

MAINE STATE LEGISLATURE

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STATE OF MAINE
ONE HUNDRED AND TWENTY-THIRD LEGISLATURE
SECOND REGULAR SESSION
JOURNAL OF THE SENATE

In Senate Chamber
Thursday
February 14, 2008

Senate called to order by President Beth Edmonds of
Cumberland County.

Prayer by Senator Peter B. Bowman of York County.

SENATOR BOWMAN: Good morning esteemed Senate colleagues. About going to church on Sunday morning at the early service, my father used to say many are chosen but few know how to get up. This morning my normal 5:30 revelry, that's a military term, was thrown a kilter because of the loss of power last night and I didn't reset the alarm properly. It's a longer story than that but that will do for this. Nonetheless, here we are. Whether you are Protestant, Catholic, Muslim, Hindu, or any other religion, or even a nonbeliever, it is undeniable that we are deeply spiritual as well as pragmatic human beings. I want to read a prayer that was given in the early 1980's in the Ohio Legislature. Let us pray.

Father in Heaven, bless us all again in our efforts to serve Your people. Help all here to see Your good and gracious hand at work on this floor, from this chair, and in our committee rooms. Give patience and prudence to all whether the meeting is highly partisan, highly controversial, or not. Let the process continue to grind away, but Lord, how about a drop or two of oil. Amen.

Reading of the Journal of Tuesday, February 12, 2008.

Off Record Remarks

Out of order and under suspension of the Rules, on motion by Senator **MITCHELL** of Kennebec, the following Joint Order:
S.P. 852

Ordered, the House concurring, that when the House and Senate adjourn, they do so until Monday, February 25, 2008 at 10:00 in the morning.

READ and PASSED.

Ordered sent down forthwith for concurrence.

PAPERS FROM THE HOUSE

House Paper

Bill "An Act To Provide Additional Funding for the Low-income Home Energy Assistance Program" (EMERGENCY)
H.P. 1575 L.D. 2208

Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS** suggested and ordered printed.

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

On motion by Senator **MITCHELL** of Kennebec, **TABLED** until Later in Today's Session, pending **REFERENCE**, in **NON-CONCURRENCE**.

Off Record Remarks

COMMUNICATIONS

The Following Communication: H.C. 448

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

February 12, 2008

Honorable Joy J. O'Brien
Secretary of the Senate
123rd Maine Legislature
Augusta, Maine 04333

Dear Secretary O'Brien:

The House voted today to adhere to its previous action whereby it Indefinitely Postponed Joint Order Directing the Joint Standing Committee on Health and Human Services to report out, to the Senate, a bill regarding parental consent to dispense prescription drugs to children (S.P. 842).

Sincerely,

S/Millicent M. MacFarland
Clerk of the House

READ and ORDERED PLACED ON FILE.

SENATE PAPERS

Bill "An Act To Increase the Amount of Value of a Residence Protected from Bankruptcy Proceedings"
S.P. 853 L.D. 2215

Sponsored by Senator **PERRY** of Penobscot.

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

On motion by Senator **HOBBINS** of York, **REFERRED** to the Committee on **JUDICIARY** and ordered printed.

Sent down for concurrence.

All matters thus acted upon were ordered sent down forthwith for concurrence.

REPORTS OF COMMITTEES

House

Ought to Pass As Amended

The Committee on **UTILITIES AND ENERGY** on Bill "An Act To Ensure Adequate Funding for the Oversight of Spent Nuclear Fuel Storage in Maine" (EMERGENCY)

H.P. 1351 L.D. 1918

Reported that the same **Ought to Pass as Amended by Committee Amendment "A"** (H-671).

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A"** (H-671).

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

READ ONCE.

Committee Amendment "A" (H-671) **READ** and **ADOPTED**, in concurrence.

ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.

Senate

Ought to Pass As Amended

Senator **BRANNIGAN** for the Committee on **HEALTH AND HUMAN SERVICES** on Bill "An Act To Repeal the Ban on the Sale and Furnishing of Hard Snuff" (EMERGENCY)

S.P. 755 L.D. 1961

Reported that the same **Ought to Pass as Amended by Committee Amendment "A"** (S-423).

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

READ ONCE.

Committee Amendment "A" (S-423) **READ** and **ADOPTED**.

ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.

SECOND READERS

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

Senate As Amended

Bill "An Act To Allow Blended Sentencing for Certain Juveniles"

S.P. 691 L.D. 1897

(C "B" S-415)

READ A SECOND TIME and **PASSED TO BE ENGROSSED AS AMENDED.**

Ordered sent down forthwith for concurrence.

Bill "An Act To Amend the Laws Regarding School Funding" (EMERGENCY)

S.P. 741 L.D. 1932

(S "D" S-419 to C "A" S-410)

READ A SECOND TIME.

On motion by Senator **MITCHELL** of Kennebec, **TABLED** until Later in Today's Session, pending **PASSAGE TO BE ENGROSSED AS AMENDED.**

ENACTORS

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

Emergency Measure

An Act To Create the Starboard Water District

S.P. 807 L.D. 2117

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

Emergency Resolve

Resolve, Regarding Supplemental Services under the National Family Caregiver Support Program

H.P. 397 L.D. 519

(C "A" H-665)

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

Emergency Resolve

Resolve, To Extend the Deadline To Adopt a Rule by the Department of Health and Human Services Regarding Smoking in the Workplace

H.P. 1398 L.D. 2014

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

Mandate

An Act To Amend the Lucerne-in-Maine Village Corporation Charter

S.P. 759 L.D. 1965
(C "A" S-404)

This being a Mandate, in accordance with the provisions of Section 21 of Article IX of the Constitution, having received the affirmative vote of 32 Members of the Senate, with 1 Senator having voted in the negative, and 32 being more than two-thirds of the entire elected Membership of the Senate, was **PASSED TO BE ENACTED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

Act

An Act To Authorize Load Aggregation for Consumer-owned Electric Utilities

S.P. 434 L.D. 1248
(C "A" S-405)

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

Resolves

Resolve, Authorizing the President of the Maine Community College System To Sell 2 Parcels of Real Property in South Portland

H.P. 1442 L.D. 2058
(C "A" H-663)

Resolve, To Change the Name of the South Bridge between Lewiston and Auburn

H.P. 1487 L.D. 2101
(C "A" H-661)

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

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

PAPERS FROM THE HOUSE

House Paper

Bill "An Act To Streamline and Ensure Adequate Funding for the Bureau of Air Quality"

H.P. 1582 L.D. 2216

Comes from the House, **REFERRED** to the Committee on **NATURAL RESOURCES** and ordered printed.

REFERRED to the Committee on **NATURAL RESOURCES** and ordered printed, in concurrence.

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

PAPERS FROM THE HOUSE

House Paper

Resolve, To Provide Temporary Weight Limits for Trucks Carrying Forest Products (EMERGENCY)

H.P. 1581 L.D. 2214

Comes from the House, **REFERRED** to the Committee on **TRANSPORTATION** and ordered printed.

On motion by Senator **DAMON** of Hancock, **REFERRED** to the Committee on **TRANSPORTATION** and ordered printed, in concurrence.

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

COMMUNICATIONS

The Following Communication: S.C. 636

**STATE OF MAINE
ONE HUNDRED AND TWENTY-THIRD LEGISLATURE
COMMITTEE ON INSURANCE AND FINANCIAL SERVICES**

February 12, 2008

The Honorable Beth Edmonds
President of the Senate of Maine
123rd Maine Legislature
State House
Augusta, Maine 04333-0003

Dear Madame President:

In accordance with 3 M.R.S.A., Section 157, and with Joint Rule 505 of the 123rd Maine Legislature, the Joint Standing Committee on Insurance & Financial Services has had under consideration the nomination of Mila Kofman of Potomac, Maryland, for appointment as the Superintendent of Insurance.

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

YEAS	Senators	2	Sullivan of York, Bowman of York
	Representatives	6	Brautigam of Falmouth, Canavan of Waterville, Conover of Oakland, Crockett of Augusta, Priest of Brunswick, Treat of Farmingdale
NAYS		5	Rep. McKane of Newcastle, Rep. Richardson of Warren, Rep. Savage of Falmouth, Sen. Snowe-Mello of Androscoggin, Rep. Vaughan of Durham
ABSENT		0	

Eight members of the Committee having voted in the affirmative and five in the negative, it was the vote of the Committee that the nomination of Mila Kofman of Potomac, Maryland, for appointment as the Superintendent of Insurance be confirmed.

Signed,

S/Nancy B. Sullivan
Senate Chair

S/John R. Brautigam
House Chair

READ and ORDERED PLACED ON FILE.

The President laid before the Senate the following: "Shall the recommendation of the Committee on **INSURANCE AND FINANCIAL SERVICES** be overridden?"

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

Senator **SULLIVAN:** Thank you, Madame President, men and women of the Senate. I'd like to take just a minute or two to talk to you and introduce you to who I hope will be the next

Superintendent of Insurance. I have passed out to people, or had put on your desk, a 10-page letter of credentials, editor, peer review, and insurance papers written. This woman is extremely qualified. I have letters from the State of Utah, the State of Nevada, and the State of Florida. All letters of recommendation. Amazingly enough, they all happen to be from states appointed by Republican Governors. Unfortunately, as so much politics has reared its ugly head. Let me tell you about the Bureau of Insurance and the Superintendent. We set law. She or he interprets. They do what we tell them to do. The woman, Mila Kofman, was my go to person as I was trying to come up with market reforms last year. She was able to tell me the difference between reinsurance and high risk pools, what works, and what doesn't work. She negotiated with the U.S. Senate the S-Chip compromise that was essentially vetoed later by the President. She worked with both sides of the aisle. Does she think exactly as I think? Absolutely not. Most of you could breath a large sigh of relief with that. Unfortunately, even my husband doesn't always think as I think and I let him know that often. This woman is qualified. In fact, way before this particular piece, when I heard she was considering it, I have to be honest, I looked at her and said, 'Why would you want to come to the state of Maine?' Her answer was very honest. She said, 'My husband and I love the outdoors, we love to hike, and we would like to live in Maine.' What so many other people see, they would like to live in Maine. I'm not going to stand and argue with the debate. Let's take the vote, but she is qualified. Senator Snowe has asked her to testify on her behalf in the U.S. Senate. This woman has a reputation for being fair, impartial, and extremely credentialed in being able to make and interpret what the law says. I would ask you to endorse this. I would ask you to respect the fact that not everybody thinks as we do, but we are very fortunate to have the quality of people like Mila Kofman willing to come and settle in Maine. In fact, pending this vote she will probably be a constituent of the Senator from Kennebec, Senator Mitchell. I don't think she knows that yet. It is a commitment she's made, to live here immediately. I would ask you to take a moment to look at this, read the letters from the three states that are represented here, and realize that this is the Governor's appointment and clearly the public hearing said regarding the qualifications of the nominee for this job that she is qualified. Case closed. She is qualified and that is our job. I would ask you to vote and welcome her to the state of Maine. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Snowe-Mello.

Senator **SNOWE-MELLO:** Thank you, Madame President and honorable members of the Senate. I rise today to explain to you why we could not support this nomination. It is not because Ms. Kofman is not a nice person. She seems to be very lovely. It's not because she's not bright. She certainly is very bright and very knowledgeable. Myself and the other members of the committee who voted in opposition to her nomination simply did not believe that she was qualified for this position. I would like to read to you part of the testimony that Kristine Ossenfort gave neither for nor against this nomination. I think it gives you a very good idea why I believe this nominee would not be good for this state, especially since we need to turn around Maine's high cost of insurance. We need to go where we haven't gone before. We need to go and support free market solutions to health insurance, especially when the Prosperity Committee came out in favor of the risk pool.

'In past writings Ms. Kofman has been critical of consumer driven health plans, health savings accounts, and multiple employer welfare accounts, MEWAS. In addition Ms. Kofman expressed the opinion that the Employee Retirement Income Security Act of 1974,' which we all know as ERISA, 'serves as a significant obstacle to State health reform and the financing of those reforms. ERISA was created, in part, to allow employers to offer uniform benefit plans across state lines. A number of Maine's largest employers, as well as a number of businesses that Maine is seeking to attract to Maine through economic development efforts, have self-funded health insurance plans that have worked extremely well in this state. If this state is seen as one that is constantly trying to erode or circumvent the protections afforded by ERISA we will create a less competitive and less attractive business climate.' Finally, we are concerned, and I am concerned, about Ms. Kofman's neutrality with respect to Dirigo Health and the savings offset payment, SOP. Ms. Kofman has previously expressed her support for the program, and as noted earlier, her belief that ERISA serves as an impediment to the implementation and funding of state health reform efforts. This gives me and the other members that have voted against this nomination much concern that the Superintendent's review of SOP may not be unbiased from the outset.

The concerns I have expressed thus far relate to health insurance. However, there is also significant concern over Ms. Kofman's lack of experience in other lines of insurance. This committee is well aware the Bureau of Insurance regulates more than just health insurance. It also regulates life insurance, property and casualty insurance, and workers' compensation insurance, including the regulation of workers' comp self insurance. I've just read you some major concerns that we share with the Chamber. As Superintendent you must be a regulator and you must be unbiased. I ask this Senate to please not vote in favor of this nomination. Thank you.

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

Senator **BOWMAN:** Thank you, Madame President. It would be a travesty, in my mind, to deny Mila Kofman the position of Superintendent of Insurance. She is extremely well qualified and we are lucky in this state to have her to consider us. During the confirmation hearings in the Insurance Committee Ms. Kofman shined like a very bright light during the proceedings. Highly professional, answered all the questions extremely skillfully. Thank you.

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

Senator **ROSEN:** Thank you, Madame President and colleagues in the Senate. It is my hope that you follow the light of the good Senator from Androscoggin, Senator Snowe-Mello, and consider the comments that she put forward. The concerns expressed here reflect, I think, a difference that was picked up both in the material that was presented by the nominee on her behalf and her own comments during the hearing and it seems, as one member speaking in reaction to looking at the material before us, that she is really better suited to be serving in a policy making body rather than as a regulator. Many of her comments, positions, and writings are as an advocate in many cases. Granted the substantial listings here are of a professional that is able to

advocate on any side of an issue, and has been secured by a variety of different organizations to do so, she's done so effectively, like any good attorney; but beyond that it seems that there is a particular point of view expressed in her opinions and in the work that she has done. She perhaps brings that point of view as in the position of a regulator, a regulator that needs to be fair, balanced, and needs to continue the tradition that we have seen in this particular position. She referred and spoke many times about the development of policy, the making of policy, and the implementation of policy. My personal opinion is that she would be very well suited in that role. This is not policy making. This is a regulator and the regulator's role must be balanced and even-handed. The concerns related to the possibility of this state seeing a dramatic increase the Savings Offset Payment is a real and profound concern, both on those that are privately insured, concerns among the ERISA community, and the economy of the state in general.

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

Senator **BARTLETT:** Thank you, Madame President. I rise because I think I'm a little confused as I listen to this debate. On the one hand I hear criticism that because someone has been involved in policy advocacy or development in the past they are somehow unsuited to serve in this role. If that is the standard we use we will never place people in regulatory positions. It's quite common for someone in a regulator position to come either from one side or the other to gain their experience. On that point I'm confused. If that is the standard we would have to vote against virtually any nominee that would come before us for any position.

The second point, on the one hand I'm hearing concerns about the potential for advocacy of certain positions and then a concern that perhaps this individual might enforce the Dirigo Law. I simply have trouble understanding how we could disqualify someone for their willingness to enforce a law that is on the books. That is exactly what a regulator is required to do. Thank you.

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

Senator **SULLIVAN:** Thank you, Madame President. Perhaps in the volumes of information that you have received you have missed the fact that she has several years as a regulator for the Department of Labor. She has experience for labor in the Department of Labor as a regulator. She does peer review, which covers all field of insurance, all packages, PC, car, all of them. This woman is extremely well qualified and it is not lost on Mila Kofman, I am sure, that this is to fill the appointment until July or August of 2009. If she doesn't do what she needs to do, you know what, we have a chance because she has to be reappointed. She's willing to take the chance. It's a reappointment from Superintendent Al Iuppa, who has left this open. What a perfect opportunity. She can come in for a little over a year and if she doesn't do what she needs to do then I'll be the first to cast the vote. In the meantime I am much more willing to put this to a professional. I would ask you to remember that she was a regulator; she has spent several years with the United States Department of Labor as a regular on insurance. Thank you.

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

Senator **PLOWMAN:** Thank you, Madame President, men and women of the Senate. While I agree that Ms. Kofman's resume is impressive I think what the people of the state of Maine were hoping for was an independent minded person to replace Superintendent Iuppa, who very carefully went over all the figures and found that the claims of Dirigo have been greatly exaggerated and have been greatly over estimated. He was willing to stand firm on that as opposed to someone who has spoken in many venues, including the state of Maine in 2005, endorsing the program. That's what we're looking for. It's unfortunate that this is not what the second floor found for us. It is unfortunate that we didn't even reach deeper into our own office to find someone who knows exactly what needs to be known about all the lines of insurance in the state of Maine. All the lines. It's unfortunate that there are people who qualify for this who actually do live in the state of Maine and who were overlooked. It's unfortunate that I had to receive an e-mail from someone who said Maine taxpayers deserve to be better represented when it comes to everything that happens in that insurance office. If we're going to have someone who has to rely on all of the subordinates in the office to fill in the gaps in this resume then why didn't we find that person in the first place? There are all kinds of places and think tanks all over the United States, Canada, and probably a lot of Europe where Ms. Kofman would be very well qualified. I wish that was where she would land. Unfortunately Maine becomes another experiment at a time where we are dying from social experimentation. The taxpayers are paying health insurance premiums that are just barely affordable now and they are going to take the hit. I would urge you to vote no. I know that's not going to happen, but at least when I sit down I can tell the people who e-mailed me last night that I spoke, and just like all other times when I speak and refer to the State as a system, it is more like when your mother said, 'If everybody jumped off the bridge would you jump too?' Every week we have another bill before us where we hear someone else did this or we should be the first. It's expensive and I don't know if you spent a lot of time in Appropriations, but this experimentation take its toll day by day, budget by budget, and now generation by generation. We don't have that many generations ahead of us that have the time to pay for what keeps happening in this state. They are leaving us with a generation gap. There is a reason why. This is another reason.

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

Senator **TURNER:** Thank you, Madame President, ladies and gentlemen of the Senate. When you look at the applicant's resume it is clear that we have a very bright and capable applicant before us. Summa cum laude, Phi Beta Kappa from the University of Maryland, doctorate in law from Georgetown, and an editor of one of their law reviews. She has a wealth and depth and breadth of experience that I think any of us would envy. I'm looking at a paragraph from one of the people who submitted testimony in favor of her nomination, it's from the Commissioner of Insurance in the State of Nevada. This is paraphrasing part of one paragraph. It says, 'I'm acutely aware of the need for an insurance regulator's ability to work on a bipartisan level while balancing consumer protection with the insurance industry's

needs for a stable, fair, and solvent market.' I think that's where I became very concerned because we do not have a fair, stable, and solvent market today. We are in desperate need for market reforms. The writings of this applicant suggests to me that market reform is not what she is about. While she is very well qualified in an academic or work experience sense, in another venue Robert Bork, a constitutional scholar rejected by the U.S. Senate to be Chief Justice, was considered to be very well qualified, extremely well qualified. We have a higher threshold than the U.S. Senate to reject somebody. It requires, as you know, a 2/3 vote. I, frankly, don't believe we're going to get that 2/3 today. I think that's unfortunate. We have a Dirigo Health Insurance product that is in trouble, relying on a savings offset payment that is hated by individual policyholders and providers alike. If you relied on the findings of the Dirigo Health Board that last savings offset payment would have ranked somewhere in the \$70 million range. The Superintendent of Insurance sought to disallow more than half of that savings offset payment request and it ended up being \$32 million. My concern now is that with this applicant approved as the Superintendent of Insurance the savings offset payment will ratchet up to its legal limit of 4% and our insurance market will be burdened by an \$80 million savings offset payment. I think that is unfortunate and a significant mistake. I'll be voting against the applicant for that reason and other reasons that I have stated. Madame President, I would like to close by chastising the business community who furiously worked behind the scenes and lobbied members of my caucus to oppose this nomination, furiously. Yet, if you will pardon the expression, they did not have the stones to go public in the testimony, which I think is an egregious error on their part. While the testimony of the lobbyist from the State Chamber has been read into the record, and is an accurate portrayal of that testimony, it was given neither for nor against. If you are going to be hurt by something, as a member of the business community, for Lord's sake please have the courage to stand up and be counted, and don't rely on the Minority Party to simply beat their gums into the wind while the vote is taken by the yeas and nays and will affirm this nomination as I previously forecasted. Thank you, Madame President.

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

Senator **MARTIN:** Thank you, Madame President. I am pleased to follow the remarks of the good Senator from Cumberland, Senator Turner, because I think it lays out exactly one of the problems that we have. The industry wanted their way and if you don't go their way they are not happy and very often hide behind the shield of others. The good Senator from Cumberland, Senator Turner, has made a point that should not go by the wayside. It is ironic to me that we are going to be just maybe voting for someone who believes that consumers have rights. That would be an interesting approach. I'm also amazed how anyone could assume that the person can give an insurance offset payment before other persons reviewed the files. The former Superintendent, in my opinion, was way too conservative. I'm hoping this one is a little bit more moderate. We take a look and talk about the issue. Has anyone bothered to see what the reason why the cost of health care is rising in Maine? Why is it that it is more expensive to go a hospital in this state than going to Massachusetts? Maybe we ought to be looking at the cost and what is driving the cost and not just assume it's the fault of the insurance companies, providing whether it be MaineCare,

Anthem Blue Cross, or anyone else. We probably should be looking at what we did when we abolished the Cost Commission a number of years ago. That really is a concern to me. I think that when we look at the nominee I'm convinced that she'll be more than fair. I had my doubts as to whether or not she should get this job because she was appointed by a Republican in other states. I had to forego my bias and look at the quality of the individual. I would hope that the members of the Minority Party would do the same.

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

Senator **MILLS:** Thank you, Madame President and men and women of the Senate. It's no secret, I think, that Dirigo, the insurance product, in its current form is failing. It is an extraordinarily expensive program. Its cost per member is outrageous. It is providing a full suite of coverage to people whose needs may include all that it provides. It is providing in an awkward sense asset protection to people who have, in some cases, extraordinary wealth but happen to have low income. Its enrollment is diminishing. Without a substantial reform of the Dirigo insurance product it ought not to be continuing. Two of the prior Insurance Superintendents have reviewed the evidence in support of the savings offset payment to determine whether the claims of the Dirigo Board ought to be sustained. In the most recent decision Superintendent Iuppa has ruled that something like \$30 million was the total amount that he could possibly find justified by the competing actuarial reports and we are informed that this amount of money is not enough to sustain Dirigo past February 2009, one year from now. I hope I'm not being overly cynical, but there is widespread suspicion that the current Superintendent is being replaced for the sake of seeing the savings offset payment jump from around \$32 million to an \$80 million tax on 600,000 people in Maine who are struggling to pay some of the highest health insurance premiums in the United States. We're going to put a 4% tax on them in order to protect insurance benefits for 15,000 or 20,000 people who are being very highly subsidized at the expense of everyone else. This is a program that needs to be completely rethought by this Legislature. My concern is that we will not muster the will to accomplish that this Spring and if things go forward under the law, as it's currently written, the law vests in the office of the Superintendent of Insurance something that is frightfully close to unfettered discretion to impose a tax on every business that provides health insurance and on every person that buys and is struggling to pay for health insurance in this state and a very substantial tax at that. This is a serious concern. Health insurance is one of the four or five biggest challenges facing this state, health costs and health insurance. I can't say this to a certainty but my deep concern is that this appointment may result in the imposition of that kind of tax to the detriment to the system as a whole. The problem of solving the health insurance and health cost crisis belongs here in this Chamber and the other Chamber. We're the ones who have to grapple with it. We shouldn't be doing things, or allowing the second floor to do things, that simply prop up a system that appears to be failing.

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

Senator **TURNER:** Thank you, Madame President, ladies and gentlemen of the Senate. Advance apologies to my colleagues on Appropriations because I may repeat something that I said earlier this week in committee. First of all to the good Senator from Aroostook, Senator Martin, I'm from time to time accused of not being Republican enough. I suspect I'll continue to be criticized for that from time to time by the voters who sent me here as well as my colleagues in caucus. I did not come to my conclusion on the applicant based on whether or not they had a Republican endorsement, had worked in the Clinton administration, or had with another Republican Governor. I remain very concerned about the direction she will take the savings offset payment and the market reforms that we also very much need to have. I am one of the few, I think, in the Chamber who was actually on the Joint Select Committee that considered Dirigo in the 122nd. I supported it and said we needed to try this. Everything that has been promised with the Dirigo Health insurance product, itself, has come up wanting. The only things we haven't done is put it in the General Fund and try to fund it that way. I suspect there will be some who will try to do that. I'll try to keep this germane to the appointment that we're considering. When you consider the savings offset payment, and the language associated with it, it says, 'Go into the mountains, peruse the hills, and find savings and bring them back.' You made it clear those savings were for offset payment purposes. That's where the similarity ends because if you think about carbon trading and carbon tax products, I can take those to the Chicago Mercantile Board of Trade and get value for them. I can sell them for money. I can buy them for money. I would be pleased to make an offer to anyone in this Chamber to buy the \$32 million offset payment. You won't have to go to Chicago to do it, I'll sell it to you. I'll sell it to you for \$1,000 because you would then be able to have that savings offset payment and translate it into real money. If you believe that you may see me at the end of the session and I'll take your money and give you access to the savings offset payment and you can then cash in for real value. None of you will take me up on that offer because it doesn't exist. There is nothing you can reach out and tangibly take real value for. My abiding concern with respect to that is given the paper trail of the nominee I feel the savings offset payment will be reinforced by the Superintendent who, as the good Senator from Somerset, Senator Mills, indicates, has almost unfettered authority to judge reality and otherwise. Again, I ask you to oppose the nomination before us. Thank you, Madame President.

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

Senator **MITCHELL:** Thank you, Madame President and colleagues in the Senate. If I just walked into the room I would have thought this was a debate about Dirigo rather than confirming an extraordinary person who has put her name forth to hear this conversation about her. Oh well, that's the way we do sometimes. I want to ask each of us where we've been for the past month. All over this nation people have turned out in record numbers, both Democrats and Republicans, saying, 'We don't want this kind of debate any more, change is important on both sides of the aisles.' They want us to deal with the issues. I also think of the old cartoon, Pogo; 'We have met the enemy and it is us.' We're the ones who wrote the Dirigo law. We're the ones who can fix it this session. We are committed to doing so

because there are several jobs out there that do. If the fear is the offset payment, we have an opportunity to get rid of it and replace it with something else. The committee worked on this all last year and they'll be working on it again. There is a bill to do that. We should be thinking about the real issue and not blaming a regulator who's following the laws that we give. In addition to that, we have talked about market reforms. There is a place, there is a need for market reforms. Let's do that. We also want to make sure that those people who are currently on Dirigo aren't kicked out into the snow, and can keep their affordable and necessary insurance. We have a new player on the block, Harvard-Pilgrim. I am filled with hope. It's our problem, not the regulator's problem. I invite you to accept this highly credentialed person to help us deal with fair and reasonable regulations and then we, as Republicans and Democrats, as Liberals and Conservatives, can fix Dirigo. That's what I would urge you to do, vote in favor of this highly qualified nominee.

In accordance with 3 M.R.S.A., Chapter 6, Section 151, and with Joint Rule 506 of the 123rd Legislature, the vote was taken by the Yeas and Nays.

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#281)

YEAS: Senators: BENOIT, COURTNEY, DOW, GOOLEY, HASTINGS, MCCORMICK, MILLS, NASS, PLOWMAN, RAYE, ROSEN, SAVAGE, SHERMAN, SMITH, SNOWE-MELLO, TURNER, WESTON

NAYS: Senators: BARTLETT, BOWMAN, BRANNIGAN, BROMLEY, BRYANT, DAMON, DIAMOND, HOBBS, MARRACHE, MARTIN, MITCHELL, NUTTING, PERRY, ROTUNDO, SCHNEIDER, STRIMLING, SULLIVAN, THE PRESIDENT - BETH G. EDMONDS

17 Senators having voted in the affirmative and 18 Senators having voted in the negative, and 17 being less than two-thirds of the Membership present and voting, it was the vote of the Senate that the Committee's recommendation be **ACCEPTED** and the nomination of **Mila Kofman** of Potomac, Maryland, for appointment as the Superintendent of Insurance was **CONFIRMED**.

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

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

REPORTS OF COMMITTEES

House

Divided Report

The Majority of the Committee on **TRANSPORTATION** on Bill "An Act To Require a Hearing When a Fatality Results from a Motor Vehicle Accident"

H.P. 1384 L.D. 1948

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-673)**.

Signed:

Senators:

DAMON of Hancock
SAVAGE of Knox

Representatives:

PEOPLES of Westbrook
MARLEY of Portland
BROWNE of Vassalboro
FISHER of Brewer
MAZUREK of Rockland
HOGAN of Old Orchard Beach
THOMAS of Ripley
ROSEN of Bucksport
THERIAULT of Madawaska

The Minority of the same Committee on the same subject reported that the same **Ought To Pass as Amended by Committee Amendment "B" (H-674)**.

Signed:

Representative:

CEBRA of Naples

Comes from the House with the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-673)** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-673)**.

Reports **READ**.

On motion by Senator **DAMON** of Hancock, the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-673)** Report **ACCEPTED**, in concurrence.

READ ONCE.

Committee Amendment "A" (H-673) **READ** and **ADOPTED**, in concurrence.

ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.

Senate at Ease.

Senate called to order by the President.

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

PAPERS FROM THE HOUSE

**Pursuant to Joint Order
Joint Standing Committee on State and Local Government**

The **Joint Standing Committee on State and Local Government**, pursuant to Joint Order, H.P. 1540 asked leave to report that the accompanying Bill "An Act To Implement the Recommendations of the Working Group To Improve Public Understanding and Participation in the Rulemaking Process"
H.P. 1580 L.D. 2213

Be **REFERRED** to the Committee on **STATE AND LOCAL GOVERNMENT** and ordered printed pursuant to Joint Rule 218.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **REFERRED** to the Committee on **STATE AND LOCAL GOVERNMENT** and ordered printed pursuant to Joint Rule 218.

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

On motion by Senator **SCHNEIDER** of Penobscot, **REFERRED** to the Committee on **STATE AND LOCAL GOVERNMENT** and ordered printed pursuant to Joint Rule 218, in concurrence.

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

PAPERS FROM THE HOUSE

**Pursuant to Statute
Joint Standing Committee on Judiciary**

The **Joint Standing Committee on Judiciary**, pursuant to the Maine Revised Statutes, Title 1, section 432, subsection 1 asked leave to report that the accompanying Bill "An Act Concerning Public Records Exceptions"
H.P. 1579 L.D. 2212

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

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

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

On motion by Senator **HOBBINS** of York, **REFERRED** to the Committee on **JUDICIARY** and ordered printed pursuant to Joint Rule 218, in concurrence.

ORDERS OF THE DAY

Unfinished Business

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

The Chair laid before the Senate the following Tabled and Later (2/6/08) Assigned matter:

JOINT ORDER - Expression of Legislative Sentiment
Recognizing the following members of the York High School Girls Soccer Team

SLS 506

Tabled - February 6, 2008, by Senator **BOWMAN** of York

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

(In Senate, February 6, 2008, on motion by Senator **BOWMAN** of York, **READ**.)

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

Senator **BOWMAN:** Thank you, Madame President. I think it's pretty well known that York County is one of the state's great economic engines. What is not so widely known but is becoming known is that Southwestern York County is becoming an engine of athletic ability and championships. Last year it was the Wildcat wrestling team that came before us. This year it's the Girls Class B Champion Soccer Team. When I was growing up I wasn't much of an athlete so in some sense I'm living vicariously through their great exploits and skill. Go Wildcats.

On motion by Senator **BOWMAN** of York, **PASSED**.

Sent down for concurrence.

THE PRESIDENT: The Chair is pleased to recognize in the rear of the Chamber members of the York High School Girls Soccer Team. Would they please rise and receive the greetings of the Maine Senate.

The Chair laid before the Senate the following Tabled and Later (2/6/08) Assigned matter:

JOINT ORDER - Expression of Legislative Sentiment
Recognizing Wally Caldwell, of York

SLS 507

Tabled - February 6, 2008, by Senator **BOWMAN** of York

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

(In Senate, February 6, 2008, on motion by Senator **BOWMAN** of York, **READ**.)

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

Senator **BOWMAN:** Thank you, Madame President. The person we are recognizing today is truly an exemplary human being. All you have to do is take a look at the photograph of him with his team that was in the local paper a couple of months ago. Not only has Coach Caldwell been recognized by the award of the State Class B Coach of the Year Award, but he was also given the award of the New England Large School Coach of the Year. As Tina Turner says, 'He is simply the best, better than all the rest.' It is my privilege to recognize Coach Caldwell.

On motion by Senator **BOWMAN** of York, **PASSED**.

Sent down for concurrence.

THE PRESIDENT: The Chair is pleased to recognize in the rear of the Chamber, Wally Caldwell of York. Would he please rise and accept the greetings of the Maine Senate.

The Chair laid before the Senate the following Tabled and Later (2/6/08) Assigned matter:

JOINT ORDER - Expression of Legislative Sentiment
Recognizing Dan Blaney, of Old Orchard Beach
SLS 509

Tabled - February 6, 2008, by Senator **HOBBINS** of York

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

(In Senate, February 6, 2008, on motion by Senator **HOBBINS** of York, **READ**.)

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

Senator **HOBBINS:** Thank you, Madame President, men and women of the Senate. It gives me great pleasure to rise today and ask you to join me in recognizing Dan Blaney of Old Orchard Beach on his officially becoming the Old Orchard Beach Town Historian. Mr. Blaney was born on March 11, 1944 at 14 West Old Orchard Avenue, and that is where he resides today. He has devoted his life to the passionate study of the town's history and is always eager to learn new facts and to answer citizen's questions. I know personally that I have called upon Mr. Blaney on numerous occasions to learn a little bit more about the community I represent and the historical significance of Old Orchard Beach as it relates to the state of Maine. Mr. Blaney has been an active member of the community, serving on a variety of committees and programs and organizations relating to the town of Old Orchard Beach. Please join me in congratulating Mr. Blaney on his appointment as historian and we commend him for his valuable contributions to his community of Old Orchard Beach and to the state. Thank you very much.

On motion by Senator **HOBBINS** of York, **PASSED**.

Sent down for concurrence.

The Chair laid before the Senate the following Tabled and Later (2/6/08) Assigned matter:

JOINT ORDER - Expression of Legislative Sentiment
Recognizing Old Orchard Beach on the 125th anniversary of its incorporation

SLS 510

Tabled - February 6, 2008, by Senator **HOBBINS** of York

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

(In Senate, February 6, 2008, on motion by Senator **HOBBINS** of York, **READ**.)

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

Senator **HOBBINS:** Thank you, Madame President, men and women of the Senate. I rise today in recognition of Old Orchard Beach's 125th anniversary of its incorporation on February 20, 1883. Old Orchard Beach will be having a celebration on that date in honor of the occasion. As you know, Old Orchard Beach is located in the bay area of the Saco River and on the Atlantic coast. The early settlers of this community came from England, Ireland, and basically have continued to this day some of the older customs. Old Orchard Beach became a place for holding what is known as the Festival of Waters, which is an historic event that occurs. The first settlers visited it on the 24th of June, St. John the Baptist Day, when all who dipped in the waters were believed to be secure from disease or death. Believe it or not Old Orchard Beach is a town borne from, and used to be part of, the city of Saco and became a community on February 20, 1883. It gives me great honor to present this Joint Order and sentiment in recognition of the citizens of Old Orchard Beach and the community leaders of that town. Thank you.

On motion by Senator **HOBBINS** of York, **PASSED**.

Sent down for concurrence.

The Chair laid before the Senate the following Tabled and Later (1/8/08) Assigned matter:

SENATE REPORTS - from the Committee on **BUSINESS, RESEARCH AND ECONOMIC DEVELOPMENT** on Bill "An Act To Strengthen Rural Community Investment"
S.P. 239 L.D. 790

Majority - **Ought Not to Pass** (10 members)

Minority - **Ought to Pass as Amended by Committee Amendment "B" (S-393)** (3 members)

Tabled - January 8, 2008, by Senator **SCHNEIDER** of Penobscot

Pending - **ACCEPTANCE OF EITHER REPORT**

(In Senate, January 8, 2008, Reports **READ**.)

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

Sent down for concurrence.

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

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

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

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

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

All matters thus acted upon were ordered sent down forthwith for
concurrence.

On motion by Senator **MITCHELL** of Kennebec, **ADJOURNED**,
pursuant to the Joint Order, to Monday, February 25, 2008, at
10:00 in the morning.