

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
Tuesday
February 26, 2008

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

Prayer by President Beth Edmonds of Cumberland County.

PRESIDENT EDMONDS: Join me in a moment of silence. Holy One of Blessings, Your presence fills creation. Let us remember the poor, the hungry, the children, the elderly, and let us continue to work for peace and justice for all. Amen.

Reading of the Journal of Monday, February 25, 2008.

Off Record Remarks

SENATE PAPERS

Bill "An Act To Amend the Laws Governing the State's Cash Investment Policies"

S.P. 858 L.D. 2226

Sponsored by Senator ROSEN of Hancock.
Cosponsored by Representative MILLETT of Waterford and Senators: TURNER of Cumberland, WESTON of Waldo.
Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

On motion by Senator **ROTUNDO** of Androscoggin, **REFERRED** to the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS** and ordered printed.

Sent down for concurrence.

Bill "An Act To Amend the Laws Governing Reports Related to Natural Resources"

S.P. 862 L.D. 2230

Sponsored by Senator MARTIN of Aroostook.
Cosponsored by Representative KOFFMAN of Bar Harbor.
Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

On motion by Senator **MARTIN** of Aroostook, **REFERRED** to the Committee on **NATURAL RESOURCES** and ordered printed.

Sent down for concurrence.

Bill "An Act To Provide Tax Relief to Maine's Forest Products Industry" (EMERGENCY)

S.P. 857 L.D. 2225

Sponsored by Senator SCHNEIDER of Penobscot.
(GOVERNOR'S BILL)
Cosponsored by Speaker CUMMINGS of Portland and Senators: NASS of York, PERRY of Penobscot, SMITH of Piscataquis, Representatives: CLARK of Millinocket, KNIGHT of Livermore Falls, PIOTTI of Unity, THOMAS of Ripley, WATSON of Bath.

Resolve, To Provide a Rebate of Diesel Fuel Taxes Paid by Maine's Forest Products Industry (EMERGENCY)

S.P. 860 L.D. 2228

Sponsored by Senator SCHNEIDER of Penobscot.
Cosponsored by Representative JACKSON of Allagash and Senators: BRYANT of Oxford, DOW of Lincoln, RAYE of Washington, SHERMAN of Aroostook, SMITH of Piscataquis, Representatives: CLARK of Millinocket, KNIGHT of Livermore Falls, THOMAS of Ripley.
Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

Bill "An Act To Expand the Economic Development Benefit of Tax Increment Financing in Counties That Include Unorganized Territories"

S.P. 861 L.D. 2229

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

On motion by Senator **STRIMLING** of Cumberland, **REFERRED** to the Committee on **TAXATION** and ordered printed.

Sent down for concurrence.

REPORTS OF COMMITTEES

House

Ought to Pass

The Committee on **LABOR** on Bill "An Act To Improve the Codification of Retirement Plans Administered by the Maine Public Employees Retirement System"

H.P. 1525 L.D. 2146

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

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

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

READ ONCE.

ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.

The Committee on **LABOR** on Bill "An Act To Clarify Retirement Programs for Participating Local Districts" (EMERGENCY)
H.P. 1530 L.D. 2150

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

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

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

READ ONCE.

ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.

Ought to Pass As Amended

The Committee on **STATE AND LOCAL GOVERNMENT** on Resolve, To Authorize the State To Convey an Unused Parcel of Land in Frenchville to an Abutting Neighbor
H.P. 1375 L.D. 1941

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-672)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Resolve **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-672) AS AMENDED BY HOUSE AMENDMENT "A" (H-681)** thereto.

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

READ ONCE.

Committee Amendment "A" (H-672) **READ**.

House Amendment "A" (H-681) to Committee Amendment "A" (H-672) **READ** and **ADOPTED**, in concurrence.

Committee Amendment "A" (H-672) as Amended by House Amendment "A" (H-681) thereto **ADOPTED**, in concurrence.

ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.

Senate

Ought to Pass Pursuant to Public Law

Senator MARTIN for the Committee on **NATURAL RESOURCES** on Bill "An Act To Minimize the Potential for Slope Failure in Gravel Pits"

S.P. 859 L.D. 2227

Reported that the same **Ought to Pass**, pursuant to Public Law 2007, chapter 364.

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

READ ONCE.

ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.

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

SECOND READERS

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

Senate As Amended

Bill "An Act To Clarify the Election of Municipal Charter Commission Members"

S.P. 762 L.D. 1968
(C "A" S-426)

Bill "An Act To Make Allocations from Maine Turnpike Authority Funds for the Maine Turnpike Authority for the Calendar Year Ending December 31, 2009"

S.P. 808 L.D. 2118
(C "A" S-428)

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

Sent down for concurrence.

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

ENACTORS

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

Emergency Measure

An Act To Designate Certain Rules Proposed by the Board of Pesticides Control as Major Substantive Rules

H.P. 1560 L.D. 2190

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

Emergency Measure

An Act To Designate Certain Application and Licensing Information Provided to the State Harness Racing Commission as Confidential

H.P. 1561 L.D. 2191

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

Acts

An Act Regarding Certain Positions at the Public Utilities Commission

S.P. 749 L.D. 1955
(C "A" S-407)

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

An Act To Provide a Tax Credit for the Purchase of Small Wind Power Generators for Personal or Small Business Use

H.P. 279 L.D. 349
(C "B" H-668)

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

An Act Regarding Axle Weight on Tri-axle Farm Trucks

S.P. 754 L.D. 1960
(C "A" S-409)

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

Off Record Remarks

Senate at Ease.

Senate called to order by the President.

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

REPORTS OF COMMITTEES

Senate

Ought to Pass Pursuant to Joint Order

Senator HOBBS for the Committee on **JUDICIARY** on Bill "An Act To Repeal Certain Confidentiality Provisions in the Child Protective Laws" (EMERGENCY)

S.P. 863 L.D. 2233

Reported that the same **Ought to Pass**, pursuant to Joint Order, S.P. 820.

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

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

Sent down forthwith for concurrence.

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

ORDERS OF THE DAY

Unfinished Business

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

The Chair laid before the Senate the following Tabled and Later (2/7/08) Assigned matter:

SENATE REPORTS - from the Committee on **UTILITIES AND ENERGY** on Bill "An Act To Amend the Charter of the Kennebunk Light and Power District"

S.P. 422 L.D. 1221

Majority - **Ought to Pass as Amended by Committee Amendment "A" (S-412)** (7 members)

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

Tabled - February 7, 2008, by Senator **BARTLETT** of Cumberland

Pending - ACCEPTANCE OF EITHER REPORT

(In Senate, February 7, 2008, Reports **READ**.)

Senator **BARTLETT** of Cumberland moved the Senate **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report.

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

Senator **SMITH:** Thank you, Madame President. I just wanted to say a few brief words initially about this bill and I'd like to pose a question at the end. This is a bill that has been around the State House for many years. It has surfaced at least in the 1990's once and in the early part of this new century of ours a couple of times. I think this is the fourth time that it has appeared before us. In the previous renditions the folks from Kennebunk who are interested in taking over part of the Central Maine Power Company franchise area have been told to go to the Public Utilities Commission where the Legislature, long ago, in statute set up a procedure for this precise question to be handled and the standards are set forth there for the re-arrangements of any franchise area. Basically the test is that the Public Utilities Commission must find that it is a matter of public necessity and convenience in order to do so. After the third trip to the Legislature to try to end-run that statute, that series of statutes, they finally went to the Public Utilities Commission and after the case was concluded the Public Utilities Commission basically told these folks that it didn't meet the standard, that there is no public necessity or inconvenience, and they were denied the opportunity to rearrange the service area. They have come back again this time basically asking the same question. They are looking for an end-run around a well-established Public Utilities Commission procedure and have asked the Legislature to set them up with a special law that will allow them to do so. The Committee is deeply divided over this matter. This is a 7 to 6 report. The Minority Report is a slightly bi-partisan report. It has struck those of us that are in the Minority that this is a piece of legislation that is highly motivated from a political point of view, that it clearly is not good policy from a utility law point of view, and the amendment that the Committee proposes now as the Majority Report is a very troubling one indeed. It is unclear in some respects as to what this would do and for what purpose. To enter that discussion, I would like to pose a question if I may.

THE PRESIDENT: The Senator may pose his question.

Senator **SMITH:** Thank you, Madame President. My question is essentially this, is it the intent of this Committee Amendment to compel the sale of CMP assets against the will of CMP? In other words, is it the intent of this amendment to force a sale against the will and without a willing seller?

THE PRESIDENT: The Senator from Piscataquis, Senator Smith poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Cumberland, Senator Bartlett.

Senator **BARTLETT:** Thank you, Madame President. I'd like to answer that question and make a few additional comments. It is not the intent to force a sale over the will of CMP. This legislation arises because of the fact that Kennebunk Power and Light, like all consumer owned utilities, exists purely as creatures of statute. What they can and can't do is governed by the charter that we, as a Legislature, pass. In 1903 a line was drawn. It was an arbitrary line. I'm sure it was the result of some great political compromise at the time. It was drawn right through Kennebunk. Although Kennebunk Power and Light serves the remainder of Kennebunk, they were not allowed to serve anyone over that line. They could not cross that line. This leaves approximately 1,300 customers in CMP's territory. One of the concerns that the Town of Kennebunk has is that as part of their charter the entire town is bound to any liabilities that may ultimately occur and not get paid by Kennebunk Power and Light. All of the residents of the town of Kennebunk are at risk and essentially are backing the liability of Kennebunk Power and Light, yet 1,300 of them are not allowed to access service. There are also some issues that were raised about the services differences in the different parts of town. Folks really want, and it's very important to the folks in Kennebunk, to unify that.

To be a little bit clearer about the process. This bill has come before. The Utilities and Energy Committee has said, 'We believe the PUC has the authority to act here, go to the PUC and try there first.' They did. They went to the PUC and the PUC said, 'Well, because of that 1903 line that is written in statute we don't have the authority to act here. Our hands are tied. You'll have to go to the Legislature and have them give you the authority to acquire the assets across that line.' They were really in a catch-22. Everywhere they went they were told to go somewhere else. That's what has brought it back before us this session. In light of the fact that they had exhausted the remedies with the PUC and the result of the fact that it's purely this line, a creature of statute, that stands as a barrier to the PUC deciding whether it would be appropriate for a transfer. We believe that this statutory change is appropriate.

I also want to be very clear as to what this bill does. It does not require CMP, as I mentioned before, to sell its assets. It simply allows Kennebunk Power and Light to come to the table as a willing buyer and if they so choose they can make an offer to acquire the assets on the other side of that line. It's simply saying if we believe we really want these two entities to be able to interact in a typical fashion we need to make sure that not only do we have a potential seller but also a willing buyer that can come to the table. All this does is give Kennebunk Power and Light the ability to come to the table if they want. It also outlines some of the process in terms of what would happen if the sale were to take place.

Central Maine Power brought to our attention a number of very valid concerns about the bill that was originally drafted. We've made every effort to address them. For example, there was concern that stranded costs, which are paid by CMP ratepayers, would essentially get shifted from the 1,300 folks in Kennebunk to everybody else. It was the desire of our committee, and was acceptable to Kennebunk Power and Light, that if Kennebunk Power and Light acquires any assets of CMP or any customers of CMP they will be required to assume that portion of stranded costs. CMP customers will be held harmless from any transfer of assets. The second issue of concern was what if there were some costs. There were surely going to be costs from transferring customers and assets. Again, we put right

into the statute that if Kennebunk Power and Light were to buy they would have to cover those costs for CMP, making sure they were holding both the shareholders of CMP and the ratepayers of CMP harmless from a transfer. The fact that we're only creating the opportunity means that CMP will never have to sell if it doesn't want to. It's very hard for me to understand the harm that would result to CMP. In fact, the only way I could imagine a transfer taking place that the management of CMP didn't like would be if Kennebunk Power and Light came to the table with an offer that was so good that they would be breaching their fiduciary obligation to their shareholders if they didn't accept it. I wish we all had such potential of risk out there. We don't believe that there is any down side risk here to CMP.

The reason this is necessary is because Kennebunk Power and Light is a creature of statute. Private and special laws are required to make any changes to their charter. That's why they have come before us. We're simply trying to set up an arrangement where a mutually beneficial transaction could take place if it truly were the will of both parties. Thank you.

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

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

Senator **SMITH:** Thank you, Madame President. Just a few more comments to finish up my remarks and I will try to do my rebuttal as I finish them up. Perhaps rebuttal first. I agree with the Senator from Cumberland, Senator Bartlett. In my interpretation of this rather poorly done Committee Amendment I would conclude that it does not force a sale of the CMP assets. However, it does some other rather bizarre things.

Number one, without requiring an extension of service into the CMP area, it creates an overlap with Kennebunk Light and Power and CMP. It's an unheard of maneuver, to tell you the truth. This is bizarre in the sense that it has never been done in Maine utility law before, but simply creates the opportunity for Kennebunk Light and Power to enter the CMP area under undefined circumstances, and presumably, which would require a purchase later on. This overlap thing is something that is really unusual and strange for our utility law here in the state of Maine.

The other thing that it does which is very consequential, it seems to me, to others who are not even involved in this controversy is that it allows, under this amendment, Kennebunk Light and Power to go to the Public Utilities Commission even if they do not have a willing seller at the table and ask the Public Utilities Commission to go through a lengthy process of setting the appraised value of the assets that they wish to acquire without the willing seller. Not only that, but the amendment clearly sets forth that the PUC alone cannot do that. They must go and hire experts who are expert in the business of appraising electric facilities of this sort. How is all of that going to be paid for? It is not going to be paid for by the moving party. It is going to be paid for by the Public Utilities Commission. How does the Public Utilities Commission get the money to pay for it? They go to the ratepayers through assessments on all of the electric companies. Even though the controversy doesn't involve, for instance, Bangor Hydroelectric, it doesn't involve Maine Public Service, it doesn't involve the co-op down in Washington County that serves 30 or 40 towns, but they all are going to be assessed to pay for a high

priced procedure which the folks in Kennebunk have the right, under this law, to go and require the PUC to take action on. That, to me, is fundamentally unfair and is grounds enough to turn this thing down or at least, at some point, to amend it so those who come to the PUC without even a willing seller and ask for this expensive procedure be the ones who pay for it; not all of the rest of the ratepayers in the state of Maine.

This is such a poorly done amendment I think it ought to be completely repudiated by the Senate. I would urge you to vote against the pending motion. If the other Body feels differently about it then perhaps we can fix this thing up, minimally, so that at least it is fair to all of the other electric ratepayers in this state who have nothing to do with this controversy whatsoever. Thank you.

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

Senator **SULLIVAN:** Thank you, Madame President. Yes, this bill is finally here. Thank goodness. I've listened to all and I agree with one thing that the Senator from Piscataquis, Senator Smith, has said. That one thing is that it is finally here. The rest of it isn't quite as easy as that. The people of Kennebunk happen to be my constituents and I will tell you how they feel. They feel strongly about making their community whole. Those of you from small rural places understand that. They want to be whole. They voted 89%. People not effected and people effected voted 89% in a referendum to join and allow this legislation to go forward. I will also tell you that every piece of lobbying, and you've just seen normal everyday people from Kennebunk, has been paid by private citizens because under the charter of Kennebunk Power and Light they cannot spend any of that money. What you have seen is a private company. I've been with some of these faces so much that I think they are my father, my husband, or my brother. I've taken meals with them so we can all talk. This is also about safety. They will tell you owners, residents of Kennebunk, have had to stand and watch a fire on their line that cannot be put out because of liability by Kennebunk. They have to wait for CMP to come from Alfred. This is a lot more than about a political bill and David and Goliath. This is not about legalized monopolies and private companies set up by a municipality that says, 'We want to have some local control.' You might have heard that in a different issue around here, local control. This is about a Maine company that pays Maine taxes and provides for their Maine families. That's what Kennebunk Power and Light is about, their community. We have jumped through the hoops each and every time. It was former Representative Murphy in the other Body when I first came in here. Each time they have said, 'Go to the PUC and get a ruling.' They've done that and the Legislature has said, 'Oh no, we were just kidding about that. You have to put in legislation,' or the PUC would say, 'You have to put in legislation.' It has cost countless dollars from private citizens who feel so strongly about their community and about their right to decide.

The people in lower York County had no say when CMP picked up 6,000 meters when New Hampshire Public Service got into some problems. No one was concerned then. I didn't see CMP funding that. They were due to pick up 6,000. We're talking about 1,500 meters, 1,531 to be exact. The Chamber of Commerce and every single business has sent a letter. This is in lower village. The lower village of Kennebunk is basically a peninsula. You can't go any further southeast because you'll fall into the Atlantic Ocean. Those are the businesses where Windows On The Water, Federal Jacks, and several of these

other places that make their money during the summer and have had more outages than any other place. Why, quite frankly, because CMP is so large they can't make the trimming and maintenance that is needed. If you doubt my words, if I'm saying something that is politically motivated, then I would be happy to give the names, I would be happy to show you the petition, where every single business said, 'This hurts our business, please make us whole.'

We've heard this from both sides of the aisle, perhaps local people really do know better than we do. Perhaps local people want to have the same rights as everybody else. They want to know that when they turn that switch it will be on. Not the other part of town where they have the financial responsibility for Kennebunk, but where they pay the rates too for CMP. They want to know that when they turn that switch on somebody is going to be there. This is a community. This is local control. This is American business. What we are doing is trying to protect a large conglomeration which is now own by a Spanish company. This is about community. You may disagree with it and you may vote against it, but don't tell the people in Kennebunk that they don't know what they are doing or that this is about rates. This is about a community. My Kennebunk people have as much right to want their community to be made whole as anybody else. If you are going to vote against it you are voting against it because you want to support CMP not because Kennebunk doesn't know what they're doing or that Kennebunk is getting some extra treatment here. It's about community. It's about Maine people working together. It's about a business that is run by them, their own community. Local control.

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

Senator **RAYE:** Thank you, Madame President. I'd like to request permission to pose a question through the Chair.

THE PRESIDENT: The Senator may pose his question.

Senator **RAYE:** Thank you, Madame President. I'd like to pose the question as to whether I'm reading this bill correctly. It appears to amend the charter of the Kennebunk Light and Power district and by taking the matter out of the PUC's hands. I would just like to get clarification as to if it does, in fact, remove the matter from the PUC's hands.

Off Record Remarks

THE PRESIDENT: The Senator from Washington, Senator Raye poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Cumberland, Senator Bartlett.

Senator **BARTLETT:** Thank you, Madame President. I will endeavor to give a response to that question and also to raise a couple of other points. What the bill does is it sets up a framework in which Kennebunk Power and Light can be a willing buyer. There are still other procedures that they have to go through with the PUC in order for a sale. One of the concerns

that was raised by the good Senator from Piscataquis, Senator Smith, was that the PUC would be forced to hire an independent appraiser. I do not believe that is a fair reading of this amendment. The section in which the appraisal is talked about is section three; resolve disagreements and independent appraisal. If you read down it indicates that only upon a disagreement in terms of the valuation of the assets would an appraisal be required. Simply saying, if there is a dispute between the parties the PUC would then order an independent appraisal, which they would probably have to do anyways. The PUC does not have the inside expertise to value the assets. That is simply all that is done. An independent appraisal would not be required if the two parties agree to the value. It's only if there is a disagreement in the course of that sale.

There was also concern raised about the fact that there is a potential crossover in territory. That issue was raised in committee and it was a very valid point. That's why we addressed it in the amendment. We specifically say when the provision providing for an extension of service territory it may not occur unless the district has acquired by purchase the plans, properties, rights, privileges, and franchises of any other public utility furnishing electric service to the public in that area of the town of Kennebunk. We have expressly said that any extension of territory only takes effect if there is a sale. Kennebunk Power and Light is going to want a sale, CMP has got to agree to it, it's got to get PUC approval, and only after its done that would Kennebunk Power and Light be able to offer service in that territory.

I believe we really did, at the committee level, take the concerns of the opponents of this bill to heart. We've made changes everywhere we could to try to legitimately address those concerns but also make sure that Kennebunk Power and Light should be a willing buyer. It's also important to understand that this charter, in its current form, says the following, 'Any public utility now furnishing electric service to the public within the territory limits of the district', the Kennebunk Power and Light district, 'may acquire by purchase the plans, properties, rights, privileges, and franchises of Kennebunk Power and Light.' Under current law CMP has the authority to buy the assets of Kennebunk Power and Light. We simply want to make sure that Kennebunk Power and Light is treated fairly and they also have an opportunity to acquire the assets of CMP. It's an issue of parity. I saw no one who came before the committee suggesting we should repeal. In fact, originally in the draft bill that section was repealed. We put it back in because we wanted to make sure there was parity, that both parties were treated fairly, that both could be willing buyers and both could be willing sellers. That's what we tried to accomplish in this amendment and we have not changed any other part of the process.

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

Senator **SMITH:** Thank you, Madame President. In further response to the question posed by the Senator from Washington, Senator Raye, I think it's pretty clear that this is an amendment that would alter the private and special law of 1951 that was the updating of the charter of the Kennebunk Light and Power district. Section three of the amendment clearly states that notwithstanding Maine Revised Statutes Title 35A, sections 2102,

2105, and 2110 as amended, extension of service by the district within the town of Kennebunk is not subject to the consent of the Public Utilities Commission. I think this belies the fact that has been stated here by the proponents of this bill that the PUC does not have authority to act in this area. The very fact that this authority is taken away in this amendment suggests that they do have the authority to act on this type of proposal, and that the proper place for it is in the Public Utilities Commission. In fact, they go to the extra step of taking the authority away from the PUC to act on this.

I think it's pretty clear that this is a complete end-run around established procedures, around the established public law, around the PUC, and is an attempt by these folks to come in here and do a complete end-run around a rational procedure that should be allowed to stand in the general law of this state. It has also been said here that this is an attempt to make whole the town of Kennebunk. The whole idea of this arbitrary line that was drawn back in 1903 is a laughable notion, to tell you the truth, because if you know anything about the history of the establishment of the early power generation efforts you know that most of our towns started with some small entity deciding to put in a power generator to generate power in villages. In Kennebunk it happened in two pieces. The town government itself decided to put in a generator for one portion of the town, the part that was most heavily settled, and left out through its charter the other part of Kennebunk. That part of Kennebunk resolved to get its electric service through the more traditional method that many other towns followed, that is to find some local investors who were willing to put private dollars up. The other part of the town, on the other side of that line that was drawn in the charter of the Kennebunk Light and Power district, was to be provided by this private investor group that eventually became, after being sold time and again, Central Maine Power Company.

Basically what we have here at this point is a publicly owned power district wanting to take the assets, in one fashion or another, of a privately owned company. This is unprecedented in this state to do an end-run for that purpose. It's bad utility law and I think we should simply turn this down on its face. Thank you.

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

Senator **RAYE:** Thank you, Madame President. I appreciate the response of the Senator from Piscataquis, Senator Smith. I rise in opposition to the pending motion. I want to preface it by saying I do so somewhat reluctantly because I understand the concerns of the residents of Kennebunk. I even sympathize with their goal. I do have a concern that the bill before us is an inappropriate vehicle to address those concerns and to reach that goal. Some like to portray this as a David versus Goliath issue with the town of Kennebunk and its residents being David and Central Maine Power being Goliath. It's not that simple. We need to look at the impact this will have across the state; for instance, in the part of Maine I represent, in northern Washington County, where the state's poorest residents face the prospect of vastly increased electricity bills. If this bill is enacted and sets a precedent that will send ripples across this state. I think the fact is that it will set a very dangerous precedent. That is perhaps illustrated most clearly by the fact that so many, what would seemingly be uninterested parties, have taken a great interest in this bill. Why would they take an interest in this bill? They are far removed

from Kennebunk. Well, perhaps because they realize it will have consequences not intended by the sponsor or the good people of Kennebunk. For those of us who live in rural areas utility lines are comparable to roads. There are miles and miles of utility lines and poles to up-keep and relatively few people to pay the utility bill. This bill before us, if enacted, could set a precedent that would allow other utilities to come into areas like mine, cherry pick off some profit centers, and leave the rural areas to fend for themselves and have even higher bills to pay to take care of those lines. If the supporters of this bill and the people of Kennebunk are really looking for clarification that the PUC has authority to determine this, we could amend this bill and pass an amended version that clarifies and gives to the PUC jurisdiction if they are concerned they may lack it. I'm concerned that the bill, as it's before us, will, despite the arguments to the contrary, set a precedent that could have an unintended impact on other areas of the state. Let's step back, and if we want to do something on this bill, pass a version that would let the PUC decide it based on the merits, not on the basis of political persuasion. Thank you.

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

Senator **MARTIN:** Thank you, Madame President and members of the Senate. I'm sure some of you are wondering why I even rose on this issue. I need to tell you that I've been around this place long enough to have seen other instances and understand what's going on at the moment. Remember that it is the Legislature, under Title 35A, that sets the Public Utilities' authority. It is our ability to control what the PUC does. It is not the other way around. I was here in the mid 1960's when Maine Public Service attempted and was rating the individuals who were getting power from Eastern Co Op, the very corporation to which the good Senator from Washington, Senator Raye, just referred. If you go through Route 11, through Patten and Mt. Chase, you will see two electrical lines, one on either side of the road. Very unusual, isn't it? Side by side where Maine Public Service put up their line and then started rating the customers of Eastern Co Op. At that point the Legislature got involved. As a matter of fact, a former Senator from Aroostook County, Elmer Violette, sponsored a bill to prevent that from continuing. The two lines are still there, the cost to the consumers, etcetera. You can imagine how ridiculous that is in the long term. The Legislature at that point chose not to divide it up but to simply stop it. The ratings stopped.

I have absolutely no fear and I understand the paranoia that has developed because a representative of Houlton Light and Power, and a representative of Van Buren Light and Power sat through some of the work sessions and the hearing on this bill. Rightly so. They have an interest in what happens with the municipal systems in this state. I can guarantee you neither one are tempting to rate customers because I don't believe this Legislature would choose to change the law to allow that to happen. I just think that it's a mistake to try to inter-relate the two. I can guarantee you that if I were to be back in the Legislature I'd make sure that the rating downing occur on Eastern Co Op.

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

Senator **SULLIVAN:** Thank you, Madame President. Just a couple of things. This bill has been around for how long and all of

a sudden I hear, 'Why don't we amend it?' Why didn't the Minority Report put that amendment forth? It simply puts forth Ought Not to Pass. Amazing. Twelfth hour, 59 point whatever seconds, and let's amend it. I can't believe anybody wants to see these halls quite as full as they have been in the last three weeks for any longer. I'd also say that the PUC continues to have a role in protecting ratepayers. That never changes. It's the law now, it's the law tomorrow, and it's the law if this gets passed and 90 days after closing becomes law. The PUC still has that role. No one is usurping that. All this bill does is gives Kennebunk the right to expand their service in their own municipality lines. No place else. In their own municipality lines. To expand in their municipality lines. Where their charter is. It's one more case of stalling. If we can just amend it. If we can support a few more lobbyists here. This is not about amending, this is a vote. I would remind you the PUC still has their role. They continue to have their role. We are doing nothing to change that. Nothing. We're expanding the area of the municipality's service. Still within the lines of Kennebunk. We're removing a line the Legislature put there. The PUC says they can't un-put it, if there is such a word and I doubt that there is, and the Legislature says, 'We can't move on until the PUC okays it.' You've put them in the middle of something that's impossible to solve because we're not willing to do what we need to do. I would ask you to simply vote and let's move on. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Oxford, Senator Hastings.

Senator **HASTINGS:** Thank you, Madame President, ladies and gentlemen of the Senate. I am going to pose a question because I've got some confusion here. I am hearing that nothing in this bill is intended to require Central Maine Power Company or anyone, any unwilling seller, to convey their property against their will. What I'm hearing is that there will have to be a willing seller and a willing buyer before anything can proceed, even with this bill. I assume that even without this bill, should we have a willing buyer and a willing seller between two utilities, they may negotiate and then proceed to the Public Utilities Commission and ask to have their boundaries changed accordingly. Don't utilities buy each other quite regularly? Isn't that how Central Maine Power Company became its size? It has acquired small utility after small utility. That's my question, is it possible under present law now for Kennebunk Power and Light to negotiate with CMP, as willing buyer and seller, to come to an agreement, take that agreement and present it to the PUC and ask to have it approved? If that is the case then I wonder what the purpose of this bill is? What does this bill accomplish other than to almost force CMP to become a seller against its will? I pose that question through the Chair, if I could.

THE PRESIDENT: The Senator from Oxford, Senator Hastings poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Cumberland, Senator Bartlett.

Senator **BARTLETT:** Thank you, Madame President. I appreciate the question from the good Senator from Oxford, Senator Hastings, because I think it really highlights the crux of this issue. Under current law the territory of Kennebunk Power and Light is defined and that line is the cutoff. Under current law an agreement as you've outlined could not be reached and could

not be approved by the PUC without a change in statute. That has the huge impediment to any form of negotiation. The reality is that Kennebunk Power and Light could not make that position. The anomaly is that CMP, under the current law, could acquire the assets of Kennebunk Power and Light. What you have is a system where CMP could acquire their assets under current law with no change needed but Kennebunk Power and Light can't acquire that tiny piece of CMP's territory without a change of statute. That is the anomaly that this is trying to address. I should make a point, we indicated we had gone back to revisit the language to make sure that CMP retained the right to purchase Kennebunk Power and Lights assets. The bill had been voted on without that language. That language had been stricken from the bill. We were getting ready to sign the jackets when CMP came to us, or reminded us, of that problem. I asked my colleagues in the committee to pull the bill back. I know some of the supporters were not very excited when I did that. I pulled the bill back to put that language back in because I felt it was so important that there be parity, that both utilities have the opportunity to purchase the assets of the other. This is simply what the bill is trying to do.

THE PRESIDENT: The Chair recognizes the Senator from Oxford, Senator Hastings.

Senator **HASTINGS:** Thank you, Madame President. I thank the Senator from Cumberland, Senator Bartlett, for the clarification. I still want to pose another question through the Chair.

THE PRESIDENT: The Senator may pose his question.

Senator **HASTINGS:** Thank you, Madame President. If the existing Kennebunk Power and Light and CMP came to an agreement to buy and sell as a willing buyer and seller, would they simply have to then propose to the Legislature a boundary line change? Would that accomplish the same thing? I would suspect it would not be a difficult bill in this Legislature to act upon if the two parties came in and said, 'We've made an agreement and we simply ask you to ratify that agreement by moving the boundary lines.' I ask if that could happen?

THE PRESIDENT: The Senator from Oxford, Senator Hastings poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Cumberland, Senator Bartlett.

Senator **BARTLETT:** Thank you, Madame President. It could, but imagine the delay. Imagine if they came to an agreement on May 1, 2008. It would be a good long time before it could be effectuated. Also in terms of basic leverage and negotiation, when you need to change a statute it becomes that more difficult.

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

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#286)

YEAS: Senators: BARTLETT, BOWMAN, BRANNIGAN, BROMLEY, BRYANT, COURTNEY, DAMON, DIAMOND, HOBBS, MARRACHE, MARTIN, MILLS, MITCHELL, NASS, NUTTING, PERRY, ROTUNDO, SAVAGE, SCHNEIDER, SHERMAN, STRIMLING, SULLIVAN, THE PRESIDENT - BETH G. EDMONDS

NAYS: Senators: BENOIT, DOW, GOOLEY, HASTINGS, MCCORMICK, PLOWMAN, RAYE, ROSEN, SMITH, SNOWE-MELLO, TURNER, WESTON

23 Senators having voted in the affirmative and 12 Senators having voted in the negative, the motion by Senator **BARTLETT** of Cumberland to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, **PREVAILED**.

READ ONCE.

Committee Amendment "A" (S-412) **READ** and **ADOPTED**.

ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.

Off Record Remarks

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

PAPERS FROM THE HOUSE

House Paper

Bill "An Act To Reduce the Cost of Prescription Drugs Purchased by the State and Counties by Using Section 340B of the Federal Public Health Service Act"

H.P. 1591 L.D. 2231

Comes from the House, **REFERRED** to the Committee on **HEALTH AND HUMAN SERVICES** and ordered printed.

On motion by Senator **ROTUNDO** of Androscoggin, **REFERRED** to the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS**, in **NON-CONCURRENCE**.

Sent down for concurrence.

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

PAPERS FROM THE HOUSE

House Paper

Bill "An Act To Amend the Games of Cards Law"

H.P. 1593 L.D. 2232

Comes from the House, **REFERRED** to the Committee on **LEGAL AND VETERANS AFFAIRS** and ordered printed.

On motion by Senator **MARRACHÉ** of Kennebec, **REFERRED** to the Committee on **LEGAL AND VETERANS AFFAIRS** and ordered printed, in concurrence.

Off Record Remarks

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

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

Off Record Remarks

On motion by Senator **MITCHELL** of Kennebec, **ADJOURNED** to Thursday, February 28, 2008, at 10:00 in the morning.