

MAINE STATE LEGISLATURE

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

Volume II

First Regular Session

May 27, 2003 – June 14, 2003

First Special Session

August 21, 2003 – August 23, 2003

Second Regular Session

January 7, 2004 - January 30, 2004

Second Special Session

February 3, 2004 - April 7, 2004

Pages 777-1562

Curley, Duprey B, Fletcher, Heidrich, Honey, Joy, Kaelin, Lewin, Maietta, McKenney, Murphy, Muse, Nutting, O'Brien J, Peavey-Haskell, Richardson M, Rogers, Rosen, Shields, Snowe-Mello, Stone, Sykes, Tardy, Treadwell, Vaughan, Young.

ABSENT - Berube, Davis, Goodwin, Greeley, McGlocklin, McGowan, Usher.

Yes, 106; No, 37; Absent, 7; Excused, 1.

106 having voted in the affirmative and 37 voted in the negative, with 7 being absent and 1 excused, and accordingly the Bill was **PASSED TO BE ENGROSSED as Amended by House Amendment "A" (H-570) in NON-CONCURRENCE** and sent for concurrence. **ORDERED SENT FORTHWITH.**

The Chair laid before the House the following item which was **TABLED** earlier in today's session:

Bill "An Act To Implement School Funding Based on Essential Programs and Services"

(S.P. 575) (L.D. 1623)
(C. "A" S-258)

Which was **TABLED** by Representative RICHARDSON of Brunswick pending **PASSAGE TO BE ENGROSSED as Amended.**

The SPEAKER: The Chair recognizes the Representative from Kennebunk, Representative Murphy.

Representative MURPHY: Mr. Speaker, Men and Women of the House. I think, first of all as an aside, Mr. Speaker, I drive through your district twice a day as a commuter and I think going home late last night everything was quiet in your district, but there was one of those Maine moments on the way in. As I came down the steep hill and was starting up the hill toward the Irving, there were two 11 year old boys walking along. The first thing as a teacher I knew was school is out in Gardiner. They were carrying their fishing polls. One had a little bait bag. They were optimists because they had a big bucket and they knew they were going to catch something. There was a very subtle message to me and to this body that it is time for this institution to go home.

Last night we had two choices before us. One, to return this bill back to committee or to begin the process of moving toward enactment. Today we really only have one choice. An Ought Not to Pass would kill the issue for the next two years and that would be a very serious error, I think, on our part. I do take offense in terms of comments made on the floor last night as to my possible making misrepresentation of special ed and transportation. I think the comment was made that you would lose it. I picked my words very carefully and very clearly last night had said that there was a hybrid before you and part of that was the old law dealing with special ed and transportation. I made it very clear that once the index has been set, it will probably not match the printout that you have been given today. You might get more. You might get less or you might get just the same. I did not imply or say that you would not be getting the money for special ed and transportation.

I was very pleased to hear last night in the debate that on the other side of the issue from the Majority Report that there was an agreement between the two sides on this issue. One, the bill that is before us is incomplete. It is not a full mosaic. I also heard, it gave me a little reassurance last night, that this is long term. You were told to put it into the statutes because this will not happen for another two or two and a half years. It will be years before it will be implemented. During these last two days of this session or if we return for a special session, if this does appear on the ballot as a competing issue or if a reference is made to this

essential services on the ballot, then it will not match with what we were told last night.

Even though there were two divided reports on this committee, every member of that committee is unanimous in finding the best way of getting more resources to our children. I first came to this Legislature in January 1981. The reason for running was to get those resources to Maine school children. I returned in December 1988 for that same reason and for the last three years I have been a thorn in the side of leadership on both sides of the aisle for us not meeting our partnership obligations at the state level when it comes to funding education. I think as we move into the closing days we will look to see, is this a long-term implementation or is there a separate agenda to enact this fall. You will not have an opportunity to attend a hearing or a work session in your region to find out how this matches up with what is at home.

About a week after this session ends and after you go through your decompression and you return to a normal mental state, I will have delivered to you in the mail a worksheet and it will take the current ratios that are in this bill, the ones that are in there already, and it will be a simple one page worksheet that you can take to your superintendent and ask, how does this ratio match with what is happening in our school unit? In that way you will be able to find, are these indexes correct or are they too light? What impact will it have on children before we come back in January to finish up this essential programs and services?

The Chair ordered a division on **PASSAGE TO BE ENGROSSED as Amended.**

A vote of the House was taken. 97 voted in favor of the same and 18 against, and accordingly the Bill was **PASSED TO BE ENGROSSED as Amended by Committee Amendment "A" (S-258) in concurrence. ORDERED SENT FORTHWITH.**

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

ENACTORS

Constitutional Amendment

RESOLUTION, Proposing an Amendment to the Constitution of Maine to Preserve the Fund for a Healthy Maine

(H.P. 1188) (L.D. 1612)
(C. "A" H-568)

The SPEAKER: The Chair recognizes the Representative from Belmont, Representative Berry.

Representative BERRY: Mr. Speaker, Men and Women of the House. I received on my desk after our last vote a document and one of the statements on it is the coalition will be very disappointed. I would just like to explain something here. Over a year ago I chose to support protecting the Fund for a Healthy Maine. I chose to support making sure that the funds for that were used for a single purpose and that was the health care and those programs related to what I determined to be legitimate use of funds. I have in my hand the document and in that document also highlighted is a statement that says, "In these tough times it isn't every day that you see a leader standing up for health programs. Here in Maine our Governor and 129 members of our Legislature are making Maine a national leader in health care issues by protecting Maine's tobacco settlement dollars for the Fund for a Healthy Maine." They know that preventing kids from smoking, helping adults quit and keeping healthier in general is a smart choice that will save a lot of state money and protect generations to come.

Ladies and gentlemen of the House, nowhere in this document does it say that I had to or I ever approved the use of a Constitutional Amendment to achieve this. I look at this

statement as an absolute attack upon my integrity and the integrity of other people here who chose to protect the Fund for a Healthy Maine.

I have spent my entire career working with young people. I spent my entire career as a coach working with young people and encouraging that their lives be clean and that they be a clean individual. I will continue to doing that.

I am offended that the use of a document like this to myself and others questions our support for the Fund for a Healthy Maine. I wanted to be on the record of this chamber that I have always supported legitimate use of the Fund for a Healthy Maine. I will not consider voting for this Constitutional Amendment because I do not believe that is what this is about. It does not require any of us in this chamber to have a Constitutional Amendment to protect the young people and adults of the State of Maine. Thank you Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Auburn, Representative Shields.

Representative **SHIELDS**: Mr. Speaker, Ladies and Gentlemen of the House. For those of you who are on the fence, be assured that the Fund for a Healthy Maine is already protected by statute. This is admirable. For those of you who weren't around earlier, the Fund for a Healthy Maine came from tobacco settlements and compensation for state expenses of those who suffered from tobacco related problems.

Currently bankruptcy has been threatened by the tobacco businesses. There is some question as to how long those businesses will last. However, if they continue on eventually that money is going to dry up in ensuing years. If this Constitutional Amendment passes, we will have an empty constitutional area. There has been refusal by those in power to put any part of these funds into any sort of protected trust like entity to generate funds for the future and into perpetuity. In other words, the current intentions are that they spend every dollar every year. If these funds are put into the Constitution, they can only be spent for the purposes listed, which takes away options to meet unforeseen emergencies as noted in recent years. Approximately half of the funds have been used for emergencies and for other purposes. I urge you to support the Fund for a Healthy Maine, but not bind it up in the Constitution where it can't be useful for everyone.

The SPEAKER: The Chair recognizes the Representative from Skowhegan, Representative Richardson.

Representative **RICHARDSON**: Mr. Speaker, Ladies and Gentlemen of the House. I, too, got one of those little notes from the coalition, as the good Representative from Belmont did. I take umbrage at that particular little notice. I support the Fund for a Healthy Maine. I believe that requiring a Constitutional Amendment is questioning whether we have the backbone not to raid a fund that is set up here on a specific basis. I will tell you what. If we aren't trustworthy enough to not do that in the future without having to be prohibited by a Constitutional Amendment, then we need to do something about the House of Representatives. Thank you.

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

Representative **DUDLEY**: Mr. Speaker, Men and Women of the House. This year in our last budget, the Part I budget, we took \$6.6 million out of the Fund for a Healthy Maine. I am not singling any one of us out. I voted for it too. I also signed the pledge to protect the Fund for a Healthy Maine. The fact of the nature of all the demands upon us naturally lead us to places where there are money, including the Fund for a Healthy Maine. This wasn't the first time that we went after the Fund for a Healthy Maine. Since its inception, we have gone after the Fund for a Healthy Maine eight different times. We have taken almost \$90

million out of the Fund for a Healthy Maine. I understand that about 40 percent of the total proceeds of the Fund for a Healthy Maine have been taken out and devoted to non-Fund for a Healthy Maine purposes. We did that with two-thirds support. We all did it. It wasn't one side of the aisle or the other. It was all of us.

The fact is the demands upon us are so great that naturally it is difficult for us to find the restraint to protect the Fund for a Healthy Maine. This, ladies and gentlemen of the House, is the only proposal that will truly protect the Fund for a Healthy Maine. Again, \$6.6 million this session, we have already raised from the Fund for a Healthy Maine. I urge you to join me and make our pledges mean something. Let's pass this amendment and let's let the voters decide what they think is the best thing to do with the Fund for a Healthy Maine. Thank you.

The SPEAKER: The Chair recognizes the Representative from Gorham, Representative Barstow.

Representative **BARSTOW**: Mr. Speaker, Men and Women of the House. I understand the good Representative from Belmont and his perspective in regards to the document that is on his desk. In regards to other issues that we have dealt with and being in my first term, the multiple pieces of paper that I have gotten on my desk on many issues, some of them could be called distorted. I think it is up to us to sift through that information and use it as we must as we make our decisions. I further understand that we have statute in place that ensures that this money is spent only for health purposes. What I am thinking of in supporting this Constitutional Amendment is that we are forming a pact with our fellow citizens and allowing them to come into agreement with us to ensure that this funding will be secured even more so than it is right now. I hope that you will join me in supporting this endeavor, giving the voters an opportunity to form a pact with us and making sure that this funding is preserved for the future. Thank you Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Hodgdon, Representative Sherman.

Representative **SHERMAN**: Mr. Speaker, Ladies and Gentlemen of the House. I would be more than happy to vote for this Constitutional Amendment if we had approved amendments on the other side to limit spending. We had several bills in that would limit our spending constitutionally as 25 or 30 other states have done and maybe we wouldn't be in this financial problem where we are chasing every dollar around the countryside.

The second point is, it is interesting when that little document came across our desk and it was unsigned. We don't know who passed it out. If that is the type of individual we have lobbying out there, maybe they should learn to put a signature on those documents. Thank you.

The SPEAKER: The Chair recognizes the Representative from Farmington, Representative Mills.

Representative **MILLS**: Mr. Speaker, Men and Women of the House. I dislike the kind of deal making that was alluded to a few minutes ago, one Constitutional Amendment for another. There is one Constitutional Amendment proposal before us and only one. I am concerned about the possible misuses of the money that we got almost fortuitously. This money came to us, not from the general fund, not from the taxpayers, but because of the damage to people's health caused by the use of tobacco products. It is a special fund. It is a special sort of money. While ordinarily I am not in favor of tampering with the Constitution, I am in favor of preserving this fund for the special uses to which it should be put because of the source of funding that it represents.

The majority of the people polled by whatever polling mechanism have indicated that they would like to vote on such proposals. I think we need to give them that opportunity. By

standing here and voting in the affirmative on this enactment measure. We are not necessarily saying that we individually want to amend the Constitution, but that we want to give the people the right to say yea or nay. I ask you to vote in favor of this enactment.

The **SPEAKER**: The Chair recognizes the Representative from Manchester, Representative Moody.

Representative **MOODY**: Mr. Speaker, Ladies and Gentlemen of the House. I am one of the House sponsors of this piece of legislation. I feel so strongly about removing these funds for projects that have nothing to do with their purpose, that I would like to see eventually a Constitutional Amendment protecting the funds of ratepayers who pay with regular monthly payments into a variety of funds that have been raided over the years.

Some of us have been accused of cutting a deal too early in the game. My conviction has become stronger as time has gone on with this package. I think an apology is definitely owed to those members of our institution who received this piece this afternoon. I am sorry for that. I believe that everyone here is doing his or her best to vote their conscience. Last week I was asked by a constituent if there was a deal being brokered in trade for votes on this amendment. My response was absolutely not. There is far too much integrity in this body to be cutting deals of this nature. I will explain why.

I believe that if you vote against this bill, you are in favor of raiding the funds for other purposes. That may be an overstatement, but I think that is the net affect. They will be raided. We have laws against corporate raiding, but we have no laws against government raiding. The minute you raid these funds, they are no longer funds. They become taxes. I don't know of many folks here today who are interested in raising taxes. I would ask for your vote in favor of LD 1612.

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

Representative **BRUNO**: Mr. Speaker, Men and Women of the House. I would like to remind this chamber why you call it raiding funds from the Fund for a Healthy Maine, that money went to funding Maine Care shortages, which is health care. Everyone says that is what they want to use the Fund for a Healthy Maine for. If you are taking the money out of a Fund for a Healthy Maine and you put it into the Maine Care Program that is health care for the poor, isn't that an appropriate use of that money?

I heard about how we raided \$90 million out of the fund over the last session. I can tell you that last session they were all majority budgets and Republicans are not in the majority. The Chief Executive said that as long as he is in office you don't have to worry about a constitutional spending cap, because he is there to stop it. Why is this fund any different? Not only should he be making that pledge, but you ought to be making that same pledge. You have every right to stop the money from going to Public Works projects, building a park or whatever you don't think is health care. You have every right to say that if that money is going to health care, then that is an appropriate use.

Ladies and gentlemen, I don't see a need for protecting the Fund for a Healthy Maine in a Constitutional Amendment, which is something we don't do for any fund around here. Why would you tie your hands that way? If you weren't able to get in the Fund for a Healthy Maine, what would you have done with all the shortages around here?

Ladies and gentlemen, I urge you to do the right thing and not support this bill.

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

Representative **RICHARDSON**: Mr. Speaker, Men and Women of the House. During the past couple of years there were many pledges that went around to different people who asked to have you sign a pledge. I didn't sign that pledge. I didn't like to see the fact that the Fund for a Healthy Maine had been raided from time to time if people want to call it that or used for other health care purposes. I never felt it was appropriate to sign a pledge because I never knew exactly what would happen here. I didn't know if we would have to use it for other purposes. I thought for a time there it would be foolish on my part to sign some pledge, which everyone in this room who did sign a pledge broke the promise. Unfortunately now we have gotten down to the point where we have spent 40 percent of the fund. Forty percent was diverted off into other areas and so the fund continues and continues to shrink and shrink and shrink to a smaller point to where if we don't do something soon, like enacting a Constitutional Amendment, then we are going to find ourselves at a point where we don't have a Fund for a Healthy Maine any longer. It will be gone.

Yes, it will be used for a good purpose somewhere else, here or there, but it won't be used for the purposes to which we received it and to which the people believe, in fact, we received it. These aren't tax dollars. These aren't people's money per say that we collected through revenue. This is through a court settlement. It was to be used for a specific purpose. We are down now to where there is no more meat on the bone. It is just the bone we are trying to save. I ask you to join me in supporting the Constitutional Amendment. Take it out. Not only today if you vote against this, you are voting against the fact that we are not even allowing the people to decide. Your vote today won't be whether or not we have a Constitutional Amendment. Your vote will be whether we allow the people to decide. I am for letting people decide things like the Fund for a Healthy Maine, letting them decide whether it is the right purpose to which we first received it. It is the same purpose to which we should not use it. If we miss this opportunity today, then that Fund for a Healthy Maine won't be 40 percent diverted, it will be 60 percent diverted and we will be back in the 122nd arguing that we ought to have a Constitutional Amendment to save the little bit that is left.

Today this isn't a vote about whether you agree or disagree in adding a Constitutional Amendment, it is a vote to let those people decide whether or not they want to support it. I would ask you to let this go out to the people. That is all we are doing here. Thank you very much.

The **SPEAKER**: The Chair recognizes the Representative from Turner, Representative Bryant-Deschenes.

Representative **BRYANT-DESCHENES**: Mr. Speaker, Ladies and Gentlemen of the House. I would like to have on record that my motive for not voting for this is not because I want to raid these funds. My motive for not voting for this is because I, again, believe that it is not going to make the difference that we are told it will. We had a bill come before the Judiciary Committee this year trying to take \$81 million from the program when the insurance companies left the state, which was put into a trust fund. The only reason that didn't go to the general fund along with everything else is because it was in a trust fund and it couldn't be touched. I would only support this amendment if the money were to be put into a trust fund, not into a fund for the Fund for a Healthy Maine and there would be some protection on where the spending would be done. Thank you.

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

Representative **GLYNN**: Mr. Speaker, Colleagues of the House. I rise in opposition to this Constitutional Amendment and I would like to explain a little bit of my rationale why. I was on the

joint standing committee that dealt with this issue, the Health Care Reform Committee, who voted out the recommendation and I was on the Ought Not to Pass report. I was quite troubled by our work session when we discussed the issue when I learned that this Constitutional Amendment will bind the hands of future legislators from protecting health care in Maine.

One of the concerns that was raised to me by a constituent and I asked the question in committee was, what would happen after this Constitutional Amendment passed, if due to all these budget shortfalls, we were to have a very harmful cut to Medicaid that affected the mental health patients that are served throughout the State of Maine and they were to lose their coverage? They would lose the money that was to go to very basic and needed services. The question was then asked, could we, after this amendment passed, would we be able to take funds from a Fund for a Healthy Maine and transfer them for medical purposes over to make sure that these clients continue to receive services? The answer I received was a resounding no.

This Constitutional Amendment binds our hands to new programs, new spending and prevention. While I think those are admirable and lofty goals and things that I support, I do realize that in a time of financial hardship, such as the times we are going through now, the Legislature needs to reserve the right and it is our obligation and our charge to make sure that basic services are rendered for our constituents. I would hate to be a member of the Legislature dealing with the types of budget shortfalls that I believe are going to be looming and have my hands tied and watch brochures printed for prevention programs and watch new programs started at the expense of people who lost their services as a result of financial hard times in Maine. I urge a no vote. Thank you Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Cornville, Representative Mills.

Representative MILLS: Mr. Speaker, Men and Women of the House. This proposal for a Constitutional Amendment sort of has me on a razor's edge. I may wind up voting both ways on it before I am done this afternoon. I am not sure. Something needs to be said about the history of how this money came into our hands and how it continues to come into our hands and what was the genesis of the lawsuit among the 46 states that brought one? Understand the source of this money before we decide how to dispose of it or to arrange for its disposal within the Constitution. The theory upon which the lawsuit was brought by the State of Maine in 1997 was that we had within the statute of limitations, which is six years in Maine, for a period of six years before 1997 we had accumulated a certain number of costs within the Medicaid account that could be attributed to smoking. Smoking people who are Medicaid run up certain health care costs, which could be aggregated and made the subject of a damage claim against the tobacco companies that were purveying those products in Maine.

When it came time to settle these cases across the United States, they were all somewhat similar, the tobacco companies made a rather astonishing deal with the states' Attorney General by proposing not only to settle the claims that had accrued down through the date of the settlement, but they also said that we will pay you even more money, in fact, a great deal more money on a perpetual basis if you sign a settlement agreement that gives the manufacturers a perpetual immunity to suing for Medicaid expenses relating to tobacco consumption. That indeed was the substance of this 145 page settlement document that came about some time in 1998 or 1999. All of the money that we receive then has a Medicaid genesis. The only reason we are getting the money is because of the theory and the fact that we, as a state, have been spending a lot more money than we probably should

have been spending because of the number of habitual smokers who were covered under Medicaid and who will be covered under Medicaid almost in perpetuity, perhaps beyond the life span of anybody in this room. The money has a Medicaid genesis. It comes from Medicaid. It rises out of Medicaid expenditures and quite frankly it seems to me that the way in which this amendment was originally drafted, the terms of the amendment could very easily be complied with simply by allocating the \$50 or \$60 million a year that we get right into the Medicaid account, which is around \$400 million. We could very easily comply with this amendment as it was originally drafted by contributing the entire fund into the Medicaid account sub-planting that effort and calling it a day.

I think that was the temptation back in 1999 when we first got our hands on these funds in a number of very interesting and very fine interest groups came forward, people that were concerned about child care, prenatal care, providing prescription drugs, dental care, substance abuse. All of these folks that were more concerned about more general public health issues came forward and formed a coalition and lobbied very intently and very successfully for the passage of the law that we are now considering drafting into the Constitution.

One of my criticisms of this proposed Constitutional Amendment is that it is perhaps so easily evaded. We have taught ourselves how to evade these things as we have with the fish and game restrictions, that is the restrictions on license money from fish and game, as we have on the restrictions on gas tax revenues. We have ways of making sure that that money when we need it in times of distress that that money is used to assist the general fund in a variety of different ways in order to get through a given crisis.

I have mixed feelings about this proposal. I think it is more window dressing than anything. It is certainly a noble cause. Who can quarrel with the nine proposed purposes? We should certainly be spending more than \$50 million a year on these purposes and, in fact, we do. My own view is it is an amendment that may not have the affect that its sponsors intend. It is certainly worthy of our consideration, but it is not what anybody thinks it is cracked up to be. Thank you.

The SPEAKER: The Chair recognizes the Representative from Rockport, Representative Bowen.

Representative BOWEN: Mr. Speaker, Men and Women of the House. There is a scene in the Godfather Part II, which for my money is the best of the Godfather movies, by the way, in which Michael Corleone is throwing this party at the beginning of the movie. His sister, Connie, shows up with this deadbeat she picked up someplace. They are going to get married. She comes looking for money. She comes in begging Michael Corleone to give her some money. She tells him to keep out of her life and all this. He says something to the effect of, I don't know this Merle. I don't know what he does. I don't know where he gets his money. Tell him that you don't want to be married to him and you never want to see him again and he will understand, I can promise you. She fusses some more and he says, "Connie, if you disobey me and marry this man, you will disappoint me." Needless to say, she doesn't marry the man.

I was reminded of this because, like some of our colleagues in here, I got a note as well. It said, Representative Bowen what happened? The coalition is very disappointed. It is unsigned by the way. It doesn't say who amongst this coalition sent this to me. I feel the need to do as the Representative from Turner did and go on record and say that my opposition to this Constitutional Amendment does not mean that I don't support this fund. I have to disagree with my colleague from Manchester that my

opposition to this amendment means that I am supporting raiding funds.

What I support is self-control. When these budgets come around we sit down and we are a little more careful. When we are told that we need this amendment because we don't have any self-control, as apparently has been evidenced by the number of times we have looted this fund, it reminds me of dieters who paddle lock the fridge and then they try and hide the key on themselves so they can't get back into it. They just don't have the control to stay out of there.

I hold this body in higher regard and I hold the Constitution in higher regard. I think we can exercise self-control. When we are working on budgets, we can look at where this money comes from and be more careful about it. We did try, several of us, a Constitutional Amendment to put some spending controls in. We were told that a statute was good enough. We didn't need a Constitutional Amendment. The statutes were enough to put a spending cap in that would do what we wanted it to do. I don't see any reason why it isn't good enough that we can just promise ourselves to exercise a little more self-control when this doesn't quite rise, in my opinion, to the level of Constitutional Amendment. Thank you.

The SPEAKER: The Chair recognizes the Representative from Wiscasset, Representative Rines.

Representative RINES: Mr. Speaker, Men and Women of the House. When we started this session one of the first things that we did was balance the budget. We balanced the budget by raising all of the funds that we could get our hands on. We can pat ourselves on the back and be very proud that we didn't raid tobacco funds like many other states have done. Shortly after that happened, the Utilities Committee asked the Attorney General for his opinion. I quote, "Unless funds are held in trust or are specifically protected by the terms of the Constitution, the Legislature has discretion in making allocations for any designated governmental purpose, including allocation to the general fund." This question was asked of the Attorney General because in Utilities we handle money through the PUC that is collected on water rates, telephone bills, light bills and the like in the tunes of millions of dollars. Our attempt was to try to protect those funds. The Attorney also informed us that the Legislature could not create a trust fund for funds that were created through a tax because they were funds that we had created and didn't come from an outside source. The only alternative we have if we want to protect the funds is the Constitution.

I won't read what the rest of it says. It is basically immaterial. The only way that we can protect the funds from now and into the future and for the purpose it was intended for is with a Constitutional Amendment, which in this case, will act as a Constitutional Amendment backed up by a referendum. Everybody in this body knows how we feel about referendums and word that comes from the voter. I would urge you to vote in favor of it. Thank you.

The SPEAKER: The Chair recognizes the Representative from Saco, Representative O'Neil.

Representative O'NEIL: Mr. Speaker, Ladies and Gentlemen of the House. I support the pending motion. For many of you have served on committees with me, you know often times I agonize over the gray area. I slow down when everybody is ready to move and I say that we have to look at this detail or that detail. Mr. Speaker, you yourself have told me on numerous occasions, don't sweat the details. I am a big picture guy. That is why we are a good match. On this one, I can declare myself a minimalist. It is just black and white to me. I, like the Representative from Brunswick, refused to sign that pledge back last year. I don't like signing pledges. I recognize the various

situations that might befall us and I recognize that eventually we may regret the fact that we had signed the pledge and done what we had considered to be inevitable or unavoidable.

In the spirit of Representative Bowen's cinema experience, I don't remember which Clint Eastwood movie it was with Dirty Harry, but that famous line about a man's gotta know his limitations. He is right. I think many of us, while we know our limitations, sometimes are faced with situations that force us to exceed those limitations. For me, if, indeed, I want to put my money where my mouth is and I want to lock up the Fund for a Healthy Maine, it is not sufficient to tie my hands, because maybe my other hand can get out or maybe I can get at it elsewhere. I can get it right out of the way. It is not even there to tempt me. I can't tell my dog to keep away from that steak that I put on the floor and walk away and trust that he is going to do it. Why put ourselves into that position. If, indeed, we feel that the purposes of the Fund for a Healthy Maine are as worthwhile as we have declared, let's lock them up. It is black and white for me. Please support the motion.

The SPEAKER: The Chair recognizes the Representative from Frenchville, Representative Paradis.

Representative PARADIS: Mr. Speaker, Ladies and Gentlemen of the House. It is time for a short one. History teaches us valuable lessons. We had a Governor in the '70s, I will leave him unnamed, you can figure it out, who raided the Maine State Retirement System, big time. He set people back for years. Ultimately special legislation was needed to protect the fund. We have a similar situation here. Those funds are very tempting indeed. We cannot trust future chief executives and legislators. We cannot fully trust ourselves to keep their hands off and to squander these precious funds on anything but the health of our citizens. We need this vote also to make Dirigo Health take off properly. I would encourage you to vote for final passage of LD 1612. Thank you.

The SPEAKER: The Chair recognizes the Representative from Kennebunk, Representative Murphy.

Representative MURPHY: Mr. Speaker, Men and Women of the House. When you get to my age sometimes you will hear things on the floor and you will experience a flashback. When the good Representative from Cornville was speaking, I had a flashback. Let me take you back. He was talking about the history of about how all this came about and when you serve in leadership a lot of things happen behind closed doors while you are at dinner or lunch or twitting your thumbs and saying this place isn't going forward. Things are happening. Back at that time with the previous Attorney General, Attorney General Ketterer, had to make a decision involving those lawsuits brought by all the states. He had a very short window of time. I think he made the proper decision that it was best to take that offer, that settlement and be able to stop the process at that point rather than going on for another two or three years. During that 48 hour period that he had to make that final decision, he had gone and visited with the 10 members of leadership individually letting them know what his decision was and what did they think. I think he got a unanimous answer back. The following day down in the Governor's Cabinet Room, the members of leadership at that point and Governor King and that Attorney General met, held a press conference and there were two themes of where the money was going to go, young people in the area of prevention in an effort to try to repair the damage that had been done to our older citizens. It was very substantial, costly medical damage. That was the theme. Both parties, supporting that Attorney General's decision, which I believe to this day was the proper decision. When we left that room, we felt we had a focus. That was where the money was going to go.

There is a thing around this place called feeding frenzy. When you see the money and you have this drive that you have to spend it. We had a fight in this Legislature because there was an effort to spend the money, commit the money, before it even got here. We knew it was nine months or 12 months away and there was an effort to put into place programs without money in the bank. That had to be slowed down. What happens behind closed doors when you get a peek at the frenzy, the spending frenzy, and I don't know if it was Senator Bruno or Senator Kneeland that was with me and was Speaker of the House Rowe that pointed out that they had made up a list of how they wanted to spend that new money. You gotta remember at that time that without the money we did have either a \$4 or \$5 million program aimed at young people and prevention. There was a very limited program in place with money that had been put there well before any possible settlement of those dollars. The two of us arrived at the outer Speaker's Office, the Appropriations Committee was in there, leadership was in there and we were given a list. It was, this is how we would like to spend the money. The two of us stood there and looked at the list and looked at each other and handed it back to then Speaker Rowe and said we think something is missing. Are you sure you don't want to take a look at this list before you release it to the press? Not only had a decision been made to take that money and start brand new programs, but in the process they had taken the \$5 million that was already in place for youth prevention that when we went down, we thought that was the area that was going to be reinforced. Faces turned red. The door slammed and then three to four hours later a new list came out and young people and prevention went back in there. When the Majority Leader says basically that we can't help ourselves when it comes to this money, two of us got to look through that door and see that helplessness in terms of that call of the money and how easy it is to get diverted.

I am going to be voting both ways today. I originally had voted for a Constitutional Amendment. I signed the pledge. I am going to keep that pledge. It doesn't involve a Constitutional Amendment. When I stood up in front of the press that day, I said my principles are such that that money will go to young people for prevention and to repair the damage of tobacco to the citizens of the State of Maine and I cast my votes accordingly. That is why as some of these raids have come in, I have voted for my first budget today in the last two years because of the raids. When we hear about a Constitutional Amendment to protect money, take a look at the section dealing with the Department of Transportation and the gas tax dollars. It says clearly that you cannot take that money collected and use it for any other purpose than roads and bridges and transportation. How well did that Constitutional Amendment protect those dollars? It was taken to the general fund this year. That is how strong a Constitutional Amendment is.

The protection for those dollars is for you to say individually that my principles are such that that money is going to be used to protect young people so they don't go through the misery that their elders have and to repair that damage. That is how you keep the promise. That is how you keep the pledge. It is your basic core principles that will do it.

The SPEAKER: The Chair recognizes the Representative from Sanford, Representative Courtney.

Representative **COURTNEY**: Mr. Speaker, Ladies and Gentlemen of the House. I rise in opposition to this motion. I realize this has gone on for a while and I will be brief. My concern is not setting the fund aside. I think that makes sense for all of us. I think we all want to do that. Doing it in the

Constitution and looking at how it has been administered since it was set aside, it raises some great concerns. We use it on cross country ski trails, bike paths, race car sponsorships, TV commercials that tell people's children that they shouldn't be drinking soda. I think that that might not be the best use of that money when we have people at home that are trying to afford their drugs, trying to get medical care. I think that we are going down the wrong road with some of that. My concern is who is administering the fund and some of the checks and balances on that. Therefore, I would ask you to join me and not support this Constitutional Amendment. Thank you very much.

The SPEAKER: The Chair recognizes the Representative from Biddeford, Representative Laverriere-Boucher.

Representative **LAVERRIERE-BOUCHER**: Mr. Speaker, Men and Women of the House. I rise in support of this motion. What is before us right now is not if we agree that the Constitution be amended, but rather that it goes out to referendum and our constituents vote on that. I don't have a problem with allowing them to voice their decision on this particular amendment. I support this and I hope that you follow me. Thank you.

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

Representative **DUDLEY**: Mr. Speaker, Men and Women of the House. I don't think there are very many of us here who have trouble exercising self-restraint. The point isn't our personal willingness to be resolute relative to the Fund for a Healthy Maine. The point is the way this institution works, the fact that it is built on compromise and finding ways to work together. I don't think there is a single person in this room who has gotten everything that they have wanted to accomplish this session. I don't think there is anybody that anyone of us can point to in this chamber, anybody else that we can point to and say that I agree with every single thing that person believes in. We don't agree on everything. That is what makes us strong. That is what makes us able to do our jobs.

The point here is that our budgets and our use for the Fund for a Healthy Maine and every other issue that we deal with here is built to some degree on compromise, recognizing that there are other interests at play and finding ways to work together. Unfortunately at times that has led to each of us having to compromise on the Fund for a Healthy Maine, despite how we personally feel about it, despite how strongly we feel that it ought to be protected. We recognize that we have a job to do and part of that job means recognizing the interests of other members. We are left with having gone to the Fund for a Healthy Maine eight times or more or maybe fewer to take money to apply to other interests. I don't think that impugns any single one of our resoluteness in trying to protect the Fund for a Healthy Maine, but just the nature of this institution and I think we ought to recognize the nature of this institution, not to denigrate it, but to understand it and to support this type of control on the Fund for a Healthy Maine, a unique source of revenue that we have wisely invested in health promotion and prevention. This Constitutional Amendment, while not perfect, is a solid step in the direction of preserving the Fund for a Healthy Maine forever.

I am sorry if some of you have felt offended by notes that have gone out. Maybe whoever sent them out wasn't exercising the best strategy, but let's look a little beyond it to the greater goal in protecting the Fund for a Healthy Maine. Thank you.

Reported by the Committee on **Engrossed Bills** as truly and strictly engrossed. This being a Constitutional Amendment, a two-thirds vote of the House being necessary, a total was taken. 90 voted in favor of the same and 55 against, and accordingly the Resolution **FAILED FINAL PASSAGE**.

Representative RICHARDSON of Brunswick moved that the House **RECONSIDER** its action whereby the Resolution **FAILED FINAL PASSAGE**.

On further motion of the same Representative, **TABLED** pending his motion to **RECONSIDER** whereby the Resolution **FAILED FINAL PASSAGE** and later today assigned.

Acts

An Act To Implement School Funding Based on Essential Programs and Services

(S.P. 575) (L.D. 1623)
(C. "A" S-258)

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

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

Emergency Measure

An Act To Strengthen the Energy Resources Council

(S.P. 233) (L.D. 669)
(H. "A" H-567 to C. "A" S-200)

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. 101 voted in favor of the same and 31 against, and accordingly the Bill was **PASSED TO BE ENACTED**, signed by the Speaker and sent to the Senate. **ORDERED SENT FORTHWITH**.

Emergency Measure

An Act To Simplify Calculation of Legal Interest

(H.P. 835) (L.D. 1132)
(H. "B" H-571)

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. 116 voted in favor of the same and 2 against, and accordingly the Bill was **PASSED TO BE ENACTED**, signed by the Speaker and sent to the Senate. **ORDERED SENT FORTHWITH**.

SENATE PAPERS

Non-Concurrent Matter

Bill "An Act to Amend Certain Provisions of the Program Evaluation and Government Accountability Laws"

(H.P. 59) (L.D. 51)

PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-361) AND HOUSE AMENDMENT "A" (H-558) in the House on June 12, 2003.

Came from the Senate with that Body having **ADHERED** to its former action whereby **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-361) in NON-CONCURRENCE**.

Representative DUNLAP of Old Town moved the House **RECEDE AND CONCUR**.

The SPEAKER: The Chair recognizes the Representative from Old Town, Representative Dunlap.

Representative **DUNLAP**: Mr. Speaker, Ladies and Gentlemen of the House. I will not make reference to any action by the other body or any member thereof because that would be against the rules. However, I do still believe in the amendment that was offered in the House. You have the action of the other body before you. Mr. Speaker, in order to keep this thing alive, I move that the House Recede and Concur.

The SPEAKER: The Chair recognizes the Representative from Waldoboro, Representative Trahan.

Representative **TRAHAN**: Mr. Speaker, Ladies and Gentlemen of the House. Like usual, the Representative from Old Town has cleverly worded his statement on the floor. I admire his approach. I also support the Recede and Concur motion and ask you to do so. We can take care of this issue at a later date. Thank you Mr. Speaker.

Subsequently, the House voted to **RECEDE AND CONCUR**.

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

The House recessed until the Sound of the Bell.

(After Recess)

The House was called to order by the Speaker.

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

SENATE PAPERS

Non-Concurrent Matter

Resolve, Directing the Department of Human Services To Establish an Advisory Task Force to Examine Staff-child Ratios and Maximum Group Size in Child Care Facilities

(H.P. 538) (L.D. 732)
(C. "A" H-168)

FINALLY PASSED in the House on May 5, 2003.

Came from the Senate **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-168) AS AMENDED BY SENATE AMENDMENT "A" (S-277)** thereto in **NON-CONCURRENCE**.

The House voted to **RECEDE AND CONCUR. ORDERED SENT FORTHWITH**.

Non-Concurrent Matter

Resolve, To Create the Task Force To Study Parity and Portability of Retirement Benefits for State Law Enforcement Officers, Municipal Law Enforcement Officers and Firefighters (EMERGENCY)

(H.P. 989) (L.D. 1343)
(C. "A" H-190)

FINALLY PASSED in the House on May 8, 2003.

Came from the Senate **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-190) AND SENATE AMENDMENT "A" (S-275)** in **NON-CONCURRENCE. ORDERED SENT FORTHWITH**.

The House voted to **RECEDE AND CONCUR. ORDERED SENT FORTHWITH**.