4,000 sale and there is only tax on the \$4,000 due.

I would urge you to support this bill and vote for enactment. Thank you.

The SPEAKER: The Chair recognizes the Representative from Turner, Representative Bryant-Deschenes.

Representative **BRYANT-DESCHENES**: Mr. Speaker, May I pose a question through the Chair?

The SPEAKER: The Representative may pose her question.

Representative **BRYANT-DESCHENES**: Mr. Speaker, Men and Women of the House. I would like to ask if this car is sold, repossessed and resold again, is tax paid on it the second time as well?

The SPEAKER: The Representative from Turner, Representative Bryant-Deschenes has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Scarborough, Representative Clough.

Representative **CLOUGH**: Mr. Speaker, Men and Women of the House. The answer to the question is, if this car is repossessed and sold again, the tax will be charged on the sale for whatever price is recovered. If money is recovered for the sale of this vehicle and there is still an amount owed on it from the original purchaser, that will be credited to his account.

The SPEAKER: The Chair recognizes the Representative from Auburn, Representative Simpson.

Representative **SIMPSON**: Mr. Speaker, Men and Women of the House. This came to our attention in the Taxation Committee because there was an actual business that kept selling a car, repossessing it and buying it back themselves and selling it over and over again. It is called turning. I know when the Clerk read the committee report that I was on the Majority Report. I came into the committee late and just sort of told the clerk. I prefer to be on the Minority Report, Ought Not to Pass and I urge you to vote against this bill. The implications in the future for taxes is everyone is going to be coming and saying that they really didn't get paid for that so give me back my tax money. Taxes are the dues we all pay to live in a civilized society. I think we should make sure that people just do that. Thank you.

The SPEAKER: The Chair recognizes the Representative from Pittsfield, Representative McGowan.

Representative **MCGOWAN**: Mr. Speaker, Men and Women of the House. No matter how you slice this bill, they have been taking advantage of the public and now they want to take advantage of the state. Thank you very much.

The SPEAKER: A roll call has been ordered. The pending question before the House is Enactment. All those in favor will vote yes, those opposed will vote no.

#### ROLL CALL NO. 445

YEA - Andrews, Annis, Austin, Barstow, Bennett, Berry, Bowen, Bowles, Brown R, Bruno, Bryant-Deschenes, Campbell, Carr, Churchill J, Clough, Collins, Courtney, Cowger, Crosthwaite, Curley, Daigle, Davis, Duplessie, Duprey B, Fletcher, Gagne-Friel, Glynn, Greeley, Heidrich, Honey, Jacobsen, Joy, Kaelin, Ledwin, Lewin, Maietta, McCormick, McKenney, McLaughlin, McNeil, Millett, Mills S, Murphy, Nutting, O'Brien J, Richardson E, Richardson M, Rines, Rogers, Rosen, Sherman, Shields, Snowe-Mello, Stone, Sukeforth, Suslovic, Sykes, Thomas, Thompson, Tobin D, Tobin J, Trahan, Treadwell, Usher, Vaughan, Woodbury, Young, Mr. Speaker.

NAY - Adams, Ash, Beaudette, Blanchette, Bliss, Brannigan, Breault, Bull, Bunker, Canavan, Clark, Craven, Dudley, Dugay, Dunlap, Duprey G, Earle, Eder, Faircloth, Finch, Fischer, Gerzofsky, Grose, Hutton, Jackson, Jennings, Ketterer, Koffman, Lemoine, Lerman, Lessard, Lundeen, Mailhot, Makas, Marley,

Marraché, McGlocklin, McGowan, McKee, Mills J, Moody, Norbert, Norton, O'Brien L, O'Neil, Paradis, Patrick, Pellon, Percy, Perry A, Pineau, Pingree, Piotti, Richardson J, Sampson, Saviello, Simpson, Smith N, Smith W, Sullivan, Walcott, Watson, Wheeler, Wotton.

**ABSENT** - Berube, Bierman, Browne W, Churchill E, Cressey, Cummings, Goodwin, Hatch, Hotham, Jodrey, Kane, Landry, Moore, Muse, Peavey-Haskell, Perry J, Rector, Tardy, Twomey.

Yes, 68; No, 64; Absent, 19; Excused, 0.

68 having voted in the affirmative and 64 voted in the negative, with 19 being absent, and accordingly the Bill was **PASSED TO BE ENACTED** and signed by the Speaker.

Representative DUPLESSIE of Westbrook moved that the House **RECONSIDERED** its action whereby the Bill was **PASSED TO BE ENACTED**.

On further motion of the same Representative, **TABLED** pending his motion to **RECONSIDER** whereby the Bill was **PASSED TO BE ENACTED** and later today assigned.

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**SENATE PAPERS**  
**Non-Concurrent Matter**

Resolve, Authorizing Professional and Occupational Licensing Authorities in State Government To Defer or Waive Continuing Education Requirements for Military Personnel (EMERGENCY)

(H.P. 1459) (L.D. 1959)

**READ** and **REFERRED** to the Committee on **BUSINESS, RESEARCH AND ECONOMIC DEVELOPMENT** in the House on April 7, 2004.

Came from the Senate **READ TWICE** under suspension of the rules without reference to a committee and **PASSED TO BE ENGROSSED** in **NON-CONCURRENCE**.

Representative SULLIVAN of Biddeford moved that the House **RECEDE AND CONCUR**.

The **SPEAKER**: The Chair recognizes the Representative from Sanford, Representative Bowles.

Representative **BOWLES**: Mr. Speaker, Ladies and Gentlemen of the House. Last week I objected to sending this bill to committee. I did so not because I have a problem with the content of the bill, but because I have a problem with the process whereby we skip policy committees and just pass along legislation. I think that this is probably a good idea and I think that probably should be done, but I am not going to try to block that tonight. I am not going to ask you to not support the motion. However, before I came in the chamber I was told by someone from the Department of Licensing and Registration, which is the oversight department for this that there is a problem with this. The language is flawed and they are going to need an amendment. That is exactly what a policy committee is for, to review language and to find problems before they come to this body. Now we are going to send this out of here knowing that it already has a problem and it is not going to accomplish what it was intended to do. We short-circuited the legislative process once again and once again we are going to fault legislation as a result.

The **SPEAKER**: The Chair recognizes the Representative from Biddeford, Representative Sullivan.

Representative **SULLIVAN**: Mr. Speaker, Men and Women of the House. It was not short-circuited. This was brought up. It came in late. This has to do with our returning veterans from Iraq and Kuwait. If they happen to be CPAs or barbers or anything else, they may have missed their continuing education requirement. The Board of Professional Regulation is forbidden

to change that. They cannot give a waiver. There was a move to simply ask that when our returning vets from a war came if they had some type of a degree or certificate that needed to be renewed that the State of Maine may grant them a waiver because they were not here.

I am sorry that the department can't get their act together quite that quickly. However, it behooves this organization, this Chair, that we do as much as we can for our returning veterans. Our National Guard people gave up their change to continue to have a nice comfortable home and a paycheck. We moved this through so that if we were out of here in time we still could have a bill in law. We were hoping it would be an emergency so that it could be available immediately. We have returning men and women.

This is not about playing politics. This is not about a committee not doing their job. This is about honoring our service people. That is why it went to the other body and we are out of concurrence now. We did have conversation. We were told that no other bills could be put forth. They are just beginning to return now and as we looked at this problem we realized the Constitution forbid us to do it.

Again, I would ask that we simply accept the Recede and Concur and we not grandstand on this. This is why I gave no speech.

Representative DUPLESSIE of Westbrook **REQUESTED** a roll call on the motion to **RECEDE AND CONCUR**.

More than one-fifth of the members present expressed a desire for a roll call which was ordered.

The **SPEAKER**: The Chair recognizes the Representative from Sanford, Representative Bowles.

Representative **BOWLES**: Mr. Speaker, Ladies and Gentlemen of the House. At the risk of being characterized as grandstanding, I am simply not going to point out that I am not objecting to the motion. I am not urging anybody to not support the motion. However, the good Committee Chair will find out that there is a technical flaw in the language of this bill that will preclude people serving in Iraq and Kuwait from receiving this benefit. It is, in fact, limited according to the language to people serving in Bosnia and Kosovo. A fact, which would have been uncovered during the committee process.

The **SPEAKER**: The Chair recognizes the Representative from Biddeford, Representative Sullivan.

Representative **SULLIVAN**: Mr. Speaker, Ladies and Gentlemen of the House. Yes, there is an amendment coming. It was just handed to me. Unfortunately as we tried to clear up today and tomorrow and the next day so that we can go home we were asked to move this ahead forward now and be able to get this going. I am well aware of that. I maintain that if the department gave us wording on a bill, we still wouldn't have caught it any quicker. We have it and it was just handed to me. Here it is. The amendment is ready to go and we will be offering that and hopefully we will be able to do it. It didn't come up today in time. Thank you.

Representative DUPLESSIE of Westbrook moved that the House **RECEDE**.

On further motion of the same Representative, **TABLED** pending his motion to **RECEDE** and later today assigned.

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On motion of Representative JOY of Crystal, the House adjourned at 7:19 p.m., until 9:00 a.m., Wednesday, April 14, 2004.