

# MAINE STATE LEGISLATURE

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Senate Legislative Record  
One Hundred and Twenty-Fourth Legislature

State of Maine

Daily Edition

First Regular Session  
December 3, 2008 to June 12, 2009

Pages 1 - 1159

**STATE OF MAINE  
ONE HUNDRED AND TWENTY-FOURTH LEGISLATURE  
FIRST REGULAR SESSION  
JOURNAL OF THE SENATE**

In Senate Chamber  
Wednesday  
May 20, 2009

Senate called to order by President Elizabeth H. Mitchell of  
Kennebec County.

Prayer by Pastor Elizabeth Bailey-Mitchell, Grace Linn Memorial  
United Methodist Church in Hartland.

**PASTOR BAILEY-MITCHELL:** Let us be in the spirit of prayer. Oh gracious and loving God, we see the newness of spring all around us and we are in awe as we behold Your creation. We hear Your promises to us through the prophet Isaiah, 'For behold I am creating a new heaven and a new earth.' In Isaiah 65, verses 17 - 25, we hear Your promise of a new creation in which people will live out their days with proper housing and plenty to eat and long lives that are blessed with good health. You promised that the days of your people shall be as long as the days of a tree. You promised that not only the Israelites will be blessed but that all peoples will be blessed. You promised that even before we know what to pray You will answer. In this new creation the wolf and the lamb shall graze together. God, we find ourselves still living in the old creation, that old creation where some of our brothers and sisters on this earth and in this very state do not have proper housing, or enough to eat, or medical care to enable good health and long life, or safety from violence. The list goes on, God. There is much work to be done to bring about justice and peace on this good earth and in this good state. Be present, God, to these leaders today, that they may have the wisdom, the compassion, and the honesty necessary to do the work at hand today to serve the people of this state. Amen.

Reading of the Journal of Tuesday, May 19, 2009.

Doctor of the day, Dr. Daniel Summers, MD of Hallowell.

Off Record Remarks

**PAPERS FROM THE HOUSE**

**Joint Order**

The following Joint Order:

H.P. 1032

ORDERED, the Senate concurring, that the Joint Standing Committee on Appropriations and Financial Affairs shall report out emergency legislation to the 124th Legislature as needed.

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

**READ.**

On motion by Senator **DIAMOND** of Cumberland, the Joint Order **INDEFINITELY POSTPONED**, in **NON-CONCURRENCE**.

Sent down for concurrence.

**COMMUNICATIONS**

The Following Communication: S.P. 562

**STATE OF MAINE  
124<sup>TH</sup> MAINE LEGISLATURE**

March 19, 2008

Sen. Deborah L. Simpson  
Senate Chair, Joint Standing Committee on State and Local Government  
Rep. Stephen R. Beaudette  
House Chair, Joint Standing Committee on State and Local Government  
124<sup>th</sup> Legislature  
Augusta, ME 04333

Dear Senator Simpson and Representative Beaudette:

Please be advised that Governor John E. Baldacci has nominated Tracy Bigney of Bangor for appointment to the State Civil Service Appeals Board.

Pursuant to Title 5 M.R.S.A. §7081, this nomination will require review by the Joint Standing Committee on State and Local Government and confirmation by the Senate.

Sincerely,

S/Elizabeth H. Mitchell  
President of the Senate

S/Hannah M. Pingree  
Speaker of the House

**READ** and **REFERRED** to the Committee on **STATE AND LOCAL GOVERNMENT**.

Sent down for concurrence.

The Following Communication: H.C. 184

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

May 19, 2009

Honorable Joy J. O'Brien  
Secretary of the Senate  
124th Maine Legislature  
Augusta, Maine 04333

Dear Secretary O'Brien:

The Speaker appointed the following conferees to the Committee of Conference on the disagreeing action of the two branches of the Legislature on Bill "An Act To Reduce Misuse of Woodlands by the Public" (H.P. 370) (L.D. 525).

Representative CLARK of Millinocket  
Representative SHAW of Standish  
Representative SARTY of Denmark

Sincerely,

S/Millicent M. MacFarland  
Clerk of the House

**READ and ORDERED PLACED ON FILE.**

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**ORDERS**

**Joint Order**

Expression of Legislative Sentiment recognizing:

The following members of the Edward Little High School Boy's Alpine Ski Team, of Auburn: Benjamin Bowles, Nigel Bowles, Clark Chamberlain, James Jackson, Branden Lever, Thomas Lynch, Dylan Newell, Isaiah Rembert, Mitchell Snowe, Jesse Williams, Coach Tara Eretzian and Coach Michelle Hill, winners of the 2009 Kennebec Valley Athletic Conference Boys' Alpine Ski Championship and the 2009 State Class A Boys' Alpine Ski Championship. We extend our congratulations to the members of the team on this tremendous achievement and we wish them continued success;

SLS 180

Sponsored by Senator SIMPSON of Androscoggin.  
Cosponsored by Representatives: BEAULIEU of Auburn,  
BICKFORD of Auburn, BOLDUC of Auburn.

**READ.**

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

Senator **SIMPSON:** Thank you, Madame President. Men and women of the Senate, I just wanted to congratulate Coach Eretzian and Coach Hill for their outstanding job of coaching these boys this year to the Class A State Championship. I was speaking with Coach Eretzian just before we began, and she doesn't know this, her mother was my gymnastics coach when I was in middle school. She's carried on in a great tradition of leading young people to success, not that I'm saying I'm a great success, but she was an excellent coach and a wonderful person to have as a mentor. I'm really pleased to say that my son got to enjoy the benefits of being coached by these fine women. Congratulations to Edward Little High School team.

**PASSED.**

Sent down for concurrence.

**THE PRESIDENT:** These outstanding team members are standing in the rear of the chamber. Will you please give them our sincere congratulations and welcome.

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**REPORTS OF COMMITTEES**

**House**

**Ought to Pass As Amended**

The Committee on **JUDICIARY** on Bill "An Act To Ensure Public Access to Records Relating to Public Contracts for Personal Services"

H.P. 454 L.D. 640

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-292).**

Comes from the House with the Report **READ and ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-292).**

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

**READ ONCE.**

Committee Amendment "A" (H-292) **READ and ADOPTED**, in concurrence.

**ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.**

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The Committee on **JUDICIARY** on Bill "An Act To Amend the Statute of Limitations under the Maine Human Rights Act"  
H.P. 763 L.D. 1108

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-293).**

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-293)**.

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

**READ ONCE.**

Committee Amendment "A" (H-293) **READ** and **ADOPTED**, in concurrence.

**ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.**

---

The Committee on **JUDICIARY** on Bill "An Act To Provide Limited Immunity for Road Association Directors, Commissioners and Volunteers"

H.P. 910 L.D. 1307

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-294)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-294)**.

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

**READ ONCE.**

Committee Amendment "A" (H-294) **READ** and **ADOPTED**, in concurrence.

**ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.**

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The Committee on **UTILITIES AND ENERGY** on Bill "An Act To Amend the Charter of the Addison Point Water District"

H.P. 920 L.D. 1317

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-296)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-296)**.

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

**READ ONCE.**

Committee Amendment "A" (H-296) **READ** and **ADOPTED**, in concurrence.

**ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.**

### Divided Report

The Majority of the Committee on **LEGAL AND VETERANS AFFAIRS** on Bill "An Act To Designate a Specialty State Lottery Ticket To Benefit Cancer Education and Awareness"  
H.P. 532 L.D. 781

Reported that the same **Ought Not to Pass**.

Signed:

Senators:

SULLIVAN of York  
GOODALL of Sagadahoc  
PLOWMAN of Penobscot

Representatives:

BEAULIEU of Auburn  
CORNELL du HOUX of Brunswick  
PINKHAM of Lexington Township  
VALENTINO of Saco  
TRINWARD of Waterville  
CAREY of Lewiston  
NASS of Acton  
RUSSELL of Portland

The Minority of the same Committee on the same subject reported that the same **Ought To Pass as Amended by Committee Amendment "A" (H-309)**.

Signed:

Representative:

FITTS of Pittsfield

Comes from the House with the Majority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED**.

Reports **READ**.

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

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### Divided Report

The Majority of the Committee on **MARINE RESOURCES** on Bill "An Act To Amend the Aquaculture Laws"  
H.P. 977 L.D. 1398

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-278)**.

Signed:

Senators:

DAMON of Hancock  
SULLIVAN of York  
RECTOR of Knox

Representatives:

KRUGER of Thomaston  
MacDONALD of Boothbay  
PRESCOTT of Topsham  
PENDLETON of Scarborough  
WEAVER of York  
PERCY of Phippsburg  
EATON of Sullivan  
TILTON of Harrington  
ADAMS of Portland

The Minority of the same Committee on the same subject reported that the same **Ought To Pass as Amended by Committee Amendment "B" (H-279).**

Signed:

Representative:

McKANE of Newcastle

Comes from the House with the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-278)** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-278).**

Reports **READ.**

On motion by Senator **DAMON** of Hancock, the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-278)** Report **ACCEPTED**, in concurrence.

**READ ONCE.**

Committee Amendment "A" (H-278) **READ** and **ADOPTED**, in concurrence.

**ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.**

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**Senate**

**Ought to Pass As Amended**

Senator SCHNEIDER for the Committee on **BUSINESS, RESEARCH AND ECONOMIC DEVELOPMENT** on Bill "An Act Regarding the Licensing Fees for Certain Professional Programs" S.P. 504 L.D. 1388

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-171).**

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

**READ ONCE.**

Committee Amendment "A" (S-171) **READ** and **ADOPTED.**

**ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.**

---

Senator GERZOFKY for the Committee on **CRIMINAL JUSTICE AND PUBLIC SAFETY** on Bill "An Act Concerning Domestic Violence and Firearms"

S.P. 265 L.D. 690

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-181).**

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

**READ ONCE.**

Committee Amendment "A" (S-181) **READ** and **ADOPTED.**

**ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.**

---

Senator GERZOFKY for the Committee on **CRIMINAL JUSTICE AND PUBLIC SAFETY** on Bill "An Act To Amend the Laws Governing Emergency Management"

S.P. 510 L.D. 1391

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-182).**

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

**READ ONCE.**

Committee Amendment "A" (S-182) **READ** and **ADOPTED.**

**ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.**

---

Senator ALFOND for the Committee on **EDUCATION AND CULTURAL AFFAIRS** on Bill "An Act To Exempt School Administrative District 12, School Union 37 and School Union 60 from the Laws Requiring School Administration Consolidation" (EMERGENCY)

S.P. 170 L.D. 467

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-186).**

Report **READ.**

On motion by Senator **ALFOND** of Cumberland, **TABLED** until Later in Today's Session, pending **ACCEPTANCE OF THE REPORT.**

Senator ALFOND for the Committee on **EDUCATION AND CULTURAL AFFAIRS** on Bill "An Act To Encourage Maine Residents To Attend Medical School and Practice in Maine"  
S.P. 322 L.D. 853

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-178)**.

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

**READ ONCE**.

Committee Amendment "A" (S-178) **READ** and **ADOPTED**.

**ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.**

---

Senator BRANNIGAN for the Committee on **HEALTH AND HUMAN SERVICES** on Bill "An Act To Strengthen the Workplace Smoking Laws and Other Laws Governing Smoking"  
S.P. 513 L.D. 1429

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-177)**.

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

**READ ONCE**.

Committee Amendment "A" (S-177) **READ** and **ADOPTED**.

**ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.**

---

Senator BLISS for the Committee on **JUDICIARY** on Bill "An Act To Address an Inequity in the Judicial Retirement System"  
S.P. 184 L.D. 488

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-174)**.

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

**READ ONCE**.

Committee Amendment "A" (S-174) **READ** and **ADOPTED**.

**ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.**

---

Senator BLISS for the Committee on **JUDICIARY** on Bill "An Act To Improve the Process for Recovering Personal Property and for Filing Actions Involving Consumer Credit"  
S.P. 432 L.D. 1184

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-175)**.

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

**READ ONCE**.

Committee Amendment "A" (S-175) **READ** and **ADOPTED**.

**ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.**

---

Senator JACKSON for the Committee on **LABOR** on Bill "An Act To Correct Inequities for Certain Maine Community College System Employees in the Maine Public Employees Retirement System"  
S.P. 452 L.D. 1219

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-183)**.

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

**READ ONCE**.

Committee Amendment "A" (S-183) **READ** and **ADOPTED**.

**ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.**

---

Senator SULLIVAN for the Committee on **LEGAL AND VETERANS AFFAIRS** on Bill "An Act To Extend the Jurisdiction of the Commission on Governmental Ethics and Election Practices to the Executive Branch"  
S.P. 361 L.D. 978

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-173)**.

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

**READ ONCE**.

Committee Amendment "A" (S-173) **READ** and **ADOPTED**.

**ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.**

---

Senator DAMON for the Committee on **TRANSPORTATION** on Bill "An Act To Amend the Motor Vehicle Laws"  
S.P. 438 L.D. 1190

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-176)**.

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

**READ ONCE.**

Committee Amendment "A" (S-176) **READ** and **ADOPTED**.

**ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.**

---

Senator DAMON for the Committee on **TRANSPORTATION** on Bill "An Act To Clarify the Purpose of the Notice Requirement of Land Taking by the Department of Transportation"  
S.P. 524 L.D. 1440

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-184)**.

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

**READ ONCE.**

Committee Amendment "A" (S-184) **READ** and **ADOPTED**.

**ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.**

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**Divided Report**

The Majority of the Committee on **EDUCATION AND CULTURAL AFFAIRS** on Bill "An Act To Protect School Children from Dangerous or Abusive Restraint and Seclusion"  
S.P. 407 L.D. 1096

Reported that the same **Ought Not to Pass**.

Signed:

Senators:  
SCHNEIDER of Penobscot  
WESTON of Waldo

Representatives:  
SUTHERLAND of Chapman  
FINCH of Fairfield  
CASAVANT of Biddeford  
WAGNER of Lewiston  
LOVEJOY of Portland  
NELSON of Falmouth  
RANKIN of Hiram  
RICHARDSON of Carmel  
McFADDEN of Dennysville  
JOHNSON of Greenville

The Minority of the same Committee on the same subject reported that the same **Ought To Pass as Amended by Committee Amendment "A" (S-185)**.

Signed:

Senator:  
ALFOND of Cumberland

Reports **READ**.

On motion by Senator **ALFOND** of Cumberland, **TABLED** until Later in Today's Session, pending **ACCEPTANCE OF EITHER REPORT**.

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**Divided Report**

The Majority of the Committee on **LABOR** on Bill "An Act To Require Cause for Employment Termination"  
S.P. 433 L.D. 1185

Reported that the same **Ought Not to Pass**.

Signed:

Senators:  
JACKSON of Aroostook  
GERZOFKY of Cumberland  
MILLS of Somerset

Representatives:  
TUTTLE of Sanford  
CLARK of Millinocket  
THIBODEAU of Winterport  
HAMPER of Oxford  
CUSHING of Hampden  
BUTTERFIELD of Bangor  
BICKFORD of Auburn  
DRISCOLL 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" (S-180)**.

Signed:

Representatives:  
GILBERT of Jay  
BLODGETT of Augusta

Reports **READ**.

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

Sent down for concurrence.

---

**Divided Report**

The Majority of the Committee on **LEGAL AND VETERANS AFFAIRS** on Bill "An Act To Improve Maine's Ethics Laws"  
S.P. 154 L.D. 410

Reported that the same **Ought Not to Pass**.



Signed:

Senators:

SULLIVAN of York  
GOODALL of Sagadahoc

Representatives:

CORNELL du HOUX of Brunswick  
VALENTINO of Saco  
TRINWARD of Waterville  
TUTTLE of Sanford  
CAREY of Lewiston  
RUSSELL of Portland

The Minority of the same Committee on the same subject reported that the same **Ought To Pass as Amended by Committee Amendment "A" (S-172).**

Signed:

Senator:

PLOWMAN of Penobscot

Representatives:

BEAULIEU of Auburn  
PINKHAM of Lexington Township  
FITTS of Pittsfield  
NASS of Acton

Reports **READ.**

Senator **SULLIVAN** of York moved the Senate **ACCEPT** the Majority **OUGHT NOT TO PASS** Report.

On further motion by same Senator, **TABLED** until Later in Today's Session, pending the motion by same Senator to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report.

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

**SECOND READERS**

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

**House**

Resolve, Regarding Legislative Review of Portions of Chapter 101: Establishment of the Capital Investment Fund, a Major Substantive Rule of the Governor's Office of Health Policy and Finance (EMERGENCY)

H.P. 777 L.D. 1122

Resolve, Regarding Legislative Review of Portions of Chapter 120: Release of Data to the Public, a Major Substantive Rule of the Maine Health Data Organization (EMERGENCY)

H.P. 987 L.D. 1411

Resolve, Regarding Legislative Review of Portions of Chapter 101: MaineCare Benefits Manual, Chapter III, Section 21, Home and Community Benefits for Members with Mental Retardation or Autistic Disorder, a Major Substantive Rule of the Department of Health and Human Services, Office of MaineCare Services (EMERGENCY)

H.P. 988 L.D. 1412

**READ A SECOND TIME** and **PASSED TO BE ENGROSSED**, in concurrence.

**House As Amended**

Resolve, Directing the Department of Agriculture, Food and Rural Resources To Study Potential Uses of a Potato Plant That Is Toxic to the Colorado Potato Beetle

H.P. 395 L.D. 557  
(C "A" H-275)

Resolve, Requiring Rulemaking by the Maine Quality Forum Regarding Clostridium Difficile and Methicillin-resistant Staphylococcus Aureus

H.P. 662 L.D. 960  
(C "A" H-280)

Resolve, Concerning Fitness Programs for State Employees

H.P. 689 L.D. 1001  
(C "A" H-286)

Bill "An Act Relating to Self-insurance"

H.P. 692 L.D. 1004  
(C "A" H-287)

Bill "An Act To Clarify and Update the Laws Related to Life and Health Insurance"

H.P. 821 L.D. 1180  
(C "A" H-288)

Bill "An Act To Amend the Laws Governing Licensed Financial Service Providers"

H.P. 930 L.D. 1326  
(C "A" H-284)

Bill "An Act To Promote Consumer Fairness in Tax Refund Anticipation Loans"

H.P. 944 L.D. 1343  
(C "A" H-285)

Bill "An Act To Make Technical and Supervisory Amendments to the Laws Governing Banking and Consumer Credit"

H.P. 985 L.D. 1409  
(C "A" H-289)

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

Bill "An Act To Promote Youth Hunting License Sales"  
H.P. 865 L.D. 1246  
(C "A" H-276)

**READ A SECOND TIME.**

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

**Senate As Amended**

Bill "An Act To Amend Certain Provisions of Fish and Wildlife Laws"

S.P. 319 L.D. 811  
(C "A" S-168)

Bill "An Act To Amend the Laws Governing the Recycling of Televisions"

S.P. 428 L.D. 1156  
(C "A" S-170)

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

Sent down for concurrence.

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

**ENACTORS**

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

**Act**

An Act To Clarify the Law Regarding the Passing of School Buses by Bicyclists

S.P. 422 L.D. 1131

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

**ORDERS OF THE DAY**

**Unfinished Business**

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

The Chair laid before the Senate the following Tabled and Later (5/19/09) Assigned matter:

SENATE REPORTS - from the Committee on **INLAND FISHERIES AND WILDLIFE** on Bill "An Act To Provide Greater Access to ATVs by Lowering the Minimum Operating Age"  
S.P. 104 L.D. 340

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

Minority - **Ought to Pass** (3 members)

Tabled - May 19, 2009, by Senator **JACKSON** of Aroostook

Pending - motion by same Senator to **RECONSIDER** whereby the Senate **ACCEPTED** of the Majority **OUGHT NOT TO PASS** Report

(In Senate, May 19, 2009, Reports **READ**. The motion by Senator **BRYANT** of Oxford to **ACCEPT** the Majority **OUGHT TO PASS** Report **FAILED**. Subsequently, the Majority **OUGHT NOT TO PASS** Report **ACCEPTED**.)

On motion by Senator **JACKSON** of Aroostook, the Senate **RECONSIDERED** whereby it **ACCEPTED** the Majority **OUGHT NOT TO PASS** Report.

On further motion by same Senator, **TABLED** until Later in Today's Session, pending **ACCEPTANCE** of the Majority **OUGHT NOT TO PASS** Report.

Senate at Ease.

Senate called to order by the President.

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

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

Off Record Remarks

On motion by Senator **BARTLETT** of Cumberland, **RECESSED** until the sound of the bell.

After Recess

Senate called to order by the President.

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**ORDERS OF THE DAY**

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

SENATE REPORT - from the Committee on **EDUCATION AND CULTURAL AFFAIRS** on Bill "An Act To Exempt School Administrative District 12, School Union 37 and School Union 60 from the Laws Requiring School Administration Consolidation" (EMERGENCY)

S.P. 170 L.D. 467

Report - **Ought to Pass as Amended by Committee Amendment "A" (S-186)**

Tabled - May 20, 2009, by Senator **ALFOND** of Cumberland

Pending - **ACCEPTANCE OF REPORT**

(In Senate, May 20, 2009, Report **READ**.)

Report **ACCEPTED**.

**READ ONCE**.

Committee Amendment "A" (S-186) **READ** and **ADOPTED**.

**ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY**.

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The Chair laid before the Senate the following Tabled and Later (5/20/09) Assigned matter:

SENATE REPORTS - from the Committee on **EDUCATION AND CULTURAL AFFAIRS** on Bill "An Act To Protect School Children from Dangerous or Abusive Restraint and Seclusion"

S.P. 407 L.D. 1096

Majority - **Ought Not to Pass** (12 members)

Minority - **Ought To Pass as Amended by Committee Amendment "A" (S-185)** (1 member)

Tabled - May 20, 2009, by Senator **ALFOND** of Cumberland

Pending - **ACCEPTANCE OF EITHER REPORT**

(In Senate, May 20, 2009, Reports **READ**.)

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

Sent down for concurrence.

The Chair laid before the Senate the following Tabled and Later (5/19/09) Assigned matter:

HOUSE REPORTS - from the Committee on **TRANSPORTATION** on Bill "An Act To Require Motorcyclists To Wear Helmets"

H.P. 341 L.D. 453

Majority - **Ought Not to Pass** (11 members)

Minority - **Ought to Pass as Amended by Committee Amendment "A" (H-297)** (2 members)

Tabled - May 19, 2009, by Senator **DAMON** of Hancock

Pending - **ACCEPTANCE OF EITHER REPORT**

(In House, May 18, 2009, the Majority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED**.)

(In Senate, May 19, 2009, Reports **READ**.)

Senator **DAMON** of Hancock moved the Senate **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED** Report, in **NON-CONCURRENCE**.

Senator **RAYE** of Washington requested a Roll Call.

On motion by Senator **BARTLETT** of Cumberland, **TABLED** until Later in Today's Session, pending the motion by Senator **DAMON** of Hancock to **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED** Report, in **NON-CONCURRENCE**. (Roll Call Requested)

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The Chair laid before the Senate the following Tabled and Later (5/18/09) Assigned matter:

SENATE REPORTS - from the Committee on **NATURAL RESOURCES** and the Committee on **AGRICULTURE, CONSERVATION AND FORESTRY** on Bill "An Act Regarding the Regulation of Agricultural Composting Operations"

S.P. 115 L.D. 351

Majority - **Ought Not to Pass** (15 members)

Minority - **Ought to Pass as Amended by Committee Amendment "A" (S-165)** (10 members)

Tabled - May 18, 2009, by Senator **GOODALL** of Sagadahoc

Pending - motion by same Senator to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report

(In Senate, May 18, 2009, Reports **READ**.)

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

Senator **NUTTING**: Thank you, Madame President. Ladies and gentlemen of the Senate, I rise this morning to urge you to oppose the pending motion. We, in the Ag Committee, have been trying now, largely unsuccessfully, for three years to have the Department of Agriculture and the DEP work together on the regulation of agricultural composters. Things have gotten so bad that currently fewer and fewer agricultural composters are deciding to also compost with some fish and food wastes. We heard testimony at the public hearing from Barber Foods in Portland who is now spending \$26,000 a week trucking chicken parts and other byproducts from their fine business to Massachusetts, Rhode Island, and Vermont to agricultural composters in those states because no one in Maine will take their product any more. An agricultural composter is defined as a farm with a land base that is composting with leaves, carcasses, manures, and sawdust but are not composting with sludge. There are no heavy metals in their compost operation. Currently the rules allow for an agricultural composter to compost any amount of slaughterhouse waste, called offal. That is regulated by Ag. As soon as they take 31 cubic yards a month of fish or food waste, that has to be regulated by DEP. We heard testimony from most of these businesses producing fish and food waste that with one truck load, or one wheeler load, they use 50 cubic yard dumps so that under the current rules you can't even take a full load a month in your compost operation. Compost that is made with the agricultural compost items and fish and food waste commands a premium in the market but still today there are only five agricultural compost facilities that are taking some fish and food waste. We heard testimony also from the Maine Agriculture Association, who in the past has not gotten involved in this issue but submitted a letter to us in support of the bill because they can't find people to take their byproducts. Even some in the out-to-sea processing operations are legally just now dumping it out to sea because they can't find anybody to take it in the state of Maine. I'm so frustrated that DEP still thinks that two products, one being slaughterhouse waste and the other being fish and food waste, that break down exactly the same somehow need to be regulated by two different departments. That, to me, makes no sense. One of the five facilities that is under DEP as an agricultural composter taking fish and food waste, by their own admission, is way over their permit level now. Why? Because no one else will step forward and begin to take fish and food waste. Unfortunately, at the end of the work session we heard that there are three new composters coming on board with these new rules that will make the problem better. Unfortunately, after the work session, when they had a chance to check with those three individuals, none of those individuals are taking any fish or food waste in their agricultural compost operations. They aren't going to make any difference to the problem we have. The Minority Report is not the original bill. The Minority Report simply gives the committees the authority to report out legislation next year if we choose to. I'm guessing that we will because I'm guessing the problem is going to continue to get worse and worse and worse because no one will accept these products. There is a tremendous amount of food waste generated in this state from all the restaurants, from the supermarkets, and from your small Mom and Pop stores once things expire. A lot of that waste today, unfortunately, is going into landfills. Our landfill space is very short and I think that we need to at least, at a minimum, give the committees authority to report out legislation next year to try to open up the market. We need another ten to a dozen agricultural composters to have courage enough to begin to take fish and

food waste. The Minority Report is a 15-10 report and both reports are bipartisan. We are willing to give the departments a few more months but we are very, very apprehensive about having to wait another eighteen months before any legislative vehicle could be introduced. I would urge you to oppose the pending motion. Thank you.

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

Senator **GOODALL**: Thank you, Madame President. Men and women of the Senate, I rise today in support of the pending motion. First I want to state that there are serious environmental concerns with any composting facility. If you have an identical composting facility that was on a farm on one side of the road it would be under Ag but if a corporation was running one on the other side of the road it would be under DEP. Same soil conditions, same environment. Two different regulatory schemes for the same exact operation. Realizing that was a problem, but the problem dates back much further, the DEP and the Department of Agriculture have been working together for the last few years and in 2007 they were directed to do so. There was a memorandum of understanding. They worked together on rules. The rules became public late last year. They went into effect in February. They have just begun to work. Since they went into effect on February 18<sup>th</sup> three composters have said they will come forward. That's only three months ago. More will come forward, hopefully, in the future. DEP and Ag are working closely together. They both have experts in the area. Agriculture has admitted they do not have the experts when it comes to water quality and other environmental issues. In regards to fish and food waste versus offal, slaughterhouse waste, it's a matter of scale in this state. We have much less slaughterhouse waste and a much greater amount of fish and food waste. Currently the fish and food waste can be composted in this state. We have facilities that are willing to do it. Farmers can also compost it if they want to do greater than 30 yards but they have to seek the permits and they have to be permitted by DEP, working with Agriculture as well. There have been concerns that keep going back to DEP and their experience. The head of the composting school, currently, works for the DEP. He's an expert in the area. There is an issue of whether or not you want this under Agriculture or DEP. They are working closely together. That's the best of both worlds, in my opinion. Let's let the rules play out. If they do not play out in the next year we can revisit it in two years. Next year is not enough time. Thank you, Madame President.

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

Senator **SHERMAN**: Thank you, Madame President. Ladies and gentlemen of the Senate, we are in a food fight. I hope we just keep to the food fight and not some of the other things that are composted. I rise to second what I heard from our Agriculture Chair. I will not go into the details of the rules. You don't need to hear whether they can have five cubic yards of this or five cubic yards of that or something else. The part of this that struck me, I really don't understand why people are afraid to have this play out. Let it play out. Some really serious issues probably should have been worked out before we got this far around volumes and how you mix materials and whether you could have forty tons of leaves or whatever it may have been. I wish that had been

worked out. Most of us on Agriculture would like to see the ability to come back and write some rules. To me it is as simple as that. Those rules that are worked out over the summer as to volumes, I think that needs to be done. I think the other piece to this that is bothersome, and I probably shouldn't say this, is when the folks that have the composting, when the Ag boys show up to try to solve a problem they have and work with someone, DEP, bless their hearts, tend to not do that in that fashion. I know the DEP does good work, but this is an area where they may be a little bit weak. We've had discussions about who was better trained to solve problems when they had issues on both sides, when the Ag folks could get a smell out within two days because of the way you mix stuff and you certainly don't need to know the chemistry of that. I would hope we would defeat the pending motion and have some, what I would call, reasonable effort. Not wait a year and a half, but maybe work something out between now and January. Thank you very much.

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

Senator **NUTTING:** Thank you, Madame President. Ladies and gentlemen of the Senate, I feel compelled to address a couple of items that have been put on the record. You've already heard a little bit in the debate here today, unfortunately. I was quite struck by the testimony in favor of the bill by former State Representative Don Marean who said that the opponents of this bill all make the assumptions that agriculture doesn't care about water quality and environmental issues. I think he's very, very correct in that matter. Agriculture works very closely with the Farm Service Agency and the Natural Conservation Service, both federal arms that have funding available to help farms redesign their facilities. I think I need to also correct that the head of the compost school is Dr. Bill Seekins and he's in the Department of Agriculture. The State soil scientist is David Rourke and he's in the Department of Agriculture. That is where the expertise is. When composters have had issues in the past with odors, one came before us and testified that they worked with DEP for five days trying to correct the issue. Finally Dr. Bill Seekins from the Department of Agriculture was allowed to come to that site and within two hours, with the use of lime, the odor was gone. That is where the expertise is. I'll close with one final comment and reminder. The Minority Report simply gives the committees authority to report out legislation. Nobody's promoting a bill here today. It's just that we want to, as we see more and more fish and food waste being dumped to sea and trucked out of state, next year have the legislature address that problem. I think we should. I would ask you to oppose the pending motion. Thank you.

On motion by Senator **RAYE** of Washington, 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 Sagadahoc, Senator Goodall to Accept the Majority Ought Not to Pass 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 (#86)**

**YEAS:** Senators: ALFOND, BARTLETT, BLISS, BOWMAN, BRANNIGAN, BRYANT, COURTNEY, CRAVEN, DAMON, DIAMOND, GERZOFKY, GOODALL, HOBBS, JACKSON, PERRY, SCHNEIDER, SIMPSON, THE PRESIDENT - ELIZABETH H. MITCHELL

**NAYS:** Senators: DAVIS, GOOLEY, HASTINGS, MARRACHE, MCCORMICK, MILLS, NASS, NUTTING, PLOWMAN, RAYE, RECTOR, ROSEN, SHERMAN, SMITH, SULLIVAN, TRAHAN, WESTON

18 Senators having voted in the affirmative and 17 Senators having voted in the negative, the motion by Senator **GOODALL** of Sagadahoc to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report, **PREVAILED**.

Sent down for concurrence.

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

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The Chair laid before the Senate the following Tabled and Later (5/14/09) Assigned matter:

Bill "An Act To Allow Voters To Choose Ongoing Absentee Voter Status"

H.P. 129 L.D. 150  
(C "A" H-182)

Tabled - May 14, 2009, by Senator **RAYE** of Washington

Pending - **PASSAGE TO BE ENGROSSED AS AMENDED**, in concurrence (Roll Call Requested)

(In House, April 30, 2009, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-182).**)  
(In Senate, May 14, 2009, **READ A SECOND TIME.**)

On motion by Senator **RAYE** of Washington, 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 (#87)**

**YEAS:** Senators: ALFOND, BARTLETT, BLISS, BOWMAN, BRANNIGAN, BRYANT, CRAVEN, GERZOFKY, GOODALL, HOBBS, JACKSON, MARRACHE, NUTTING, SCHNEIDER, SIMPSON, SULLIVAN, THE PRESIDENT - ELIZABETH H. MITCHELL

**NAYS:** Senators: COURTNEY, DAMON, DAVIS, DIAMOND, GOOLEY, HASTINGS, MCCORMICK, MILLS, NASS, PERRY, PLOWMAN, RAYE, RECTOR, ROSEN, SHERMAN, SMITH, TRAHAN, WESTON

17 Senators having voted in the affirmative and 18 Senators having voted in the negative, **PASSAGE TO BE ENGROSSED AS AMENDED**, in concurrence, **FAILED**.

Sent down for concurrence.

The Chair laid before the Senate the following Tabled and Later (5/14/09) Assigned matter:

SENATE REPORTS - from the Committee on **NATURAL RESOURCES** on Bill "An Act Regarding Asbestos Abatement Work"

S.P. 518 L.D. 1434

Majority - **Ought to Pass as Amended by Committee Amendment "A" (S-159)** (9 members)

Minority - **Ought Not to Pass** (4 members)

Tabled - May 14, 2009, by Senator **GOODALL** of Sagadahoc

Pending - motion by same Senator to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report (Roll Call Requested)

(In Senate, May 14, 2009, Reports **READ**.)

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

Senator **MILLS:** Thank you, Madame President. Members of the Senate, I looked at this bill very briefly but understand that its primary purpose is single-fold. It increases the fees the DEP is allowed to charge and retain for people who work as asbestos contractors, asbestos consultants, asbestos workers. I have not had anybody explain to me why DEP needs the added money for this purpose, but I can easily comprehend that by increasing the fees as dramatically as this bill does from roughly \$250 per year to \$1,000 per year for contractors and consultants that it will have a chilling effect on this very tiny industry. Secondly, those fees will be transmitted into added costs for homeowners and businesses and other people who confront asbestos challenges. I have had that experience myself. Maybe many of you have. I bought an old house, 150 year old house, next door to my office in Skowhegan. I didn't pay anything for the house. I sunk a fortune into overhauling it. In the process I encountered a run of

about 60 feet of steam line in the basement that was covered with the white jacketed asbestos. I couldn't find any contractors. I found one to come. I wanted to do the right thing. He gave me a bid of \$11,000 to remove this single run of pipe. It wasn't particularly obscured. It wasn't behind carpentry. It was in a crawl space and in a basement. It was perfectly apparent. The challenge of removing it was lost on me. I'm one of these law abiding citizens and I didn't want to risk my own reputation, but the temptation, frankly, to go down there in the dark of night with a razor blade and a bunch of plastic bags and remove that asbestos and bury it out on my back forty, I can tell you the temptation was palatable. An hour's worth of work for \$11,000. Think of it. Even I was tempted. I finally found a second contractor and he came around and bid \$3,000. I could not correlate the two bids. Made no sense to me. For \$3,000 I wasn't willing to risk my community reputation by disposing of this illegally and he did the job. He tented the thing up at about 5 o'clock one morning and he worked until 11 o'clock at night. Made all of his money in one day, but he had a crew. He earned it. When he got done I had the cleanest old basement in Skowhegan. In retrospect, I'd probably be glad to pay the \$3,000 just to see it as clean as it was. In any case, I dodged the bullet. If this poor guy who did the work for me had to pay \$1,000 a year just to stay licensed I can concede that number of contractors will diminish and the fees for those that remain will go up and people in my awkward position will be even more tempted to dispose of this stuff illegally. It seems to me that it ought to be the policy of this state, and of the DEP, to encourage people to dispose of this material in the way in which the law contemplates and provides. If anything, the state ought to be subsidizing the licensing of these people if there are so few of them and their fees are so high as it is. It seems to me it's bad public policy to impose these very high fees and thus punish, indirectly punish, people for taking the correct action in disposing of this material. For that reason, I'm going to vote against this. Thank you.

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

Senator **GOODALL:** Thank you, Madame President. Men and women of the Senate, I rise today in support of the pending motion. I just want to give you a little backdrop on the situation. It's been 20 years since these fees have been increased. Currently they are out of line with what our neighboring states currently assess their contractors and other licenses in the related asbestos field. The fees fund asbestos hazard prevention programs and included in that is training, education, and also licensing, inspection, and so forth. The essence of the debate is how much the fees are increasing. Yes, an abatement contractor license will increase from \$250 to \$650 next year and then to \$1,000 the following year. In Massachusetts the fee is currently \$2,050. In New Hampshire it is \$1,000. Currently the asbestos fee for an abatement worker in Maine is \$25 and it will be increased to \$75. In Massachusetts it is \$75 and in New Hampshire it is \$50. Other examples, an asbestos air monitor license is \$50 currently. It will be raised to \$150. It is \$625 in Massachusetts. Every state has different sorts of licenses for asbestos abatement contractors, whether it be air, whether it be the worker, or whether it be their entire company. This bill will bring us in line with other states. Currently there are approximately 75 contractors that come into the state of Maine, or are in the state, that pay these licensing fees. In addition, I will be

offering an amendment at second reading if this motion passes to reconsider some of these fees, but I would encourage you to join me on the motion of Ought to Pass as Amended by Committee Amendment "A". Thank you, Madame President.

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

Senator **SMITH:** Thank you, Madame President. Members of the Senate, when I last rose on this issue I noted an additional issue which seemed strange to me at the time of the hearing which was that there were no asbestos contractors or consultants or workers or anybody else in the room at the time that the bill was heard. Normally when you see a quadrupling of a fee on your business you would be present. It turns out that these folks don't have full-time folks down here. Undoubtedly it was advertised. DEP has constant streams of communication that they provide to all of those that are regulated and in the asbestos field it's no different. There are regular information releases that go to asbestos consultants and contractors. It is strange that these folks didn't seem to know about this hearing. Yesterday, when the gentlemen that the Senator from Somerset, Senator Mills, referred to appeared in the hallway and in the Republican Senate caucus, he indicated that there had been no communication between the regulator and the regulated community in this instance and that it came as a complete surprise to them that this bill had gone as far as it had without DEP even mentioning it to them. I think there is kind of a basic fairness thing here and, aside from the very large increase that this represents, I think these folks deserve the same treatment that many others get and deserved to be talked to by DEP before they suggest a quadrupling of the fees that are essential to keeping them in business. I just wanted you to note that with me and for those of you who are just dying to vote for a big fee increase this is your bill. Go ahead and vote for it but for me it's premature. DEP should not have come in with this bill and I would send it back to DEP to talk with these folks and to get this right. I don't think just because Massachusetts has a \$1,000 fee it is right for Maine. Thank you.

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

Senator **CRAVEN:** Thank you, Madame President. Men and women of the Senate, this bill does increase the maximum fee to be paid when notifying the DEP of asbestos abatement. We are now at the very bottom of the scale for fees to abate this very dangerous substance. I wouldn't recommend that anybody get out their razor blade and their plastic bags and go to it themselves because it's very dangerous work. The bill was advertised, as all bills are, and I'm sure that people watching the bills that are hazardous to their business should have been aware of it. It is not the fault of any wrong doing on this side that this bill wasn't noticed until it came to the Senate. Speaking of the General Fund, we just got done closing a budget in Appropriations and there is nothing left in the General Fund. DEP requires funding to be able to oversee properly the safety of the abatement as well as the safety of the disposal of this hazardous waste. I ask you to follow my light. Thank you.

On motion by Senator **RAYE** of Washington, 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 Sagadahoc, Senator Goodall to Accept the Majority Ought to Pass as Amended Report. A Roll Call has been ordered. Is the Senate ready for the question?

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

**ROLL CALL (#88)**

**YEAS:** Senators: ALFOND, BARTLETT, BLISS, BOWMAN, BRANNIGAN, BRYANT, CRAVEN, DAMON, DIAMOND, GERZOFKY, GOODALL, HOBBS, JACKSON, MARRACHE, NUTTING, PERRY, SCHNEIDER, SIMPSON, SULLIVAN, THE PRESIDENT - ELIZABETH H. MITCHELL

**NAYS:** Senators: COURTNEY, DAVIS, GOOLEY, HASTINGS, MCCORMICK, MILLS, NASS, PLOWMAN, RAYE, RECTOR, ROSEN, SHERMAN, SMITH, TRAHAN, WESTON

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

**READ ONCE.**

Committee Amendment "A" (S-159) **READ.**

On motion by Senator **SIMPSON** of Androscoggin, **TABLED** until Later in Today's Session, pending **ADOPTION** of Committee Amendment "A" (S-159).

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Off Record Remarks

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The Chair laid before the Senate the following Tabled and Later (5/14/09) Assigned matter:

HOUSE REPORTS - from the Committee on **LABOR** on Bill "An Act To Clarify the Application of the Public Works Minimum Wage Laws"

H.P. 584 L.D. 849

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-241)** (8 members)

Minority - **Ought Not to Pass** (4 members)

Tabled - May 14, 2009, by Senator **JACKSON** of Aroostook

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

(In House, May 13, 2009, 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-241)**.)

(In Senate, May 14, 2009, Reports **READ**.)

Senator **RAYE** of Washington requested a Roll Call.

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

Senator **MILLS:** Thank you, Madame President. Men and women of the Senate, as I recall this bill from Labor, it has a slight problem with its title because it doesn't have much to do with the minimum wage as most of us would recognize that term. It really has to do with prevailing wages and a requirement that construction prevailing wage concept be applied to public works for the construction of schools and it would impose those rules on school districts. It would raise, I'm told, very significantly the cost of school construction at a time when our ability to supply money for General Purpose Aid is under significant challenge. It seems to me to be the wrong time to be imposing another mandate on our school systems, a subject about which I'm sure many of you hear every time you go to a school board meeting in your local district. For that reason I ask that we oppose the pending motion and the bill.

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

Senator **BRYANT:** Thank you, Madame President. Ladies and gentlemen of the Senate, just to correct a few pieces. This bill goes to State owned school property. What it does is allow people to bid at a level where they can provide insurance and they can have a level playing field where it's not a race to the bottom. I think on a number of bills we need to make sure we are clear on what it is that we are doing. Thank you.

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

Senator **JACKSON:** Thank you, Madame President. Ladies and gentlemen of the Senate, I would like to just say ditto to the Senator from Oxford, Senator Bryant. Just to give you a little bit more. As he said, it's for totally State funded projects. That would be schools in the unorganized territory, Baxter School for the Deaf, and the Magnet School in Limestone. These are 100% State funded projects. Prevailing wage rates do a lot to support the people in Maine and keep that fair competition amongst them. It does have a fiscal note on it of \$50,000. Let Appropriations have a shot at that. I do think it's good to protect Maine workers and I hope you support the Majority Report.

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

Senator **SHERMAN:** Thank you, Madame President. Ladies and gentlemen of the Senate, may I pose a question through the Chair?

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

Senator **SHERMAN:** Thank you, Madame President. I understand the concept of State schools. Are we drawing from independent money or are we drawing from State tax funds to pay these?

**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 York, Senator Courtney.

Senator **COURTNEY:** Thank you, Madame President. Men and women of the Senate, permission to pose another question?

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

Senator **COURTNEY:** Thank you, Madame President. I'm trying to catch up with the amendment. It appears that it includes public schools. If it was a school project that was partially funded by a municipality and partially funded by the State would that be included in this?

**THE PRESIDENT:** The Senator from York, Senator Courtney poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Aroostook, Senator Jackson.

Senator **JACKSON:** Thank you, Madame President. Ladies and gentlemen of the Senate, from my understanding, it is 100% State funded buildings.

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

Senator **PLOWMAN:** Thank you, Madame President. I'm glad to hear this is only going to come out of my right pocket and not both of my pockets. Recently, in Massachusetts a State project was bid for \$3 million. After the stimulus package was put forth it was found that it would qualify for stimulus funds and under the federal stimulus bill Davis Bacon Prevailing Wage would have to apply and that \$3 million job became a \$6 million job. I know that is Massachusetts, but if we're talking driving up those kinds of costs for any kind of school I'm a little bit hesitant. In fact, I'm not a little bit hesitant. I'm not ready to do this at all. I can see the bill next year. It will go from all State owned to what we now do with our local schools. It's that proverbial camel's nose under the tent. If you want to start bagging your taxpayers again you should really vote for this.

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

Senator **MILLS:** Thank you, Madame President. Members of the Senate, as the Senator said, under the nose. I'm not very good at reading fiscal notes but I'm in good company in this one. OFPR says that the impact of this legislation on the State and individual school units cannot be determined at this time. It says that this



prevailing wage and benefits measure is higher than wages and benefits currently being paid by school administrative units for construction projects. Some analyst at least was as confused as I may be in regards to the meaning of this bill. It seems to me it does make a difference, I think I might still oppose the bill, mind you, whether it's State only projects or school units. I received a number of communications from superintendents who are fretting over this bill as they have read it. My point of objection stands.

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

Senator **GOOLEY:** Thank you, Madame President. My questions have been answered. Thank you very much.

On motion by Senator **RAYE** of Washington, 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 Aroostook, Senator Jackson to Accept the Majority Ought to Pass as Amended Report. A Roll Call has been ordered. Is the Senate ready for the question?

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

**ROLL CALL (#89)**

**YEAS:** Senators: ALFOND, BARTLETT, BLISS, BOWMAN, BRANNIGAN, BRYANT, CRAVEN, GERZOFKY, GOODALL, HOBBS, JACKSON, PERRY, SIMPSON, THE PRESIDENT - ELIZABETH H. MITCHELL

**NAYS:** Senators: COURTNEY, DAMON, DAVIS, DIAMOND, GOOLEY, HASTINGS, MARRACHE, MCCORMICK, MILLS, NASS, NUTTING, PLOWMAN, RAYE, RECTOR, ROSEN, SCHNEIDER, SHERMAN, SMITH, SULLIVAN, TRAHAN, WESTON

14 Senators having voted in the affirmative and 21 Senators having voted in the negative, the motion by Senator **JACKSON** of Aroostook to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence, **FAILED**.

The Minority **OUGHT NOT TO PASS** Report **ACCEPTED**, in **NON-CONCURRENCE**.

Sent down for concurrence.

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Off Record Remarks

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The Chair laid before the Senate the following Tabled and Later (5/14/09) Assigned matter:

**HOUSE REPORTS** - from the Committee on **INSURANCE AND FINANCIAL SERVICES** on Bill "An Act To Allow Maine Residents To Purchase Health Insurance from Out-of-state Insurers" H.P. 230 L.D. 290

Majority - **Ought Not to Pass** (9 members)

Minority - **Ought to Pass as Amended by Committee Amendment "A" (H-169)** (4 members)

Tabled - May 14, 2009, by Senator **BOWMAN** of York

Pending - motion by same Senator to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report, in concurrence

(In House, May 13, 2009, the Majority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED**.)

(In Senate, May 14, 2009, Reports **READ**.)

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

Senator **BOWMAN:** Thank you, Madame President. Men and women of the Senate, I want to frame the debate on this issue by reminding my colleagues of three life principles. What I call life principles that I have plagiarized and applied to the legislative process. The first of them is 'Nothing of substance is simple or easy. If it were we would have already done that.' The second one is 'If it looks, sounds, or feels too good to be true, it probably is.' The third one is 'With any bill that we debate here there are winners and there are losers.' The winners, if this bill were to pass, would be the young and the healthy and the losers would be, it's a relative term by the way, the relatively older people and those that have any kind of pre-existing condition.

Second major point I want to make is that although health insurance costs in this state are high, in part due to the principles of guarantee issue and modified community ratings, I believe that Maine healthcare insurance costs are high primarily because Maine has the second highest healthcare cost per capita in the country, exceeded only by Massachusetts. It's a little off the subject but related, the U.S. has the highest healthcare costs per capita in the industrialized world.

The third major point that I want to make has several sub-points to it. This bill, as amended by the Minority Report, restricts regional insurers to those domiciled in New England and applies to individual medical insurance plans only and requires regional carriers to respond to inquiries from the Bureau of Insurance. No other state allows this and it's for a good reason. At the public hearing on this bill insurance agents testified that no company would even offer this insurance nor would any state agree to it. Here are some of the reasons why. It would result in cherry-picking. For those of you who are unfamiliar with the term, in Maine insurance companies are required to offer a policy to any person regardless of their health status. This is a principle called guaranteed issue. Insurers in other states, however, may deny coverage to people that have a problem based on health status, gender, or even where they live. This means that out-of-state insurers could routinely offer policies to those who are young and healthy while denying coverage to those who need it the most. This way they collect premiums but rarely have to pay out claims for medical treatment. Maine insurers would be more, rather than

less, likely to leave the state. You know that there are not many insurers in the state, however licensed insurers subject to Maine law would be deprived of a level playing field and be left with only the highest risk customers. This would clearly lead to higher rates and less people participating. Consumer protections would be lost. Regional carriers would be exempt from some Maine's most important consumer protections, making them relatively meaningless. For example, Maine's requirements for preventive services and screenings would not apply and other important services would be excluded.

Number four, consumers would have no one to go to to appeal their claim denials. Neither the out-of-state nor the in-state agencies would have authority or funding to address these issues in most cases.

Number five, pre-existing health conditions. I've already talked about that, but people in less-than-perfect health seeking coverage from the regional insurers could be turned down for reasons as trivial as an allergy or similar minor reasons. For those who are cancer survivors or have a heart condition, you can forget about having access to private health insurance from an out-of-state company.

Number six, Maine based health providers would not be covered. Maine's provider network and geographic access standards would not apply. Insurers would not be required to contract with Maine providers. This bill would exempt regional insurers from Maine's network adequacy standards, otherwise known as Rural 850.

Number seven, patients could end up being sued for payment. Maine's prompt payment requirements would not apply. Providers could find themselves in situations that require them to go after patients when the insurer reimburses the patient and not the provider directly.

Number eight, doctors could be sued too. The one-year limit on reviewing payments under network contracts would not apply. This means that a carrier could go back in perpetuity against the provider for what are called over payments.

Number nine, many providers would not be covered because Maine requirements would not apply. This means that health insurance policies would not have to cover services and care provided by such people as chiropractors, dentists, psychologists, social workers, optometrists, nurse practitioners, and others.

Number ten, if the insurer went belly-up there is no back-up plan. Insurers would not be covered by the Maine Malpractice Fund that pays claims when in-state insurers go broke.

Number eleven, other states won't let their General Fund and Insurance Assessment dollars be used to benefit Mainers and we wouldn't do that either. If the other states are spending money to subsidize their rates in any way Mainers will not get any lower rates as a result.

Finally, my last point, there are better ways to address lower healthcare costs and expand access to healthcare. We need to find out these ways to address costs, quality, and access to healthcare but not at the expense of allowing insurance companies to deny coverage to those that need it the most.

The Obama administration is looking for a national healthcare system and they are looking to some of the principles that Maine uses in its insurance business as models for the rest of the country. Thank you.

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

Senator **McCORMICK:** Thank you, Madame President. Men and women of the Senate, I rise in opposition to the current motion. I first kind of got involved with this concept for this bill three years ago quite innocently, trying to have dinner at the table. It turns out our daughter, when she completed college, decided to work in New Hampshire. Being a responsible young adult, she went and purchased a health insurance policy that fit her needs and was something she could afford. It cost \$119.57. She's very precise. It was a \$1,000 deductible policy. As I said, it met her needs. A couple of years later she decided to move back to Maine. When she sent her change of address into her insurance company, which is the same company providing insurance in New Hampshire, and listed her Maine address the policy got reworked because of our requirements and the bill was now over \$350 a month. She became uninsured. That's what prompted the big discussion at the dinner table. I grew tired after a while of trying to justify why, in her particular case, it was now three times more expensive to get insurance for her. As this bill moved through the committee I was very aware and very interested in what was going on. The Senator from York, Senator Bowman, is exactly right in some of his comments. Maybe no other state does it, but I was listening carefully and I did not hear anyone say that this could not be done. I did not hear the Bureau of Insurance say they could not provide regulation and protections for people. There will be regulation changes necessary for sure, but I did not hear that this could not be done if we so chose. Most of the opposition, and there was considerable opposition, centered around the concept the Senator from York, Senator Bowman, also presented which was that if we allowed these insurance companies to cherry-pick our healthy people, those are the ones who would benefit the most, it would drive up costs to our less healthy people. I don't know that to be true or not. There were no figures presented that said this is what will happen should we do this. It was all kind of an umbrella statement of this will happen and we should be in fear for some reason. I don't believe we will actually know what might happen until we do or if we make the change and actually allow this to go forward. What I do know is this Body, and the legislature since I've been here, has been very concerned about reducing the uninsured population in the state. We spend over \$50 million a year on average with Dirigo simply trying to cover 10,000 of our residents and insure them. It's something we should all be concerned about and we are. Looking at the print-out by income levels from the census bureau on our uninsured population. Sometimes we tend to feel that if someone is uninsured it's simply because they cannot afford the insurance. It is expensive. Looking at this breakdown, fully 60% of the uninsured are making more than 200% of the poverty level and 36,000 of these uninsured are making more than 300% of the poverty level. Fully 10,000 uninsured people make more than five times the poverty level. This is as many people as we cover under Dirigo and these are people who I feel may be just simply making this choice of not being insured based on the cost or being healthy and not feeling they need it. These are the very people who may benefit from allowing them to find a policy that fits their needs and is affordable according to their wishes. I think there is more to gain on this end of reducing the uninsured, which does help bring more money into the whole insurance industry. It does reduce our uninsured. It gives people an option. It's something our constituents can easily understand. It's not a difficult thing. It will not be available to everyone, or if it's available to those with pre-existing conditions it may be more expensive from the out-of-state provider too. It still may be

cheaper than it is in Maine. I don't know that and I don't believe we will unless we go forward with doing something. I know you can't address all of the issues that come up at my family gatherings and dinner tables, but this is certainly one that I think we could go forward with. If unforeseen issues arise in future years, we are very good at making changes and modifications. I hope we can defeat the pending motion and move to the Minority Report. Thank you very much.

On motion by Senator **RAYE** of Washington, 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 Cumberland, Senator Alford.

Senator **ALFOND:** Thank you, Madame President. Ladies and gentlemen of the Senate, I rise to support the motion and want to follow up on a couple of pieces that my good Chair, the Senator from York, Senator Bowman, maybe glanced over. I don't spend a lot of time in IFS because I'm in Education, but what I have learned is that there have been very few times that you have Anthem, you have a Superintendent of Insurance, you have the gentleman who represents insurance agents, and the Consumers for Affordable Healthcare all saying to oppose this bill. Again, I think it just needs to be repeated. You've got Anthem, you've got the Superintendent of Insurance, you've got the gentlemen who represents insurance agents, and the Consumers for Affordable Healthcare all saying no to this bill. I think it's very clear what should happen with this bill. I respect my good Senator who got to tell us to vote in opposition of this, but I would say to him that your daughter would be cherry-picked. Your daughter would be the one that would be cherry-picked and then those of us who are older, those of us who have pre-existing conditions, would be left out to dry. I hope that we can support this motion. Thank you very much.

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

Senator **SHERMAN:** Thank you, Madame President. Ladies and gentlemen of the Senate, I rise again to pose a question.

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

Senator **SHERMAN:** Thank you, Madame President. I heard facts and figures from the good Senator from Kennebec, Senator McCormick. I heard from the good Senator from Cumberland, Senator Alford, and his appeal to authority and that this person said that. I wish that he could elucidate slightly and give us some of the factual information that those folks are opposed to that was laid before his committee or before him.

**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 Lincoln, Senator Trahan.

Senator **TRAHAN:** Thank you, Madame President. Ladies and gentlemen of the Senate, I just wanted to respond to a comment that was made earlier about being cherry-picked. I'm a self-employed logger of 25 years and I, in a sense, have been cherry-

picked along with a lot of people in Maine because of the cost of our insurance. I certainly agree there are complications to this kind of concept but certainly our system in Maine is broken and needs to be fixed. We need to find a way to do that. I, being a healthy person, could not afford health insurance and neither could my wife. I think people all across this state cannot afford health insurance. In a sense, we're being cherry-picked. We're being pushed out of the market by the high cost of insurance. We have to do something. I think this bill came forward because there is desperation currently out there. People just can't afford it. I'm a little bit concerned when I hear that President Obama is looking at Maine as a model. If he looks at Maine as a model he's going to find that we're very expensive here in both the cost of our care and our insurance premiums. I hope that he finds a solution to this, but I don't think it's going to come just from Maine, it's going to come from a much more efficient system. The cost and all of that stuff needs to be addressed and I just hope that we keep that in mind. I just think that motive of the folks who brought this forward was to try to reduce the cost of care. I hope we keep that in mind.

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

Senator **BRANNIGAN:** Thank you, Madame President. I don't know if this is a question or not, but I wonder if the people who might vote against this have thought this out? How would it work? What if the Senator from Kennebec, Senator McCormick's daughter all of a sudden went back to New Hampshire? She would have to go back to New Hampshire, or somebody in New Hampshire would have to come here because the people in New Hampshire are already here and they cannot insure her for the price she had in New Hampshire. Has anybody thought this out about whether these people, insurance companies, are going to come here to Maine and be unregulated? Are people here going to go to other states and deal with the same insurance company that they deal with here or do they have to find another insurance company that does not come to Maine? If that insurance company begins to do business in Maine aren't they a Maine company and have to come under Maine regulations? It's pretty obvious why nobody does this. I just wonder how it would work? I say it wouldn't work. Thank you.

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

Senator **McCORMICK:** Thank you, Madame President. Thank you for the question. In this particular case, as I described, the insurance company wasn't even changing. It was the address that was changing. You are right if you say she would not fall under all of the regulations that Maine requires. She would just be simply continuing a policy that was appropriate for her when she was in New Hampshire that maybe wouldn't provide weekly chiropractic care or whatever our regulations that drive up the cost of care require. She wasn't even changing companies. It was simply continuing the policy she had enforced.

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

Senator **BRANNIGAN**: Thank you, Madame President. That's my point. She happened to be in New Hampshire. If somebody else's daughter who is healthy and wants to have one of these policies, do they have to go and live somewhere else? It won't work. We can say everybody that comes from out-of-state, if they can find somebody in the state they came from that would insure them, the insurance company that they had could work here under that law rather than Maine law. It is just unforeseeable, unreasonable, and it won't work. Thank you.

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

Senator **BARTLETT**: Thank you, Madame President. I rise to pose a question through the Chair.

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

Senator **BARTLETT**: Thank you, Madame President. We've heard of a hypothetical with New Hampshire with somebody coming to Maine and facing a higher premium. The question I have is do we know whether that is because of the higher cost of care, for example through our hospital system, or is that due to the regulations? My guess is that at minimum it's a combination of both, but it would seem to me that a big part of the cost of insurance is the cost of the actual care that you have to pay for and that ends up being a driving factor in those premiums.

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

Senator **RAYE**: Thank you, Madame President. I also rise to pose a question through the Chair.

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

Senator **RAYE**: Thank you, Madame President. I wondered, during the Committee's deliberations and the public hearing on this issue, if they heard from people about the issues raised by the good Senator from York, Senator Bowman? I know that a number of Mainers are already insured out-of-state as result of their employment. Did we hear, during this process, from those Mainers that they are experiencing the many issues and difficulties raised by the Senator from York?

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

Senator **GOOLEY**: Thank you, Madame President. This is not in regards to that question. I've had a few constituents talk to me about this particular legislation and they support that we allow constituents to go out-of-state. I do recall at least one editorial in a local newspaper that also supported allowing Maine citizens to go out-of-state for their insurance. Thank you.

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

Senator **SULLIVAN**: Thank you, Madame President. I rise not to answer any of the questions. I would ask that you think very carefully about this. The cost of healthcare in Maine is high for a number of reasons. One of them is our geographic location. The Rule 850 that you talk about deals with being able to receive care close by your home. Rule 850 covers the mandates that we hear so much about. It has the mandate that says that if you want chiropractic care, you believe that is the way to service your back, you have that choice. You also have a mandate for mammograms. You have a mandate for PSA level testing. Those are mandates. That's what insurance does. You buy insurance to protect you against peril and ill health. Anybody will insure you if they don't have to pay for anything. If you get sick or if you need a colonoscopy, with all that good stuff you drink and all that other stuff, your insurance company says, 'We don't have to pay for that. We don't have any Rule 850 in the state of Maine.' If that were true what would happen is that cancer at about stage four or five, because you never had the preventative stuff done, would take over and the results might not be what you want or what you want your daughter to have. The reality is, insurance is trying to find a way to pay for a potential peril, ill health in this case. I would also remind you that the Bureau of Insurance and Financial Regulations is the only department that is run by the fees they raise with the exception of the Dirigo Plan. The companies who come here to sell pay for the regulation and the regulators. I recall when the present Senator Nass was Representative Nass and we were at an Appropriations meeting. Actually it was to sweep some money from the department because they had done such a good job in being able to run and get high marks from the regulators on our banks, one of the reasons we don't have problems here in the state of Maine right now. Representative Nass said, 'Gee, maybe you could just take over the whole budget since you do such a great job in your one. What's your plan?' The plan is that you offer a fair price to keep your companies here to insure people. Maine has a huge geographic disadvantage. The rural areas make healthcare very expensive. The islands. The lack of a lot of medical hospitals in the area. Yes, you can go to Boston. Look at the choices you have. We want to make sure that the residents in Southern Maine are not the only ones getting good healthcare. Our health insurance and our plans work for the people in the rural areas. It works for the people. Yes, we all do pay, but we also say that seeing Maine is still the oldest state in the union by population that we make sure that those people, the sick and the old, are able to get insurance at the same rights. The fact that you've managed to live long enough to be old shouldn't mean you have to pay through the nose to have decent health insurance. This is a bad bill. There are lots of things we can do to help insurance. This does not help Maine citizens. It does not help our rural areas. It does not help us in being able to keep our bureau going the way it should go and is self-sufficient. Thank you.

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

Senator **MILLS**: Thank you, Madame President. Men and women of the Senate, I've always been interested in this issue and never been quite sure how to vote on it in times past. I was very interested to hear the good Senator from York, Senator Bowman, lay out the case, as thoroughly as I've ever seen it laid out, as to why we should not do this. I'm inclined to favor this. I read the bill while we're sitting here and it does have a number of

consumer protections within it. It does subject these foreign, we call them foreign but they are out-of-state, companies to a fair amount of state oversight and regulation. I'm not certain if it is to the full extent of our own captive companies. The cost issue, it seems to me, is easily answered. How are we going to know whether our health costs are higher or lower than another state's unless we open the market to let somebody else in to sell an insurance product? We do for larger employers, for the approximately one-quarter to one-third of our total market that is unregulated by the state. It's the ERISA market. Anybody who has more than around 50 employees, such as Hannaford Brothers, BIW, and all the paper companies, have nothing to do with state regulations. They are totally exempt. They are regulated, if at all, by the U.S. Department of Labor, whose nearest office is in Boston. There is a vigorous interstate market in healthcare already present in Maine and in all 50 states courtesy of a law that Congress passed back in 1974 which is called ERISA. With just a couple of short sentences it said that major employers, larger employers, were essentially exempt. Those in interstate commerce are essentially exempt from state regulation. Our capacity to regulate health insurance is fairly limited. We can't regulate Medicare, heaven forbid. We don't regulate the large employers because of ERISA. We are very constrained on how we regulate Medicaid, which is a significant part of our market. The small fraction of the market that we do regulate is the individual market and the small group market. The biggest single reason that our costs are so much higher, immediately higher than New Hampshire, is that New Hampshire has a 4-1 rating band in community rating where as ours is very tight. It is no surprise that a young person living in New Hampshire could get insurance for \$100 and find herself paying three times as much in Maine because she is contributing to a community rating system where people my age or younger can pay quite a bit less, frankly, than you would pay in New Hampshire. In the end I think what happens here is if we vote for the bill it will have the impact of undermining our community rating system, a system that has been under discussion and debate for almost 20 years. The people who will take advantage of it are not going to be the people age 50 and 60 because they will do better under Maine law. The people who will take advantage of it will be the younger people, the 20 and 30 and 35 year olds, who can slip in using another state's rating bands, or no rating bands, frankly, because they will be allowed to do medical underwriting. It will provide cheap insurance for young people in the end. Then the question you'll have to ask yourself is, are these people already uninsured and so is it doing no harm to our market or is it doing only some small measure of harm in undermining our community rating system? I don't have a good answer for that, but I think it would be an interesting experiment. I think, in the last 20 minutes, I have changed my mind about this bill and think I will vote against my good friend from York, who did a very good job of outlining the case. Thank you.

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

Senator **BARTLETT:** Thank you, Madame President. I rise in support of the pending motion in part because of the same argument that I've heard from the good Senator from Somerset, Senator Mills, in respect to community ratings. It is true that if you change community ratings that people who are young and healthy will pay less because they are not helping to support the whole

community. It is also correct that the older population, or the unhealthier population, would prefer Maine's system. If this passes what you will see is all those young, healthy people will leave the state market and not be contributing to that community rating. As a result, if you have a chronic condition, you are of child rearing age, or if you are older, your premiums will go through the roof and you simply won't be able to get insurance. As soon as those young, healthy people leave the market everybody's prices, those who are left, are going to rise. Since we have one of the oldest populations in the country, that means the vast majority of our citizens are going to see a significant increase in their health insurance premiums, if they can afford it at all. For that reason, we should not go down that road and decimate the insurance market in the state of Maine.

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

Senator **BOWMAN:** Thank you, Madame President. I rise not to continue the debate because I think we could do this ad infinitum and so I would suggest, only suggest, that we bring this highly interesting, stimulating, challenging debate to a close sometime soon. I just want to make two other points. The Minority Leader asked a question of if there was testimony at the public hearing and limited testimony at the work session from individual insurers. The answer is not that I recall was there very many, if any. Most of the testimony came in the form of written e-mails and things like that. It was limited to that. I don't want to go on about how in-state insurance companies that are regulated by the Bureau of Insurance can help individual insurers but there was a story, a testimony, of a woman that had cancer and her policy capped the chemotherapy payments that could be made to her. The case was brought before the Superintendent of Insurance and she was able to lift that cap in that particular case. If you have insurance companies in-state where the Bureau of Insurance can take a strong role in the case you can have amazing things happen. Thank you very much.

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

Senator **MCCORMICK:** Thank you, Madame President. If I could just respond to the Senator from Cumberland, Senator Bartlett's last comment, again creating kind of the impression that all young people are suddenly going to leave and get their insurance somewhere else. I can't imagine any young teachers, who are part of a large group plan, leaving their insurance and trying to find something cheaper, or any State worker. This Minority Report would not allow large or small groups to move out of state. Anybody who already has insurance under the large group, small group, State financed, or anything else would not be interested in moving. It would be just simply individuals who are paying for their own policies. Thank you very much.

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

Senator **TRAHAN:** Thank you, Madame President. I just wanted to add to my previous comments for just a moment. I, personally, had great hopes that the Dirigo program would cover the group that I think could be targeted for such an exemption to our law. We know that we had poor success in trying to cover those folks

that are uninsured. I think they fall into my category more than they do the folks that are teaching and the young professionals that are out there. I think these folks have security in their health plans. It's the self-employed person. It's the person out there in a small business trying to cover their folks that really, I think, need help. I would think it would be an interesting debate to try to carve out an exemption for those people that Dirigo tried to target, to allow a pilot program to buy their insurance out-of-state because I think that is the group that's falling through the cracks. I don't know if we can do anything with this bill, but I certainly hope that as bills come forward dealing with Dirigo that we would try to retarget that group of folks and get them covered through an affordable health insurance policy. Thank you.

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

Senator **SIMPSON:** Thank you, Madame President. Men and women of the Senate, I rise after the caution from my good colleague from York County who wanted to get to the vote. I feel compelled to stand on behalf of young people who might think that this is a great idea because I did a quick search and in New Hampshire they don't mandate coverage for cervical cancer screening. It's a very treatable form of cancer if caught, but if not some of you, or people you know, might have to sit by the bedside of a childhood friend, as I had to, and watch them die because it wasn't found. I can tell you it's not very pleasant to watch a 32-year old woman die from a treatable form of cancer because it hadn't been found in time. They had gone for proper tests. Tests were sent to a cheap sort of mill and she didn't get the diagnosis until it was too late. Other things not covered, one in eight American women can expect to get breast cancer. Length of stay from a mastectomy is not covered in the state of New Hampshire. Here in the state of Maine your doctor decides how long the patient has to stay in the hospital. I think that is the way it ought to be. I will be supporting the pending motion because I think Maine people deserve real healthcare insurance, not just insurance that doesn't cover their needs. Thank you.

**THE PRESIDENT:** The pending question before the Senate is the motion by the Senator from York, Senator Bowman to Accept the Majority Ought Not to Pass 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 (#90)**

**YEAS:** Senators: ALFOND, BARTLETT, BLISS, BOWMAN, BRANNIGAN, BRYANT, CRAVEN, DAMON, GERZOFKY, GOODALL, HOBBS, JACKSON, MARRACHE, NUTTING, PERRY, SCHNEIDER, SIMPSON, SULLIVAN, THE PRESIDENT - ELIZABETH H. MITCHELL

**NAYS:** Senators: COURTNEY, DAVIS, DIAMOND, GOOLEY, HASTINGS, MCCORMICK, MILLS, NASS, PLOWMAN, RAYE, RECTOR, ROSEN, SHERMAN, SMITH, TRAHAN, WESTON

19 Senators having voted in the affirmative and 16 Senators having voted in the negative, the motion by Senator **BOWMAN** of York to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report, in concurrence, **PREVAILED**.

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Off Record Remarks

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On motion by Senator **BARTLETT** of Cumberland, **ADJOURNED**, to Thursday, May 21, 2009, at 10:00 in the morning.