

# MAINE STATE LEGISLATURE

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Senate Legislative Record  
One Hundred and Twenty-Fourth Legislature

State of Maine

Daily Edition

Second Regular Session  
January 6, 2010 to April 12, 2010

Pages 1209 - 1846

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

In Senate Chamber  
Tuesday  
April 6, 2010

ORDERS

Joint Order

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

Prayer by Paul B. Cates, Vassalboro Friends Meeting.

**MR. CATES:** Let us join together in prayer. Dear God, we gather together in a time of considerable confusion in our nation's politics. All people in this legislative Body are aware that every person here has valuable ideas and insights to contribute to the important deliberations of the Maine State Senate. Surely working from the attitude of mutual respect is essential for our villages, our cities, and for the state government. This morning we need Your help to keep us focused on the wonderful qualities which we have in common rather than focusing excessively on things which divide us. Soon we will celebrate the 60<sup>th</sup> anniversary of the Declaration of Conscience that the little lady from Maine, Margaret Chase Smith, delivered in the Senate of the United States. May the spirit of that historic speech continue to inspire the people of Maine, which was her home. Mainers have too much common sense to get involved in a type of political divisiveness that sometimes infects our federal government. Working with intelligence and common sense, buoyed up by the support of the people of Maine and inspired by Your presence, our beloved state will continue to be a place where differences can be expressed without rancor and where our government of the Maine people will remain a beacon to our nation. We ask Your blessing upon Maine and upon the United States of America. Amen.

Reading of the Journal of Monday, April 5, 2010.

Doctor of the day, Dr. Alisa M. Roberts, DO of Bangor.

Off Record Remarks

Senate at Ease.

Senate called to order by the President.

Off Record Remarks

Expression of Legislative Sentiment recognizing:

The 50th Anniversary of the 1960-1961 season of the New England semi-professional football champions, the Portland Sea Hawks, in which the team won 18 straight games. The Portland Sea Hawks played their home games at the Portland Stadium and drew large crowds, which came to see players who had grown up in the area and had attended Portland, South Portland, Westbrook, Deering and Cheverus high schools. In 1961, the Portland Sea Hawks went on to compete in the United States semi-professional championship game against Kansas City. Maine Governor John Reed donated a significant sum of money so that the team could rent a plane to travel to the game. The Sea Hawks were narrowly defeated. In 1962 the team joined the Atlantic Coast Professional Football League and it remained an active team until 1965. Two players from the 1960-1961 team, Willie Greenlaw and Dick Daniels, were elected to the Maine Sports Hall of Fame. We join all citizens of Maine in remembering the anniversary of this great team;  
SLS 462

Sponsored by Senator DAVIS of Cumberland.  
Cosponsored by Senators: ALFOND of Cumberland, BRANNIGAN of Cumberland, Representatives: ADAMS of Portland, COHEN of Portland, HARLOW of Portland, HASKELL of Portland, HINCK of Portland, LOVEJOY of Portland, RUSSELL of Portland, STUCKEY of Portland.

**READ.**

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

Senator **DAVIS:** Thank you, Madame President. Men and women of the Senate, I was the center on the team, not one of the famous Sea Hawks who made the Hall of Fame, but I was a center on the team and those are very good memories. We're having a banquet in the late summer. Perhaps some of you will buy a ticket. Anyways those were good memories. The Sea Hawks won 18 straight games in a row and then went on to join the Atlantic Coast Football Professional League. There are still many of us left and we're going to have a reunion. Thank you.

**PASSED.**

Sent down for concurrence.

REPORTS OF COMMITTEES

Senate

Divided Report

The Majority of the Committee on **HEALTH AND HUMAN SERVICES** on Bill "An Act To Allow Law Enforcement and Family Members To Petition the District Court To Initiate Assisted Outpatient Treatment"

S.P. 495 L.D. 1360

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-512).**

Signed:

Senators:

MARRACHÉ of Kennebec  
MILLS of Somerset

Representatives:

PERRY of Calais  
SANBORN of Gorham  
JOY of Crystal  
CAMPBELL of Newfield  
LEWIN of Eliot  
STRANG BURGESS of Cumberland

The Minority of the same Committee on the same subject reported that the same **Ought To Pass as Amended by Committee Amendment "B" (S-513).**

Signed:

Senator:

BRANNIGAN of Cumberland

Representatives:

PETERSON of Rumford  
JONES of Mount Vernon  
STUCKEY of Portland  
EVES of North Berwick

(Representative SOCTOMAH of the Passamaquoddy Tribe - of the House - supports the Majority **Ought To Pass as Amended by Committee Amendment "A" (S-512)** Report.)

Reports **READ.**

Senator **BRANNIGAN** of Cumberland moved the Senate **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "B" (S-513)** Report.

On further motion by same Senator, **TABLED** until Later in Today's Session, pending the motion by same Senator to **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "B" (S-513)** Report.

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

**PAPERS FROM THE HOUSE**

**Joint Resolution**

The following Joint Resolution:

H.P. 1323

**JOINT RESOLUTION MEMORIALIZING THE UNITED STATES DEPARTMENT OF EDUCATION TO SUPPORT THE PRESERVATION OF THE TRADITION IN MAINE OF LOCAL SCHOOL BOARDS' SELECTING THE EDUCATIONAL MATERIALS TO BE USED BY THEIR PUBLIC SCHOOL STUDENTS**

WE, your Memorialists, the Members of the One Hundred and Twenty-fourth Legislature of the State of Maine now assembled in the Second Regular Session, most respectfully present and petition the Secretary of the United States Department of Education, the Honorable Arne Duncan, as follows:

WHEREAS, local school boards in the State of Maine have always selected textbooks and other curriculum materials to provide the best education possible for the children in the public schools of Maine; and

WHEREAS, local school boards choose curriculum materials with the guidance of the Maine Learning Results; and

WHEREAS, a number of states have statewide school boards that select the educational materials for all of their students and publishers of textbooks and educational materials often gear the content of their educational materials to those states; and

WHEREAS, federal education standards require all states to adopt common core standards and we in Maine are confident in the Maine Learning Results and want to apply our own methods to meet the federal education standards in order to preserve the integrity of the decision-making process in Maine; and

WHEREAS, the State of Maine has just approved the so-called Common Core of educational standards and wishes to maintain the tradition of selecting textbooks and materials to make certain the standards of education are met; and

WHEREAS, our belief is that textbook and curriculum materials are best selected by local school boards using the guidance of the Maine Learning Results and the rigorous academic scrutiny of curriculum specialists; now, therefore, be it

RESOLVED: That We, your Memorialists, on behalf of the people we represent, take this opportunity to urge and request that Maine's Commissioner of Education uphold and support the tradition of academic independence and integrity exercised by local school boards in the State of Maine in selecting appropriate textbooks and materials for their school districts; and be it further

RESOLVED: That We, your Memorialists, urge and request that the United States Department of Education respect and support the integrity of the Maine State Legislature in its decision to uphold the tradition of local school boards' selecting curriculum materials for the instruction of their public school students; and be it further

RESOLVED: That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to the Honorable Arne Duncan, United States Secretary of Education, to Maine's Commissioner of Education and to each Member of the Maine Congressional Delegation.

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

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

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

**REPORTS OF COMMITTEES**

**House**

**Divided Report**

The Majority of the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS** on Bill "An Act To Make Administrative Changes to Tax Laws To Maintain a Balanced Budget"  
H.P. 1321 L.D. 1830

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-825)**.

Signed:

Senators:

DIAMOND of Cumberland  
CRAVEN of Androscoggin

Representatives:

CAIN of Orono  
MARTIN of Eagle Lake  
ROTUNDO of Lewiston  
MILLER of Somerville  
CONNOR of Kennebunk  
WEBSTER of Freeport

The Minority of the same Committee on the same subject reported that the same **Ought Not To Pass**.

Signed:

Senator:

ROSEN of Hancock

Representatives:

MILLETT of Waterford  
FLOOD of Winthrop  
ROBINSON of Raymond  
NUTTING of Oakland

Comes from the House with 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-825)**.

Reports **READ**.

Senator **DIAMOND** of Cumberland moved the Senate **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence.

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 further motion by same Senator, **TABLED** until Later in Today's Session, pending the motion by Senator **DIAMOND** of Cumberland to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence. (Roll Call Ordered)

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

**ENACTORS**

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

**Act**

An Act To Replace the Maine Limited Liability Company Act  
H.P. 1118 L.D. 1580  
(C "A" H-819)

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

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**Resolve**

Resolve, To Review the Waste Motor Oil Disposal Site Remediation Program  
H.P. 1314 L.D. 1827  
(C "A" H-822)

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

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Senate at Ease.

Senate called to order by the President.

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

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

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On motion by Senator **MARRACHÉ** of Kennebec,  
**RECESSED** until the sound of the bell.

After Recess

Senate called to order by the President.

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

#### COMMUNICATIONS

The Following Communication: H.C. 302

**STATE OF MAINE**  
**124<sup>TH</sup> MAINE LEGISLATURE**  
**CLERK'S OFFICE**

April 5, 2010

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

Dear Secretary O'Brien:

The House voted today to insist on its previous action whereby 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) was Passed to be Engrossed as Amended by House Amendment "A" (H-759).

Sincerely,

Millicent M. MacFarland  
Clerk of the House

**READ and ORDERED PLACED ON FILE.**

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#### ORDERS OF THE DAY

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

HOUSE REPORTS - from the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS** on Bill "An Act To Make Administrative Changes to Tax Laws To Maintain a Balanced Budget"

H.P. 1321 L.D. 1830

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-825)** (8 members)

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

Tabled - April 6, 2010, by Senator **RAYE** of Washington

Pending - motion by Senator **DIAMOND** of Cumberland to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence (Roll Call Ordered)

(In House, April 6, 2010, 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-825).**)

(In Senate, April 6, 2010, Reports **READ.**)

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

Senator **NASS:** Thank you, Madame President. Ladies and gentlemen of the Senate, just a few comments about this proposal. Obviously the Taxation Committee's effort on tax reform, which is now delayed by virtue of the referendum that's going to be put in front of the voters in June, now impacts on the possible outcomes or what happens after that. One of the outcomes is that if the referendum fails to pass, then we're faced with the dilemma of how to implement tax reform and its supposed revenue neutrality starting, potentially, in the middle of the year. The legislature attempting to do something about this runs into two problems, one of which is the obvious conflict with the opinion of the Justices, I think back in 1933, which says we can't do anything to interfere with the referendum process. It is my opinion, and my vote will reflect the fact, that this would be an interference with that. That does not prohibit this legislature from dealing with this issue after the June vote, no matter what the outcome is. Obviously if it fails, the outcome is going to be more important in a couple of different ways. One is a special session. Two, as we often do, to delay a solution to a supplemental budget which would face the next legislature in January. Those are two options which I think are preferable to interfering with the referendum process.

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

Senator **PERRY:** Thank you, Madame President. Ladies and gentlemen of the Senate, I'll be supporting the Ought to Pass Report. When I look at the options available to us on how to deal with this, this is certainly the best option in front of us. We can be proactive and we'll know upfront with very little time or cost to dealing with this. The options left, if we don't deal with how we're going to implement tax reform, are all very messy. As you know, tax reform was supposed to have taken effect on January 1<sup>st</sup> of this year. That's when the income tax rate would have been reduced by some 23%. In conjunction with that, people's withholdings out of their checks, the money that people take home every week, would have been reduced in their checks. That hasn't happened. As we know, this is a rebalancing of tax code where there are sales tax expansions as well. That's where the exportability comes from for this burden reduction. Those sales tax expansions did not occur either. We're left with a \$50 million hole if we do nothing. I expect the voters of Maine will not reject this kind of tax cut, that people are looking for tax cuts, they're looking for lower rates, they're looking to get rid of the

alternative minimum tax, and they're looking to get rid of the sales tax on assisted living facilities. I truly believe that this will not be rejected by the voters, but what do we do? We can't go back to January 1<sup>st</sup> of last year with some sort of retroactive sales tax. Do we want to come in for a special session to deal with a \$50 million hole in this budget which we just got \$300 and some odd million out of? I just look at this as the cleanest, neatest, and most cost-effective solution. We simply push all the dates forward. It's sad that the people of Maine have lost the \$50 million of burden reduction this year. It's sad the Maine miracle of cutting tax rates by 23% while every other state in the nation is raising taxes is put off a year. At this point I see this as the only option we have. Thank you.

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

Senator **DIAMOND:** Thank you, Madame President. Men and women of the Senate, this bill is just about dates and the impact and the necessity of changing those dates. As we know, L.D. 1495 was passed in this legislature this past spring. The problem with it now is that it's been delayed. It's been delayed by the constitutional authority of the people to have their say, and no one's questioning that. From a fiscal point of view, and a practical point of view, we have two issues to deal with. The first issue, as you've heard, pertains to the \$50 million hole if this veto does not prevail and this becomes law. We have the \$50 million and change to deal with. The answer to that is that we've dealt with bigger issues than that in our supplemental budgets. Starting it next January, what's the big deal? We did \$140 million last January, so what's another \$50 million? The only difference is we hadn't already cut \$800 million last January, so we have a little bit of difference there. Secondly, maybe the most important concern about this bill not passing would be this: every business, small and large, would be impacted by the necessity to change their computer systems, their accounting systems, their registers, and all of that sort of thing, in the middle of July. Now that may not seem like a big deal if you don't run a business, but those of us who have know what kind of turmoil that would cause to retailers in particular. I guarantee you that would be the story of the summer, following around to see what these small businesses in particular, had to do to compensate and make changes to add new taxes that up to this point they've not had to do. That is a huge issue, I think, for our business community and we, as a legislature, can solve that. We can deal with that right now. This bill deals solely with dates. The original intent of this bill was to start at the beginning of a calendar year. That's what this will do, bring it to the calendar year. Everything then starts as it should and there's no \$50 million hole. Maybe most importantly, there's no real negative impact on businesses, small ones in particular, who do not have the capacity to make those changes easily on many occasions, and especially for those of us who live in tourism areas where the summertime can be up to 80% of the business' income. I would ask you to think about that. We can deal with this, dates only, and get it started January 1, 2011 and then we can go from there if it's necessary. Thank you, Madame President.

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

Senator **TRAHAN:** Thank you, Madame President. Ladies and gentlemen of the Senate, I understand the need for this bill, but I think there's a fifty-fifty chance that we would need that bill and that would be after the vote. As a leader of the effort, I would support this in a special session in June. That would alleviate the good Senator's concerns around the business community having to adjust. I feel like we're interfering. I remember the debate around some other items related to tax reform and we didn't want to interfere. I'm not voting against the good Senator on that merit, I'm voting against it because I think it does conflict with taking action on the issue. I would like to address the good Senator from Taxation. This is the third time I've sat in my seat and quietly voted without debating you on the merits of the tax reform. I don't agree with your position that this is just a tax cut. For some it's a tax increase. That's why folks did what they did and went out and got signatures. I don't want to trigger a long debate around the merits of tax reform. I just feel like we'll have plenty of time between now and June to debate this. I'm not going to continue to sit and get beaten up any longer, so if we continue I'm just shooting across the bow that I'm willing to fight if you make me fight.

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

Senator **COURTNEY:** Thank you, Madame President. Men and women of the Senate, I would agree with the good Senator from Cumberland that if this tax reform repeal is unsuccessful then the sales tax would go in right away. I guess I would question whether the sales tax expansion is going to start in a month or start in six months or actually four months in some cases, if that would actually have an influence on how some people might vote. I think that it might. With respect to my good friend, and very well dressed today, Senator from Penobscot, I've heard a number of times about this Maine miracle. I would suggest that you read through the article. It is a very nice sound bite and it sounds terrific, it would be fun to talk about as we get into June. In that article they said that Maine reduced the income tax by reducing spending. That isn't what happened. Maine's proposal to reduce the income tax was by the largest sales tax expansion in the history of the state of Maine. Thank you, Madame President.

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

Senator **ROSEN:** Thank you, Madame President. Men and women of the Senate, I just want to offer an explanation of the vote that's before you on this report from the members of the Appropriations Committee. It pretty well follows the arguments that you've heard but I just wanted to express it directly. We essentially wanted to explore three questions. One was to satisfy ourselves that this would not be seen as a competing measure or one that would qualify as a competing measure. We did have the Attorney General appear before us and she did provide an explanation, from her point of view, as to why she felt it was not. Some of us were satisfied with that explanation and others found it was perhaps a little thin, so we still had some concerns around the competing measure argument. In terms of the budgetary impacts, the argument had been made that we would be called back into special session. My sense is that would probably be unlikely. Calling us back into special session any time, particularly in an election year, is a very difficult task. It really

requires that there is a very tight agreement. It's worked out. Leadership understands that they can really secure a 2/3 vote, call us in and make it happen and get out of town. Those are tough to control and so I suspect it will probably move forward to a January bill. In terms of the notification of the retailers, whenever the implementation takes place, it will be disruptive. The question is when. In terms of notice, I suspect that, because of the debate that has occurred already in the public arena and information that will flow from the June vote and afterwards, the retail community will pretty well be aware that something is coming and they'll start receiving notices from Maine Revenue Services. I don't think they'll be surprised if the vote fails and the current law is enacted. I think they'll be prepared. Our primary concern really was that we were worried that this close to June, 70 days or less until the election, that this would be seen, from either side of the question, as an attempt to influence the question. For those reasons that have been outlined by others, that's the basis for our vote that you see on the report.

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

Senator **BARTLETT:** Thank you, Madame President. Men and women of the Senate, as we engage in this debate, it's important to remember that one of our core constitutional responsibilities, perhaps our most basic constitutional responsibility in the short session, is to produce a balanced budget. Make sure that the budget remains in balance. We're faced with a situation where if a law that this legislature has passed goes into effect, our budget will immediately be out of balance by \$50 million. The suggestion here that we should simply wait for a special session doesn't work very well because we, as a legislature, don't control whether we can come back into a special session. It is the Governor's prerogative alone to determine whether or not we are called into session in the middle of the summer. So the argument seems to be that we should delegate our responsibility to balance the budget to the Governor, either by calling us into special session or, more likely, going to an immediate curtailment this summer, making changes to the spending decisions we have made in this legislature. We've spent the last few months debating what cuts were appropriate and which weren't. I don't think it is proper for us to delegate that, leave it to somebody else, and say it's not our problem. It is our problem. We have a bill that was passed by this legislature. It creates a \$50 million hole once it takes effect. It would be an abrogation of our responsibility not to do something about that here today. As a final note, in terms of the merits of tax reform, we have debated those in this chamber ad nauseam. The arguments are core policy differences between us. This issue will rise or fall based on those policy arguments, not on the effective date of the statute. I certainly hope the citizen's veto wasn't merely an effort to get us into a funny effective date and to rely on that argument. I don't think it was. I give much more credit and respect to my opponents on the other side of the aisle who have raised policy disputes with us over this issue. Let's let the voters decide that issue, but let's also be mindful of our constitutional responsibility to have a balanced budget. Thank you, Madame President.

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

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

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

Senator **DAMON:** Thank you, Madame President. If this motion prevails and L.D. 1830 does pass, does it in any way, either for or against, change the question that the voters of the state of Maine are voting on in June as to whether or not they want to repeal the law that was passed by this legislature? Does this change that?

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

Senator **DIAMOND:** Thank you, Madame President. Men and women of the Senate, I'm pleased to answer that question. This does not change the question. It doesn't change the substance. As the good Senator from Hancock, Senator Rosen, indicated, we did have the Attorney General come before our committee because of a question of competing measure. It does none of that. It simply is a matter of moving the dates from one date to another, which happens to be January 1, 2011.

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

Senator **ROSEN:** Thank you, Madame President. Men and women of the Senate, I'd just like to respond to a couple of points that were raised by the Majority Leader. In terms of the status of the budget when we adjourn pending the outcome of the referendum in June, when we adjourn this week, we will be adjourning with a budget in balance. The budget is in balance and will be in balance when we adjourn. The idea that some future pending action, either at the polls or in the economy or anything else, that may eventually drive us out of balance, we're not required to anticipate any unforeseen or expected possibility. The fact is, the budget is in balance and will be in balance when we adjourn. In terms of coming back into business here for a special session, I believe that the legislature does have the authority to call itself back into special session. I'm more than happy to be corrected if that's not the case.

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

Senator **HASTINGS:** Thank you, Madame President. Men and women of the Senate, I enjoy reading our little booklet sometimes during debate, which includes the Constitution, and I too believe that perhaps there is a procedure for us to come back in. I refer the Body to Article IV, Third Part, Section 1 of the Constitution of Maine which first deals with the setting of two regular sessions and then states that, 'The Legislature may convene at such other times on the call of the President of the Senate and Speaker of the House, with the consent of a majority of the Members of the Legislature of each political party, all Members of the Legislature having been first polled.' I do believe that allows a special session without the requirement of the Chief Executive.

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



**ROLL CALL (#403)**

Senator **TRAHAN**: Thank you, Madame President. Ladies and gentlemen of the Senate, I just would like to disagree a little bit with the Senator from Cumberland, Senator Diamond. I hate to do that because I have such great respect for him. When you fill out your signature on a petition, contained within the signature pages, front and back, is the bill. In that bill is the effective date of that legislation. So technically we are altering. If a person decided to read the law that was in between the signature pages, it would contain that effective date. If we change that effective date, we are changing what people signed.

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

Senator **RAYE**: Thank you, Madame President. Men and women of the Senate, just briefly. This is a fascinating place. This debate is remarkable. It was just a few short weeks ago that this Body rejected legislation on the grounds that there could be an appearance that it could be influencing the outcome of the referendum that's before us in June. Yet here we are, a few short days later, on the verge of passing legislation that is very clearly designed to do that. I just couldn't let the irony pass, given the comments of the good Majority Leader, the Senator from Cumberland, that we are about to do something that stands in direct contravention of something the Senate did just a few short days ago.

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

Senator **BARTLETT**: Thank you, Madame President. Ladies and gentlemen of the Senate, I'd like to thank the members who have pointed out the constitutional provision I overlooked and I do stand corrected. I do, however, think it does impose an incredible difficulty to think that we're going to get a majority of each party on each end of the hall to agree to come in in the middle of the summer. In any event, I do stand corrected and I apologize for my error. The last point that was raised, dealing with this particular measure versus some bills we've debated recently, the difference here is that those bills were making substantive changes to the tax law that we put in place. This isn't a substantive change. We've gone to the Attorney General and have gotten the Attorney General's advice that this is not a competing measure or it does not interfere with the process in the way that those other bills did. So what we're talking about here is simply a budget balancing mechanism to ensure that the original intent of the legislation carried out if it is approved at the polls. Thank you, Madame President.

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

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

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

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

**READ ONCE.**

Committee Amendment "A" (H-825) **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.

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

SENATE REPORTS - from the Committee on **HEALTH AND HUMAN SERVICES** on Bill "An Act To Allow Law Enforcement and Family Members To Petition the District Court To Initiate Assisted Outpatient Treatment"

S.P. 495 L.D. 1360

Majority - **Ought to Pass as Amended by Committee Amendment "A" (S-512)** (8 members)

Minority - **Ought To Pass as Amended by Committee Amendment "B" (S-513)** (5 members)

Tabled - April 6, 2010, by Senator **BRANNIGAN** of Cumberland

Pending - motion by same Senator to **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "B" (S-513)** Report

(In Senate, April 6, 2010, Reports **READ**.)

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

Senator **BRANNIGAN**: Thank you, Madame President. Men and women of the Senate, this is a very important matter to me and to many people who have serious and persistent mental illness and to families of folks who are so afflicted. It is really a push between

those who have serious mental illness and their families. This has been going on for many, many years and it is a pull and haul. Both have good intentions and both have fears. That is where we're at, between these two groups. This has been going on a long time. In the past, people who had serious mental illness were easily incarcerated in mental health facilities. We don't use the word incarcerated. We use the word committed. They were easily committed. A father, for example, who was close to the doctor in town and close to the judge, has a daughter is not doing as he would like. She might end up, as I know of one, 36 years in the Augusta Mental Health Institute. We've come a long way since then. We've come a long way in putting together protections for those who are seriously and persistently mentally ill. There are those who don't even understand they are, and usually that's the case, and therefore they don't take the wonderful medications, difficult medications that are getting better all the time, that we have today. That's the way the past was. Now we do have protections. I believe I'm speaking for those who have serious and persistent mental illness. I'm speaking for the people who run the departments of consumer affairs. I'm speaking, I think, for the Department in many ways. I'm speaking for the Disability Rights Center. I'm representing myself as an expert in working with people who have serious and persistent mental illness. I've done it for years and years, so I believe I know what I'm talking about.

The movement has been to commit people not just to the hospital, but commit them to treatment in the community. If you don't follow what we say, we put you in the hospital or we pull you back to the hospital. It's a very powerful position to be able to commit somebody. Right now we have two experiments going, started by the sponsor of this bill. Against all odds, he convinced us a few years ago to set up two ACT teams. Those are special community treatment teams. There are several in the state, but there are two set up. One for people in Augusta Mental Health Center, now called Riverview. We have nice names now. One in Dorothea Dix. They were slow getting started, but they are running now and we are evaluating them. The report hasn't even come to us yet, but will be coming soon to the Health and Human Services Committee. We will look at that, the Department will look at that, and I believe it will show that this is a successful model. When there is money, because these ACT teams are expensive, and there are only these two that the Department say are set up to have people committed to them. There was, at one time, a \$1 million fiscal note to set up something with this bill and that's been taken away. This means there will be no progress at this time. Otherwise, people are going to be committed to ACT teams that are not prepared. We are going to ask that you allow these pilots to go forward and not to rush to have more people committed to the community. This bill would allow that. I think there are some amendments that I haven't seen. Right now this bill takes away many of the very strict prohibitions that protect people with mental illness. It takes away one examiner. Right now there are two, there would be only one. It increases the waiting time a person has to wait to be judged mentally ill and have all of the fears that are verified by one or more examiners. Now they can wait only 24 days, this will go up as high as 35. It's beginning to head in the wrong direction. It's taking away things that we have found that have helped. It's cumbersome, yes, and it should be. We're taking away people's rights. You're putting them in incarceration in a way. You're committing them to treatment or at least to being held in a place that is much nicer now than it was. The first time I went to AMHI in 1956, there were

1,800 people there. It was an experience. I was very moved by the staff because it was a tough assignment. There were 1,800 and we're down to 100.

Let me give you just a couple of scenarios that could come out of this bill. The ACT teams have varying abilities because they haven't been funded sufficiently at times to have all the people working there they need. The head of an ACT team, probably a nurse practitioner, could decide one of the people in the community, one of the people that he or she is working with now, is on their way toward a break. This reduces the requirements for deciding how bad they are, how dangerous to themselves or others they are, it reduces that standard. The head of that ACT team, or the Commissioner, can do this. I think she can do it anyway, but not officially here. It allows the head of that ACT team, who may not be as capable or maybe even vindictive, to take one of those people to court. They have to wait, they have only one examiner now, and they can have them committed back to their care. That's a powerful thing. If not, they'll be hauled into a hospital. The hospitals, who have a number of people that they have a hard time discharging, can decide if this person would be better off in an ACT team in the community and wouldn't fall backward. If a court says that that person has to have an ACT team and the ACT teams are full, and they aren't ready for these folks by the way, it's court ordered, so somebody has to go or somebody on the waiting list won't get in. It gets the system somewhat fouled up. I have a list here of some things that I should say and the last thing is beg. I really beg you to let us go the way we are now, not to accept this bill. 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, mental illness and cancer. A lot of people probably wouldn't think they have a lot in common, but they do. Both are biological illnesses. Mental illness is really an imbalance in the chemistry in someone's brain. It's biological, it's not somehow mysterious. I think we shouldn't even be calling it 'mental illness,' we should be calling it 'brain imbalance disease' because that's what it is. Both can really adversely affect someone's health. The issue with mental illness is that it affects the organ of the body that makes decisions, the brain. Approximately 90% of people diagnosed with mental illness accept diagnosis, follow a treatment plan, and have a lot of successes in their lives. Four or five percent more of folks, through intense counseling, realize that they need to be on a treatment plan and gain that insight and stay on a treatment plan. It's that 5% to 7% of consumers with a mental illness that have no awareness of their illness. It's called agnosia. In the Majority Report it's referred to as the inability to make an informed decision. They have no awareness of their illness. They may be maintaining a job and a family, or they may be laying in a gutter at 20 below. Inwardly they don't feel any difference. You can flood somebody like that with services and counseling, but they never accept it. Most of the time they become non-compliant with their treatment plan and end up either in a mental health hospital yet again, or committing a crime and ending up in our jail system. They also tend to self-medicate to quiet the voices with alcohol or drugs. They also tend, at that point of eminent threat to themselves or others, to hurt themselves or others. This is the group, ladies and gentlemen of the Senate, that is filling our jails

and filling our mental health hospitals. I had a consumer call me a month ago opposed to this bill, and it's her right to do so. She stated to me that it was her right to stop her treatment plan if she wanted to, and she also stated to me that she has been hospitalized in Maine with 49 commitments. If each one of those commitments was three months, we've spent several million dollars committing that one individual over and over and over again.

As the good Senator from Cumberland alluded to earlier, how do you best help these folks? Do you let them somehow figure it out on their own that they need to be on a treatment plan? Or do you do the compassionate thing, in my opinion, and intercede more forcefully in their lives? Last year New Jersey became the 43<sup>rd</sup> state to pass a statute similar to this one, to help consumers who lack insight into their illness. L.D. 1551 that passed a few years ago has been alluded to, and that allows a court order assigning someone to an ACT team at the time of release from a hospital. That has had a huge positive effect on those consumers who lack awareness of their illness. For someone to work with an Assertive Community Treatment team, which is an ACT team, coupling that with a court order has shown a marked increase in people's compliance. In New York state, where they looked at the linear data from the same type of statute, they found an 87% drop in incarceration rates, an 83% drop in arrest rates, a 77% drop in psychiatric re-hospitalizations for this group of folks, and a 74% drop in homelessness. This Majority Report before you today expands somewhat on the court order that we've had in effect now for four years. It says that an ACT team can petition the courts to have someone committed to an ACT team and committed to staying on a treatment plan in the community. It gives the judges another option, a less restrictive option if someone has stopped their treatment plan and has been working with that ACT team and the ACT team knows that individual, they may not be an eminent threat to themselves or others, but they may be of substantial risk of causing harm. After a due process hearing with our courts, they may be, as I said, committed to an ACT team. As a mother who testified for the bill before the Health and Human Services Committee pointed out, an eminent threat to yourself or others for her was when she was locked in her bathroom with her son trying to beat down the bathroom door to get in to kill her, that was an eminent threat to herself or others. A month previous to that when he was up all night just screaming at the top of his lungs, that was not an eminent threat to himself or others, it was a substantial risk of harm. This bill would attempt to catch that person before they get to that eminent threat and commit a crime or end up in a jail or in a mental health hospital. When you take someone, as in several Maine cases of families that I've talked to, where their loved ones with a mental illness in the previous 12 months had spent 10 of those in a mental health hospital and out on a progressive treatment plan, called a PTP plan, had only been in the hospital 10 days out six months, that huge difference for the first time in that family's life, they felt they had a little bit of hope. A little bit of hope that their family member might make it. In talking to members of ACT teams all over this state, they are so encouraged that this bill, if it passes, might give them a tool that they've desperately wanted to have in Maine. Some of these ACT team people have worked in other states that already have this statute and they realize the advantage in how it can help them by catching people before they totally get to that eminent threat to themselves or others. I would estimate last night that there were 50 to 75 families in Maine living a hell that most of you can only imagine, caring for a loved one today that no

one else is caring for. Their loved one doesn't meet the eminent threat to themselves or others standard, but these families are scared to death of this loved one because of their actions. There was another mother who testified before the Committee that she had three locks on her bedroom door on the inside because she felt so scared of her daughter. The Majority Report could give these families and their loved ones some help in a less restrictive setting.

I want to close by reading portions of a letter from a sister in Portland that was submitted to the Health and Human Services Committee. 'My brother did not choose to be afflicted with schizophrenia anymore than he would have chosen to be afflicted with cancer. Further, unlike a patient who has cancer, my brother is not in a position to make an informed choice about his treatment options. The very nature of his illness deprives him of that choice. His illness directly affects the way his brain functions and takes away his ability to recognize reality and to rationally weigh out the consequences of his actions. So when it comes to depriving my brother of his personal liberties, schizophrenia is already doing a fine job of that. This law would help my brother and others like him to actually regain their ability to make their own choices, and isn't that what the concept of civil liberties is all about?' Then she includes a statement written by her brother. I think this is very telling to me and I'm going to close my testimony with it, and thank you for your patience. Her brother wrote, 'Tuesday the court order came to force me on medications. When it happened I felt like I was losing part of my soul, however, within two months I realized that wasn't possible. There are times when we do things, or are even coerced into doing things, that don't seem to be of our will or our choosing, which prove to be necessary and helpful. Fortunately for me this forced treatment was one of those circumstances.' I urge you to oppose the pending motion so we can go on and support the bipartisan Ought to Pass Report. Thank you.

**THE PRESIDENT:** The Chair would remind people that we're talking about the Minority Report. Please confine your comments to the Minority Report, whether you wish to accept it or reject it. The Chair recognizes the Senator from Kennebec, Senator Marraché.

Senator **MARRACHÉ:** Thank you, Madame President. Men and women of the Senate, I urge you to vote against the Minority Report and move with the Majority Report which is where I am in the Committee, along with two other providers who are on my side of the issue. The good Senator from Cumberland, Senator Brannigan, talked about speaking as an expert on this issue. I'd have to say I'm speaking not as an expert, but as one who is forced to act like one because I am forced to take care of all these patients who could have an option with the other report of having out-patient treatment that I cannot get them into. There has been a lot of talk about involuntary commitments going up. I can assure you that I doubt that would happen. I cannot even get some of my patients the help that they need, out-patient or in-patient for that matter. I have a patient right now who is out for the second time now from Riverview. She was there for eight months, and prior to that she was there for six months. To this day she calls my office six to eight times. My secretary is fed up. She asks me every day if we can get rid of her please and I tell her no, we don't do that, we're going to take care of her. Just keep telling her it's going to get better and continuously call her social worker. We continuously try and get her into services. We

cannot. There are very limited available treatments out there, and this is a means of getting more people the help they need. At my last visit with her she told me 'I want off these meds.' She told me how it's a horrible situation to have to take them and she told me what they do to her and how they make her feel. I try to assure her that she felt this way when she wasn't on her meds. We go through everything that transpired before she was admitted to the hospital, after she got out of the hospital, the last time she went off her meds, and we don't want her to go back there. She doesn't want to be there, I don't want her there. We have to do this every single time because she lacks the insight. I don't know how else I can drill it into her. I just keep offering it up, keep reassuring her, and keep doing what I can.

I will tell you about another patient of mine who unfortunately did not get to go to Riverview. Not that many people want to go there, but she's not going to be going there because she's dead. I saw her when she was having a lot of these symptoms and I told her she needed to be admitted and that I would arrange for it. I would literally shut my office down and get crisis into my office to work with her. She was so terrified that she said 'Absolutely not, you will not do that.' She had a clear frame of mind and we talked about it ad nauseam. I told her that I would call her every single day and if she didn't answer that phone call I would send the police. That Friday we called all day long and she never answered. So we called the police. I'm choked up, sorry. They went to her house and she was not there, so we didn't know what to do. We called the family and we did whatever we could. They were looking for her everywhere. She knew I was calling that Friday and we found her on Monday at a friend's house who had gone to Florida and she had offered to take care of her home. She killed herself knowing that we would not find her until it was definitely too late. These are the people I'm fighting for, to get them the treatments they need before something terrible happens. I urge you to support the Majority Report and vote against this one. 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, as somebody who participated in drafting both reports, I would like to just confine my remarks to a brief description of what I see the Minority Report is doing and what I think the deficiencies are in that report. Everyone seems to agree that assisted out-patient treatment, as it is more commonly called in the United States, here we're calling it the Progressive Treatment Program or PTP, but whatever it is called, it has been successful. Thanks to a bill that was passed two years ago with the sponsorship of the Senator from Androscoggin, Senator Nutting, the two state hospitals in Maine have authority under present law to petition the court for an order that someone be required to comply with a treatment plan that is well developed by professional people in consultation with the patient and with cooperation with the patient where feasible. To arrange for the discharge of that patient on an out-patient plan, so that person can reside in the community conditioned on compliance with a well framed plan that may include such things as reporting in frequently to caretakers, living in a certain location where they are safe, taking certain medications or variants on those medications as their doctor may prescribe, getting to the doctor's office on time and making appointments. These elements of a plan are put in place in order to, frankly, enhance the civil liberties of the

person that we're dealing with so they won't have to reside in an institution. To the great credit of the sponsor of this bill, this program, which is currently in force and is being administered in two of our cities, has been successful by most accounts. There are people now residing in the community who very probably would be either on the inside, confined in Riverview or Dix, or dead or in jail. Those seem to be the practical options for many of these folks. The Minority Report to its great credit says let's continue the program. It's an emergency bill. The original experimental program expires, by its own terms, on a sunset of July 1, 2010. It's crucial that our legislature act in some emergency manner to extend this worthy program beyond July 1, 2010. The Minority Report does that and does it just barely. It has occurred to many of us on the committee, a majority of us on the committee, that what's the point in limiting this program to one that can only be initiated when somebody's in the hospital? Why couldn't you save that round trip through confinement and simply initiate the plan in the community? Well not just anybody should be able to initiate it. The title of this bill is highly misleading because the title suggests that any citizen could start this process. That's not what this bill does in any form. In any case, I want to save most of my remarks for talking about the other report if we get to it. I merely need to point out to you that the deficiency in the Minority Report, and the reason that most of us resisted the Minority Report, is that it doesn't provide for initiating these processes in the community. It would require that somebody be hospitalized, be found by a court to be a danger to himself or others, that he ascend to that level of disease and be deprived of his or her liberty, before you could begin to consider these out-patient options. That's the deficiency in the current system and in the Minority Report that most of us on the Committee were trying to address. For that reason, I ask you to oppose the present motion. 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, I'm really so sympathetic to families that have to deal with their loved one who has a mental illness. There is a way to help people and that is to fund community-based skills, to fund the ACT teams, and to fund family support. In the eight years I have served in the legislature we've cut community-based services for people who have mental illnesses. I worry that one of the things that we do in government a lot is always throw money at the back end of any situation that confronts us as opposed to preventing the difficulties that happen down the road. I do have a few questions for people who might be able to answer them. One is, who has the authority to commit a person who has a mental illness and needs to have services from the community? How many people are likely to be committed in the state of Maine? How many people are served through the two ACT teams we have now? Those are things that I don't know. I also worry about this bill that was presented and that we have cut the fiscal note off this bill as well. If we're going to be committing more people to the ACT teams then we really need to be able to finance it. Thank you, Madame President.

**THE PRESIDENT:** The Senator from Androscoggin, Senator Craven poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Cumberland, Senator Brannigan.

Senator **BRANNIGAN**: Thank you, Madame President. Men and women of the Senate, her major question does involve what has been talked about by the other speakers. What they're really doing is begging for more money. The availability of treatment is just not there. The Department says they're not going to put anything more there. They were going to put some money there but they didn't. Either they weren't allowed to or they were talked out of it, or whatever. Just to show you what money can do, regarding the 49 hospitalizations of that woman, there has been a program started, if we could afford more of them we'd be in good shape, of an ACT team combined with a housing organization, with which I was associated for many years. Anybody who's been three to five times in Spring Harbor would be given extra help. They would be enticed to come and live in a place that is supportive and go to that ACT team. That ACT team is in pretty good shape, but it's not ready to take people who are committed to it. You want people committed to it, but you know what I mean, not court-appointed. If we did more of that there wouldn't be people with 49 hospitalizations. We would interrupt that and we would take care of that without incarcerating people. People have mentioned New York. New York has put a lot of money into it. Their equivalent of MaineCare went up 400% as a result of doing this program.

I'm taking advantage, I know in answering questions. This is all about the Minority Report because we are keeping what is in place now, and we are still evaluating it. We haven't gotten official reports on it and the Department has no ability to fund other pieces.

I know that brother who was remarked about. I know his sister, who has been seriously mentally ill for many, many years. She cleared twice and never cleared the third time. She believes that she has 65 children. Now you can imagine what you go through day and night trying to keep all of that in your mind. Her younger brother cleared and he was a poster child and just wonderful. I told him to look at his sister because you can go back if you are not careful. He wasn't careful and he stopped medication. Well, he did, and the last I heard he was in the park in Portland doing those exercises that the Chinese do. What are you going to do? Are you going to send the police after him and tell him that he has to go and be part of this ACT team? How are you going to get him there? We don't want to do that. We want somebody to go down to the park and do this with him. I was thinking of doing this myself with him because that would be good exercise and he's a great guy. You've got to have a friend. Somebody's got to be with him. We have to pay for that. I'd volunteer, but somebody has to pay for that. And there's a chance that he would agree to treatment. Are you going to force him into treatment? We want to keep the program going where we have some funding with these two hospitals and see how we do. When are we going to be able to give more assistance? My apologies to the Senate President for kind of straying, but thank you very much, and thank you all for listening.

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

Senator **MILLS**: Thank you, Madame President. Men and women of the Senate, I only remember one of the questions related to the Minority Report and that was having to do with who has authority to commit. In every single case it is a judge, typically of the district court, and after a hearing has occurred and

somebody whose liberty is at stake has been represented by counsel appointed by the court when necessary. When we use a phrase like 'due process,' that is shorthand for a series of rights, including having somebody who's a Governor appointed judge make the decision. You have a right to counsel. You have a right to cross-examine witnesses. You have a right to put on witnesses of your choosing. You have a right to hear all of the evidence that would justify a finding of commitment against you. That set of rights is all encapsulated in the phrase 'due process.'

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

Senator **NUTTING**: Thank you, Madame President. Ladies and gentlemen of the Senate, to answer the good Senator from Androscoggin's question, I don't believe there would be more than 20 to 25 additional cases a year brought under this expansion of the bill, but those 20 to 25 cases are going to have a huge, huge effect on those families that have already tried every other option out there with their loved one with no success. Again, you can flood these individuals with services. If they don't think they need them or if they have no awareness of their illness, they won't accept the services. This young man, yes at times according to his family, has done relatively well off a treatment plan especially during the summers, but this family has pointed out that on several occasions in the winter this individual has put himself in life-threatening situations because he's not on a treatment plan. If an ACT team petitions the court to put one of their present clients on an out-patient commitment in the community, they're already working with this individual, they already have a slot for this individual. I would add that all ACT teams in Maine, on a regular basis, discharge consumers when they've completed their work and think they're ready to be discharged. Then they take on more consumers. That's the way it is nationwide. Six months from now a certain ACT team that's full now may have some openings. Again, that's normal. There are ACT teams that have openings today. The last thing I'll point out in urging you to oppose the pending motion and supporting the Majority Report, the Department in their report to the Health and Human Resources Committee on this particular PTP program, did make one recommendation. That was to extend the length of this initial out-patient order from six months to 12 months. They cited various studies done in New York, and the Rand study done with consumers in North Carolina, where the back door insight really increased on those consumers in that second six-month period. The Minority Report before you does not make this change to a 12-month period, but the Majority Report does. I would urge you to reject the pending motion. Thank you.

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

Senator **BRANNIGAN**: Thank you, Madame President. I believe we did extend that last year to 12 months and we're asking that that be continued. The time is up for the program in July if we don't do something, which this report will do. I've been neglecting to ask for a roll call. Thank you very much.

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

**THE PRESIDENT:** The pending question before the Senate is the motion by the Senator from Cumberland, Senator Brannigan to Accept the Minority Ought to Pass as Amended by Committee Amendment "B" (S-513) 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 (#404)**

**YEAS:** Senators: BRANNIGAN, BRYANT, CRAVEN, GERZOFSKY, HOBBS, MCCORMICK

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

6 Senators having voted in the affirmative and 29 Senators having voted in the negative, the motion by Senator **BRANNIGAN** of Cumberland to **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "B" (S-513)** Report, **FAILED**.

On motion by Senator **MARRACHÉ** of Kennebec, the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-512)** Report **ACCEPTED**.

**READ ONCE.**

Committee Amendment "A" (S-512) **READ**.

On motion by Senator **MILLS** of Somerset, Senate Amendment "A" (S-517) to Committee Amendment "A" (S-512) **READ**.

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

Senator **MILLS:** Thank you, Madame President. Men and women of the Senate, the Majority Report, which this Body has just so graciously adopted, will permit ACT teams in two other hospitals to initiate assisted out-patient treatment. It will do so without the need to cycle somebody through a hospital, confine that person and take away that person's liberty in the process. The virtue of the Majority Report is that it will allow people to be put onto a progressive treatment plan without first having deprived them of their liberty. The concern that the Department expressed was that maybe more people will be coming into care under this pathway and they don't want to displace folks who are already receiving care, and they would put a fiscal note on this bill if they were compelled to provide care to a larger body of clientele or patients. Our intent is that this will be an option that will be available for people who are already patients within the system and we hope to enhance the value of their care and their treatment by creating a non-hospital option for putting them into a

progressive treatment plan. This amendment that lies before you is one way of accommodating those concerns of the Department. It makes it clear that an ACT team or either of the other two hospitals that will have the power to go to court for this form of relief only if the ACT team who is going to receive the patient for services was in existence on the effective date of this section, and that ACT team is in compliance with nationally-recognized standards, and meets the other criteria set by the Department. In other words, we're trying to say that this bill will not be used as an excuse, at least at this juncture, to create new ACT teams or new clientele for existing ACT teams. This is a way of simply providing an option to people who are already in the system under care and subject to various treatment plans. That's the long explanation for a fairly short amendment. I urge its adoption. Thank you.

On motion by Senator **MILLS** of Somerset, Senate Amendment "A" (S-517) to Committee Amendment "A" (S-512) **ADOPTED**.

On motion by Senator **NUTTING** of Androscoggin, **TABLED** until Later in Today's Session, pending **ADOPTION** of Committee Amendment "A" (S-512) as Amended by Senate Amendment "A" (S-517) thereto.

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

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

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

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

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

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On motion by Senator **BARTLETT** of Cumberland, **RECESSED** until 3:00 in the afternoon.

After Recess

Senate called to order by the President.

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

**REPORTS OF COMMITTEES**

**House**

**Divided Report**

The Majority of the Committee on **LABOR** on Bill "An Act To Amend the Laws Governing the Knowing Misclassification of Construction Workers"

H.P. 1102 L.D. 1565

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-746)**.

Signed:

Senators:

JACKSON of Aroostook  
GERZOFISKY of Cumberland

Representatives:

CLARK of Millinocket  
BLODGETT of Augusta  
TUTTLE of Sanford  
BUTTERFIELD of Bangor  
GILBERT of Jay  
DRISCOLL of Westbrook

The Minority of the same Committee on the same subject reported that the same **Ought Not To Pass**.

Signed:

Senator:

MILLS of Somerset

Representatives:

THIBODEAU of Winterport  
HAMPER of Oxford  
CUSHING of Hampden  
BICKFORD of Auburn

Comes from the House with 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-746) AS AMENDED BY HOUSE AMENDMENT "C" (H-826)** thereto.

Reports **READ**.

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

On motion by Senator **COURTNEY** of York, 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 the motion by same Senator to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence. (Roll Call Ordered)

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

**SENATE PAPERS**

Bill "An Act To Amend the Laws Governing the Election of Androscoggin County Commissioner District Budget Committee Members"

S.P. 747 L.D. 1832

Presented by Senator CRAVEN of Androscoggin. Cosponsored by Representative LAJOIE of Lewiston and Senators: NUTTING of Androscoggin, SIMPSON of Androscoggin, Representatives: BOLDUC of Auburn, CAREY of Lewiston, ROTUNDO of Lewiston, WAGNER of Lewiston. Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

Committee on **STATE AND LOCAL GOVERNMENT** suggested and ordered printed.

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

On motion by Senator **SIMPSON** of Androscoggin, **TABLED** until Later in Today's Session, pending **PASSAGE TO BE ENGROSSED**, without reference to a Committee.

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:

**Pursuant to Constitution**

**Public Land**

Resolve, Authorizing Certain Land Transactions by the Department of Conservation, Bureau of Parks and Lands and the Department of Inland Fisheries and Wildlife and Directing the Initiation of Negotiations Regarding Easements on Certain Land

H.P. 1291 L.D. 1803  
(C "A" H-723; H "A" H-824;  
S "B" S-509)

On motion by Senator **NUTTING** of Androscoggin, **TABLED** until Later in Today's Session, pending **FINAL PASSAGE**, in concurrence.

**Resolve**

Resolve, Directing the Department of Corrections To Coordinate Review of Due Process Procedures and To Ensure Transparency in Policies Regarding the Placement of Special Management Prisoners

H.P. 1139 L.D. 1611  
(C "A" H-763)

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

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Senate at Ease.

Senate called to order by the President.

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Off Record Remarks

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**ORDERS OF THE DAY**

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

HOUSE REPORTS - from the Committee on **LABOR** on Bill "An Act To Amend the Laws Governing the Knowing Misclassification of Construction Workers"

H.P. 1102 L.D. 1565

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-746)** (8 members)

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

Tabled - April 6, 2010, by Senator **BARTLETT** of Cumberland

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

(In House, April 6, 2010, 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-746) AS AMENDED BY HOUSE AMENDMENT "C" (H-826)** thereto.)

(In Senate, April 6, 2010, Reports **READ**.)

**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 just say that this is a bill that probably was worked on the most in the Labor Committee. It was worked on right up until this morning. Since it came out of Committee as divided, there have been a number of concessions

with a stakeholders group that worked with us to try and come to some compromise. We have increased the notice period for a hearing on a possible stop-work order from 48 hours to three business days. The decision at the hearing regarding a stop-work order would constitute final agency action allowing for immediate appeal to court. A stay of any stop-work order is allowed if the contractor obtains compensation for workers whose status was in question. We provided that a contractor obtaining insurance would not constitute evidence of violation in the hearing. We removed misrepresentation of one or more employee's status as an immediate trigger to a stop-work order, and allowed for penalty payment agreement as opposed to requiring the contractor to pay the full penalty before a stop-work order is released. If you're wondering what a stop-work order is, it's something we have talked about for the last two years in the Labor Committee with the construction industry. Last year we actually had a bill that was driven by the industry because the industry was upset with people that were coming into the construction industry and working without Workers' Comp, so the amount of money that they saved by not paying Workers' Comp they could use to underbid in the process. They were getting the bids and the people who were considered legitimate construction companies were losing the bids. The Workers' Compensation Board has a whole host of fines that they have given out to people who don't have Workers' Comp or have some violation of the Workers' Comp, and they have not been able to get those fines for a number of reasons, and some of those companies just left the state. This is an attempt to whenever you know for sure that a company has people working for them that are not covered on what is a very dangerous construction site. After the Board notifies them that they don't have the Workers' Comp, after three days if the person does not show that they've purchased Workers' Comp or they had Workers' Comp, they could shut them down. They will not shut the rest of the operation down, but it will protect the people who are working that have no Workers' Comp. I think that we certainly want our employees to be protected, because if they're not protected and they get injured, the entire Workers' Comp system picks those people up and it drives up the cost of Workers' Comp for everyone. Employers who are doing the right thing should not have to make up for the cost of some people who may not be doing the right thing. It's an important law and it's something that I honestly and truly feel in my heart is going to lower Workers' Comp costs overall for the businesses in the state of Maine. I'm actually very tired of this bill because we have worked and worked and worked but as tired as I am of this bill, I'm still happy with the fact that we've come to a consensus. Not everyone is completely happy but we've gotten to a place where I think everyone realizes that this is what is good for the industry. I ask you to support it.

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

Senator **MILLS:** Thank you, Madame President. Men and women of the Senate, this bill comes before us on the assumption that there isn't any enforcement going on and that there is no provision on the books to force people to buy Workers' Compensation insurance and that's just not true. If somebody who should procure Workers' Compensation insurance fails to do so, the employer is guilty of a Class D crime and if the employer is a corporation, any agent, that is any person working for the corporation who has primary responsibility for obtaining coverage,



is liable for punishment under this section. There are fines that can be imposed and the person can actually go to jail for not getting Workers' Compensation insurance. Indeed, if the Workers' Compensation Board has information that leads them to believe they should be prosecuting somebody or taking action, all they have to do is turn it over to the proper authorities, the Attorney General's office or the DA, and these cases will be taken. I heard no evidence that there is any reluctance to act by our present law enforcement agencies. It seems to me that this is a bill granting some added power to the Workers' Compensation Board primarily to justify hiring two more people at a cost of \$161,000 in the middle of this recession. In passing this tax, which this is, the assessments of the Workers' Compensation Board are a tax on employment in this state. It's a direct tax on employment. If we vote to pass this amendment or this bill, we're voting to impose a tax of \$161,000 on Maine employers in addition to all the other assessments that come with the territory. It was a source of immense frustration to me this spring that our Committee never took the opportunity to conduct an aggressive review of the budget of the Workers' Compensation Board, in the midst of all the other budgetary challenges that this legislature had to contend with: the Highway budget, the General Fund budget, and the other special revenue sources. Every committee in this legislature, all 17 of them, examined with great care the state budget, which was in free-fall until recently. Bear in mind that the Workers' Compensation Board is funded by imposing an assessment on all Workers' Compensation premiums and assessments, and this was never reviewed. The taxes that are being imposed on Maine employers relating to Workers' Compensation as a service, haven't been reviewed by this legislature since at least a year ago. Here we are increasing it by another \$161,000 to provide a remedy that is a duplicate to legal remedies that are already there in state law and have been there for years, with no evidence that I've heard that this added remedy is going to any good beyond the remedies that already exist. We heard that these cases are being prosecuted already. What we're doing is adding two more people to the Workers' Compensation Board with no evidence before us that they can't do this within existing resources. For all of those reasons I'm urging you to vote no on the pending motion. 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, well there you go for negotiating outside of the Committee. The good Senator from Somerset very possibly wasn't there during that time, but we heard the industry say that they needed more enforcement because they have a problem with these rogue companies that have come into Maine and are here just for a short time. You can put all the fines that you want on those people, but if they're gone and they're not here to pay, how do you track them down, and how do you make them pay? It's like that in a host of different industries. You can find them and maybe a year-and-a-half later you may actually get some results, but most of the time you don't get any results. You spend more money and time and agency effort than it really is going to be worth, finding them. This assessment is not going to raise Workers' Comp costs. That is not true. This is coming out of the special revenue assessment. There is \$2.1 million that sits there and it is the employers' money, but that money is sitting there to use for instances just like this. Like I said, I truly believe

in the end that it's going to save them money. The Labor Committee brought in the whole industry and they said that they needed to fix the form that they did last session and they need more enforcement. I asked them again and they said 'Yes, we need more enforcement.' One gentleman even said that he'd pay as much as \$100 for each form. I said that that probably wasn't realistic, but we will put some people on to give you enforcement and make sure that the bad players are being looked at, and that's what we came up with. We even found a way that's not going to raise the Workers' Comp costs for employers in the state. I certainly have no problem somewhere down the road with looking at this again to see if it's paying for itself, which I believe it will. If it isn't, then if I'm still here, or whoever is here, maybe we'll need to revisit it and change it or get rid of it. There's a problem there and we have a whole bunch of fines assessed that we cannot collect. People know that if they can hurry up and get the job done and get out of here, there's nothing that can be done. This would allow the Workers' Comp Board to go in and stop operations until people are covered. It's the law to have Workers' Comp on employees. There's no way around that. You can try and hide by saying that you're an independent contractor or whatever, but if you're considered an employer of someone, you need to have Workers' Comp on them. If you want to vote to make it so it's easier for people that come into the state to break a law, then by all means knock yourself out. I think this is a pretty good attempt and the industry has worked with us to figure out the best possible way and we've given and given and given. All this really does is give them the one opportunity to go in and stop work whenever the most egregious violations have happened.

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

Senator **SCHNEIDER:** Thank you, Madame President. Men and women of the Senate, I first would like to thank my colleague from Aroostook, Senator Jackson, for working on a compromise. Often when we don't feel exactly comfortable with pieces of legislation there are advocates around who ask us to work on something to bring it to a more comfortable level for everybody and I think he did that, and I think he should be commended for that. It's taken a great deal of work to come to this compromise and I have heard from many people who have told me that this is about fairness. It's about making sure that people who are playing by the rules are treated fairly. That's what this piece of legislation is working to achieve. I support this piece of legislation, this amended legislation, and I hope that people will also support this. This was a compromise and the stakeholders came together and worked with the leadership on the Committee to achieve a compromise. That compromise was struck and we're here today, I hope, to come together in support of this piece of legislation because it was worked as a compromise. Otherwise I think that what ends up happening is it comes into question whether or not a compromise should ever be worked on. When people say that we should work on a compromise so that we can achieve unity and then people back out on that, I think that it doesn't speak well to working on legislation to bring it to a point where people can feel comfortable with it. I would hope that people will support this amendment. Thank you.

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

Senator **SULLIVAN**: Thank you, Madame President. Men and women of the Senate, I have a question. I understand there's been a compromise and I could not agree more with the Senator from Penobscot that if there's been a compromise among the parties most affected, I'm certainly not going to get in the way of that. Is this report the exact compromise or are we expecting an amendment to this?

**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 Aroostook, Senator Jackson.

Senator **JACKSON**: Thank you, Madame President. Ladies and gentlemen of the Senate, the compromise was added on down in the other Body so the report that you have in front of you is the compromise.

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

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

**ROLL CALL (#405)**

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

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

ABSENT: Senator: NUTTING

21 Senators having voted in the affirmative and 13 Senators having voted in the negative, with 1 Senator being absent, the motion by Senator **BARTLETT** of Cumberland to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence, **PREVAILED**.

**READ ONCE.**

Committee Amendment "A" (H-746) **READ**.

House Amendment "C" (H-826) to Committee Amendment "A" (H-746) **READ** and **ADOPTED**, in concurrence.

Committee Amendment "A" (H-746) as Amended by House Amendment "C" (H-826) thereto, **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.

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On motion by Senator **DIAMOND** of Cumberland, the Senate removed from the **SPECIAL APPROPRIATIONS TABLE** the following:

**Emergency**

An Act To Amend the Maine Medical Marijuana Act  
S.P. 719 L.D. 1811  
(C "A" S-508)

Tabled - April 5, 2010, by Senator **CRAVEN** of Androscoggin

Pending - **ENACTMENT**, in concurrence

(In Senate, April 2, 2010, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-508).**)

(In House, April 5, 2010, **PASSED TO BE ENACTED.**)

On further motion by same Senator, the Senate **SUSPENDED THE RULES.**

On further by same Senator, the Senate **RECONSIDERED** whereby the Bill was **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-508).**

On further motion by same Senator, the Senate **SUSPENDED THE RULES.**

On further by same Senator, the Senate **RECONSIDERED** whereby it **ADOPTED** Committee Amendment "A" (S-508).

On further motion by same Senator, Senate Amendment "A" (S-519) to Committee Amendment "A" (S-508) **READ** and **ADOPTED.**

On motion by Senator **COURTNEY** of York, **TABLED** until Later in Today's Session, pending **ADOPTION** of Committee Amendment "A" (S-508) as Amended by Senate Amendment "A" (S-519) thereto, in **NON-CONCURRENCE.**

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

**REPORTS OF COMMITTEES**

**House**

**Divided Report**

The Majority of the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS** on Bill "An Act To Establish a New Method of Determining the State Budget"

H.P. 659 L.D. 957

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

Signed:

Senators:

DIAMOND of Cumberland  
CRAVEN of Androscoggin

Representatives:

CAIN of Orono  
WEBSTER of Freeport  
ROTUNDO of Lewiston  
MILLER of Somerville  
CONNOR of Kennebunk  
FLOOD of Winthrop

The Minority of the same Committee on the same subject reported that the same **Ought To Pass as Amended by Committee Amendment "A" (H-827)**.

Signed:

Senator:

ROSEN of Hancock

Representatives:

MARTIN of Eagle Lake  
MILLETT of Waterford  
ROBINSON of Raymond  
NUTTING of Oakland

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

Reports **READ**.

Senator **DIAMOND** of Cumberland moved the Senate **ACCEPT** the Majority **OUGHT NOT TO PASS** Report, in concurrence.

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

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

Senator **RAYE:** Thank you, Madame President. Men and women of the Senate, may I pose a question through the Chair?

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

Senator **RAYE:** Thank you, Madame President. I was curious to know what rationale those who support this motion would offer for that position?

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

Senator **DIAMOND:** Thank you, Madame President. Ladies and gentlemen of the Senate, L.D. 957 is a very valid attempt, and I

congratulate the sponsor, to change our budget system. I think the good Representative thought long and hard about this. In fact the Appropriations Committee had a bipartisan subcommittee work on this very proposal. Again, I think it was well intended. The only problem we had was the timing of it. It seemed like we were convinced that with three to five days left or even two weeks left, it was not something we could really get our arms around. Those of us who voted this for an Ought Not to Pass, it wasn't that this might not be a good way to change and look at our budget system. New people coming into this legislature would have a little more time to absorb and understand what happens in the budgetary process as opposed to it being thrust upon them, a \$6 billion budget for example. This would also apply to the policy committees. I don't think any of us thought this was a bad idea, we just thought that the timing in making that kind of change right now was probably a little bit more than we could bite off and chew. Thank you.

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

Senator **ROSEN:** Thank you, Madame President. Men and women of the Senate, I would ask you to oppose the current motion and support the Minority Report. This bill, as was described by the Senate Chair of Appropriations, is an L.D. that was introduced and is a favor introduction of a sponsor from the other Body. We held a public hearing on this bill last session and spent some time working on it through the year. Essentially the premise of the bill is very straightforward. It would start the biennial budget cycle in the second year of the legislative session. That's it, that's what this bill does. This would propose changing the model that we've been working under which is a November election and a new legislature sworn in the first week of December, coming in in January with many brand new members or members that are returning after a break, and immediately beginning to deal with the Chief Executive's two-year biennial budget. The thinking of the sponsor and those of us who support this measure, have observed over the years, and this particular session was a very good example of that, that the ability of the policy committees to have the opportunity to ramp up and understand the functions that they have policy jurisdiction over, the legislative process, the fiscal impact of a variety of different proposals, I think we would all agree takes a fair amount of work. To be able to dedicate ourselves during the first year of a legislative session to dealing with bills and then having the second year of the legislative session, having that be the year where the biennial budget is introduced and the chance for the policy committees to be fully engaged and to participate in a much more robust way in the development process of the biennial budget building. That's really the underlying premise of the sponsor and those of us who support this bill. Many of you in the majority caucus that came in this session are a perfect example. As brand new chairs of committees sitting down with us in Room 228 in January and starting off your legislative experience in this particular example in a supplement but then moving right into the construction of a biennial budget is to say the least, challenging. To be able to make that change and phase that in, which is this proposal, make the necessary changes and then go forward, I think would be a long-term benefit to the state and to our ability to craft excellent policy. I encourage your consideration of the Minority Report and reject the Majority ought not to pass.

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

Senator **RAYE:** Thank you, Madame President. Men and women of the Senate, I rise just briefly to speak to this issue. This bill was presented to us by one of the longest serving members of this institution in either Body. I think it's those years of experience that have convinced him of the wisdom of this measure. For new legislators who sit on major policy committees where the biennial budget is decided within just weeks of being sworn into office, it is sort of like trying to get a sip of water from a fire hydrant when you're dealing with the enormity of the budget decisions that we are required to face. Likewise, it is for a new Governor and a new Administration who come into office. So I think that this is something that would provide for a much more thoughtful process, a well informed process. A process where legislators would have a year under their belts to gain the sort of intricate knowledge to spend a year learning about the departments, questioning and getting answers to determine where we can make cuts and what programs need to be improved. It would be a vast improvement over the process we face now. I want to just echo the comments of the good Senator from Hancock and urge you to oppose this motion.

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

Senator **SCHNEIDER:** Thank you, Madame President. Men and women of the Senate, I would agree with much of what has been said about the accelerated time frame in which we are required to deal with the budget and the lack of knowledge that many newcomers have to that budget. However, I would submit that I don't think the answer to this is by rotating to beginning the biennial budget in the second year. I just think about what a challenge this year was and how it was like the beginning of a year as far as the budget was concerned. I would think that coming in at the beginning of the biennial budget and dealing with that would be just as horrendous. I would suggest that perhaps the answer to this problem, the solution to this problem would be to change the number of years in a legislative term to three or perhaps four. I don't think that this is the solution. I would think that there are other mechanisms to give legislators a better primer to the legislative demands overall, not just budgetary but in all ways if we were to change the number of years in a term. I do not think that this is the solution and in fact, I think it would make it in some ways more difficult because an in-coming legislature would have to deal with a supplemental budget from a previous legislature. This would be very concerning because they weren't here in the previous session. I think this is not the answer but I think it's something that warrants additional discussion and I would hope that discussion would continue by whoever is back in the next legislative session. I think it's an important one to have.

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

Senator **DIAMOND:** Thank you, Madame President. Ladies and gentlemen of the Senate, just very briefly. Again, I'm not suggesting that this might not be a good idea, but if this bill would pass, in ninety days we would have a new budget system that we'd have to work under with a new Governor coming in five or six months. I'm not suggesting that it's not something we should

look at, we probably should. It would be a totally drastic change. The current Administration has to start working on the budget as soon as we leave and they will be, on the next budget coming up to present to the new Governor and the new Administration for their consideration. It's just that the timing is not good for this and I think it has some merit to be considered and looked at through more than just a couple of members of the Appropriations Committee. It probably should include a lot of members from other committees, members of the Administration, and such. Before we do this I would think we'd want to give it a little more study. It's kind of a north/south thing, we want to make sure we all come together on this. 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, it's just something that the budget officer told us when we were discussing this bill, because I think everyone had some interest in looking at the bill because of all the statements that have been made here. She said it was going to cost hundreds of thousands of dollars to change their computer system to be able to facilitate building a one-year budget and certainly we don't have the money this year nor would we have it in the near future. Thank you very much.

**THE PRESIDENT:** The pending question before the Senate is the motion by the Senator from Cumberland, Senator Diamond 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 (#406)**

**YEAS:** Senators: ALFOND, BARTLETT, BLISS, BOWMAN, BRANNIGAN, BRYANT, CRAVEN, DAMON, DIAMOND, GERZOFISKY, GOODALL, HOBBS, JACKSON, MARRACHE, NUTTING, 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

**ABSENT:** Senator: PERRY

19 Senators having voted in the affirmative and 15 Senators having voted in the negative, with 1 Senator being absent, the motion by Senator **DIAMOND** of Cumberland to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report, in concurrence, **PREVAILED.**

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

**PAPERS FROM THE HOUSE**

**Non-Concurrent Matter**

Bill "An Act To Require That Expedited Wind Energy Development Projects Provide a Tangible Benefit to Maine Ratepayers in the Form of Discounts to Future Electric Rates"  
S.P. 582 L.D. 1504  
(S "C" S-516 to C "A" S-501)

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

In Senate, April 5, 2010, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-501) AS AMENDED BY SENATE AMENDMENT "C" (S-516) thereto, in NON-CONCURRENCE.**

Comes from the House, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-501) AS AMENDED BY HOUSE AMENDMENT "A" (H-829) thereto, in NON-CONCURRENCE.**

On motion by Senator **HOBBS** of York, the Senate **RECEDED** and **CONCURRED.**

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

**COMMUNICATIONS**

The Following Communication: S.C. 760

**STATE OF MAINE  
DEPARTMENT OF AUDIT**

**LETTER OF TRANSMITTAL**

March 31, 2010

Senator Elizabeth Mitchell President of the Senate

Representative Hannah Pingree Speaker of the House of Representatives

The Honorable John E. Baldacci Governor of Maine  
I am pleased to submit the Single Audit of the State of Maine for the fiscal year ended June 30, 2009. This audit was conducted in accordance with *Government Auditing Standards*, issued by the Comptroller General of the United States; the requirements of the Single Audit Act Amendments of 1996; and the Office of Management and Budget Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*. Our audit complies with 5 MRSA §243 and is a prerequisite for the receipt of \$3.1 billion in federal financial assistance during fiscal year 2009.

This document contains the following reports and schedules:

- Independent Auditor's Report
- Basic Financial Statements, Management's Discussion and Analysis, Notes to Financial Statements, and Required Supplementary Information
- Report on Internal Control over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with *Government Auditing Standards*
- Report on Compliance with Requirements Applicable to each Major Program and on Internal Control over Compliance in Accordance with OMB Circular A-133
- Schedule of Expenditures of Federal Awards
- Schedule of Findings and Questioned Costs
- Financial Statement Findings
- Indexes to Federal Program Findings
- Federal Findings, Questioned Costs and Corrective Action Plan
- Summary Schedule of Prior Audit Findings

On behalf of the Maine Department of Audit, I thank employees throughout Maine government who have assisted us during our audit. I know that we all work to improve financial reporting and accountability for our citizens and our State.

Please contact me if you have questions or comments about the 2009 Single Audit of the State of Maine.

Respectfully submitted,

S/Neria R. Douglass, JD, CIA State Auditor

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

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.

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

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On motion by Senator **BARTLETT** of Cumberland, **ADJOURNED** to Wednesday, April 7, 2010, at 10:00 in the morning.