

# MAINE STATE LEGISLATURE

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Senate Legislative Record  
One Hundred and Twenty-Third Legislature  
State of Maine

Daily Edition

First Special Session  
April 1, 2008 to April 18, 2008

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STATE OF MAINE  
ONE HUNDRED AND TWENTY-THIRD LEGISLATURE  
FIRST SPECIAL SESSION  
JOURNAL OF THE SENATE

In Senate Chamber  
Monday  
April 14, 2008

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

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Prayer by Senator Dana L. Dow of Lincoln County.

**SENATOR DOW:** Good morning. Within a few weeks I probably will have the opportunity to step back into the pulpits where I probably originally came from and where I actually feel more comfortable than I do speaking on the Senate floor. Every time I get into the pulpit I do one thing before I go to the church. I have to look in the mirror and realize that everything that I say also applies to myself.

A revised reading from Ephesians from the Apostle Paul. For he himself is our peace, who has made the two one and has destroyed the barrier. His purpose was to create in himself one new man out of the two, thus making peace, and in this one body to reconcile both of them to God. He came and preached peace to those who are far away and peace to those who are near.

Let us be in the spirit of prayer. Heavenly Father, this prayer this morning is for each of the special Senators in this Chamber. May we remind ourselves that while we are here to perform the work of our constituency that we speak to the issues and do not attack each other. Let us make sure that we pray for each other, for each of us has needs and wants and desperately needs to know the peace of that prayer. Also, as the Apostle John was fond of saying in his later years, let us love one another. Amen.

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Pledge of Allegiance led by Senator Lisa T. Marraché of Kennebec County.

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Reading of the Journal of Friday, April 11, 2008.

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Doctor of the day, Carla Burkley, MD of Auburn.

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Off Record Remarks

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PAPERS FROM THE HOUSE

Non-Concurrent Matter

SENATE REPORTS - from the Committee on **EDUCATION AND CULTURAL AFFAIRS** on Bill "An Act To Amend Teacher Confidentiality Laws"

S.P. 912 L.D. 2291  
(C "B" S-578)

Majority - **Ought to Pass as Amended by Committee Amendment "A" (S-577)** (11 members)

Minority - **Ought to Pass as Amended by Committee Amendment "B" (S-578)** (1 member)

In Senate, April 8, 2008, the Minority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "B" (S-578)** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "B" (S-578)**.

Comes from the House, the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-577)** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-577)**, in **NON-CONCURRENCE**.

On motion by Senator **BOWMAN** of York, **TABLED** until Later in Today's Session, pending **FURTHER CONSIDERATION**.

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House Papers

Resolve, To Appoint Members to and Establish Terms for the Workers' Compensation Board

H.P. 1677 L.D. 2318

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

On motion by Senator **STRIMLING** of Cumberland, **TABLED** until Later in Today's Session, pending **REFERENCE**, in concurrence.

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Bill "An Act To Promote Filmmaking in the State"

H.P. 1680 L.D. 2319

Committee on **TAXATION** 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 **STRIMLING** of Cumberland, **TABLED** until Later in Today's Session, pending **REFERENCE**, in **NON-CONCURRENCE**.

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

Senator **SAVAGE** of Knox was granted unanimous consent to address the Senate off the Record.

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

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#### COMMUNICATIONS

The Following Communication: H.C. 522

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

April 11, 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 accepted the Minority Ought Not to Pass Report of the Committee on Taxation on Bill "An Act To Reduce the Income Tax" (S.P. 303) (L.D. 952).

Sincerely,

S/Millicent M. MacFarland  
Clerk of the House

**READ and ORDERED PLACED ON FILE.**

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#### REPORTS OF COMMITTEES

##### Senate

##### Ought to Pass Pursuant to Joint Order

Senator **BROMLEY** for the Committee on **BUSINESS, RESEARCH AND ECONOMIC DEVELOPMENT** on Bill "An Act To Stimulate Capital Investment for Innovative Businesses in Maine"

S.P. 929 L.D. 2320

Reported that the same **Ought to Pass**, pursuant to Joint Order, S.P. 873.

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

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

Ordered sent down forthwith for concurrence.

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##### Ought to Pass As Amended

Senator **MARRACHÉ** for the Committee on **LEGAL AND VETERANS AFFAIRS** on Resolve, To Prohibit In-person Absentee Voting on November 3, 2008

S.P. 914 L.D. 2293

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-616)**.

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

**READ ONCE.**

Committee Amendment "A" (S-616) **READ** and **ADOPTED**.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED**.

Ordered sent down forthwith for concurrence.

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Senator **DAMON** for the Committee on **MARINE RESOURCES** on Bill "An Act To Amend the Laws Governing Marine Resources" S.P. 824 L.D. 2156

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-615)**.

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

**READ ONCE.**

Committee Amendment "A" (S-615) **READ** and **ADOPTED**.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED**.

Ordered sent down forthwith for concurrence.

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

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#### ENACTORS

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

**Act**

An Act To Provide Access to Certain Medications to Certified Midwives

H.P. 1616 L.D. 2253  
(C "B" H-936)

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.

On motion by Senator **TURNER** of Cumberland, **TABLED** until Later in Today's Session, pending **ENACTMENT**, in concurrence. (Roll Call Ordered)

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Off Record Remarks

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

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Senator **WESTON** of Waldo was granted unanimous consent to address the Senate off the Record.

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Off Record Remarks

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On motion by Senator **MITCHELL** of Kennebec, **RECESSED** until 11:40 in the morning.

After Recess

Senate called to order by the President.

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

#### REPORTS OF COMMITTEES

##### Senate

##### Ought to Pass As Amended

Senator **ROTUNDO** for the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS** on Bill "An Act To Ensure Continued Operation of the Poison Hotline" (EMERGENCY)  
S.P. 785 L.D. 1991

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-619)**.

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

**READ ONCE**.

Committee Amendment "A" (S-619) **READ** and **ADOPTED**.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED**.

Ordered sent down forthwith for concurrence.

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#### ENACTORS

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

##### Resolve

Resolve, Authorizing the State Tax Assessor To Sell 2 Certain Parcels of Land in the Unorganized Territory

H.P. 1583 L.D. 2217  
(S "A" S-583 to C "A" H-946)

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

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Off Record Remarks

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

#### PAPERS FROM THE HOUSE

##### Non-Concurrent Matter

SENATE REPORTS - from the Committee on **LEGAL AND VETERANS AFFAIRS** on Bill "An Act To Allow Direct-to-consumer Wine Sales"

S.P. 781 L.D. 1987  
(C "A" S-575)

Majority - **Ought Not to Pass** (8 members)

Minority - **Ought to Pass as Amended by Committee Amendment "A" (S-575)** (5 members)

In Senate, April 11, 2008, the Minority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-575)**.

Comes from the House, the Majority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED**, in **NON-CONCURRENCE**.

Senator **BROMLEY** of Cumberland moved the Senate **INSIST**.

On further motion by same Senator, **TABLED** until Later in Today's Session, pending the motion by same Senator to **INSIST**.

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**Non-Concurrent Matter**

Bill "An Act To Protect Maine's Energy Sovereignty through the Designation of Energy Infrastructure Corridors and Energy Plan Development"

S.P. 885 L.D. 2255  
(C "A" S-561)

In Senate, April 7, 2008, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-561).**

Comes from the House, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-561) AS AMENDED BY HOUSE AMENDMENTS "A" (H-970) AND "B" (H-999) thereto, in NON-CONCURRENCE.**

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

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**REPORTS OF COMMITTEES**

**House**

**Divided Report**

The Majority of the Committee on **TRANSPORTATION** on Bill "An Act To Require That a Person Be a Maine Resident in Order To Be Issued a Maine Driver's License" (EMERGENCY)  
H.P. 1662 L.D. 2304

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

Signed:

Senators:

DAMON of Hancock  
DIAMOND of Cumberland  
SAVAGE of Knox

Representatives:

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

The Minority of the same Committee on the same subject reported that the same **Ought To Pass as Amended by Committee Amendment "A" (H-937).**

Signed:

Representatives:

THOMAS of Ripley  
CEBRA of Naples  
ROSEN of Bucksport

Comes from the House with the Majority **OUGHT TO PASS** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY HOUSE AMENDMENT "B" (H-994).**

Reports **READ**.

On motion by Senator **DAMON** of Hancock, the Majority **OUGHT TO PASS** Report **ACCEPTED**, in concurrence.

**READ ONCE.**

House Amendment "B" (H-994) **READ** and **ADOPTED**, in concurrence.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED**, in concurrence.

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**ENACTORS**

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

**Acts**

An Act To Amend Maine's Scallop Laws

H.P. 1455 L.D. 2071  
(S "B" S-597 to C "A" H-863;  
H "A" H-889)

An Act To Change the Timing of the Health Care Occupations Report and To Add and Clarify Definitions Relating to Swimming Pools and Spas

H.P. 1491 L.D. 2105  
(C "A" H-874; S "A" S-574)

An Act To Establish a Railroad Crossing Information Council

S.P. 847 L.D. 2199  
(S "A" S-600 to C "A" S-549)

An Act To Implement the Recommendations of a Task Force Convened To Evaluate and Recommend Revisions Regarding the Statutory Definition of "Service Dog"

H.P. 1648 L.D. 2285  
(S "A" S-598 to C "A" H-943)

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

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

**PAPERS FROM THE HOUSE**

**Joint Resolution**

The following Joint Resolution:

H.P. 1679

**JOINT RESOLUTION ENDORSING TAIWAN'S  
PARTICIPATION IN THE WORLD HEALTH ORGANIZATION**

WHEREAS, good health is essential to every citizen of the world, and access to health information and services of the highest standard is necessary to improve public health; and

WHEREAS, the World Health Organization set forth in the first chapter of its charter the objective of attaining the highest possible level of health for all persons; and

WHEREAS, the achievements of Taiwan, the Republic of China, in the field of health are substantial, including having the highest life expectancy levels in Asia, having maternal and infant mortality rates comparable to those of western countries, eradicating infectious diseases such as cholera, smallpox and the plague and being the first country in Asia to eradicate polio and provide children with Hepatitis B vaccinations; and

WHEREAS, Taiwan's population of 23.5 million is larger than that of 3/4 of the member states already in the World Health Organization; and

WHEREAS, the United States Centers for Disease Control and Prevention and its Taiwanese counterpart agencies have enjoyed close collaboration on a wide range of public health issues; and

WHEREAS, in recent years Taiwan has expressed a willingness to assist financially and technically in international health activities supported by the World Health Organization; and

WHEREAS, with the great potential of the cross-border spread of diseases, such as the human immunodeficiency virus, HIV; tuberculosis; malaria; severe acute respiratory syndrome, SARS, in 2002; and the recent outbreak of avian flu, it is crucial for all countries, including Taiwan, to have direct and unobstructed access to information and assistance from the World Health Organization in order to limit successfully the spread of various infectious diseases; and

WHEREAS, the European Parliament called on the World Health Assembly, in Geneva, Switzerland, to accept observer status for Taiwan and on its member states to support the application of Taiwan as an observer to the World Health Organization; and

WHEREAS, in 2002, the United States House of Representatives and the United States Senate authorized the Secretary of State to endorse observer status for Taiwan at the World Health Assembly, and the House repeated its endorsement in 2006; now, therefore, be it

RESOLVED: That We, the Members of the One Hundred and Twenty-third Legislature now assembled in the First Special Session, on behalf of the people we represent, take this opportunity to commend Taiwan's efforts to improve world health and support its efforts to gain observer status at the World Health Organization; and be it further

RESOLVED: That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to the Honorable George W. Bush, President of the United States; to Michael O. Leavitt, Secretary of the United States Department of Health and Human Services; to Dr. Margaret Chan, Director-General of the World Health Organization in Geneva, Switzerland; and to K.T. Yang, Director-General of the Taipei Economic and Cultural Office in Boston, Massachusetts.

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

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

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

**REPORTS OF COMMITTEES**

**House**

**Ought to Pass As Amended**

The Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS** on Bill "An Act To Increase Access to After-school Programs"

H.P. 61 L.D. 63

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-1002)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1002)**.

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

**READ ONCE**.

Committee Amendment "A" (H-1002) **READ** and **ADOPTED**, in concurrence.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED**, in concurrence.

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The Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS** on Bill "An Act To Increase the Availability of Cellular Telephone Service for Rural Residents"

H.P. 249 L.D. 305

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-1001)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1001)**.

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

**READ ONCE.**

Committee Amendment "A" (H-1001) **READ** and **ADOPTED**, in concurrence.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED**, in concurrence.

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

**REPORTS OF COMMITTEES**

**House**

**Ought to Pass As Amended**

The Committee on **BUSINESS, RESEARCH AND ECONOMIC DEVELOPMENT** on Bill "An Act To Encourage Energy Conservation by the Maine State Housing Authority Pursuant to the State Government Evaluation Act Review"

H.P. 1627 L.D. 2264

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-1004)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1004)**.

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

**READ ONCE.**

Committee Amendment "A" (H-1004) **READ** and **ADOPTED**, in concurrence.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED**, in concurrence.

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

**PAPERS FROM THE HOUSE**

**Non-Concurrent Matter**

SENATE REPORTS - from the Committee on **LEGAL AND VETERANS AFFAIRS** on Bill "An Act To Join the Interstate Compact on the National Popular Vote"

S.P. 611 L.D. 1744

Majority - **Ought to Pass** (7 members)

Minority - **Ought Not to Pass** (3 members)

In Senate, April 2, 2008, the Majority **OUGHT TO PASS** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED**.

Comes from the House, Reports **READ** and the Bill and accompanying papers **INDEFINITELY POSTPONED**, in **NON-CONCURRENCE**.

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

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

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**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 (4/7/08) Assigned matter:

Bill "An Act To Restore Benefits under the Circuitbreaker Program"

S.P. 921 L.D. 2305

Tabled - April 7, 2008, by Senator **NASS** of York

Pending - **PASSAGE TO BE ENGROSSED**, without reference to a Committee

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

(In Senate, April 7, 2008, **READ A SECOND TIME**.)

On motion by Senator **NASS** of York, Senate Amendment "A" (S-617) **READ**.

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

Senator **STRIMLING:** Thank you, Madame President. Just as a brief reminder on this bill, and I do rise in support of the amendment as well. In the Taxation Committee, in the budget, we had made a recommendation to Appropriations to repeal the indexing of circuitbreaker. When it was first presented and talked about it was presented in a way in which we thought it was dealing with just the folks who were at the highest end of circuitbreaker and reducing the amount that they would be receiving in the future. That seemed fine. In a time of budget cuts that is what we should be doing. After it had already been put into the budget and whatnot, we had realized that by repealing the indexing we didn't just not have the indexing going forward we also repealed it going backwards. It goes back a



number of years, back to L.D. 1. What that ended up doing is actually cutting rebates for middle income families across the state. The lowest incomes were fine because it really didn't effect them because they don't hit the maximum benefit. On average middle income families, and when I'm talking about middle income families I'm talking about from \$30,000 to about \$70,000, received a cut in their property tax rebate of around \$150 each on average. Once we realized that we said that we certainly didn't want to try to cut property tax rebates, in essence increasing property taxes, on folks in these economic times. This was in both reports out of the Appropriations Committee.

From that time forward, the Senator from York, Senator Nass, and myself have been meeting with various groups to see if we could come up with a way to solve this. We met with the Chamber especially and they were supportive. We basically went to the bipartisan amendment that we had talked about here before, that the Senator from Cumberland, Senator Diamond, had presented. We took one piece of it, the net operating loss, and looked to see if there was some way we could use it to fix the circuitbreaker problem. In meeting with the business community, the original way that it had been proposed actually really didn't work because it ended up costing quite a bit down the road. We were able to move it all into one year and that's what this amendment is going to do. The Chamber supports it. They said this is a reasonable way to do it. As you know, with net operating loss, it's really just a one year cash flow issue for those businesses that are doing well. It doesn't effect somebody's ability. They are just holding off on being able to use their losses against next year. It was in both budgets. The Chamber of Commerce is on board with it. The folks who are supportive of trying to make sure circuitbreaker benefits get to the people who need them the most are on board with this as is the Executive Branch. I would like to thank my colleague from York County and the Chamber for all of their hard work. Thank you, Madame President.

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

Senator **NASS:** Thank you, Madame President, ladies and gentlemen of the Senate. When you get into net operating loss, this amendment basically reorders and extends what we did in the budget in a prior piece. We generally conform with the federal government on net operating loss and carry forwards, so this is a recognition on our state forms and a push, or a delay, of about 10% of those amounts for a company that may have that net operating loss in excess of \$100,000 in any one year. The amendment also extends that for another year. We understand there is someone who has plans of using that net operating loss for the next 20 years. This is available for a company for a succeeding 20 years. I would characterize it differently than the Senator from Cumberland, Senator Strimling. The Chamber was willing to participate in this. I don't want to suggest that they are enthused about this. They are willing to help us fix what we did in the circuitbreaker in perhaps a little too exuberant fashion. I would encourage you to support this. Thank you.

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

Senator **STRIMLING:** Thank you, Madame President. Thank you for that clarification. Willingness to work with myself usually

feels like exuberance. I did want to mention about the circuitbreaker itself and what we did because I forgot to say that. We put the indexing back in place and instead went to a \$60,000 - \$80,000 cap for an individual and a family. Instead of effecting 20,000 families, which is what the budget bill did, by reducing their rebate, this bill now only effects 7,000 families. Basically, you are making sure that a minimum 13,000 families in Maine are going to be getting this property tax rebate back, which we would have cut otherwise.

On motion by Senator **NASS** of York, Senate Amendment "A" (S-617) **ADOPTED**.

**PASSED TO BE ENGROSSED AS AMENDED BY SENATE AMENDMENT "A" (S-617).**

Ordered sent down forthwith for concurrence.

The Chair laid before the Senate the following Tabled and Later (4/8/08) Assigned matter:

HOUSE REPORTS - from the Committee on **LABOR** on Bill "An Act To Ensure the Freedom of Family Child Care Providers To Jointly Negotiate with the State"

H.P. 1481 L.D. 2095

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-901)** (8 members)

Minority - **Ought Not to Pass** (5 members)

Tabled - April 8, 2008, by Senator **STRIMLING** of Cumberland

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

(In House, April 7, 2008, the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-901).**)

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

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 Doorkeepers secured the Chamber.

The Secretary opened the vote.

#### **ROLL CALL (#433)**

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

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

20 Senators having voted in the affirmative and 15 Senators having voted in the negative, the motion by Senator **STRIMLING** of Cumberland to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence, **PREVAILED**.

**READ ONCE.**

Committee Amendment "A" (H-901) **READ**.

On motion by Senator **DIAMOND** of Cumberland, Senate Amendment "A" (S-612) to Committee Amendment "A" (H-901) **READ**.

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

Senator **DIAMOND:** Thank you, Madame President, men and women of the Senate. This amendment, as you can see, will grandfather the membership of those childcare providers that already are organized by region or by local affiliation as of the date mentioned in this amendment. They will be grandfathered and they can then choose to join the MSCA or they may choose not to. It will be up to them if they fit this description. Thank you.

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

Senator **STRIMLING:** Thank you, Madame President. I will just rise to voice my support for this amendment. I think it helps the bill and makes sure that we can provide the services we need to the rest of the state.

On motion by Senator **DIAMOND** of Cumberland, Senate Amendment "A" (S-612) to Committee Amendment "A" (H-901) **ADOPTED**.

Committee Amendment "A" (H-901) as Amended by Senate Amendment "A" (S-612) thereto, **ADOPTED**, in **NON-CONCURRENCE**.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-901) AS AMENDED BY SENATE AMENDMENT "A" (S-612)** thereto, in **NON-CONCURRENCE**.

Ordered sent down forthwith for concurrence.

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The Chair laid before the Senate the following Tabled and Later (4/11/08) Assigned matter:

HOUSE REPORTS - from the Committee on **TAXATION** on Bill "An Act To Change the Formula for Calculation of the Motor Vehicle Excise Tax"

H.P. 1633 L.D. 2270

Majority - **Ought Not to Pass** (8 members)

Minority - **Ought to Pass as Amended by Committee Amendment "A" (H-974)** (5 members)

Tabled - April 11, 2008, by Senator **MITCHELL** of Kennebec

Pending - **ACCEPTANCE OF EITHER REPORT**

(In House, April 10, 2008, the Majority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED**.)

(In Senate, April 11, 2008, Reports **READ**.)

On motion by Senator **PERRY** of Penobscot, the Majority **OUGHT NOT TO PASS** Report **ACCEPTED**, in concurrence.

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The Chair laid before the Senate the following Tabled and Later (4/11/08) Assigned matter:

Bill "An Act Regarding the Maine Economic Development Evaluation"

S.P. 926 L.D. 2317

Tabled - April 11, 2008, by Senator **MARTIN** of Aroostook

Pending - **PASSAGE TO BE ENGROSSED**

(In Senate, April 11, 2008, **READ A SECOND TIME**.)

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 Washington, Senator Raye.

Senator **RAYE:** Thank you, Madame President. I rise to express my opposition to this measure. I am concerned with the fact that it will direct OPEGA to divert from the work plan that the Government Oversight Committee has considered. With precious resources, as we've all discussed, for OPEGA, I'm somewhat troubled that this bill seeks to do that. I also understand that this measure was not subject to a public hearing. I understand that we are in the last days of the session, but I am concerned about it and urge people to join me in voting against it.

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

Senator **BROMLEY:** Thank you, Madame President, men and women of the Senate. I'll have to ask my colleagues on the BRED Committee but I believe we certainly had a public hearing on this issue. This bill is in response, in part, to the OPEGA study calling into question the effectiveness of some of the economic development programs. We had a lengthy conversation about that in the BRED Committee and one thing that we understood was the firm support we have for the R & D evaluations, bipartisan and bicameral. We wanted to make sure that we were going to have that same kind of confidence in the

economic development programs that we have. We outlined, with our expertise in the committee, a process. The reason that we were supportive of having the Maine Development Foundation look at this was because of their expertise with the Maine Economic Growth Council, with benchmarking and evaluation, and also the non-partisan object imprimatur that this gives this. It was actually in response to the OPEGA report. It was certainly in no disrespect but was an acknowledgement that the OPEGA process is primarily one of auditing and that program evaluation is a different skill set and we wanted to be sure that we were effectively evaluating programs that we're supporting with precious tax resources. Thank you.

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

Senator **TURNER:** Thank you, Madame President, ladies and gentlemen of the Senate. I would agree with most of what the Senator from Cumberland, Senator Bromley, has said. However, I think the specifics of L.D. 2317 were subject to a public hearing. That said, Appropriations, Tax, and BRED did meet jointly to discuss a mechanism for funding this program. The Commissioner of Economic and Community Development was directed to go forth and come up with a means for doing it. I think L.D. 2317 represents that effort. Thank you, Madame President.

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

Senator **COURTNEY:** Thank you, Madame President, men and women of the Senate. I don't have a lot to add to the debate but I do have some concerns because we didn't have the public hearing on this bill. It appears that it diverts money from OPEGA and I have some strong concerns about that so I won't be able to support it.

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

Senator **MARTIN:** Thank you, Madame President and members of the Senate. My recollection is that we discussed in Appropriations at some length that OPEGA did a study and they said they could figure out that there was duplication but it was not their job to then take it to the next step. This is the next step. As I recall OPEGA's recommendation was that they wanted \$250,000, or that someone should spend that amount of money to get to the next step. We all know we haven't got the money to get to the next step. This was a mechanism to at least move to that level. That's my recollection of this. Obviously, if we're not going to rely on the recommendations of OPEGA, I rest my case.

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

Senator **TURNER:** Thank you, Madame President. To further clarify the matter, I believe the price tag suggested by the Commissioner of Economic and Community Development was \$150,000. Further, it is my understanding that there were some unexpended funds left in the OPEGA budget that were, in fact, offered up by the Executive Director of OPEGA to help us balance our budget. We had incorporated those in the so-called Diamond amendment when we were going through the travails of

trying to get a unified budget for this Chamber. I hope that clarifies the matter.

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

Senator **RAYE:** Thank you, Madame President, men and women of the Senate. My concern with this is really a matter of process and the integrity of the process. Those of us who serve on the Government Oversight Committee spend a great deal of our time and energy focused on the work plan for OPEGA and establishes the priorities for OPEGA. My concern is that this measure circumvents that work plan. With limited resources and a very small staff, OPEGA will be called off at some point from something that we have determined should be a priority for them. I just think it's an assertion of the legislature into a process that was specifically designed to have a measure of independence.

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

Senator **TURNER:** Thank you, Madame President. Fifteen months ago OPEGA brought forward a study saying that there were a whole host of economic development programs but they couldn't tell us, nor could we tell them, which ones are good, bad, and somewhere in between. For 15 months we have waited for the Administration to take the next step, which is to do the study. The Commissioner of Economic and Community Development has lined up a resource that is from the outside, an independent. This is a mechanism to execute that study. I would think we would all be in great support of this. It, in effect, affirms, in my judgment, the great work being done by OPEGA and I'm anxious to hear the results of the study, if we can fund it. Thank you, Madame President.

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

Senator **BROMLEY:** Thank you, Madame President. I agree with the good Senator from Cumberland, Senator Turner, that this really does sort of support the work of OPEGA by saying that we heard them. We haven't looked at the overlap, actually we've wanted to. This gave the committee the opportunity to say that we need to look at this with some emphasis and some support from other than just our committee. Let me speak just a moment to the lack of a public hearing. I think that was in response to a bill that gave us authority to report out legislation and it certainly wasn't to silence any voices. We really thought that this was kind of inside baseball. I think it's a step back if we don't do this because how do we answer OPEGA when they say that they don't understand how to do the program evaluation? They are fabulous auditors. Once we give them this information about the evaluation of programs then we are empowering them to do the work that they are supposed to do. I think this is a really good thing for us to do and we should just do it. Thank you, Madame President.

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

Senator **MILLS**: Thank you, Madame President, men and women of the Senate. It seems to me, just from reading the bill, that it doesn't really create an evaluation system. It is in the form, really, of a request to OPEGA to tell us how to go about evaluating the effectiveness of these various tax incentives and economic development systems that we have in place. I guess my criticism of the bill is that it doesn't go far enough to actually start the process of evaluating these. I served for several years on the commission whose purpose in life is to evaluate the effectiveness of the BETR program and the TIF system. It was a nightmare in trying to figure it out because we were constantly at the mercy of some of the state's largest businesses and how to respond subjectively to whether these tax incentives that we were handing out like cookies were indeed important to how they do business. Of course the answer is that yes, if they were important. The idea of trying to evaluate whether spending \$80 million a year on the BETR program was worth \$80 million to the people of Maine, let me tell you, was far beyond the capacity of our poor commission to get to the bottom of. I see, however, some of these smaller programs would lend themselves, perhaps, to some more systematic way of objectively evaluating these. At least I hope there are ways of doing it. My youngest sister is in the public health field and constantly reminding me of the need to set aside 5% or 10% of the money that you allocate to any initiative in the public health arena for evaluation, to see whether the other 90% or 95% that you are spending is having the kind of impact that you envision. In 14 years here I can safely say that we have no idea whether our economic development initiatives are worth anything. Part of the problem is that we are forced, in many respects, to rely on subjective responses from the very people who are taking the money and in some cases running with it. I'd be very interested to see if OPEGA has any suggestions. They certainly have the expertise to help us design systems for evaluation. I don't think they have anywhere near enough resources to actually conduct the evaluations that I personally believe are necessary.

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

Senator **NUTTING**: Thank you, Madame President. I request permission to pose a question through the Chair?

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

Senator **NUTTING**: Thank you, Madame President. My question would be regarding this \$150,000, as I glanced through the L.D. I didn't see in the fiscal note where this \$150,000 is coming from. I've heard that it's coming from OPEGA. If we do take this from OPEGA are there still funds enough there to fund the two vacant positions in OPEGA? That would be my question. Thank you.

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

Senator **MARTIN**: Thank you, Madame President. First of all, the funding of the two positions is unrelated and that is a separate amendment that will, hopefully, be adopted by this legislature before we get out of here. The \$150,000, as my recollection when we were talking about this in Appropriations, will be from

funds presently within the department and between OPEGA and the Commissioner's assets. Basically the purpose here is that OPEGA is being asked to set up an assessment process. The other departments are not doing it. They are actually just going to provide the material to OPEGA to develop an assessment process. I'm not sure I understand what the criticism is.

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

Senator **RAYE**: Thank you, Madame President. I think the concern that I have, as a member of the Government Oversight Committee, is that this would establish a precedent that will impinge on the work plan that the Government Oversight Committee has worked very hard to establish. I certainly don't have any objection to establishing a process that will allow us to have a better understanding of the ethicality of economic development programs. I laud the goal. The problem is that we're presented here with a piece of legislation that arrived very late in the session and there was not an opportunity to have a public hearing and fully vet it. I'm just concerned that, given the workload that OPEGA has with a very limited staff and very limited budget, by us establishing a precedent of the legislature now directing OPEGA, which was established to have a certain degree of independence and nonpartisanship in terms of its structure and its direction, to perform these functions is going to require that some of the work that is on the work plan be pulled back in favor of this approach. It's not something that we've had an opportunity to vet in the Government Oversight Committee. Again, I have no problem at all with us establishing some kind of process by which to have a better understanding of the ethicality of these programs, but I'm just very concerned about the precedent that we are setting by infringing on the process that has been set up. I would note that the fiscal note that was prepared for this bill does say that this could result in diverting resources from other projects apparently on OPEGA's work plan that has been approved by the Government Oversight Committee. Thank you.

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

Senator **BROMLEY**: Thank you, Madame President. It says in the report that this could result in diverting resources but I will remind you of a couple of things. We're responding to what OPEGA asked us to do. Specifically, they said some of the economic development programs have been on the books so long that when they were asked what the goal of the program was the person that responded said that they didn't know. We think that's important and we think that's beyond the scope of OPEGA to look closely at that. This work that we did in the BRED Committee was reported pursuant to Public Law 2007, Chapter 434, section 9. We were asked to do this by law. We were certainly not trying to slip this through without a thorough vetting. What I would ask the members of this Body to consider is passing this, sending it to the table, and then have closer discussion because it is my understanding that OPEGA offered up money that was one-time money of unspent resources, as was

mentioned by the Senator from Cumberland, Senator Turner. Additionally, it streamlines some overlapping and duplicate reporting in DECD and we expect some amount of savings there to be able to help as well. I hope that you will pass this in its current form and get it to the table so we can have a closer discussion about the finances and certainly endorsing quality and appropriate assessments and evaluations. Thank you.

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

Senator **WESTON:** Thank you, Madame President, men and women of the Senate. Not being the historian of the Senate, with some fear and trepidation I will try to go through some of the history as I've read it in the OPEGA report. I think we've come full circle. My understanding is that in 1996 the State and Local Committee at the time had a big question about the money that we were spending for economic development. They voiced that question but never followed up on it. Two years later, in 1998 I believe, the newly formed Economic Development Committee said, 'We don't know if this money is being spent wisely.' They formed the Department of Economic Development. Now, 10 years later, we are asking the same question, is our money wisely spent? Who are we asking to do the review? The Department of Economic Development. We are asking them to come back with a report to the Committee of Economic Development. I don't know that I have confidence that, 10 whole years later, going back to the very department that is spending this money and asking them to bring back an accurate report to the Committee is going to move us ahead. Therefore I do have questions about expending any money that's only going to repeat a history that has not answered the question. Thank you.

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

Senator **MARTIN:** Thank you, Madame President and members of the Senate. What the bill does is asks OPEGA to determine an assessment method so the department in question is not going to be involved. All this bill does is directs OPEGA, which I think is obviously an issue here, to get an assessment method in place and then bring that assessment method back to the legislature.

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

Senator **DOW:** Thank you, Madame President. The report we are discussing here now had a nice chart on it. It had a whole bunch of red, yellow, and green flags on it. The report just pointed out some areas that we ought to take a look at. Something could receive a red flag if it hadn't been evaluated for 15 years, for instance. It was our feeling that many of these programs should be evaluated. The process that OPEGA works, the way we have it set up now, is this; any member of the legislature brings a concern to the Government Oversight Committee and we look at that concern and, amongst all of the other concerns that we have, try to determine a priority level. It's possible that there may be some other items on this priority list that we are doing now that actually may be more important than this. If the legislature wanted something like this done then we should provide the funds for this committee for this extra work. It may not be extra work. We may decide this could take one of the

top priorities. That's the way it works because it's an independent group. It's the only bipartisan group that we have. The sentence in here directing OPEGA to work with another agency is something different and we've fought against this before because it takes the ability to be independent away. I would ask that we vote against this and if we wanted to do something we ought to include the funding for it. Chances are that many times OPEGA goes outside its own people and hires an independent review team to come in and evaluate anyways. This is quite common. That's my take on this and this is the only time I'm going to speak, Madame President.

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

Senator **BROMLEY:** Thank you, Madame President. Two minor things. This bill before you is a response, as I said, to Public Law 2007. The original bill was L.D. 1163. The title of the bill is 'An Act to Implement the Recommendations of the Office of Program Evaluation and Government Accountability Regarding Economic Development in Maine.' That bill was sponsored by the good Senator from Hancock, Senator Rosen. That is what brought this work before us today. Thank you.

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

Senator **COURTNEY:** Thank you, Madame President, men and women of the Senate. I guess the discussion we are having here is probably a good example of why this needs to go through the committee process, but we can do it here. I thought when we were in the committee process we had a pretty good understanding. The three committees were Appropriations, Taxation, and the Business, Research and Economic Development Committee. I thought we had a pretty good plan of how to proceed with this. I didn't hear a lot of opposition. Why are we in this situation? I think we all have to take some responsibility for why we are in this situation. If the committees of oversight were overseeing the individual plans, whether it was a tax incentive or any of a number of incentives, we probably wouldn't be here. I think that this idea is something that probably all of us agree that we should do. We need to better evaluate this on an independent basis. I must tell you that doing it through this process, in the nonpartisan way the OPEGA structure has been set up, you don't direct OPEGA to do anything on a partisan basis. In this case this actually could happen. I think it sets a precedent that weakens the structure of OPEGA. It's my hope that perhaps we could look at this a little differently. We all have the same goals. Let's look at trying to put the proper funding in place. Some of us even went so far as to say that the people receiving the economic incentives ought to be the ones to pay for it. That makes sense to me and I think it makes sense to most people. I think through the discussions over the last few weeks that you can understand why some of us have concerns when one party or one group decides to direct the legislature to do something specifically to OPEGA, which was specifically reduced massively in the Majority budget. In addition, there were some language changes in the Majority budget that concerned many of us deeply. That's why I'm opposing this. I don't oppose the effort but I oppose the process and the way that we are doing it.

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

Senator **WESTON:** Thank you, Madame President, men and women of the Senate. May I pose a question, Madame President?

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

Senator **WESTON:** Thank you, Madame President. It is my understanding, as I look at the bill, that OPEGA is going to gather the information but then the Commissioner of DECD will then take that information and prepare the report for the legislature. You have the Commissioner who is in charge of the program taking the information from OPEGA and deciding what to put in the report that then comes to the legislature. I find that troublesome. If I am incorrect, I would love to be corrected.

**THE PRESIDENT:** The Senator from Waldo, Senator Weston poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Cumberland, Senator Bromley.

Senator **BROMLEY:** Thank you, Madame President, men and women of the Senate. I sort of hate to stand up, but I think this is the reason why I'm hoping we can get this to the table. We've had several discussions about the funding source of this. I agree with the Senator from York, Senator Courtney. Unlike in the R & D evaluation, where we actually fund those evaluations from the money that is dispersed, it's not so easy with tax credit programs. In fact it's quite complicated. We need to be looking at it carefully. Also the committee was interested in having an RFP for this process and not just handing it to the committee. In fact, that is why in my initial remarks I said that it was going to the Maine Development Foundation but I think that was up in the air. There are certainly questions about the funding that are valid and I think we should have the discussion. I hope that you will pass the bill and when it gets to the table we can answer these questions appropriately. Thank you, Madame President.

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

Senator **TURNER:** Thank you, Madame President. I would answer the question this way; there exists an RFP that was put out by the Commissioner of Economic and Community Development. I believe the successful responder to that is the Maine Development Foundation. If this goes forward as we envision the report will be done by the Maine Development Foundation. I think it is right and proper to have OPEGA involved in the process since they were the source of the original information that came to the legislature in the first place. I think it further enhances OPEGA and finally gets to the underlying questions as to what are the values, if any, of the various economic development programs that we have in place today. Thank you.

**THE PRESIDENT:** The pending question before the Senate is Passage to be Engrossed. 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 (#434)

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

NAYS: Senators: BENOIT, COURTNEY, DOW, HASTINGS, NASS, PLOWMAN, RAYE, ROSEN, SAVAGE, SHERMAN, SMITH, SNOWE-MELLO, WESTON

22 Senators having voted in the affirmative and 13 Senators having voted in the negative, was **PASSED TO BE ENGROSSED.**

Sent down for concurrence.

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The Chair laid before the Senate the following Tabled and Later (4/11/08) Assigned matter:

#### Emergency

An Act To Establish the Shellfish Advisory Council and To Improve the Process of Reopening Clam Flats

H.P. 1422 L.D. 2038

(H "B" H-947; H "C" H-954 to

C "A" H-741)

Tabled - April 11, 2008, by Senator **MITCHELL** of Kennebec

Pending - **ENACTMENT**, in concurrence (Roll Call Ordered)

(In Senate, April 8, 2008, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-741) AS AMENDED BY HOUSE AMENDMENTS "B" (H-947) AND "C" (H-954)** thereto, in concurrence.)

(In House, April 10, 2008, **PASSED TO BE ENACTED.**)

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

**ROLL CALL (#435)**

YEAS: Senators: BARTLETT, BENOIT, BOWMAN, BRANNIGAN, BROMLEY, BRYANT, COURTNEY, DIAMOND, DOW, GOOLEY, HASTINGS, HOBBS, MARRACHE, MARTIN, MCCORMICK, MILLS, MITCHELL, NASS, NUTTING, PERRY, PLOWMAN, RAYE, ROSEN, ROTUNDO, SAVAGE, SHERMAN, SMITH, SNOWE-MELLO, STRIMLING, SULLIVAN, TURNER, WESTON, THE PRESIDENT - BETH G. EDMONDS

NAYS: Senators: DAMON, SCHNEIDER

33 Senators having voted in the affirmative and 2 Senators having voted in the negative, was **PASSED TO BE ENACTED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

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The Chair laid before the Senate the following Tabled and Later (4/11/08) Assigned matter:

Resolve, To Support the Inclusion of Labor Education at Maine Public Institutions of Higher Education

H.P. 115 L.D. 123  
(H "B" H-964 to C "C" H-908)

Tabled - April 11, 2008, by Senator **STRIMLING** of Cumberland

Pending - **FINAL PASSAGE**, in concurrence

(In Senate, April 10, 2008, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "C" (H-908) AS AMENDED BY HOUSE AMENDMENT "B" (H-964)** thereto, in concurrence.)

(In House, April 11, 2008, **FINALLY PASSED**.)

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

Senator **TURNER:** Thank you, Madame President, ladies and gentlemen of the Senate. Before we vote on this matter I would just ask that you consider the following. Our university system is under stress. On various campuses programs are being evaluated and departments are being considered for elimination to make budgets come together. While this is a Resolve only asking that labor education be considered, I don't think it's in the best interest of the university system for the legislature to go into the position of curriculum development or curriculum suggestion. I would urge that you not support the pending motion.

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

Senator **STRIMLING:** Thank you, Madame President. I would encourage my colleagues to support this motion. It is a Resolve and even the Chancellor has expressed that he would like to know what it is that we think about this. I have to say that I find it a little bit discouraging. If this were a Resolve to promote the

opening of a business school I'm sure my colleagues on the other side of the aisle would probably support that, as would I. I think it has more to do with the issue at hand than it does with what was just spoken about. I think labor history is an important part of our history, just like business history is. We should be supportive of it happening. This is just a Resolve to ask them to keep it in consideration.

Senator **WESTON** of Waldo requested a Division.

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

Senator **TURNER:** Thank you, Madame President. Not to further prolong the agony of this particular matter, if a Resolve came forward for a business school and one already existed I would oppose it. We had a Resolve that came forward in the last session, the 122<sup>nd</sup>, to require the University of Southern Maine to have a football team. I think if you look closely at that particular matter you would find the fingerprints of the originator of that bill and this Resolve are the same. We put a university system board of trustees in place for a very good reason and we should let them do their work without us getting too involved in their activities. In closing I would simply ask that you oppose the pending motion. Thank you.

At the request of Senator **WESTON** of Waldo a Division was had. 19 Senators having voted in the affirmative and 16 Senators having voted in the negative, was **FINALLY PASSED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

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The Chair laid before the Senate the following Tabled and Later (4/11/08) Assigned matter:

An Act To Amend Motor Vehicle Laws

H.P. 1459 L.D. 2075  
(C "A" H-913)

Tabled - April 11, 2008, by Senator **BRYANT** of Oxford

Pending - **ENACTMENT**, in concurrence

(In Senate, April 7, 2008, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-913)**.)

(In House, April 11, 2008, **PASSED TO BE ENACTED**.)

On motion by Senator **BRYANT** of Oxford, **TABLED** until Later in Today's Session, pending **ENACTMENT**, in concurrence.

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Senate at Ease.

Senate called to order by the President.

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Senator **WESTON** of Waldo 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.

On motion by Senator **MITCHELL** of Kennebec,  
**RECESSED** until 2:00 in the afternoon.

After Recess

Senate called to order by the President.

#### ORDERS OF THE DAY

The Chair laid before the Senate the following Tabled and Later (4/9/08) Assigned matter:

HOUSE REPORTS - from the Committee on **LEGAL AND VETERANS AFFAIRS** on Bill "An Act To Promote Transparency and Accountability in Campaigns and Governmental Ethics"  
H.P. 1585 L.D. 2219  
(C "B" H-939)

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-938)** (7 members)

Minority - **Ought to Pass as Amended by Committee Amendment "B" (H-939)** (6 members)

Tabled - April 9, 2008, by Senator **MARRACHÉ** of Kennebec

Pending - motion by same Senator to **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "B" (H-939)** Report, in **NON-CONCURRENCE**

(In House, April 8, 2008, the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (C-H-938)** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-938).**)

(In Senate, April 9, 2008, Reports **READ.**)

On motion by Senator **MARRACHÉ** of Kennebec, the Minority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "B" (H-939)** Report **ACCEPTED**, in **NON-CONCURRENCE.**

**READ ONCE.**

Committee Amendment "B" (H-939) **READ.**

On motion by Senator **MARRACHÉ** of Kennebec, Senate Amendment "A" (S-601) to Committee Amendment "B" (H-939) **READ.**

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

Senator **MARRACHÉ**: Thank you, Madame President, men and women of the Senate. This amendment simply allows, that during a public complaint that is lodged against a legislator if it comes to fruition that there has been a whisper campaign, the legislator would now be able to open up the entire process to make sure everything is transparent for all involved in the case as it goes forward.

On motion by Senator **MARRACHÉ** of Kennebec, Senate Amendment "A" (S-601) to Committee Amendment "B" (H-939) **ADOPTED.**

Committee Amendment "B" (H-939) as Amended by Senate Amendment "A" (S-601) thereto, **ADOPTED**, in **NON-CONCURRENCE.**

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "B" (H-939) AS AMENDED BY SENATE AMENDMENT "A" (S-601)** thereto, in **NON-CONCURRENCE.**

Ordered sent down forthwith for concurrence.

The Chair laid before the Senate the following Tabled and Later (4/9/08) Assigned matter:

Bill "An Act To Increase Public Confidence in Government by Expanding Public Disclosure"  
S.P. 838 L.D. 2178  
(C "A" S-523)

Tabled - April 9, 2008, by Senator **MARRACHÉ** of Kennebec

Pending - **FURTHER CONSIDERATION**

(In Senate, March 31, 2008, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-523).**)

(In House, April 8, 2008, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-523) AS AMENDED BY HOUSE AMENDMENT "E" (H-959)** thereto, in **NON-CONCURRENCE.**)

On motion by Senator **MARRACHÉ** of Kennebec, the Senate **RECEDED** from whereby the Bill was **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-523).**

On further motion by same Senator, the Senate **RECEDED** from whereby it **ADOPTED COMMITTEE AMENDMENT "A" (S-523).**

House Amendment "E" (H-959) to Committee Amendment "A" (S-523) **READ.**



Senator **MARRACHÉ** of Kennebec moved to **INDEFINITELY POSTPONE** House Amendment "E" (H-959) to Committee Amendment "A" (S-523), in **NON-CONCURRENCE**.

On motion by Senator **ROSEN** of Hancock, 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 Penobscot, Senator Plowman.

Senator **FLOWMAN**: Thank you, Madame President. I urge you to reject the pending motion. The bill, as brought out of the committee, seemed a bit over-broad and has been worked on by several committee members to bring forth this amendment. The amendment makes it so that you still have quite a bit more reporting than you used to but this amendment now looks at it and asks how much does the constituent, the state, or the public need to know about you. This amendment that you are seeking to indefinitely postpone says that pieces of real estate located throughout the state and stocks and bonds you own will not have to be enumerated. That seems like an awful lot of information for people to be able to find out about you on the internet, keeping in mind that all of this information will be posted on the internet, including the value of your properties and investments. When you make out a bank application you do put all of that information on that. You wouldn't make a photocopy of that and leave it in every restaurant in the state of Maine so that people would know what you have for assets. You would probably hold that pretty close and hand it to your bank and hope that it stays in your file. This amendment says that this is personal information, that you want to hold it back, but you are perfectly willing to say where you work and what you do, but to have to explain every piece of paper, every piece of property, and stock investment or savings account, whether in your name, your spouse's name, or your child's name, seems a little bit intrusive. I believe that we should be responsible and disclose our conflicts of interests and apparent investments, but I don't think that it should be out there for everyone. I would ask you to hold onto this and do not vote for the indefinite postponement. Thank you.

**THE PRESIDENT:** The pending question before the Senate is the motion by the Senator from Kennebec, Senator Marraché to Indefinitely Postpone House Amendment "E" (H-959) to Committee Amendment "A" (S-523). 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 (#436)

YEAS: Senators: BARTLETT, BOWMAN, BRANNIGAN, BROMLEY, BRYANT, HOBBS, MARRACHE, MARTIN, MITCHELL, NUTTING, ROTUNDO, SULLIVAN, THE PRESIDENT - BETH G. EDMONDS

NAYS: Senators: BENOIT, COURTNEY, DAMON, DIAMOND, DOW, GOOLEY, HASTINGS, MCCORMICK, MILLS, NASS, PERRY, PLOWMAN, RAYE, ROSEN, SAVAGE, SCHNEIDER, SHERMAN, SMITH, SNOWE-MELLO, STRIMLING, TURNER, WESTON

13 Senators having voted in the affirmative and 22 Senators having voted in the negative, the motion by Senator **MARRACHÉ** of Kennebec to **INDEFINITELY POSTPONE** House Amendment "E" (H-959) to Committee Amendment "A" (S-523), in **NON-CONCURRENCE, FAILED**.

House Amendment "E" (H-959) to Committee Amendment "A" (S-523) **ADOPTED**, in concurrence.

Committee Amendment "A" (S-523) as Amended by House Amendment "E" (H-959) thereto, **ADOPTED**, in concurrence.

**PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-523) AS AMENDED BY HOUSE AMENDMENT "E" (H-959)** thereto, in concurrence.

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

#### REPORTS OF COMMITTEES

##### House

##### Divided Report

The Majority of the Committee on **BUSINESS, RESEARCH AND ECONOMIC DEVELOPMENT** on Bill "An Act To Establish a Uniform Building and Energy Code"

H.P. 1619 L.D. 2257

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-983)**.

Signed:

Senators:  
BROMLEY of Cumberland  
SCHNEIDER of Penobscot

Representatives:  
BEAULIEU of Auburn  
SAMSON of Auburn  
MacDONALD of Boothbay  
SILSBY of Augusta  
SMITH of Monmouth  
BEAUDETTE of Biddeford  
CLEARY of Houlton

The Minority of the same Committee on the same subject reported that the same **Ought To Pass as Amended by Committee Amendment "B" (H-984)**.

Signed:

Senator:  
COURTNEY of York

Representatives:  
AUSTIN of Gray  
PRESCOTT of Topsham  
RECTOR of Thomaston

Comes from the House with the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-983)** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-983) AS AMENDED BY HOUSE AMENDMENT "B" (H-1005)** thereto.

Reports **READ**.

Senator **BROMLEY** of Cumberland moved the Senate **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-983)** Report, in concurrence.

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

Senator **BROMLEY:** Thank you, Madame President, men and women of the Senate. What we have before us is an act to establish a uniform building and energy code. If any of you have been in or around or near the BRED Committee you will know this has been an issue that has been debated in the past eight years, although the Senator from Cumberland, Senator Brannigan, told me it's been 20 years. We are one of 11 states that don't have a building code and it has an impact in ways that many of us might not realize. It adds costs to housing. It makes the unpredictability of planning an issue for developers. Something that I learned rather recently is that if you are applying for an SBA loan for construction on your small business expansion you have a much more difficult path than if your municipality has an enforced building code. The issue of the adoption of a code is not controversial. It was some years back. The committee was unanimous in its belief that a uniform code is important and the Maine Municipal Association supported that as well, which we were very grateful for.

Where the committee divides, and where some of us may as well, is whether or not it is important to enforce this code. I will give you a couple of examples why I'm going to support enforcement forcefully. You may not know this, if you have served on the BRED Committee you do, we already have a voluntary building code and a voluntary rehab code. Those are not enforced for a couple of reasons. One is because the code officers have not been trained in this code. The fact that it is not required makes it an option. Some of the several businesses and groups that are supporting this remind us that if we're not going to enforce the code it won't have the benefits that are so important to all of us. I want to quote a upstanding businessperson and retail lumber dealer who says, 'Adoption of a uniform statewide building code with mandatory enforcement sends a strong signal to business that Maine is serious about addressing some of the longstanding complications of building and developing in Maine.'

Another issue that is near and dear to almost of us in this Chamber is downtown rehab. It's particularly upsetting and

demoralizing, actually, for many of us when we see beautiful historic buildings disappear from the landscape. One of the reasons, and we've all grappled with this, is to build, add on, or rehab a historic building to a modern code is almost impossible. This code includes a rehab code that relaxes some of the provisions that would make it impossible to bring a historic building up to code. As we coupled together some of the work we've done around historic preservation, this rehab code is a very important piece of that.

I also want to talk to you for a moment about how the committee did not take lightly the issues of municipalities who were worried about how they might implement this and talk to you a little bit about it. Actually there is a paper, hopefully, going around to you about this. I'll make sure that you all have a chance to see it before you vote. I want to give you a list of some of the things that we did to be helpful to municipalities. The first thing to notice is that if a municipality has under 2,000 residents this bill does not apply to them. The code does not apply. Also local code enforcement officers will receive free training and certification at the State's expense. When I say at the State's expense it is actually from the developers who supported this bill agreed to a 4¢ per square foot surcharge on commercial buildings because of their awareness of the importance of this code. That money will be used to fund the training and the board. Code enforcement will be phased in slowly; July 2010 for towns that already have a code and not until 2012 for towns that do not have a code.

It's easy for us to say up here that a uniform statewide code will save towns the expense and hassle of having to update and amend the code each year themselves. We estimate a \$3,000 per adoption savings and we're sure there are other savings in terms of how codes are harmonized, that was a word we were using. If some codes come in conflict with the State, a board of experts will work very diligently to make sure that the codes are harmonized. When it comes to enforcement, we understood that this was a particular issue for towns and cities so we've laid out in this bill four options. Towns that are like my city of South Portland who are already doing this will not be impacted. They may choose to enforce the codes with enforcement officers they have on staff. That is what my city is doing. They may contract for enforcement. They may also join together with other towns and do it as a group. We still realized there might be towns that weren't in a position to hire people and also might not have the budget to contract out. We added a forth option of third party inspectors which would mean that the builder and the owner could share the cost of the inspection and the only requirements of the municipality would be to simply file that report before they issue an occupancy certificate, which they are already doing. If number four on this list is chosen, the only additional thing that a municipality will have to do is simply file a piece of paper. We think the benefits of having a uniform code and a uniform energy code certainly outweigh the minor additional activity at the municipal level and I would urge you to support the pending motion. Thank you.

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

Senator **COURTNEY:** Thank you, Madame President, men and women of the Senate. First of all I want to thank the good Chair for outlining what's gone on in the BRED Committee quite accurately. I guess I want to be real clear that the reason that I'm

not supporting this motion is because it's pushing this mandate onto municipalities. While the good Senator outlined how the mandate may have been reduced, I'm not sure that it is reduced completely, or eliminated it. I'm surprised to actually see this come up here without a mandate preamble, but maybe that will happen downstairs if it goes that far.

We talked about the enforcement and when the State instructs the municipalities to do this enforcement. The good Senator mentioned using the existing structure, which is fine, contracting it, or join with another towns. It all sounds good. The fourth part really concerns me because it has the third party inspectors. That part is very troublesome because those third party inspectors have to be paid. If a community chooses to do so, they could actually have the contractor or the homeowner pay for that expense. That is taking a mandate on the municipality and putting it on the people at home. Will the phones ring off the hook if that happens and we pass it and go home? No, but they will ring off the hook in a couple of years when it goes into effect.

The other piece that concerns me greatly is that we've tried to take a big step here. Maine Municipal has gone on record as being supportive of this statewide uniform building code. They are supportive of the other report, which I won't talk about. They are taking a big step. There are people who have been committed to moving this code forward so we have uniformity for a number of years. There are some pieces in it that try to grasp it a little bit too much, like what we haven't heard anything about yet, the statewide energy code which certainly needs to be vetted properly and separately from the initial building code. While the goals are to improve energy efficiency for all of us, I think that this really hasn't had an extensive discussion in the committee about the details and the process. I would just ask you to take a good look at this and decide whether or not we think that we know more up here than the people at home. I have confidence that the people at home will make the right decision if we choose to just put the code out there and give them the opportunity to use it. The argument of the supporters, saying that we absolutely have to have this mandatory code, is undone by the very essence of their report. When you look at it, they exempt the communities up to 2,000 people. If you represent a community of 2,000 or less, I guess what I'd suggest, if you're going to vote for this report, is that you trust the government not to come back in a couple of years and change what is required of you.

In summary, Madame President, I just would request that you oppose this motion so we have an opportunity to look at something else. Thank you.

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

Senator **BARTLETT:** Thank you, Madame President, men and women of the Senate. I rise in support of the pending motion. I wanted to talk for a moment about a couple of things, one being the enforcement options that were chosen and the other being the importance of the energy code, and to address some of the concerns that have been raised.

In terms of the enforcement, when we were looking at building codes, both the general building codes and the energy efficiency codes, we knew that enforcement was a key element, as the good Senator from Cumberland, Senator Bromley, pointed out. Unless you have some sort of enforcing mechanism in place you will not get the uniform application that is hoped to be achieved by implementing the code. In doing that we responded

to the very legitimate concerns that were raised by MMA and others who were concerned that a one-size-fits-all approach was not appropriate for the many communities in Maine. We listened to the concerns and came up with a range of options. One of those options is for a traditional code enforcement at the local level, which some municipalities favored. I've heard from a number of communities who like that approach and believe that this is the approach that we should be taking. Other communities, though, don't have any code enforcement officers at present, do not want to hire folks to perform that function, and so we said we'd give those communities an option for third party enforcement so that they can allow independent third parties to do it and have the certificate provided to the town. This is designed to minimize the cost to the town and the fee to obtain those inspections is no different than permit fees that you pay to municipalities so they can hire the code enforcement officers to go out and do the work. Those are the options we offered and brought forward in response to the concerns we heard. It was my understanding, quite frankly, that MMA was supportive of having these options included in there to make sure that it was not a one-size-fits-all approach.

With respect to the energy building codes, the code has been well vetted. We, in the Utilities and Energy Committee, have been talking about it for a long time. We've put in place the voluntary energy building code in a previous session, so we were well aware of it and it has been well vetted and this is the code that has been chosen. The reason that an energy code is important, and it's important to understand, is because we're not looking to make our homes the most efficient possible with this code. Far from it. This is a very baseline standard. Most consumers, when they buy new homes, assume that there is some minimum floor standard that is being met in terms of the insulation, the windows, and so forth. The reality is that 84% of the time they will be disappointed when they get their energy bills. Of the new homes that are being constructed in this state 84% don't even meet a very basic level of energy efficiency.

What does this mean in terms of cost? The number one issue that does get addressed is the insulation of the foundations. If you were to go and do that, in building a new home, you would spend in the range of \$1,200 to \$1,500. That's total with the increase to make it meet code. You will save far more than that over a very short period of time. We did calculations that concluded that even if you had to build that extra cost into your mortgage, in the energy savings you would achieve, you would be making \$4 a month. By making that simple investment you will be making \$4 a month net profit as a result of doing that. It's important to understand that these codes do not cost you money. In the term of the course of owning your home it is saving you money every single month from day one. That is what this is about. Achieving a minimum floor to make sure you are saving money. I think this past winter is a good example. People have been spending thousands and thousands of dollars on their heating oil. With minimum standards in place, they will be saving \$50 to \$100 a month in heating costs. That is very real money in the pockets of Maine people. Given the fact that we are the only state in New England without an energy efficiency code and we are only one 11 states nationally, I would ask, why is it that Maine consumers do not deserve, when they are building their homes, the same level of efficiency and low cost operation that is achieved in every other New England state and in most other states around the country? That's all we're doing with this code.

It has been well vetted. It is an appropriate step and it will not cost folks money in the operation of their homes.

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 pending question before the Senate is the motion by the Senator from Cumberland, Senator Bromley to Accept the Majority Ought to Pass as Amended by Committee Amendment "A" (H-983) 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 (#437)**

**YEAS:** Senators: BARTLETT, BOWMAN, BRANNIGAN, BROMLEY, DAMON, DIAMOND, HOBBS, MARRACHE, MARTIN, MILLS, MITCHELL, PERRY, ROTUNDO, SCHNEIDER, STRIMLING, SULLIVAN, TURNER, THE PRESIDENT - BETH G. EDMONDS

**NAYS:** Senators: BENOIT, BRYANT, COURTNEY, DOW, GOOLEY, HASTINGS, MCCORMICK, NASS, NUTTING, PLOWMAN, RAYE, ROSEN, SAVAGE, SHERMAN, SMITH, SNOWE-MELLO, WESTON

18 Senators having voted in the affirmative and 17 Senators having voted in the negative, the motion by Senator **BROMLEY** of Cumberland to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-983)** Report, in concurrence, **PREVAILED**.

**READ ONCE.**

Committee Amendment "A" (H-983) **READ**.

House Amendment "B" (H-1005) to Committee Amendment "A" (H-983) **READ** and **ADOPTED**, in concurrence.

On motion by Senator **BRYANT** of Oxford, Senate Amendment "A" (S-613) to Committee Amendment "A" (H-983) **READ**.

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

Senator **BRYANT:** Thank you, Madame President, ladies and gentlemen of the Senate. Back in the 1900's we had eliminated, or had exempted, 2,000. What I propose here today is an exemption of 5,000. I have a number of towns within my district that certainly do not like this mandate. They don't mind a statewide code but they don't necessarily believe that the State ought to be mandating them to do that. What I present to you is an amendment that exempts populations of 5,000 and less. As I said, probably 70 or 80 years ago the 2,000 was put in there and the population has grown. I think it is within reason, 5,000 is a

reasonable number to allow towns under that population to make their own decisions. I would appreciate your vote.

Senator **BROMLEY** of Cumberland moved to **INDEFINITELY POSTPONE** Senate Amendment "A" (S-613) to Committee Amendment "A" (H-983).

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

Senator **BROMLEY:** Thank you, Madame President. We wrestled with the right number to exempt and some of us thought it was 1,000 and some of us thought it was 1,500, so we went to 2,000 somewhat reluctantly. I think there are only 85 towns that are over 5,000 and most of them are already enforcing the code. This would pretty much gut the bill. We have put in place a graduated system so that towns that don't have a code don't have to adopt it and don't have to put it into place until 2012. There will be lots of resources and lots of support to help them. There are a handful of people who simply don't want to have to be told to do anything. I certainly understand that. Those people are probably never going to support this. For all the reasons I mentioned before, it would be very important to defeat this amendment and support Indefinite Postponement. Thank you, Madame President.

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

Senator **COURTNEY:** Thank you, Madame President, men and women of the Senate. I'll be opposing the Indefinite Postponement motion. One thing I'm not sure that everybody completely understands is that the code is the code whether you are 2,000, 1,000, or 500. The code that was just passed is a statewide building code and it's in place. The threshold is the threshold that requires the mandatory enforcement. I'll be supporting raising the threshold for mandatory enforcement for some of my rural friends that don't want to take that on. Thank you.

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

Senator **TURNER:** Thank you, Madame President. I'm going to ask that you support the motion before us, Indefinite Postponement. My numbers may be off precisely, but I think some 40 states currently have mandatory building codes. They are all being enforced in some fashion or another at this point. For those of you who have medium term memories, I will refer you back to Florida in 1994. One of the large hurricanes came blowing across the peninsula and gutted the lower core of that state where they had a building code on a statewide basis that was not enforced. Where there should have been 16" between 2 x 4s and the like there were sometimes 3". Enforcement is always a good idea and I would encourage you to vote in favor of the pending motion of Indefinite Postponement.

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

**THE PRESIDENT:** The pending question before the Senate is the motion by the Senator from Cumberland, Senator Bromley to

Indefinite Postpone Senate Amendment "A" (S-613) to Committee Amendment "A" (H-983). 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 (#438)**

YEAS: Senators: BARTLETT, BOWMAN, BRANNIGAN, BROMLEY, DAMON, DIAMOND, HOBBS, MARRACHE, MARTIN, MILLS, MITCHELL, NUTTING, PERRY, ROSEN, ROTUNDO, SCHNEIDER, STRIMLING, SULLIVAN, TURNER, WESTON, THE PRESIDENT - BETH G. EDMONDS

NAYS: Senators: BENOIT, BRYANT, COURTNEY, DOW, GOOLEY, HASTINGS, MCCORMICK, NASS, PLOWMAN, RAYE, SAVAGE, SHERMAN, SMITH, SNOWE-MELLO

21 Senators having voted in the affirmative and 14 Senators having voted in the negative, the motion by Senator BROMLEY of Cumberland to **INDEFINITELY POSTPONE** Senate Amendment "A" (S-613) to Committee Amendment "A" (H-983), **PREVAILED**.

Committee Amendment "A" (H-983) as Amended by House Amendment "B" (H-1005) thereto, **ADOPTED**, in concurrence.

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

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

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

**ROLL CALL (#439)**

YEAS: Senators: BARTLETT, BOWMAN, BRANNIGAN, BROMLEY, DAMON, DIAMOND, DOW, GOOLEY, HOBBS, MARRACHE, MARTIN, MILLS, MITCHELL, PERRY, ROTUNDO, SCHNEIDER, STRIMLING, SULLIVAN, TURNER, THE PRESIDENT - BETH G. EDMONDS

NAYS: Senators: BENOIT, BRYANT, COURTNEY, HASTINGS, MCCORMICK, NASS, NUTTING, PLOWMAN, RAYE, ROSEN, SAVAGE, SHERMAN, SMITH, SNOWE-MELLO, WESTON

20 Senators having voted in the affirmative and 15 Senators having voted in the negative, was **PASSED TO BE ENGROSSED AS AMENDED**, in concurrence.

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

**ORDERS OF THE DAY**

The Chair laid before the Senate the following Tabled and Later (4/11/08) Assigned matter:

Bill "An Act To Amend the Axle Weight Laws for Trucks Transporting Unprocessed Agricultural Products and Forest Products" (EMERGENCY)

H.P. 1576 L.D. 2209  
(H "A" H-888 to C "B" H-872)

Tabled - April 11, 2008, by Senator MARTIN of Aroostook

Pending - motion by Senator DAMON of Hancock to **RECONSIDER** whereby the Senate **RECEDED** and **CONCURRED**

(In House, April 8, 2008, that Body **INSISTED** to **PASSAGE TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "B" (H-872) AS AMENDED BY HOUSE AMENDMENT "A" (H-888)** thereto.)

(In Senate, April 10, 2008, on motion by Senator MARTIN of Aroostook, **RECEDED** from **ACCEPTANCE** of Report "A", Ought Not To Pass, in **NON-CONCURRENCE**. On further motion by same Senator, **CONCURRED** to **PASSAGE TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "B" (H-872) AS AMENDED BY HOUSE AMENDMENT "A" (H-888)** thereto, in concurrence.)

On motion by Senator MARTIN of Aroostook, 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 Aroostook, Senator Martin.

Senator MARTIN: Thank you, Madame President. I'll be very brief. I urge all my colleagues to vote against the motion to Reconsider.

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

Senator DAMON: Thank you, Madame President, ladies and gentlemen of the Senate. I would urge all my colleagues to vote in favor of the motion to Reconsider and I would do that so we could get to the position where we could take the right action on this bill and not the harmful action on this bill. Thank you, Madame President.

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

Senator MARTIN: Thank you, Madame President. For the record, the Senator from Hancock, Senator Damon, wants to kill the bill. I want to save it.

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

Senator **DIAMOND:** Thank you, Madame President, men and women of the Senate. The Senator from Hancock, Senator Damon, wants to kill the bill because it's a bad bill. The bill was heard by the Transportation Committee and this bill, if it passes, will remove the restrictions on weights on axles. If you want to really do damage to roads and bridges, which we are working hard to keep in shape, this is one way to do it. I understand the good Senator from Aroostook, Senator Martin, and the people he represents. I understand that this is a little bit of a relief but long term I think it does harm to the bridges and roads and I would ask you to consider that. Thank you.

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

Senator **SCHNEIDER:** Thank you, Madame President, men and women of the Senate. This is a bill that has come forward because our trucking industry, as well as the forest products industry, is in serious trouble. This is a bill to create some fairness. Currently agriculture can have adjusted axle weight. Forest products truckers don't get that luxury. It's very difficult to get proper axle weight adjusted when you are in the woods. Please, please follow my good colleague from Aroostook, Senator Martin's light on this. This is a critical bill for our forest products industry and if you don't think that they are in trouble watch as the truckers start losing their trucks, bankers start getting them, and we have a breakdown in the chain of the forest products industry. It's already happening. We had a gentleman out here who had repossessions of several of his trucks. This is happening. This is an economic issue for certain. I implore you to please follow the Senator from Aroostook, Senator Martin's light. Thank you.

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

Senator **SHERMAN:** Thank you, Madame President, men and women of the Senate. I would just like to associate myself with the good Senator from Aroostook, Senator Martin, and the good Senator from Penobscot, Senator Schneider. Enough said.

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

Senator **SAVAGE:** Thank you, Madame President, men and women of the Senate. This bill is not a temporary fix for the truckers who are having high diesel fuel prices and putting their trucks away. It's a permanent change in the transportation laws, one that we will live with for years to come. It's the heavy axle weights that are doing damage to bridges. We just got through working a bill that the Governor presented to us, a funding bill to make repairs and replacements on bridges. This bill is just going to continue that deterioration. As written, this bill would create a \$29 million a year loss in federal funds. This is because of the interstate system's excess weight laws. If we correct that, it's going to drive these trucks onto town roads. Over \$220 million is spent by the municipalities to keep the roads in passable condition. You have to admit, a lot of them are not in passable condition at the moment. This is only just going to create more

problems for our roads and bridges. I would ask you to support the current motion.

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

Senator **SCHNEIDER:** Thank you, Madame President, men and women of the Senate. I'd like to let you know that the forest products industry is an \$8 billion to \$10 billion industry. We are in trouble here folks. One trucker's revenue is well over in excess of \$100,000 to this state. If we start losing these people we will lose the link to a chain of an \$8 billion to \$10 billion industry. If you think it is temporary, let me tell you something folks. It will not be temporary. These people will not be coming back to our state. We're in trouble here. This is an effort to help them and it may be permanent but let's, for goodness sake, help them to stay in our state. This is about business. Do we want truckers to be on our roads at all? That's really the issue here. I think we need to answer the call here and step up to the plate and say that these truckers need a break. Our forest products industry is important to us. That's what we are talking about here. This is critical. They have made it abundantly clear of how critical this is to them. I hope you will vote against the reconsideration of this.

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

Senator **SHERMAN:** Thank you, Madame President, ladies and gentlemen of the Senate. Sometimes I get amused and sometimes I get sad and I'm not sure which one I am right now. It is an \$8 billion industry. They have had repossessions. This is not just about the truckers themselves. It's about the mills that they take fiber to. The other comment I'd make, if you look at a trailer truck when you are passing them on the highway, or they are passing you on the highway, you will notice in the lower right or left corner they will indicate the amount of taxes they've paid. You need to take a look at that. Take a look at the fuel taxes they've paid. I would guarantee you that they pay more per ton in fuel taxes than what a car or SUV does. They should be getting some benefit out of that. Just take a look at that little yellow sticker that some of those folks put on there. They pay taxes. They pay fuel taxes. This is in effect a kind of minor change, to some extent. I would like to pose a question through the Chair.

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

Senator **SHERMAN:** Thank you, Madame President. I would like to have someone on the Transportation Committee tell me exactly what this bill does? I'm hearing talk about the agriculture products and we are talking about forestry products. I'd like to know if the agriculture products are out there. I'd also like to know how the axle weight is adjusted or not adjusted. What does the bill actually do in its present form?

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

Senator **DAMON:** Thank you, Madame President, ladies and gentlemen of the Senate. I had my light pressed before the question was posed, but I will try to make my speech and also

answer the good Senator, if I might. It is true that the forest products industry, as my good colleague from Penobscot has mentioned, is in terrible shape. Perhaps the only thing that is in worst shape than that are our roads and our bridges. They are in terrible shape too. Are they a \$10 billion or \$20 billion investment or part of our infrastructure? Indeed, they are. For us to, as some way to provide some relief to that struggling industry, permit a practice to occur which further deteriorates that infrastructure and that investment that we have is ludicrous. It's very well intentioned but very poor policy.

The comment that was made regarding the little yellow sticker in terms of how many fees these trucks have paid in taxes, it is astounding. I'll tell you that. Perhaps there ought to be another sticker, maybe in red, in that same little location that tells how much damage they do. Indeed, you would find that astounding and you would find it even more astounding if we were to put more weight centered over an axle that drives that weight down into the pavement as it goes over and onto the bridges. There have been scientific reports that have gone to our committee that indicate, without question, that the greater deterioration is not on the overall gross vehicle weight and how that is distributed but on how it is focused down into the roadway. That's what this bill does.

I stood here in support of a bill that had us allow overweight vehicles for the forest products industry. You know, that was one of the first bills that came before us in January of this year in an effort to help them out. It did not call specifically for overweight on the axles. That is where I have to draw the line. I am so pleased that my colleagues on the Transportation Committee, the good Senator from Cumberland and the good Senator from Knox, have stood in defense of this proposed amendment and will stand to defeat this because it is they who have listened to and are knowledgeable about the effects of vehicle weight on our roads and it is they who know how destructive that is to our infrastructure and how valuable that infrastructure is, not just to our forestry products or agricultural industries but to all of our economy in Maine. We cannot allow it to be further deteriorated. We can't keep up with the present needs, financially. We can't do it. The present funding model for it is not sustainable. Now we're being asked to do further damage. Please support the pending motion so that we can get to the point where this bill can be disposed of. Thank you, Madame President.

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

Senator **SCHNEIDER:** Thank you, Madame President, men and women of the Senate. I'm sorry but I hope you will vote against the pending motion. Clearly, I am not a forester. However, I've heard from many people in the woods that trying to figure out where exactly the weight is with different kinds of loads of wood is impossible to do. I did not hear anything in the public testimony from any person who has any experience and could tell me that it was possible. There are policy wonks, certainly, who would say that this may cause additional stress to our roads. I would also suggest to you that it is unfair to expect these forest products folks to figure out where exactly that wood is on any particular axle while out in the woods. We're blaming these folks for the deterioration of our roads. No. We have a responsibility to keep up our roads. If we do not do that we do not have the right to

blame these folks in the field. Please vote against the pending motion. I implore you. This will make a difference in real people's lives and their ability to do business in this state. We talk a lot about helping small businesses and this is your opportunity to step up to the plate. Thank you.

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

Senator **SHERMAN:** Thank you, Madame President, men and women of the Senate. I appreciate the Senator from Hancock, Senator Damon's comments. I did not hear what the bill actually does. I did not hear how much in taxes. I appreciate the fact that he was certainly willing to give a speech. I'd be interested to see what this does. I asked the Agriculture Committee if agriculture was still in that and I didn't hear that either. I may have to get the bill out and read it again. I will end with a poem, if I may, by Oliver Goldsmith. It's called The Deserted Village.

'Princes and Lords may flourish, or may fade; a breath can make them as a breath has made; but a bold peasantry, their country's pride, when once destroyed can never be supplied.' I think this is what we are talking about.

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

Senator **MARTIN:** Thank you, Madame President and members of the Senate. All of you are talking about the deterioration of our roads. On I-95 the roads are deteriorating. There aren't many agricultural trucks there. There are forest products trucks there. Keep that in the back of your mind. In the years that I've been here the chief reason why this law is the way it is is because it's a great income benefactor to the Department of Transportation. It's not because it's the worst place in the world. Studies have been done. Remember, this is an income producer. That's the issue. That's why we're getting the criticism.

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

Senator **SAVAGE:** Thank you, Madame President, men and women of the Senate. I just want to point out that it's not just the roads that are being deteriorated. If you talk to the engineers, it's the over weight axles on these trucks that are doing the damage to our bridges. It's the bridges as well as the roads, and probably more. We've had a report, we did a study, of the deficient bridges after the tragedy in Minnesota. We have a tremendous amount of work to be done to our bridges. That, for one thing, is what we have to consider.

To the good Senator from Aroostook, Senator Sherman, you asked what the bill does. If you will bear with me I'll read the summary. This bill provides that a vehicle transporting unprocessed agricultural products or forest products that exceeds the axle weight limits and axle weight tolerance restrictions imposed under Maine law is not subject to a fine for a violation of those limits and restrictions unless the vehicle exceeds the maximum gross weight limits, including tolerances. Thank you, Madame President.

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

Senator **PLOWMAN**: Thank you, Madame President. May I pose a question through the Chair?

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

Senator **PLOWMAN**: Thank you, Madame President. Is there any leeway when a State Police Officer pulls over a truck if he finds someone there that he can identify as somebody that just couldn't have done it any better that day and could take a little pity on him and not fine them \$1,700 today? Is there any leeway? I understand that even the police officers object to having to enforce this.

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

Senator **SAVAGE**: Thank you, Madame President. I'll try to answer that. Currently there is a law on the books that says not withstanding subsections 1-6 when an officer determines that a vehicle that is within the gross vehicle weight limit is in violation of an axle weight limit the officer shall permit the operator to redistribute the load once before proceeding. If the redistribution brings the vehicle into compliance with axle limits then the fine is reduced as follows. If the violation is less than 2,000 pounds there is no penalty. It graduates up from that.

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

Senator **SHERMAN**: Thank you, Madame President. Permission to comment on the weight, if I may? It's interesting, if we have a 100,000 pound truck going over the road and you divide whatever the weight of a car is, what's the damage done by 150 or 200 cars who probably equal the same weight as that truck going once?

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

Senator **SCHNEIDER**: Thank you, Madame President. Permission to respond to the question? I'd just like you to think about how you have this big forest products truck hauling all of these logs out on the highway, how are they going to redistribute that load? It's not possible, folks. They are put in an impossible situation. They don't want to be over axle. They want it to be evenly distributed. They are in the woods, loading these huge logs and things up. It just is not a reasonable request. There was nobody at the public hearing who could say that they could achieve this. If you think people get baffled by this, it's not difficult to be baffled because I'd like to see us try to do this. It's an impossible task. \$1,700 for a fine. These folks are putting everything that they have into the fuel and insurance. We've got to stop this or we will lose our forest products industry. I'm telling you that here and now. Please vote with me on this motion. Thank you.

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

Senator **MARTIN**: Thank you, Madame President and members of the Senate. Just very quickly, remember you could well be

within the weight limit but if you are over 2,000 on an axle that's when you really get hammered. The reason that is is because it is an income producer.

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

Senator **PLOWMAN**: Thank you, Madame President. May I pose another question?

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

Senator **PLOWMAN**: Thank you, Madame President. After the truck has been fined and there is no ability to shift the weight around, what happens to the load? How does this load get off the road? Could someone explain to me if there is more cost involved to make that happen.

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

Senator **MARTIN**: Thank you, Madame President. Having been through a number of them and having watched the State Police operate, if they happen to have a very nice State Trooper he might allow the contractor to drive 30 miles to unload two logs to get him within that limit. In my area I have rarely seen a State Trooper who has been willing to let someone move a load around in order to meet the standard.

**THE PRESIDENT**: The Chair recognizes the Senator from Franklin, Senator Gooley.

Senator **GOOLEY**: Thank you, Madame President. I just wanted to rise to answer something about the 2,000 pounds, if you are over 2,000 pounds. In speaking of wood, 2,000 is equal to 1/2 cord. I think that puts it into perspective on this issue. Thank you very much.

**THE PRESIDENT**: The pending question before the Senate is the motion by the Senator from Hancock, Senator Damon to Reconsider whereby the Senate Receded and Concurred. 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 (#440)

YEAS: Senators: BARTLETT, BOWMAN, BRANNIGAN, BROMLEY, DAMON, DIAMOND, HASTINGS, MARRACHE, NASS, ROTUNDO, SAVAGE, STRIMLING, SULLIVAN, TURNER, THE PRESIDENT - BETH G. EDMONDS



NAYS: Senators: BENOIT, BRYANT, COURTNEY,  
DOW, GOOLEY, HOBBS, MARTIN,  
MCCORMICK, MILLS, MITCHELL, NUTTING,  
PERRY, PLOWMAN, RAYE, ROSEN,  
SCHNEIDER, SHERMAN, SMITH, SNOWE-  
MELLO, WESTON

15 Senators having voted in the affirmative and 20 Senators having voted in the negative, the motion by Senator **DAMON** of Hancock to **RECONSIDER** whereby the Senate **RECEDED** and **CONCURRED, FAILED**.

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

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Off Record Remarks

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

**REPORTS OF COMMITTEES**

**House**

**Ought to Pass As Amended**

The Committee on **CRIMINAL JUSTICE AND PUBLIC SAFETY** on Bill "An Act To Bring Maine into Compliance with Federal Law Regarding Purchases of Firearms by Persons Found To Be a Danger to Themselves or Others"

H.P. 1336 L.D. 1902

Reported that the same **Ought to Pass as Amended by Committee Amendment "B" (H-941)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "B" (H-941) AS AMENDED BY HOUSE AMENDMENT "A" (H-1007)** thereto.

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

**READ ONCE.**

Committee Amendment "B" (H-941) **READ**.

House Amendment "A" (H-1007) to Committee Amendment "B" (H-941) **READ** and **ADOPTED**, in concurrence.

Committee Amendment "B" (H-941) as Amended by House Amendment "A" (H-1007) thereto, **ADOPTED**, in concurrence.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED**, in concurrence.

**ORDERS OF THE DAY**

The Chair laid before the Senate the following Tabled and Later (2/28/08) Assigned matter:

An Act Regarding Occupational Safety and Health Training for Workers on State-funded Construction Projects

H.P. 458 L.D. 591

(C "A" H-635)

Tabled - February 28, 2008, by Senator **STRIMLING** of Cumberland

Pending - **ENACTMENT**, in concurrence

(In House, February 26, 2008, **PASSED TO BE ENACTED**.)

(In Senate, February 12, 2008, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-635)**.)

On motion by Senator **STRIMLING** of Cumberland, Bill and accompanying papers **INDEFINITELY POSTPONED**, in **NON-CONCURRENCE**.

Sent down for concurrence.

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Senate at Ease.

Senate called to order by the President.

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

SENATE REPORTS - from the Committee on **EDUCATION AND CULTURAL AFFAIRS** on Bill "An Act To Amend Teacher Confidentiality Laws"

S.P. 912 L.D. 2291

(C "B" S-578)

Majority - **Ought to Pass as Amended by Committee Amendment "A" (S-577)** (11 members)

Minority - **Ought to Pass as Amended by Committee Amendment "B" (S-578)** (1 member)

Tabled - April 14, 2008, by Senator **BOWMAN** of York

Pending - **FURTHER CONSIDERATION**

(In Senate, April 8, 2008, the Minority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "B" (S-578)** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "B" (S-578)**.)

(In House, April 10, 2008, the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-577)** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-577)**, in **NON-CONCURRENCE**.)

On motion by Senator **MILLS** of Somerset, the Senate **RECEDED** from whereby the Bill was **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "B" (S-578)**.

On further motion by same Senator, the Senate **RECEDED** from whereby it **ACCEPTED** the Minority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "B" (S-578)** Report.

On further motion by same Senator, the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-577)** Report **ACCEPTED**, in concurrence.

Committee Amendment "A" (S-577) **READ**.

On motion by Senator **MILLS** of Somerset, Senate Amendment "A" (S-624) to Committee Amendment "A" (S-577) **READ**.

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

Senator **MILLS:** Thank you, Madame President and men and women of the Senate. This bill has had a strange course in the last few days. As a product of activity in the other Chamber, it was sent to the Judiciary Committee where there was a very extensive and full inquiry into the substance of the Minority Report. If the Chamber will recall, this has to do with the rules by which teacher certification issues may be released by the Department. The Judiciary Committee had some small suggestions for editing and improving the text of the bill and the Senate Amendment that is presented to you at this juncture incorporates, I can tell you, the thoughts of the Judiciary Committee. Just to summarize what this does, it does a couple of things that I think are essential within the Department of Education. First of all, it would permit the Department to make use of confidential information for purposes of completing its own investigations so that they can go out into the field and at least be a little bit more open about why they are out there doing an investigation if they have to. Secondly, it permits the Department to reciprocate with other states that may be in need of information that is entirely within the possession of the Maine's Department of Education so that our department can share information on a relevant and need-to-know basis with those who are doing similar work in another state. It also permits the Department to report or prevent criminal misconduct, if it's in progress or they are concerned about it, or to assist law enforcement agencies in their investigations. Finally, this version includes a cross reference to the child abuse and neglect laws which have, as many of you know, a mandatory reporting requirement for people in many different professions. The Department is certainly one of those mandatory reporters. At present the current law is actually in conflict with the mandatory reporting law. There is a clause in this amendment that will resolve that conflict to make it clear that should it be necessary or appropriate to report something to the Department of Human Services that this would be possible for the Commissioner to do. It also includes a clause that says that

statistical information may be released but only to the extent that it does not jeopardize the confidentiality of individually identifiable information.

This amendment is in essence the substance of the Minority Report that we voted on the other day but it's limited in a couple of ways. You may recall that the Minority Report had a clause in it that said that the Commission could comment publicly on an investigation that was already in the public domain or was the subject of a criminal prosecution. Because it was a difficult clause to draft and left people with some sense of confusion, that has been eliminated with this amendment so that the Commissioner, under this amendment, would not have the ability to comment publicly on anything under investigation until it actually goes to District Court. Secondly, there is in this amendment something that the Judiciary Committee thought was appropriate. That is a cross reference to the fingerprinting law, which is a story unto itself as many of you know. The fingerprinting law has its own confidentiality provisions. Basically, it says that any information that the Department acquires from the FBI or the State Police through the fingerprint interrogation process is used. That information, if there is any information, comes, as I understand, in a big black envelope and it is retained in a separate part of the file. It certainly can provide the basis for denying a certification but there are important considerations about how that specific body of information is used. It remains confidential even under this amendment. The only information that the Commissioner can release under this amendment, in a very limited way, is the material that comes to them other than through the FBI files.

All of this was the subject of a rather intense discussion that the Judiciary Committee had a few days ago. I've reviewed the text of this amendment with some of the members of the committee and I believe that there is general satisfaction with the amendment that lies before us. For that reason I would move that it be adopted. Thank you for your patience in listening to this.

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

Senator **HASTINGS:** Thank you, Madame President and members of the Senate. I just want to confirm the statements made by the Senator from Somerset, Senator Mills, about the actions of the Judiciary Committee. As you may know, the Judiciary Committee is charged year-round with overseeing and reviewing proposed exceptions to the public Right To Know law in the state of Maine to make sure that they are as narrowly written as possible but still protecting any interest that deserves protection from the public records law. In this case we were faced with two exceptions. It was very interesting. I think that if this had ever come to us in the first place in the existing law we never would have approved it. We had the Commissioner of Education with us as we made this review. One of our members asked the Commissioner if they could tell us how many teachers had complaints made against them last year and she said she could not tell us that. She couldn't tell us anything. There is some reason to keep the details of complaints private. I think teachers can be in a pretty volatile situation and a lot of unfounded accusations are made. The details may not need to be known publicly. Nothing here does that. All it does is allow some common sense. Statistical reporting, report of child abuse, and things that you would certainly expect that the Commissioner and the Department should have within their purview to share

without infringing upon the individual right of privacy of any individual teacher. I would hope that you would support this amendment as being the better compromise between the public's right to know and a professional's right to privacy.

On motion by Senator **MILLS** of Somerset, Senate Amendment "A" (S-624) to Committee Amendment "A" (S-577) **ADOPTED**.

Committee Amendment "A" (S-577) as Amended by Senate Amendment "A" (S-624) thereto, **ADOPTED**, in **NON-CONCURRENCE**.

**PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-577) AS AMENDED BY SENATE AMENDMENT "A" (S-624) thereto, in NON-CONCURRENCE.**

Ordered sent down forthwith for concurrence.

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

Resolve, To Appoint Members to and Establish Terms for the Workers' Compensation Board

H.P. 1677 L.D. 2318

Tabled - April 14, 2008, by Senator **STRIMLING** of Cumberland

Pending - **REFERENCE**, in concurrence

(In House, April 11, 2008, **REFERRED** to the Committee on **LABOR** and ordered printed.)

Under suspension of the Rules, **READ TWICE**, without reference to a Committee.

On motion by Senator **STRIMLING** of Cumberland, Senate Amendment "A" (S-625) **READ**.

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

Senator **STRIMLING:** Thank you, Madame President. The bill in front of you basically overhauls our Workers' Comp appointment system. The board consists of six people and unfortunately, and I think the Executive Office would agree just because it has fallen by the way side, a number of the appointments to this board are way beyond their expired terms. We also have in law that you continue to serve until somebody else has been appointed. People are beyond even their term limits. They are only allowed two terms and we have people on there who are in the 12<sup>th</sup> year because nobody has been appointed to the seat for confirmation. What this bill is doing is just trying to start the process again and clean it all up and just say for us to appoint six new people and start a new process. If you read the bill, it basically sets back into law what the same terms are that currently exist but just allows us to restart. It has everybody who is there resign as of next year and the Governor will then appoint, from both sides, the six people who will be confirmed for different terms. The Chamber and the labor groups are supportive of this. Everybody agrees that it's a mess and we're apologetic that it's become such a

mess. We do need to do something. That is what the bill is doing.

The amendment, which is what I really guess I'm supposed to be speaking to at the moment, just restructures how, in current law, the labor groups and the business groups would give four names to the Governor per seat and the Governor would then appoint one of them. What the Governor's bill said was to give 12 names for all three seats and we felt it would be more appropriate for each group to be able to give four names for each individual seat. That gives a little more control to those two groups in who it is they are looking for the Governor to appoint without taking away too much authority but also keeps it more consistent with current law. I would encourage folks to support the amendment. I just want to put on the record that it came in to us very late. There was discussion in our committee about whether this should go to committee. There was a lot of consternation about how late it had come in. I did spend quite a bit of time after that talking to the groups that are most effected and they both felt that it was important that we pass this bill and they both asked for this amendment.

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

Senator **SULLIVAN:** Thank you, Madame President, men and women of the Senate. It is a mess, I agree. It did come in late. It came in late, way after deadline, way after close of committee, and the only reason we were even meeting was because we had confirmations. The committee, to the person, said we didn't want to do this at all. You have to play by the same rules we have to play by. This isn't right. However, I certainly don't want to say that the Senator from Cumberland, Senator Strimling, that calmer minds set about. For whatever reason, there was talk after the meeting. I'm going to reluctantly vote for this. If I had a yellow light here, other than the RTS, I would vote for that because I think it is wrong that these boards that oversee us have not been important enough that for 11 or 12 years no one seems to really notice them. If we stopped paying our bills for 11 years, or we didn't have elections for 11 years and people just kept on serving, somebody would notice. No one noticed. I have asked, and I have been assured by the Senate Chair, that no one presently on the board can serve. They have served way beyond the anticipated 8 years. They are done. Bye, bye, so long, thank you for your service. I want to be sure that this is in there, that these are new people that are appointed. It is a needed board, but we, as a legislature, need to be sure that we watch what happens and we have people appointed to us in a timely fashion. There is absolutely no excuse for this. I will reluctantly push yellow. I just wanted to be very clear about that. This cannot happen again. I have a feeling you will find other boards that have the same problem. This has not been a highlight for anyone and it's time that we insist that people follow the rules. Thank you.

On motion by Senator **STRIMLING** of Cumberland, Senate Amendment "A" (S-625) **ADOPTED**.

**PASSED TO BE ENGROSSED AS AMENDED BY SENATE AMENDMENT "A" (S-625), without reference to a Committee, in NON-CONCURRENCE.**

Ordered sent down forthwith for concurrence.

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

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Senate at Ease.

Senate called to order by the President.

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

#### PAPERS FROM THE HOUSE

##### Non-Concurrent Matter

Bill "An Act To Protect Inland Water Access"  
H.P. 1294 L.D. 1858  
(S "A" S-463 to C "A" H-689)

In House, February 28, 2008, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-689).**

In Senate, April 2, 2008, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-689) AS AMENDED BY SENATE AMENDMENT "A" (S-463) thereto, in NON-CONCURRENCE.**

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

On motion by Senator **BRYANT** of Oxford, the Senate **ADHERED.**

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Senate at Ease.

Senate called to order by the President.

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

#### ENACTORS

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

##### Acts

An Act To Amend the Laws Governing Marine Resources  
S.P. 824 L.D. 2156  
(C "A" S-615)

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

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An Act To Improve the Use of Information Regarding Sex Offenders to Better Ensure Public Safety and Awareness  
S.P. 147 L.D. 446  
(C "A" S-594)

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

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An Act To Make Capital Rail Improvements for Economic Development Purposes  
H.P. 1403 L.D. 2019  
(C "A" H-906)

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

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An Act To Promote Municipal Wind Generation Development  
S.P. 893 L.D. 2266  
(H "A" H-986 to C "A" S-579)

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

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An Act To Stimulate Capital Investment for Innovative Businesses in Maine  
S.P. 929 L.D. 2320

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

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#### Resolves

Resolve, To Improve the Absentee Voting System on November 3, 2008  
S.P. 914 L.D. 2293  
(C "A" S-616)

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

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Resolve, Regarding the Operations of the Greater Portland Public Development Commission  
H.P. 1556 L.D. 2186  
(C "A" H-809; H "A" H-969)

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

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Senator **WESTON** of Waldo was granted unanimous consent to address the Senate on the Record.

Senator **WESTON**: Thank you, Madame President, men and women of the Senate. Today there is a very special meeting happening in Portland, Oregon. The U.S. Transportation Secretary, Mary Peters, is recognizing only 14 individuals from across the nation. One of those 14 people is not in Portland, Oregon. She's sitting in our Chamber because she takes seriously the work that she does. That is our own Senator Christine Savage. There are 2,000 people participating in this event but only 14 getting awards. I would like to honor her for her dedication and her hard work and what they would have honored her for and what they will do in her absence in Portland, Oregon. It is in recognition of the leadership in a successful effort to enact a primary seatbelt law in the state of Maine, which was signed into law on April 30, 2007. When Senator Savage came to the State House she came with energy and hopes and she has accomplished a lot. She is leaving this Chamber this year with a record that many will never meet. As we think of her we can think that there are people in Portland Oregon, talking about her as well today. Thank you.

**THE PRESIDENT**: The Chair would lend her great admiration and support to the good Senator from Knox, Senator Savage. Thank you very much.

Senator **SAVAGE** of Knox was granted unanimous consent to address the Senate on the Record.

Senator **SAVAGE**: Thank you, Madame President. Thank you to everyone in the Senate, especially to the Senator from Waldo, Senator Weston. I appreciate this honor that was being presented. I just want to say, Madame President, that I did have reservations made to fly. I had hotel reservations. I kept watching every day to see what was being worked and said, 'I can't do it, I can't let down my caucus.' Here I am and Patrick Moody from AAA and Betty Mason are accepting my award in Portland, Oregon. Thank you, folks.

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

Senator **MITCHELL**: Thank you, Madame President. You are a role model for all of us and no one can accept the award for you because you are bigger than any of us. You are just a marvelous woman and I've learned so much from you, as we have all.

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On motion by Senator **MITCHELL** of Kennebec, **ADJOURNED** to Tuesday, April 15, 2008, at 10:00 in the morning.