

MAINE STATE LEGISLATURE

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Senate Legislative Record
One Hundred and Twentieth Legislature
State of Maine

Volume 2

First Regular Session (Continued)
May 24, 2001 to June 22, 2001

First Confirmation Session
October 24, 2001

Second Confirmation Session
December 6, 2001

Second Regular Session
January 2, 2002 to April 1, 2002

Pages 912 - 1844

Senator **MARTIN** of Aroostook moved to amend the motion to extend until 11:00 p.m., pursuant to Senate Rule 514.

Senate at Ease.

Senate called to order by the President.

Senator **MARTIN** of Aroostook requested and received leave of the Senate to withdraw his verbal amendment to the motion to extend.

On motion by President Pro Tem **BENNETT** of Oxford, the Senate extend until 10:00 p.m., pursuant to Senate Rule 514.

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

PAPERS FROM THE HOUSE

Non-Concurrent Matter

Bill "An Act to Increase Access to Health Care"
H.P. 979 L.D. 1303
(C "A" H-639)

In Senate, May 31, 2001, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-639)**, in concurrence.

Comes from the House, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-639) AS AMENDED BY HOUSE AMENDMENT "C" (H-748)** thereto, in **NON-CONCURRENCE**.

Senator **MARTIN** of Aroostook moved the Senate **RECEDE** and **CONCUR**.

On motion by President Pro Tem **BENNETT** of Oxford, supported by a Division of at least one-fifth of the members present and voting, a Roll Call was ordered.

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

Senator **NUTTING:** Mr. President, ladies and gentlemen of the Senate. I'm going to be voting to Recede and Concur on first reading on this bill. I signed on as a co-sponsor of the L.D. I have concerns with how the L.D. is now before us, but I am going to be trying to fix that on second reader. So I am going to be voting for it now and then offering an amendment later. Thank you.

Off Record Remarks

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

Senator **NUTTING:** Thank you, Mr. President. Ladies and gentlemen of the Senate. I'll be voting to oppose this motion so I can make a motion to Recede so that, at that point, I can offer my amendment. Thank you.

Off Record Remarks

Senator **NUTTING** of Androscoggin moved the Senate **RECEDE**.

The Chair ordered a Division. 20 Senators having voted in the affirmative and 13 Senators having voted in the negative, the motion by Senator **NUTTING** of Androscoggin to **RECEDE, PREVAILED**.

On motion by Senator **NUTTING** of Androscoggin, the Senate **RECEDED** from whereby it **ADOPTED** Committee Amendment "A" (H-639).

House Amendment "C" (H-748) to Committee Amendment "A" (H-639) **READ**.

Senator **NUTTING** of Androscoggin moved House Amendment "C" (H-748) to Committee Amendment "A" (H-639) be **INDEFINITELY POSTPONED**, in **NON-CONCURRENCE**.

The Chair ordered a Division. 19 Senators having voted in the affirmative and 14 Senators having voted in the negative, the motion by Senator **NUTTING** of Androscoggin to **INDEFINITELY POSTPONE** House Amendment "C" (H-748) to Committee Amendment "A" (H-639), in **NON-CONCURRENCE, PREVAILED**.

On motion by Senator **NUTTING** of Androscoggin, Senate Amendment "A" (S-396) to Committee Amendment "A" (H-748) **READ**.

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

Senator **NUTTING:** Thank you, Mr. President. I've always supported this bill before us. I think we need to continue to pick away, as best as possible, at the cost of health care. We've done, as a legislature, great things last year in the cost of health care. I think this bill needs to move forward to be passed and enacted to do great things for the cost of health care and extending health care to the uninsured. What I've liked about this bill is the fact that extending health care to those that don't have it was tied in the bills' original drafting to an increase in the tax on cigarettes. To me it was linked, it was clean, and I've always been in support of that. Now, all of a sudden, I find that the

funding for this bill, as it came to us, was, yes, an increase in the cigarette tax, although smaller than originally in the bill, but it also was funded by removing the loss carryback that businesses enjoy in the State of Maine and businesses use in the State of Maine. Now I've heard in the halls that this business tax break isn't used anymore. Well, I've distributed a letter from one accounting firm in Bangor and have talked to another accounting firm in Lewiston. They both assured me that businesses, especially small businesses, currently use the loss carryback provision that is in our statute in Maine and I believe in about half the states in the United States. I know Vermont has it. I'm concerned that this particular tax break was first proposed in the Governor's Budget and rejected by the Appropriations Committee. Last week, this tax break was going to be used to fund, or at least considered in the hallway, domestic abuse shelters. Then that was worked out. Now it's back and it's going to be used to fund health care. I think an increase in cigarette tax and linking that to extending health care benefits to those who don't have it is much cleaner than removing a business tax break to then extend health care. I don't see the connection there. I've talked to businesses in the construction industry. They use this tax break and have in the last year. A saw mill industry has used this. Other natural resource based industries have used this tax break. This amendment proposes that the cigarette tax would be increased 14¢ not 8¢ and it maintains the loss carryback tax break provision in our statute. I think this is a much cleaner bill now. I would urge your adoption of this proposed amendment. Thank you.

Senator **DAGGETT** of Kennebec requested a Roll Call.

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

Senator **MARTIN:** Thank you, Mr. President. Members of the Senate. I don't disagree that a tax on cigarettes is always one way that we can fund everything. We've obviously done a pretty good job at it in the budget. We certainly added an amount there. What we've done with the budget thus far, and what we have already on the books, I believe, will now raise the cigarette tax to \$1. I suspect that will make us the highest in New England and I don't know how much further we want to go. I will be voting against adoption of this amendment.

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

Senator **MILLS:** Mr. President and men and women of the Senate. I too will vote against this proposed amendment and invite you to do the same. The taxes that we have raised in the budget that we have addressed this evening are both fairly regressive. We are taxing people who smoke and we are taxing people who eat in restaurants that don't have Class A alcohol licenses. Generally speaking, the people that will be paying these taxes are not among the well-to-do. These are moderately regressive taxes. The net operating loss carryback, however, is, in my thinking, a deficiency in our present tax code that deserves to be remedied, whether we use the revenue to support something or not. It is a factor that introduces a high degree of volatility into our business tax code, into our income tax code. Frankly, I think it comes in such small doses for individual businesses that it really has little or no impact on the profitability or the survival of most businesses who may take advantage of it.

Yet, in the aggregate, when the state tax assessor must write out sometimes hundreds or thousands of checks to return this money for taxes that were previously paid in the year preceding, or the two years preceding, it diminishes our own state revenue, often times at a time when we can least afford to relinquish that revenue. It serves to exacerbate the bungee cord phenomenon that has plagued this state's revenue sources for decades. Most businesses that have profitable years followed by loss years also have profitable years later on. They can take advantage of the loss carryforward provisions, which in this state are very generous, they go forward for 20 years. Now there is a good reason to continue maintaining a loss carryforward provision. A business that has suffered a loss, or several losses in succession, becomes a rip target for new investment by someone on the outside who wants to inject money into this failing business in order to save it. Why? Because they know that they can carry forward the tax losses that that poor business has incurred and of set it against new earnings, against profits that they may make in the future. The loss carryforward provisions are beneficial to rehabilitating a business. They are beneficial to inject new life and to attract new capital to a business that may be failing. The loss carryback doesn't work that way. If you have a business that has two profitable years and then has a slump and a down year, they get to get their taxes back. That's right. They do so under federal law, and under current law, they do so under state law. But the state refund that we give is based on a tax rate that is so much smaller than the federal one that it really doesn't amount to very much. In the worst case scenario, it is merely an asset in the bankruptcy estate that the trustee in bankruptcy collects and distributes to a bank or some other creditors. It isn't, in my view, nearly so beneficial to perpetuating or sustaining a business as the loss carryforward provisions are because the loss carryforward provisions actually operate as a magnet for new investment and new capital to renew, to start a failing business up over again. I have no idea what happened with American Skiing, but I suspect that all of their losses over the years may well make them attractive and have made them attractive to a take-over party who wants to inject new investment and take advantage of the losses to carry them forward. I don't see the same phenomenon at work in a loss carryback situation. I see it impacting our own state revenues with great volatility. Many states have repealed it for that reason. I think we should join those states. I think, as a free-standing matter of tax policy, we should repeal the loss carryback and if we can use it to fund the worthy cause of extending Medicaid benefits to our very poorest citizens, then so be it. That's fine. I think that in large measure, most of the money that flows out of this state in the loss carrybacks, I believe that those are used by the largest tax payers primarily, that the largest dollar volume is used by those secular industries, large secular industries who can actually plan in advance when they are going to have losses. They aggregate their losses into a particular fiscal year. They plan to get their tax money back. They get it back. It's all part of the long-range financial planning that they undertake. We, the state, in a sense, our victimized to a small degree, but to a degree, by the accountants who exploit this gimmick that we've allowed them to have. I think it's time to repeal it. I would argue that as a matter purely of tax policy, without regard to what it may support.

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

Senator TURNER: Thank you, Mr. President. Ladies and gentlemen of the Senate. I'll try to confine my remarks to the amendment at hand and using tobacco to fund a really important health access program. I suspect all of you now have been actively lobbied by one side or the other with respect to this program, but I think it has many things that all of us can be supportive of. That said, I remain very conflicted with respect to how we're going to fund it. I think that the good Senator from Androscoggin, Senator Nutting's, amendment improves the funding mechanism but we still have one that is heavily dependent on the cigarette tax. If I refer to information that's relevant, at least up through April of this year, going to \$1.08 per pack would make us the number two state in the country, second only to New York State. New York State went from 56¢ a pack to \$1.11 in March of last year. They clearly saw an increase in revenues. They also saw a drop off in sales. However, I think what happened, in terms of usage, is perhaps deceiving, because, just as we're experiencing here in Maine at 74¢ a pack, cigarettes are being purchased over the internet. I had the pleasure, this evening, of talking with a gentleman from Washington County who already secures his cigarettes from the Onondaga Nation in upstate New York via the internet. We've gone to 94¢, headed to \$1.08 on a pack. My fear is that, while we have a very worthy program, we continue to have something that is not sustainable from the funding standpoint. I'm reminded of that phrase that H. Ross Perot used when he denigrated the NAFTA trade agreement. He talked about how that giant sucking sound would be all the jobs leaving this country and going to Mexico. My fear is now that the giant sucking sound we will hear will be more than half of Maine's citizens who are within an hour or less of the New Hampshire border choosing to buy their cigarettes there if they don't know how to use the internet. So I think we have ourselves in a very sticky wicket. I'm going to sit down. I have not yet decided how I'm going to vote on this particular matter because I want what the program provides and I find the mechanism that we're choosing to do, while better than what was before us before, is still fundamentally flawed. Thank you.

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

Senator LEMONT: Thank you, Mr. President. Ladies and gentlemen of the Senate. I find it interesting that this tax proposal is before us to fund this particular L.D. The Tax Committee had the opportunity to have a bill before them to repeal the net operating loss carryback. We had several days of debate and we had a work session. We unanimously agreed it was not the right way to go for the State of Maine and the small businesses and small corporations in the state. Last year alone, 1,500 corporations took advantage of the net operating loss carryback. What we're talking about here is corporations that lost money. They are in trouble, they are struggling to stay afloat in this state. This is a huge financial benefit for them. In a lot of cases it helps them to get back on their feet and go forward and be profitable once again. The scope of this tax bothers me because I don't think we can identify how many funds are available, if any, and if they are one-time revenues. I think if you believe in this legislation, the taxation ought to be straight faced. It ought to be understood and we ought to know what it proposes to do. I come from southern York County. I represent several businesses in that part of the state. We compete with New Hampshire every single day for jobs and business, provided New

Hampshire does not have a net operating loss carryback. I believe in our tax code in the State of Maine that is the only advantage we have for our corporations to compete with New Hampshire. They will go to great lengths to recruit business. They have even taken us to the Supreme Court to pick up a business that sits on an island in the Piscataqua River. I'd like to complement the good Senator from Androscoggin, Senator Nutting, for bring this amendment forward. It makes a lot of sense and I will be supporting it. Thank you.

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

Senator FERGUSON: Thank you very much, Mr. President. Ladies and gentlemen of the Senate. The good Senator from Androscoggin, Senator Nutting, has provided us with a fact sheet. Maybe some of you haven't had the opportunity to read it. I'm just going to read a paragraph from it. This is from a CPA firm and is signed by Lee J. Chick, who is a CPA. It says in part, 'in the course of our providing tax and accounting services to clients of all sizes, we have found that the net operating loss carryback provisions to be particularly helpful to small tax payers who may not enjoy the capital reserves that large businesses have.' I'm not going to go any further. But I think the good Senator from York, Senator Lemont, has stated that there are 1,500 businesses in the state that have taken advantage of this and I believe we should adopt the amendment because, in my judgment, it is a tool that we use to maintain jobs in the state and I would urge passage of it. Thank you, Mr. President.

THE PRESIDENT: The Chair recognizes the Senator from Waldo, Senator Longley.

Senator LONGLEY: Thank you, Mr. President. Colleagues in the Senate. I guess we have a lot of Hobson's Choices these days. On the one hand we have a cigarette tax. On the other hand we have a look back. Just earlier tonight a lot of us followed what our leadership asked us to do and we voted for the Part II Budget, using a cigarette tax as a way to do it. We did things like retirees and their health care, higher education, arts programs, reading recovery. A lot of us didn't want to use cigarette tax money for non-health issues. But we also wanted to help retirees with health care and all the other lists of things. We're very grateful to those of our leadership that followed and voted the compromises that came from those budget negotiations. It's a true sign of leadership, in my opinion, to honor the deals that one is striking. So the Hobson's Choice is do we go back at that cigarette tax twice tonight, or I'm of the firm belief that we should keep our eyes on the prize, which is health care and let's all give a little. The regressive cigarette tax has given its share tonight. As much as a lot of us are conflicted, there has to be give from other areas too in honor of health care. It's the single most important issue out there. There are people who need help. We have the best of programs for ourselves. We're trying to extend it to others. It was a hard worked compromise in the health committee and now we're seeing a different permutation of it. It's not perfect. We wish we were a better funded state so we wouldn't have to go to these places. But the fact of the matter is various entities have already given. We all take our turn and the ethic of Maine is to try to meet in the middle somewhere to honor the higher obligation, which I think is helping with health care. It's a Hobson's Choice. It's not fun. It's important in honor of health care. Thank you.

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

Senator **MARTIN:** Thank you very much, Mr. President, members of the Senate. Let me first begin by indicating how pleased I am to see the Senator from York, Senator Lemont, supporting the cigarette tax because, all the years that he's been a member of the legislature, he's always cried about the fact that people are going to New Hampshire to buy their cigarettes. So I'm sure the people of York County are pleased to hear the support. Secondly, I must tell you, as far as I know, there was no bill in the legislature which went to the Taxation Committee dealing with the NOL. I may be wrong. I've read a few bills but maybe I missed one. But I don't believe so. Third, I think that the issue here is a real serious one, kidding aside, because I think that in a way this is, we all know, in the final analysis if this were to be added to the bill, it will kill it. That's really the bottom line. I know that the Senator from Androscoggin, Senator Nutting, has every good intention and I know his concern. But I also know that, in the final analysis, this could be the end of this bill which is what I do not want tonight. So I urge you to vote against adoption of the Senate Amendment.

On motion by Senator **DAGGETT** of Kennebec, supported by a Division of at least one-fifth of the members present and voting, a Roll Call was ordered.

THE PRESIDENT: The Chair recognizes President Pro Tem Bennett of Oxford.

President Pro Tem **BENNETT:** Thank you, Mr. President. Fellow members of the Senate. Well, this is an evening of irony, no doubt. I appreciate the comments from the Senator from Aroostook, Senator Martin, regarding the comments from the Senator from York, Senator Lemont. I was just looking at a sheet of paper here distributed by the Senator from Aroostook, Senator Martin, indicating the support for a 50¢ per pack increase in the state tobacco tax. This modest proposal before us would mean that tonight we would have raised the tax on cigarettes, I gather, much less than that, actually about half of that. So it is an evening of irony. One of the concerns that I've heard repeatedly during the last six months now, and I've heard it in previous sessions when I've served on the Appropriations Committee, is the concern about the structural gap, about funding with one-time money ongoing costs. I've heard it from of the speakers here tonight. The problem with the original amendment that came down to us, asking for us to Recede and Concur, was that it, in fact, used one-time, what people would call one-time money, for an ongoing program. The net operating loss carryback provision can be used once. It is essentially a push of revenue, or I should say a pull of revenue from the future to the present. It can be used once. This bill before us has an immense ongoing cost. So I would expect that all of those individuals who have repeatedly decried increasing the structural gap, all of those individuals who have sung the mantra of one-time money vs ongoing money, would have the courage to support this amendment as a correction to one of the inherent flaws in this bill, which is that it promises much, it protests to have the courage to find the revenue for an expensive ongoing program, but it only funds it for the current biennium and it leaves it for the future generations of people to fund in other ways. I commend the Senator from Androscoggin, Senator Nutting, for actually having the foresight

to address that issue and to call a spade a spade and to be honest about the future costs with respect to this program. So for that reason, I will be supporting his amendment. Thank you.

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

Senator **NUTTING:** Thank you, Mr. President. Ladies and gentlemen of the Senate. I'll be very, very brief. I just want to say that the businesses that are using this NOL are using it because they are in real bad shape and they are facing a real hard time and desperately need the tax break they are going to receive quick. That is what happens with a net loss carryback. You receive a refund check. If you carry it forward, there is one assumption made there. The good Senator from Somerset, Senator Mills, used the word bankruptcy. Well, a lot of businesses I talked to today use the NOL to try to survive the year by getting their adjustment to their taxes reimbursed to them in a check quickly so they can survive until the next year. I want this bill to pass. I believe this bill is going to pass. I frankly think there are some major issues we aren't going to deal with tonight, scholarship aid being one of them. I think we've got to come back and deal with that at some point. We're going to have more time with this bill. I just think this is a much more straight forward, ongoing way to fund this bill. I'd urge your adoption of this amendment. Thank you.

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

Senator **EDMONDS:** Thank you, Mr. President. Fellow members of the Senate. I wasn't going to speak, but I do need to talk a little bit here. My father was a small businessman and he died of lung cancer and I watched him die of lung cancer. We talked, all of us, at every door we went to and everything we heard from people had to do with health care. This bill talks about health care. I will be an unhappy woman if we go home tonight and do not pass this bill. I know all the arguments about businesses. I can see my father's face in front of me. He had a little tiny contracting business. I don't know if he knew about net carrybacks or net carryforwards or anything else. I just know that if there had been some way, and in this bill we have cancer drugs, I can't believe that we would turn our backs on people who need cancer drugs. I can't believe we would turn our backs on uninsured adults and uninsured young people. I just can't believe it. I wish I knew how to argue with you about the tax thing. I don't. I just ask you to remember the doors you went to. I went to 6,000 doors. I'm sure you went to as many. 95% of the people you talked to at those doors asked you, begged you, to do something about health care. I just hope you keep them in your minds. If we go home tonight without passing this bill, I will be sorely, sorely ashamed of us. Thank you.

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

Senator **GOLDTHWAIT:** Thank you, Mr. President. Ladies and gentlemen of the Senate. Just a few points. First of all, I guess I want to reference the comment about irony because there is plenty of that in this chamber and a lot of it has to do with taxes and records on people who choose to spend money and people who choose to apply taxes or not to support that spending. I do want to say that, in my opinion, the sponsor of this bill is a person

from the other body representing a breath of vision that in year seven here I feel that I have failed to achieve. I've learned a lot here. I've worked hard on some issues. But I have not been able to step up, either for failure of courage or failure of knowledge, to a scope of vision that is reflected in this bill. It is a great pleasure to me that this debate has focused, not on the merits of this health proposal, but on how it ought to be funded. I think there is general acknowledgment that this is a really positive step forward in terms of health care for the people of Maine. I think it's important that we do resolve a funding source for this bill so that this very valuable program can go forward. It is expensive. No doubt about it. But I think it is worth it and I absolutely agree with the previous speaker, every single person I talked to has, on their minds, health care, whether it's a business who can't provide it, whether it's a family who can't purchase it, health care is number one. We have really only nibbled around the edges of that so far. I just want to clarify a couple of points. The first is that I have the report of the Taxation Committee to the Appropriations Committee regarding their opinion of the NOL carryback proposal. Contrary to a previous comment made regarding unanimous opposition to that, this says the committee was evenly divided, 6 to 6, on whether to recommend repeal of the provisions permitting the carryback of net operating losses. Also there was a reference by a previous speaker to the fact that the Appropriations Committee rejected this tax. Indeed we did, but I would not like you to infer from that that the committee was opposed to the tax in its entirety. In fact, it is my opinion, that the majority of committee members supported the net operating loss carryback. In our efforts to create a compromise proposal, we were willing to listen to some of our colleagues who did not favor this. This was one of the items we rejected for that reason, although I believe if we had put it to a vote in the committee, it would have received a majority vote in favor. Finally, the Senator from Somerset, Senator Mills, has laid the situation on the net operating loss carryback out as well as it can be done, and I believe represents quite fairly, the information relayed to the Appropriations Committee by the Bureau of Revenue Services. But I just want to add, when businesses need this credit the most is when the state can least afford it. It is at a time of an economic down turn. It's unpredictability is the complicating factor with this tax. We cannot predict ahead of time how much this will cost us, if businesses take advantage of it, and therefore it contributes significantly to the volatility of the tax structure at a time when the state may be ill prepared to afford it. So with those additional technical comments, if you will, I hope you will join me in opposing the pending motion.

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

Senator **MC ALEVEY:** Thank you, Mr. President. Men and women of the Senate. For me, when I look at the need or the potential of legislation, it doesn't matter to me who sponsored it or how it's going to be funded. We're in the business, as Senators, to listen to the needs of people and to find legitimate solutions to those needs. In terms of this legislation, I really don't care one way or the other on how it's funded as long as it is funded. There is a legitimate need. I don't need to go where other people have gone about what people have said when we campaigned. I've heard from businesses and their ability or inability to pay for insurance for their employees. I would ask that whatever we do tonight, we do in such a manner as to put this bill

in the best possible light for its passage. We cannot afford to do anything less.

THE PRESIDENT: The pending question before the Senate is the motion by the Senator from Androscoggin, Senator Nutting to Adopt Senate Amendment "A" (S-396). A Roll Call has been ordered. Is the Senate ready for the question?

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#154)

YEAS: Senators: BENNETT, CARPENTER, DAVIS, FERGUSON, KNEELAND, LEMONT, MITCHELL, NUTTING, SAVAGE, SHOREY, SMALL, TURNER, WOODCOCK, YOUNGBLOOD

NAYS: Senators: ABROMSON, BROMLEY, CATHCART, DAGGETT, DOUGLASS, EDMONDS, GAGNON, GOLDTHWAIT, KILKELLY, LAFOUNTAIN, LONGLEY, MARTIN, MCALEVEY, MILLS, O'GARA, PENDLETON, RAND, ROTUNDO, TREAT, THE PRESIDENT - MICHAEL H. MICHAUD

ABSENT: Senator: SAWYER

14 Senators having voted in the affirmative and 20 Senators having voted in the negative, with 1 Senator being absent, the motion by Senator **NUTTING** of Androscoggin to **ADOPT** Senate Amendment "A" (S-396) to Committee Amendment "A" (H-748), **FAILED**.

Senator **MARTIN** of Aroostook moved the Senate **CONCUR**.

On motion by President Pro Tem **BENNETT** of Oxford, supported by a Division of at least one-fifth of the members present and voting, a Roll Call was ordered.

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

Senator **GAGNON:** Thank you, Mr. President. Men and women of the Senate. There was a great deal of discussion on the previous motion concerning the position of the Taxation Committee and tax policies as a whole. It is true that our committee did review the net operating loss carryback as part of the Governor's Budget a very brief time a few years ago. We did look at the tax and changed it slightly, allowing a two year carryback rather than three to match what the federal government provides for. I'm certainly going to support this bill, it's far ranging and there has been a great deal of work on this. It is, as the good Senator to my right talked about, a critical bill for the future of the people in the State of Maine and for the number one issue that we were faced with as we went door-to-door. I am troubled, however, by the process by which the funding mechanisms were prepared. Other than the good Senator from York, Senator Lemont, most of the people who talked about tax policy don't serve on the Taxation Committee this evening. I'm in my fifth year on the Taxation Committee. We talk about volatility and a number of other factors relating

to the issue of taxes. It's true the cigarette tax is extremely regressive. It's true that net operating loss carryback is a big benefit to smaller businesses, although most of those funds, most of the funds that are sent out, those check that are sent out from the State Treasurer, go to the larger companies in the State of Maine, the bulk of the funds. L.D. 1303 never came to the Taxation Committee. I continue to be troubled as other people have talked about the process and how we may have been able to come up with an alternative, a series of alternatives, on this bill. We weren't given that opportunity. This is a bill that was presented and worked on by the Health and Human Services Committee. It spent a great deal of time with the Appropriations Committee. But it never came to the Taxation Committee. Despite that, I'll be supporting this bill and hope that in the future this approach will not be taken. Thank you, Mr. President.

THE PRESIDENT: The pending question before the Senate is the motion by the Senator from Aroostook, Senator Martin to Concur. A Roll Call has been ordered. Is the Senate ready for the question?

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#155)

YEAS: Senators: BROMLEY, CATHCART, DAGGETT, DOUGLASS, EDMONDS, GAGNON, GOLDTHWAIT, KILKELLY, LAFOUNTAIN, LONGLEY, MARTIN, MCALEVEY, MILLS, NUTTING, O'GARA, PENDLETON, RAND, ROTUNDO, TREAT, THE PRESIDENT - MICHAEL H. MICHAUD

NAYS: Senators: ABROMSON, BENNETT, CARPENTER, DAVIS, FERGUSON, KNEELAND, LEMONT, MITCHELL, SAVAGE, SHOREY, SMALL, TURNER, WOODCOCK, YOUNGBLOOD

ABSENT: Senator: SAWYER

20 Senators having voted in the affirmative and 14 Senators having voted in the negative, with 1 Senator being absent, the motion by Senator **MARTIN** of Aroostook to **CONCUR**, **PREVAILED**.

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

COMMUNICATIONS

The Following Communication: S.C. 387

**120TH LEGISLATURE
JOINT STANDING COMMITTEE ON JUDICIARY**

June 20, 2001

The Honorable Michael H. Michaud, President of the Senate
The Honorable Michael V. Saxl, Speaker of the House
120th Maine Legislature
Augusta, Maine 04333

Dear President Michaud and Speaker Saxl:

We are pleased to report that all business which was placed before the Committee on Judiciary during the First Regular Session of the 120th Legislature has been completed. The breakdown of bills before our committee follows:

Total Number of Bills & Papers		126
Unanimous Reports	74	
Ought to Pass	8	
Ought to Pass as Amended	30	
Ought Not to Pass	36	
Divided Reports	43	
Carry Overs	7	
Joint Study Orders	1	
Jointly Referred Bills	1	

Respectfully submitted,

S/Anne M. Rand
Senate Chair

S/Charles C. LaVerdiere
House Chair

READ and ORDERED PLACED ON FILE.

The Following Communication: S.C. 388

**120TH LEGISLATURE
JOINT STANDING COMMITTEE ON
APPROPRIATIONS AND FINANCIAL AFFAIRS**

June 19, 2001

The Honorable Michael H. Michaud, President of the Senate
The Honorable Michael V. Saxl, Speaker of the House
120th Maine Legislature
Augusta, Maine 04333

Dear President Michaud and Speaker Saxl:

We are pleased to report that all business which was placed before the Committee on Appropriations and Financial Affairs during the First Regular Session of the 120th Legislature has been completed. The breakdown of bills before our committee follows:

Total Number of Bills & Papers		107
Unanimous Reports	90	
Ought to Pass	13	
Ought to Pass as Amended	35	
Ought Not to Pass	39	
Referred to Another Committee	3	
Divided Reports	12	
Carry Overs	5	