

# MAINE STATE LEGISLATURE

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

**Daily Edition**

**Second Regular Session**

January 4, 2012 – May 31, 2012

pages 1084 - 1604

ONE HUNDRED AND TWENTY-FIFTH LEGISLATURE  
SECOND REGULAR SESSION  
21st Legislative Day  
Wednesday, February 29, 2012

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

Prayer by Rabbi Rachel M. Isaacs, Beth Israel Congregation; Jewish Chaplain, Colby College, Waterville.

Pledge of Allegiance.

The Journal of yesterday was read and approved.

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**SENATE PAPERS**

**Non-Concurrent Matter**

Bill "An Act To Allow Forfeiture of Maine Public Employees Retirement System Benefits for Persons Convicted of Certain Crimes"

(H.P. 1351) (L.D. 1831)

**REFERRED** to the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS** in the House on February 23, 2012.

Came from the Senate **REFERRED** to the Committee on **JUDICIARY** in **NON-CONCURRENCE**.

The House voted to **RECEDE AND CONCUR**.

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**ORDERS**

On motion of Representative RICHARDSON of Carmel, the following Joint Resolution: (H.P. 1356) (Cosponsored by Representatives: AYOTTE of Caswell, BEAUDOIN of Biddeford, BEAULIEU of Auburn, BEAVERS of South Berwick, BECK of Waterville, BELIVEAU of Kittery, BENNETT of Kennebunk, BERRY of Bowdoinham, BICKFORD of Auburn, BLACK of Wilton, BLODGETT of Augusta, BOLAND of Sanford, BOLDUC of Auburn, BRIGGS of Mexico, BRYANT of Windham, BURNS of Whiting, CAIN of Orono, CAREY of Lewiston, CASAVANT of Biddeford, CEBRA of Naples, CELLI of Brewer, CHAPMAN of Brooksville, CHASE of Wells, CHIPMAN of Portland, CLARK of Millinocket, CLARK of Easton, CLARKE of Bath, CORNELL du HOUX of Brunswick, COTTA of China, CRAFTS of Lisbon, CRAY of Palmyra, CROCKETT of Bethel, CURTIS of Madison, CUSHING of Hampden, DAMON of Bangor, DAVIS of Sangerville, DILL of Old Town, DION of Portland, DOW of Waldoboro, DRISCOLL of Westbrook, DUCHESNE of Hudson, DUNPHY of Embden, EBERLE of South Portland, EDGEComb of Caribou, ESPLING of New Gloucester, EVES of North Berwick, FITTS of Pittsfield, FITZPATRICK of Houlton, FLEMINGS of Bar Harbor, FLOOD of Winthrop, FOSSEL of Alna, FOSTER of Augusta, FREDETTE of Newport, GIFFORD of Lincoln, GILBERT of Jay, GILLWAY of Searsport, GOODE of Bangor, GRAHAM of North Yarmouth, GUERIN of Glenburn, HAMPER of Oxford, HANLEY of Gardiner, HARLOW of Portland, HARMON of Palermo, HARVELL of Farmington, HASKELL of Portland, HAYES of Buckfield, HERBIG of Belfast, HINCK of Portland, HOGAN of Old Orchard Beach, HUNT of Buxton, INNES of Yarmouth, JOHNSON of Eddington, JOHNSON of Greenville, KAENRATH of South Portland, KENT of Woolwich, KESCHL of Belgrade, KNAPP of Gorham, KNIGHT of Livermore Falls, KRUGER of Thomaston, KUMIEGA of Deer Isle, LAJOIE of Lewiston, LIBBY of Waterboro, LONG of Sherman, LONGSTAFF of Waterville, LOVEJOY of Portland, LUCHINI of Ellsworth, MacDONALD of Boothbay, MAKER of Calais, MALABY of Hancock, MALONEY of Augusta, MARTIN of Eagle Lake, MAZUREK of Rockland, McCABE of Skowhegan, McCLELLAN of Raymond, McFADDEN of Dennyville, McKANE of Newcastle,

MITCHELL of the Penobscot Nation, MONAGHAN-DERRIG of Cape Elizabeth, MORISSETTE of Winslow, MORRISON of South Portland, MOULTON of York, NASS of Acton, NELSON of Falmouth, NEWENDYKE of Litchfield, Speaker NUTTING of Oakland, O'BRIEN of Lincolnville, O'CONNOR of Berwick, OLSEN of Phippsburg, PARKER of Veazie, PARRY of Arundel, PEOPLES of Westbrook, PETERSON of Rumford, PICCHIOTTI of Fairfield, PILON of Saco, PLUMMER of Windham, PRESCOTT of Topsham, PRIEST of Brunswick, RANKIN of Hiram, RICHARDSON of Warren, RIOUX of Winterport, ROCHELO of Biddeford, ROSEN of Bucksport, ROTUNDO of Lewiston, RUSSELL of Portland, SANBORN of Gorham, SANDERSON of Chelsea, SARTY of Denmark, SHAW of Standish, SIROCKI of Scarborough, SLAGGER of the Houlton Band of Maliseet Indians, SOCTOMAH of the Passamaquoddy Tribe, STEVENS of Bangor, STRANG BURGESS of Cumberland, STUCKEY of Portland, THERIAULT of Madawaska, TILTON of Harrington, TIMBERLAKE of Turner, TREAT of Hallowell, TURNER of Burlington, TUTTLE of Sanford, VALENTINO of Saco, VOLK of Scarborough, WAGNER of Lewiston, WALLACE of Dexter, WATERHOUSE of Bridgton, WEAVER of York, WEBSTER of Freeport, WELSH of Rockport, WILLETTE of Mapleton, WILLETTE of Presque Isle, WINSOR of Norway, WOOD of Sabattus, Senators: ALFOND of Cumberland, BARTLETT of Cumberland, BRANNIGAN of Cumberland, COLLINS of York, COURTNEY of York, CRAVEN of Androscoggin, DIAMOND of Cumberland, DILL of Cumberland, FARNHAM of Penobscot, GERZOFSKY of Cumberland, GOODALL of Sagadahoc, HASTINGS of Oxford, HILL of York, HOBBS of York, JACKSON of Aroostook, JOHNSON of Lincoln, KATZ of Kennebec, LANGLEY of Hancock, MARTIN of Kennebec, MASON of Androscoggin, McCORMICK of Kennebec, PATRICK of Oxford, PLOWMAN of Penobscot, President RAYE of Washington, RECTOR of Knox, ROSEN of Hancock, SAVIELLO of Franklin, SCHNEIDER of Penobscot, SHERMAN of Aroostook, SNOWE-MELLO of Androscoggin, SULLIVAN of York, THIBODEAU of Waldo, THOMAS of Somerset, WHITTEMORE of Somerset, WOODBURY of Cumberland)

**JOINT RESOLUTION RECOGNIZING MAINE ADULT EDUCATION**

WHEREAS, since 1871 Maine's public schools have supported the development of an adult education system that has grown and adapted to meet the needs of people throughout the State; and

WHEREAS, Maine's adult education programs are uniquely positioned to provide adults with the opportunity to learn wherever they live in the State, with services in 85% of municipalities; and

WHEREAS, Maine's adult education programs are educating Maine people about the use of broadband Internet through the ConnectME Community Connections project; and

WHEREAS, adult education programs are vital to the economic development of Maine and are actively responding to the current crisis of lost jobs by providing programs and courses specifically designed to help educate the workforce and prepare Maine adults for success, including:

1. Direct service to Maine adults who have experienced job loss or who need improved skills to obtain employment;

2. Career preparation and courses for Maine workers, partnerships with postsecondary and workforce institutions, as well as certificate programs, including the implementation of the WorkReady program focusing on workforce development skills for success on the job;

3. Literacy and English as a Second Language programs and successful family literacy programs combining adult education and early childhood education and parenting instruction;

4. High school completion and general educational development programs, which annually award 3,000 credentials in Maine;

5. Comprehensive college transition programs in place in 22 regions covering every county in Maine, which provide career guidance, college orientation and refresher and prerequisite classes for adults seeking college success;

6. Community education, including a vibrant array of courses contributing to the quality of life in Maine communities, offering the opportunity for Mainers of all ages to share talents and learn from others; and

7. A new emphasis on collaboration through the use of distance learning and videoconferencing to bring new learning opportunities to rural communities through a newly awarded federal grant; and

WHEREAS, the Maine Adult Education Association launched a web portal system of coordinated websites for local programs allowing statewide searching for courses and online registration and payment, with 925,300 visits and 4.8 million page views in the past 3 years and with visits up 15% from 2010 to 2011; now, therefore, be it

RESOLVED: That We, the Members of the One Hundred and Twenty-fifth Legislature now assembled in the Second Regular Session, on behalf of the people we represent, pause to acknowledge and express our appreciation and strong support of Maine's adult education programs, which uniquely meet the needs of the communities they serve and provide a vital system of service to the population of the State as new challenges are faced in this period of economic uncertainty; and be it further

RESOLVED: That a suitable copy of this resolution, duly authenticated by the Secretary of State, be transmitted to the Department of Education.

**READ and ADOPTED.**

Sent for concurrence.

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On motion of Representative DION of Portland, the following House Order: (H.O. 40)

WHEREAS, it appears to the House of Representatives of the 125th Legislature that the following are important questions of law and that this is a solemn occasion; and

WHEREAS, the Constitution of Maine, Article VI, Section 3 provides for the Justices of the Supreme Judicial Court to render their opinion on these questions; and

WHEREAS, there is concern within the House of Representatives that the Treasurer of State has violated the provisions of the Constitution of Maine, Article V, Part Third, Section 3, which states that: "The Treasurer shall not, during the treasurer's continuance in office, engage in any business of trade or commerce, or as a broker, nor as an agent or factor for any merchant or trader."; and

WHEREAS, in response to questions posed to the Attorney General by a member of the House of Representatives dated February 10, 2012, the Attorney General has provided the following information. Most of this information regarding the Treasurer of State's activities contained in the Attorney General's opinion is also identified in an amended Statement of Sources of Income filed by the Treasurer of State with the Commission on Governmental Ethics and Election Practices in response to a complaint filed by the Maine Democratic Party alleging that the Treasurer of State failed to disclose adequately sources of

income and activities on his 2010 Statement of Sources of Income.

1. During his term in office the Treasurer of State has owned the Popham Beach Club in Phippsburg, Maine. Research not mentioned by the Attorney General's opinion shows that the website for the club indicates that it is a private recreational club with family memberships that is available for rental for private events beginning in May 2012. The club is not organized as a separate entity and does not file a separate tax return. All revenues and expenses of the club are attributed to the Treasurer of State personally. While a manager is employed with responsibility for day-to-day operations of the club, the manager is not involved with club finances. The Treasurer of State is the sole signatory for the club's checking account. All utility bills are in the Treasurer of State's name. While serving as Treasurer of State, the Treasurer of State has represented the club before the Town of Phippsburg with regard to a local land use permit application.

2. During his term in office the Treasurer of State has also been involved with real estate development activities through a domestic limited liability company known as Dirigo Holdings, LLC. Records on file with the Secretary of State indicate that the Treasurer of State is the clerk/registered agent for the company. Management of the company is vested in its members. The Treasurer of State is the sole member of the company. The primary business of Dirigo Holdings, LLC is the development of real estate in the Town of Phippsburg known as Popham Woods Condominiums. A site location of development order issued by the Department of Environmental Protection in 2007 to Dirigo Holdings, LLC states that the company planned to develop a 69-unit condominium development with an estimated cost of \$17,279,000 and that the company intended to self-finance the proposed project. Properties are currently being marketed by a realty company.

3. The Constitution of Maine, Article V, Part Third, Section 2 requires the Treasurer of State to give bond to the State. The Maine Revised Statutes, Title 5, section 122 provides that a condition of the bond must be that the Treasurer of State will not engage in trade or commerce or act as a broker, agent or factor for any merchant or trader. The bond provided by the Treasurer of State under Title 5, section 122 does not address engagement in trade or commerce.

4. The Attorney General's opinion concludes that the intent of the constitutional restriction in the Constitution of Maine, Article V, Part Third, Section 3 is to require the Treasurer of State to make a full-time commitment to the office of Treasurer of State and that the Treasurer of State is precluded from engaging in trade or business that would divert his attention and cannot accept employment or provide services to others while in office.

5. The Attorney General concludes that, with respect to the Treasurer of State, any activities related to active management of stock or other ownership interests should be handled by 3rd parties and the Treasurer of State should dissociate himself from active management of any entities and should not appear before any governmental bodies on behalf of any entities that he owns; and

WHEREAS, the Attorney General was unable to locate any judicial decision construing the constitutional restrictions on the Treasurer of State's activities; and

WHEREAS, the Treasurer of State does not appear to have responded to the recommendations of the Attorney General; and

WHEREAS, the Treasurer of State has also indicated to the Commission on Governmental Ethics and Election Practices that he holds passive ownership interests in other investment

companies and that his original required filing with the commission did not completely identify all of his activities and sources of income; and

WHEREAS, if the activities of the Treasurer of State violate the provisions of the Constitution of Maine, Article V, Part Third, Section 3, the validity of previous and future action by the Treasurer of State under the Constitution and statutes of the State of Maine is placed in question; and

WHEREAS, if the activities of the Treasurer of State violate the provisions of the Constitution of Maine, Article V, Part Third, Section 3, the only remedies available to the House of Representatives would be removal from office by impeachment or address under Article IX, Section 5; and

WHEREAS, under the Constitution of Maine, Article IV, Part First, Section 8, the House of Representatives has the sole power of impeachment; and

WHEREAS, the initiation of impeachment or address proceedings is one of the most serious actions that the Legislature can contemplate and should not be undertaken without a clear understanding of the governing provisions of the Constitution of Maine; and

WHEREAS, a decision by the House of Representatives on whether to initiate proceedings to remove the Treasurer of State from office involves important questions of law on a solemn occasion; now, therefore, be it

ORDERED, that, in accordance with the provisions of the Constitution of Maine, the House of Representatives respectfully requests the Justices of the Supreme Judicial Court to give the House of Representatives their opinion on the following questions of law:

Question 1. Do any of the activities of the Treasurer of State identified by the Attorney General violate the constitutional restrictions prohibiting the Treasurer of State from engaging in a business of trade or commerce or as a broker or agent or factor for any merchant or trader? Has the Treasurer of State violated his oath "...to support the Constitution of the State of Maine"?

Question 2. If the answer to either part of Question 1 is in the affirmative, does this violation place in jeopardy the validity of any actions taken by the Treasurer of State while in violation of the constitutional restrictions?

Question 3. If the answer to either part of Question 1 is in the affirmative, having violated the Constitution of Maine, is it possible for the Treasurer of State to remain in office?

Question 4. Given that the Treasurer of State is prohibited from engaging in trade or commerce, could he comply with the Constitution of Maine by placing management of his business interests in the hands of a 3rd party or would it be necessary for him to divest himself of his interests entirely?

Question 5. Do the activities of the Treasurer of State identified by the Attorney General with regard to the Treasurer of State's involvement with the Popham Beach Club or Dirigo Holdings, LLC or the Treasurer of State's failure to provide complete information regarding sources of income and activities to the Commission on Governmental Ethics and Election Practices constitute a misdemeanor in office permitting the House of Representatives to take action against the Treasurer of State under the Constitution of Maine, Article IX, Section 5 providing for the impeachment or removal by address to the Governor?

Question 6. Are there any other avenues available to the Legislature to investigate the activities of the Treasurer of State and to determine whether the Treasurer of State's actions violate the Constitution of Maine or any provisions of law?

Question 7. Does the incompleteness of the Treasurer of State's bond constitute grounds for removal under the Maine

Revised Statutes, Title 5, section 124? What action would be necessary under that law to remove the Treasurer of State?

**READ.**

Representative DION of Portland moved that the House Order be **TABLED** one Legislative day pending **PASSAGE** pursuant to House Rule 513.

Subsequently, Representative DION of Portland **WITHDREW** his motion to **TABLE** one Legislative day pending **PASSAGE** pursuant to House Rule 513.

The SPEAKER: The Chair recognizes the Representative from Portland, Representative Dion.

Representative **DION**: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. Today I've presented an order that speaks for our fundamental responsibility which is to uphold the Constitution of this state. We have taken an oath in defense of that document. It is not a mere scrap of paper nor old law. It is the foundation of this chamber. And as a result of that, we have an obligation, a duty to ensure that it is enforced and preserved. I'll set aside my written comments because I tried the script earlier and we all saw what resulted from that. But this is a serious matter. For 32 years, I took an oath to uphold the Constitution and that duty, at times, was taxing and weighed heavily on I and my colleagues, but what distinguished us was that we honored that document and we honored what it meant. The Constitution is not about rights. It's about the responsibility that we hold as citizens to keep government and its agents in check, that no one can stand outside the law, especially no one who is part of the government. That is our core responsibility to our fellow citizens and it's one that this order seeks to address.

Weeks ago I raised questions with the Attorney General regarding the activities of a constitutional officer. We did receive a reply, but that was not an answer. There was no conclusion as to whether or not the standards and expectations of the Constitution were violated. It simply provided remedies, guidelines of our future conduct. There can be no remedies without a wrong and the Attorney General took safe harbor in the idea that no court had yet ruled on what the language in Article III actually meant. I'm not a judge. The language is clear and it is my singular opinion that a violation has occurred, but my opinion counts not until the court rules, and therefore the genesis of this order.

I am pleased to have been informed today that the majority has elected to join this effort to seek justice, to seek the objective nonpartisan opinion of the court as to whether or not that violation has occurred and what consequence should follow. What steps can this body take to hold a constitutional officer in check, for that is the central responsibility of the Constitution, limited government, limited not by its budget but limited by its power to act independently from the wishes of the public. So that's what we are here to do today. The duty to vote in the affirmative will not fall fairly and evenly on all of us. Some, the consequence and burden will be heavier, because they will have to decide today that in defense of the Constitution they can no longer escape by being politicians, but instead we need to be patriots, patriots to that principle that the rule of law applies equally no matter your station in government or in private life. So I urge you, I ask you to meet that duty squarely today and pass this order. Thank you.

On motion of Representative CAIN of Orono, the House Order was **TABLED** one Legislative day pending **PASSAGE** pursuant to House Rule 513 and specially assigned for Thursday, March 1, 2012.

Representative WEBSTER of Freeport assumed the Chair.  
The House was called to order by the Speaker Pro Tem.

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### SPECIAL SENTIMENT CALENDAR

In accordance with House Rule 519 and Joint Rule 213, the following item:

#### Recognizing:

James "Jim" Emerson, of Corinna, the Chief of Police for the Dexter Police Department, on his retirement after 30 years of service. Chief Emerson has been Chief of Police for 3 years. We send him our appreciation for his commitment to his community, to law enforcement and to the State. We congratulate him on his retirement;

(HLS 1011)

Presented by Representative WALLACE of Dexter.  
Cosponsored by Senator PLOWMAN of Penobscot,  
Representative FREDETTE of Newport.

On **OBJECTION** of Representative DAVIS of Sangerville,  
was **REMOVED** from the Special Sentiment Calendar.

#### READ.

On motion of Representative DAVIS of Sangerville, the rules were **SUSPENDED** for the purpose of adding all Members of the House as co-sponsors.

Subsequently, the Sentiment was **PASSED** and sent for concurrence.

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### REPORTS OF COMMITTEE

#### Divided Reports

Majority Report of the Committee on **JUDICIARY** reporting  
**Ought to Pass as Amended by Committee Amendment "B"**  
**(H-721)** on Bill "An Act To Protect Homeowners Subject to  
Foreclosure by Requiring the Foreclosing Entity To Provide the  
Court with Original Documents"

(H.P. 128) (L.D. 145)

Signed:

Senators:

HASTINGS of Oxford  
DILL of Cumberland  
WOODBURY of Cumberland

Representatives:

NASS of Acton  
SARTY of Denmark  
FOSSEL of Alna  
MOULTON of York  
PRIEST of Brunswick  
MALONEY of Augusta  
ROCHELO of Biddeford  
MONAGHAN-DERRIG of Cape Elizabeth

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

Signed:

Representatives:

WATERHOUSE of Bridgton  
BEAULIEU of Auburn

#### READ.

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

The **SPEAKER PRO TEM**: The Chair recognizes the  
Representative from Acton, Representative Nass.

Representative **NASS**: Thank you, Mr. Speaker. Thirty-eight years ago, my husband and I borrowed, which now seems like a small amount, to buy money for our home in Acton. For 25 years, we've made out a check for \$268.55. That's 300 payments. During this 25-year period, our bank was absorbed by another bank still in Maine. Our monthly payments still went on the same to the same Lewiston address. No payment was ever late or missing. So 300 times we met our obligation. At the end, the new bank provided us, in a timely manner, with a release of mortgage document, which we then filed in the York County Register of Deeds. However, when we asked the bank to return the original mortgage document, they said they would try to find it. So having made 300 payments over 25 years, it seemed reasonable that we should get our original note. Like we made our obligation 300 times, it only seemed reasonable they honor us with a simple thing of giving us back our note. What would have happened if the bank were to try to have foreclosed on us, as they did with many people? And that is the reason today why I am speaking in strong support of the Majority Ought to Pass as Amended for LD 145.

The Judiciary Committee has been discussing this issue extensively since it was introduced during the last legislative session and I believe this argument offers a reasonable solution. This legislation would protect consumers in a foreclosure proceeding by requiring the financial institution to produce the original mortgage note to show they do in fact have the right to foreclose. In its original form, LD 145 created substantial undue burdens on the financial institution which far outweighed the added protections being provided to the consumer. Over the past year, we have revisited this issue on several occasions and ultimately we were able to work with several stakeholders, including the strong cooperation and perseverance led, in large part, by the credit unions to come up with the compromise that is before you today.

This amendment would require the financial institution to provide the original mortgage note if requested by the plaintiff or borrower. Appropriate timelines were given to both parties, both the party required to produce the original note as well as to the party requesting the original note. Exceptions are provided in cases where the note is lost, stolen or destroyed, or where there is only an electronic copy. The original bill has been further amended to protect against abuses of the system and ensure that the foreclosure process will not be unduly delayed or postponed. This compromise is the right balanced approach between the needs of the borrower to have added consumer protections and the ability of the financial institution to bring legitimate foreclosure action. In this day and age, when stories of foreclosure, abuse and misconduct are the top news stories of the day, we need to be vigilant to protect Maine homeowners. We must do so appropriately and responsibly without placing undue and unnecessary burdens on our banks, Maine credit unions, and especially our local banks who are pursuing a legitimate foreclosure action. I strongly urge you to vote Ought to Pass as Amended. Thank you, Mr. Speaker.

The **SPEAKER PRO TEM**: The Chair recognizes the Representative from Portland, Representative Haskell.

Representative **HASKELL**: Thank you, Mr. Speaker. Mr. Speaker, Men and Women of the House. I oppose this bill and I would ask you to join me in that opposition. I have been a director of a community bank here in the State of Maine for something close to 22 years now and I have watched the progress of these community banks while we have watched big banks from across the country do the kinds of hijacks which have been reported in the paper. And while that's being done, our credible locally owned and locally driven community banks have

been swept up in this furor to get at the larger banks. Maine community banks have never been part of the problem. We have been the solution. We have been where people have fled to when they have had problems with the big banks who couldn't get it right and couldn't keep track of their paperwork. That's just plain not true for community banks.

I would suggest to you that the amendment proposed by the Credit Union League doesn't correct some of the problems which had been presented by the bill; specifically, the borrower can now request inspection of the original at any time during the foreclosure action, regardless of the status of the case, including after trial. There are no time limits or other requirements on making that request. The borrower can request inspection without basis to challenge the copy of the note at all. While this amendment does limit the number of requests the borrower can make, there are no consequences for failing to appear at the designated time and place for that inspection, and there is no requirement for that inspection to be made in a manner or by a method designated to ensure receipt by the lender.

The other consequence of this for banks – and I have been familiar with this, I don't claim to be an expert, I'm not a banker, I'm just a bank director – but when banks are seeking to sell their mortgages on the secondary market, those mortgages are lumped together and they need to meet certain criteria in order for the secondary market to be interested in those loans. Maine will be an outlier with this particular provision. That could mean, and there's no way of knowing, but that could mean for the secondary market that they're either not interested in our loans or that they'll be a premium charged because of this additional requirement. So I'm asking you, on behalf of community banks here in the State of Maine which comprise a very large number of employees and a large number of responsible banking institutions who have been here solidly in all of our communities, for you to vote against this bill. Thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Livermore Falls, Representative Knight.

Representative **KNIGHT**: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I rise in opposition to the pending motion and would reiterate what we just heard from the good Representative Haskell. For those who don't know my background, I spent 44 years in community banking. During part of that career, several years, I traversed this great country of ours fighting against interstate banking. I think this bill that stands before us today for our consideration is just a little tiny result of having failed in my effort to prevent the acquisition of one bank by another, by another, by another to the point where we've kind of lost sight of who's controlling the banking industry. Representative Haskell has very correctly pointed out that the community banks in Maine – and I would also add the credit unions of Maine – have done a wonderful job helping to promote the economic circumstances of the communities of Maine that they serve.

This bill, I think, pushes us back a step or two. Maine right now – and I stand to be corrected if this is not a correct statement, I believe it is – is the second longest in the nation in terms of foreclosure action. No community bank in Maine, no credit union in Maine wants to own someone's home. We want to help people stay in their homes and we've worked very, very hard to assure that that is the situation. As a result of that, various agreements and laws have been structured over the years, and we now have the very long process of some 400 days to assure that everyone gets their fair shake, if you will, if they run into problems. Long before that, the banks and all the credit union folks are working with these individuals to try to assure that they do not lose property.

There are two documents that should be on the desk of each and every one of you in this room and I encourage you to read them thoroughly. One has been put out by the current executive team of Maine Bankers, the other by the Maine Association of Realtors. This action is going to delay Maine getting out of the great recession that we find ourselves in. This is going to hurt property values. This is going to hurt consumers. This is not good legislation. This is problematic for all who are involved in trying to move Maine forward. It is my understanding that the Home Loan Bank of Boston has now weighed in on the issue. They are one of the primary makers of the mortgage market, if you will, in New England, and they are concerned about this legislation. Maine will be an outlier. I would ask that every member of this House follow my light and vote against bad legislation. Thank you, Mr. Speaker.

The SPEAKER PRO TEM: The Chair recognizes the Representative from South Berwick, Representative Beavers.

Representative **BEAVERS**: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I rise to support the motion to pass LD 145 as amended. I thank the Maine Credit Union League for coming to the table and working with us to improve the original bill.

In this age of securitization of mortgages, it is not easy for us to know who really owns our mortgages. If any of you, or any member of your family, were the unfortunate one being foreclosed on, wouldn't you expect the financial institution to produce the legal documents that prove they have the right to foreclose on your property? Would you accept a copy of a \$100 bill as proof that the person has \$100? I don't think so. I feel that the fact that 11 members of the bipartisan, bicameral Judiciary Committee have stayed with this for the past year and four votes worth, and so I think, as I said, that speaks volumes.

This is a simple, logical and fair bill that helps prevent such fraud from being further perpetuated in Maine by requiring, upon request by the homeowner, that the lender produce the original note and original documents for inspection and copying. Up front, this is even before they are necessarily in the court situation. This is the process that they're supposed to be following now and some of them are not, actually quite a few, and it's mostly, as it's been pointed out, it is the national lenders that have not been following this and they are the ones who are delaying the court action. Who is this costing? It is costing all of us, taxpayers.

I spoke to my own CEO of my community bank on this issue at length last fall. At the end of our conversation, I said "Will this hurt you in any way?" and he said "No, but we don't want to oppose our banking association." Providing the proof of legal right to foreclose up front should significantly reduce the foreclosing process, saving on legal fees and court costs.

To cover some of the objections heard from lenders, we did incorporate the Maine Statute Title 11 Universal Commercial Code section related to lost or destroyed documents and the Title 10 section of the Uniform Electronic Transaction Act that relates to transferable records, if they're applicable.

Please allow me to quote the Preamble of the Maine Constitution, which states that the object of government is and I'm just going to do one sentence or one group of phrases from it: "We the people of Maine, in order to establish justice, insure tranquility, provide for our mutual defense, promote our common welfare...."and I repeat, promote our common welfare. Article I of our state constitution reminds us of the natural right to possess and protect property and about truth given in evidence.

And finally, as Representative Nass has pointed out, this will allow your constituents to know that the foreclosures against them are being conducted honestly and only by entities that really

do have the right to conduct them. It will not prevent any legitimate foreclosure from going ahead. Please join me in supporting LD 145. It is both just and righteous. Thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Bangor, Representative Damon.

Representative **DAMON**: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I rise in opposition to this bill and many good things have been said about it, and, as the good Representative stated, a lot of hard work has been done on it and I commend all those who have done that. However, my perspective on this is just a bit different. We as Representatives are charged in protecting our citizens and our homelands, our residences. Without the original documents, the banks cannot file the real and latest owner of that house or that building. If we do not have the documents to file, it is impossible to find who owns the building and who is not maintaining it.

As someone who works in that industry, there are houses that I have worked on for years, there is one on the end of my street that has been vacant and repossessed for more than four years and still to this day I cannot find anybody that knows who owns the house. The lawns are not mowed, repairs are not done, their trash is not cleaned out of the dooryard. The people are not protected from that destruction that goes on there.

No institution should be allowed to exist that cannot provide the paperwork necessary to give back when it's repossessed. It has to be required, their feet have to be held to the fire. If a bank can operate with hundreds of thousands of people, as some of the major banks do, and not be able to trace the paperwork, then they should be held to account. Therefore, I stand in opposition to this bill because of the fact that we cannot find ownership without proper documentation. Thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Augusta, Representative Maloney.

Representative **MALONEY**: Thank you, Mr. Speaker. Mr. Speaker, Men and Women of the House. I rise in support of the pending motion. This bill is actually a very small change to Maine law. Maine law already requires that an original document be produced before you can foreclose on someone's home. That's already in there. We've adopted the UCC, the Uniform Commercial Code. If the banks don't like having to produce the original document, they need to bring a bill to change that. This does not change that. So since you already have to produce the original note before you can foreclose, all this bill is asking is produce it up front. Don't waste the court's time. Don't waste everyone's time and make us sit around and go through proceeding after proceeding and mediate with someone who doesn't even own the note to find out at the eleventh hour that the bank doesn't own the note.

So instead, let's produce it up front. Let's make sure that the person who is foreclosing has it up front. If you don't want to have to produce an original note, then bring a bill to change Maine law. This does not do that. This just says, hey, we've got Maine law, let's produce it up front and let's stop wasting judicial resources. So for that reason I do support the pending motion.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Waldoboro, Representative Dow.

Representative **DOW**: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the Chamber. I oppose this bill. Because of recent banking changes that have been made, I believe these protections are already in place. This represents duplication and overkill, and it punishes Maine's small banks to get at large national and international banks. Therefore, I will oppose this bill. Thank you.

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

Representative **BRIGGS**: Thank you, Mr. Speaker. For me, I'm looking on the technical side of this issue as well. I do support the pending motion. Having worked at the registry of deeds a number of years in South Paris, I've seen thousands of mortgages come through. Also, I've seen mortgages being sold, being assigned to new banks. Sometimes a mortgage would get assigned four and five times out. I say to myself seeing these documents come through all the time, I say to myself "Oh my goodness, how can these people even keep track? How can they even know where their original mortgage is?"

I know, as I said, the technical side of it. The original mortgages do get recorded at the registry of deeds. There is always a paper trail going back to that original document. You can always obtain an attested copy from the registry of deeds. This is your original mortgage; this is where the transactions began. You can almost do like a title search, that you would have to, in order to research the steps of where your mortgage is as banks have come forward and they record their transactions that they've assigned all of their holdings to another financial institution. So all of that is recorded as well, so it's almost like you'd have to do a title search to see who's holding your mortgage now after four or five times of it being reassigned. So I just wanted to make that notification, that clarification that there is always that paper trail going back to the beginning of where your mortgage started from. Thank you, Mr. Speaker.

The SPEAKER PRO TEM: The Chair recognizes the Representative from York, Representative Moulton.

Representative **MOULTON**: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. You know, it's unfortunate that here in the State of Maine, with our banks and credit unions and other financial institutions able to comply with the current set of laws, that we have to take an extra measure to deal with those folks from away that seem unable to do something as basic as providing proof that they actually own the note that becomes the basis of these foreclosure actions, but here we are. You know, the Judiciary Committee worked with, over the interim, the credit unions to try to come up with language that would not unnecessarily delay, or even delay at all, the process. By and large, Maine institutions comply. We're not trying to delay things. If Maine has a problem with the length of time in the foreclosure process, then we need to take a look at the statute and deal with that in terms of delays that are already written into current law. But it is a basic framework of our law that the consumer actually be given proof of those original documents, and also the payments made under that, instead of finding out after a judgment has already been granted and their remedies, at that point, are severely curtailed. It is a complex process. Like other people in the business, I've seen everybody suffer. People lose their homes. Banks lose out because they, in good faith, lend the money and, in declining markets, can't recover that plus the costs of doing the foreclosure. That's one of the hard realities of the process and neighbors suffer because it is a drag on the value of their real estate.

So, Mr. Speaker, with respect to this bill, frankly, I'm tired of getting phone calls from clients and constituents who are having trouble with Bank of America because, almost invariably, that's the bank, that's the villain here. Not our Maine banks, not our Maine credit unions. With respect to the federal regulations, that also came up during the committee process and I believe that through the process actually we are doing something in conformity with what the feds want us to do rather than being out of conformity. Finally, Mr. Speaker, when the vote is taken, I request a roll call vote. Thank you.



The same Representative **REQUESTED** a roll call on the motion to **ACCEPT** the Majority **Ought to Pass as Amended** Report.

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

The **SPEAKER PRO TEM**: The Chair recognizes the Representative from Newport, Representative Fredette.

Representative **FREDETTE**: Mr. Speaker, I give my time to the good Representative Clark.

The **SPEAKER PRO TEM**: The Chair recognizes the Representative from Millinocket, Representative Clark.

Representative **CLARK**: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. You know, I've been following this bill off and on since last year, even though I might not have spent a lot of time in the committee room. Thank God we have places to listen to at home or on the squawk box. I stand in front of you here today in strong support of LD 145. I want to protect the Maine consumer, the Maine homeowner.

I'll share a little story with you before I get into what I have to say. Last week I received a phone call. We all get phone calls. I had a phone call on a foreclosure, an elderly lady who lived in her house basically most of her life. I'm telling you it's heartbreaking when you get those calls. You might have watched the TV news and seen nationwide of all the foreclosures that have taken place, but when it hits home it sends up a message: we need to do something. Right, wrong or indifferent, we need to do something. The committee worked extremely hard with the bankers and the credit unions and they came up with this report. I can live with this report. I think my small credit union in Millinocket, Maine, or in East Millinocket, Maine, can live with this report. I would hope that each and every one of you look at yourselves in the mirror tomorrow and put your consumer first and not any lending institution you have in front of you here today, because the people who elected you to be here want some justice.

Back here a week or so ago, there was a \$26 million settlement on major, let me tell you, lending institutions – Bank of America, City Group, JPMorgan Chase, Wells Fargo, Allied Finance – \$26 million given to help people out. Every night on the news you watch banks getting money, the consumers are getting nothing. This may not be the fix-all or the cure-all, but at least it sends up a flag, at least it sends up a message we need to do something. Thank you very much, Mr. Speaker.

The **SPEAKER PRO TEM**: The Chair recognizes the Representative from Newport, Representative Fredette.

Representative **FREDETTE**: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I've served for 15 years on a credit union board and continue to do so this day and also serve as an attorney, and so I've seen both sides of this. But I've also sort of seen the reality that we have in our society today a process where someone who is obviously in default of a mortgage, who then has a very long time within which they can continue to reside in a property and not pay the mortgage. Sometimes a year, sometimes a year and a half until that foreclosure process is done. So the question in this bill is, how much protection is too much?

I agree with the good Representative from Millinocket that this is a consumer protection bill, and I am going to support the committee work because I do believe the committee worked hard to support this, and I do believe the credit union folks and our community banks have worked hard with this amendment to make this bill work. But the reality is, as a member of a credit union board, we have spent thousands of dollars, thousands of dollars to be able to become electronic. We're storing our documents electronically because we don't want to continue to pay to have rooms just full of boxes sitting around and you may

need one out of 20,000 documents in that storage, and so we are spending a lot of money to try to do away with the process of storing documents, which this puts us back in the position of having to require that we keep those documents.

So I see both sides of this. I agree with the consumer protection portion of this. I would ask the question, however, as we are moving forward, there comes a point where too much protection is finally achieved and we have to look at that because we are beginning to overburden our credit unions, our community banks, and our banks with these sorts of regulations. But I will be supporting the work of the committee.

The **SPEAKER PRO TEM**: The Chair recognizes the Representative from Sanford, Representative Boland.

Representative **BOLAND**: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I just wanted to add I've been a title examiner for many years and one of the issues that does come up on occasion is that there is a conflict found when a title search is done, exactly what bank does own the mortgage? In fact, I just recently finished up a report where the interest of the mortgage had been sold to one bank but a different one was foreclosing it. So I don't think that it really is too much to ask for this little extra bit of care in keeping track of things, and I do know that it's one thing that my clients have complained about often is that it can be very difficult to follow the trail. Perhaps knowing that the evidence has to be there will make it easier. Thank you.

The **SPEAKER PRO TEM**: The Chair recognizes the Representative from Palermo, Representative Harmon.

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

The **SPEAKER PRO TEM**: The Representative may pose his question.

Representative **HARMON**: Thank you, Mr. Speaker. It has come to my attention that late last fall there was a Maine Supreme Court ruling regarding, I don't know specifically, it had to do with foreclosures. But within that ruling there was a footnote regarding foreclosures in original documents, and within that footnote they were also saying that original documents and scanned documents and facsimiles were all okay for the foreclosure process. I ask the question to perhaps attorneys within the room, Mr. Speaker, what actually that footnote means. Is that law? Is it a signal from the Maine Supreme Court that they would judge this to perhaps be okay some day? So I'd just like to pose that question, Mr. Speaker, if someone could answer. Thank you.

The **SPEAKER PRO TEM**: The Representative from Palermo, Representative Harmon, has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Augusta, Representative Maloney.

Representative **MALONEY**: Thank you, Mr. Speaker. I do have an answer to that question. All right, so there are several reasons that it's incorrect to read that this footnote has eliminated the need for protection of original documents. The first reason is that the reference to electronic equivalent in this footnote more logically should be read as a reference to electronic notes under the Maine Uniform Electronic Transaction Act. So that's separate from the Uniform Commercial Code. The Uniform Commercial Code is what requires the original document in this case. The second reason is that the Law Court would not overrule its holding in *Camber versus Bridges* and nullify the original note requirements in the Maine Uniform Commercial Code by a single sentence in a footnote. Had it intended to do so, such a holding would have been embodied in the text of the original opinion, not just a footnote, and there would have been substantial discussion

in the opinion about the reasons for such a change in the law. When the court changes its opinion, it's a big deal and it makes a big deal about that in its opinion. Then there is a third reason which is that it would be called dicta in the court case, it wasn't actually a holding of the case. So thank you.

The **SPEAKER PRO TEM**: The Chair recognizes the Representative from South Berwick, Representative Beavers.

Representative **BEAVERS**: I just wanted to clarify something that Representative Fredette mentioned and the reason for including in this bill reference to the Uniform Electronic Transaction Act was, at such point when it becomes law, that those documents are there. That's precisely why we've included it, so we don't have to change it again when that happens. Thank you.

The **SPEAKER PRO TEM**: The Chair recognizes the Representative from Bethel, Representative Crockett.

Representative **CROCKETT**: Thank you, Mr. Speaker. Mr. Speaker, Distinguished Members of the House. This chamber has been the home of great decisions in our history. Orators and statesmen alike have stood before you and given great speeches that have influenced the outcome of these decisions. Unfortunately, my comments today don't qualify as such.

I rise in opposition to the pending motion and it's not because – I believe it's offered with the purest of intentions and best of spirits. Everybody in this room wants to see the little guy protected versus the big banks. I, myself, have taken the big banks to court, I have defended foreclosures, I have introduced consumer protection pieces of legislation, but this bill goes just a bridge too far.

We, as a Legislature, should be proud of what we have done so far in the realm of consumer protection in this session. We have preserved mediation which has had a great effect for consumers, allowing them to face the banks in a mediation room face to face as opposed to having lawyers fight it out in court. It's giving the consumer a chance to go after the banks or to try to come up with a mediated solution. This is despite pressure from banks. This is despite our budget crunches. We'd still preserve that mediation process. We've also authorized attorneys' fees for defending attorneys and court actions. This legislation took that bold step and it had an immediate effect allowing consumers who are indigent legal counsel. That was a bold move and we should be proud of that.

This piece of legislation, however, is unnecessary. There is already a process in place if there is a dispute about whether the original document is necessary. The court already has a process to bring it forward. This is a bridge too far. We would be creating, if we pass this, an imbalance that is unnecessary. So I will be opposing the pending motion. Thank you.

The **SPEAKER PRO TEM**: The Chair recognizes the Representative from Brunswick, Representative Priest.

Representative **PRIEST**: Thank you, Mr. Speaker. Mr. Speaker, Men and Women of the House. I think we have to concentrate on what the purpose of this bill really is. I've taken a look at the material given to us by the Maine Association of Realtors and by the bankers, and what they say is that it's going to delay things. But, in fact, far from delaying things, it's going to speed things up. If you're a defendant, the one thing you want to know right up front is, does this bank have a right to sue me on the promissory note? Do they have the note or do they not? This issue wouldn't arise if in fact some banks had the suit and not had the promissory note. It's a real issue. Is it an issue with our local banks? Is it an issue with the credit unions? Probably not. They have the original note within their own vaults. They can show that they have the note and they can show up front they've got the note. However, federal law doesn't allow you to

differentiate between our local banks and the banks from out of state, and it's the banks from out of state that have caused the problem here.

Now what happens now if you are a defendant and you think maybe this bank doesn't own this note, you ask for it by discovery and the lawyer for the bank does not give it to you? So you then file a note, you file a motion before the court to ask for production of the note and still you don't get it. Then you ask the judge to order that the note be given and the judge makes that order and you still may not get it. That is a delay because it's 30 days at a time for each of these ongoing hearings. What this says is, and I quote, "The defendant has the right to request inspection and copying of the original note under this section only once during the pendency of the foreclosure action unless the court in which the action is pending for good cause shown otherwise orders."

Representative Haskell says this could be used for a delay. Well, if in fact the defendant doesn't show up when the note is ready to be produced, that's it. The defendant's lost his chance to keep on asking for more time. This is not going to delay things. This is going to speed things up. It's absolutely clear and the Maine Supreme Court has made it clear that the note has to be produced. The question is, when? This note just ensures that it gets produced up front so the question of ownership gets taken care of. That's basically all this bill does. As far as foreclosure taking too long, that may or may not be true, but that's another bill. That's not this bill. All this bill does is say you get the note up front. It's a simple action. It's going to speed up foreclosures, not slow them down, and I would ask that you vote for the bill. Thank you.

The **SPEAKER PRO TEM**: A roll call has been ordered. The pending question before the House is Acceptance of the Majority Ought to Pass as Amended Report. All those in favor will vote yes, those opposed will vote no.

#### ROLL CALL NO. 234

YEA - Ayotte, Beaudoin, Beavers, Beliveau, Berry, Blodgett, Boland, Bolduc, Briggs, Cain, Carey, Casavant, Chapman, Chase, Chipman, Clark H, Clarke, Cornell du Houx, Cotta, Crafts, Cray, Curtis, Davis, Dill J, Dion, Driscoll, Duchesne, Dunphy, Eberle, Edgecomb, Esping, Eves, Flemings, Fossel, Fredette, Gifford, Gilbert, Goode, Graham, Harlow, Harvell, Hayes, Herbig, Hinck, Hogan, Hunt, Innes Walsh, Kaenrath, Kent, Kruger, Kumiega, Lajoie, Long, Longstaff, Lovejoy, Luchini, MacDonald, Maloney, Martin, McCabe, McKane, Monaghan-Derrig, Morrison, Moulton, Nass, O'Brien, Olsen, Parry, Peoples, Peterson, Picchiotti, Priest, Rankin, Richardson D, Rochelo, Rosen, Rotundo, Russell, Sanborn, Sarty, Shaw, Stevens, Stuckey, Theriault, Treat, Turner, Tuttle, Wagner R, Wallace, Webster.

NAY - Beaulieu, Beck, Bennett, Bickford, Burns DC, Cebra, Clark T, Crockett, Cushing, Damon, Dow, Fitts, Fitzpatrick, Flood, Foster, Gillway, Guerin, Hamper, Harmon, Haskell, Johnson D, Johnson P, Keschl, Knapp, Knight, Libby, Maker, Malaby, Mazurek, McClellan, McFadden, Morissette, Newendyke, O'Connor, Parker, Pilon, Prescott, Richardson W, Rioux, Sanderson, Sirocki, Strang Burgess, Tilton, Timberlake, Valentino, Volk, Waterhouse, Weaver, Welsh, Willette A, Willette M, Winsor, Wood, Mr. Speaker.

ABSENT - Black, Bryant, Celli, Hanley, Nelson, Plummer.

Yes, 90; No, 54; Absent, 6; Vacant, 1; Excused, 0.

90 having voted in the affirmative and 54 voted in the negative, 1 vacancy with 6 being absent, and accordingly the Majority **Ought to Pass as Amended Report was ACCEPTED.**

The Bill was **READ ONCE. Committee Amendment "B" (H-721) was READ** by the Clerk and **ADOPTED.** The Bill was assigned for **SECOND READING** Thursday, March 1, 2012.

Majority Report of the Committee on **INSURANCE AND FINANCIAL SERVICES** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-723)** on Bill "An Act To Limit Health Care Mandates"

(H.P. 649) (L.D. 882)

Signed:

Senators:

WHITTEMORE of Somerset  
SNOWE-MELLO of Androscoggin

Representatives:

RICHARDSON of Warren  
FITZPATRICK of Houlton  
McKANE of Newcastle  
MORISSETTE of Winslow  
PICCHIOTTI of Fairfield

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

Signed:

Senator:

BRANNIGAN of Cumberland

Representatives:

BEAUDOIN of Biddeford  
BECK of Waterville  
GOODE of Bangor  
MORRISON of South Portland  
TREAT of Hallowell

**READ.**

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

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

Majority Report of the Committee on **INSURANCE AND FINANCIAL SERVICES** reporting **Ought Not to Pass** on Bill "An Act To Require Advance Review and Approval of Certain Small Group Health Insurance Rate Increases and To Implement the Requirements of the Federal Patient Protection and Affordable Care Act"

(H.P. 877) (L.D. 1179)

Signed:

Senators:

WHITTEMORE of Somerset  
SNOWE-MELLO of Androscoggin

Representatives:

RICHARDSON of Warren  
FITZPATRICK of Houlton  
McKANE of Newcastle  
MORISSETTE of Winslow  
PICCHIOTTI of Fairfield

Minority Report of the same Committee reporting **Ought to Pass as Amended by Committee Amendment "A" (H-725)** on same Bill.

Signed:

Senator:

BRANNIGAN of Cumberland

Representatives:

BEAUDOIN of Biddeford  
BECK of Waterville  
GOODE of Bangor  
MORRISON of South Portland  
TREAT of Hallowell

**READ.**

Representative RICHARDSON of Warren 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.

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## CONSENT CALENDAR

### First Day

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

(S.P. 535) (L.D. 1625) Bill "An Act To Amend the Organization of the Quality Assurance Review Committee" Committee on **HEALTH AND HUMAN SERVICES** reporting **Ought to Pass**

(S.P. 285) (L.D. 897) Bill "An Act To Amend the Application Process for the Progressive Treatment Program" Committee on **HEALTH AND HUMAN SERVICES** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-389)**

(S.P. 593) (L.D. 1733) Bill "An Act To Provide for the 2012 and 2013 Allocations of the State Ceiling on Private Activity Bonds" Committee on **LABOR, COMMERCE, RESEARCH AND ECONOMIC DEVELOPMENT** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-388)**

(H.P. 1282) (L.D. 1737) Bill "An Act Regarding the Interception of Oral or Wire Communications of Residents of State Correctional Facilities and Jails" Committee on **CRIMINAL JUSTICE AND PUBLIC SAFETY** reporting **Ought to Pass**

(H.P. 1318) (L.D. 1793) Resolve, Regarding Legislative Review of Portions of Chapter 375: No Adverse Environmental Effect Standard of the Site Location Law, a Major Substantive Rule of the Department of Environmental Protection (EMERGENCY) Committee on **ENVIRONMENT AND NATURAL RESOURCES** reporting **Ought to Pass**

(H.P. 1225) (L.D. 1635) Bill "An Act Regarding Inmates on Public Works Projects" (EMERGENCY) Committee on **CRIMINAL JUSTICE AND PUBLIC SAFETY** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-731)**

(H.P. 1301) (L.D. 1767) Bill "An Act To Authorize the Commissioner of Education To Allow Access to Criminal History Record Information to Entities Providing Document Management and To Remove Applicants' Fingerprints from the Fingerprint File" Committee on **EDUCATION AND CULTURAL AFFAIRS** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-730)**

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

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**CONSENT CALENDAR**

**Second Day**

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

(S.P. 594) (L.D. 1735) Bill "An Act To Promote Jobs in the Motor Coach Industry by Providing a Sales Tax Exemption for Certain Buses"

(S.P. 554) (L.D. 1655) Bill "An Act To Create a Sales Tax Exemption for the Sale and Delivery of Off-peak Electricity for Electric Thermal Storage Devices" (EMERGENCY) (C. "A" S-383)

(H.P. 1249) (L.D. 1697) Bill "An Act Relating to the Calculation of Population for Purposes of the Maine Uniform Building and Energy Code and Public Safety Answering Point Assessments" (EMERGENCY)

(H.P. 448) (L.D. 590) Bill "An Act To Require Review of Certain Changes to Sales Tax Policy Application or Practice prior to Implementation" (C. "C" H-718)

(H.P. 602) (L.D. 806) Bill "An Act To Provide Public Access to Price Lists of Hospitals and Ambulatory Surgical Facilities" (C. "A" H-719)

(H.P. 722) (L.D. 978) Bill "An Act To Amend the Probate Code Regarding Powers of Attorney, Education of Children and Guardianship" (C. "A" H-720)

(H.P. 1226) (L.D. 1636) Bill "An Act To Extend Certain Insurance Protection to Emergency Responders" (C. "A" H-722)

(H.P. 1227) (L.D. 1637) Bill "An Act To Permit Financial Institutions To Share Certain Information for the Purpose of Preventing Electronic Bank Card Losses and Other Fraud" (C. "A" H-717)

(H.P. 1247) (L.D. 1695) Bill "An Act To Provide Additional In-store Space for Maine's Businesses by Removing License and Permit Posting Requirements" (C. "A" H-726)

(H.P. 1250) (L.D. 1698) Bill "An Act To Establish Veterans Treatment Courts" (EMERGENCY) (C. "A" H-729)

No objections having been noted at the end of the Second Legislative Day, the Senate Papers were **PASSED TO BE ENGROSSED** or **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.

**BILLS IN THE SECOND READING**

**House as Amended**

Bill "An Act To Create Excise Tax Equity and Consistency for Buses"

(H.P. 1251) (L.D. 1699)  
(C. "A" H-724)

Reported by the Committee on **Bills in the Second Reading**, read the second time, the House Paper was **PASSED TO BE ENGROSSED as Amended** and sent for concurrence.

**ENACTORS**

**Emergency Measure**

An Act To Amend the Charter of the Lucerne-in-Maine Village Corporation

(S.P. 580) (L.D. 1681)  
(C. "A" S-384)

Reported by the Committee on **Engrossed Bills** as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 129 voted in favor of the same and 1 against, and accordingly the Bill was **PASSED TO BE**

**ENACTED**, signed by the Speaker Pro Tem and sent to the Senate.

**Acts**

An Act To Support Maine Farms and Alleviate Hunger  
(H.P. 862) (L.D. 1164)

(C. "A" H-710)

An Act To Amend the Limited-entry Program for Taking Lobsters in the Monhegan Lobster Conservation Area

(H.P. 1261) (L.D. 1709)

Reported by the Committee on **Engrossed Bills** as truly and strictly engrossed, **PASSED TO BE ENACTED**, signed by the Speaker Pro Tem and sent to the Senate.

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

The Speaker resumed the Chair.

The House was called to order by the Speaker.

The following item was taken up out of order by unanimous consent:

**ORDERS**

On motion of Representative CURTIS of Madison, the following House Order: (H.O. 41)

WHEREAS, it appears to the House of Representatives of the 125th Legislature that the following are important questions of law and that this is a solemn occasion; and

WHEREAS, the Constitution of Maine, Article VI, Section 3 provides for the Justices of the Supreme Judicial Court to render their opinion on these questions; and

WHEREAS, there is a question within the House of Representatives as to what activities constitute engaging in trade or commerce within the meaning of the Constitution of Maine, Article V, Part Third, Section 3; now, therefore, be it

ORDERED, that, in accordance with the provisions of the Constitution of Maine, the House of Representatives respectfully requests the Justices of the Supreme Judicial Court to give the House of Representatives their opinion on the following questions of law:

Question 1. Does mere ownership of business interests or stock by the Treasurer of State constitute engaging in any business of trade or commerce, or as a broker, or as an agent or factor for any merchant or trader as such terms are used in the Constitution of Maine, Article V, Part Third, Section 3?

Question 2. If the answer to Question 1 is in the affirmative, would the Treasurer of State be engaged in any business of trade or commerce, or as a broker, or as an agent or factor for any merchant or trader if the Treasurer of State did not manage or involve himself in the day-to-day activities of such business interests or stock?

Question 3. If it is determined that the Treasurer of State has engaged in any business of trade or commerce, or as a broker, or as an agent or factor for any merchant or trader, does that finding affect or have an impact on the validity of the actions taken by the Treasurer of State in the performance of his official duties as used in the Constitution of Maine, Article V, Part Third, Section 3?

**READ.**

On motion of Representative CURTIS of Madison, the House Order was **TABLED** one Legislative day pending **PASSAGE**

pursuant to House Rule 513 and specially assigned for Thursday, March 1, 2012.

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The SPEAKER: The Chair recognizes the Representative from Augusta, Representative Maloney, who wishes to address the House on the record.

Representative **MALONEY**: Thank you, Mr. Speaker. I ask to be recorded as yes for LD 1681.

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On motion of Representative WEBSTER of Freeport, the House adjourned at 11:36 a.m., until 10:00 a.m., Thursday, March 1, 2012.