

MAINE STATE LEGISLATURE

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Legislative Record
House of Representatives
One Hundred and Twenty-Fifth Legislature
State of Maine

Daily Edition

First Regular Session

December 1, 2010 – June 29, 2011

pages 1 - 1067

ONE HUNDRED AND TWENTY-FIFTH LEGISLATURE
FIRST REGULAR SESSION
37th Legislative Day
Wednesday, April 27, 2011

The House met according to adjournment and was called to order by the Speaker.

Prayer by Stephen Hall, Harvest Chapel, Levant.
National Anthem by Casie Poplaski, Winterport.
Pledge of Allegiance.
Doctor of the day, Virginia Eddy, M.D., Cumberland.
The Journal of yesterday was read and approved.

SENATE PAPERS

Bill "An Act To Require the State To Transfer Employee Pension Premium Payments to the Employee's Pension Plan within 2 Business Days"

(S.P. 462) (L.D. 1481)

Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS** suggested and ordered printed.

Came from the Senate, **REFERRED** to the Committee on **STATE AND LOCAL GOVERNMENT** and ordered printed.

On motion of Representative FLOOD of Winthrop, **TABLED** pending **REFERENCE** in concurrence and later today assigned.

COMMUNICATIONS

The Following Communication: (H.C. 139)

**STATE OF MAINE
HOUSE OF REPRESENTATIVES
SPEAKER'S OFFICE
AUGUSTA, MAINE 04333-0002**

April 26, 2011

The Honorable Heather J.R. Priest
Clerk of the House

2 State House Station
Augusta, Maine 04333

Dear Clerk Priest:

Pursuant to my authority under the Governor's Executive Order 09, FY 10/11, I am pleased to appoint the following Representatives to the Health Information Technology Steering Committee:

Representative Leslie T. Fossel of Alna

Representative Anne P. Graham of North Yarmouth

Please let me know if you have any questions regarding these appointments.

Sincerely,

S/Robert W. Nutting

Speaker of the House

READ and ORDERED PLACED ON FILE.

The Following Communication: (H.C. 140)

**STATE OF MAINE
HOUSE OF REPRESENTATIVES
SPEAKER'S OFFICE
AUGUSTA, MAINE 04333-0002**

April 26, 2011

The Honorable Heather J.R. Priest

Clerk of the House

2 State House Station

Augusta, Maine 04333

Dear Clerk Priest:

Pursuant to my authority under Title 5, MRSA, §19202, I am pleased to appoint Representative Linda F. Sanborn of Gorham to the Maine HIV Advisory Committee.

Please let me know if you have any questions regarding this appointment.

Sincerely,

S/Robert W. Nutting

Speaker of the House

READ and ORDERED PLACED ON FILE.

The Following Communication: (H.C. 141)

**STATE OF MAINE
CLERK'S OFFICE
2 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0002**

April 27, 2011

The Honorable Robert W. Nutting

Speaker of the House

2 State House Station

Augusta, Maine 04333

Dear Speaker Nutting:

Pursuant to Joint Rule 310, the following Joint Standing Committees have voted unanimously to report the following bills out "Ought Not to Pass":

Education and Cultural Affairs

L.D. 803

An Act To Allow the Town of Dayton To Opt Out of Its Regional School Unit Agreement

L.D. 1049

An Act To Allow a Municipality To Withdraw from a Regional School Unit

L.D. 1083

An Act To Allow the Town of Arundel To Withdraw from Its Regional School Unit without Penalty (EMERGENCY)

L.D. 1214

An Act To Allow a Referendum Regarding School Choice within Regional School Unit No. 12

Energy, Utilities and Technology

L.D. 328

An Act To Move Propane Safety Oversight to the Maine Fuel Board

L.D. 1158

An Act To Change the Regulation of Liquefied Petroleum Gas Distribution Facilities

Environment and Natural Resources

L.D. 524

An Act To Charge a Fee for Garbage Disposal To Encourage Recycling

Health and Human Services

L.D. 353

An Act Regarding Agencies Contracted by the Department of Health and Human Services To Provide Regulatory Oversight and Billing Services

L.D. 466

An Act To Require Hospitals To Adopt Employee Illness and Injury Prevention Programs and To Provide Lift Teams and To Require Reduced Workers' Compensation Insurance Rates for those Hospitals

L.D. 475

An Act Regarding Private Health Insurance Purchased by the State for Recipients of MaineCare

L.D. 774

An Act To Allow Access to Pseudoephedrine by Prescription Only

L.D. 1029

Resolve, To Reduce Health Care Costs through Interstate Collaboration

L.D. 1062

An Act To Ensure Access to Certain Health Care Services for Children

L.D. 1166

An Act To Improve Electronic Prescribing

- | | | | |
|--|--|--|---|
| Inland Fisheries and Wildlife | | | |
| L.D. 101 | An Act To Institute a Snaring Program for Coyotes | L.D. 239 | An Act To Provide a Sales Tax Exemption on Fuel Used for Heating a Business (EMERGENCY) |
| L.D. 292 | An Act To Prohibit Placing the Carcass of a Dead Animal on a Frozen Body of Water for the Purpose of Baiting Coyotes | L.D. 684 | An Act To Clarify the Taxing of Property of Quasi-municipal Organizations |
| L.D. 413 | An Act To Clarify Standards by Which Recreational Vehicles May Be Stopped | L.D. 686 | An Act To Promote Small Business in Maine |
| L.D. 682 | An Act To Establish the Moose Biologist Fund To Support a Moose Biologist Position | L.D. 764 | An Act To Ensure That Municipalities Refund Amounts Collected in Excess of Tax Liens |
| L.D. 884 | An Act To Change the Moose Lottery To Increase the Chances for Resident Hunters | L.D. 822 | An Act To Remove Taxes on Equipment Used for Business |
| Insurance and Financial Services | | L.D. 847 | An Act To Increase the Amount of Deductible Business Expense Allowed for Property Placed in Service Beginning in 2011 |
| L.D. 517 | An Act Regarding Prescription Drug Step Therapy and Prior Authorization | L.D. 1036 | An Act To Clarify the Municipal Development District Law |
| L.D. 660 | An Act To Clarify the Responsibilities of Pharmacy Benefits Managers and Preferred Provider Organizations | L.D. 1044 | An Act To Allow a Tax Credit for Tuition Paid to Private Schools |
| L.D. 712 | An Act To Expand Access to Clinical Trials | Veterans and Legal Affairs | |
| L.D. 720 | An Act To Mandate Insurance Coverage for Infertility Treatment | L.D. 80 | An Act Regarding Maine Clean Election Act Funds for a Candidate without a Primary Opponent |
| L.D. 858 | An Act To Amend the Law Related to Multiple-employer Welfare Arrangements | L.D. 203 | An Act To Assist Municipal Clerks by Providing Adequate Time To Register Voters |
| L.D. 899 | An Act To Disclose Insurance Policy Options to Senior Citizens | L.D. 843 | An Act To Modernize the Maine Clean Election Act by Allowing for Private Contributions |
| L.D. 960 | An Act To Ensure Payment to Tow Truck Operators for Towing from Accidents | L.D. 968 | An Act To Require Participating Candidates Who Are Principal Officers of Political Action Committees To Give a Percentage of Funds to the Maine Clean Election Fund |
| L.D. 1010 | An Act To Require an Insurance Company To Notify a Landlord When a Tenant Changes or Cancels a Residential Property Insurance Contract | L.D. 1140 | An Act To Amend the Dual Liquor License Law |
| L.D. 1089 | An Act To Require That Homeowner's Insurance Covers Rental Equipment | The sponsors and cosponsors have been notified of the Committee's action. | |
| L.D. 1175 | An Act To Allow a Homeowner To Insure a Residence for Less than Actual Cash Value | Sincerely, | |
| L.D. 1215 | An Act To Require Health Insurers To Provide Coverage for Nutritional Wellness and Illness Prevention Measures and Products | S/Heather J.R. Priest | |
| L.D. 1229 | An Act To Require Health Insurance Coverage for Hearing Aids for Adults | Clerk of the House | |
| L.D. 1239 | An Act To Further Expand Access to Oral Health Care by Requiring Insurance Coverage for Services Performed by Denturists | READ and with accompanying papers ORDERED PLACED ON FILE. | |
| Judiciary | | <hr/> | |
| L.D. 616 | An Act To Clarify Landowner Liability for Environmental Damage Caused by Others | PETITIONS, BILLS AND RESOLVES REQUIRING REFERENCE | |
| L.D. 1193 | An Act To Strengthen Confidentiality Laws for Child Victims of Crime | Bill "An Act To Make Changes to the Laws Regarding Notice and Publication of Unclaimed Property" (H.P. 1118) (L.D. 1518) | |
| Labor, Commerce, Research and Economic Development | | Sponsored by Representative NASS of Acton. | |
| L.D. 166 | An Act To Exempt Seasonally Restricted Cottages from the Newly Adopted Maine Uniform Building and Energy Code | Submitted by the Treasurer of State pursuant to Joint Rule 204. | |
| L.D. 304 | An Act To Promote the Hiring of Seasonal Workers | Committee on STATE AND LOCAL GOVERNMENT suggested and ordered printed. | |
| L.D. 406 | Resolve, To Clarify the Scope of Practice of Licensed Alcohol and Drug Counselors Regarding Tobacco Use (EMERGENCY) | REFERRED to the Committee on STATE AND LOCAL GOVERNMENT and ordered printed. | |
| L.D. 818 | Resolve, To Improve the Training and Retention of Maine's Professional Direct Care and Personal Supports Workforce | Sent for concurrence. | |
| Taxation | | <hr/> | |
| L.D. 229 | An Act To Protect Homeowners Concerning Property Liens | By unanimous consent, all matters having been acted upon were ORDERED SENT FORTHWITH. | |
| | | <hr/> | |
| | | REPORTS OF COMMITTEE | |
| | | Change of Committee | |
| | | Representative RICHARDSON from the Committee on EDUCATION AND CULTURAL AFFAIRS on Bill "An Act To Allow School Administrative Units To Seek Less Expensive Health Insurance Alternatives" | |
| | | (H.P. 972) (L.D. 1326) | |

Reporting that it be REFERRED to the Committee on **INSURANCE AND FINANCIAL SERVICES**.

Report was READ and ACCEPTED and the Bill REFERRED to the Committee on **INSURANCE AND FINANCIAL SERVICES**. Sent for concurrence.

Divided Report

Majority Report of the Committee on **EDUCATION AND CULTURAL AFFAIRS** reporting **Ought Not to Pass** on Bill "An Act To Exempt Certain Necessary School Auxiliary Buildings for New Mechanical Systems from Referendum Requirements"

(H.P. 315) (L.D. 389)

Signed:

Senators:

LANGLEY of Hancock
ALFOND of Cumberland
MASON of Androscoggin

Representatives:

RICHARDSON of Carmel
JOHNSON of Greenville
LOVEJOY of Portland
MAKER of Calais
McCLELLAN of Raymond
McFADDEN of Dennysville
NELSON of Falmouth
RANKIN of Hiram
WAGNER of Lewiston

Minority Report of the same Committee reporting **Ought to Pass** on same Bill.

Signed:

Representative:

EDGECOMB of Caribou

Representative SOCTOMAH of the Passamaquoddy Tribe - of the House - supports the Majority **Ought Not to Pass** Report.

READ.

On motion of Representative RICHARDSON of Carmel, the Majority **Ought Not to Pass** Report was ACCEPTED and sent for concurrence.

Majority Report of the Committee on **EDUCATION AND CULTURAL AFFAIRS** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-115)** on Resolve, To Ensure That Maine Teachers and Paraprofessionals Who Work with Children with Autism Spectrum Disorders Are Highly Qualified (EMERGENCY)

(H.P. 546) (L.D. 715)

Signed:

Senators:

LANGLEY of Hancock
ALFOND of Cumberland
MASON of Androscoggin

Representatives:

RICHARDSON of Carmel
LOVEJOY of Portland
McFADDEN of Dennysville
NELSON of Falmouth
RANKIN of Hiram

WAGNER of Lewiston

Minority Report of the same Committee reporting **Ought Not to Pass** on same Resolve.

Signed:

Representatives:

EDGECOMB of Caribou
JOHNSON of Greenville
MAKER of Calais
McCLELLAN of Raymond

Representative SOCTOMAH of the Passamaquoddy Tribe - of the House - supports the Majority **Ought to Pass as Amended by Committee Amendment "A" (H-115)** Report.

READ.

On motion of Representative RICHARDSON of Carmel, the Majority **Ought to Pass as Amended** Report was ACCEPTED.

The Resolve was READ ONCE. **Committee Amendment "A" (H-115)** was READ by the Clerk and ADOPTED. The Resolve was assigned for **SECOND READING** Thursday, April 28, 2011.

Majority Report of the Committee on **INLAND FISHERIES AND WILDLIFE** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-105)** on Resolve, To Increase the Amount Tagging Agents Receive for Tagging Game

(H.P. 467) (L.D. 637)

Signed:

Senators:

MARTIN of Kennebec
TRAHAN of Lincoln

Representatives:

DAVIS of Sangerville
CRAFTS of Lisbon
EBERLE of South Portland
GUERIN of Glenburn
SARTY of Denmark
SHAW of Standish

Minority Report of the same Committee reporting **Ought Not to Pass** on same Resolve.

Signed:

Senator:

PATRICK of Oxford

Representatives:

BRIGGS of Mexico
CLARK of Millinocket
ESPLING of New Gloucester

READ.

On motion of Representative DAVIS of Sangerville, the Majority **Ought to Pass as Amended** Report was ACCEPTED.

The Resolve was READ ONCE. **Committee Amendment "A" (H-105)** was READ by the Clerk and ADOPTED. The Resolve was assigned for **SECOND READING** Thursday, April 28, 2011.

Majority Report of the Committee on **JUDICIARY** reporting **Ought Not to Pass** on Bill "An Act To Allow a Member, Manager or Authorized Employee of a Limited Liability Company To Appear for That Company in an Action for Eviction"

(H.P. 434) (L.D. 551)

Signed:

Senators:

HASTINGS of Oxford
BLISS of Cumberland
WOODBURY of Cumberland

Representatives:

NASS of Acton
BEAULIEU of Auburn
DILL of Cape Elizabeth
FOSTER of Augusta
MALONEY of Augusta
MOULTON of York
PRIEST of Brunswick
ROCHELO of Biddeford
SARTY of Denmark

Minority Report of the same Committee reporting **Ought to Pass** on same Bill.

Signed:

Representative:

WATERHOUSE of Bridgton

READ.

On motion of Representative NASS of Acton, the Majority **Ought Not to Pass** Report was **ACCEPTED** and sent for concurrence.

Majority Report of the Committee on **MARINE RESOURCES** reporting **Ought Not to Pass** on Bill "An Act To Encourage Lobstering Traditions and Facilitate Retirement from Lobstering"

(H.P. 249) (L.D. 307)

Signed:

Senators:

SNOWE-MELLO of Androscoggin
LANGLEY of Hancock
SULLIVAN of York

Representatives:

WEAVER of York
BELIVEAU of Kittery
CHAPMAN of Brooksville
KNAPP of Gorham
KRUGER of Thomaston
KUMIEGA of Deer Isle
MacDONALD of Boothbay
OLSEN of Phippsburg
TILTON of Harrington

Minority Report of the same Committee reporting **Ought to Pass** on same Bill.

Signed:

Representative:

PARRY of Arundel

READ.

On motion of Representative WEAVER of York, the Majority **Ought Not to Pass** Report was **ACCEPTED** and sent for concurrence.

Majority Report of the Committee on **STATE AND LOCAL GOVERNMENT** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-108)** on Bill "An Act To Repeal the Informed Growth Act"

(H.P. 255) (L.D. 322)

Signed:

Senators:

THOMAS of Somerset
COLLINS of York
SULLIVAN of York

Representatives:

COTTA of China
CASAVANT of Biddeford
GILLWAY of Searsport
GRAHAM of North Yarmouth
HARVELL of Farmington
MOULTON of York

Minority Report of the same Committee reporting **Ought Not to Pass** on same Bill.

Signed:

Representatives:

BOLAND of Sanford
BOLDUC of Auburn
KAENRATH of South Portland

READ.

Representative COTTA of China moved that the House **ACCEPT** the Majority **Ought to Pass as Amended** Report.

On motion of Representative CAIN of Orono, **TABLED** pending the motion of Representative COTTA of China to **ACCEPT** the Majority **Ought to Pass as Amended** Report and later today assigned.

Majority Report of the Committee on **TAXATION** reporting **Ought Not to Pass** on Bill "An Act To Base the Excise Tax on Vehicles on a Percentage of the Manufacturer's Suggested Retail Price"

(H.P. 67) (L.D. 79)

Signed:

Senators:

TRAHAN of Lincoln
HASTINGS of Oxford
WOODBURY of Cumberland

Representatives:

BERRY of Bowdoinham
BICKFORD of Auburn
BRYANT of Windham
FLEMINGS of Bar Harbor
PILON of Saco
WATERHOUSE of Bridgton

Minority Report of the same Committee reporting **Ought to Pass as Amended by Committee Amendment "A" (H-111)** on same Bill.

Signed:

Representatives:

KNIGHT of Livermore Falls
BENNETT of Kennebunk
BURNS of Alfred

HARMON of Palermo

READ.

Representative KNIGHT of Livermore Falls moved that the House **ACCEPT** the Minority **Ought to Pass as Amended** Report.

On further motion of the same Representative, **TABLED** pending his motion to **ACCEPT** the Minority **Ought to Pass as Amended** Report and later today assigned.

Majority Report of the Committee on **TAXATION** reporting **Ought Not to Pass** on Resolve, To Study Adoption of the Streamlined Sales and Use Tax Agreement

(H.P. 344) (L.D. 451)

Signed:

Senators:

TRAHAN of Lincoln
HASTINGS of Oxford

Representatives:

KNIGHT of Livermore Falls
BENNETT of Kennebunk
BICKFORD of Auburn
BURNS of Alfred
HARMON of Palermo
WATERHOUSE of Bridgton

Minority Report of the same Committee reporting **Ought to Pass as Amended by Committee Amendment "A" (H-112)** on same Resolve.

Signed:

Senator:

WOODBURY of Cumberland

Representatives:

BERRY of Bowdoinham
BRYANT of Windham
FLEMINGS of Bar Harbor
PILON of Saco

READ.

Representative KNIGHT of Livermore Falls moved that the House **ACCEPT** the Majority **Ought Not to Pass** Report.

On further motion of the same Representative, **TABLED** pending his motion to **ACCEPT** the Majority **Ought Not to Pass** Report and later today assigned.

Majority Report of the Committee on **TAXATION** reporting **Ought Not to Pass** on Bill "An Act To Provide Equitable Revenue-sharing Distribution"

(H.P. 569) (L.D. 762)

Signed:

Senators:

TRAHAN of Lincoln
HASTINGS of Oxford
WOODBURY of Cumberland

Representatives:

KNIGHT of Livermore Falls
BENNETT of Kennebunk
BERRY of Bowdoinham
BICKFORD of Auburn
BURNS of Alfred

FLEMINGS of Bar Harbor

HARMON of Palermo

PILON of Saco

WATERHOUSE of Bridgton

Minority Report of the same Committee reporting **Ought to Pass as Amended by Committee Amendment "A" (H-113)** on same Bill.

Signed:

Representative:

BRYANT of Windham

READ.

Representative KNIGHT of Livermore Falls moved that the House **ACCEPT** the Majority **Ought Not to Pass** Report.

The **SPEAKER**: The Chair recognizes the Representative from Standish, Representative Shaw.

Representative **SHAW**: Thank you, Mr. Speaker. Mr. Speaker, Men and Women of the House. I usually don't dive into complicated tax issues but the simple truth is, is that the revenue-sharing II system is broken. The real name for the revenue-sharing II fund is called the Disproportionate Tax Burden Fund. Municipalities with properties that are lower in value often require a higher mill rate. However, this does not mean a higher tax burden. Originally revenue-sharing was just distributed as one fund and then about 12 years ago or so, I'm not exactly sure, someone came up with the idea of making the revenue II sharing fund and called it the Disproportionate Tax Burden Fund. At the time, it was supposed to go to service centers. There are 61 service center communities in the state. You may ask why the service centers have a disproportionate tax burden. Service centers do have a disproportionate tax burden because of a couple of reasons. One, most service centers have untaxable property, properties owned by various nonprofit organizations or churches. Sometimes up to 50 percent of their property may not be taxed. So my bill would have had all the revenue II money go straight to the service centers. Currently, around 80 percent of the towns in the state get revenue II money. What happens why 80 percent of the towns get this money? It's diluted, so there are many, many towns out there that are getting diluted funds and the service centers aren't getting their rightful share of the money either.

So you may ask do I come from a service center. No, I do not. Standish was also affected around 2005 or 2006. Previous to that, they had capped Revenue I at \$100 million. All the money coming in from the state, 5 percent of all the sales and income tax went to revenue-sharing. They capped it at \$100 million. Anything above that went into the Revenue II fund. It was a tough system to guess how much your towns would get year to year because sometimes revenues came in higher than other years, so the Revenue II fund was fluctuating wildly. So the Tax Committee at the time, years ago, decided to scrap that whole system and go with a system based on a percentage of the whole fund. Right now in the budget last year, the Biennial Budget, we put it at 15 percent of the total fund would go into Revenue II. Each year for the next five years, it would increase by 1 percent, so the fund will end up being 20 percent revenue-sharing II, 80 percent revenue-sharing I. The higher your town's mill rate, once you get above 10, you qualify for Revenue II. I have a feeling because it seems like we're going to be probably providing less money to every town in revenue-sharing, that our mill rates will probably go up. In just a guess from my part, I bet you most towns will probably have mill rates of more than 10, and when that happens every single town in the state will share in Revenue II sharing, diluting the funding even further.

Municipalities with properties that are lower in value often require a higher mill rate, so it doesn't mean that the residents in that town may make more or less money than another similar town in another area of the state, so the burden is actually the same.

Currently, the way the system is set up, frugality is not rewarded. We talk about trying to save the taxpayers money. What happens now is some towns that decide to have many more services than maybe even their neighboring town. Some towns may have municipal golf courses or indoor swimming pools, Olympic-sized. And that's fine. That's what their constituents wanted and that's what that town has. Often times, that town will have a higher mill rate than the next town over that might not have the services. What happens? The town with the extravagant services, in some cases, gets tons and tons of money from the municipal revenue-sharing II fund and the next door town gets nothing.

Some towns you may know that really got hit hard back in 2006, when we changed the way revenue-sharing was handled. All the unorganized territories, Durham, Leeds, Turner, Allagash, Castle Hill, Garfield Plantation, Glenwood Plantation, Hamlin, Monroe, Nashville Plantation, Orient, St. Francis, St. John, Baldwin, Casco, Chebeague, Frye Island, Gray, Harpswell, Harrison, Long Island, Naples, New Gloucester, Raymond, Sebago, Standish, Carrabassett Valley, Dallas Plantation, Eustis, New Sharon, New Vineyard, Rangeley, Rangeley Plantation, Sandy River Plantation, Weld, Amherst, Bar Harbor, Blue Hill, Brooklyn, Brooksville, Castine, Cranberry Isles, Dedham, Deer Isle, Franklin, Gouldsboro, Great Pond, Hancock, Lemoine. This is a tough one. Mariaville. Mount Desert, Orland, Otis, Penobscot, Sedgwick, Sorrento, Southwest Harbor, Stonington, Sullivan, Surry, Swan's Island, Tremont, Trenton, Verona, Waltham, Winter Harbor, Albion, Belgrade, Benton, China, Fayette, Mount Vernon, Pittston, Rome, Sidney, Vassalboro, West Gardiner, Windsor, Cushing, Friendship, Isle Au Haut. The list goes on and on, folks. I probably named enough already for you, but really, the list does go on. Every town that I just listed, plus all the rest of them that are on this list, were negatively affected in 2006 when we went to the current system. My bill seeks to change that.

During the committee process we heard that now is not the right time to fiddle with the Revenue II sharing because all the cities and towns are getting less. The reality is there is no better time than now or later, it really doesn't matter, because what happens is it equals out in the long run anyway. So that was my spiel on revenue-sharing II. Should I be elected again in the next session as I was in the last session, I will put the same bill in again and I will try to make my speech shorter at that time. Thank you, Mr. Speaker.

Subsequently, the Majority Ought Not to Pass Report was ACCEPTED and sent for concurrence.

CONSENT CALENDAR First Day

In accordance with House Rule 519, the following items appeared on the Consent Calendar for the First Day:

(H.P. 356) (L.D. 463) Bill "An Act Concerning Policy Objectives of the Public Utilities Commission" Committee on **ENERGY, UTILITIES AND TECHNOLOGY** reporting Ought to Pass as Amended by Committee Amendment "A" (H-121)

(H.P. 397) (L.D. 504) Bill "An Act To Allow Consumer Refunds or Exchanges of Unopened Bottles of Spirits" Committee on **VETERANS AND LEGAL AFFAIRS** reporting Ought to Pass as Amended by Committee Amendment "A" (H-119)

(H.P. 411) (L.D. 528) Bill "An Act To Change the Frequency of Wine Tastings Allowed in a 12-month Period" Committee on **VETERANS AND LEGAL AFFAIRS** reporting Ought to Pass as Amended by Committee Amendment "A" (H-118)

(H.P. 463) (L.D. 633) Bill "An Act To Update Department of Defense, Veterans and Emergency Management Laws" Committee on **VETERANS AND LEGAL AFFAIRS** reporting Ought to Pass as Amended by Committee Amendment "A" (H-120)

(H.P. 657) (L.D. 890) Bill "An Act To Create the Anson and Madison Water District" (EMERGENCY) Committee on **ENERGY, UTILITIES AND TECHNOLOGY** reporting Ought to Pass as Amended by Committee Amendment "A" (H-116)

(H.P. 754) (L.D. 1018) Bill "An Act To Amend the Charter of the Anson Water District" Committee on **ENERGY, UTILITIES AND TECHNOLOGY** reporting Ought to Pass as Amended by Committee Amendment "A" (H-117)

There being no objections, the above items were ordered to appear on the Consent Calendar tomorrow under the listing of Second Day.

CONSENT CALENDAR Second Day

In accordance with House Rule 519, the following items appeared on the Consent Calendar for the Second Day:

(S.P. 91) (L.D. 311) Bill "An Act To Improve Harbor Safety by Clarifying Requirements for Maintenance Dredging Permits" (C. "A" S-30)

(S.P. 95) (L.D. 315) Bill "An Act Relating to the Status of a Private Investigator as an Independent Contractor" (C. "A" S-38)

(S.P. 176) (L.D. 584) Bill "An Act To Appropriate Funds for the Maine Downtown Center" (C. "A" S-37)

(S.P. 193) (L.D. 613) Bill "An Act To Clarify the Definition of 'Employment' in the Employment Security Law" (C. "A" S-35)

(H.P. 338) (L.D. 445) Resolve, Directing the Department of Inland Fisheries and Wildlife To Study Scents Used in Hunting Deer and Renderings Used in Deer Feed

(H.P. 410) (L.D. 527) Bill "An Act To Bring Maine's Minimum Financial Responsibility Laws Pertaining to Rental Vehicles into Conformity with Privately Owned Vehicles"

(H.P. 612) (L.D. 816) Bill "An Act To Clarify Provisions of the Law Concerning Municipal Inspections of Buildings"

(H.P. 796) (L.D. 1061) Bill "An Act To Amend the Lien Process for Unpaid Water Rates"

(H.P. 853) (L.D. 1155) Bill "An Act To Allow Harness Racing Betting To Be Conducted at Class A Lounges"

(H.P. 910) (L.D. 1219) Resolve, To Require the Department of Transportation To Designate the Park Street Bridge in the Town of Presque Isle the Gold Star Memorial Bridge

(H.P. 267) (L.D. 334) Bill "An Act To Promote Further Stability within the Workers' Compensation System by Extending the Number of Terms That May Be Served on the Maine Employers' Mutual Insurance Company Board of Directors" (C. "A" H-102)

(H.P. 270) (L.D. 337) Bill "An Act To Make Technical Changes to Aquaculture Laws" (C. "A" H-106)

(H.P. 420) (L.D. 537) Bill "An Act To Expand Recertification Options for Certified Nursing Assistants" (C. "A" H-107)

(H.P. 424) (L.D. 541) Bill "An Act To Clarify the Boundary between the Town of Cushing and the Town of Friendship" (C. "A" H-109)

(H.P. 531) (L.D. 701) Bill "An Act To Amend Certain Laws Governing County Sheriffs" (C. "A" H-110)

(H.P. 575) (L.D. 768) Bill "An Act To Amend the Laws Relating to Group Trusts Established by Group Self-insurers of Workers' Compensation Benefits" (C. "A" H-103)

(H.P. 682) (L.D. 922) Resolve, To Streamline the Laws Governing Small Slaughterhouses (EMERGENCY) (C. "A" H-114)

No objections having been noted at the end of the Second Legislative Day, the Senate Papers were **PASSED TO BE ENGROSSED as Amended** in concurrence and the House Papers were **PASSED TO BE ENGROSSED or PASSED TO BE ENGROSSED as Amended** and sent for concurrence.

By unanimous consent, all matters having been acted upon were **ORDERED SENT FORTHWITH**.

The following items were taken up out of order by unanimous consent:

UNFINISHED BUSINESS

The following matters, in the consideration of which the House was engaged at the time of adjournment yesterday, had preference in the Orders of the Day and continued with such preference until disposed of as provided by House Rule 502.

Bill "An Act Designating March 29th Vietnam Veterans Day" (EMERGENCY)

(H.P. 12) (L.D. 20)

TABLED - March 22, 2011 (Till Later Today) by Representative CLARK of Millinocket.

PENDING - **ADOPTION OF HOUSE AMENDMENT "A" (H-37) to COMMITTEE AMENDMENT "A" (H-29)**.

The SPEAKER: The Chair recognizes the Representative from China, Representative Cotta.

Representative **COTTA**: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. As you will see shortly, there is another amendment coming forward and I would like to discuss my probably impassioned testimony before. The Vietnam era and the Vietnam era veterans and the veterans being part of the overall group of veterans was my goal. I didn't want to single them out. The amendment that you see coming forward, I think, recognizes and holds in high regard those members that participated, the soldiers that participated in that conflict and it also moves their recognition for the conflict forward, and I applaud that we are recognizing events and not individual and isolating groups of people. I thank all concerned through developing this amendment. Thank you, Mr. Speaker.

Subsequently, Representative **COTTA** of China **WITHDREW House Amendment "A" (H-37) to Committee Amendment "A" (H-29)**.

Representative **CORNELL DU HOUX** of Brunswick **PRESENTED House Amendment "D" (H-104) to Committee Amendment "A" (H-29)**, which was **READ** by the Clerk.

Representative **CORNELL du HOUX**: Thank you, Mr. Speaker. As it was mentioned, the legislation here changes the name to Vietnam War Remembrance Day. This is an important distinction for the veterans' community because we want to ensure that Vietnam Veterans Day recognizes all veterans. We don't want to single out Vietnam veterans as a separate day itself because that, again, puts them out in a separate area. We want everyone as all veterans to be united on Veterans Day.

What this does is it brings in line with the past days that we've remembered, for instance, Korean War Armistice Day, Victory in Europe Day, Victory in Japan Day, and a number of others. So this brings it in line with the precedent that has been

happening in the past and also recognizes the Vietnam veterans themselves. So I thank everyone for their indulgence and hopefully follow my light.

The SPEAKER: The Chair recognizes the Representative from York, Representative Weaver.

Representative **WEAVER**: Thank you, Mr. Speaker. It has been 36 years since the end of the Vietnam War in 1975 and most of the people, many of the people in this body weren't even born at that time or were at the time young children, so I want to read just two paragraphs out of a book depicting the last days of that war.

"In about late March of 1975, as the end drew near, World Airways sent two 727s on a mercy mission to rescue civilian refugees at Da Nang Airbase. When the first plane landed, about a thousand hysterical men, women, and children mobbed the aircraft. But the South Vietnamese military decided that they deserved to be saved instead of the civilians, and they began firing at the refugees, and two hundred soldiers from the South Vietnamese Black Panther regiment threw everyone off the aircraft but themselves."

"The pilot of the second 727 had the good sense not to land, but television cameras in that aircraft captured the sight of refugees hanging in the wheel wells of the first aircraft as it flew over the South China Sea. One by one, the people in the wheel wells fell off."

"I tried to imagine the panic and desperation of those last days before the final surrender. Millions of refugees, entire military units falling apart instead of fighting, paralysis in Saigon and in Washington, and the mesmerizing images of chaos and disintegration flashing across television screens around the world. A total humiliation for us, a complete disaster for them."

"As it turned out, the bad guys weren't that bad, and the good guys weren't that good. It's all perception, public relations, and propaganda anyway. Both sides had been dehumanizing each other for so long, they'd forgotten they were all Vietnamese, and all human."

There are also pictures of that time of Saigon and the embassy and they were pulling people by helicopters off the embassy roof and there were also people falling off the helicopters, kids, you've probably seen that. The date on this bill is a wrong day. We were pulling out of Saigon in defeat and it is not a good day to honor our Vietnam veterans. Personally, I believe Veterans Day is enough honor for serving in Vietnam. All veterans are equal and should be treated as a group, no one special. Thank you, Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Mexico, Representative Briggs.

Representative **BRIGGS**: Thank you, Mr. Speaker. I rise today to thank everybody for all of their hard work to make this bill possible. It means a lot to my constituent, to my family, and many, many veterans throughout the State of Maine. I compliment everyone for all of their hard work, their collaboration, working together to make this bill work for everybody, and I just wanted to say thank you very, very much.

The SPEAKER: The Chair recognizes the Representative from North Yarmouth, Representative Graham.

Representative **GRAHAM**: Thank you, Mr. Speaker. Mr. Speaker, Men and Women of the House. This was the second bill I heard in committee after the whoopie pies. When I heard the whoopie pie bill, I said, what the heck am I doing here? But when I heard the Vietnam veterans bill put forth by our fine Representative from Mexico, I was enormously moved. Very honestly, we were all very moved, the tissue box was passed around the committee horseshoe.

I was a young adolescent just moving into my teen years

when the Vietnam veterans were coming home, and I didn't understand why they had to change their uniforms before they got off the plane and I didn't understand why so many people despised them. This hearing was the most moving experience, honestly, I have had. None of my brothers have ever served in the military. My father did.

I just want you all to know that this bill has huge importance and respect to my committee chair, Representative Cotta. I agree we should not separate out any veterans. They all deserve great support, love, and compassion. I so respect what Representative Briggs has done and the veterans who have served in Vietnam. I just want to say that this is so important and thank you very much and I hope you all will support this bill.

Subsequently, **House Amendment "D" (H-104) to Committee Amendment "A" (H-29) was ADOPTED.**

Representative CAIN of Orono **REQUESTED** a roll call on **ADOPTION of Committee Amendment "A" (H-29) as Amended by House Amendment "D" (H-104) thereto.**

More than one-fifth of the members present expressed a desire for a roll call which was ordered.

The **SPEAKER:** The Chair recognizes the Representative from Biddeford, Representative Casavant.

Representative **CASAVANT:** Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I, too, serve on the State and Local Committee and there are two ways to look at this bill. The first is in terms of the veterans themselves who served in that particular conflict and to honor them and respect them from what they endured. But the second part is equally as important and that is a catharsis of sorts for those who lived during that time period and didn't understand the conflict and the turmoil and the social upheaval that was going on in the '60s.

The testimony that we heard was so powerful, things that I hadn't even thought about even though I'm a history teacher by trade. So I look at this bill as a way not just to respect the veterans of that particular era, but also as a chance for the people of Maine to say thank you for what you did, thank you for what you endured, and, if we hurt you or said anything that was bad, we apologize. Thank you.

The **SPEAKER:** A roll call has been ordered. The pending question before the House is Adoption of Committee Amendment "A" (H-29) as Amended by House Amendment "D" (H-104) thereto. All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 23

YEA - Ayotte, Beaudoin, Beaulieu, Beavers, Beck, Beliveau, Bennett, Berry, Black, Blodgett, Boland, Bolduc, Briggs, Bryant, Burns DR, Cain, Carey, Casavant, Cebra, Celli, Chapman, Chase, Chipman, Clark H, Clark T, Clarke, Cornell du Houx, Cotta, Crafts, Cray, Crockett, Cushing, Damon, Davis, Dill C, Dill J, Dion, Dow, Driscoll, Duchesne, Dunphy, Eberle, Edgcomb, Espling, Eves, Fitts, Fitzpatrick, Flemings, Flood, Fossel, Foster, Fredette, Gifford, Gilbert, Gillway, Goode, Graham, Guerin, Hamper, Hanley, Harlow, Harmon, Harvell, Haskell, Hayes, Herbig, Hinck, Hogan, Hunt, Innes Walsh, Johnson D, Johnson P, Kaenrath, Kent, Keschl, Knight, Kruger, Kumiiega, Lajoie, Libby, Long, Longstaff, Lovejoy, Luchini, MacDonald, Maker, Malaby, Maloney, Martin, Mazurek, McCabe, McClellan, McFadden, McKane, Morissette, Morrison, Moulton, Nass, Nelson, Newendyke, O'Brien, O'Connor, Olsen, Parker, Parry, Peoples, Peterson, Picchiotti, Pilon, Plummer, Prescott, Priest, Rankin, Richardson D, Richardson W, Rioux, Rochelo, Rosen, Rotundo, Russell, Sanborn, Sanderson, Sarty, Shaw, Sirocki, Stevens, Strang Burgess, Stuckey, Theriault, Tilton, Timberlake, Treat, Turner, Tuttle, Valentino, Volk, Wagner R,

Waterhouse, Webster, Welsh, Willette A, Willette M, Winsor, Wintle, Wood, Mr. Speaker.

NAY - Burns DC, Knapp, Weaver.

ABSENT - Bickford, Curtis.

Yes, 146; No, 3; Absent, 2; Excused, 0.

146 having voted in the affirmative and 3 voted in the negative, with 2 being absent, and accordingly **Committee Amendment "A" (H-29) as Amended by House Amendment "D" (H-104) thereto was ADOPTED.**

The Bill was assigned for **SECOND READING** Thursday, April 28, 2011.

Bill "An Act To Create Transparency and Accountability in Economic Development Subsidies"

(H.P. 1065) (L.D. 1451)

(Committee on **LABOR, COMMERCE, RESEARCH AND ECONOMIC DEVELOPMENT** suggested)

TABLED - April 12, 2011 (Till Later Today) by Representative **PRESCOTT** of Topsham.

PENDING - REFERENCE.

Subsequently, the Bill was **REFERRED** to the Committee on **LABOR, COMMERCE, RESEARCH AND ECONOMIC DEVELOPMENT**, ordered printed and sent for concurrence.

HOUSE DIVIDED REPORT - Majority (8) Ought Not to Pass - Minority (5) Ought to Pass - Committee on **EDUCATION AND CULTURAL AFFAIRS** on Resolve, Requiring the Department of Education To Amend Its Rules To Prohibit School Administrative Units from Imposing Unreasonable Restrictions That Impede the Ability of Parents and Evaluators To Observe Students

(H.P. 708) (L.D. 964)

TABLED - April 26, 2011 (Till Later Today) by Representative **RICHARDSON** of Carmel.

PENDING - Motion of same Representative to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report.

The **SPEAKER:** The Chair recognizes the Representative from Cumberland, Representative Strang Burgess.

Representative **STRANG BURGESS:** Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I would like to ask your indulgence for just a few minutes on this bill. I am a cosponsor of it. We have a fair number of special education oriented bills this session and for those of you who have been out to supper with me for the last few sessions, you've heard me talk on these issues quite a bit, so here we go.

This bill is one of those bills that's really no big deal. Let me tell you what this bill says. First of all is that it's a resolve. It requires the Department of Education to allow school administrative units to not impose unreasonable restrictions that impede the ability for parents – that's us – and evaluators to observe our kiddos. It's qualified examiners, it isn't just anybody, and they are only there at the request of me, the parent. So that's what this bill says.

Now let me tell you how it works in reality. Here's how this works. I have had two kiddos go through special ed, all the way from being in kindergarten through high school, so I fortunately have about 25 years of experience now working with special ed. I've seen a lot and I've talked to a heck of a lot of parents. It is probably one of the most frustrating, challenging things that you will ever do as a parent if you have a kiddo that, for a variety of number of reasons, doesn't quite fit through the square peg when they enter kindergarten.

I have to tell you I went to school and did my homework and I did all that, and when I had my first child and he was identified for

special education when he was four years old, I had to basically go to school almost every day. About once a week I was in the school system and I advocated for my kiddo every step of the way. It takes so much energy, so much time. I mean I sort of felt like I went back to school, K-12, and then I got to do it again with my third son. We make it so adversarial and we don't need to do this. Everybody is on the same side. We all want the best things for our kiddos and we just try to figure out as a parent what's the right thing to do.

So what happens is there is a whole process that's set up and I don't have a quarrel with the process. In fact, we've actually worked really hard the last four years to tighten that process so we can better understand what's going on and make sure that the kids get the best things for the kids. After all, that is the bottom line, and these are all in that category of the better you get our kids prepared to go through school, the better chance they will come out of school with the education preparedness that they need to have to do whatever it is they want to do, whether it's go to college or go to trade school or whatever, you want everybody to be developed to their potential.

So what this bill says or why it's here in the first place is this is the situation. Many different times in this process, I have hired my own individual evaluator to look at my kiddo because the school does their thing and sometimes, you know, the school is saying, you know what, he's really just doing great, and I know for a fact that he is failing different things or he is very anxious or whatever the situation is, I am entitled just as you are to get a second opinion at a medical doctor. I'm entitled to do that, only I pay 100 percent of that bill. Nobody else pays for it and I'm not asking anybody else to pay for it. I pay for it. So if I hire someone, in addition to talking to me and meeting my kid, probably they are going to need to observe him in a school situation.

So the way it works is that they would need to come into the classroom to observe my son. Now the way this happens now is that most schools, this really isn't an issue, but it's just becoming so adversarial and difficult, that is the reason that drove this bill to happen, so it simply removes any question that if someone is operating on my behalf, on my nickel, that they need to be treated with respect and work in a reasonable manner.

So this qualified person – well, first of all, what this bill doesn't do is it doesn't give anybody carte blanche to run around the school and hang out at the school for hours or days or weeks. I'm paying the bill and let me tell you, I'm not going to be paying for any more time than is necessary, and you don't need to observe a kid for very long to understand what is going on.

So here is another piece that this bill doesn't do. This person, the way it would work, the way I would work it, is that I'm hiring an independent evaluator and part of the evaluation is they need to see my son in class. I call the principal of the school and I say, you know, Mrs. Smith is going to be coming by at some point on Tuesday to observe my son in class and I just want to give you the heads up and I hope that you will be as courteous as possible. So on Tuesday Mrs. Smith shows up at the school, goes to the principal's office or whatever the school rules are, they are not exempt from the school rules of safety and all the schools, you know, you go through the front door, you have to report straight to the thing, you've got to get a badge to be a guest, you have to let people know you're there. So you go do that and then they say, well, my son is in English today at this time, so they go down to the English class and they are meant to be as unobstructive as possible and they are observing my child in the classroom.

Now then, what happens if – you know in English, because the teacher there is running a pretty tight ship and my son is

doing really well there and yet there was some question about him staying on task. I'm making this up, although actually probably I'm not. Anyway, and the next class is gym. Well, I'd like to see this kiddo if I was the professional, in an unstructured environment so I'm going to go back to the principal's office, I'm a qualified examiner at this point, and I'm going to say to you that was great, I'd like to stick around and watch him in gym class, I'm just letting you know. That is a decision that that person made without necessarily the parent on the phone back and forth. What could happen is this principal would say, I'm sorry, you have to leave and you can come back another day when the parent lets me know more specially or something like that. That is just a waste of my nickel, my time that I'm paying for this person. You've wasted my money, I want to get this person in and out as efficiently and effectively as possible, which is mutually from the school's perspective as well.

I just want to end with saying that please understand that the word reasonable is in this title. If a teacher is having something special in their classroom or they are on a trip or something that is inappropriate to have an observer, then certainly that person should understand and they should be able to communicate like human beings. So this bill is really not about a whole lot other than it's about some respect for special ed parents and letting us look at our kids and get people there through good communication and understanding. Life would be a lot easier, and I would appreciate it if you all would follow my light. I will be voting against the motion on the floor, which is the Ought Not to Pass. I will be voting against that motion and I encourage you all to follow my light to support parents. Thank you.

The SPEAKER: The Chair recognizes the Representative from Woolwich, Representative Kent.

Representative KENT: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I was not expecting to speak today, so I am speaking a little off the cuff.

I have a son, a four-year-old, who has Downs syndrome. I am, by the way, the sponsor of this bill. I have a four-year-old who has Downs syndrome and just two days ago, he's been having trouble speaking, and just a couple of days ago we decided we wanted to have an independent evaluator, another opinion. It's not that we disagree with the opinions that we've had. We just want another opinion outside of the auspices of the institution that he is in. It is valuable information for us and it is a check on the evaluations that we've been given concerning him.

It is not necessarily adversarial. It just gives us a broader perspective on where he is at and where we might be able to take him. It is as if any one of us went to the doctor, got a diagnosis, had an opinion and wanted to go to another doctor, we would want to take all the information to another doctor so that they were evaluating from the same perspective or position.

So it is with a parent who feels, and I myself feel, that I want my independent evaluator to have access to all the same information that the school's evaluator has, not different information, and all this bill is asking for is that an independent evaluator have this same access to the child that the school's evaluator has. No more than that, just the same access, and a school evaluator is there all day long in many, many different situations and an independent evaluator needs to have the same access to evaluate in many different situations without the control of the school trying to manipulate, at times, when and where an independent evaluator can see or visit or speak to or observe the child. I urge you all to vote against the motion on the floor. Thank you.

The SPEAKER: The Chair recognizes the Representative from Lewiston, Representative Wagner.

Representative WAGNER: Thank you, Mr. Speaker. I really cannot say more than these two very experienced parents have said, but I do want to read, once again, the wording, because it is very clear that this is an issue of allowing for a level playing field. This is a Resolve that the Department of Education shall amend its rules to permit a qualified examiner to observe a child at school or at a potential educational placement when the qualified examiner is conducting an independent educational evaluation at the request of the parent, at times and durations as determined necessary by the qualified examiner. Thank you, Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Greenville, Representative Johnson.

Representative JOHNSON: Thank you, Mr. Speaker, and I thank the previous speaker for reading the text of the Resolve. This Resolve changes the rules for qualified examiners. The title of the Resolve is inaccurate because it has nothing to do with access by the parents. It is parent's approval to send an evaluator in at times and duration to be determined by the evaluator. In my view, that is unfettered access which can create disruptions in a classroom.

Now I too have a special needs child that went through special education from about sixth grade through high school, so I am sensitive to the process that we have in place. We already have a process in place and it's a complex set of requirements, rules and procedures for special education that school administrative units have to abide by, and there are legal implications for not abiding by those sets of rules. If you were concerned as I am about public education for all kids, not just the 15 percent that are special education children, and the environment that they have in their schools, the discipline in the classroom and the cost of education, we should not tie the hands of teachers and administrators of those schools. In my view, this is a mandate on schools and it would create additional administrative burdens. We spend a lot of time talking about how to reduce the cost of education, and I'll tell you one thing, adding more mandates to schools is not a way to do it. Thank you.

The SPEAKER: The Chair recognizes the Representative from Whiting, Representative Burns.

Representative BURNS: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I support the Ought to Pass on this amendment and the sponsors and cosponsors of this and I do so for many of the same reasons. I am the parent of a severely disabled child who spent his entire time in special education. I have also been, as I've said before, a policymaker for schools for over 25 years so I've been on both sides of this issue. But as a parent, and I would appreciate decorum in this place, Mr. Speaker. It is difficult to get a point across when you can't hear or be heard.

The SPEAKER: The House will be in order.

Representative BURNS: Thank you, Mr. Speaker. As a parent of a special needs child, you already have your hands full dealing with the needs of that child. If you come to a place where you need to have an independent evaluation done, it seems reasonable to me, especially if you were going to foot the bill for that above and beyond what's already being done through your RAPs, that you be allowed access, not unfettered access but reasonable access, to come in when that evaluator needs to see that child in their environment and conduct that evaluation. That doesn't at all seem unreasonable.

We're talking about professionals here on both sides of this issue. The professionals that work under the direction of the special ed director and the professionals that would be qualified to come in and do these evaluations. It seems to me, on the behalf of these children, that we could work out some reasonable accommodations to see that that happens.

I don't think anybody is suggesting that we need to disrupt the school day unnecessarily so that these evaluations can be done. That certainly wasn't the intent of the bill. That's why the bill is entitled the way that it is. No unreasonable restrictions.

I think that this is an approach to a difficult set of circumstances that parents of special ed, even though that's only 15 percent of the population, are trying to deal with on a daily basis. To deny that access, I believe, puts parents in a predicament where they are not able to get a second opinion on what the needs are for that child. Just as you and I would want to do if we had a medical condition and we weren't comfortable with the opinion that we had received from our first physician. I would suggest to you that this is equally as important to parents and the children in this predicament, this situation.

The only thing that gives me pause for concern is in the last sentence. The last sentence of the bill, at the time and duration as determined necessary by the qualified examiner, and I realize why that causes some consternation with educators, those who spend their time in the classroom trying to work with all the children, not just my special ed child. But once again, these are all professionals that we're talking about. It seems to me that we can work out those details in order to allow this very necessary step to be taken so that these kids can have a second evaluation. I would urge you to support this. I think it will work. Thank you, Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Scarborough, Representative Volk.

Representative VOLK: Thank you, Mr. Speaker. I too am the parent of a special needs child. My son is 19 1/2 and has Asperger's syndrome and every teacher he has ever had would tell you he is probably one of the most challenging students that they ever had, and he continues to be a challenge at the age of 19. But when your child is diagnosed with autism or even ADHD, my son was also diagnosed with Tourette's, he was misdiagnosed many, many times. We had one person who saw him for 18 months and told us that he was just a spirited child in spite of the fact that he had all the hallmarks of Asperger's syndrome.

You're really vulnerable and particularly you're very vulnerable when you are dealing with the school because the school uses themselves as an expert, and you may be an expert on your child at home, but they will view themselves as the expert on your child at school, and it really feels like you are at a disadvantage. If you go to a table a PET meeting – and there can be 20 people sitting around that table and most of them are from the school – you might have yourself and your spouse, and if you've hired an independent examiner, that one person on your side, everybody else is from the school and they all have a plan for what they're going to tell you they should be doing with your child. If you don't have someone on your side to disagree or to have second opinions or other ideas or just another set of eyes, experience in what other school districts are doing and what's working for a child who is maybe similar to your child, then it's a really, really daunting experience.

So I feel that this Resolve is very important to allow independent qualified evaluators to provide an informed second opinion and make suggestions so that the parents can advocate adequately for their child, and sometimes it might be something that the school is doing and the evaluator may have a suggestion that might actually save the school money and make their life easier in dealing with the child. But in order to do that, they need to be allowed to observe the child. We're not asking that they had unfettered access to classroom and the school. It says that they can impose restrictions, they just can't be unreasonable restrictions, and so I just ask that you would follow our light and

vote Ought Not to Pass on this measure. Thank you.

The **SPEAKER**: The Chair recognizes the Representative from Topsham, Representative Prescott.

Representative **PRESCOTT**: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I will be voting against the pending motion of Ought Not to Pass. Sometimes school evaluations aren't enough and sometimes kids slip through the cracks and parents need to find extra help elsewhere, and professionals are out there for so many different areas of concern.

It has been said many times that there are many diagnoses to get out there and in order to get that accurate diagnosis, these evaluations must be done at school. This is where these kids spend the majority of their days and parents have a right to these evaluations. It is their choice and they are seeking professional help. It doesn't mean that these professionals are going to march right into the school and demand to take over and disrupt a class.

Schools have policies, but together, I think, schools, teachers, parents, and these independent evaluators can work together as a team, and we should not be limiting such important professional work to obtain a necessary diagnosis by professionals by allowing them to watch a student. The ultimate goal is give the best outcome for the student. Please follow my light and vote red. Thank you.

Representative **CAIN** of Orono **REQUESTED** a roll call on the motion to **ACCEPT** the Majority Ought Not to Pass Report.

More than one-fifth of the members present expressed a desire for a roll call which was ordered.

The **SPEAKER**: The Chair recognizes the Representative from Carmel, Representative Richardson.

Representative **RICHARDSON**: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. This bill is one; as was pointed out, is one of many coming before the Education Committee regarding special education and this, as I said, is only the first, and I suspect that they will all engender the passion and the emotion that they deserve because we're talking about children, the very vulnerable population of our children. So rightfully so, we should have a vigorous discussion and we should be concerned and caring and passionate and emotional about this. I rise just as you think about your vote on this bill, just offer a little bit of insight into what the committee dealt with as they were considering the bill.

First of all, I would like to point out, as has already been pointed out, that the title is a little bit misleading. The title of the bill is misleading because it talks about parents, but nowhere in the bill itself is there mention of the parents. So in reality this bill deals with independent evaluators. Currently, as the way I understand it and based on my nearly 30 years in a classroom, independent evaluators can come into a classroom. They always did in my classroom. So that is not the issue. The issue for the majority on this report, there were two or three issues.

First of all, there is no definition of qualified examiner. As a classroom teacher, as someone who is responsible for hundreds of children, that is a concern for me that I have people coming into the room or coming into my school, into my classroom, who may not have the qualifications that profess to be. Because there is no definition of qualified examiners, the bill would allow whomever the parent says is a qualified examiner to walk into a classroom at any time the qualified examiner determines necessary. That's what the bill language says. Whether that's the intent to not, that's what the bill language says, a qualified examiner can do that.

Since there is no definition of a qualified examiner in the bill, this allows the school and its personnel, which would be me in the classroom, no way to really protect all of my children. There

is also no language regarding the number of visits or the length of the visits, duration, as being by the so-called "qualified examiner." The intent, we all understand the intent and I think we all agree that the second evaluation or multiple evaluations may be warranted, but it's the language in the bill that caused pause for some of us on the committee.

Secondly, and it was alluded to, the unrestricted access, even though that may not be the intent, that seems to be what the bill allows, raises concerns relative to the potential violations and the school administrative unit's obligation and the teacher's obligation to ensure students' safety by managing access to those students and access to the classrooms and access to the students' information. Unrestricted access to anybody roaming around, wherever, whenever, how often, how long they want to, is a potential problem.

Lastly, we had an opportunity in the committee to ask about the special ed due process office at DOE regarding complaints where qualified examiners were not allowed to come in to the classroom, and the department reported that there hasn't been any problem brought to their attention. Furthermore, if there is a problem, if any parent has a problem or any "qualified examiner" has a problem, there are current provisions in the law to provide appropriate safeguards, including the parent's right to file a complaint regarding any unreasonable restrictions.

I just offered these for your consideration as you consider your vote on this bill. These are some of the elements that the committee considered as they voted. Thank you very much, Mr. Speaker.

The **SPEAKER**: The Chair recognizes the Representative from Raymond, Representative McClellan.

Representative **McCLELLAN**: Thank you, Mr. Speaker. I am on the committee that saw this bill and I'm also a parent of a special ed kid. In fact, my wife was a special educator, currently she is a principal of a school, and I guess I pretty much agree with what Representative Richardson, and previously Representative Johnson, said.

The only other point I'd make, I suppose, is I, like many people, ran on the issue of local control and I think I brought a lot of core values to the table on the Education Committee. Ultimately, I have learned for myself, I've found that the filter I have kind of created for myself is often, can the school board do this, and if the school board can do this, why do we need a law, mandate? So I will be voting today on Ought Not to Pass. Thank you.

The **SPEAKER**: The Chair recognizes the Representative from Portland, Representative Lovejoy.

Representative **LOVEJOY**: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I rise in opposition to the current motion and I have a number of reasons for this, but one of the things that we have to point out on this bill, this is at the parents' expense. If they want to hire a qualified examiner, why shouldn't they be able to?

It's also about what type of disabilities may be involved. Now if you have a child who has socialization problems, do you want that independent examiner to come in at a time that the school designates when he is in a computer lab? Or does the independent examiner want to observe when that child is at recess or lunchtime when you can look at what's happening in terms of socialization?

Unfortunately, the current system gives the power and, of course, the deeper pockets to the school district. Many of these parents don't have the resources to take and hire attorneys, and this is one of the things that they need to be able to do to present a case. The issue of whether the qualified examiner is defined in this bill, I think, is a moot point. After all, would any parent hire

someone as a qualified examiner that wasn't qualified to go in and represent their interests in an IEP?

I went to an IEP this summer with a student that I had been talking to and at her invitation went, and I looked and, as Representative Strang Burgess said, yes, or Representative Volk I believe it was, everyone at the table was representing the school district, including a paid consultant, and the deck was pretty much stacked.

So I think anyone that wants a fair shot wants to be able to get a good second opinion. If you had a diagnosis that really scared you, would you want to get a second opinion from someone? I certainly would. You need to take and realize no parent is going to pay for someone to go there five hours a day for the next two weeks. That's not what we're talking about here. So I am going to be voting red on this motion, I urge all of you to vote red. I know that won't happen, but these are our most vulnerable citizens and let's not put the school districts ahead of their students.

The SPEAKER: The Chair recognizes the Representative from Cumberland, Representative Strang Burgess.

Representative **STRANG BURGESS**: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. Just two last points and I think that we're all ready to move on.

One is remember this is an independent evaluator that the parents have hired. This is a lot about parents' rights here. We spend a lot of time talking about how important it is for home rule, local rule. Parents, what happened to the parents? And the other part is it is not unfettered access. It is access to watch the child. Obviously every part of the school rules will be adhered to. There is nothing in this bill that says unfettered access. It does not say anything of special permissions. They would go into the school, they would have to do all the security situation that any school would have as if anybody were to come in and want to watch. If a parent shows up, you have to go through the same process.

I just would like to sort of in closing say, you hear the passion on this floor and it's a little detail that we're talking about, but I think that it illustrates to you why we have this adversity that's been built up, is that basically the schools are trying to prevent these activities from happening. I really am just terribly distressed about that and it's getting worse, and the parents are getting their backs up. So you know that's what this is all about and it's too bad that schools wouldn't embrace these situations and these kids in these special ed situations and the fact that autism is off the charts. If you want to talk about an unbudgeted problem.... Anyway, off track. So this is an example in the bill that really needs people's support. Thank you very much.

The SPEAKER: The Chair recognizes the Representative from Brewer, Representative Celli.

Representative **CELLI**: Mr. Speaker, may I pose a question through the Chair?

The SPEAKER: The Representative may pose his question.

Representative **CELLI**: Where this legislation says unreasonable restrictions, would that include setting up an appointment, like setting up a day, calling ahead? Would that be an unreasonable restriction?

The SPEAKER: The Representative from Brewer, Representative Celli, has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Passamaquoddy Tribe, Representative Soctomah.

Representative **SOCTOMAH**: Thank you, Mr. Speaker. I am on the Education Committee and I supported the Minority Report of Ought to Pass and preserve the right of the parents being involved in their child's education and well being. I think it's very

important that we do not allow institutions to get involved in that area because the parents know the child the best and that ought to be supported by any institution in the welfare of the child. Thank you.

The SPEAKER: The Chair recognizes the Representative from Brewer, Representative Celli.

Representative **CELLI**: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. Since there doesn't seem to be a definition of what is unreasonable, having been a former teacher and asking for a courtesy in anyone visiting my classroom, I will have to vote with the Ought Not to Pass. Thank you.

The SPEAKER: The Chair recognizes the Representative from Boothbay, Representative Macdonald.

Representative **MacDONALD**: Thank you, Mr. Speaker. Mr. Speaker, Men and Women of the House. I just speak with the experience of having been not only a classroom teacher but a school principal for eight years. I would not fear this bill at all as a school principal and as a teacher. I would welcome into the discussion any person that a parent felt was qualified to help in the evaluation of a child with difficulties.

I'm going to vote red on this and I hope that you will support the minority position on this. I just think that we have set up enough adversarial situations in our educational system. As a building principal I would know immediately who was in my building. If that person were there too often, if that person were not behaving appropriately, I would have them in my office to talk with them. I would be running my own evaluation of their qualifications. If they were there too long and too often, I would be negotiating with them about changing their behavior.

I think this is an entirely reasonable request that is being made by Representatives Kent and Strang Burgess and others. I would support them completely and ask that you not be afraid, as some people have suggested we should be, of unintended mandates or strange things happening in the school, and vote against this Ought Not to Pass and support the minority opinion. Thank you, Mr. Speaker.

The SPEAKER: A roll call has been ordered. The pending question before the House is Acceptance of the Majority Ought Not to Pass Report. All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 24

YEA - Ayotte, Beaulieu, Bennett, Black, Casavant, Celli, Clark T, Cotta, Crafts, Cray, Crockett, Cushing, Damon, Davis, Dow, Dunphy, Edgecomb, Espling, Fitzpatrick, Flood, Fredette, Gifford, Gillway, Hamper, Harmon, Johnson D, Johnson P, Keschl, Knapp, Libby, Long, Maker, Martin, McClellan, McFadden, Morissette, Nass, O'Connor, Parker, Parry, Plummer, Richardson D, Richardson W, Rioux, Sanderson, Sarty, Tilton, Timberlake, Turner, Waterhouse, Weaver, Willette A, Willette M, Wintle, Mr. Speaker.

NAY - Beaudoin, Beavers, Beck, Beliveau, Berry, Blodgett, Boland, Bolduc, Briggs, Bryant, Burns DC, Burns DR, Cain, Carey, Chapman, Chase, Chipman, Clark H, Clarke, Cornell du Houx, Dill J, Dion, Driscoll, Duchesne, Eberle, Eves, Fitts, Flemings, Fossel, Foster, Gilbert, Goode, Graham, Guerin, Hanley, Harlow, Harvell, Haskell, Hayes, Herbig, Hinck, Hogan, Hunt, Innes Walsh, Kaenrath, Kent, Knight, Kruger, Kumiega, Lajoie, Longstaff, Lovejoy, Luchini, MacDonald, Malaby, Maloney, Mazurek, McCabe, McKane, Morrison, Moulton, Nelson, Newendyke, O'Brien, Olsen, Peoples, Peterson, Picchiotti, Pilon, Prescott, Priest, Rankin, Rochelo, Rosen, Rotundo, Russell, Sanborn, Shaw, Sirocki, Stevens, Strang Burgess, Stuckey, Theriault, Treat, Tuttle, Valentino, Volk, Wagner R, Webster, Welsh, Winsor, Wood.

ABSENT - Bickford, Cebra, Curtis, Dill C.
Yes, 55; No, 92; Absent, 4; Excused, 0.

55 having voted in the affirmative and 92 voted in the negative, with 4 being absent, and accordingly the Majority **Ought Not to Pass** Report was **NOT ACCEPTED**.

Subsequently, the Minority **Ought to Pass as Amended** Report was **ACCEPTED**.

The Resolve was **READ ONCE** and was assigned for **SECOND READING** Thursday, April 28, 2011.

SENATE PAPERS

Bill "An Act To Amend the Uniform Principal and Income Act"
(S.P. 479) (L.D. 1517)

Came from the Senate, **REFERRED** to the Committee on **JUDICIARY** and ordered printed.

REFERRED to the Committee on **JUDICIARY** in concurrence.

CONSENT CALENDAR

First Day

In accordance with House Rule 519, the following items appeared on the Consent Calendar for the First Day:

(S.P. 96) (L.D. 316) Bill "An Act To Clarify the Scope of Maine's Franchise Laws for Dealers of Power Equipment, Machinery and Appliances" (EMERGENCY) Committee on **LABOR, COMMERCE, RESEARCH AND ECONOMIC DEVELOPMENT** reporting **Ought to Pass**

(S.P. 178) (L.D. 595) Bill "An Act To Allow for Timely Credit for Driver's License Suspensions Imposed by a Court" Committee on **CRIMINAL JUSTICE AND PUBLIC SAFETY** reporting **Ought to Pass**

(S.P. 221) (L.D. 731) Bill "An Act To Terminate the Authorization of the Maine Self-Insurance Guarantee Association To Serve as a Statistical Advisory Organization for Self-insurers" Committee on **INSURANCE AND FINANCIAL SERVICES** reporting **Ought to Pass**

(S.P. 279) (L.D. 891) Bill "An Act To Amend the Maine Consumer Credit Code Regarding Interest Charged on Deferred Payments" Committee on **INSURANCE AND FINANCIAL SERVICES** reporting **Ought to Pass**

(S.P. 364) (L.D. 1243) Resolve, To Direct the Bureau of Consumer Credit Protection To Recommend Changes to Credit Reporting Laws Concerning Paid Debts Committee on **INSURANCE AND FINANCIAL SERVICES** reporting **Ought to Pass**

(S.P. 216) (L.D. 727) Bill "An Act Relating to Indemnity Agreements in Motor Carrier Transportation Contracts" Committee on **TRANSPORTATION** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-43)**

(S.P. 240) (L.D. 796) Bill "An Act To Continue the Axle Fine Waiver during the Midwinter Season" Committee on **TRANSPORTATION** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-40)**

There being no objections, the above items were ordered to appear on the Consent Calendar tomorrow under the listing of Second Day.

In accordance with House Rule 519, the following items appeared on the Consent Calendar for the First Day:

(H.P. 241) (L.D. 297) Bill "An Act To Allow Treasurers To Process Tax Lien Discharge and Sanitary District Sewer Lien

Documents Using Facsimile Signatures" Committee on **TAXATION** reporting **Ought to Pass**

(H.P. 416) (L.D. 533) Bill "An Act To Clarify the Use of Tax Increment Financing Funds for Recreational Development" Committee on **TAXATION** reporting **Ought to Pass**

(H.P. 440) (L.D. 557) Bill "An Act To Qualify the Port of Eastport as Tax Exempt for Purpose of Bonding" (EMERGENCY) Committee on **TAXATION** reporting **Ought to Pass**

(H.P. 275) (L.D. 349) Bill "An Act To Require the Inclusion of a Financial Statement on School Administrative Unit Bond Obligations When Voting on a School Construction Project" Committee on **EDUCATION AND CULTURAL AFFAIRS** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-124)**

(H.P. 939) (L.D. 1280) Bill "An Act To Establish a Pilot Physical Education Project in Four Maine Schools" (EMERGENCY) Committee on **EDUCATION AND CULTURAL AFFAIRS** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-125)**

There being no objections, the above items were ordered to appear on the Consent Calendar tomorrow under the listing of Second Day.

By unanimous consent, all matters having been acted upon were **ORDERED SENT FORTHWITH**.

On motion of Representative STRANG BURGESS of Cumberland, the House adjourned at 11:51 a.m., until 10:00 a.m., Thursday, April 28, 2011.