

MAINE STATE LEGISLATURE

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State of Maine

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

In Senate Chamber
Friday
April 2, 2010

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

Prayer by Pastor Stephen Tracey, Lakeview Orthodox Presbyterian Church of West Rockport.

PASTOR TRACEY: Thank you for the privilege of being here on Good Friday. I was reading the famous newspaper, the Midcoast Beacon, that comes free on Thursdays. There was a fascinating question at the beginning, 'Where does the Easter Bunny live?' Now famous children gave their suggestions; in an Easter hole in Maine, in a giant Easter egg, in a house in Africa, in Easterbunnyville, and, my favorite, in a furnished house in a redwood tree in California.

I've been thinking about Easter, partly because people think about eggs and I wonder why eggs and Easter go together. Perhaps new life. I've been wondering why there is some confusion as to bunnies coming out of eggs. They don't come out of eggs in Ireland, but this is America.

Today is Good Friday. Let me read you what is an historical account of what happened on this day in history. Pilate, wishing to satisfy the crowd, released for them Barabbas, and having scourged Jesus, he delivered him to be crucified. The soldiers led him away inside the palace and they called together the whole battalion and they clothed him in a purple cloak and, twisting together a crown of thorns, they put it on him. They began to salute him, 'Hail, King of the Jews' and they were striking his head with a reed and spitting on him and kneeling down in homage to him. When they had mocked him, they stripped him of the purple cloak and put his own clothes on him and they led him away to crucify him. They compelled a passerby, Simon of Cyrene, who was coming in from the country, the father of Alexander and Rufus, to carry his cross. They brought him to the place called Golgotha, which means a place of a skull. They offered him wine mixed with myrrh but he did not take it, and they crucified him. They divided his garments among them, casting lots for them to decide what each should take. It was the third hour when they crucified him. The inscription of the charge against him read, 'The King of the Jews'. With him they crucified two robbers, one on his right and one on his left. Those who passed by derided him, wagging their heads and saying, 'You would destroy the temple and rebuild it in three days, save yourself, come down from the cross.' When the sixth hour had come there was darkness over the whole land until the ninth hour. At the ninth hour he cried out, with a loud voice, 'Eloi, Eloi, lema sabachthani?' meaning, 'My God, my God, why have you forsaken me?'

Let us pray. Oh Lord, Our God, we pray that You will hear us as we pray on behalf of the Senate. We pray for Your grace to be given to the members. They have stepped forward to be become public servants and such a task is never easy. We pray for them

in their work and we pray that as important affairs of state rests in their hands, matters that involve health and wellbeing of all who dwell in this great state. We pray that You will give them wisdom, compassion, the grace to listen, and to be silent at the right time, as well as the grace to speak and not to be silent at the right time. We pray for their families as they experience all the action of life and death, sickness, health, joy and sorrow, and peace and pain. We thank You that You are a faithful God. On this Good Friday especially we pray that You will help us not think only about this kingdom or our own kingdom but about the kingdom of God in Jesus Christ. In Jesus name we pray. Amen.

Reading of the Journal of Thursday, April 1, 2010.

Off Record Remarks

PAPERS FROM THE HOUSE

Non-Concurrent Matter

SENATE REPORTS - from the Committee on **EDUCATION AND CULTURAL AFFAIRS** on Bill "An Act To Allow the Town of Wells and the Town of Ogunquit To Amend the Terms of Their Cost-sharing Agreement for Their Community School District and To Provide Each Town the Ability To Withdraw from the Wells-Ogunquit Community School District"

S.P. 670 L.D. 1747

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

Minority - **Ought to Pass as Amended by Committee Amendment "A" (S-422)** (5 members)

In Senate, March 24, 2010, the Majority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED**.

Comes from the House, the Minority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-422) AS AMENDED BY HOUSE AMENDMENT "A" (H-815)** thereto, in **NON-CONCURRENCE**.

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

COMMUNICATIONS

The Following Communication: S.C. 756

**STATE OF MAINE
ONE HUNDRED AND TWENTY-FOURTH LEGISLATURE
COMMITTEE ON AGRICULTURE, CONSERVATION AND
FORESTRY**

March 31, 2010

The Honorable Elizabeth H. Mitchell
President of the Senate
The Honorable Hannah M. Pingree
Speaker of the House of Representatives
124th Legislature
State House
Augusta, ME 04333

Dear Madam President and Madam Speaker:

Pursuant to Title 3 Maine Revised Statutes, chapter 35, we are pleased to submit the findings of the Joint Standing Committee on Agriculture, Conservation and Forestry from the review and evaluation of the Department of Agriculture, Food and Rural Resources under the State Government Evaluation Act. In its review, the Committee found that the Department is operating within its statutory authority.

Sincerely,

S/Senator John M. Nutting
Senate Chair

S/Representative Wendy Pieh
House Chair

READ and with accompanying papers **ORDERED PLACED ON FILE.**

Senate at Ease.

Senate called to order by the President.

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

REPORTS OF COMMITTEES

Senate

Ought to Pass As Amended

Senator BRANNIGAN for the Committee on **HEALTH AND HUMAN SERVICES** on Bill "An Act To Amend the Maine Medical Marijuana Act"

S.P. 719 L.D. 1811

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-508).**

Report **READ.**

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

Off Record Remarks

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.

ORDERS OF THE DAY

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

SENATE REPORT - from the Committee on **HEALTH AND HUMAN SERVICES** on Bill "An Act To Amend the Maine Medical Marijuana Act"

S.P. 719 L.D. 1811

Report - Ought to Pass as Amended by Committee Amendment "A" (S-508)

Tabled - April 2, 2010, by Senator **NASS** of York

Pending - **ACCEPTANCE OF THE REPORT**

(In Senate, April 2, 2010, Report **READ.**)

Report **ACCEPTED.**

READ ONCE.

Committee Amendment "A" (S-508) **READ** and **ADOPTED.**

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

Ordered sent down forthwith for concurrence.

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

ENACTORS

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

Emergency Measure

An Act To Enable the Installation of Broadband Infrastructure
H.P. 1265 L.D. 1778
(H "B" H-807 to C "A" H-784)

This being an Emergency Measure and having received the affirmative vote of 28 Members of the Senate, with no Senators having voted in the negative, and 28 being more than two-thirds of the entire elected Membership of the Senate, was **PASSED TO BE ENACTED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

Emergency Measure

An Act To Promote the Establishment of Innovative Schools
S.P. 706 L.D. 1801
(H "A" H-800 to C "A" S-455)

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.

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

Emergency Measure

An Act Relating to the Recommendations of the Office of Program Evaluation and Government Accountability Regarding Emergency Communications Services
H.P. 1297 L.D. 1813
(C "A" H-806)

This being an Emergency Measure and having received the affirmative vote of 28 Members of the Senate, with no Senators having voted in the negative, and 28 being more than two-thirds of the entire elected Membership of the Senate, was **PASSED TO BE ENACTED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

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

REPORTS OF COMMITTEES

House

Ought to Pass As Amended

The Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS** on Resolve, Authorizing the Commissioner of Administrative and Financial Services To Sell or Lease the Interests of the State in Certain Real Property Located at 187-189 State Street, Augusta, Known as the Smith-Merrill House, and at 159 Hogan Road, Bangor, known as the Elizabeth Levinson Center

H.P. 1311 L.D. 1825

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-816)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Resolve **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-816)**.

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

READ ONCE.

Committee Amendment "A" (H-816) **READ** and **ADOPTED**, in concurrence.

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

Ordered sent forthwith to the Engrossing Division.

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

ENACTORS

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

Act

An Act Concerning the Allocation of Power Generated by GNE, LLC

H.P. 388 L.D. 543
(C "A" H-803)

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

Senator **SULLIVAN:** Thank you, Madame President. Could somebody just tell me what has happened on this bill?

THE PRESIDENT: The Senator from York, Senator Sullivan poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from York, Senator Hobbins.

Senator **HOBBS:** Thank you very much, Madame President. Men and women of the Senate, this bill is in regard to the issue of the town of Millinocket and the owners of what used to be known as the Great Northern Paper Company, which is Brookfield Financial. Essentially what this bill is is a compromise proposal

which effectively encourages Brookfield Financial and the town of Millinocket to continue to negotiate in good faith with respect to the issues surrounding the hydro issues and also the possibility of building out a boiler system for biomass in order to heat the town's plant. What this will do is essentially give a first right of refusal to the communities in the event, all permissive with Brookfield Financial, that they do not wish to proceed with the build out and the utilization of hydro. What would occur is the community of Millinocket would be able to put together a not-for-profit entity which would essentially act as a middle person, broker, or distributor of hydro power that was being used to fuel the mill. Right now, unfortunately, since October 2008 a very productive mill and hundreds and hundreds of individuals have been dislocated because of unfortunate circumstances, most regarding international issues with fiber and paper. This is a compromise proposal. It is a demonstration to the community of Millinocket, East Millinocket, and to the people that have worked long and hard so diligently in the mills in building up a vibrant community. It will give them a little bit of hope that we, as a legislature, as a matter of public policy would, in fact, continue to support the efforts of the community and also financial development with the possibility of reopening the mill either with this particular owner or with future owners. This was a unanimous report of the committee. It sat on the table of the Utilities and Energy Committee for 16.5 months with the understanding that the communities would still be involved with the Governor's Office with negotiations. Those negotiations continue to this day. We're hoping that someday the communities of Millinocket and East Millinocket and all of the area involved and the thousands of jobs that were involved with the vibrant economy will someday come to fruition and we'll have those jobs back. This is just, quite frankly, a compromise symbolic effort on the part of our committee and on the part of many, many stakeholders here in the state of Maine. Thank you.

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

Off Record Remarks

Senator **SHERMAN** of Aroostook was granted unanimous consent to address the Senate off the Record.

Senator **JACKSON** of Aroostook was granted unanimous consent to address the Senate off the Record.

Off Record Remarks

ORDERS OF THE DAY

The Chair laid before the Senate the following Tabled and Later (4/1/10) Assigned matter:

An Act Concerning Statewide Communications Interoperability
H.P. 1201 L.D. 1700
(C "A" H-775)

Tabled - April 1, 2010, by Senator **RAYE** of Washington

Pending - **ENACTMENT**, in **NON-CONCURRENCE**

(In Senate, March 30, 2010, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-775)**, in concurrence.)

(In House, March 31, 2010, **FAILED ENACTMENT.**)

PASSED TO BE ENACTED, in **NON-CONCURRENCE.**

Ordered sent down forthwith for concurrence.

The Chair laid before the Senate the following Tabled and Later (3/24/10) Assigned matter:

NOMINATION - of Peter L. Darwin of Portland for appointment as a District Court Judge

Tabled - March 24, 2010, by Senator **BLISS** of Cumberland

Pending - **CONSIDERATION**

(In Senate, March 24, 2010, Communication (S.C. 717) from the Committee on **JUDICIARY**, **READ** and **ORDERED PLACED ON FILE.**)

The President laid before the Senate the following: "Shall the recommendation of the Committee on **JUDICIARY** be overridden?"

In accordance with 3 M.R.S.A., Chapter 6, Section 151, and with Joint Rule 506 of the 124th Legislature, the vote was taken by the Yeas and Nays.

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#395)

YEAS: Senators: None

NAYS: Senators: ALFOND, BARTLETT, BLISS, BOWMAN, BRANNIGAN, COURTNEY, CRAVEN, DAMON, DAVIS, DIAMOND, GERZOFKY, GOODALL, GOOLEY, HASTINGS, HOBBS, JACKSON, MARRACHE, MCCORMICK, NASS, NUTTING, PERRY, PLOWMAN, RAYE, RECTOR, ROSEN, SHERMAN, SIMPSON, SMITH, SULLIVAN, TRAHAN, WESTON, THE PRESIDENT - ELIZABETH H. MITCHELL

ABSENT: Senators: BRYANT, MILLS, SCHNEIDER

No Senator having voted in the affirmative and 32 Senators having voted in the negative, with 3 Senators being absent, and none being less than two-thirds of the Membership present and voting, it was the vote of the Senate that the Committee's recommendation be **ACCEPTED** and the nomination of **Peter L. Darwin** of Portland for appointment as a District Court Judge was **CONFIRMED**.

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

The Chair laid before the Senate the following Tabled and Later (3/26/10) Assigned matter:

Resolve, Authorizing Certain Land Transactions by the Department of Conservation, Bureau of Parks and Lands and the Department of Inland Fisheries and Wildlife

H.P. 1291 L.D. 1803
(C "A" H-723)

Tabled - March 26, 2010, by Senator **BARTLETT** of Cumberland

Pending - **FINAL PASSAGE**, in concurrence

(In Senate, March 23, 2010, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-723)**, in concurrence.)

(In House, March 25, 2010, **FINALLY PASSED**.)

On motion by Senator **RAYE** of Washington, the Senate **SUSPENDED THE RULES**.

On further motion by same Senator, the Senate **RECONSIDERED** whereby the Bill was **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-723)**, in concurrence.

On further motion by same Senator, Senate Amendment "B" (S-509) **READ**.

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

Senator **RAYE:** Thank you, Madame President. This amendment adds to the bill a very small piece of property in the town of Lubec. As many of the men and women of the Senate know, Cobscook Bay has been the scene of seven tragic deaths of fishermen within an 11 month time period. Losses of tragic and historic proportions for the communities around Cobscook Bay. There has arisen a very strongly supported effort to erect a memorial to lost fishermen in the town of Lubec. As the project was underway and they were getting ready to begin it was discovered that there is a very small piece of land in the middle of this property that is owned by the town that is actually owned by the Department of Conservation. The Department, Commissioner, Governor, and everybody is on board with transferring that so that the construction of the memorial can proceed. That is the content of the amendment before us. Thank you.

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

Senator **NUTTING:** Thank you, Madame President. Ladies and gentlemen of the Senate, I likewise wanted to just quickly say that the committee members that we've talked to support this amendment. It's very appropriate. Yes, it may have been a little cleaner if we'd realized at the time of the public hearing but nobody did and that's just the way it is. This is a good amendment. I think it will help. This is what we try to do in what we call the land-swap bill every couple of years. I urge you to support this amendment.

On motion by Senator **RAYE** of Washington, Senate Amendment "B" (S-509) **ADOPTED**.

PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-723) AND SENATE AMENDMENT "B" (S-509), in NON-CONCURRENCE.

Ordered sent down forthwith for concurrence.

The Chair laid before the Senate the following Tabled and Later (4/1/10) Assigned matter:

Bill "An Act To Amend the Standards by Which Game Wardens May Stop All-terrain Vehicles when Operating on Private Property"

H.P. 1080 L.D. 1536

Tabled - April 1, 2010, by Senator **RAYE** of Washington

Pending - motion by Senator **BRYANT** of Oxford to **INDEFINITELY POSTPONE** House Amendment "A" (H-759), in **NON-CONCURRENCE** (Roll Call Ordered)

(In House, March 24, 2010, the Majority **OUGHT TO PASS** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY HOUSE AMENDMENT "A" (H-759)**.)

(In Senate, April 1, 2010, on motion by Senator **BRYANT** of Oxford, **RECEDED** from **ACCEPTANCE** of the Minority **OUGHT NOT TO PASS** Report. On further motion by same Senator, the Majority **OUGHT TO PASS** Report **READ** and **ACCEPTED**, in concurrence. **RULES SUSPENDED. READ TWICE.** House Amendment "A" (H-759) **READ.**)

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

Senator **NASS:** Thank you, Madame President. I just want to speak briefly on this and the tenuous situation that we have with access to land in general, and all the work that has been done in the last years to develop an ATV trail system that is currently the largest in the country. I want to talk just briefly about the whole landowner situation and urge a vote against the pending motion. If you are a landowner in the state of Maine and you've allowed snowmobiles and ATVs access to your land, or you've given somebody written permission. That is the key to this. There are other pressures on landowners and while we are just talking about ATVs, and potentially snowmobiles here we tend to forget the other pressures, timber trespass and the timber loss. This legislature has done a lot about. Landowners are subject to that. The pressure of having to worry about it. People throwing garbage willy-nilly around open land is a big problem, which is difficult to legislate against but it's a problem. Having people, as in the case of this specific case with ATVs, potentially destroy or do damage to the land is the problem at hand. The pressure on landowners is significant. This bill attempts to take us back to a place we were at a few years ago that assures landowners that people that have access to their land have written permission to do so. There are various versions of that. Last year we changed it. This year we are trying to go back to that. It's extremely important, I think, for our recreation industry that we promote and have this extensive ATV trail system. We need to get back to the point where landowners have an assurance that people are not going to abuse their land, that it's going to be properly used and that if it's not the enforcement folks that we have out there have the ability to help out the landowner to assure him or her that somebody is going to pay attention if their land is being abused. For those reasons, and just as a review, Madame President, I would urge a vote in opposition to the pending motion. Thank you.

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

Senator **TRAHAN:** Thank you, Madame President. Ladies and gentlemen of the Senate, I will not repeat my speech from the other day but I do want to get on the record that the other Body came up with a compromise amendment, which is now before us. That is the amendment to Indefinitely Postpone. There is no other compromise language or an amendment. The compromise is currently before us. That's why I rise in opposition to the pending motion and ask this Body to accept and adopt the other Body's version of the bill before us.

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

Senator **JACKSON:** Thank you, Madame President. Ladies and gentlemen of the Senate, I was going to say the same thing. I

didn't hear much about that compromise. I am certainly in support of the Senator from Oxford, Senator Bryant's motion. The issue that I see with this bill is that if it is on trails that have been approved, permission is already implied, the State has allowed money to be used to build these trails, and so that automatically gives permission to ATV riders. This bill would sweep those trails in also. On lands that are private, I think the landowners already have the ability to tell the game wardens not to allow people to go there. They have the ability to post land, which I don't think anyone wants but that certainly is a right of theirs. We're not taking that right away. The argument about garbage, well people go by in vehicles and throw garbage out. It's not just ATV users. Most of the big dumps that have been made on people's land have been brought there by pick-up trucks, so to blame that on ATV riders is unfair, I think. I'm sure there have been some people in the last year that have complained, but the change in law that we made last year has not created any good big issue. The same people that are here today advocated last year to not change the law. Now they are advocating to change it back. In my area I have had no significant amount of people that have asked to have the law changed back. The large landowners in the state of Maine have really no opinion on this bill one way or the other. I think it is certainly something that we should leave alone. Last week we heard people talking about how it's sad whenever people's rights are being taken away. This is a perfect example. You are taking away people's right to operate an ATV legally and not be worried about being stopped for absolutely no reason. At the same time the landowners have the right to say, 'You cannot come on my land.' No one is taking that away, but I think it's a poor policy to just go out and start saying that we're going to stop you anytime we feel like it. I heard people talk about the tourism industry. I guarantee you people will start hearing more and more about this. I don't believe, up until we changed this law last year, that most people from away understood the fact that they could be pulled over for absolutely nothing. These debates are going to start making people in other states start hearing that in Maine, if they come here, they can be stopped for no reason at all. I've heard a lot of that, especially on Ski-doo's. People tell me they are not coming back to Maine because they were accosted so much by law enforcement people for what they felt was no reason. I certainly can't speak to what happened. I've heard an awful lot of complaints like that. This is just going to make it worse for people. I understand landowners' rights and I agree with them 100%. I think the amendment alleviates some of those concerns and, as much as I would not like to see that, you always have the right so say absolutely no one can go on your land. I cannot, in good conscience, say that someone should lose their rights so someone else can have theirs. I ask you to vote with the good Senator from Oxford.

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

Senator **TRAHAN:** Thank you, Madame President. Ladies and gentlemen of the Senate, I just stood to correct some of that previous testimony from the good Senator from Aroostook. Just so you understand, ATV trails are a different type of ATV trail. If an ATV trail is owned by the State of Maine certainly the State of Maine has policies on those ATV trails. There are other trails that are given by permission from the landowner. Even that current trail is owned by private landowners. They give permission to go

over their land. That's where the problem exists. You might have 20 landowners who encompass a section of an ATV trail. ATVs then diverge off those trails, onto private property, and do damage. That's where, I think, the concern lies for the landowners.

As far as the other issue, the good Senator from Aroostook County, which is a wonderful place, I visit there maybe four or five times a year, it is a different life than along the coast. It is open potato fields. It's magnificent hills. ATVs are a serious way to get around. A lot of people get around on their ATVs. They travel too and from restaurants. They do a lot of activities on ATVs. I certainly understand the concerns of the good Senator from Aroostook. In the southern part of the state, where a landowner might only have 10 or 15 acres of land, where landowners are very close together, and where there is a big population, there are serious problems associated with ATVs.

One last point, it is a sad thing when we lose our rights. I wanted to give you some history. This law, as we are trying to amend it now, was existing State law. It was changed last year to now be before us to be changed. That tells me how very quickly landowners paid attention to the statutory change. That is why there is an outcry and that bill is now before us to be converted back to what was law two years ago. To think that there weren't a lot of landowners complaining is just not quite accurate. In southern Maine there are a lot of landowners complaining. That's why I am standing here to not support the pending motion and to revert back to the old statute.

THE PRESIDENT: The pending question before the Senate is the motion by the Senator from Oxford, Senator Bryant to Indefinitely Postpone House Amendment "A" (H-759). 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 (#396)

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

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

ABSENT: Senators: MILLS, SCHNEIDER

20 Senators having voted in the affirmative and 13 Senators having voted in the negative, with 2 Senators being absent, the motion by Senator **BRYANT** of Oxford to **INDEFINITELY POSTPONE** House Amendment "A" (H-759), in **NON-CONCURRENCE, PREVAILED.**

On motion by Senator **BRYANT** of Oxford, Senate Amendment "C" (S-507) **READ.**

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

Senator **BRYANT:** Thank you, Madame President. Men and women of the Senate, I present this amendment today as the best compromise that I could find for a number of reasons. Over the last 7 to 10 years we have continually moved in a direction to find middle ground between all of our recreational activities that we do in this state, whether it be boating, ATV, snowmobiling, or outside activities. As we moved through that things change and people try to get to the best place where they can get to. I think this amendment brings us there. What this amendment does is allows the law enforcement officer to stop an all terrain vehicle operated on privately owned property without a particular suspicion to believe a violation of law has occurred when the private property owner has affirmatively requested the law enforcement officer make such a stop on that private landowner's land. What it does is clearly articulates in law that landowners that want not only the warden service, but it could be the State Police, the sheriff, the town officer, the constable, or anybody else that enforces the law to be able to make these stops on privately owned property if the landowner wanted them to do so. I think that's fair. It doesn't take away the rights of people who do not want that activity to happen to them because what we have done over the last 4 or 5 years is put an incredible body of law around recreational activities. Under the current law, if you don't allow it to work, you would bring that whole body of law onto someone that was on their own property, doing nothing wrong, if we don't meet in the middle. I think this is a good amendment and I'd urge you to support it.

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

Senator **TRAHAN:** Thank you, Madame President. Ladies and gentlemen of the Senate, the amendment before you is really what exists in current law. If a landowner does not want a person on their property they can simply tell law enforcement and law enforcement then knows about it. How is law enforcement supposed to know what a person's boundaries are? How are they supposed to know where a person's land ends and where it begins? I guess they'd be spending a lot of time with their town clerk, looking at their maps and trying to figure that out. This amendment would, I think, cause some real problems. First of all, I'll use my in-laws for an example, they have 250 acres. Five or six people have permission to be on their property with ATVs. Some do not. How do you break that apart? How does a law enforcement agent know who has permission and who doesn't? It just creates a complete nightmare. Worse than that, it extends the power that should be vested in the constitutional statute with our legislature to dismiss articulable suspicion to the landowner. Think about that for a moment. We would be extending that privilege, that responsibility that exists in the legislature, to the individual landowners. They would then be the ones who decide who has a constitutional right and who does not. That authority should reside only with this legislature and this amendment would create a precedent that I think could be very disturbing. I also can see how landowners could use this when they have a disgruntled neighbor. Neighbor fighting neighbor, trying to use this authority against those people they don't like. Instead of adopting this amendment is there something else that we can do

for a compromise? I would certainly be interested in listening to that, but this amendment, having talked to the landowners and others, is not a compromise. I think what was done in the other Body was a compromise.

On motion by Senator **TRAHAN** of Lincoln, 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 Sagadahoc, Senator Goodall.

Senator **GOODALL:** Thank you, Madame President. Men and women of the Senate, I rise today in support of the pending motion and am going to be joining the good Senator from Oxford. I have struggled with this issue, as I'm assuming many of us have, from its inception in this Body and more or less in committee this year. It's one that I did not take lightly. I think it's important that people rise and defend our constitutional rights and we have to be very cautious about eroding those through statutory action, legislative action. We have to be cognizant of the fact that law enforcement needs suspicion in order to stop people. We should not waive that right. We should not allow someone to be pulled over on their own land for no reason whatsoever. The pending amendment, that hopefully will be adopted, is going to strike a balance. Yes, it will require some additional work. Yes, it may put a small burden on law enforcement. That burden is worth it when it is protecting our constitutional right. The Forth Amendment is something that we should not take lightly. I would encourage everyone to join the good Senator from Oxford.

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

Senator **NASS:** Thank you, Madame President. Ladies and gentlemen of the Senate, in addition to the constitutional side of this I think we need to look at the practical side of this, so I'm speaking in opposition to the proposed amendment. There is no practical way for law enforcement, all collected together, to deal with this in a manner that makes any difference. It's my understanding there are more than 120,000 landowners in the state that own 10 acres or more. You could include those folks with smaller acreage and you'd be close to 200,000 landowners. At any one time we have about 40 wardens out there. They are the ones that primarily spend their time chasing ATVs. If you are a county sheriffs deputy or State Police you don't get very far chasing a young kid on an ATV. They are in the woods pretty quickly. The practicality of this for landowners is that they have a decision to make. The question is, do I protect my land from abuse or don't? If we pass this we are providing no help to landowners. Not in all cases but in many cases the answer that they are going to provide is to post the land. In my area I recently attended a couple of town meetings. Folks were coming up to me, ATV club folks, asking for a change in this law. While there may be differences, certainly in my area, this is an important determination of whether to allow access or not. You pass this amendment and it's a clear message to landowners that we don't care about what happens to their land and they are on their own. That means land is going to be posted. 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, just to follow up on the Senator from York, Senator Nass' comments. The farmers in Aroostook County came down here 2 or 3 years ago worrying about ATVs going through their fields because they spread disease. If you are selling to McCain's, who is super careful about what goes through those admittedly fattening french fries, even though they are using different oil now, you have to be concerned. That's a plug for the french fries, I guess. The gentleman I was talking to said he allowed exactly two people to go through his fields because if you are picking up blight on those tires and spreading them all over the place you could damage millions of dollars of product if you went through the 50,000 acres that are up there. The landowners I have in Aroostook County say they will post if they have to. I can't speak for all of them, but when a farmer looks me in the eye and says they have, basically, allowed two people to go across their land because he trusts them, I think you can see that this is not a two-Maines issue in some ways, it's an economic issue for those of us who live in those areas where we are very careful about the quality material that is coming out of there. Broccoli in some cases and potatoes in another.

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

Senator **GOOLEY:** Thank you, Madame President. I, too, am opposed to this pending legislation. Being a consulting forester and a landowner, I've done a lot of work on small wood lots. I'll tell you, it's very difficult to find the lines on many of these small wood lots. As was previously mentioned, there are over 100,000 small wood lots. Some of them are owned by out-of-staters who don't get into the state very often. If we want to create a can of worms this is one way to do it, folks. I'm opposed to this legislation. Thank you.

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

Senator **BRYANT:** Thank you, Madame President. Men and women of the Senate, we've had these discussions a number of times. As far as current law, if you are on agricultural land you need written permission. What we are trying to do here is find a compromise that everybody can live with. What we have is tree growth pieces. We have open land space where we give benefits to people to keep that. We have a dairy stabilization fund in which we try to make sure that the farmers are taken care of. We try to strike a balance in what everybody does. I think what this amendment does is say that if, in fact, you are a farmer and you don't want anybody on your land, and you have a large tract of land, the warden knows that. I would say this to people from law enforcement around the whole state, this law is enforced by anybody; the town police officer or your town constable. The argument that somehow these people don't know where ATVs should be and where they shouldn't be is a bit much because our Inland Fisheries and Wildlife budget goes to the warden service, putting boots on the ground and making sure that the landowner is being protected. One of their main jobs is to be a landowner relations specialist. That's part of their function. They are out there talking to landowners, making sure that things are

happening in a proper way. What we are trying to do, as we move forward to the long term in the state, is have policies that meet in the middle and move forward with not just one person having all the apples. I'd encourage you to vote for the pending motion.

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

Senator **TRAHAN:** Thank you, Madame President. Ladies and gentlemen of the Senate, just to clarify a point just made around the written permission. I would remind you that the warden would have to be the one to define the agricultural lands. Without the ability to stop them he wouldn't be able to check for the written permission. I'd like to speak to the Senator from Sagadahoc, Senator Goodall's point about the constitutionality, the loss of rights, and whatnot. I remind the Body that there was a Supreme Court ruling just recently that clarified that this type of stop was reasonable. I would remind the good Senator that the courts are often times the entity that defines what is reasonable for regulation. This is a regulation. It's not my intent to take away a person's constitutional right, but the courts and the legislature define what is reasonable. It was found by the courts, in a majority report from the Supreme Court, that it was reasonable to make these types of stops.

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

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

THE PRESIDENT: The Senator may pose his question.

Senator **SHERMAN:** Thank you, Madame President. I'm interested in the enforcement issue. I wonder if you could tell me how many game wardens are out there that would be doing this work and where they are stationed?

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 Oxford, Senator Bryant.

Senator **BRYANT:** Thank you, Madame President. Ladies and gentlemen of the Senate, I will just repeat again, this is not only for the warden service. This law is to be enforced by all law enforcement in the state of Maine. Anyone who has authority to the forest ranger. I believe we have, to answer the question, maybe 106 or maybe 109, I can't remember exactly.

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

Senator **GOODALL:** Thank you, Madame President. Men and women of the Senate, it is a great thing in our society in this country that we have three branches of government. I would encourage all of you to read that majority opinion, a mere 4 - 3 opinion, and the very strong dissent by the 3 in the minority. I stand here today joining that dissent. I think, if you spend the time to go back and read it, that the law is clear and that a majority of the state would not necessarily, without reviewing that

opinion, agree because, in my opinion, the majority clearly flouts the Forth Amendment rights to citizens. I encourage you all to take some time to review that. 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, two points on agricultural land. If there is a danger of blight or something serious like that happening I think that, for all intended purposes, the farmer should post it and not allow anyone on it if it's such a severe issue because I don't think that under either one of these bills he's probably going to be able to control every person from going onto that land. Even under posting I don't think he's going to have an iron clad deal where he's going to stop everyone if there is an issue of blight being transported. On the practicality issue for wardens, I don't know, I'm not a lawyer, and I don't look at it as much as I should, but if you read down through the constitution I don't think at the bottom there is a disclaimer that says, 'If it gets too hard, just don't follow any of the above lines.' I would think that we would want to go ahead and enforce the law as it is written and if it is hard then maybe somewhere down the line we can come up with a better suggestion.

THE PRESIDENT: The pending question before the Senate is the motion by the Senator from Oxford, Senator Bryant to Adopt Senate Amendment "C" (S-507). 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 (#397)

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

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

ABSENT: Senators: MILLS, SCHNEIDER

20 Senators having voted in the affirmative and 13 Senators having voted in the negative, with 2 Senators being absent, the motion by Senator **BRYANT** of Oxford to **ADOPT** Senate Amendment "C" (S-507), **PREVAILED**.

PASSED TO BE ENGROSSED AS AMENDED BY SENATE AMENDMENT "C" (S-507), in NON-CONCURRENCE.

Ordered sent down forthwith for concurrence.

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

Emergency Measure

An Act To Promote the Establishment of Innovative Schools
S.P. 706 L.D. 1801
(H "A" H-800 to C "A" S-455)

Tabled - April 2, 2010, by Senator **BARTLETT** of Cumberland

Pending - **ENACTMENT**, in concurrence

(In Senate, March 31, 2010, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-455) AS AMENDED BY HOUSE AMENDMENT "A" (H-800)** thereto, in concurrence.)

(In House, April 2, 2010, **PASSED TO BE ENACTED**.)

Senator **RAYE** of Washington requested and received leave of the Senate to withdraw his request for a Roll Call.

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

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

ENACTORS

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

Act

An Act To Distribute Funds Received from the Racino in Bangor to the Department of Health and Human Services, Office of Substance Abuse

H.P. 569 L.D. 833
(H "A" H-791 to H "A" H-785)

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

Resolve

Resolve, To Develop Practices for Developments of State and Regional Significance in Order To Reduce Dependency on Fossil Fuels and Meet the State's Greenhouse Gas Emissions Reduction Goals

S.P. 341 L.D. 891
(H "A" H-801 to C "A" S-386)

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

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

ENACTORS

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

Emergency Measure

An Act To Enhance the Redevelopment of the Brunswick Naval Air Station

S.P. 629 L.D. 1664
(C "A" S-503)

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

Emergency Measure

An Act To Decriminalize Violations of Rules or Permit Conditions of the Baxter State Park Authority

H.P. 1310 L.D. 1824
(C "A" H-812)

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

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

ENACTORS

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

Act

An Act To Clarify Maine's Phaseout of Polybrominated Diphenyl Ethers

H.P. 1105 L.D. 1568
(S "C" S-502 to C "A" H-731)

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

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

ENACTORS

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

Acts

An Act To Align the Duties of School Boards Concerning Student Safety with the Requirements of the Federal Gun-Free Schools Act and To Prohibit the Discharge of Firearms within 500 Feet of Public and Private School Properties

H.P. 1206 L.D. 1705
(H "B" H-805 to C "A" H-769)

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

Senate at Ease.

Senate called to order by the President.

An Act To Provide Predictable Benefits to Maine Communities That Host Wind Energy Developments

S.P. 582 L.D. 1504
(C "A" S-501)

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

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

PAPERS FROM THE HOUSE

House Paper

Bill "An Act To Make Administrative Changes to Tax Laws To Maintain a Balanced Budget"

H.P. 1321 L.D. 1830

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

Senator **DIAMOND** of Cumberland moved to **REFER** the Bill and accompanying papers to the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS**, in concurrence.

On motion by Senator **COURTNEY** of York, **TABLED** until Later in Today's Session, pending the motion by Senator **DIAMOND** of Cumberland to **REFER** the Bill and accompanying papers to the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS**, in concurrence.

Senate at Ease.

Senate called to order by the President.

ORDERS OF THE DAY

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

Bill "An Act To Make Administrative Changes to Tax Laws To Maintain a Balanced Budget"

H.P. 1321 L.D. 1830

Tabled - April 2, 2010, by Senator **COURTNEY** of York

Pending - the motion by Senator **DIAMOND** of Cumberland to **REFER** the Bill and accompanying papers to the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS**, in concurrence

(In House, April 2, 2010, **REFERRED** to the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS** and ordered printed.)

On motion by Senator **DIAMOND** of Cumberland, **REFERRED** to the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS** and ordered printed, in concurrence.

Off Record Remarks

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

Senator **PLOWMAN** of Penobscot was granted unanimous consent to address the Senate off the Record.

On motion by Senator **BARTLETT** of Cumberland, **ADJOURNED** to Monday, April 5, 2010, at 9:00 in the morning.